

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Council for Smarter Government offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. (1) The Division of Workers' Compensation of the Department of Labor and Employment Security is transferred by a type two transfer, as defined in section 20.06(2), Florida Statutes, to the Department of Insurance, except as otherwise provided in this section. The transfers to the Department of Insurance shall include all resources, data, records, property, and unexpended balances of appropriations, allocations, or other funds. No personnel are transferred to the Department of Insurance. The employees of the Department of Labor and Employment Security's Division of Workers' Compensation, Office of the Secretary, Office of Administrative Services, and Office of General Counsel employed by the Department of Labor and Employment Security as of March 1, 2001 may be given hiring priority by the Department of Insurance, and at least 300 of these employees

Amendment No. ____ (for drafter's use only)

1 shall be offered employment by the Department of Insurance,
2 effective October 1, 2001. To the extent feasible, the
3 positions established by the Department of Insurance will be
4 at pay grades comparable to the positions established by the
5 Department of Labor and Employment Security based on the
6 classification code and specifications of the positions for
7 work to be performed at the Department of Insurance. Offers of
8 employment to the 300 employees must be tendered no later than
9 August 15, 2001. The Department of Labor and Employment
10 Security shall offer, and if accepted provide, job placement
11 assistance to those employees not offered employment by the
12 Department of Insurance. After October 1, 2001, such
13 assistance, upon request, shall be provided to these employees
14 by the Agency for Workforce Innovation. The Department of
15 Insurance shall determine the number of positions needed to
16 administer the provisions of chapter 440, Florida Statutes.
17 The number of positions the department determines is needed
18 may not exceed the number of authorized positions and salary
19 and benefits that was authorized for the Division of Workers'
20 Compensation within the Department of Labor and Employment
21 Security prior to the transfer. Upon transfer of the Division
22 of Workers' Compensation, the number of required positions as
23 determined by the department shall be authorized within the
24 agency. The Department of Insurance is further authorized to
25 reassign, reorganize, or otherwise transfer positions to
26 appropriate administrative subdivisions within the department
27 and to establish such regional offices as are necessary to
28 properly enforce and administer its responsibilities under the
29 Florida Insurance Code and chapter 440, Florida Statutes. The
30 department may also enter into contracts with public or
31 private entities to administer its duties and responsibilities

Amendment No. ____ (for drafter's use only)

1 associated with the transfer of the Division of Workers'
2 Compensation. All existing contracts related to those
3 functions that are transferred to the Department of Insurance
4 are subject to cancellation or renewal upon review by the
5 Department of Insurance.

6 (2) Three senior attorney positions and one
7 administrative assistant III position, and the related
8 property and unexpended balances of appropriations,
9 allocations, and other funds, are transferred from the Office
10 of General Counsel of the Department of Labor and Employment
11 Security to the Department of Insurance by a type two
12 transfer, as defined in section 20.06(2), Florida Statutes.

13 (3) The Office of the Judges of Compensation Claims is
14 transferred by a type two transfer, as defined in section
15 20.06(2), Florida Statutes, from the Department of Labor and
16 Employment Security to the Division of Administrative Hearings
17 of the Department of Management Services.

18 (4) Four positions within the Division of Workers'
19 Compensation of the Department of Labor and Employment
20 Security responsible for coding or entering data contained
21 within final orders issued by the judges of compensation
22 claims are transferred by a type two transfer, as defined in
23 section 20.06(2), Florida Statutes, to the Office of the
24 Judges of Compensation Claims within the Division of
25 Administrative Hearings of the Department of Management
26 Services.

27 (5) Ten positions within the Division of Workers'
28 Compensation of the Department of Labor and Employment
29 Security responsible for receiving and preparing docketing
30 orders for the petitions for benefits and for receiving and
31 entering data related to the petitions for benefits are

Amendment No. ____ (for drafter's use only)

1 transferred by a type two transfer, as defined in section
2 20.06(2), Florida Statutes, to the Office of the Judges of
3 Compensation Claims within the Division of Administrative
4 Hearings of the Department of Management Services.

5 (6) Four positions within the Division of Workers'
6 Compensation of the Department of Labor and Employment
7 Security responsible for financial management, accounting, and
8 budgeting for the Office of the Judges of Compensation Claims
9 are transferred by a type two transfer, as defined in section
10 20.06(2), Florida Statutes, to the Office of the Judges of
11 Compensation Claims within the Division of Administrative
12 Hearings of the Department of Management Services.

13 (7) Twenty-nine full-time equivalent positions from
14 the Division of Workers' Compensation of the Department of
15 Labor and Employment Security and the records, property, and
16 unexpended balances of appropriations, allocations, and other
17 funds related to oversight of medical services in workers'
18 compensation provider relations, dispute and complaint
19 resolution, program evaluation, and data management are
20 transferred by a type two transfer, as defined in section
21 20.06(2), Florida Statutes, from the Department of Labor and
22 Employment Security to the Agency for Health Care
23 Administration. However, the claims review functions and
24 three-member panel shall not be so transferred and shall be
25 retained by the Department of Insurance.

26 (8) All statutory powers, duties, functions, rules,
27 records, personnel, property, and unexpended balances of
28 appropriations, allocations, and other funds of the Division
29 of Workers' Compensation, Office of Medical Services and
30 Rehabilitation, related to reemployment, training and
31 education, obligations to rehire, and preferred worker

Amendment No. ____ (for drafter's use only)

1 requirements, consisting of 98 full-time equivalent positions,
2 are transferred by a type two transfer, as defined in section
3 20.06(2), Florida Statutes, from the Department of Labor and
4 Employment Security to the Department of Education.

5 (9) Except as provided in this section, the records,
6 property, and unexpended balances of appropriations,
7 allocations, and other funds and resources of the Office of
8 the Secretary and the Office of Administrative Services of the
9 Department of Labor and Employment Security which support the
10 activities and functions of the Division of Workers'
11 Compensation are transferred by a type two transfer as defined
12 in section 20.06(2), Florida Statutes, to the Department of
13 Insurance. The Department of Insurance, in consultation with
14 the Department of Labor and Employment Security, shall
15 determine the number of positions needed for administrative
16 support of the programs within the Division of Workers'
17 Compensation as transferred to the Department of Insurance.
18 The number of administrative support positions that the
19 Department of Insurance determines is needed may not exceed
20 the number of administrative support positions that was
21 authorized for the Department of Labor and Employment Security
22 for this purpose prior to the transfer. Upon transfer of the
23 Division of Workers' Compensation, the number of required
24 administrative support positions as determined by the
25 Department of Insurance shall be authorized within the
26 Department of Insurance.

27 (10) All the personnel, records, property, and
28 unexpended balances of appropriations, allocations, and other
29 funds and resources of the Office of the Secretary and the
30 Office of Administrative Services of the Department of Labor
31 and Employment Security which support the activities and

Amendment No. ____ (for drafter's use only)

1 functions transferred under subsections (7) and (8) to the
2 Department of Education are transferred by a type two transfer
3 as defined in section 20.06(2), Florida Statutes, to the
4 Department of Education.

5 (11) The records, property, and unexpended balances of
6 appropriations, allocations, and other funds and resources of
7 the Office of the Secretary and the Office of Administrative
8 Services of the Department of Labor and Employment Security
9 which support the activities and functions transferred under
10 subsection (7) to the Agency for Health Care Administration
11 are transferred by a type two transfer as defined in section
12 20.06(2), Florida Statutes, to the Agency for Health Care
13 Administration.

14 (12) Effective July 1, 2001, all powers, duties,
15 functions, rules, records, personnel, property, and unexpended
16 balances of appropriations, allocations, and other funds of
17 the Unemployment Appeals Commission relating to the
18 commission's specified authority, powers, duties, and
19 responsibilities are transferred by a type two transfer, as
20 defined in s. 20.06(2), Florida Statutes, to the Agency for
21 Workforce Innovation.

22 (13) Effective July 1, 2001, all powers, duties,
23 functions, rules, records, personnel, property, and unexpended
24 balances of appropriations, allocations, and other funds of
25 the Public Employees Relations Commission relating to the
26 commission's specified authority, powers, duties, and
27 responsibilities are transferred by a type two transfer, as
28 defined in s. 20.06(2), Florida Statutes, to the Department of
29 Management Services.

30 (14) Effective July 1, 2001, the Office of Information
31 Systems is transferred by a type two transfer, as defined in

Amendment No. ____ (for drafter's use only)

1 s. 20.06(2), Florida Statutes, from the Department of Labor
2 and Employment Security to the State Technology Office.

3 (15)(a) Effective July 1, 2001, the records, property,
4 and unexpended balances of appropriations, allocations, and
5 other funds and resources of the Office of the Secretary and
6 the Office of Administrative Services of the Department of
7 Labor and Employment Security which support the activities and
8 functions transferred under subsection (12) to the Agency for
9 Workforce Innovation are transferred as provided in s.
10 20.06(2), Florida Statutes, to the Agency for Workforce
11 Innovation.

12 (b) Effective July 1, 2001, the records, property, and
13 unexpended balances of appropriations, allocations, and other
14 funds and resources of the Office of the Secretary and the
15 Office of Administrative Services of the Department of Labor
16 and Employment Security which support the activities and
17 functions transferred under subsection (13) to the Department
18 of Management Services are transferred as provided in s.
19 20.06(2), Florida Statutes, to the Department of Management
20 Services.

21 (c) Effective July 1, 2001, the records, property, and
22 unexpended balances of appropriations, allocations, and other
23 funds and resources of the Office of the Secretary and the
24 Office of Administrative Services of the Department of Labor
25 and Employment Security which support the activities and
26 functions transferred under subsection (14) to the State
27 Technology Office are transferred as provided in s. 20.06(2),
28 Florida Statutes, to the State Technology Office.

29 (16) This act does not affect the validity of any
30 judicial or administrative proceeding involving the Department
31 of Labor and Employment Security, which is pending as of the

Amendment No. ____ (for drafter's use only)

1 effective date of any transfer under this act. The successor
2 department, agency, or entity responsible for the program,
3 activity, or function relative to the proceeding shall be
4 substituted, as of the effective date of the applicable
5 transfer under this act, for the Department of Labor and
6 Employment Security as a party in interest in any such
7 proceedings.

8 (17) Effective July 1, 2001, eleven full-time
9 equivalent positions from the Division of Workers'
10 Compensation of the Department of Labor and Employment
11 Security, and the powers, duties, functions, rules, records,
12 personnel, property, and unexpended balances of
13 appropriations, allocations, and other funds related to the
14 administration of child labor laws under chapter 450, Florida
15 Statutes, are transferred by a type two transfer, as defined
16 in section 20.06(2), Florida Statutes, from the Department of
17 Labor and Employment Security to the Department of Business
18 and Professional Regulation.

19 (18) Effective July 1, 2001, thirty full-time
20 equivalent positions from the Compliance and Enforcement
21 Program in the Office of the Secretary and Administrative
22 Services and one senior attorney and one administrative
23 secretary from the Office of General Counsel in the Office of
24 the Secretary and Administrative Services, and the powers,
25 duties, functions, rules, records, personnel, property, and
26 unexpended balances of appropriations, allocations, and other
27 funds of the Office of the Secretary and Administrative
28 Services of the Department of Labor and Employment Security
29 related to the regulation of labor organizations under chapter
30 447, Florida Statutes, and the administration of migrant labor
31 and farm labor laws under chapter 450, Florida Statutes, are

Amendment No. ____ (for drafter's use only)

1 transferred by a type two transfer, as defined in section
2 20.06 (2), Florida Statutes, from the Department of Labor and
3 Employment Security to the Department of Business and
4 Professional Regulation.

5 (19) Effective July 1, 2001, any other powers, duties,
6 functions, rules, records, property, and unexpended balances
7 of appropriations, allocations, and other funds of the
8 Department of Labor and Employment Security not otherwise
9 transferred by this act, relating to workplace regulation and
10 enforcement, including, but not limited to, those under
11 chapter 448, Florida Statutes, are transferred by a type two
12 transfer, as defined in section 20.06(2), Florida Statutes,
13 from the Department of Labor and Employment Security to the
14 Department of Business and Professional Regulation.

15 (20) Effective July 1, 2001, the records, property,
16 and unexpended balances of appropriations, allocations, and
17 other funds and resources of the Office of the Secretary and
18 Administrative Services of the Department of Labor and
19 Employment Security which support the activities and functions
20 transferred under subsections (17), (18), and (19) to the
21 Department of Business and Professional Regulation are
22 transferred as provided in section 20.06(2), Florida Statutes,
23 to the Department of Business and Professional Regulation.

24 (21) Notwithstanding any other provision of law, any
25 binding contract or interagency agreement existing on or
26 before October 1, 2001, between the Department of Labor and
27 Employment Security, or an entity or agent of the department,
28 and any other agency, entity, or person shall continue as a
29 binding contract or agreement for the remainder of the term of
30 such contract or agreement with the successor department,
31 agency, or entity responsible for the program, activity, or

Amendment No. ____ (for drafter's use only)

1 functions relative to the contract or agreement.

2 Section 2. Paragraph (k) is added to subsection (2) of
3 section 20.13, Florida Statutes, to read:

4 20.13 Department of Insurance.--There is created a
5 Department of Insurance.

6 (2) The following divisions of the Department of
7 Insurance are established:

8 (k) Division of Workers' Compensation.

9 Section 3. Section 20.171, Florida Statutes, is
10 repealed.

11 Section 4. Paragraph (1) of subsection (2) of section
12 110.205, Florida Statutes, is amended to read:

13 110.205 Career service; exemptions.--

14 (2) EXEMPT POSITIONS.--The exempt positions which are
15 not covered by this part include the following, provided that
16 no position, except for positions established for a limited
17 period of time pursuant to paragraph (h), shall be exempted if
18 the position reports to a position in the career service:

19 (1) All assistant division director, deputy division
20 director, and bureau chief positions in any department, and
21 those positions determined by the department to have
22 managerial responsibilities comparable to such positions,
23 which positions include, but are not limited to, positions in
24 the Department of Health, the Department of Children and
25 Family Services, and the Department of Corrections that are
26 assigned primary duties of serving as the superintendent or
27 assistant superintendent, or warden or assistant warden, of an
28 institution; positions in the Department of Corrections that
29 are assigned primary duties of serving as the circuit
30 administrator or deputy circuit administrator; positions in
31 the Department of Transportation that are assigned primary

Amendment No. ____ (for drafter's use only)

1 duties of serving as regional toll managers and managers of
2 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
3 in the Department of Environmental Protection that are
4 assigned the duty of an Environmental Administrator or program
5 administrator; ~~those positions described in s. 20.171 as~~
6 ~~included in the Senior Management Service~~; and positions in
7 the Department of Health that are assigned the duties of
8 Environmental Administrator, Assistant County Health
9 Department Director, and County Health Department Financial
10 Administrator. Unless otherwise fixed by law, the department
11 shall set the salary and benefits of these positions in
12 accordance with the rules established for the Selected Exempt
13 Service.

14 Section 5. Section 440.015, Florida Statutes, is
15 amended to read:

16 440.015 Legislative intent.--It is the intent of the
17 Legislature that the Workers' Compensation Law be interpreted
18 so as to assure the quick and efficient delivery of disability
19 and medical benefits to an injured worker and to facilitate
20 the worker's return to gainful reemployment at a reasonable
21 cost to the employer. It is the specific intent of the
22 Legislature that workers' compensation cases shall be decided
23 on their merits. The workers' compensation system in Florida
24 is based on a mutual renunciation of common-law rights and
25 defenses by employers and employees alike. In addition, it is
26 the intent of the Legislature that the facts in a workers'
27 compensation case are not to be interpreted liberally in favor
28 of either the rights of the injured worker or the rights of
29 the employer. Additionally, the Legislature hereby declares
30 that disputes concerning the facts in workers' compensation
31 cases are not to be given a broad liberal construction in

Amendment No. ____ (for drafter's use only)

1 favor of the employee on the one hand or of the employer on
2 the other hand, and the laws pertaining to workers'
3 compensation are to be construed in accordance with the basic
4 principles of statutory construction and not liberally in
5 favor of either employee or employer. It is the intent of the
6 Legislature to ensure the prompt delivery of benefits to the
7 injured worker. Therefore, an efficient and self-executing
8 system must be created which is not an economic or
9 administrative burden. The Division of Workers' Compensation
10 of the Department of Insurance, the Department of Education,
11 and the Agency for Health Care Administration shall administer
12 the Workers' Compensation Law in a manner that which
13 facilitates the self-execution of the system and the process
14 of ensuring a prompt and cost-effective delivery of payments.

15 Section 6. Subsections (11), (13), and (14) of section
16 440.02, Florida Statutes, are amended, and subsection (40) is
17 added to that section, to read:

18 440.02 Definitions.--When used in this chapter, unless
19 the context clearly requires otherwise, the following terms
20 shall have the following meanings:

21 (11) "Department" means the Department of Insurance
22 ~~Labor and Employment Security~~.

23 (13) "Division" means the Division of Workers'
24 Compensation of the Department of Insurance ~~Labor and~~
25 ~~Employment Security~~.

26 (14)(a) "Employee" means any person engaged in any
27 employment under any appointment or contract of hire or
28 apprenticeship, express or implied, oral or written, whether
29 lawfully or unlawfully employed, and includes, but is not
30 limited to, aliens and minors.

31 (b) "Employee" includes any person who is an officer

Amendment No. ____ (for drafter's use only)

1 of a corporation and who performs services for remuneration
2 for such corporation within this state, whether or not such
3 services are continuous.

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

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

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

16
17 Services are presumed to have been rendered to the corporation
18 if the officer is compensated by other than dividends upon
19 shares of stock of the corporation which the officer owns.

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

Amendment No. ____ (for drafter's use only)

1 construction industry and who elects to be exempt from this
2 chapter by filing a written notice of the election with the
3 department division as provided in s. 440.05 is not an
4 employee. For purposes of this chapter, an independent
5 contractor is an employee unless he or she meets all of the
6 conditions set forth in subparagraph (d)1.

7 (d) "Employee" does not include:

8 1. An independent contractor, if:

9 a. The independent contractor maintains a separate
10 business with his or her own work facility, truck, equipment,
11 materials, or similar accommodations;

12 b. The independent contractor holds or has applied for
13 a federal employer identification number, unless the
14 independent contractor is a sole proprietor who is not
15 required to obtain a federal employer identification number
16 under state or federal requirements;

17 c. The independent contractor performs or agrees to
18 perform specific services or work for specific amounts of
19 money and controls the means of performing the services or
20 work;

21 d. The independent contractor incurs the principal
22 expenses related to the service or work that he or she
23 performs or agrees to perform;

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

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

31 g. The independent contractor may realize a profit or

Amendment No. ____ (for drafter's use only)

1 suffer a loss in connection with performing work or services;

2 h. The independent contractor has continuing or
3 recurring business liabilities or obligations; and

4 i. The success or failure of the independent
5 contractor's business depends on the relationship of business
6 receipts to expenditures.

7
8 However, the determination as to whether an individual
9 included in the Standard Industrial Classification Manual of
10 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
11 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
12 2448, or 2449, or a newspaper delivery person, is an
13 independent contractor is governed not by the criteria in this
14 paragraph but by common-law principles, giving due
15 consideration to the business activity of the individual.

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

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

24 4. An owner-operator of a motor vehicle who transports
25 property under a written contract with a motor carrier which
26 evidences a relationship by which the owner-operator assumes
27 the responsibility of an employer for the performance of the
28 contract, if the owner-operator is required to furnish the
29 necessary motor vehicle equipment and all costs incidental to
30 the performance of the contract, including, but not limited
31 to, fuel, taxes, licenses, repairs, and hired help; and the

Amendment No. ____ (for drafter's use only)

1 owner-operator is paid a commission for transportation service
2 and is not paid by the hour or on some other time-measured
3 basis.

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

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

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

24 b. Volunteers participating in federal programs
25 established under Pub. L. No. 93-113.

26 7. Any officer of a corporation who elects to be
27 exempt from this chapter.

28 8. A sole proprietor or officer of a corporation who
29 actively engages in the construction industry, and a partner
30 in a partnership that is actively engaged in the construction
31 industry, who elects to be exempt from the provisions of this

Amendment No. ____ (for drafter's use only)

1 chapter. Such sole proprietor, officer, or partner is not an
2 employee for any reason until the notice of revocation of
3 election filed pursuant to s. 440.05 is effective.

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

10 10. A taxicab, limousine, or other passenger
11 vehicle-for-hire driver who operates said vehicles pursuant to
12 a written agreement with a company which provides any
13 dispatch, marketing, insurance, communications, or other
14 services under which the driver and any fees or charges paid
15 by the driver to the company for such services are not
16 conditioned upon, or expressed as a proportion of, fare
17 revenues.

18 (40) "Agency" means the Agency for Health Care
19 Administration.

20 Section 7. Section 440.021, Florida Statutes, is
21 amended to read:

22 440.021 Exemption of workers' compensation from
23 chapter 120.--Workers' compensation adjudications by judges of
24 compensation claims are exempt from chapter 120, and no judge
25 of compensation claims shall be considered an agency or a part
26 thereof. Communications of the result of investigations by the
27 department division pursuant to s. 440.185(4) are exempt from
28 chapter 120. In all instances in which the department division
29 institutes action to collect a penalty or interest which may
30 be due pursuant to this chapter, the penalty or interest shall
31 be assessed without hearing, and the party against which such

Amendment No. ____ (for drafter's use only)

1 penalty or interest is assessed shall be given written notice
2 of such assessment and shall have the right to protest within
3 20 days of such notice. Upon receipt of a timely notice of
4 protest and after such investigation as may be necessary, the
5 department division shall, if it agrees with such protest,
6 notify the protesting party that the assessment has been
7 revoked. If the department division does not agree with the
8 protest, it shall refer the matter to the judge of
9 compensation claims for determination pursuant to s.
10 440.25(2)-(5). Such action of the department division is
11 exempt from the provisions of chapter 120.

12 Section 8. Section 440.05, Florida Statutes, is
13 amended to read:

14 440.05 Election of exemption; revocation of election;
15 notice; certification.--

16 (1) Each corporate officer who elects not to accept
17 the provisions of this chapter or who, after electing such
18 exemption, revokes that exemption shall mail to the department
19 division in Tallahassee notice to such effect in accordance
20 with a form to be prescribed by the department division.

21 (2) Each sole proprietor or partner who elects to be
22 included in the definition of "employee" or who, after such
23 election, revokes that election must mail to the department
24 division in Tallahassee notice to such effect, in accordance
25 with a form to be prescribed by the department division.

26 (3) Each sole proprietor, partner, or officer of a
27 corporation who is actively engaged in the construction
28 industry and who elects an exemption from this chapter or who,
29 after electing such exemption, revokes that exemption, must
30 mail a written notice to such effect to the department
31 division on a form prescribed by the department division

Amendment No. ____ (for drafter's use only)

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

Amendment No. ____ (for drafter's use only)

1 certification of the election to the sole proprietor, partner,
2 or officer, unless the department ~~division~~ determines that the
3 information contained in the notice is invalid. The department
4 ~~division~~ shall revoke a certificate of election to be exempt
5 from coverage upon a determination by the department ~~division~~
6 that the person does not meet the requirements for exemption
7 or that the information contained in the notice of election to
8 be exempt is invalid. The certificate of election must list
9 the names of the sole proprietorship, partnership, or
10 corporation listed in the request for exemption. A new
11 certificate of election must be obtained each time the person
12 is employed by a new sole proprietorship, partnership, or
13 corporation that is not listed on the certificate of election.
14 A copy of the certificate of election must be sent to each
15 workers' compensation carrier identified in the request for
16 exemption. Upon filing a notice of revocation of election, a
17 sole proprietor, partner, or officer who is a subcontractor
18 must notify her or his contractor. Upon revocation of a
19 certificate of election of exemption by the department
20 ~~division~~, the department ~~division~~ shall notify the workers'
21 compensation carriers identified in the request for exemption.

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

Amendment No. ____ (for drafter's use only)

1 acknowledges the foregoing notice.

2 (5) A notice given under subsection (1), subsection
3 (2), or subsection (3) shall become effective when issued by
4 the department ~~division~~ or 30 days after an application for an
5 exemption is received by the department ~~division~~, whichever
6 occurs first. However, if an accident or occupational disease
7 occurs less than 30 days after the effective date of the
8 insurance policy under which the payment of compensation is
9 secured or the date the employer qualified as a self-insurer,
10 such notice is effective as of 12:01 a.m. of the day following
11 the date it is mailed to the department ~~division~~ in
12 Tallahassee.

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

Amendment No. ____ (for drafter's use only)

1 the expiration date and an application for renewal to the
2 certificateholder at the address on the certificate.

3 (7) Any contractor responsible for compensation under
4 s. 440.10 may register in writing with the workers'
5 compensation carrier for any subcontractor and shall
6 thereafter be entitled to receive written notice from the
7 carrier of any cancellation or nonrenewal of the policy.

8 (8)(a) The department ~~division~~ must assess a fee of
9 \$50 with each request for a construction industry certificate
10 of election to be exempt or renewal of election to be exempt
11 under this section.

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

17 (9) The department ~~division~~ may by rule prescribe
18 forms and procedures for filing an election of exemption,
19 revocation of election to be exempt, and notice of election of
20 coverage for all employers and require specified forms to be
21 submitted by all employers in filing for the election of
22 exemption. The department ~~division~~ may by rule prescribe forms
23 and procedures for issuing a certificate of the election of
24 exemption.

25 Section 9. Paragraph (d) of subsection (7) of section
26 440.09, Florida Statutes, is amended to read:

27 440.09 Coverage.--

28 (7)

29 (d) The department ~~division~~ shall provide by rule for
30 the authorization and regulation of drug-testing policies,
31 procedures, and methods. Testing of injured employees shall

Amendment No. ____ (for drafter's use only)

1 not commence until such rules are adopted.

2 Section 10. Paragraphs (f) and (g) of subsection (1)
3 of section 440.10, Florida Statutes, are amended to read:

4 440.10 Liability for compensation.--

5 (1)

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

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

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

19 2. The independent contractor provides the general
20 contractor with a valid certificate of workers' compensation
21 insurance or a valid certificate of exemption issued by the
22 department ~~division~~.

23
24 A sole proprietor, partner, or officer of a corporation who
25 elects exemption from this chapter by filing a certificate of
26 election under s. 440.05 may not recover benefits or
27 compensation under this chapter. An independent contractor
28 who provides the general contractor with both an affidavit
29 stating that he or she meets the requirements of s.
30 440.02(14)(d) and a certificate of exemption is not an
31 employee under s. 440.02(14)(c) and may not recover benefits

Amendment No. ____ (for drafter's use only)

1 under this chapter. For purposes of determining the
2 appropriate premium for workers' compensation coverage,
3 carriers may not consider any person who meets the
4 requirements of this paragraph to be an employee.

5 Section 11. Subsection (2), paragraph (a) of
6 subsection (3), and paragraph (g) of subsection (7) of section
7 440.102, Florida Statutes, are amended to read:

8 440.102 Drug-free workplace program requirements.--The
9 following provisions apply to a drug-free workplace program
10 implemented pursuant to law or to rules adopted by the Agency
11 for Health Care Administration:

12 (2) DRUG TESTING.--An employer may test an employee or
13 job applicant for any drug described in paragraph (1)(c). In
14 order to qualify as having established a drug-free workplace
15 program which affords an employer the ability to qualify for
16 the discounts provided under s. 627.0915 and deny medical and
17 indemnity benefits, under this chapter all drug testing
18 conducted by employers shall be in conformity with the
19 standards and procedures established in this section and all
20 applicable rules adopted pursuant to this section. However, an
21 employer does not have a legal duty under this section to
22 request an employee or job applicant to undergo drug testing.
23 If an employer fails to maintain a drug-free workplace program
24 in accordance with the standards and procedures established in
25 this section and in applicable rules, the employer shall not
26 be eligible for discounts under s. 627.0915. All employers
27 qualifying for and receiving discounts provided under s.
28 627.0915 must be reported annually by the insurer to the
29 department division.

30 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--

31 (a) One time only, prior to testing, an employer shall

Amendment No. ____ (for drafter's use only)

- 1 give all employees and job applicants for employment a written
2 policy statement which contains:
- 3 1. A general statement of the employer's policy on
4 employee drug use, which must identify:
 - 5 a. The types of drug testing an employee or job
6 applicant may be required to submit to, including
7 reasonable-suspicion drug testing or drug testing conducted on
8 any other basis.
 - 9 b. The actions the employer may take against an
10 employee or job applicant on the basis of a positive confirmed
11 drug test result.
 - 12 2. A statement advising the employee or job applicant
13 of the existence of this section.
 - 14 3. A general statement concerning confidentiality.
 - 15 4. Procedures for employees and job applicants to
16 confidentially report to a medical review officer the use of
17 prescription or nonprescription medications to a medical
18 review officer both before and after being tested.
 - 19 5. A list of the most common medications, by brand
20 name or common name, as applicable, as well as by chemical
21 name, which may alter or affect a drug test. A list of such
22 medications as developed by the Agency for Health Care
23 Administration shall be available to employers through the
24 Division of Workers' Compensation ~~of the Department of Labor~~
25 ~~and Employment Security~~.
 - 26 6. The consequences of refusing to submit to a drug
27 test.
 - 28 7. A representative sampling of names, addresses, and
29 telephone numbers of employee assistance programs and local
30 drug rehabilitation programs.
 - 31 8. A statement that an employee or job applicant who

Amendment No. ____ (for drafter's use only)

1 receives a positive confirmed test result may contest or
2 explain the result to the medical review officer within 5
3 working days after receiving written notification of the test
4 result; that if an employee's or job applicant's explanation
5 or challenge is unsatisfactory to the medical review officer,
6 the medical review officer shall report a positive test result
7 back to the employer; and that a person may contest the drug
8 test result pursuant to law or to rules adopted by the Agency
9 for Health Care Administration.

10 9. A statement informing the employee or job applicant
11 of his or her responsibility to notify the laboratory of any
12 administrative or civil action brought pursuant to this
13 section.

14 10. A list of all drugs for which the employer will
15 test, described by brand name or common name, as applicable,
16 as well as by chemical name.

17 11. A statement regarding any applicable collective
18 bargaining agreement or contract and the right to appeal to
19 the Public Employees Relations Commission or applicable court.

20 12. A statement notifying employees and job applicants
21 of their right to consult with a medical review officer for
22 technical information regarding prescription or
23 nonprescription medication.

24 (7) EMPLOYER PROTECTION.--

25 (g) This section does not prohibit an employer from
26 conducting medical screening or other tests required,
27 permitted, or not disallowed by any statute, rule, or
28 regulation for the purpose of monitoring exposure of employees
29 to toxic or other unhealthy substances in the workplace or in
30 the performance of job responsibilities. Such screening or
31 testing is limited to the specific substances expressly

Amendment No. ____ (for drafter's use only)

1 identified in the applicable statute, rule, or regulation,
2 unless prior written consent of the employee is obtained for
3 other tests. Such screening or testing need not be in
4 compliance with the rules adopted by the Agency for Health
5 Care Administration under this chapter or under s. 112.0455. A
6 public employer may, through the use of an unbiased selection
7 procedure, conduct random drug tests of employees occupying
8 safety-sensitive or special-risk positions if the testing is
9 performed in accordance with drug-testing rules adopted by the
10 Agency for Health Care Administration and the Department of
11 Insurance ~~Labor and Employment Security~~. If applicable, random
12 drug testing must be specified in a collective bargaining
13 agreement as negotiated by the appropriate certified
14 bargaining agent before such testing is implemented.

15 Section 12. Section 440.103, Florida Statutes, is
16 amended to read:

17 440.103 Building permits; identification of minimum
18 premium policy.--Except as otherwise provided in this chapter,
19 every employer shall, as a condition to receiving a building
20 permit, show proof that it has secured compensation for its
21 employees under this chapter as provided in ss. 440.10 and
22 440.38. Such proof of compensation must be evidenced by a
23 certificate of coverage issued by the carrier, a valid
24 exemption certificate approved by the division or the
25 department, or a copy of the employer's authority to
26 self-insure and shall be presented each time the employer
27 applies for a building permit. As provided in s. 627.413(5),
28 each certificate of coverage must show, on its face, whether
29 or not coverage is secured under the minimum premium
30 provisions of rules adopted by rating organizations licensed
31 by the Department of Insurance. The words "minimum premium

Amendment No. ____ (for drafter's use only)

1 policy" or equivalent language shall be typed, printed,
2 stamped, or legibly handwritten.

3 Section 13. Paragraph (a) of subsection (2) of section
4 440.105, Florida Statutes, is amended to read:

5 440.105 Prohibited activities; reports; penalties;
6 limitations.--

7 (2) Whoever violates any provision of this subsection
8 commits a misdemeanor of the second degree, punishable as
9 provided in s. 775.082 or s. 775.083.

10 (a) It shall be unlawful for any employer to
11 knowingly:

12 1. Coerce or attempt to coerce, as a precondition to
13 employment or otherwise, an employee to obtain a certificate
14 of election of exemption pursuant to s. 440.05.

15 2. Discharge or refuse to hire an employee or job
16 applicant because the employee or applicant has filed a claim
17 for benefits under this chapter.

18 3. Discharge, discipline, or take any other adverse
19 personnel action against any employee for disclosing
20 information to the department ~~division~~ or any law enforcement
21 agency relating to any violation or suspected violation of any
22 of the provisions of this chapter or rules promulgated
23 hereunder.

24 4. Violate a stop-work order issued by the department
25 ~~division~~ pursuant to s. 440.107.

26 Section 14. Subsections (3) and (4) of section
27 440.106, Florida Statutes, are amended to read:

28 440.106 Civil remedies; administrative penalties.--

29 (3) Whenever any group or individual self-insurer,
30 carrier, rating bureau, or agent or other representative of
31 any carrier or rating bureau is determined to have violated s.

Amendment No. ____ (for drafter's use only)

1 440.105, the department ~~of Insurance~~ may revoke or suspend the
2 authority or certification of any group or individual
3 self-insurer, carrier, agent, or broker.

4 (4) The department ~~division~~ shall report any
5 contractor determined in violation of requirements of this
6 chapter to the appropriate state licensing board for
7 disciplinary action.

8 Section 15. Section 440.107, Florida Statutes, is
9 amended to read:

10 440.107 Department ~~Division~~ powers to enforce employer
11 compliance with coverage requirements.--

12 (1) The Legislature finds that the failure of an
13 employer to comply with the workers' compensation coverage
14 requirements under this chapter poses an immediate danger to
15 public health, safety, and welfare. The Legislature authorizes
16 the department ~~division~~ to secure employer compliance with the
17 workers' compensation coverage requirements and authorizes the
18 department ~~division~~ to conduct investigations for the purpose
19 of ensuring employer compliance.

20 (2) The department ~~division~~ and its authorized
21 representatives may enter and inspect any place of business at
22 any reasonable time for the limited purpose of investigating
23 compliance with workers' compensation coverage requirements
24 under this chapter. Each employer shall keep true and accurate
25 business records that contain such information as the
26 department ~~division~~ prescribes by rule. The business records
27 must contain information necessary for the department ~~division~~
28 to determine compliance with workers' compensation coverage
29 requirements and must be maintained within this state by the
30 business, in such a manner as to be accessible within a
31 reasonable time upon request by the department ~~division~~. The

Amendment No. ____ (for drafter's use only)

1 business records must be open to inspection and be available
2 for copying by the department division at any reasonable time
3 and place and as often as necessary. The department division
4 may require from any employer any sworn or unsworn reports,
5 pertaining to persons employed by that employer, deemed
6 necessary for the effective administration of the workers'
7 compensation coverage requirements.

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

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

26 (5) Whenever the department division determines that
27 an employer who is required to secure the payment to his or
28 her employees of the compensation provided for by this chapter
29 has failed to do so, such failure shall be deemed an immediate
30 serious danger to public health, safety, or welfare sufficient
31 to justify service by the department division of a stop-work

Amendment No. ____ (for drafter's use only)

1 order on the employer, requiring the cessation of all business
2 operations at the place of employment or job site. The order
3 shall take effect upon the date of service upon the employer,
4 unless the employer provides evidence satisfactory to the
5 department division of having secured any necessary insurance
6 or self-insurance and pays a civil penalty to the department
7 division, to be deposited by the department division into the
8 Workers' Compensation Administration Trust Fund, in the amount
9 of \$100 per day for each day the employer was not in
10 compliance with this chapter.

11 (6) The department division may file a complaint in
12 the circuit court in and for Leon County to enjoin any
13 employer, who has failed to secure compensation as required by
14 this chapter, from employing individuals and from conducting
15 business until the employer presents evidence satisfactory to
16 the department division of having secured payment for
17 compensation and pays a civil penalty to the department
18 division, to be deposited by the department division into the
19 Workers' Compensation Administration Trust Fund, in the amount
20 of \$100 per day for each day the employer was not in
21 compliance with this chapter.

22 (7) In addition to any penalty, stop-work order, or
23 injunction, the department division may assess against any
24 employer, who has failed to secure the payment of compensation
25 as required by this chapter, a penalty in the amount of:

26 (a) Twice the amount the employer would have paid
27 during periods it illegally failed to secure payment of
28 compensation in the preceding 3-year period based on the
29 employer's payroll during the preceding 3-year period; or

30 (b) One thousand dollars, whichever is greater.

31

Amendment No. ____ (for drafter's use only)

1 Any penalty assessed under this subsection is due within 30
2 days after the date on which the employer is notified, except
3 that, if the department ~~division~~ has posted a stop-work order
4 or obtained injunctive relief against the employer, payment is
5 due, in addition to those conditions set forth in this
6 section, as a condition to relief from a stop-work order or an
7 injunction. Interest shall accrue on amounts not paid when due
8 at the rate of 1 percent per month.

9 (8) The department ~~division~~ may bring an action in
10 circuit court to recover penalties assessed under this
11 section, including any interest owed to the department
12 ~~division~~ pursuant to this section. In any action brought by
13 the department ~~division~~ pursuant to this section in which it
14 prevails, the circuit court shall award costs, including the
15 reasonable costs of investigation and a reasonable attorney's
16 fee.

17 (9) Any judgment obtained by the department ~~division~~
18 and any penalty due pursuant to the service of a stop-work
19 order or otherwise due under this section shall, until
20 collected, constitute a lien upon the entire interest of the
21 employer, legal or equitable, in any property, real or
22 personal, tangible or intangible; however, such lien is
23 subordinate to claims for unpaid wages and any prior recorded
24 liens, and a lien created by this section is not valid against
25 any person who, subsequent to such lien and in good faith and
26 for value, purchases real or personal property from such
27 employer or becomes the mortgagee on real or personal property
28 of such employer, or against a subsequent attaching creditor,
29 unless, with respect to real estate of the employer, a notice
30 of the lien is recorded in the public records of the county
31 where the real estate is located, and with respect to personal

Amendment No. ____ (for drafter's use only)

1 property of the employer, the notice is recorded with the
2 Secretary of State.

3 (10) Any law enforcement agency in the state may, at
4 the request of the department ~~division~~, render any assistance
5 necessary to carry out the provisions of this section,
6 including, but not limited to, preventing any employee or
7 other person from remaining at a place of employment or job
8 site after a stop-work order or injunction has taken effect.

9 (11) Actions by the department ~~division~~ under this
10 section must be contested as provided in chapter 120. All
11 civil penalties assessed by the department ~~division~~ must be
12 paid into the Workers' Compensation Administration Trust Fund.
13 The department ~~division~~ shall return any sums previously paid,
14 upon conclusion of an action, if the department ~~division~~ fails
15 to prevail and if so directed by an order of court or an
16 administrative hearing officer. The requirements of this
17 subsection may be met by posting a bond in an amount equal to
18 twice the penalty and in a form approved by the department
19 ~~division~~.

20 Section 16. Subsection (1) of section 440.108, Florida
21 Statutes, is amended to read:

22 440.108 Investigatory records relating to workers'
23 compensation employer compliance; confidentiality.--

24 (1) All investigatory records of the department
25 ~~Division of Workers' Compensation~~ made or received pursuant to
26 s. 440.107 and any records necessary to complete an
27 investigation are confidential and exempt from the provisions
28 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
29 until the investigation is completed or ceases to be active.
30 For purposes of this section, an investigation is considered
31 "active" while such investigation is being conducted by the

Amendment No. ____ (for drafter's use only)

1 ~~department division~~ with a reasonable, good-faith ~~good-faith~~
2 belief that it may lead to the filing of administrative,
3 civil, or criminal proceedings. An investigation does not
4 cease to be active if the agency is proceeding with reasonable
5 dispatch and there is a good faith belief that action may be
6 initiated by the agency or other administrative or law
7 enforcement agency. After an investigation is completed or
8 ceases to be active, records relating to the investigation
9 remain confidential and exempt from the provisions of s.
10 119.07(1) and s. 24(a), Art. I of the State Constitution if
11 disclosure would:

- 12 (a) Jeopardize the integrity of another active
13 investigation;
14 (b) Reveal a trade secret, as defined in s. 688.002;
15 (c) Reveal business or personal financial information;
16 (d) Reveal the identity of a confidential source;
17 (e) Defame or cause unwarranted damage to the good
18 name or reputation of an individual or jeopardize the safety
19 of an individual; or
20 (f) Reveal investigative techniques or procedures.

21 Section 17. Section 440.125, Florida Statutes, is
22 amended to read:

23 440.125 Medical records and reports; identifying
24 information in employee medical bills; confidentiality.--

25 (1) Any medical records and medical reports of an
26 injured employee and any information identifying an injured
27 employee in medical bills which are provided to the
28 department, agency, or Department of Education ~~Division of~~
29 ~~Workers' Compensation of the Department of Labor and~~
30 ~~Employment Security~~ pursuant to s. 440.13 are confidential and
31 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.

Amendment No. ____ (for drafter's use only)

1 I of the State Constitution, except as otherwise provided by
2 this chapter.

3 (2) The Legislature finds that it is a public
4 necessity that an injured employee's medical records and
5 medical reports and information identifying the employee in
6 medical bills held by the department, agency, or Department of
7 Education ~~Division of Workers' Compensation~~ pursuant to s.
8 440.13 be confidential and exempt from the public records law.
9 Public access to such information is an invasion of the
10 injured employee's right to privacy in that personal,
11 sensitive information would be revealed, and public knowledge
12 of such information could lead to discrimination against the
13 employee by coworkers and others. Additionally, there is
14 little utility in providing public access to such information
15 in that the effectiveness and efficiency of the workers'
16 compensation program can be otherwise adequately monitored and
17 evaluated.

18 (3) The department may share any confidential and
19 exempt information received pursuant to s. 440.13 with the
20 Agency for Health Care Administration in furtherance of the
21 agency's official duties under ss. 440.13 and 440.134. The
22 agency shall maintain the confidential and exempt status of
23 the information.

24 Section 18. Section 440.13, Florida Statutes, is
25 amended to read:

26 440.13 Medical services and supplies; penalty for
27 violations; limitations.--

28 (1) DEFINITIONS.--As used in this section, the term:

29 (a) "Alternate medical care" means a change in
30 treatment or health care provider.

31 (b) "Attendant care" means care rendered by trained

Amendment No. ____ (for drafter's use only)

1 professional attendants which is beyond the scope of household
2 duties. Family members may provide nonprofessional attendant
3 care, but may not be compensated under this chapter for care
4 that falls within the scope of household duties and other
5 services normally and gratuitously provided by family members.
6 "Family member" means a spouse, father, mother, brother,
7 sister, child, grandchild, father-in-law, mother-in-law, aunt,
8 or uncle.

9 (c) "Carrier" means, for purposes of this section,
10 insurance carrier, self-insurance fund or individually
11 self-insured employer, or assessable mutual insurer.

12 (d) "Catastrophic injury" means an injury as defined
13 in s. 440.02.

14 (e) "Certified health care provider" means a health
15 care provider who has been certified by the agency ~~division~~ or
16 who has entered an agreement with a licensed managed care
17 organization to provide treatment to injured workers under
18 this section. Certification of such health care provider must
19 include documentation that the health care provider has read
20 and is familiar with the portions of the statute, impairment
21 guides, and rules which govern the provision of remedial
22 treatment, care, and attendance.

23 (f) "Compensable" means a determination by a carrier
24 or judge of compensation claims that a condition suffered by
25 an employee results from an injury arising out of and in the
26 course of employment.

27 (g) "Emergency services and care" means emergency
28 services and care as defined in s. 395.002.

29 (h) "Health care facility" means any hospital licensed
30 under chapter 395 and any health care institution licensed
31 under chapter 400.

Amendment No. ____ (for drafter's use only)

1 (i) "Health care provider" means a physician or any
2 recognized practitioner who provides skilled services pursuant
3 to a prescription or under the supervision or direction of a
4 physician and who has been certified by the agency ~~division~~ as
5 a health care provider. The term "health care provider"
6 includes a health care facility.

7 (j) "Independent medical examiner" means a physician
8 selected by either an employee or a carrier to render one or
9 more independent medical examinations in connection with a
10 dispute arising under this chapter.

11 (k) "Independent medical examination" means an
12 objective evaluation of the injured employee's medical
13 condition, including, but not limited to, impairment or work
14 status, performed by a physician or an expert medical advisor
15 at the request of a party, a judge of compensation claims, or
16 the agency ~~division~~ to assist in the resolution of a dispute
17 arising under this chapter.

18 (l) "Instance of overutilization" means a specific
19 inappropriate service or level of service provided to an
20 injured employee.

21 (m) "Medically necessary" means any medical service or
22 medical supply which is used to identify or treat an illness
23 or injury, is appropriate to the patient's diagnosis and
24 status of recovery, and is consistent with the location of
25 service, the level of care provided, and applicable practice
26 parameters. The service should be widely accepted among
27 practicing health care providers, based on scientific
28 criteria, and determined to be reasonably safe. The service
29 must not be of an experimental, investigative, or research
30 nature, except in those instances in which prior approval of
31 the Agency for Health Care Administration has been obtained.

Amendment No. ____ (for drafter's use only)

1 The Agency for Health Care Administration shall adopt rules
2 providing for such approval on a case-by-case basis when the
3 service or supply is shown to have significant benefits to the
4 recovery and well-being of the patient.

5 (n) "Medicine" means a drug prescribed by an
6 authorized health care provider and includes only generic
7 drugs or single-source patented drugs for which there is no
8 generic equivalent, unless the authorized health care provider
9 writes or states that the brand-name drug as defined in s.
10 465.025 is medically necessary, or is a drug appearing on the
11 schedule of drugs created pursuant to s. 465.025(6), or is
12 available at a cost lower than its generic equivalent.

13 (o) "Palliative care" means noncurative medical
14 services that mitigate the conditions, effects, or pain of an
15 injury.

16 (p) "Pattern or practice of overutilization" means
17 repetition of instances of overutilization within a specific
18 medical case or multiple cases by a single health care
19 provider.

20 (q) "Peer review" means an evaluation by two or more
21 physicians licensed under the same authority and with the same
22 or similar specialty as the physician under review, of the
23 appropriateness, quality, and cost of health care and health
24 services provided to a patient, based on medically accepted
25 standards.

26 (r) "Physician" or "doctor" means a physician licensed
27 under chapter 458, an osteopathic physician licensed under
28 chapter 459, a chiropractic physician licensed under chapter
29 460, a podiatric physician licensed under chapter 461, an
30 optometrist licensed under chapter 463, or a dentist licensed
31 under chapter 466, each of whom must be certified by the

Amendment No. ____ (for drafter's use only)

1 ~~agency division~~ as a health care provider.

2 (s) "Reimbursement dispute" means any disagreement
3 between a health care provider or health care facility and
4 carrier concerning payment for medical treatment.

5 (t) "Utilization control" means a systematic process
6 of implementing measures that assure overall management and
7 cost containment of services delivered.

8 (u) "Utilization review" means the evaluation of the
9 appropriateness of both the level and the quality of health
10 care and health services provided to a patient, including, but
11 not limited to, evaluation of the appropriateness of
12 treatment, hospitalization, or office visits based on
13 medically accepted standards. Such evaluation must be
14 accomplished by means of a system that identifies the
15 utilization of medical services based on medically accepted
16 standards as established by medical consultants with
17 qualifications similar to those providing the care under
18 review, and that refers patterns and practices of
19 overutilization to the ~~agency division~~.

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

21 (a) Subject to the limitations specified elsewhere in
22 this chapter, the employer shall furnish to the employee such
23 medically necessary remedial treatment, care, and attendance
24 for such period as the nature of the injury or the process of
25 recovery may require, including medicines, medical supplies,
26 durable medical equipment, orthoses, prostheses, and other
27 medically necessary apparatus. Remedial treatment, care, and
28 attendance, including work-hardening programs or
29 pain-management programs accredited by the Commission on
30 Accreditation of Rehabilitation Facilities or Joint Commission
31 on the Accreditation of Health Organizations or

Amendment No. ____ (for drafter's use only)

1 pain-management programs affiliated with medical schools,
2 shall be considered as covered treatment only when such care
3 is given based on a referral by a physician as defined in this
4 chapter. Each facility shall maintain outcome data, including
5 work status at discharges, total program charges, total number
6 of visits, and length of stay. ~~The department shall utilize~~
7 ~~such data and report to the President of the Senate and the~~
8 ~~Speaker of the House of Representatives regarding the efficacy~~
9 ~~and cost-effectiveness of such program, no later than October~~
10 ~~1, 1994.~~ Medically necessary treatment, care, and attendance
11 does not include chiropractic services in excess of 18
12 treatments or rendered 8 weeks beyond the date of the initial
13 chiropractic treatment, whichever comes first, unless the
14 carrier authorizes additional treatment or the employee is
15 catastrophically injured.

16 (b) The employer shall provide appropriate
17 professional or nonprofessional attendant care performed only
18 at the direction and control of a physician when such care is
19 medically necessary. The value of nonprofessional attendant
20 care provided by a family member must be determined as
21 follows:

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

24 2. If the family member is employed and elects to
25 leave that employment to provide attendant or custodial care,
26 the per-hour value of that care equals the per-hour value of
27 the family member's former employment, not to exceed the
28 per-hour value of such care available in the community at
29 large. A family member or a combination of family members
30 providing nonprofessional attendant care under this paragraph
31 may not be compensated for more than a total of 12 hours per

Amendment No. ____ (for drafter's use only)

1 day.

2 (c) If the employer fails to provide treatment or care
3 required by this section after request by the injured
4 employee, the employee may obtain such treatment at the
5 expense of the employer, if the treatment is compensable and
6 medically necessary. There must be a specific request for the
7 treatment, and the employer or carrier must be given a
8 reasonable time period within which to provide the treatment
9 or care. However, the employee is not entitled to recover any
10 amount personally expended for the treatment or service unless
11 he or she has requested the employer to furnish that treatment
12 or service and the employer has failed, refused, or neglected
13 to do so within a reasonable time or unless the nature of the
14 injury requires such treatment, nursing, and services and the
15 employer or his or her superintendent or foreman, having
16 knowledge of the injury, has neglected to provide the
17 treatment or service.

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

22 (e) Except in emergency situations and for treatment
23 rendered by a managed care arrangement, after any initial
24 examination and diagnosis by a physician providing remedial
25 treatment, care, and attendance, and before a proposed course
26 of medical treatment begins, each insurer shall review, in
27 accordance with the requirements of this chapter, the proposed
28 course of treatment, to determine whether such treatment would
29 be recognized as reasonably prudent. The review must be in
30 accordance with all applicable workers' compensation practice
31 parameters. The insurer must accept any such proposed course

Amendment No. ____ (for drafter's use only)

1 of treatment unless the insurer notifies the physician of its
2 specific objections to the proposed course of treatment by the
3 close of the tenth business day after notification by the
4 physician, or a supervised designee of the physician, of the
5 proposed course of treatment.

6 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

7 (a) As a condition to eligibility for payment under
8 this chapter, a health care provider who renders services must
9 be a certified health care provider and must receive
10 authorization from the carrier before providing treatment.
11 This paragraph does not apply to emergency care. The agency
12 ~~division~~ shall adopt rules to implement the certification of
13 health care providers. As a one-time prerequisite to obtaining
14 certification, the agency ~~division~~ shall require each
15 physician to demonstrate proof of completion of a minimum
16 5-hour course that covers the subject areas of cost
17 containment, utilization control, ergonomics, and the practice
18 parameters adopted by the agency ~~division~~ governing the
19 physician's field of practice. The agency ~~division~~ shall
20 coordinate with ~~the Agency for Health Care Administration, the~~
21 Florida Medical Association, the Florida Osteopathic Medical
22 Association, the Florida Chiropractic Association, the Florida
23 Podiatric Medical Association, the Florida Optometric
24 Association, the Florida Dental Association, and other health
25 professional organizations and their respective boards as
26 deemed necessary by the Agency for Health Care Administration
27 in complying with this subsection. ~~No later than October 1,~~
28 ~~1994, the division shall adopt rules regarding the criteria~~
29 ~~and procedures for approval of courses and the filing of proof~~
30 ~~of completion by the physicians.~~

31 (b) A health care provider who renders emergency care

Amendment No. ____ (for drafter's use only)

1 must notify the carrier by the close of the third business day
2 after it has rendered such care. If the emergency care results
3 in admission of the employee to a health care facility, the
4 health care provider must notify the carrier by telephone
5 within 24 hours after initial treatment. Emergency care is not
6 compensable under this chapter unless the injury requiring
7 emergency care arose as a result of a work-related accident.
8 Pursuant to chapter 395, all licensed physicians and health
9 care providers in this state shall be required to make their
10 services available for emergency treatment of any employee
11 eligible for workers' compensation benefits. To refuse to make
12 such treatment available is cause for revocation of a license.

13 (c) A health care provider may not refer the employee
14 to another health care provider, diagnostic facility, therapy
15 center, or other facility without prior authorization from the
16 carrier, except when emergency care is rendered. Any referral
17 must be to a health care provider that has been certified by
18 the agency division, unless the referral is for emergency
19 treatment.

20 (d) A carrier must respond, by telephone or in
21 writing, to a request for authorization by the close of the
22 third business day after receipt of the request. A carrier who
23 fails to respond to a written request for authorization for
24 referral for medical treatment by the close of the third
25 business day after receipt of the request consents to the
26 medical necessity for such treatment. All such requests must
27 be made to the carrier. Notice to the carrier does not include
28 notice to the employer.

29 (e) Carriers shall adopt procedures for receiving,
30 reviewing, documenting, and responding to requests for
31 authorization. Such procedures shall be for a health care

Amendment No. ____ (for drafter's use only)

1 provider certified under this section.

2 (f) By accepting payment under this chapter for
3 treatment rendered to an injured employee, a health care
4 provider consents to the jurisdiction of the agency division
5 as set forth in subsection (11) and to the submission of all
6 records and other information concerning such treatment to the
7 agency division in connection with a reimbursement dispute,
8 audit, or review as provided by this section. The health care
9 provider must further agree to comply with any decision of the
10 agency division rendered under this section.

11 (g) The employee is not liable for payment for medical
12 treatment or services provided pursuant to this section except
13 as otherwise provided in this section.

14 (h) The provisions of s. 456.053 are applicable to
15 referrals among health care providers, as defined in
16 subsection (1), treating injured workers.

17 (i) Notwithstanding paragraph (d), a claim for
18 specialist consultations, surgical operations,
19 physiotherapeutic or occupational therapy procedures, X-ray
20 examinations, or special diagnostic laboratory tests that cost
21 more than \$1,000 and other specialty services that the agency
22 division identifies by rule is not valid and reimbursable
23 unless the services have been expressly authorized by the
24 carrier, or unless the carrier has failed to respond within 10
25 days to a written request for authorization, or unless
26 emergency care is required. The insurer shall not refuse to
27 authorize such consultation or procedure unless the health
28 care provider or facility is not authorized or certified or
29 unless an expert medical advisor has determined that the
30 consultation or procedure is not medically necessary or
31 otherwise compensable under this chapter. Authorization of a

Amendment No. ____ (for drafter's use only)

1 treatment plan does not constitute express authorization for
2 purposes of this section, except to the extent the carrier
3 provides otherwise in its authorization procedures. This
4 paragraph does not limit the carrier's obligation to identify
5 and disallow overutilization or billing errors.

6 (j) Notwithstanding anything in this chapter to the
7 contrary, a sick or injured employee shall be entitled, at all
8 times, to free, full, and absolute choice in the selection of
9 the pharmacy or pharmacist dispensing and filling
10 prescriptions for medicines required under this chapter. It is
11 expressly forbidden for the agency division, an employer, or a
12 carrier, or any agent or representative of the agency
13 division, an employer, or a carrier to select the pharmacy or
14 pharmacist which the sick or injured employee must use;
15 condition coverage or payment on the basis of the pharmacy or
16 pharmacist utilized; or to otherwise interfere in the
17 selection by the sick or injured employee of a pharmacy or
18 pharmacist.

19 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
20 DEPARTMENT DIVISION.--

21 (a) Any health care provider providing necessary
22 remedial treatment, care, or attendance to any injured worker
23 shall submit treatment reports to the carrier in a format
24 prescribed by the department in consultation with the agency
25 division. A claim for medical or surgical treatment is not
26 valid or enforceable against such employer or employee,
27 unless, by the close of the third business day following the
28 first treatment, the physician providing the treatment
29 furnishes to the employer or carrier a preliminary notice of
30 the injury and treatment on forms prescribed by the department
31 in consultation with the agency division and, within 15 days

Amendment No. ____ (for drafter's use only)

1 thereafter, furnishes to the employer or carrier a complete
2 report, and subsequent thereto furnishes progress reports, if
3 requested by the employer or insurance carrier, at intervals
4 of not less than 3 weeks apart or at less frequent intervals
5 if requested on forms prescribed by the department ~~division~~.
6 (b) Each medical report or bill obtained or received
7 by the employer, the carrier, or the injured employee, or the
8 attorney for the employer, carrier, or injured employee, with
9 respect to the remedial treatment or care of the injured
10 employee, including any report of an examination, diagnosis,
11 or disability evaluation, must be filed with the department
12 ~~Division of Workers' Compensation~~ pursuant to rules adopted by
13 the department in consultation with the agency ~~division~~. The
14 health care provider shall also furnish to the injured
15 employee or to his or her attorney, on demand, a copy of his
16 or her office chart, records, and reports, and may charge the
17 injured employee an amount authorized by the department
18 ~~division~~ for the copies. Each such health care provider shall
19 provide to the agency or department ~~division~~ any additional
20 information about the remedial treatment, care, and attendance
21 that the agency or department ~~division~~ reasonably requests.
22 (c) It is the policy for the administration of the
23 workers' compensation system that there be reasonable access
24 to medical information by all parties to facilitate the
25 self-executing features of the law. Notwithstanding the
26 limitations in s. 456.057 and subject to the limitations in s.
27 381.004, upon the request of the employer, the carrier, or the
28 attorney for either of them, the medical records of an injured
29 employee must be furnished to those persons and the medical
30 condition of the injured employee must be discussed with those
31 persons, if the records and the discussions are restricted to

Amendment No. ____ (for drafter's use only)

1 conditions relating to the workplace injury. Any such
2 discussions may be held before or after the filing of a claim
3 without the knowledge, consent, or presence of any other party
4 or his or her agent or representative. A health care provider
5 who willfully refuses to provide medical records or to discuss
6 the medical condition of the injured employee, after a
7 reasonable request is made for such information pursuant to
8 this subsection, shall be subject by the agency ~~division~~ to
9 one or more of the penalties set forth in paragraph (8)(b).

10 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

11 (a) In any dispute concerning overutilization, medical
12 benefits, compensability, or disability under this chapter,
13 the carrier or the employee may select an independent medical
14 examiner. The examiner may be a health care provider treating
15 or providing other care to the employee. An independent
16 medical examiner may not render an opinion outside his or her
17 area of expertise, as demonstrated by licensure and applicable
18 practice parameters.

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

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

25 2. The examiner ceases to practice in the specialty
26 relevant to the employee's condition;

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

30 4. The parties agree to an alternate examiner.
31

Amendment No. ____ (for drafter's use only)

1 Any party may request, or a judge of compensation claims may
2 require, designation of an agency ~~a division~~ medical advisor
3 as an independent medical examiner. The opinion of the
4 advisors acting as examiners shall not be afforded the
5 presumption set forth in paragraph (9)(c).

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

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

30 (e) No medical opinion other than the opinion of a
31 medical advisor appointed by the judge of compensation claims

Amendment No. ____ (for drafter's use only)

1 or agency division, an independent medical examiner, or an
2 authorized treating provider is admissible in proceedings
3 before the judges of compensation claims.

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

8 (6) UTILIZATION REVIEW.--Carriers shall review all
9 bills, invoices, and other claims for payment submitted by
10 health care providers in order to identify overutilization and
11 billing errors, and may hire peer review consultants or
12 conduct independent medical evaluations. Such consultants,
13 including peer review organizations, are immune from liability
14 in the execution of their functions under this subsection to
15 the extent provided in s. 766.101. If a carrier finds that
16 overutilization of medical services or a billing error has
17 occurred, it must disallow or adjust payment for such services
18 or error without order of a judge of compensation claims or
19 the agency division, if the carrier, in making its
20 determination, has complied with this section and rules
21 adopted by the agency division.

22 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

23 (a) Any health care provider, carrier, or employer who
24 elects to contest the disallowance or adjustment of payment by
25 a carrier under subsection (6) must, within 30 days after
26 receipt of notice of disallowance or adjustment of payment,
27 petition the agency division to resolve the dispute. The
28 petitioner must serve a copy of the petition on the carrier
29 and on all affected parties by certified mail. The petition
30 must be accompanied by all documents and records that support
31 the allegations contained in the petition. Failure of a

Amendment No. ____ (for drafter's use only)

1 petitioner to submit such documentation to the agency division
2 results in dismissal of the petition.

3 (b) The carrier must submit to the agency division
4 within 10 days after receipt of the petition all documentation
5 substantiating the carrier's disallowance or adjustment.
6 Failure of the carrier to submit the requested documentation
7 to the agency division within 10 days constitutes a waiver of
8 all objections to the petition.

9 (c) Within 60 days after receipt of all documentation,
10 the agency division must provide to the petitioner, the
11 carrier, and the affected parties a written determination of
12 whether the carrier properly adjusted or disallowed payment.
13 The agency division must be guided by standards and policies
14 set forth in this chapter, including all applicable
15 reimbursement schedules, in rendering its determination.

16 (d) If the agency division finds an improper
17 disallowance or improper adjustment of payment by an insurer,
18 the insurer shall reimburse the health care provider,
19 facility, insurer, or employer within 30 days, subject to the
20 penalties provided in this subsection.

21 (e) The agency division shall adopt rules to carry out
22 this subsection. The rules may include provisions for
23 consolidating petitions filed by a petitioner and expanding
24 the timetable for rendering a determination upon a
25 consolidated petition.

26 (f) Any carrier that engages in a pattern or practice
27 of arbitrarily or unreasonably disallowing or reducing
28 payments to health care providers may be subject to one or
29 more of the following penalties imposed by the agency
30 division:

31 1. Repayment of the appropriate amount to the health

Amendment No. ____ (for drafter's use only)

1 care provider.

2 2. An administrative fine assessed by the agency
3 ~~division~~ in an amount not to exceed \$5,000 per instance of
4 improperly disallowing or reducing payments.

5 3. Award of the health care provider's costs,
6 including a reasonable attorney's fee, for prosecuting the
7 petition.

8 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

9 (a) Carriers must report to the agency ~~division~~ all
10 instances of overutilization including, but not limited to,
11 all instances in which the carrier disallows or adjusts
12 payment. The agency ~~division~~ shall determine whether a pattern
13 or practice of overutilization exists.

14 (b) If the agency ~~division~~ determines that a health
15 care provider has engaged in a pattern or practice of
16 overutilization or a violation of this chapter or rules
17 adopted by the agency ~~division~~, it may impose one or more of
18 the following penalties:

- 19 1. An order of the agency ~~division~~ barring the
20 provider from payment under this chapter;
- 21 2. Deauthorization of care under review;
- 22 3. Denial of payment for care rendered in the future;
- 23 4. Decertification of a health care provider certified
24 as an expert medical advisor under subsection (9) or of a
25 rehabilitation provider certified under s. 440.49;
- 26 5. An administrative fine assessed by the agency
27 ~~division~~ in an amount not to exceed \$5,000 per instance of
28 overutilization or violation; and
- 29 6. Notification of and review by the appropriate
30 licensing authority pursuant to s. 440.106(3).

31 (9) EXPERT MEDICAL ADVISORS.--

Amendment No. ____ (for drafter's use only)

1 (a) The agency division shall certify expert medical
2 advisors in each specialty to assist the agency division and
3 the judges of compensation claims within the advisor's area of
4 expertise as provided in this section. The agency division
5 shall, in a manner prescribed by rule, in certifying,
6 recertifying, or decertifying an expert medical advisor,
7 consider the qualifications, training, impartiality, and
8 commitment of the health care provider to the provision of
9 quality medical care at a reasonable cost. As a prerequisite
10 for certification or recertification, the agency division
11 shall require, at a minimum, that an expert medical advisor
12 have specialized workers' compensation training or experience
13 under the workers' compensation system of this state and board
14 certification or board eligibility.

15 (b) The agency division shall contract with or employ
16 expert medical advisors to provide peer review or medical
17 consultation to the agency division or to a judge of
18 compensation claims in connection with resolving disputes
19 relating to reimbursement, differing opinions of health care
20 providers, and health care and physician services rendered
21 under this chapter. Expert medical advisors contracting with
22 the agency division shall, as a term of such contract, agree
23 to provide consultation or services in accordance with the
24 timetables set forth in this chapter and to abide by rules
25 adopted by the agency division, including, but not limited to,
26 rules pertaining to procedures for review of the services
27 rendered by health care providers and preparation of reports
28 and recommendations for submission to the agency division.

29 (c) If there is disagreement in the opinions of the
30 health care providers, if two health care providers disagree
31 on medical evidence supporting the employee's complaints or

Amendment No. ____ (for drafter's use only)

1 the need for additional medical treatment, or if two health
2 care providers disagree that the employee is able to return to
3 work, the agency ~~division~~ may, and the judge of compensation
4 claims shall, upon his or her own motion or within 15 days
5 after receipt of a written request by either the injured
6 employee, the employer, or the carrier, order the injured
7 employee to be evaluated by an expert medical advisor. The
8 opinion of the expert medical advisor is presumed to be
9 correct unless there is clear and convincing evidence to the
10 contrary as determined by the judge of compensation claims.
11 The expert medical advisor appointed to conduct the evaluation
12 shall have free and complete access to the medical records of
13 the employee. An employee who fails to report to and cooperate
14 with such evaluation forfeits entitlement to compensation
15 during the period of failure to report or cooperate.

16 (d) The expert medical advisor must complete his or
17 her evaluation and issue his or her report to the agency
18 ~~division~~ or to the judge of compensation claims within 45 days
19 after receipt of all medical records. The expert medical
20 advisor must furnish a copy of the report to the carrier and
21 to the employee.

22 (e) An expert medical advisor is not liable under any
23 theory of recovery for evaluations performed under this
24 section without a showing of fraud or malice. The protections
25 of s. 766.101 apply to any officer, employee, or agent of the
26 agency ~~division~~ and to any officer, employee, or agent of any
27 entity with which the agency ~~division~~ has contracted under
28 this subsection.

29 (f) If the agency ~~division~~ or a judge of compensation
30 claims determines that the services of a certified expert
31 medical advisor are required to resolve a dispute under this

Amendment No. ____ (for drafter's use only)

1 section, the carrier must compensate the advisor for his or
2 her time in accordance with a schedule adopted by the agency
3 division. The agency division may assess a penalty not to
4 exceed \$500 against any carrier that fails to timely
5 compensate an advisor in accordance with this section.

6 (10) WITNESS FEES.--Any health care provider who gives
7 a deposition shall be allowed a witness fee. The amount
8 charged by the witness may not exceed \$200 per hour. An expert
9 witness who has never provided direct professional services to
10 a party but has merely reviewed medical records and provided
11 an expert opinion or has provided only direct professional
12 services that were unrelated to the workers' compensation case
13 may not be allowed a witness fee in excess of \$200 per day.

14 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
15 DIVISION; JURISDICTION.--

16 (a) The Agency for Health Care Administration Division
17 of Workers' Compensation of the Department of Labor and
18 Employment Security may investigate health care providers to
19 determine whether providers are complying with this chapter
20 and with rules adopted by the agency division, whether the
21 providers are engaging in overutilization, and whether
22 providers are engaging in improper billing practices. If the
23 agency division finds that a health care provider has
24 improperly billed, overutilized, or failed to comply with
25 agency division rules or the requirements of this chapter it
26 must notify the provider of its findings and may determine
27 that the health care provider may not receive payment from the
28 carrier or may impose penalties as set forth in subsection (8)
29 or other sections of this chapter. If the health care provider
30 has received payment from a carrier for services that were
31 improperly billed or for overutilization, it must return those

Amendment No. ____ (for drafter's use only)

1 payments to the carrier. The agency division may assess a
2 penalty not to exceed \$500 for each overpayment that is not
3 refunded within 30 days after notification of overpayment by
4 the agency division or carrier.

5 (b) The department division shall monitor and audit
6 carriers, as provided in s. 624.3161, to determine if medical
7 bills are paid in accordance with this section and department
8 division rules. ~~Any employer, if self-insured, or carrier~~
9 ~~found by the division not to be within 90 percent compliance~~
10 ~~as to the payment of medical bills after July 1, 1994, must be~~
11 ~~assessed a fine not to exceed 1 percent of the prior year's~~
12 ~~assessment levied against such entity under s. 440.51 for~~
13 ~~every quarter in which the entity fails to attain 90-percent~~
14 ~~compliance. The department division shall fine or otherwise~~
15 ~~discipline an employer or carrier, pursuant to this chapter,~~
16 ~~the insurance code, or rules adopted by the department~~
17 ~~division, for each late payment of compensation that is below~~
18 ~~the minimum 90-percent performance standard. Any carrier that~~
19 ~~is found to be not in compliance in subsequent consecutive~~
20 ~~quarters must implement a medical bill review program approved~~
21 ~~by the division, and the carrier is subject to disciplinary~~
22 ~~action by the Department of Insurance.~~

23 (c) The agency division has exclusive jurisdiction to
24 decide any matters concerning reimbursement, to resolve any
25 overutilization dispute under subsection (7), and to decide
26 any question concerning overutilization under subsection (8),
27 which question or dispute arises after January 1, 1994.

28 (d) The following agency division actions do not
29 constitute agency action subject to review under ss. 120.569
30 and 120.57 and do not constitute actions subject to s. 120.56:
31 referral by the entity responsible for utilization review; a

Amendment No. ____ (for drafter's use only)

1 decision by the agency division to refer a matter to a peer
2 review committee; establishment by a health care provider or
3 entity of procedures by which a peer review committee reviews
4 the rendering of health care services; and the review
5 proceedings, report, and recommendation of the peer review
6 committee.

7 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
8 REIMBURSEMENT ALLOWANCES.--

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

Amendment No. ____ (for drafter's use only)

1 percent of their usual and customary charges. Annually, the
2 three-member panel shall adopt schedules of maximum
3 reimbursement allowances for physicians, hospital inpatient
4 care, hospital outpatient care, ambulatory surgical centers,
5 work-hardening programs, and pain programs. However, the
6 maximum percentage of increase in the individual reimbursement
7 allowance may not exceed the percentage of increase in the
8 Consumer Price Index for the previous year. An individual
9 physician, hospital, ambulatory surgical center, pain program,
10 or work-hardening program shall be reimbursed either the usual
11 and customary charge for treatment, care, and attendance, the
12 agreed-upon contract price, the per diem rate for hospital
13 inpatient stay, or the maximum reimbursement allowance in the
14 appropriate schedule, whichever is less.

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

26 (c) Reimbursement for all fees and other charges for
27 such treatment, care, and attendance, including treatment,
28 care, and attendance provided by any hospital or other health
29 care provider, ambulatory surgical center, work-hardening
30 program, or pain program, must not exceed the amounts provided
31 by the uniform schedule of maximum reimbursement allowances as

Amendment No. ____ (for drafter's use only)

1 determined by the panel or as otherwise provided in this
2 section. This subsection also applies to independent medical
3 examinations performed by health care providers under this
4 chapter. Until the three-member panel approves a uniform
5 schedule of maximum reimbursement allowances and it becomes
6 effective, all compensable charges for treatment, care, and
7 attendance provided by physicians, ambulatory surgical
8 centers, work-hardening programs, or pain programs shall be
9 reimbursed at the lowest maximum reimbursement allowance
10 across all 1992 schedules of maximum reimbursement allowances
11 for the services provided regardless of the place of service.
12 In determining the uniform schedule, the panel shall first
13 approve the data which it finds representative of prevailing
14 charges in the state for similar treatment, care, and
15 attendance of injured persons. Each health care provider,
16 health care facility, ambulatory surgical center,
17 work-hardening program, or pain program receiving workers'
18 compensation payments shall maintain records verifying their
19 usual charges. In establishing the uniform schedule of maximum
20 reimbursement allowances, the panel must consider:

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

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

28 3. The financial impact of the reimbursement
29 allowances upon health care providers and health care
30 facilities, including trauma centers as defined in s.
31 395.4001, and its effect upon their ability to make available

Amendment No. ____ (for drafter's use only)

1 to injured workers such medically necessary remedial
2 treatment, care, and attendance. The uniform schedule of
3 maximum reimbursement allowances must be reasonable, must
4 promote health care cost containment and efficiency with
5 respect to the workers' compensation health care delivery
6 system, and must be sufficient to ensure availability of such
7 medically necessary remedial treatment, care, and attendance
8 to injured workers; and

9 4. The most recent average maximum allowable rate of
10 increase for hospitals determined by the Health Care Board
11 under chapter 408.

12 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
13 AUTHORIZED TO RENDER MEDICAL CARE.--The agency ~~division~~ shall
14 remove from the list of physicians or facilities authorized to
15 provide remedial treatment, care, and attendance under this
16 chapter the name of any physician or facility found after
17 reasonable investigation to have:

18 (a) Engaged in professional or other misconduct or
19 incompetency in connection with medical services rendered
20 under this chapter;

21 (b) Exceeded the limits of his or her or its
22 professional competence in rendering medical care under this
23 chapter, or to have made materially false statements regarding
24 his or her or its qualifications in his or her application;

25 (c) Failed to transmit copies of medical reports to
26 the employer or carrier, or failed to submit full and truthful
27 medical reports of all his or her or its findings to the
28 employer or carrier as required under this chapter;

29 (d) Solicited, or employed another to solicit for
30 himself or herself or itself or for another, professional
31 treatment, examination, or care of an injured employee in

Amendment No. ____ (for drafter's use only)

1 connection with any claim under this chapter;

2 (e) Refused to appear before, or to answer upon
3 request of, the agency division or any duly authorized officer
4 of the state, any legal question, or to produce any relevant
5 book or paper concerning his or her conduct under any
6 authorization granted to him or her under this chapter;

7 (f) Self-referred in violation of this chapter or
8 other laws of this state; or

9 (g) Engaged in a pattern of practice of
10 overutilization or a violation of this chapter or rules
11 adopted by the agency division.

12 (14) PAYMENT OF MEDICAL FEES.--

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

21 (b) Fees charged for remedial treatment, care, and
22 attendance may not exceed the applicable fee schedules adopted
23 under this chapter.

24 (c) Notwithstanding any other provision of this
25 chapter, following overall maximum medical improvement from an
26 injury compensable under this chapter, the employee is
27 obligated to pay a copayment of \$10 per visit for medical
28 services. The copayment shall not apply to emergency care
29 provided to the employee.

30 (15) PRACTICE PARAMETERS.--

31 (a) The Agency for Health Care Administration, in

Amendment No. ____ (for drafter's use only)

1 conjunction with the department ~~division~~ and appropriate
2 health professional associations and health-related
3 organizations shall develop and may adopt by rule
4 scientifically sound practice parameters for medical
5 procedures relevant to workers' compensation claimants.
6 Practice parameters developed under this section must focus on
7 identifying effective remedial treatments and promoting the
8 appropriate utilization of health care resources. Priority
9 must be given to those procedures that involve the greatest
10 utilization of resources either because they are the most
11 costly or because they are the most frequently performed.
12 Practice parameters for treatment of the 10 top procedures
13 associated with workers' compensation injuries including the
14 remedial treatment of lower-back injuries must be developed by
15 December 31, 1994.

16 (b) The guidelines may be initially based on
17 guidelines prepared by nationally recognized health care
18 institutions and professional organizations but should be
19 tailored to meet the workers' compensation goal of returning
20 employees to full employment as quickly as medically possible,
21 taking into consideration outcomes data collected from managed
22 care providers and any other inpatient and outpatient
23 facilities serving workers' compensation claimants.

24 (c) Procedures must be instituted which provide for
25 the periodic review and revision of practice parameters based
26 on the latest outcomes data, research findings, technological
27 advancements, and clinical experiences, at least once every 3
28 years.

29 (d) Practice parameters developed under this section
30 must be used by carriers and the agency ~~division~~ in evaluating
31 the appropriateness and overutilization of medical services

Amendment No. ____ (for drafter's use only)

1 provided to injured employees.

2 Section 19. Subsection (23) of section 440.134,
3 Florida Statutes, is amended to read:

4 440.134 Workers' compensation managed care
5 arrangement.--

6 (23) The agency shall immediately notify the
7 Department of Insurance ~~and the Department of Labor and~~
8 ~~Employment Security~~ whenever it issues an administrative
9 complaint or an order or otherwise initiates legal proceedings
10 resulting in, or which may result in, suspension or revocation
11 of an insurer's authorization.

12 Section 20. Subsection (3) of section 440.14, Florida
13 Statutes, is amended to read:

14 440.14 Determination of pay.--

15 (3) The department ~~division~~ shall establish by rule a
16 form which shall contain a simplified checklist of those items
17 which may be included as "wage" for determining the average
18 weekly wage.

19 Section 21. Subsections (11), (13), and (14) of
20 section 440.02, Florida Statutes, are amended, and subsection
21 (40) is added to that section, to read:

22 440.02 Definitions.--When used in this chapter, unless
23 the context clearly requires otherwise, the following terms
24 shall have the following meanings:

25 (11) "Department" means the Department of Insurance
26 ~~Labor and Employment Security~~.

27 (13) "Division" means the Division of Workers'
28 Compensation of the Department of Insurance ~~Labor and~~
29 ~~Employment Security~~.

30 (14)(a) "Employee" means any person engaged in any
31 employment under any appointment or contract of hire or

Amendment No. ____ (for drafter's use only)

1 apprenticeship, express or implied, oral or written, whether
2 lawfully or unlawfully employed, and includes, but is not
3 limited to, aliens and minors.

4 (b) "Employee" includes any person who is an officer
5 of a corporation and who performs services for remuneration
6 for such corporation within this state, whether or not such
7 services are continuous.

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

11 2. As to officers of a corporation who are actively
12 engaged in the construction industry, no more than three
13 officers may elect to be exempt from this chapter by filing
14 written notice of the election with the department ~~division~~ as
15 provided in s. 440.05.

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

20
21 Services are presumed to have been rendered to the corporation
22 if the officer is compensated by other than dividends upon
23 shares of stock of the corporation which the officer owns.

24 (c) "Employee" includes a sole proprietor or a partner
25 who devotes full time to the proprietorship or partnership
26 and, except as provided in this paragraph, elects to be
27 included in the definition of employee by filing notice
28 thereof as provided in s. 440.05. Partners or sole proprietors
29 actively engaged in the construction industry are considered
30 employees unless they elect to be excluded from the definition
31 of employee by filing written notice of the election with the

Amendment No. ____ (for drafter's use only)

1 ~~department division~~ as provided in s. 440.05. However, no more
2 than three partners in a partnership that is actively engaged
3 in the construction industry may elect to be excluded. A sole
4 proprietor or partner who is actively engaged in the
5 construction industry and who elects to be exempt from this
6 chapter by filing a written notice of the election with the
7 ~~department division~~ as provided in s. 440.05 is not an
8 employee. For purposes of this chapter, an independent
9 contractor is an employee unless he or she meets all of the
10 conditions set forth in subparagraph (d)1.

11 (d) "Employee" does not include:

12 1. An independent contractor, if:

13 a. The independent contractor maintains a separate
14 business with his or her own work facility, truck, equipment,
15 materials, or similar accommodations;

16 b. The independent contractor holds or has applied for
17 a federal employer identification number, unless the
18 independent contractor is a sole proprietor who is not
19 required to obtain a federal employer identification number
20 under state or federal requirements;

21 c. The independent contractor performs or agrees to
22 perform specific services or work for specific amounts of
23 money and controls the means of performing the services or
24 work;

25 d. The independent contractor incurs the principal
26 expenses related to the service or work that he or she
27 performs or agrees to perform;

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

Amendment No. ____ (for drafter's use only)

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

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

6 h. The independent contractor has continuing or
7 recurring business liabilities or obligations; 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 2. A real estate salesperson or agent, if that person
21 agrees, in writing, to perform for remuneration solely by way
22 of commission.

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

28 4. An owner-operator of a motor vehicle who transports
29 property under a written contract with a motor carrier which
30 evidences a relationship by which the owner-operator assumes
31 the responsibility of an employer for the performance of the

Amendment No. ____ (for drafter's use only)

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

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

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

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

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

30 7. Any officer of a corporation who elects to be
31 exempt from this chapter.

Amendment No. ____ (for drafter's use only)

1 8. A sole proprietor or officer of a corporation who
2 actively engages in the construction industry, and a partner
3 in a partnership that is actively engaged in the construction
4 industry, who elects to be exempt from the provisions of this
5 chapter. Such sole proprietor, officer, or partner is not an
6 employee for any reason until the notice of revocation of
7 election filed pursuant to s. 440.05 is effective.

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

14 10. A taxicab, limousine, or other passenger
15 vehicle-for-hire driver who operates said vehicles pursuant to
16 a written agreement with a company which provides any
17 dispatch, marketing, insurance, communications, or other
18 services under which the driver and any fees or charges paid
19 by the driver to the company for such services are not
20 conditioned upon, or expressed as a proportion of, fare
21 revenues.

22 (40) "Agency" means the Agency for Health Care
23 Administration.

24 Section 22. Section 440.15, Florida Statutes, is
25 amended to read:

26 440.15 Compensation for disability.--Compensation for
27 disability shall be paid to the employee, subject to the
28 limits provided in s. 440.12(2), as follows:

29 (1) PERMANENT TOTAL DISABILITY.--

30 (a) In case of total disability adjudged to be
31 permanent, 66 2/3 percent of the average weekly wages shall

Amendment No. ____ (for drafter's use only)

1 be paid to the employee during the continuance of such total
2 disability.

3 (b) Only a catastrophic injury as defined in s. 440.02
4 shall, in the absence of conclusive proof of a substantial
5 earning capacity, constitute permanent total disability. Only
6 claimants with catastrophic injuries are eligible for
7 permanent total benefits. In no other case may permanent total
8 disability be awarded.

9 (c) In cases of permanent total disability resulting
10 from injuries that occurred prior to July 1, 1955, such
11 payments shall not be made in excess of 700 weeks.

12 (d) If an employee who is being paid compensation for
13 permanent total disability becomes rehabilitated to the extent
14 that she or he establishes an earning capacity, the employee
15 shall be paid, instead of the compensation provided in
16 paragraph (a), benefits pursuant to subsection (3). The
17 department division shall adopt rules to enable a permanently
18 and totally disabled employee who may have reestablished an
19 earning capacity to undertake a trial period of reemployment
20 without prejudicing her or his return to permanent total
21 status in the case that such employee is unable to sustain an
22 earning capacity.

23 (e)1. The employer's or carrier's right to conduct
24 vocational evaluations or testing pursuant to s. 440.491
25 continues even after the employee has been accepted or
26 adjudicated as entitled to compensation under this chapter.
27 This right includes, but is not limited to, instances in which
28 such evaluations or tests are recommended by a treating
29 physician or independent medical-examination physician,
30 instances warranted by a change in the employee's medical
31 condition, or instances in which the employee appears to be

Amendment No. ____ (for drafter's use only)

1 making appropriate progress in recuperation. This right may
2 not be exercised more than once every calendar year.

3 2. The carrier must confirm the scheduling of the
4 vocational evaluation or testing in writing, and must notify
5 employee's counsel, if any, at least 7 days before the date on
6 which vocational evaluation or testing is scheduled to occur.

7 3. Pursuant to an order of the judge of compensation
8 claims, the employer or carrier may withhold payment of
9 benefits for permanent total disability or supplements for any
10 period during which the employee willfully fails or refuses to
11 appear without good cause for the scheduled vocational
12 evaluation or testing.

13 (f)1. If permanent total disability results from
14 injuries that occurred subsequent to June 30, 1955, and for
15 which the liability of the employer for compensation has not
16 been discharged under s. 440.20(11), the injured employee
17 shall receive additional weekly compensation benefits equal to
18 5 percent of her or his weekly compensation rate, as
19 established pursuant to the law in effect on the date of her
20 or his injury, multiplied by the number of calendar years
21 since the date of injury. The weekly compensation payable and
22 the additional benefits payable under this paragraph, when
23 combined, may not exceed the maximum weekly compensation rate
24 in effect at the time of payment as determined pursuant to s.
25 440.12(2). Entitlement to these supplemental payments shall
26 cease at age 62 if the employee is eligible for social
27 security benefits under 42 U.S.C. ss. 402 and 423, whether or
28 not the employee has applied for such benefits. These
29 supplemental benefits shall be paid by the division out of the
30 Workers' Compensation Administration Trust Fund when the
31 injury occurred subsequent to June 30, 1955, and before July

Amendment No. ____ (for drafter's use only)

1 1, 1984. These supplemental benefits shall be paid by the
2 employer when the injury occurred on or after July 1, 1984.
3 Supplemental benefits are not payable for any period prior to
4 October 1, 1974.

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

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

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

Amendment No. ____ (for drafter's use only)

1 (2) TEMPORARY TOTAL DISABILITY.--

2 (a) In case of disability total in character but
3 temporary in quality, 66 2/3 percent of the average weekly
4 wages shall be paid to the employee during the continuance
5 thereof, not to exceed 104 weeks except as provided in this
6 subsection, s. 440.12(1), and s. 440.14(3). Once the employee
7 reaches the maximum number of weeks allowed, or the employee
8 reaches the date of maximum medical improvement, whichever
9 occurs earlier, temporary disability benefits shall cease and
10 the injured worker's permanent impairment shall be determined.

11 (b) Notwithstanding the provisions of paragraph (a),
12 an employee who has sustained the loss of an arm, leg, hand,
13 or foot, has been rendered a paraplegic, paraparetic,
14 quadriplegic, or quadriparetic, or has lost the sight of both
15 eyes shall be paid temporary total disability of 80 percent of
16 her or his average weekly wage. The increased temporary total
17 disability compensation provided for in this paragraph must
18 not extend beyond 6 months from the date of the accident. The
19 compensation provided by this paragraph is not subject to the
20 limits provided in s. 440.12(2), but instead is subject to a
21 maximum weekly compensation rate of \$700. If, at the
22 conclusion of this period of increased temporary total
23 disability compensation, the employee is still temporarily
24 totally disabled, the employee shall continue to receive
25 temporary total disability compensation as set forth in
26 paragraphs (a) and (c). The period of time the employee has
27 received this increased compensation will be counted as part
28 of, and not in addition to, the maximum periods of time for
29 which the employee is entitled to compensation under paragraph
30 (a) but not paragraph (c).

31 (c) Temporary total disability benefits paid pursuant

Amendment No. ____ (for drafter's use only)

1 to this subsection shall include such period as may be
2 reasonably necessary for training in the use of artificial
3 members and appliances, and shall include such period as the
4 employee may be receiving training and education under a
5 program pursuant to s. 440.49(1). Notwithstanding s.
6 440.02(9), the date of maximum medical improvement for
7 purposes of paragraph (3)(b) shall be no earlier than the last
8 day for which such temporary disability benefits are paid.

9 (d) The department ~~division~~ shall, by rule, provide
10 for the periodic reporting to the department ~~division~~,
11 employer, or carrier of all earned income, including income
12 from social security, by the injured employee who is entitled
13 to or claiming benefits for temporary total disability. The
14 employer or carrier is not required to make any payment of
15 benefits for temporary total disability for any period during
16 which the employee willfully fails or refuses to report upon
17 request by the employer or carrier in the manner prescribed by
18 the rules. The rule must require the claimant to personally
19 sign the claim form and attest that she or he has reviewed,
20 understands, and acknowledges the foregoing.

21 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

22 (a) Impairment benefits.--

23 1. Once the employee has reached the date of maximum
24 medical improvement, impairment benefits are due and payable
25 within 20 days after the carrier has knowledge of the
26 impairment.

27 2. The three-member panel, in cooperation with the
28 department ~~division~~, shall establish and use a uniform
29 permanent impairment rating schedule. This schedule must be
30 based on medically or scientifically demonstrable findings as
31 well as the systems and criteria set forth in the American

Amendment No. ____ (for drafter's use only)

1 Medical Association's Guides to the Evaluation of Permanent
2 Impairment; the Snellen Charts, published by American Medical
3 Association Committee for Eye Injuries; and the Minnesota
4 Department of Labor and Industry Disability Schedules. The
5 schedule should be based upon objective findings. The schedule
6 shall be more comprehensive than the AMA Guides to the
7 Evaluation of Permanent Impairment and shall expand the areas
8 already addressed and address additional areas not currently
9 contained in the guides. On August 1, 1979, and pending the
10 adoption, by rule, of a permanent schedule, Guides to the
11 Evaluation of Permanent Impairment, copyright 1977, 1971,
12 1988, by the American Medical Association, shall be the
13 temporary schedule and shall be used for the purposes hereof.
14 For injuries after July 1, 1990, pending the adoption by
15 department ~~division~~ rule of a uniform disability rating
16 schedule, the Minnesota Department of Labor and Industry
17 Disability Schedule shall be used unless that schedule does
18 not address an injury. In such case, the Guides to the
19 Evaluation of Permanent Impairment by the American Medical
20 Association shall be used. Determination of permanent
21 impairment under this schedule must be made by a physician
22 licensed under chapter 458, a doctor of osteopathic medicine
23 licensed under chapters 458 and 459, a chiropractic physician
24 licensed under chapter 460, a podiatric physician licensed
25 under chapter 461, an optometrist licensed under chapter 463,
26 or a dentist licensed under chapter 466, as appropriate
27 considering the nature of the injury. No other persons are
28 authorized to render opinions regarding the existence of or
29 the extent of permanent impairment.

30 3. All impairment income benefits shall be based on an
31 impairment rating using the impairment schedule referred to in

Amendment No. ____ (for drafter's use only)

1 subparagraph 2. Impairment income benefits are paid weekly at
2 the rate of 50 percent of the employee's average weekly
3 temporary total disability benefit not to exceed the maximum
4 weekly benefit under s. 440.12. An employee's entitlement to
5 impairment income benefits begins the day after the employee
6 reaches maximum medical improvement or the expiration of
7 temporary benefits, whichever occurs earlier, and continues
8 until the earlier of:
9 a. The expiration of a period computed at the rate of
10 3 weeks for each percentage point of impairment; or
11 b. The death of the employee.
12 4. After the employee has been certified by a doctor
13 as having reached maximum medical improvement or 6 weeks
14 before the expiration of temporary benefits, whichever occurs
15 earlier, the certifying doctor shall evaluate the condition of
16 the employee and assign an impairment rating, using the
17 impairment schedule referred to in subparagraph 2.
18 Compensation is not payable for the mental, psychological, or
19 emotional injury arising out of depression from being out of
20 work. If the certification and evaluation are performed by a
21 doctor other than the employee's treating doctor, the
22 certification and evaluation must be submitted to the treating
23 doctor, and the treating doctor must indicate agreement or
24 disagreement with the certification and evaluation. The
25 certifying doctor shall issue a written report to the
26 department division, the employee, and the carrier certifying
27 that maximum medical improvement has been reached, stating the
28 impairment rating, and providing any other information
29 required by the department by rule division. If the employee
30 has not been certified as having reached maximum medical
31 improvement before the expiration of 102 weeks after the date

Amendment No. ____ (for drafter's use only)

1 temporary total disability benefits begin to accrue, the
2 carrier shall notify the treating doctor of the requirements
3 of this section.

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

6 6. The department ~~division~~ may by rule specify forms
7 and procedures governing the method of payment of wage loss
8 and impairment benefits for dates of accidents before January
9 1, 1994, and for dates of accidents on or after January 1,
10 1994.

11 (b) Supplemental benefits.--

12 1. All supplemental benefits must be paid in
13 accordance with this subsection. An employee is entitled to
14 supplemental benefits as provided in this paragraph as of the
15 expiration of the impairment period, if:

16 a. The employee has an impairment rating from the
17 compensable injury of 20 percent or more as determined
18 pursuant to this chapter;

19 b. The employee has not returned to work or has
20 returned to work earning less than 80 percent of the
21 employee's average weekly wage as a direct result of the
22 employee's impairment; and

23 c. The employee has in good faith attempted to obtain
24 employment commensurate with the employee's ability to work.

25 2. If an employee is not entitled to supplemental
26 benefits at the time of payment of the final weekly impairment
27 income benefit because the employee is earning at least 80
28 percent of the employee's average weekly wage, the employee
29 may become entitled to supplemental benefits at any time
30 within 1 year after the impairment income benefit period ends
31 if:

Amendment No. ____ (for drafter's use only)

1 a. The employee earns wages that are less than 80
2 percent of the employee's average weekly wage for a period of
3 at least 90 days;

4 b. The employee meets the other requirements of
5 subparagraph 1.; and

6 c. The employee's decrease in earnings is a direct
7 result of the employee's impairment from the compensable
8 injury.

9 3. If an employee earns wages that are at least 80
10 percent of the employee's average weekly wage for a period of
11 at least 90 days during which the employee is receiving
12 supplemental benefits, the employee ceases to be entitled to
13 supplemental benefits for the filing period. Supplemental
14 benefits that have been terminated shall be reinstated when
15 the employee satisfies the conditions enumerated in
16 subparagraph 2. and files the statement required under
17 subparagraph 5. Notwithstanding any other provision, if an
18 employee is not entitled to supplemental benefits for 12
19 consecutive months, the employee ceases to be entitled to any
20 additional income benefits for the compensable injury. If the
21 employee is discharged within 12 months after losing
22 entitlement under this subsection, benefits may be reinstated
23 if the employee was discharged at that time with the intent to
24 deprive the employee of supplemental benefits.

25 ~~4. During the period that impairment income benefits~~
26 ~~or supplemental income benefits are being paid, the carrier~~
27 ~~has the affirmative duty to determine at least annually~~
28 ~~whether any extended unemployment or underemployment is a~~
29 ~~direct result of the employee's impairment. To accomplish this~~
30 ~~purpose, the division may require periodic reports from the~~
31 ~~employee and the carrier, and it may, at the carrier's~~

Amendment No. ____ (for drafter's use only)

~~1 expense, require any physical or other examinations,
2 vocational assessments, or other tests or diagnoses necessary
3 to verify that the carrier is performing its duty. Not more
4 than once in each 12 calendar months, the employee and the
5 carrier may each request that the division review the status
6 of the employee and determine whether the carrier has
7 performed its duty with respect to whether the employee's
8 unemployment or underemployment is a direct result of
9 impairment from the compensable injury.~~

10 4.5. After the initial determination of supplemental
11 benefits, the employee must file a statement with the carrier
12 stating that the employee has earned less than 80 percent of
13 the employee's average weekly wage as a direct result of the
14 employee's impairment, stating the amount of wages the
15 employee earned in the filing period, and stating that the
16 employee has in good faith sought employment commensurate with
17 the employee's ability to work. The statement must be filed
18 quarterly on a form and in the manner prescribed by the
19 department division. The department division may modify the
20 filing period as appropriate to an individual case. Failure to
21 file a statement relieves the carrier of liability for
22 supplemental benefits for the period during which a statement
23 is not filed.

24 5.6. The carrier shall begin payment of supplemental
25 benefits not later than the seventh day after the expiration
26 date of the impairment income benefit period and shall
27 continue to timely pay those benefits. The carrier may request
28 a mediation conference for the purpose of contesting the
29 employee's entitlement to or the amount of supplemental income
30 benefits.

31 6.7. Supplemental benefits are calculated quarterly

Amendment No. ____ (for drafter's use only)

1 and paid monthly. For purposes of calculating supplemental
2 benefits, 80 percent of the employee's average weekly wage and
3 the average wages the employee has earned per week are
4 compared quarterly. For purposes of this paragraph, if the
5 employee is offered a bona fide position of employment that
6 the employee is capable of performing, given the physical
7 condition of the employee and the geographic accessibility of
8 the position, the employee's weekly wages are considered
9 equivalent to the weekly wages for the position offered to the
10 employee.

11 ~~7.8.~~ Supplemental benefits are payable at the rate of
12 80 percent of the difference between 80 percent of the
13 employee's average weekly wage determined pursuant to s.
14 440.14 and the weekly wages the employee has earned during the
15 reporting period, not to exceed the maximum weekly income
16 benefit under s. 440.12.

17 ~~8.9.~~ The department ~~division~~ may by rule define terms
18 that are necessary for the administration of this section and
19 forms and procedures governing the method of payment of
20 supplemental benefits for dates of accidents before January 1,
21 1994, and for dates of accidents on or after January 1, 1994.

22 (c) Duration of temporary impairment and supplemental
23 income benefits.--The employee's eligibility for temporary
24 benefits, impairment income benefits, and supplemental
25 benefits terminates on the expiration of 401 weeks after the
26 date of injury.

27 (4) TEMPORARY PARTIAL DISABILITY.--

28 (a) In case of temporary partial disability,
29 compensation shall be equal to 80 percent of the difference
30 between 80 percent of the employee's average weekly wage and
31 the salary, wages, and other remuneration the employee is able

Amendment No. ____ (for drafter's use only)

1 to earn, as compared weekly; however, the weekly benefits may
2 not exceed an amount equal to 66 2/3 percent of the
3 employee's average weekly wage at the time of injury. In order
4 to simplify the comparison of the preinjury average weekly
5 wage with the salary, wages, and other remuneration the
6 employee is able to earn, the department ~~division~~ may by rule
7 provide for the modification of the weekly comparison so as to
8 coincide as closely as possible with the injured worker's pay
9 periods. The amount determined to be the salary, wages, and
10 other remuneration the employee is able to earn shall in no
11 case be less than the sum actually being earned by the
12 employee, including earnings from sheltered employment.

13 (b) Such benefits shall be paid during the continuance
14 of such disability, not to exceed a period of 104 weeks, as
15 provided by this subsection and subsection (2). Once the
16 injured employee reaches the maximum number of weeks,
17 temporary disability benefits cease and the injured worker's
18 permanent impairment must be determined. The department
19 ~~division~~ may by rule specify forms and procedures governing
20 the method of payment of temporary disability benefits for
21 dates of accidents before January 1, 1994, and for dates of
22 accidents on or after January 1, 1994.

23 (5) SUBSEQUENT INJURY.--

24 (a) The fact that an employee has suffered previous
25 disability, impairment, anomaly, or disease, or received
26 compensation therefor, shall not preclude her or him from
27 benefits for a subsequent aggravation or acceleration of the
28 preexisting condition nor preclude benefits for death
29 resulting therefrom, except that no benefits shall be payable
30 if the employee, at the time of entering into the employment
31 of the employer by whom the benefits would otherwise be

Amendment No. ____ (for drafter's use only)

1 payable, falsely represents herself or himself in writing as
2 not having previously been disabled or compensated because of
3 such previous disability, impairment, anomaly, or disease and
4 the employer detrimentally relies on the misrepresentation.
5 Compensation for temporary disability, medical benefits, and
6 wage-loss benefits shall not be subject to apportionment.

7 (b) If a compensable permanent impairment, or any
8 portion thereof, is a result of aggravation or acceleration of
9 a preexisting condition, or is the result of merger with a
10 preexisting impairment, an employee eligible to receive
11 impairment benefits under paragraph (3)(a) shall receive such
12 benefits for the total impairment found to result, excluding
13 the degree of impairment existing at the time of the subject
14 accident or injury or which would have existed by the time of
15 the impairment rating without the intervention of the
16 compensable accident or injury. The degree of permanent
17 impairment attributable to the accident or injury shall be
18 compensated in accordance with paragraph (3)(a). As used in
19 this paragraph, "merger" means the combining of a preexisting
20 permanent impairment with a subsequent compensable permanent
21 impairment which, when the effects of both are considered
22 together, result in a permanent impairment rating which is
23 greater than the sum of the two permanent impairment ratings
24 when each impairment is considered individually.

25 (6) OBLIGATION TO REHIRE.--If the employer has not in
26 good faith made available to the employee, within a 100-mile
27 radius of the employee's residence, work appropriate to the
28 employee's physical limitations within 30 days after the
29 carrier notifies the employer of maximum medical improvement
30 and the employee's physical limitations, the employer shall
31 pay to the department ~~division~~ for deposit into the Workers'

Amendment No. ____ (for drafter's use only)

1 Compensation Administration Trust Fund a fine of \$250 for
2 every \$5,000 of the employer's workers' compensation premium
3 or payroll, not to exceed \$2,000 per violation, as the
4 department ~~division~~ requires by rule. The employer is not
5 subject to this subsection if the employee is receiving
6 permanent total disability benefits or if the employer has 50
7 or fewer employees.

8 (7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
9 employee refuses employment suitable to the capacity thereof,
10 offered to or procured therefor, such employee shall not be
11 entitled to any compensation at any time during the
12 continuance of such refusal unless at any time in the opinion
13 of the judge of compensation claims such refusal is
14 justifiable.

15 (8) EMPLOYEE LEAVES EMPLOYMENT.--If an injured
16 employee, when receiving compensation for temporary partial
17 disability, leaves the employment of the employer by whom she
18 or he was employed at the time of the accident for which such
19 compensation is being paid, the employee shall, upon securing
20 employment elsewhere, give to such former employer an
21 affidavit in writing containing the name of her or his new
22 employer, the place of employment, and the amount of wages
23 being received at such new employment; and, until she or he
24 gives such affidavit, the compensation for temporary partial
25 disability will cease. The employer by whom such employee was
26 employed at the time of the accident for which such
27 compensation is being paid may also at any time demand of such
28 employee an additional affidavit in writing containing the
29 name of her or his employer, the place of her or his
30 employment, and the amount of wages she or he is receiving;
31 and if the employee, upon such demand, fails or refuses to

Amendment No. ____ (for drafter's use only)

1 make and furnish such affidavit, her or his right to
2 compensation for temporary partial disability shall cease
3 until such affidavit is made and furnished.

4 (9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case
5 an employee becomes an inmate of a public institution, then no
6 compensation shall be payable unless she or he has dependent
7 upon her or him for support a person or persons defined as
8 dependents elsewhere in this chapter, whose dependency shall
9 be determined as if the employee were deceased and to whom
10 compensation would be paid in case of death; and such
11 compensation as is due such employee shall be paid such
12 dependents during the time she or he remains such inmate.

13 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
14 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
15 ACT.--

16 (a) Weekly compensation benefits payable under this
17 chapter for disability resulting from injuries to an employee
18 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
19 be reduced to an amount whereby the sum of such compensation
20 benefits payable under this chapter and such total benefits
21 otherwise payable for such period to the employee and her or
22 his dependents, had such employee not been entitled to
23 benefits under this chapter, under 42 U.S.C. ss. 402 and 423,
24 does not exceed 80 percent of the employee's average weekly
25 wage. However, this provision shall not operate to reduce an
26 injured worker's benefits under this chapter to a greater
27 extent than such benefits would have otherwise been reduced
28 under 42 U.S.C. s. 424(a). This reduction of compensation
29 benefits is not applicable to any compensation benefits
30 payable for any week subsequent to the week in which the
31 injured worker reaches the age of 62 years.

Amendment No. ____ (for drafter's use only)

1 (b) If the provisions of 42 U.S.C. s. 424(a) are
2 amended to provide for a reduction or increase of the
3 percentage of average current earnings that the sum of
4 compensation benefits payable under this chapter and the
5 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
6 the amount of the reduction of benefits provided in this
7 subsection shall be reduced or increased accordingly. The
8 department division may by rule specify forms and procedures
9 governing the method for calculating and administering the
10 offset of benefits payable under this chapter and benefits
11 payable under 42 U.S.C. ss. 402 and 423. The department
12 division shall have first priority in taking any available
13 social security offsets on dates of accidents occurring before
14 July 1, 1984.

15 (c) No disability compensation benefits payable for
16 any week, including those benefits provided by paragraph
17 (1)(f), shall be reduced pursuant to this subsection until the
18 Social Security Administration determines the amount otherwise
19 payable to the employee under 42 U.S.C. ss. 402 and 423 and
20 the employee has begun receiving such social security benefit
21 payments. The employee shall, upon demand by the department
22 division, the employer, or the carrier, authorize the Social
23 Security Administration to release disability information
24 relating to her or him and authorize the Division of
25 Unemployment Compensation to release unemployment compensation
26 information relating to her or him, in accordance with rules
27 to be promulgated by the department division prescribing the
28 procedure and manner for requesting the authorization and for
29 compliance by the employee. Neither the department division
30 nor the employer or carrier shall make any payment of benefits
31 for total disability or those additional benefits provided by

Amendment No. ____ (for drafter's use only)

1 paragraph (1)(f) for any period during which the employee
2 willfully fails or refuses to authorize the release of
3 information in the manner and within the time prescribed by
4 such rules. The authority for release of disability
5 information granted by an employee under this paragraph shall
6 be effective for a period not to exceed 12 months, such
7 authority to be renewable as the department ~~division~~ may
8 prescribe by rule.

9 (d) If compensation benefits are reduced pursuant to
10 this subsection, the minimum compensation provisions of s.
11 440.12(2) do not apply.

12 (11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
13 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
14 COMPENSATION.--

15 (a) No compensation benefits shall be payable for
16 temporary total disability or permanent total disability under
17 this chapter for any week in which the injured employee has
18 received, or is receiving, unemployment compensation benefits.

19 (b) If an employee is entitled to temporary partial
20 benefits pursuant to subsection (4) and unemployment
21 compensation benefits, such unemployment compensation benefits
22 shall be primary and the temporary partial benefits shall be
23 supplemental only, the sum of the two benefits not to exceed
24 the amount of temporary partial benefits which would otherwise
25 be payable.

26 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
27 OFFICERS.--Any law enforcement officer as defined in s.
28 943.10(1), (2), or (3) who, while acting within the course of
29 employment as provided by s. 440.091, is maliciously or
30 intentionally injured and who thereby sustains a job-connected
31 disability compensable under this chapter shall be carried in

Amendment No. ____ (for drafter's use only)

1 full-pay status rather than being required to use sick,
2 annual, or other leave. Full-pay status shall be granted only
3 after submission to the employing agency's head of a medical
4 report which gives a current diagnosis of the employee's
5 recovery and ability to return to work. In no case shall the
6 employee's salary and workers' compensation benefits exceed
7 the amount of the employee's regular salary requirements.

8 (13) REPAYMENT.--If an employee has received a sum as
9 an indemnity benefit under any classification or category of
10 benefit under this chapter to which she or he is not entitled,
11 the employee is liable to repay that sum to the employer or
12 the carrier or to have that sum deducted from future benefits,
13 regardless of the classification of benefits, payable to the
14 employee under this chapter; however, a partial payment of the
15 total repayment may not exceed 20 percent of the amount of the
16 biweekly payment.

17 Section 23. Section 440.17, Florida Statutes, is
18 amended to read:

19 440.17 Guardian for minor or incompetent.--Prior to
20 the filing of a claim, the department ~~division~~, and after the
21 filing of a claim, a judge of compensation claims, may require
22 the appointment by a court of competent jurisdiction, for any
23 person who is mentally incompetent or a minor, of a guardian
24 or other representative to receive compensation payable to
25 such person under this chapter and to exercise the powers
26 granted to or to perform the duties required of such person
27 under this chapter; however, the judge of compensation claims,
28 in the judge of compensation claims' discretion, may designate
29 in the compensation award a person to whom payment of
30 compensation may be paid for a minor or incompetent, in which
31 event payment to such designated person shall discharge all

Amendment No. ____ (for drafter's use only)

1 liability for such compensation.

2 Section 24. Section 440.185, Florida Statutes, is
3 amended to read:

4 440.185 Notice of injury or death; reports; penalties
5 for violations.--

6 (1) An employee who suffers an injury arising out of
7 and in the course of employment shall advise his or her
8 employer of the injury within 30 days after the date of or
9 initial manifestation of the injury. Failure to so advise the
10 employer shall bar a petition under this chapter unless:

11 (a) The employer or the employer's agent had actual
12 knowledge of the injury;

13 (b) The cause of the injury could not be identified
14 without a medical opinion and the employee advised the
15 employer within 30 days after obtaining a medical opinion
16 indicating that the injury arose out of and in the course of
17 employment;

18 (c) The employer did not put its employees on notice
19 of the requirements of this section by posting notice pursuant
20 to s. 440.055; or

21 (d) Exceptional circumstances, outside the scope of
22 paragraph (a) or paragraph (b) justify such failure.

23

24 In the event of death arising out of and in the course of
25 employment, the requirements of this subsection shall be
26 satisfied by the employee's agent or estate. Documents
27 prepared by counsel in connection with litigation, including
28 but not limited to notices of appearance, petitions, motions,
29 or complaints, shall not constitute notice for purposes of
30 this section.

31 (2) Within 7 days after actual knowledge of injury or

Amendment No. ____ (for drafter's use only)

1 death, the employer shall report such injury or death to its
2 carrier, in a format prescribed by the department division,
3 and shall provide a copy of such report to the employee or the
4 employee's estate. The report of injury shall contain the
5 following information:

- 6 (a) The name, address, and business of the employer;
7 (b) The name, social security number, street, mailing
8 address, telephone number, and occupation of the employee;
9 (c) The cause and nature of the injury or death;
10 (d) The year, month, day, and hour when, and the
11 particular locality where, the injury or death occurred; and
12 (e) Such other information as the department division
13 may require.

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 department division in
18 Tallahassee. However, the department division may by rule
19 provide for a different reporting system for those types of
20 injuries which it determines should be reported in a different
21 manner and for those cases which involve minor injuries
22 requiring professional medical attention in which the employee
23 does not lose more than 7 days of work as a result of the
24 injury and is able to return to the job immediately after
25 treatment and resume regular work.

26 (3) In addition to the requirements of subsection (2),
27 the employer shall notify the department division within 24
28 hours by telephone or telegraph of any injury resulting in
29 death. However, this special notice shall not be required
30 when death results subsequent to the submission to the
31 department division of a previous report of the injury

Amendment No. ____ (for drafter's use only)

1 pursuant to subsection (2).

2 (4) Within 3 days after the employer or the employee
3 informs the carrier of an injury the carrier shall mail to the
4 injured worker an informational brochure approved by the
5 department ~~division~~ which sets forth in clear and
6 understandable language an explanation of the rights,
7 benefits, procedures for obtaining benefits and assistance,
8 criminal penalties, and obligations of injured workers and
9 their employers under the Florida Workers' Compensation Law.
10 Annually, the carrier or its third-party administrator shall
11 mail to the employer an informational brochure approved by the
12 department ~~division~~ which sets forth in clear and
13 understandable language an explanation of the rights,
14 benefits, procedures for obtaining benefits and assistance,
15 criminal penalties, and obligations of injured workers and
16 their employers under the Florida Workers' Compensation Law.
17 All such informational brochures shall contain a notice that
18 clearly states in substance the following: "Any person who,
19 knowingly and with intent to injure, defraud, or deceive any
20 employer or employee, insurance company, or self-insured
21 program, files a statement of claim containing any false or
22 misleading information commits a felony of the third degree."

23 (5) Additional reports with respect to such injury and
24 of the condition of such employee, including copies of medical
25 reports, funeral expenses, and wage statements, shall be filed
26 by the employer or carrier to the department ~~division~~ at such
27 times and in such manner as the department ~~division~~ may
28 prescribe by rule. In carrying out ~~its~~ responsibilities under
29 this chapter, the department and agency ~~division~~ may by rule
30 provide for the obtaining of any medical records relating to
31 medical treatment provided pursuant to this chapter,

Amendment No. ____ (for drafter's use only)

1 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

2 (6) In the absence of a stipulation by the parties,
3 reports provided for in subsection (2), subsection (4), or
4 subsection (5) shall not be evidence of any fact stated in
5 such report in any proceeding relating thereto, except for
6 medical reports which, if otherwise qualified, may be admitted
7 at the discretion of the judge of compensation claims.

8 (7) Every carrier shall file with the department
9 ~~division~~ within 21 days after the issuance of a policy or
10 contract of insurance such policy information as the
11 department ~~division~~ may require, including notice of whether
12 the policy is a minimum premium policy. Notice of cancellation
13 or expiration of a policy as set out in s. 440.42(3) shall be
14 mailed to the department ~~division~~ in accordance with rules
15 adopted ~~promulgated~~ by the department ~~division~~ under chapter
16 120.

17 (8) When a claimant, employer, or carrier has the
18 right, or is required, to mail a report or notice with
19 required copies within the times prescribed in subsection (2),
20 subsection (4), or subsection (5), such mailing will be
21 completed and in compliance with this section if it is
22 postmarked and mailed prepaid to the appropriate recipient
23 prior to the expiration of the time periods prescribed in this
24 section.

25 (9) Any employer or carrier who fails or refuses to
26 timely send any form, report, or notice required by this
27 section shall be subject to a civil penalty not to exceed \$500
28 for each such failure or refusal. However, any employer who
29 fails to notify the carrier of the injury on the prescribed
30 form or by letter within the 7 days required in subsection (2)
31 shall be liable for the civil penalty, which shall be paid by

Amendment No. ____ (for drafter's use only)

1 the employer and not the carrier. Failure by the employer to
2 meet its obligations under subsection (2) shall not relieve
3 the carrier from liability for the civil penalty if it fails
4 to comply with subsections (4) and (5).

5 (10) The department ~~division~~ may by rule prescribe
6 forms and procedures governing the submission of the change in
7 claims administration report and the risk class code and
8 standard industry code report for all lost time and denied
9 lost-time cases. The department ~~division~~ may by rule define
10 terms that are necessary for the effective administration of
11 this section.

12 (11) Any information in a report of injury or illness
13 filed pursuant to this section that would identify an ill or
14 injured employee is confidential and exempt from the
15 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
16 Constitution. This subsection is subject to the Open
17 Government Sunset Review Act of 1995 in accordance with s.
18 119.15, and shall stand repealed on October 2, 2003, unless
19 reviewed and saved from repeal through reenactment by the
20 Legislature.

21 Section 25. Subsection (1) of section 440.191, Florida
22 Statutes, is amended to read:

23 440.191 Employee Assistance and Ombudsman Office.--

24 (1)(a) In order to effect the self-executing features
25 of the Workers' Compensation Law, this chapter shall be
26 construed to permit injured employees and employers or the
27 employer's carrier to resolve disagreements without undue
28 expense, costly litigation, or delay in the provisions of
29 benefits. It is the duty of all who participate in the
30 workers' compensation system, including, but not limited to,
31 carriers, service providers, health care providers, attorneys,

Amendment No. ____ (for drafter's use only)

1 employers, and employees, to attempt to resolve disagreements
2 in good faith and to cooperate with the department's
3 ~~division's~~ efforts to resolve disagreements between the
4 parties. The department ~~division~~ may by rule prescribe
5 definitions that are necessary for the effective
6 administration of this section.

7 (b) An Employee Assistance and Ombudsman Office is
8 created within the department ~~Division of Workers'~~
9 ~~Compensation~~ to inform and assist injured workers, employers,
10 carriers, and health care providers in fulfilling their
11 responsibilities under this chapter. The department ~~division~~
12 may by rule specify forms and procedures for administering
13 requests for assistance provided by this section.

14 (c) The Employee Assistance and Ombudsman Office,
15 ~~Division of Workers' Compensation,~~ shall be a resource
16 available to all employees who participate in the workers'
17 compensation system and shall take all steps necessary to
18 educate and disseminate information to employees and
19 employers.

20 Section 26. Subsections (1) and (8) of section
21 440.192, Florida Statutes, are amended to read:

22 440.192 Procedure for resolving benefit disputes.--

23 (1) Subject to s. 440.191, any employee who has not
24 received a benefit to which the employee believes she or he is
25 entitled under this chapter shall serve by certified mail upon
26 the employer, the employer's carrier, and the department
27 ~~division~~ in Tallahassee a petition for benefits that meets the
28 requirements of this section. The department ~~division~~ shall
29 refer the petition to the Office of the Judges of Compensation
30 Claims.

31 (8) Within 14 days after receipt of a petition for

Amendment No. ____ (for drafter's use only)

1 benefits by certified mail, the carrier must either pay the
2 requested benefits without prejudice to its right to deny
3 within 120 days from receipt of the petition or file a notice
4 of denial with the department ~~division~~. The carrier must list
5 all benefits requested but not paid and explain its
6 justification for nonpayment in the notice of denial. A
7 carrier that does not deny compensability in accordance with
8 s. 440.20(4) is deemed to have accepted the employee's
9 injuries as compensable, unless it can establish material
10 facts relevant to the issue of compensability that could not
11 have been discovered through reasonable investigation within
12 the 120-day period. The carrier shall provide copies of the
13 notice to the filing party, employer, and claimant by
14 certified mail.

15 Section 27. Subsections (1), (3), and (4) of section
16 440.1925, Florida Statutes, are amended to read:

17 440.1925 Procedure for resolving maximum medical
18 improvement or permanent impairment disputes.--

19 (1) Notwithstanding the limitations on carrier
20 independent medical examinations in s. 440.13, an employee or
21 carrier who wishes to obtain an opinion other than the opinion
22 of the treating physician or an agency ~~a division~~ advisor on
23 the issue of permanent impairment may obtain one independent
24 medical examination, except that the employee or carrier who
25 selects the treating physician is not entitled to obtain an
26 alternate opinion on the issue of permanent impairment, unless
27 the parties otherwise agree. This section and s. 440.13(2) do
28 not permit an employee or a carrier to obtain an additional
29 medical opinion on the issue of permanent impairment by
30 requesting an alternate treating physician pursuant to s.
31 440.13.

Amendment No. ____ (for drafter's use only)

1 (3) Disputes shall be resolved under this section
2 when:

3 (a) A carrier that is entitled to obtain a
4 determination of an employee's date of maximum medical
5 improvement or permanent impairment has done so;

6 (b) The independent medical examiner's opinion on the
7 date of the employee's maximum medical improvement and degree
8 or permanent impairment differs from the opinion of the
9 employee's treating physician on either of those issues, or
10 from the opinion of the expert medical advisor appointed by
11 the agency ~~division~~ on the degree of permanent impairment; or

12 (c) The carrier denies any portion of an employee's
13 claim petition for benefits due to disputed maximum medical
14 improvement or permanent impairment issues.

15 (4) Only opinions of the employee's treating
16 physician, an agency ~~a division~~ medical advisor, or an
17 independent medical examiner are admissible in proceedings
18 before a judge of compensation claims to resolve maximum
19 medical improvement or impairment disputes.

20 Section 28. Subsections (3), (6), (8), (9), (10),
21 (11), (12), (15), (16), and (17) of section 440.20, Florida
22 Statutes, are amended to read:

23 440.20 Time for payment of compensation; penalties for
24 late payment.--

25 (3) Upon making payment, or upon suspension or
26 cessation of payment for any reason, the carrier shall
27 immediately notify the department ~~division~~ that it has
28 commenced, suspended, or ceased payment of compensation. The
29 department ~~division~~ may require such notification in any
30 format and manner it deems necessary to obtain accurate and
31 timely reporting.

Amendment No. ____ (for drafter's use only)

1 (6) If any installment of compensation for death or
2 dependency benefits, disability, permanent impairment, or wage
3 loss payable without an award is not paid within 7 days after
4 it becomes due, as provided in subsection (2), subsection (3),
5 or subsection (4), there shall be added to such unpaid
6 installment a punitive penalty of an amount equal to 20
7 percent of the unpaid installment or \$5, which shall be paid
8 at the same time as, but in addition to, such installment of
9 compensation, unless notice is filed under subsection (4) or
10 unless such nonpayment results from conditions over which the
11 employer or carrier had no control. When any installment of
12 compensation payable without an award has not been paid within
13 7 days after it became due and the claimant concludes the
14 prosecution of the claim before a judge of compensation claims
15 without having specifically claimed additional compensation in
16 the nature of a penalty under this section, the claimant will
17 be deemed to have acknowledged that, owing to conditions over
18 which the employer or carrier had no control, such installment
19 could not be paid within the period prescribed for payment and
20 to have waived the right to claim such penalty. However,
21 during the course of a hearing, the judge of compensation
22 claims shall on her or his own motion raise the question of
23 whether such penalty should be awarded or excused. The
24 department division may assess without a hearing the punitive
25 penalty against either the employer or the insurance carrier,
26 depending upon who was at fault in causing the delay. The
27 insurance policy cannot provide that this sum will be paid by
28 the carrier if the department division or the judge of
29 compensation claims determines that the punitive penalty
30 should be made by the employer rather than the carrier. Any
31 additional installment of compensation paid by the carrier

Amendment No. ____ (for drafter's use only)

1 pursuant to this section shall be paid directly to the
2 employee.

3 (8) In addition to any other penalties provided by
4 this chapter for late payment, if any installment of
5 compensation is not paid when it becomes due, the employer,
6 carrier, or servicing agent shall pay interest thereon at the
7 rate of 12 percent per year from the date the installment
8 becomes due until it is paid, whether such installment is
9 payable without an order or under the terms of an order. The
10 interest payment shall be the greater of the amount of
11 interest due or \$5.

12 (a) Within 30 days after final payment of compensation
13 has been made, the employer, carrier, or servicing agent shall
14 send to the department ~~division~~ a notice, in accordance with a
15 form format and manner prescribed by the department ~~division~~,
16 stating that such final payment has been made and stating the
17 total amount of compensation paid, the name of the employee
18 and of any other person to whom compensation has been paid,
19 the date of the injury or death, and the date to which
20 compensation has been paid.

21 (b) If the employer, carrier, or servicing agent fails
22 to so notify the department ~~division~~ within such time, the
23 department ~~division~~ shall assess against such employer,
24 carrier, or servicing agent a civil penalty in an amount not
25 over \$100.

26 (c) In order to ensure carrier compliance under this
27 chapter and provisions of the insurance code, the department
28 ~~division~~ shall monitor the performance of carriers by
29 conducting market conduct examinations, as provided in s.
30 624.3161, and conducting investigations, as provided in s.
31 624.317. The department ~~division~~ shall impose penalties on

Amendment No. ____ (for drafter's use only)

1 ~~establish by rule minimum performance standards for carriers~~
2 ~~to ensure that a minimum of 90 percent of all compensation~~
3 ~~benefits are timely paid. The division shall fine a carrier as~~
4 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~
5 ~~of compensation pursuant to s. 624.4211 that is below the~~
6 ~~minimum 90 percent performance standard.~~ This paragraph does
7 not affect the imposition of any penalties or interest due to
8 the claimant. If a carrier contracts with a servicing agent to
9 fulfill its administrative responsibilities under this
10 chapter, the payment practices of the servicing agent are
11 deemed the payment practices of the carrier for the purpose of
12 assessing penalties against the carrier.

13 (9) The department ~~division~~ may upon its own
14 initiative at any time in a case in which payments are being
15 made without an award investigate same and shall, in any case
16 in which the right to compensation is controverted, or in
17 which payments of compensation have been stopped or suspended,
18 upon receipt of notice from any person entitled to
19 compensation or from the employer that the right to
20 compensation is controverted or that payments of compensation
21 have been stopped or suspended, make such investigations,
22 cause such medical examination to be made, or hold such
23 hearings, and take such further action as it considers will
24 properly protect the rights of all parties.

25 (10) Whenever the department ~~division~~ deems it
26 advisable, it may require any employer to make a deposit with
27 the Treasurer to secure the prompt and convenient payments of
28 such compensation; and payments therefrom upon any awards
29 shall be made upon order of the department ~~division~~ or judge
30 of compensation claims.

31 (11)(a) Upon joint petition of all interested parties,

Amendment No. ____ (for drafter's use only)

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

Amendment No. ____ (for drafter's use only)

1 15.

2 (b) Upon joint petition of all interested parties, a
3 lump-sum payment in exchange for the employer's or carrier's
4 release from liability for future medical expenses, as well as
5 future payments of compensation and rehabilitation expenses,
6 and any other benefits provided under this chapter, may be
7 allowed at any time in any case after the injured employee has
8 attained maximum medical improvement. An employer or carrier
9 may not pay any attorney's fees on behalf of the claimant for
10 any settlement, unless expressly authorized elsewhere in this
11 chapter. A compensation order so entered upon joint petition
12 of all interested parties shall not be subject to modification
13 or review under s. 440.28. However, a judge of compensation
14 claims is not required to approve any award for lump-sum
15 payment when it is determined by the judge of compensation
16 claims that the payment being made is in excess of the value
17 of benefits the claimant would be entitled to under this
18 chapter. The judge of compensation claims shall make or cause
19 to be made such investigations as she or he considers
20 necessary, in each case in which the parties have stipulated
21 that a proposed final settlement of liability of the employer
22 for compensation shall not be subject to modification or
23 review under s. 440.28, to determine whether such final
24 disposition will definitely aid the rehabilitation of the
25 injured worker or otherwise is clearly for the best interests
26 of the person entitled to compensation and, in her or his
27 discretion, may have an investigation made by the Department
28 of Education Rehabilitation Section of the Division of
29 Workers' Compensation. The joint petition and the report of
30 any investigation so made will be deemed a part of the
31 proceeding. An employer shall have the right to appear at any

Amendment No. ____ (for drafter's use only)

1 hearing pursuant to this subsection which relates to the
2 discharge of such employer's liability and to present
3 testimony at such hearing. The carrier shall provide
4 reasonable notice to the employer of the time and date of any
5 such hearing and inform the employer of her or his rights to
6 appear and testify. When the claimant is represented by
7 counsel or when the claimant and carrier or employer are
8 represented by counsel, final approval of the lump-sum
9 settlement agreement, as provided for in a joint petition and
10 stipulation, shall be approved by entry of an order within 7
11 days after the filing of such joint petition and stipulation
12 without a hearing, unless the judge of compensation claims
13 determines, in her or his discretion, that additional
14 testimony is needed before such settlement can be approved or
15 disapproved and so notifies the parties. The probability of
16 the death of the injured employee or other person entitled to
17 compensation before the expiration of the period during which
18 such person is entitled to compensation shall, in the absence
19 of special circumstances making such course improper, be
20 determined in accordance with the most recent United States
21 Life Tables published by the National Office of Vital
22 Statistics of the United States Department of Health and Human
23 Services. The probability of the happening of any other
24 contingency affecting the amount or duration of the
25 compensation, except the possibility of the remarriage of a
26 surviving spouse, shall be disregarded. As a condition of
27 approving a lump-sum payment to a surviving spouse, the judge
28 of compensation claims, in the judge of compensation claims'
29 discretion, may require security which will ensure that, in
30 the event of the remarriage of such surviving spouse, any
31 unaccrued future payments so paid may be recovered or recouped

Amendment No. ____ (for drafter's use only)

1 by the employer or carrier. Such applications shall be
2 considered and determined in accordance with s. 440.25.

3 (c) This section applies to all claims that the
4 parties have not previously settled, regardless of the date of
5 accident.

6 (12)(a) Liability of an employer for future payments
7 of compensation may not be discharged by advance payment
8 unless prior approval of a judge of compensation claims or the
9 department division has been obtained as hereinafter provided.
10 The approval shall not constitute an adjudication of the
11 claimant's percentage of disability.

12 (b) When the claimant has reached maximum recovery and
13 returned to her or his former or equivalent employment with no
14 substantial reduction in wages, such approval of a reasonable
15 advance payment of a part of the compensation payable to the
16 claimant may be given informally by letter by a judge of
17 compensation claims or by the department division director,
18 ~~or by the administrator of claims of the division.~~

19 (c) In the event the claimant has not returned to the
20 same or equivalent employment with no substantial reduction in
21 wages or has suffered a substantial loss of earning capacity
22 or a physical impairment, actual or apparent:

23 1. An advance payment of compensation not in excess of
24 \$2,000 may be approved informally by letter, without hearing,
25 by any judge of compensation claims or the Chief Judge.

26 2. An advance payment of compensation not in excess of
27 \$2,000 may be ordered by any judge of compensation claims
28 after giving the interested parties an opportunity for a
29 hearing thereon pursuant to not less than 10 days' notice by
30 mail, unless such notice is waived, and after giving due
31 consideration to the interests of the person entitled thereto.

Amendment No. ____ (for drafter's use only)

1 When the parties have stipulated to an advance payment of
2 compensation not in excess of \$2,000, such advance may be
3 approved by an order of a judge of compensation claims, with
4 or without hearing, or informally by letter by any such judge
5 of compensation claims, or by the department ~~division~~
6 ~~director~~, if such advance is found to be for the best
7 interests of the person entitled thereto.

8 3. When the parties have stipulated to an advance
9 payment in excess of \$2,000, subject to the approval of the
10 department ~~division~~, such payment may be approved by a judge
11 of compensation claims by order if the judge finds that such
12 advance payment is for the best interests of the person
13 entitled thereto and is reasonable under the circumstances of
14 the particular case. The judge of compensation claims shall
15 make or cause to be made such investigations as she or he
16 considers necessary concerning the stipulation and, in her or
17 his discretion, may have an investigation of the matter made
18 by the Department of Education ~~Rehabilitation Section of the~~
19 ~~division~~. The stipulation and the report of any investigation
20 shall be deemed a part of the record of the proceedings.

21 (d) When an application for an advance payment in
22 excess of \$2,000 is opposed by the employer or carrier, it
23 shall be heard by a judge of compensation claims after giving
24 the interested parties not less than 10 days' notice of such
25 hearing by mail, unless such notice is waived. In her or his
26 discretion, the judge of compensation claims may have an
27 investigation of the matter made by the Department of
28 Education ~~Rehabilitation Section of the division~~, in which
29 event the report and recommendation of that section will be
30 deemed a part of the record of the proceedings. If the judge
31 of compensation claims finds that such advance payment is for

Amendment No. ____ (for drafter's use only)

1 the best interests of the person entitled to compensation,
2 will not materially prejudice the rights of the employer and
3 carrier, and is reasonable under the circumstances of the
4 case, she or he may order the same paid. However, in no event
5 may any such advance payment under this paragraph be granted
6 in excess of \$7,500 or 26 weeks of benefits in any 48-month
7 period, whichever is greater, from the date of the last
8 advance payment.

9 (15)(a) The department division shall examine on an
10 ongoing basis claims files in accordance with ss. 624.3161 and
11 624.310(5) in order to identify questionable claims-handling
12 techniques, questionable patterns or practices of claims, or a
13 pattern of repeated unreasonably controverted claims by
14 employers, carriers, and self-insurers, health care providers,
15 health care facilities, training and education providers, or
16 any others providing services to employees pursuant to this
17 chapter and may certify its findings to the Department of
18 insurance. If the department finds such questionable
19 techniques, patterns, or repeated unreasonably controverted
20 claims as constitute a general business practice of a carrier,
21 in the judgment of the division shall be certified in its
22 findings by the division to the Department of Insurance or
23 such other appropriate licensing agency. Such certification by
24 the division is exempt from the provisions of chapter 120.
25 Upon receipt of any such certification, the department of
26 insurance shall take appropriate action so as to bring such
27 general business practices to a halt pursuant to s.
28 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.
29 The department division may initiate investigations of
30 questionable techniques, patterns, practices, or repeated
31 unreasonably controverted claims. The department division may

Amendment No. ____ (for drafter's use only)

1 by rule establish penalties for violations and forms and
2 procedures for corrective action plans and for auditing
3 carriers.

4 (b) As to any examination, investigation, or hearing
5 being conducted under this chapter, the Treasurer or his or
6 her designee Secretary of Labor and Employment Security or the
7 secretary's designee:

8 1. May administer oaths, examine and cross-examine
9 witnesses, receive oral and documentary evidence; and

10 2. Shall have the power to subpoena witnesses, compel
11 their attendance and testimony, and require by subpoena the
12 production of books, papers, records, files, correspondence,
13 documents, or other evidence which is relevant to the inquiry.

14 (c) If any person refuses to comply with any such
15 subpoena or to testify as to any matter concerning which she
16 or he may be lawfully interrogated, the Circuit Court of Leon
17 County or of the county wherein such examination,
18 investigation, or hearing is being conducted, or of the county
19 wherein such person resides, may, on the application of the
20 department, issue an order requiring such person to comply
21 with the subpoena and to testify.

22 (d) Subpoenas shall be served, and proof of such
23 service made, in the same manner as if issued by a circuit
24 court. Witness fees, costs, and reasonable travel expenses, if
25 claimed, shall be allowed the same as for testimony in a
26 circuit court.

27 (e) ~~The division shall publish annually a report which~~
28 ~~indicates the promptness of first payment of compensation~~
29 ~~records of each carrier or self-insurer so as to focus~~
30 ~~attention on those carriers or self-insurers with poor payment~~
31 ~~records for the preceding year. A copy of such report shall be~~

Amendment No. ____ (for drafter's use only)

1 ~~certified to~~ The department of ~~Insurance~~ which shall take
2 appropriate steps so as to cause such poor carrier payment
3 practices to halt pursuant to s. 440.38(3)(a). In addition,
4 the department ~~division~~ shall take appropriate action so as to
5 halt such poor payment practices of self-insurers. "Poor
6 payment practice" means a practice of late payment sufficient
7 to constitute a general business practice.

8 (f) The department ~~division~~ shall promulgate rules
9 providing guidelines to carriers, self-insurers, and employers
10 to indicate behavior that may be construed as questionable
11 claims-handling techniques, questionable patterns of claims,
12 repeated unreasonably controverted claims, or poor payment
13 practices.

14 (16) No penalty assessed under this section may be
15 recouped by any carrier or self-insurer in the rate base, the
16 premium, or any rate filing. ~~In the case of carriers, The~~
17 Department of Insurance shall enforce this subsection; ~~and in~~
18 ~~the case of self-insurers, the division shall enforce this~~
19 ~~subsection.~~

20 (17) The department ~~division~~ may by rule establish
21 audit procedures and set standards for the Automated Carrier
22 Performance System.

23 Section 29. Subsections (1) and (2) of section
24 440.207, Florida Statutes, are amended to read:

25 440.207 Workers' compensation system guide.--

26 (1) The department ~~Division of Workers' Compensation~~
27 ~~of the Department of Labor and Employment Security~~ shall
28 educate all persons providing or receiving benefits pursuant
29 to this chapter as to their rights and responsibilities under
30 this chapter.

31 (2) The department ~~division~~ shall publish an

Amendment No. ____ (for drafter's use only)

1 understandable guide to the workers' compensation system which
2 shall contain an explanation of benefits provided; services
3 provided by the Employee Assistance and Ombudsman Office;
4 procedures regarding mediation, the hearing process, and civil
5 and criminal penalties; relevant rules of the department
6 ~~division~~; and such other information as the department
7 ~~division~~ believes will inform employees, employers, carriers,
8 and those providing services pursuant to this chapter of their
9 rights and responsibilities under this chapter and the rules
10 of the department division. For the purposes of this
11 subsection, a guide is understandable if the text of the guide
12 is written at a level of readability not exceeding the eighth
13 grade level, as determined by a recognized readability test.

14 Section 30. Subsection (1) of section 440.211, Florida
15 Statutes, is amended to read:

16 440.211 Authorization of collective bargaining
17 agreement.--

18 (1) Subject to the limitation stated in subsection
19 (2), a provision that is mutually agreed upon in any
20 collective bargaining agreement filed with the department
21 ~~division~~ between an individually self-insured employer or
22 other employer upon consent of the employer's carrier and a
23 recognized or certified exclusive bargaining representative
24 establishing any of the following shall be valid and binding:

25 (a) An alternative dispute resolution system to
26 supplement, modify, or replace the provisions of this chapter
27 which may include, but is not limited to, conciliation,
28 mediation, and arbitration. Arbitration held pursuant to this
29 section shall be binding on the parties.

30 (b) The use of an agreed-upon list of certified health
31 care providers of medical treatment which may be the exclusive

Amendment No. ____ (for drafter's use only)

1 source of all medical treatment under this chapter.

2 (c) The use of a limited list of physicians to conduct
3 independent medical examinations which the parties may agree
4 shall be the exclusive source of independent medical examiners
5 pursuant to this chapter.

6 (d) A light-duty, modified-job, or return-to-work
7 program.

8 (e) A vocational rehabilitation or retraining program.

9 Section 31. Subsections (1), (2), and (3) of section
10 440.24, Florida Statutes, are amended to read:

11 440.24 Enforcement of compensation orders;
12 penalties.--

13 (1) In case of default by the employer or carrier in
14 the payment of compensation due under any compensation order
15 of a judge of compensation claims or other failure by the
16 employer or carrier to comply with such order within 10 days
17 after the order becomes final, any circuit court of this state
18 within the jurisdiction of which the employer or carrier
19 resides or transacts business shall, upon application by the
20 department ~~division~~ or any beneficiary under such order, have
21 jurisdiction to issue a rule nisi directing such employer or
22 carrier to show cause why a writ of execution, or such other
23 process as may be necessary to enforce the terms of such
24 order, shall not be issued, and, unless such cause is shown,
25 the court shall have jurisdiction to issue a writ of execution
26 or such other process or final order as may be necessary to
27 enforce the terms of such order of the judge of compensation
28 claims.

29 (2) In any case where the employer is insured and the
30 carrier fails to comply with any compensation order of a judge
31 of compensation claims or court within 10 days after such

Amendment No. ____ (for drafter's use only)

1 order becomes final, ~~the division shall notify~~ the department
2 ~~of Insurance of such failure, and the Department of Insurance~~
3 shall thereupon suspend the license of such carrier to do an
4 insurance business in this state, until such carrier has
5 complied with such order.

6 (3) In any case where the employer is a self-insurer
7 and fails to comply with any compensation order of a judge of
8 compensation claims or court within 10 days after such order
9 becomes final, the department ~~division~~ may suspend or revoke
10 any authorization previously given to the employer to become a
11 self-insurer, and the department ~~division~~ may sell such of the
12 securities deposited by such self-insurer with the department
13 ~~division~~ as may be necessary to satisfy such order.

14 Section 32. Subsections (4), (5), and (7) of section
15 440.25, Florida Statutes, are amended to read:

16 440.25 Procedures for mediation and hearings.--

17 (4)(a) If, on the 10th day following commencement of
18 mediation, the questions in dispute have not been resolved,
19 the judge of compensation claims shall hold a pretrial
20 hearing. The judge of compensation claims shall give the
21 interested parties at least 7 days' advance notice of the
22 pretrial hearing by mail. At the pretrial hearing, the judge
23 of compensation claims shall, subject to paragraph (b), set a
24 date for the final hearing that allows the parties at least 30
25 days to conduct discovery unless the parties consent to an
26 earlier hearing date.

27 (b) The final hearing must be held and concluded
28 within 45 days after the pretrial hearing. Continuances may be
29 granted only if the requesting party demonstrates to the judge
30 of compensation claims that the reason for requesting the
31 continuance arises from circumstances beyond the party's

Amendment No. ____ (for drafter's use only)

1 control.

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

5 (d) The hearing shall be held in the county where the
6 injury occurred, if the injury occurred in this state, unless
7 otherwise agreed to between the parties and authorized by the
8 judge of compensation claims in the county where the injury
9 occurred. If the injury occurred without the state and is one
10 for which compensation is payable under this chapter, then the
11 hearing above referred to may be held in the county of the
12 employer's residence or place of business, or in any other
13 county of the state which will, in the discretion of the Chief
14 Judge, be the most convenient for a hearing. The hearing shall
15 be conducted by a judge of compensation claims, who shall,
16 within 14 days after final hearing, unless otherwise agreed by
17 the parties, determine the dispute in a summary manner. At
18 such hearing, the claimant and employer may each present
19 evidence in respect of such claim and may be represented by
20 any attorney authorized in writing for such purpose. When
21 there is a conflict in the medical evidence submitted at the
22 hearing, the provisions of s. 440.13 shall apply. The report
23 or testimony of the expert medical advisor shall be made a
24 part of the record of the proceeding and shall be given the
25 same consideration by the judge of compensation claims as is
26 accorded other medical evidence submitted in the proceeding;
27 and all costs incurred in connection with such examination and
28 testimony may be assessed as costs in the proceeding, subject
29 to the provisions of s. 440.13. No judge of compensation
30 claims may make a finding of a degree of permanent impairment
31 that is greater than the greatest permanent impairment rating

Amendment No. ____ (for drafter's use only)

1 given the claimant by any examining or treating physician,
2 except upon stipulation of the parties.

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

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

25 (g) Judges of compensation claims shall adopt and
26 enforce uniform local rules for workers' compensation.

27 (h) Notwithstanding any other provision of this
28 section, the judge of compensation claims may require the
29 appearance of the parties and counsel before her or him
30 without written notice for an emergency conference where there
31 is a bona fide emergency involving the health, safety, or

Amendment No. ____ (for drafter's use only)

1 welfare of an employee. An emergency conference under this
2 section may result in the entry of an order or the rendering
3 of an adjudication by the judge of compensation claims.

4 (i) To expedite dispute resolution and to enhance the
5 self-executing features of the Workers' Compensation Law, the
6 Chief Judge shall make provision by rule or order for the
7 resolution of appropriate motions by judges of compensation
8 claims without oral hearing upon submission of brief written
9 statements in support and opposition, and for expedited
10 discovery and docketing.

11 (j) To further expedite dispute resolution and to
12 enhance the self-executing features of the system, those
13 petitions filed in accordance with s. 440.192 that involve a
14 claim for benefits of \$5,000 or less shall, in the absence of
15 compelling evidence to the contrary, be presumed to be
16 appropriate for expedited resolution under this paragraph; and
17 any other claim filed in accordance with s. 440.192, upon the
18 written agreement of both parties and application by either
19 party, may similarly be resolved under this paragraph. For
20 purposes of expedited resolution pursuant to this paragraph,
21 the Chief Judge shall make provision by rule or order for
22 expedited and limited discovery and expedited docketing in
23 such cases. At least 15 days prior to hearing, the parties
24 shall exchange and file with the judge of compensation claims
25 a pretrial outline of all issues, defenses, and witnesses on a
26 form promulgated by the Chief Judge; provided, in no event
27 shall such hearing be held without 15 days' written notice to
28 all parties. No pretrial hearing shall be held. The judge of
29 compensation claims shall limit all argument and presentation
30 of evidence at the hearing to a maximum of 30 minutes, and
31 such hearings shall not exceed 30 minutes in length. Neither

Amendment No. ____ (for drafter's use only)

1 party shall be required to be represented by counsel. The
2 employer or carrier may be represented by an adjuster or other
3 qualified representative. The employer or carrier and any
4 witness may appear at such hearing by telephone. The rules of
5 evidence shall be liberally construed in favor of allowing
6 introduction of evidence.

7 (5)(a) Procedures with respect to appeals from orders
8 of judges of compensation claims shall be governed by rules
9 adopted by the Supreme Court. Such an order shall become final
10 30 days after mailing of copies of such order to the parties,
11 unless appealed pursuant to such rules.

12 (b) An appellant may be relieved of any necessary
13 filing fee by filing a verified petition of indigency for
14 approval as provided in s. 57.081(1) and may be relieved in
15 whole or in part from the costs for preparation of the record
16 on appeal if, within 15 days after the date notice of the
17 estimated costs for the preparation is served, the appellant
18 files with the judge of compensation claims a copy of the
19 designation of the record on appeal, and a verified petition
20 to be relieved of costs. A verified petition filed prior to
21 the date of service of the notice of the estimated costs shall
22 be deemed not timely filed. The verified petition relating to
23 record costs shall contain a sworn statement that the
24 appellant is insolvent and a complete, detailed, and sworn
25 financial affidavit showing all the appellant's assets,
26 liabilities, and income. Failure to state in the affidavit all
27 assets and income, including marital assets and income, shall
28 be grounds for denying the petition with prejudice. The
29 department ~~division~~ shall promulgate rules as may be required
30 pursuant to this subsection, including forms for use in all
31 petitions brought under this subsection. The appellant's

Amendment No. ____ (for drafter's use only)

1 attorney, or the appellant if she or he is not represented by
2 an attorney, shall include as a part of the verified petition
3 relating to record costs an affidavit or affirmation that, in
4 her or his opinion, the notice of appeal was filed in good
5 faith and that there is a probable basis for the District
6 Court of Appeal, First District, to find reversible error, and
7 shall state with particularity the specific legal and factual
8 grounds for the opinion. Failure to so affirm shall be grounds
9 for denying the petition. A copy of the verified petition
10 relating to record costs shall be served upon all interested
11 parties, including the department division and the ~~Office of~~
12 ~~the General Counsel, Department of Labor and Employment~~
13 ~~Security~~, in Tallahassee. The judge of compensation claims
14 shall promptly conduct a hearing on the verified petition
15 relating to record costs, giving at least 15 days' notice to
16 the appellant, the department division, and all other
17 interested parties, all of whom shall be parties to the
18 proceedings. The judge of compensation claims may enter an
19 order without such hearing if no objection is filed by an
20 interested party within 20 days from the service date of the
21 verified petition relating to record costs. Such proceedings
22 shall be conducted in accordance with the provisions of this
23 section and with the workers' compensation rules of procedure,
24 to the extent applicable. In the event an insolvency petition
25 is granted, the judge of compensation claims shall direct the
26 department division to pay record costs and filing fees from
27 the Workers' Compensation Administrative Trust Fund pending
28 final disposition of the costs of appeal. The department
29 ~~division~~ may transcribe or arrange for the transcription of
30 the record in any proceeding for which it is ordered to pay
31 the cost of the record. In the event the insolvency petition

Amendment No. ____ (for drafter's use only)

1 is denied, the judge of compensation claims may enter an order
2 requiring the petitioner to reimburse the department division
3 for costs incurred in opposing the petition, including
4 investigation and travel expenses.

5 (c) As a condition of filing a notice of appeal to the
6 District Court of Appeal, First District, an employer who has
7 not secured the payment of compensation under this chapter in
8 compliance with s. 440.38 shall file with the notice of appeal
9 a good and sufficient bond, as provided in s. 59.13,
10 conditioned to pay the amount of the demand and any interest
11 and costs payable under the terms of the order if the appeal
12 is dismissed, or if the District Court of Appeal, First
13 District, affirms the award in any amount. Upon the failure of
14 such employer to file such bond with the judge of compensation
15 claims or the District Court of Appeal, First District, along
16 with the notice of appeal, the District Court of Appeal, First
17 District, shall dismiss the notice of appeal.

18 (7) An injured employee claiming or entitled to
19 compensation shall submit to such physical examination by a
20 certified expert medical advisor approved by the agency
21 ~~division~~ or the judge of compensation claims as the agency
22 ~~division~~ or the judge of compensation claims may require. The
23 place or places shall be reasonably convenient for the
24 employee. Such physician or physicians as the employee,
25 employer, or carrier may select and pay for may participate in
26 an examination if the employee, employer, or carrier so
27 requests. Proceedings shall be suspended and no compensation
28 shall be payable for any period during which the employee may
29 refuse to submit to examination. Any interested party shall
30 have the right in any case of death to require an autopsy, the
31 cost thereof to be borne by the party requesting it; and the

Amendment No. ____ (for drafter's use only)

1 judge of compensation claims shall have authority to order and
2 require an autopsy and may, in her or his discretion, withhold
3 her or his findings and award until an autopsy is held.

4 Section 33. Section 440.271, Florida Statutes, is
5 amended to read:

6 440.271 Appeal of order of judge of compensation
7 claims.--Review of any order of a judge of compensation claims
8 entered pursuant to this chapter shall be by appeal to the
9 District Court of Appeal, First District. Appeals shall be
10 filed in accordance with rules of procedure prescribed by the
11 Supreme Court for review of such orders. The department
12 ~~division~~ shall be given notice of any proceedings pertaining
13 to s. 440.25, regarding indigency, or s. 440.49, regarding the
14 Special Disability Trust Fund, and shall have the right to
15 intervene in any proceedings.

16 Section 34. Section 440.345, Florida Statutes, is
17 amended to read:

18 440.345 Reporting of attorney's fees.--All fees paid
19 to attorneys for services rendered under this chapter shall be
20 reported to the department ~~division~~ as the department ~~division~~
21 requires by rule. The department ~~division~~ shall annually
22 summarize such data in a report to the Workers' Compensation
23 Oversight Board.

24 Section 35. Section 440.35, Florida Statutes, is
25 amended to read:

26 440.35 Record of injury or death.--Every employer
27 shall keep a record in respect of any injury to an employee.
28 Such record shall contain such information of disability or
29 death in respect of such injury as the department ~~division~~ may
30 by regulation require, and shall be available to inspection by
31 the department ~~division~~ or by any state authority at such time

Amendment No. ____ (for drafter's use only)

1 and under such conditions as the department ~~division~~ may by
2 regulation prescribe.

3 Section 36. Subsections (1), (2), and (3) of section
4 440.38, Florida Statutes, are amended to read:

5 440.38 Security for compensation; insurance carriers
6 and self-insurers.--

7 (1) Every employer shall secure the payment of
8 compensation under this chapter:

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

13 (b) By furnishing satisfactory proof to the department
14 ~~division~~ of its financial ability to pay such compensation
15 individually and on behalf of its subsidiary and affiliated
16 companies with employees in this state and receiving an
17 authorization from the department ~~division~~ to pay such
18 compensation directly in accordance with the following
19 provisions:

20 1. The department ~~division~~ may, as a condition to such
21 authorization, require such employer to deposit in a
22 depository designated by the department ~~division~~ either an
23 indemnity bond or securities, at the option of the employer,
24 of a kind and in an amount determined by the department
25 ~~division~~ and subject to such conditions as the department
26 ~~division~~ may prescribe, which shall include authorization to
27 the department ~~division~~ in the case of default to sell any
28 such securities sufficient to pay compensation awards or to
29 bring suit upon such bonds, to procure prompt payment of
30 compensation under this chapter. In addition, the department
31 ~~division~~ shall require, as a condition to authorization to

Amendment No. ____ (for drafter's use only)

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

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

Amendment No. ____ (for drafter's use only)

1 the latest opinion, the department division shall then revoke
2 such employer's authorization to self-insure, and such failure
3 shall be deemed to constitute an immediate serious danger to
4 the public health, safety, or welfare sufficient to justify
5 the summary suspension of the employer's authorization to
6 self-insure pursuant to s. 120.68.

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

Amendment No. ____ (for drafter's use only)

1 group of persons or business entities, which holds or acquires
2 legal or beneficial title to the majority of the assets or the
3 majority of the shares of the employer.

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

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

13 b. Certificates of deposit with financial
14 institutions, the deposits of which are insured through the
15 Federal Deposit Insurance Corporation or the Federal Savings
16 and Loan Insurance Corporation.

17 c. Irrevocable letters of credit in favor of the
18 department division issued by financial institutions described
19 in sub-subparagraph b.

20 d. Direct obligations of the United States Treasury
21 backed by the full faith and credit of the United States.

22 e. Securities issued by this state and backed by the
23 full faith and credit of this state.

24 5. The qualifying security deposit shall be held by
25 the department division, or by a depository authorized by the
26 department division, exclusively for the benefit of workers'
27 compensation claimants. The security shall not be subject to
28 assignment, execution, attachment, or any legal process
29 whatsoever, except as necessary to guarantee the payment of
30 compensation under this chapter. No surety bond may be
31 terminated, and no other qualifying security may be allowed to

Amendment No. ____ (for drafter's use only)

1 lapse, without 90 days' prior notice to the department
2 ~~division~~ and deposit by the self-insuring employer of other
3 qualifying security of equal value within 10 business days
4 after such notice. Failure to provide such notice or failure
5 to timely provide qualifying replacement security after such
6 notice shall constitute grounds for the department ~~division~~ to
7 call or sue upon the surety bond, or to act with respect to
8 other pledged security in any manner necessary to preserve its
9 value for the purposes intended by this section, including the
10 exercise of rights under a letter of credit, the sale of any
11 security at then prevailing market rates, or the withdrawal of
12 any funds represented by any certificate of deposit forming
13 part of the qualifying security deposit. The department
14 ~~division~~ may specify by rule the amount of the qualifying
15 security deposit required prior to authorizing an employer to
16 self-insure and the amount of net worth required for an
17 employer to qualify for authorization to self-insure;

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

23 (d) By entering into an interlocal agreement with
24 other local governmental entities to create a local government
25 pool pursuant to s. 624.4622;

26 (e) In accordance with s. 440.135, an employer, other
27 than a local government unit, may elect coverage under the
28 Workers' Compensation Law and retain the benefit of the
29 exclusiveness of liability provided in s. 440.11 by obtaining
30 a 24-hour health insurance policy from an authorized property
31 and casualty insurance carrier or an authorized life and

Amendment No. ____ (for drafter's use only)

1 health insurance carrier, or by participating in a fully or
2 partially self-insured 24-hour health plan that is established
3 or maintained by or for two or more employers, so long as the
4 law of this state is not preempted by the Employee Retirement
5 Income Security Act of 1974, Pub. L. No. 93-406, or any
6 amendment to that law, which policy or plan must provide, for
7 at least occupational injuries and illnesses, medical benefits
8 that are comparable to those required by this chapter. A local
9 government unit, as a single employer, in accordance with s.
10 440.135, may participate in the 24-hour health insurance
11 coverage plan referenced in this paragraph. Disputes and
12 remedies arising under policies issued under this section are
13 governed by the terms and conditions of the policies and under
14 the applicable provisions of the Florida Insurance Code and
15 rules adopted under the insurance code and other applicable
16 laws of this state. The 24-hour health insurance policy may
17 provide for health care by a health maintenance organization
18 or a preferred provider organization. The premium for such
19 24-hour health insurance policy shall be paid entirely by the
20 employer. The 24-hour health insurance policy may use
21 deductibles and coinsurance provisions that require the
22 employee to pay a portion of the actual medical care received
23 by the employee. If an employer obtains a 24-hour health
24 insurance policy or self-insured plan to secure payment of
25 compensation as to medical benefits, the employer must also
26 obtain an insurance policy or policies that provide indemnity
27 benefits as follows:

28 1. If indemnity benefits are provided only for
29 occupational-related disability, such benefits must be
30 comparable to those required by this chapter.

31 2. If indemnity benefits are provided for both

Amendment No. ____ (for drafter's use only)

1 occupational-related and nonoccupational-related disability,
2 such benefits must be comparable to those required by this
3 chapter, except that they must be based on 60 percent of the
4 average weekly wages.

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

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

22 (f) By entering into a contract with an individual
23 self-insurer under an approved individual
24 self-insurer-provided self-insurance program as set forth in
25 s. 624.46225. The department division may adopt rules to
26 implement this subsection.

27 (2)(a) The department division shall adopt rules by
28 which businesses may become qualified to provide underwriting
29 claims-adjusting, loss control, and safety engineering
30 services to self-insurers.

31 (b) The department division shall adopt rules

Amendment No. ____ (for drafter's use only)

1 requiring self-insurers to file any reports necessary to
2 fulfill the requirements of this chapter. Any self-insurer who
3 fails to file any report as prescribed by the rules adopted by
4 the department ~~division~~ shall be subject to a civil penalty
5 not to exceed \$100 for each such failure.

6 (3)(a) The license of any stock company or mutual
7 company or association or exchange authorized to do insurance
8 business in the state shall for good cause, ~~upon~~
9 ~~recommendation of the division~~, be suspended or revoked by the
10 Department of Insurance. No suspension or revocation shall
11 affect the liability of any carrier already incurred.

12 (b) The department ~~division~~ shall suspend or revoke
13 any authorization to a self-insurer for good cause, as defined
14 by rule of the department ~~division~~. No suspension or
15 revocation shall affect the liability of any self-insurer
16 already incurred.

17 (c) Violation of s. 440.381 by a self-insurance fund
18 shall result in the imposition of a fine not to exceed \$1,000
19 per audit if the self-insurance fund fails to act on said
20 audits by correcting errors in employee classification or
21 accepted applications for coverage where it knew employee
22 classifications were incorrect. Such fines shall be levied by
23 the department ~~division~~ and deposited into the Workers'
24 Compensation Administration Trust Fund.

25 Section 37. Subsections (3) and (7) of section
26 440.381, Florida Statutes, are amended to read:

27 440.381 Application for coverage; reporting payroll;
28 payroll audit procedures; penalties.--

29 (3) ~~The department of Insurance and the Department of~~
30 ~~Labor and Employment Security~~ shall establish by rule minimum
31 requirements for audits of payroll and classifications in

Amendment No. ____ (for drafter's use only)

1 order to ensure that the appropriate premium is charged for
2 workers' compensation coverage. The rules shall ensure that
3 audits performed by both carriers and employers are adequate
4 to provide that all sources of payments to employees,
5 subcontractors, and independent contractors have been reviewed
6 and that the accuracy of classification of employees has been
7 verified. The rules shall provide that employers in all
8 classes other than the construction class be audited not less
9 frequently than biennially and may provide for more frequent
10 audits of employers in specified classifications based on
11 factors such as amount of premium, type of business, loss
12 ratios, or other relevant factors. In no event shall employers
13 in the construction class, generating more than the amount of
14 premium required to be experience rated, be audited less than
15 annually. The annual audits required for construction classes
16 shall consist of physical onsite audits. Payroll verification
17 audit rules must include, but need not be limited to, the use
18 of state and federal reports of employee income, payroll and
19 other accounting records, certificates of insurance maintained
20 by subcontractors, and duties of employees.

21 (7) If an employee suffering a compensable injury was
22 not reported as earning wages on the last quarterly earnings
23 report filed with the Division of Unemployment Compensation
24 before the accident, the employer shall indemnify the carrier
25 for all workers' compensation benefits paid to or on behalf of
26 the employee unless the employer establishes that the employee
27 was hired after the filing of the quarterly report, in which
28 case the employer and employee shall attest to the fact that
29 the employee was employed by the employer at the time of the
30 injury. ~~It shall be the responsibility of the Division of~~
31 ~~Workers' Compensation to collect all necessary data so as to~~

Amendment No. ____ (for drafter's use only)

1 ~~enable it to notify the carrier of the name of an injured~~
2 ~~worker who was not reported as earning wages on the last~~
3 ~~quarterly earnings report. The division is hereby authorized~~
4 ~~to release such records to the carrier which will enable the~~
5 ~~carrier to seek reimbursement as provided under this~~
6 ~~subsection.~~ Failure of the employer to indemnify the insurer
7 within 21 days after demand by the insurer shall constitute
8 grounds for the insurer to immediately cancel coverage. Any
9 action for indemnification brought by the carrier shall be
10 cognizable in the circuit court having jurisdiction where the
11 employer or carrier resides or transacts business. The
12 insurer shall be entitled to a reasonable attorney's fee if it
13 recovers any portion of the benefits paid in such action.

14 Section 38. Section 440.385, Florida Statutes, is
15 amended to read:

16 440.385 Florida Self-Insurers Guaranty Association,
17 Incorporated.--

18 (1) CREATION OF ASSOCIATION.--

19 (a) There is created a nonprofit corporation to be
20 known as the "Florida Self-Insurers Guaranty Association,
21 Incorporated," hereinafter referred to as "the association."
22 Upon incorporation of the association, all individual
23 self-insurers as defined in ss. 440.02(23)(a) and
24 440.38(1)(b), other than individual self-insurers which are
25 public utilities or governmental entities, shall be members of
26 the association as a condition of their authority to
27 individually self-insure in this state. The association
28 ~~corporation~~ shall perform its functions under a plan of
29 operation as established and approved under subsection (5) and
30 shall exercise its powers and duties through a board of
31 directors as established under subsection (2). The association

Amendment No. ____ (for drafter's use only)

1 ~~corporation~~ shall have those powers granted or permitted
2 associations ~~corporations~~ not for profit, as provided in
3 chapter 617. The activities of the association shall be
4 subject to review by the Department of Insurance. The
5 Department of Insurance shall have oversight responsibility as
6 set forth in this act. The association is specifically
7 authorized to enter into agreements with the State of Florida
8 to perform specified services.

9 (b) A member may voluntarily withdraw from the
10 association when the member voluntarily terminates the
11 self-insurance privilege and pays all assessments due to the
12 date of such termination. However, the withdrawing member
13 shall continue to be bound by the provisions of this section
14 relating to the period of his or her membership and any claims
15 charged pursuant thereto. The withdrawing member who is a
16 member on or after January 1, 1991, shall also be required to
17 provide to the association ~~division~~ upon withdrawal, and at
18 12-month intervals thereafter, satisfactory proof, including,
19 if requested by the association, a report of known and
20 potential claims certified by a member of the American Academy
21 of Actuaries, that it continues to meet the standards of s.
22 440.38(1)(b)1. in relation to claims incurred while the
23 withdrawing member exercised the privilege of self-insurance.
24 Such reporting shall continue until the withdrawing member
25 demonstrates to ~~satisfies~~ the association ~~division~~ that there
26 is no remaining value to claims incurred while the withdrawing
27 member was self-insured. If a withdrawing member fails or
28 refuses to timely provide an actuarial report to the
29 association, the association may obtain an order from a
30 circuit court requiring the member to produce such a report
31 and ordering such other relief as the court determines

Amendment No. ____ (for drafter's use only)

1 appropriate. The association shall be entitled to recover all
2 reasonable costs and attorney's fees expended in such
3 proceedings. If during this reporting period the withdrawing
4 member fails to meet the standards of s. 440.38(1)(b)1., the
5 withdrawing member who is a member on or after January 1,
6 1991, shall thereupon, and at 6-month intervals thereafter,
7 provide to the ~~division and the~~ association the certified
8 opinion of an independent actuary who is a member of the
9 American Academy Society of Actuaries of the actuarial present
10 value of the determined and estimated future compensation
11 payments of the member for claims incurred while the member
12 was a self-insurer, using a discount rate of 4 percent. With
13 each such opinion, the withdrawing member shall deposit with
14 the association ~~division~~ security in an amount equal to the
15 value certified by the actuary and of a type that is
16 acceptable for qualifying security deposits under s.
17 440.38(1)(b). The withdrawing member shall continue to
18 provide such opinions and to provide such security until such
19 time as the latest opinion shows no remaining value of claims.
20 The association has a cause of action against a withdrawing
21 member, and against any successor of a withdrawing member, who
22 fails to timely provide the required opinion or who fails to
23 maintain the required deposit with the division. The
24 association shall be entitled to recover a judgment in the
25 amount of the actuarial present value of the determined and
26 estimated future compensation payments of the withdrawing
27 member for claims incurred during the time that the
28 withdrawing member exercised the privilege of self-insurance,
29 together with reasonable attorney's fees. The association is
30 also entitled to recover reasonable attorney's fees in any
31 action to compel production of any actuarial report required

Amendment No. ____ (for drafter's use only)

1 by this statute.For purposes of this section, the successor
2 of a withdrawing member means any person, business entity, or
3 group of persons or business entities, which holds or acquires
4 legal or beneficial title to the majority of the assets or the
5 majority of the shares of the withdrawing member.

6 (2) BOARD OF DIRECTORS.--The board of directors of the
7 association shall consist of nine persons and shall be
8 organized as established in the plan of operation. All board
9 members shall be experienced in self-insurance in this state.

10 ~~With respect to initial appointments, the Secretary of Labor~~
11 ~~and Employment Security shall, by July 15, 1982, approve and~~
12 ~~appoint to the board persons who are experienced with~~
13 ~~self-insurance in this state and who are recommended by the~~
14 ~~individual self-insurers in this state required to become~~
15 ~~members of the association pursuant to the provisions of~~
16 ~~paragraph (1)(a). In the event the secretary finds that any~~
17 ~~person so recommended does not have the necessary~~
18 ~~qualifications for service on the board and a majority of the~~
19 ~~board has been appointed, the secretary shall request the~~
20 ~~directors thus far approved and appointed to recommend another~~
21 ~~person for appointment to the board.~~Each director shall serve
22 for a 4-year term and may be reappointed. Appointments after
23 March 21, 2001,~~other than initial appointments~~ shall be made
24 by the Insurance Commissioner ~~Secretary of Labor and~~
25 ~~Employment Security~~ upon recommendation of members of the
26 association. Any vacancy on the board shall be filled for the
27 remaining period of the term in the same manner as
28 appointments other than initial appointments are made. Each
29 director shall be reimbursed for expenses incurred in carrying
30 out the duties of the board on behalf of the association.

31 (3) POWERS AND DUTIES.--

Amendment No. ____ (for drafter's use only)

1 (a) Upon creation of the Insolvency Fund pursuant to
2 the provisions of subsection (4), the association is obligated
3 for payment of compensation under this chapter to insolvent
4 members' employees resulting from incidents and injuries
5 existing prior to the member becoming an insolvent member and
6 from incidents and injuries occurring within 30 days after the
7 member has become an insolvent member, provided the incidents
8 giving rise to claims for compensation under this chapter
9 occur during the year in which such insolvent member is a
10 member of the guaranty fund and was assessable pursuant to the
11 plan of operation, and provided the employee makes timely
12 claim for such payments according to procedures set forth by a
13 court of competent jurisdiction over the delinquency or
14 bankruptcy proceedings of the insolvent member. Such
15 obligation includes only that amount due the injured worker or
16 workers of the insolvent member under this chapter. In no
17 event is the association obligated to a claimant in an amount
18 in excess of the obligation of the insolvent member. The
19 association shall be deemed the insolvent employer for
20 purposes of this chapter to the extent of its obligation on
21 the covered claims and, to such extent, shall have all rights,
22 duties, and obligations of the insolvent employer as if the
23 employer had not become insolvent. However, in no event shall
24 the association be liable for any penalties or interest.

25 (b) The association may:

26 1. Employ or retain such persons as are necessary to
27 handle claims and perform other duties of the association.

28 2. Borrow funds necessary to effect the purposes of
29 this section in accord with the plan of operation.

30 3. Sue or be sued.

31 4. Negotiate and become a party to such contracts as

Amendment No. ____ (for drafter's use only)

1 are necessary to carry out the purposes of this section.

2 5. Purchase such reinsurance as is determined
3 necessary pursuant to the plan of operation.

4 6. Review all applicants for membership in the
5 association to determine whether the applicant is qualified
6 for membership under the law. The association shall recommend
7 to the Department of Insurance that the application be
8 accepted or rejected based on the criteria set forth in s.
9 440.38(1)(b). The department shall approve or disapprove the
10 application. Prior to a final determination by the Division of
11 Workers' Compensation as to whether or not to approve any
12 applicant for membership in the association, the association
13 may issue opinions to the division concerning any applicant,
14 which opinions shall be considered by the division prior to
15 any final determination.

16 7. Collect and review financial information from
17 employers and make recommendations to the Department of
18 Insurance regarding the appropriate security deposit and
19 reinsurance amounts necessary for an employer to demonstrate
20 that it has the financial strength necessary to assure the
21 timely payment of all current and future claims. The
22 association may audit and examine an employer to verify the
23 financial strength of its current and former members. If the
24 association determines that a current or former self-insured
25 employer does not have the financial strength necessary to
26 assure the timely payment of all current and estimated future
27 claims, the association may recommend to the department that
28 the department:

29 a. Revoke the employer's self-insurance privilege.

30 b. Require the employer to provide a certified opinion
31 of an independent actuary who is a member of the American

Amendment No. ____ (for drafter's use only)

1 Academy of Actuaries as to the actuarial present value of the
2 employer's estimated current and future compensation payments,
3 using a 4-percent discount rate.

4 c. Require an increase in the employer's security
5 deposit in an amount determined by the association to be
6 necessary to assure payment of compensation claims. The
7 department shall act on such recommendations. The association
8 has a cause of action against an employer, and against any
9 successor of an employer, who fails to provide an additional
10 security deposit required by the department. The association
11 shall recover a judgment in the amount of the requested
12 additional security deposit together with reasonable
13 attorney's fees. For the purposes of this section, the
14 successor of an employer is any person, business entity, or
15 group of persons or business entities that holds or acquires
16 legal or beneficial title to the majority of the assets or the
17 majority of the shares of the employer.

18 8.7. Charge fees to any member of the association to
19 cover the actual costs of examining the financial and safety
20 conditions of that member.

21 9.8. Charge an applicant for membership in the
22 association a fee sufficient to cover the actual costs of
23 examining the financial condition of the applicant.

24 10. Implement any and all procedures necessary to
25 ensure compliance with regulatory actions taken by the
26 department.

27 (c)1. To the extent necessary to secure funds for the
28 payment of covered claims and also to pay the reasonable costs
29 to administer them, the association, subject to approval by
30 the Department of ~~Insurance Labor and Employment Security,~~
31 ~~upon certification of the board of directors,~~ shall levy

Amendment No. ____ (for drafter's use only)

1 assessments based on the annual written ~~normal~~ premium each
2 employer would have paid had the employer not been
3 self-insured. Every assessment shall be made as a uniform
4 percentage of the figure applicable to all individual
5 self-insurers, provided that the assessment levied against any
6 self-insurer in any one year shall not exceed 1 percent of the
7 annual written ~~normal~~ premium during the calendar year
8 preceding the date of the assessment. Assessments shall be
9 remitted to and administered by the board of directors in the
10 manner specified by the approved plan. Each employer so
11 assessed shall have at least 30 days' written notice as to the
12 date the assessment is due and payable. The association shall
13 levy assessments against any newly admitted member of the
14 association so that the basis of contribution of any newly
15 admitted member is the same as previously admitted members,
16 provision for which shall be contained in the plan of
17 operation.

18 2. If, in any one year, funds available from such
19 assessments, together with funds previously raised, are not
20 sufficient to make all the payments or reimbursements then
21 owing, the funds available shall be prorated, and the unpaid
22 portion shall be paid as soon thereafter as sufficient
23 additional funds become available.

24 3. Funds may be allocated or paid from the Workers'
25 Compensation Administration Trust Fund to contract with the
26 association to perform services required by law. However, no
27 state funds of any kind shall be allocated or paid to the
28 association or any of its accounts for payment of covered
29 claims or related expenses except those state funds accruing
30 to the association by and through the assignment of rights of
31 an insolvent employer. The department shall not levy any

Amendment No. ____ (for drafter's use only)

1 assessment on the Florida Self-Insurance Guaranty Association.

2 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
3 operation ~~or the adoption of rules by the Department of Labor~~
4 ~~and Employment Security pursuant to subsection (5)~~, there
5 shall be created an Insolvency Fund to be managed by the
6 association.

7 (a) The Insolvency Fund is created for purposes of
8 meeting the obligations of insolvent members incurred while
9 members of the association and after the exhaustion of any
10 security deposit bond, as required under this chapter.
11 However, if such security deposit bond, ~~surety~~, or reinsurance
12 policy is payable to the Florida Self-Insurers Guaranty
13 Association, the association shall commence to provide
14 benefits out of the Insolvency Fund and be reimbursed from the
15 security deposit bond, ~~surety~~, or reinsurance policy. The
16 method of operation of the Insolvency Fund shall be defined in
17 the plan of operation as provided in subsection (5).

18 (b) The department shall have the authority to audit
19 the financial soundness of the Insolvency Fund annually.

20 (c) The department may offer certain amendments to the
21 plan of operation to the board of directors of the association
22 for purposes of assuring the ongoing financial soundness of
23 the Insolvency Fund and its ability to meet the obligations of
24 this section.

25 ~~(d) The department actuary may make certain~~
26 ~~recommendations to improve the orderly payment of claims.~~

27 (5) PLAN OF OPERATION.--The association shall operate
28 pursuant to a plan of operation approved by the board of
29 directors. The plan of operation in effect on March 1, 2001,
30 and approved by the Department of Labor and Employment
31 Security shall remain in effect. However, any amendments to

Amendment No. ____ (for drafter's use only)

1 the plan shall not become effective until approved by the
2 Department of Insurance. ~~By September 15, 1982, the board of~~
3 ~~directors shall submit to the Department of Labor and~~
4 ~~Employment Security a proposed plan of operation for the~~
5 ~~administration of the association and the Insolvency Fund.~~

6 (a) The purpose of the plan of operation shall be to
7 provide the association and the board of directors with the
8 authority and responsibility to establish the necessary
9 programs and to take the necessary actions to protect against
10 the insolvency of a member of the association. In addition,
11 the plan shall provide that the members of the association
12 shall be responsible for maintaining an adequate Insolvency
13 Fund to meet the obligations of insolvent members provided for
14 under this act and shall authorize the board of directors to
15 contract and employ those persons with the necessary expertise
16 to carry out this stated purpose. By January 1, 2002, the
17 board of directors shall submit to the Department of Insurance
18 a proposed plan of operation for the administration of the
19 association. The Department of Insurance shall approve the
20 plan by order, consistent with this act. The Department of
21 Insurance shall approve any amendments to the plan, by order
22 consistent with this act, and determined appropriate to carry
23 out the duties and responsibilities of the association.

24 ~~(b) The plan of operation, and any amendments thereto,~~
25 ~~shall take effect upon approval in writing by the department.~~
26 ~~If the board of directors fails to submit a plan by September~~
27 ~~15, 1982, or fails to make required amendments to the plan~~
28 ~~within 30 days thereafter, the department shall promulgate~~
29 ~~such rules as are necessary to effectuate the provisions of~~
30 ~~this subsection. Such rules shall continue in force until~~
31 ~~modified by the department or superseded by a plan submitted~~

Amendment No. ____ (for drafter's use only)

- 1 ~~by the board of directors and approved by the department.~~
2 **(b)(c)** All member employers shall comply with the plan
3 of operation.
4 **(c)(d)** The plan of operation shall:
5 1. Establish the procedures whereby all the powers and
6 duties of the association under subsection (3) will be
7 performed.
8 2. Establish procedures for handling assets of the
9 association.
10 3. Establish the amount and method of reimbursing
11 members of the board of directors under subsection (2).
12 4. Establish procedures by which claims may be filed
13 with the association and establish acceptable forms of proof
14 of covered claims. Notice of claims to the receiver or
15 liquidator of the insolvent employer shall be deemed notice to
16 the association or its agent, and a list of such claims shall
17 be submitted periodically to the association or similar
18 organization in another state by the receiver or liquidator.
19 5. Establish regular places and times for meetings of
20 the board of directors.
21 6. Establish procedures for records to be kept of all
22 financial transactions of the association and its agents and
23 the board of directors.
24 7. Provide that any member employer aggrieved by any
25 final action or decision of the association may appeal to the
26 department within 30 days after the action or decision.
27 8. Establish the procedures whereby recommendations of
28 candidates for the board of directors shall be submitted to
29 the department.
30 9. Contain additional provisions necessary or proper
31 for the execution of the powers and duties of the association.

Amendment No. ____ (for drafter's use only)

1 (d)~~(e)~~ The plan of operation may provide that any or
2 all of the powers and duties of the association, except those
3 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to
4 a corporation, association, or other organization which
5 performs or will perform functions similar to those of this
6 association or its equivalent in two or more states. Such a
7 corporation, association, or organization shall be reimbursed
8 as a servicing facility would be reimbursed and shall be paid
9 for its performance of any other functions of the association.
10 A delegation of powers or duties under this subsection shall
11 take effect only with the approval of both the board of
12 directors and the department and may be made only to a
13 corporation, association, or organization which extends
14 protection which is not substantially less favorable and
15 effective than the protection provided by this section.

16 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
17 ~~AND EMPLOYMENT SECURITY~~.--

18 (a) The department shall:

19 ~~1. review recommendations of the association~~
20 concerning whether current or former self-insured employers or
21 members of the association have the financial strength
22 necessary to ensure the timely payment of all current and
23 estimated future claims. If the association determines an
24 employer does not have the financial strength necessary to
25 ensure the timely payment of all current and future claims and
26 recommends action pursuant to paragraph (3)(b), the Department
27 of Insurance may take such action as necessary to order the
28 employer to comply with the recommendation.~~Notify the~~
29 ~~association of the existence of an insolvent employer not~~
30 ~~later than 3 days after it receives notice of the~~
31 ~~determination of insolvency.~~

Amendment No. ____ (for drafter's use only)

- 1 (b) The department may:
2 1. Contract with the association for services, which
3 may include, but not be limited to, the following:
4 a. Process applications for self-insurance.
5 b. Collect and review financial statements and loss
6 reserve information from individual self-insurers.
7 c. Collect and maintain files for original security
8 deposit documents and reinsurance policies from individual
9 self-insurers and, if necessary, perfect security interests in
10 security deposits.
11 d. Process compliance documentation for individual
12 self-insurers and provide same to the Department of Insurance.
13 e. Collect all data necessary to calculate annual
14 premium for all individual self-insurers, including individual
15 self-insurers that are public utilities or governmental
16 entities, and provide such calculated annual premium to the
17 Department of Insurance for assessment purposes.
18 f. Inspect and audit annually, if necessary, the
19 payroll and other records of each individual self-insurer,
20 including individual self-insurers that are public utilities
21 or governmental entities, in order to determine the wages paid
22 by each individual self-insurer, the premium such individual
23 self-insurer would have to pay if insured, and all payments of
24 compensation made by such individual self-insurer during each
25 prior period with the results of such audit provided to the
26 Department of Insurance. For the purposes of this section,
27 the payroll records of each individual self-insurer shall be
28 open to inspection and audit by the association, the
29 department, or their authorized representative, during regular
30 business hours.
31 g. Provide legal representation to implement the

Amendment No. ____ (for drafter's use only)

1 administration and audit of individual self-insurers and make
2 recommendations regarding prosecution of any administrative or
3 legal proceedings necessitated by the department's regulation
4 of the individual self-insurers.

5 2. Contract with an attorney or attorneys recommended
6 by the association for representation of the department in any
7 administrative or legal proceedings necessitated by the
8 recommended regulation of the individual self-insurers. ~~Upon~~
9 ~~request of the board of directors, provide the association~~
10 ~~with a statement of the annual normal premiums of each member~~
11 ~~employer.~~

12 ~~(b) The department may:~~

13 3.1. Direct the association to require from each
14 individual self-insurer, at such time and in accordance with
15 such regulations as the department prescribes, reports in
16 respect to wages paid, the amount of premiums such individual
17 self-insurer would have to pay if insured, and all payments of
18 compensation made by such individual self-insurer during each
19 prior period and determine the amounts paid by each individual
20 self-insurer and the amounts paid by all individual
21 self-insurers during such period. For the purposes of this
22 section, the payroll records of each individual self-insurer
23 shall be open to annual inspection and audit by the
24 association, the department, or their authorized
25 representative, during regular business hours, and if any
26 audit of such records of an individual self-insurer discloses
27 a deficiency in the amount reported to the association or in
28 the amounts paid to the Department of Insurance by an
29 individual self-insurer for its assessment for the Workers'
30 Compensation Administration Trust Fund, the Department of
31 Insurance or the association may assess the cost of such audit

Amendment No. ____ (for drafter's use only)

1 against the individual self-insurer.

2 4. Require that the association notify the member
3 employers and any other interested parties of the
4 determination of insolvency and of their rights under this
5 section. Such notification shall be by mail at the last known
6 address thereof when available; but, if sufficient information
7 for notification by mail is not available, notice by
8 publication in a newspaper of general circulation shall be
9 sufficient.

10 5.2. Suspend or revoke the authority of any member
11 employer failing to pay an assessment when due or failing to
12 comply with the plan of operation to self-insure in this
13 state. As an alternative, the department may levy a fine on
14 any member employer failing to pay an assessment when due.
15 Such fine shall not exceed 5 percent of the unpaid assessment
16 per month, except that no fine shall be less than \$100 per
17 month.

18 ~~3. Revoke the designation of any servicing facility if~~
19 ~~the department finds that claims are being handled~~
20 ~~unsatisfactorily.~~

21 (7) EFFECT OF PAID CLAIMS.--

22 (a) Any person who recovers from the association under
23 this section shall be deemed to have assigned his or her
24 rights to the association to the extent of such recovery.
25 Every claimant seeking the protection of this section shall
26 cooperate with the association to the same extent as such
27 person would have been required to cooperate with the
28 insolvent member. The association shall have no cause of
29 action against the employee of the insolvent member for any
30 sums the association has paid out, except such causes of
31 action as the insolvent member would have had if such sums had

Amendment No. ____ (for drafter's use only)

1 been paid by the insolvent member. In the case of an
2 insolvent member operating on a plan with assessment
3 liability, payments of claims by the association shall not
4 operate to reduce the liability of the insolvent member to the
5 receiver, liquidator, or statutory successor for unpaid
6 assessments.

7 (b) The receiver, liquidator, or statutory successor
8 of an insolvent member shall be bound by settlements of
9 covered claims by the association or a similar organization in
10 another state. The court having jurisdiction shall grant such
11 claims priority against the assets of the insolvent member
12 equal to that to which the claimant would have been entitled
13 in the absence of this section. The expense of the association
14 or similar organization in handling claims shall be accorded
15 the same priority as the expenses of the liquidator.

16 (c) The association shall file periodically with the
17 receiver or liquidator of the insolvent member statements of
18 the covered claims paid by the association and estimates of
19 anticipated claims on the association, which shall preserve
20 the rights of the association against the assets of the
21 insolvent member.

22 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid
23 in the detection and prevention of employer insolvencies+

24 ~~(a)~~ upon determination by majority vote that any
25 member employer may be insolvent or in a financial condition
26 hazardous to the employees thereof or to the public, it shall
27 be the duty of the board of directors to notify the Department
28 of Insurance ~~Labor and Employment Security~~ of any information
29 indicating such condition.

30 ~~(b) The board of directors may, upon majority vote,~~
31 ~~request that the department determine the condition of any~~

Amendment No. ____ (for drafter's use only)

1 ~~member employer which the board in good faith believes may no~~
2 ~~longer be qualified to be a member of the association. Within~~
3 ~~30 days of the receipt of such request or, for good cause~~
4 ~~shown, within a reasonable time thereafter, the department~~
5 ~~shall make such determination and shall forthwith advise the~~
6 ~~board of its findings. Each request for a determination shall~~
7 ~~be kept on file by the department, but the request shall not~~
8 ~~be open to public inspection prior to the release of the~~
9 ~~determination to the public.~~

10 ~~(c) It shall also be the duty of the department to~~
11 ~~report to the board of directors when it has reasonable cause~~
12 ~~to believe that a member employer may be in such a financial~~
13 ~~condition as to be no longer qualified to be a member of the~~
14 ~~association.~~

15 ~~(d) The board of directors may, upon majority vote,~~
16 ~~make reports and recommendations to the department upon any~~
17 ~~matter which is germane to the solvency, liquidation,~~
18 ~~rehabilitation, or conservation of any member employer. Such~~
19 ~~reports and recommendations shall not be considered public~~
20 ~~documents.~~

21 ~~(e) The board of directors may, upon majority vote,~~
22 ~~make recommendations to the department for the detection and~~
23 ~~prevention of employer insolvencies.~~

24 ~~(f) The board of directors shall, at the conclusion of~~
25 ~~any member's insolvency in which the association was obligated~~
26 ~~to pay covered claims, prepare a report on the history and~~
27 ~~cause of such insolvency, based on the information available~~
28 ~~to the association, and shall submit such report to the~~
29 ~~department.~~

30 (9) EXAMINATION OF THE ASSOCIATION.--The association
31 shall be subject to examination and regulation by the

Amendment No. ____ (for drafter's use only)

1 Department of Insurance Labor and Employment Security. No
2 later than March 30 of each year, the board of directors shall
3 submit an audited ~~a~~ financial statement ~~report~~ for the
4 preceding calendar year in a form approved by the department.

5 (10) IMMUNITY.--There shall be no liability on the
6 part of, and no cause of action of any nature shall arise
7 against, any member employer, the association or its agents or
8 employees, the board of directors, or the Department of
9 Insurance Labor and Employment Security or its representatives
10 for any action taken by them in the performance of their
11 powers and duties under this section.

12 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
13 JUDGMENTS.--All proceedings in which an insolvent employer is
14 a party, or is obligated to defend a party, in any court or
15 before any quasi-judicial body or administrative board in this
16 state shall be stayed for up to 6 months, or for such
17 additional period from the date the employer becomes an
18 insolvent member, as is deemed necessary by a court of
19 competent jurisdiction to permit proper defense by the
20 association of all pending causes of action as to any covered
21 claims arising from a judgment under any decision, verdict, or
22 finding based on the default of the insolvent member. The
23 association, either on its own behalf or on behalf of the
24 insolvent member, may apply to have such judgment, order,
25 decision, verdict, or finding set aside by the same court or
26 administrator that made such judgment, order, decision,
27 verdict, or finding and shall be permitted to defend against
28 such claim on the merits. If requested by the association,
29 the stay of proceedings may be shortened or waived.

30 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
31 any other provision of this chapter, a covered claim, as

Amendment No. ____ (for drafter's use only)

1 defined herein, with respect to which settlement is not
2 effected and pursuant to which suit is not instituted against
3 the insured of an insolvent member or the association within 1
4 year after the deadline for filing claims with the receiver of
5 the insolvent member, or any extension of the deadline, shall
6 thenceforth be barred as a claim against the association.

7 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
8 by a member by refund, dividend, or otherwise from the
9 association shall be payable within 30 days of receipt to the
10 Department of Insurance for deposit with the Treasurer to the
11 credit of the General Revenue Fund. All provisions of chapter
12 220 relating to penalties and interest on delinquent corporate
13 income tax payments apply to payments due under this
14 subsection.

15 Section 39. Subsections (2), (3), and (4) of section
16 440.386, Florida Statutes, are amended to read:

17 440.386 Individual self-insurers' insolvency;
18 conservation; liquidation.--

19 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
20 Department of Insurance or the Florida Self-Insurers Guaranty
21 Association, Incorporated, may commence a delinquency ~~any such~~
22 proceeding by application to the court for an order directing
23 the individual self-insurer to show cause why the department
24 or association should not have the relief prayed for. ~~The~~
25 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may
26 ~~petition the department to commence such proceedings, and upon~~
27 ~~receipt of such petition, the department shall commence such~~
28 ~~proceeding.~~ On the return of such order to show cause, and
29 after a full hearing, the court shall either deny the
30 application or grant the application, together with such other
31 relief as the nature of the case and the interests of the

Amendment No. ____ (for drafter's use only)

1 claimants, creditors, stockholders, members, subscribers, or
2 public may require. The Department of Insurance and the
3 association shall give Florida Self-Insurers Guaranty
4 Association, Incorporated, shall be given reasonable written
5 notice to each other ~~by the department~~ of all hearings which
6 pertain to an adjudication of insolvency of a member
7 individual self-insurer.

8 (3) GROUNDS FOR LIQUIDATION.--The Department of
9 Insurance or the association may apply to the court for an
10 order appointing a receiver and directing the receiver to
11 liquidate the business of a domestic individual self-insurer
12 if such individual self-insurer is insolvent. ~~Florida~~
13 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
14 ~~the department to apply to the court for such order. Upon~~
15 ~~receipt of such petition, the department shall apply to the~~
16 ~~court for such order.~~

17 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
18 SELF-INSURERS.--

19 (a) The Department of Insurance or the association may
20 apply to the court for an order appointing a receiver or
21 ancillary receiver, and directing the receiver to conserve the
22 assets within this state, of a foreign individual self-insurer
23 if such individual self-insurer is insolvent. ~~Florida~~
24 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
25 ~~the department to apply for such order, and, upon receipt of~~
26 ~~such petition, the department shall apply to the court for~~
27 ~~such order.~~

28 (b) An order to conserve the assets of an individual
29 self-insurer shall require the receiver forthwith to take
30 possession of the property of the receiver within the state
31 and to conserve it, subject to the further direction of the

Amendment No. ____ (for drafter's use only)

1 court.

2 Section 40. Section 440.40, Florida Statutes, is
3 amended to read:

4 440.40 Compensation notice.--Every employer who has
5 secured compensation under the provisions of this chapter
6 shall keep posted in a conspicuous place or places in and
7 about her or his place or places of business typewritten or
8 printed notices, in accordance with a form prescribed by the
9 department ~~division~~, stating that such employer has secured
10 the payment of compensation in accordance with the provisions
11 of this chapter. Such notices shall contain the name and
12 address of the carrier, if any, with whom the employer has
13 secured payment of compensation and the date of the expiration
14 of the policy. The department ~~division~~ may by rule prescribe
15 the form of the notices and require carriers to provide the
16 notices to policyholders.

17 Section 41. Section 440.41, Florida Statutes, is
18 amended to read:

19 440.41 Substitution of carrier for employer.--In any
20 case where the employer is not a self-insurer, in order that
21 the liability for compensation imposed by this chapter may be
22 most effectively discharged by the employer, and in order that
23 the administration of this chapter in respect of such
24 liability may be facilitated, the department ~~division~~ shall by
25 regulation provide for the discharge, by the carrier for such
26 employer, of such obligations and duties of the employer in
27 respect of such liability, imposed by this chapter upon the
28 employer, as it considers proper in order to effectuate the
29 provisions of this chapter. For such purposes:

30 (1) Notice to or knowledge of an employer of the
31 occurrence of the injury shall be notice to or knowledge of

Amendment No. ____ (for drafter's use only)

1 the carrier.

2 (2) Jurisdiction of the employer by the judges of
3 compensation claims, the department division, or any court
4 under this chapter shall be jurisdiction of the carrier.

5 (3) Any requirement by the judges of compensation
6 claims, the department division, or any court under any
7 compensation order, finding, or decision shall be binding upon
8 the carrier in the same manner and to the same extent as upon
9 the employer.

10 Section 42. Subsection (3) of section 440.42, Florida
11 Statutes, is amended to read:

12 440.42 Insurance policies; liability.--

13 (3) No contract or policy of insurance issued by a
14 carrier under this chapter shall expire or be canceled until
15 at least 30 days have elapsed after a notice of cancellation
16 has been sent to the department division and to the employer
17 in accordance with the provisions of s. 440.185(7). However,
18 when duplicate or dual coverage exists by reason of two
19 different carriers having issued policies of insurance to the
20 same employer securing the same liability, it shall be
21 presumed that only that policy with the later effective date
22 shall be in force and that the earlier policy terminated upon
23 the effective date of the latter. In the event that both
24 policies carry the same effective date, one of the policies
25 may be canceled instanter upon filing a notice of cancellation
26 with the department division and serving a copy thereof upon
27 the employer in such manner as the department division
28 prescribes by rule. The department division may by rule
29 prescribe the content of the notice of retroactive
30 cancellation and specify the time, place, and manner in which
31 the notice of cancellation is to be served.

Amendment No. ____ (for drafter's use only)

1 Section 43. Section 440.44, Florida Statutes, is
2 amended to read:

3 440.44 Workers' compensation; staff organization.--

4 (1) INTERPRETATION OF LAW.--As a guide to the
5 interpretation of this chapter, the Legislature takes due
6 notice of federal social and labor acts and hereby creates an
7 agency to administer such acts passed for the benefit of
8 employees and employers in Florida industry, and desires to
9 meet the requirements of such federal acts wherever not
10 inconsistent with the Constitution and laws of Florida.

11 (2) INTENT.--It is the intent of the Legislature that
12 the department, the agency, and the Department of Education
13 ~~division~~ assume an active and forceful role in their ~~its~~
14 administration of this act, so as to ensure that the system
15 operates efficiently and with maximum benefit to both
16 employers and employees.

17 (3) EXPENDITURES.--The department, the agency, the
18 Department of Education,~~division~~ and the Chief Judge shall
19 make such expenditures, including expenditures for personal
20 services and rent at the seat of government and elsewhere, for
21 law books; for telephone services and WATS lines; for books of
22 reference, periodicals, equipment, and supplies; and for
23 printing and binding as may be necessary in the administration
24 of this chapter. All expenditures in the administration of
25 this chapter shall be allowed and paid as provided in s.
26 440.50 upon the presentation of itemized vouchers therefor
27 approved by the department, the agency, the Department of
28 Education,~~division~~ or the Chief Judge.

29 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL
30 ADMINISTRATION.--Subject to the other provisions of this
31 chapter, the department, the agency, and the Department of

Amendment No. ____ (for drafter's use only)

1 Education are ~~division is~~ authorized to appoint, and prescribe
2 the duties and powers of, bureau chiefs, attorneys,
3 accountants, medical advisers, technical assistants,
4 inspectors, claims examiners, and such other employees as may
5 be necessary in the performance of its duties under this
6 chapter.

7 (5) OFFICE.--The department, the agency, the
8 Department of Education,~~division~~ and the Chief Judge shall
9 maintain and keep open during reasonable business hours an
10 office, which shall be provided in the Capitol or some other
11 suitable building in the City of Tallahassee, for the
12 transaction of business under this chapter, at which office
13 the official records and papers shall be kept. The office
14 shall be furnished and equipped. The department, the agency
15 ~~division~~, any judge of compensation claims, or the Chief Judge
16 may hold sessions and conduct hearings at any place within the
17 state.

18 (6) SEAL.--The division and, the Office of the Judges
19 of Compensation Claims ~~judges of compensation claims, and the~~
20 ~~Chief Judge~~ shall have seals ~~a seal~~ upon which shall be
21 inscribed the words "State of Florida Department of Insurance
22 ...Seal" and the "Division of Administrative Hearings...
23 Seal." ~~respectively. of Labor and Employment Security--Seal."~~

24 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
25 ~~division~~ is expressly authorized to provide by regulation for
26 and to destroy obsolete records of the department ~~division and~~
27 ~~commission~~.

28 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
29 and functions requiring administrative hearings, the
30 department and the agency ~~division~~ shall proceed in accordance
31 with the Administrative Procedure Act. The authority of the

Amendment No. ____ (for drafter's use only)

1 department and the agency division to issue orders resulting
2 from administrative hearings as provided for in this chapter
3 shall not infringe upon the jurisdiction of the judges of
4 compensation claims.

5 Section 44. Section 440.4416, Florida Statutes, is
6 hereby repealed.

7 Section 45. Subsection (1) of section 440.45, Florida
8 Statutes, is amended to read:

9 440.45 Office of the Judges of Compensation Claims.--

10 (1) There is hereby created the Office of the Judges
11 of Compensation Claims within the Division of Administrative
12 Hearing of the Department of Management Services ~~Department of~~
13 ~~Labor and Employment Security~~. The Office of the Judges of
14 Compensation Claims shall be headed by a Chief Judge. The
15 Chief Judge shall be appointed by the Governor for a term of 4
16 years from a list of three names submitted by the statewide
17 nominating commission created under subsection (2). The Chief
18 Judge must possess the same qualifications for appointment as
19 a judge of compensation claims, and the procedure for
20 reappointment of the Chief Judge will be the same as for
21 reappointment of a judge of compensation claims. The office
22 shall be a separate budget entity and the Chief Judge shall be
23 its agency head for all purposes. The Division of
24 Administrative Hearings ~~Department of Labor and Employment~~
25 ~~Security~~ shall provide administrative support and service to
26 the office to the extent requested by the Chief Judge but
27 shall not direct, supervise, or control the Office of the
28 Judges of Compensation Claims in any manner, including, but
29 not limited to, personnel, purchasing, budgetary matters, or
30 property transactions. The operating budget of the Office of
31 the Judges of Compensation Claims shall be paid out of the

Amendment No. ____ (for drafter's use only)

1 Workers' Compensation Administration Trust Fund established in
2 s. 440.50.

3 Section 46. Subsections (1), (2), (7), (8), (9), (10),
4 and (11) of section 440.49, Florida Statutes, are amended to
5 read:

6 440.49 Limitation of liability for subsequent injury
7 through Special Disability Trust Fund.--

8 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
9 for workers with disabilities to achieve employment or to
10 become reemployed following an injury, and it is the desire of
11 the Legislature to facilitate the return of these workers to
12 the workplace, it is the purpose of this section to encourage
13 the employment, reemployment, and accommodation of the
14 physically disabled by reducing an employer's insurance
15 premium for reemploying an injured worker, to decrease
16 litigation between carriers on apportionment issues, and to
17 protect employers from excess liability for compensation and
18 medical expense when an injury to a physically disabled worker
19 merges with, aggravates, or accelerates her or his preexisting
20 permanent physical impairment to cause either a greater
21 disability or permanent impairment, or an increase in
22 expenditures for temporary compensation or medical benefits
23 than would have resulted from the injury alone. The department
24 ~~division~~ or the administrator shall inform all employers of
25 the existence and function of the fund and shall interpret
26 eligibility requirements liberally. However, this subsection
27 shall not be construed to create or provide any benefits for
28 injured employees or their dependents not otherwise provided
29 by this chapter. The entitlement of an injured employee or her
30 or his dependents to compensation under this chapter shall be
31 determined without regard to this subsection, the provisions

Amendment No. ____ (for drafter's use only)

1 of which shall be considered only in determining whether an
2 employer or carrier who has paid compensation under this
3 chapter is entitled to reimbursement from the Special
4 Disability Trust Fund.

5 (2) DEFINITIONS.--As used in this section, the term:

6 (a) "Permanent physical impairment" means and is
7 limited to the conditions listed in paragraph (6)(a).

8 (b) "Preferred worker" means a worker who, because of
9 a permanent impairment resulting from a compensable injury or
10 occupational disease, is unable to return to the worker's
11 regular employment.

12 (c) "Merger" describes or means that:

13 1. If the permanent physical impairment had not
14 existed, the subsequent accident or occupational disease would
15 not have occurred;

16 2. The permanent disability or permanent impairment
17 resulting from the subsequent accident or occupational disease
18 is materially and substantially greater than that which would
19 have resulted had the permanent physical impairment not
20 existed, and the employer has been required to pay, and has
21 paid, permanent total disability or permanent impairment
22 benefits for that materially and substantially greater
23 disability;

24 3. The preexisting permanent physical impairment is
25 aggravated or accelerated as a result of the subsequent injury
26 or occupational disease, or the preexisting impairment has
27 contributed, medically and circumstantially, to the need for
28 temporary compensation, medical, or attendant care and the
29 employer has been required to pay, and has paid, temporary
30 compensation, medical, or attendant care benefits for the
31 aggravated preexisting permanent impairment; or

Amendment No. ____ (for drafter's use only)

1 4. Death would not have been accelerated if the
2 permanent physical impairment had not existed.

3 (d) "Excess permanent compensation" means that
4 compensation for permanent impairment, or permanent total
5 disability or death benefits, for which the employer or
6 carrier is otherwise entitled to reimbursement from the
7 Special Disability Trust Fund.

8 (e) "Administrator" means the entity selected by the
9 commission to review, allow, deny, compromise, controvert, and
10 litigate claims of the Special Disability Trust Fund.

11 (f) "Corporation" means the Special Disability Trust
12 Fund Financing Corporation, as created under subsection (14).

13 (g) "Commission" means the Special Disability Trust
14 Fund Privatization Commission, as created under subsection
15 (13).

16
17 In addition to the definitions contained in this subsection,
18 the department ~~division~~ may by rule prescribe definitions that
19 are necessary for the effective administration of this
20 section.

21 (7) REIMBURSEMENT OF EMPLOYER.--

22 (a) The right to reimbursement as provided in this
23 section is barred unless written notice of claim of the right
24 to such reimbursement is filed by the employer or carrier
25 entitled to such reimbursement with the department ~~division~~ or
26 administrator at Tallahassee within 2 years after the date the
27 employee last reached maximum medical improvement, or within 2
28 years after the date of the first payment of compensation for
29 permanent total disability, wage loss, or death, whichever is
30 later. The notice of claim must contain such information as
31 the department ~~division~~ by rule requires or as established by

Amendment No. ____ (for drafter's use only)

1 the administrator; and the employer or carrier claiming
2 reimbursement shall furnish such evidence in support of the
3 claim as the department ~~division~~ or administrator reasonably
4 may require.

5 (b) For notice of claims on the Special Disability
6 Trust Fund filed on or after July 1, 1978, the Special
7 Disability Trust Fund shall, within 120 days after receipt of
8 notice that a carrier has paid, been required to pay, or
9 accepted liability for excess compensation, serve notice of
10 the acceptance of the claim for reimbursement.

11 (c) A proof of claim must be filed on each notice of
12 claim on file as of June 30, 1997, within 1 year after July 1,
13 1997, or the right to reimbursement of the claim shall be
14 barred. A notice of claim on file on or before June 30, 1997,
15 may be withdrawn and refiled if, at the time refiled, the
16 notice of claim remains within the limitation period specified
17 in paragraph (a). Such refiled shall not toll, extend, or
18 otherwise alter in any way the limitation period applicable to
19 the withdrawn and subsequently refiled notice of claim. Each
20 proof of claim filed shall be accompanied by a proof-of-claim
21 fee as provided in paragraph (9)(d). The Special Disability
22 Trust Fund shall, within 120 days after receipt of the proof
23 of claim, serve notice of the acceptance of the claim for
24 reimbursement. This paragraph shall apply to all claims
25 notwithstanding the provisions of subsection (12).

26 (d) Each notice of claim filed or refiled on or after
27 July 1, 1997, must be accompanied by a notification fee as
28 provided in paragraph (9)(d). A proof of claim must be filed
29 within 1 year after the date the notice of claim is filed or
30 refiled, accompanied by a proof-of-claim fee as provided in
31 paragraph (9)(d), or the claim shall be barred. The

Amendment No. ____ (for drafter's use only)

1 notification fee shall be waived if both the notice of claim
2 and proof of claim are submitted together as a single filing.
3 The Special Disability Trust Fund shall, within 180 days after
4 receipt of the proof of claim, serve notice of the acceptance
5 of the claim for reimbursement. This paragraph shall apply to
6 all claims notwithstanding the provisions of subsection (12).
7 (e) For dates of accident on or after January 1, 1994,
8 the Special Disability Trust Fund shall, within 120 days of
9 receipt of notice that a carrier has been required to pay, and
10 has paid over \$10,000 in benefits, serve notice of the
11 acceptance of the claim for reimbursement. Failure of the
12 Special Disability Trust Fund to serve notice of acceptance
13 shall give rise to the right to request a hearing on the claim
14 for reimbursement. If the Special Disability Trust Fund
15 through its representative denies or controverts the claim,
16 the right to such reimbursement shall be barred unless an
17 application for a hearing thereon is filed with the department
18 ~~division~~ or administrator at Tallahassee within 60 days after
19 notice to the employer or carrier of such denial or
20 controversion. When such application for a hearing is timely
21 filed, the claim shall be heard and determined in accordance
22 with the procedure prescribed in s. 440.25, to the extent that
23 such procedure is applicable, and in accordance with the
24 workers' compensation rules of procedure. In such proceeding
25 on a claim for reimbursement, the Special Disability Trust
26 Fund shall be made the party respondent, and no findings of
27 fact made with respect to the claim of the injured employee or
28 the dependents for compensation, including any finding made or
29 order entered pursuant to s. 440.20(11), shall be res
30 judicata. The Special Disability Trust Fund may not be joined
31 or made a party to any controversy or dispute between an

Amendment No. ____ (for drafter's use only)

1 employee and the dependents and the employer or between two or
2 more employers or carriers without the written consent of the
3 fund.

4 (f) When it has been determined that an employer or
5 carrier is entitled to reimbursement in any amount, the
6 employer or carrier shall be reimbursed annually from the
7 Special Disability Trust Fund for the compensation and medical
8 benefits paid by the employer or carrier for which the
9 employer or carrier is entitled to reimbursement, upon filing
10 request therefor and submitting evidence of such payment in
11 accordance with rules prescribed by the department ~~division~~,
12 which rules may include parameters for annual audits. The
13 Special Disability Trust Fund shall pay the approved
14 reimbursement requests on a first-in, first-out basis
15 reflecting the order in which the reimbursement requests were
16 received.

17 (g) The department ~~division~~ may by rule require
18 specific forms and procedures for the administration and
19 processing of claims made through the Special Disability Trust
20 Fund.

21 (8) PREFERRED WORKER PROGRAM.--The The Department of
22 Education ~~division~~ or administrator shall issue identity cards
23 to preferred workers upon request by qualified employees and
24 the department shall reimburse an employer, from the Special
25 Disability Trust Fund, for the cost of workers' compensation
26 premium related to the preferred workers payroll for up to 3
27 years of continuous employment upon satisfactory evidence of
28 placement and issuance of payroll and classification records
29 and upon the employee's certification of employment. The
30 department and the Department of Education ~~division~~ may by
31 rule prescribe definitions, forms, and procedures for the

Amendment No. ____ (for drafter's use only)

1 administration of the preferred worker program. The Department
2 of Education ~~division~~ may by rule prescribe the schedule for
3 submission of forms for participation in the program.

4 (9) SPECIAL DISABILITY TRUST FUND.--

5 (a) There is established in the State Treasury a
6 special fund to be known as the "Special Disability Trust
7 Fund," which shall be available only for the purposes stated
8 in this section; and the assets thereof may not at any time be
9 appropriated or diverted to any other use or purpose. The
10 Treasurer shall be the custodian of such fund, and all moneys
11 and securities in such fund shall be held in trust by such
12 Treasurer and shall not be the money or property of the state.
13 The Treasurer is authorized to disburse moneys from such fund
14 only when approved by the department ~~division~~ or corporation
15 and upon the order of the Comptroller. The Treasurer shall
16 deposit any moneys paid into such fund into such depository
17 banks as the department ~~division~~ or corporation may designate
18 and is authorized to invest any portion of the fund which, in
19 the opinion of the division, is not needed for current
20 requirements, in the same manner and subject to all the
21 provisions of the law with respect to the deposits of state
22 funds by such Treasurer. All interest earned by such portion
23 of the fund as may be invested by the Treasurer shall be
24 collected by her or him and placed to the credit of such fund.

25 (b)1. The Special Disability Trust Fund shall be
26 maintained by annual assessments upon the insurance companies
27 writing compensation insurance in the state, the commercial
28 self-insurers under ss. 624.462 and 624.4621, the assessable
29 mutuals under s. 628.601, and the self-insurers under this
30 chapter, which assessments shall become due and be paid
31 quarterly at the same time and in addition to the assessments

Amendment No. ____ (for drafter's use only)

1 provided in s. 440.51. The department ~~division~~ shall estimate
2 annually in advance the amount necessary for the
3 administration of this subsection and the maintenance of this
4 fund and shall make such assessment in the manner hereinafter
5 provided.

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

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

13 b. Two times the disbursements of the most recent
14 calendar year.

15
16 Such amount shall be prorated among the insurance companies
17 writing compensation insurance in the state and the
18 self-insurers. Provided however, for those carriers that have
19 excluded ceded reinsurance premiums from their assessments on
20 or before January 1, 2000, no assessments on ceded reinsurance
21 premiums shall be paid by those carriers until such time as
22 the Division of Workers' Compensation of the Department of
23 Labor and Employment Security or the department advises each
24 of those carriers of the impact that the inclusion of ceded
25 reinsurance premiums has on their assessment. The department
26 ~~division~~ may not recover any past underpayments of assessments
27 levied against any carrier that on or before January 1, 2000,
28 excluded ceded reinsurance premiums from their assessment
29 prior to the point that the Division of Workers' Compensation
30 of the Department of Labor and Employment Security or the
31 department advises of the appropriate assessment that should

Amendment No. ____ (for drafter's use only)

1 have been paid.

2 3. The net premiums written by the companies for
3 workers' compensation in this state and the net premium
4 written applicable to the self-insurers in this state are the
5 basis for computing the amount to be assessed as a percentage
6 of net premiums. Such payments shall be made by each carrier
7 and self-insurer to the department ~~division~~ for the Special
8 Disability Trust Fund in accordance with such regulations as
9 the department ~~division~~ prescribes.

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

16 (c) Notwithstanding the Special Disability Trust Fund
17 assessment rate calculated pursuant to this section, the rate
18 assessed shall not exceed 4.52 percent.

19 (d) The Special Disability Trust Fund shall be
20 supplemented by a \$250 notification fee on each notice of
21 claim filed or refiled after July 1, 1997, and a \$500 fee on
22 each proof of claim filed in accordance with subsection (7).
23 Revenues from the fee shall be deposited into the Special
24 Disability Trust Fund and are exempt from the deduction
25 required by s. 215.20. The fees provided in this paragraph
26 shall not be imposed upon any insurer which is in receivership
27 with the Department of Insurance.

28 (e) The Department of Insurance ~~Labor and Employment~~
29 ~~Security~~ or administrator shall report annually on the status
30 of the Special Disability Trust Fund. The report shall update
31 the estimated undiscounted and discounted fund liability, as

Amendment No. ____ (for drafter's use only)

1 determined by an independent actuary, change in the total
2 number of notices of claim on file with the fund in addition
3 to the number of newly filed notices of claim, change in the
4 number of proofs of claim processed by the fund, the fee
5 revenues refunded and revenues applied to pay down the
6 liability of the fund, the average time required to reimburse
7 accepted claims, and the average administrative costs per
8 claim. The department or administrator shall submit its
9 report to the Governor, the President of the Senate, and the
10 Speaker of the House of Representatives by December 1 of each
11 year.

12 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
13 CLAIMS; ADVISORY COMMITTEE; EXPENSES.--The department ~~division~~
14 or administrator shall administer the Special Disability Trust
15 Fund with authority to allow, deny, compromise, controvert,
16 and litigate claims made against it and to designate an
17 attorney to represent it in proceedings involving claims
18 against the fund, including negotiation and consummation of
19 settlements, hearings before judges of compensation claims,
20 and judicial review. The department ~~division~~ or administrator
21 or the attorney designated by it shall be given notice of all
22 hearings and proceedings involving the rights or obligations
23 of such fund and shall have authority to make expenditures for
24 such medical examinations, expert witness fees, depositions,
25 transcripts of testimony, and the like as may be necessary to
26 the proper defense of any claim. The department ~~division~~ shall
27 appoint an advisory committee composed of representatives of
28 management, compensation insurance carriers, and self-insurers
29 to aid it in formulating policies with respect to conservation
30 of the fund, who shall serve without compensation for such
31 terms as specified by it, but be reimbursed for travel

Amendment No. ____ (for drafter's use only)

1 expenses as provided in s. 112.061. All expenditures made in
2 connection with conservation of the fund, including the salary
3 of the attorney designated to represent it and necessary
4 travel expenses, shall be allowed and paid from the Special
5 Disability Trust Fund as provided in this section upon the
6 presentation of itemized vouchers therefor approved by the
7 department ~~division~~.

8 (11) EFFECTIVE DATES.--This section does not apply to
9 any case in which the accident causing the subsequent injury
10 or death or the disablement or death from a subsequent
11 occupational disease occurred prior to July 1, 1955, or on or
12 after January 1, 1998. In no event shall the Special
13 Disability Trust Fund be liable for, or reimburse employers or
14 carriers for, any case in which the accident causing the
15 subsequent injury or death or the disablement or death from a
16 subsequent occupational disease occurred on or after January
17 1, 1998. The Special Disability Trust Fund shall continue to
18 reimburse employers or carriers for subsequent injuries
19 occurring prior to January 1, 1998, and the department
20 ~~division~~ shall continue to assess for and the department
21 ~~division~~ or administrator shall fund reimbursements as
22 provided in subsection (9) for this purpose.

23 Section 47. Section 440.491, Florida Statutes, is
24 amended to read:

25 440.491 Reemployment of injured workers;
26 rehabilitation.--

27 (1) DEFINITIONS.--As used in this section, the term:

28 (a) "Carrier" means group self-insurance funds or
29 individual self-insureds authorized under this chapter and
30 commercial funds or insurance entities authorized to write
31 workers' compensation insurance under chapter 624.

Amendment No. ____ (for drafter's use only)

1 (b) "Medical care coordination" includes, but is not
2 limited to, coordinating physical rehabilitation services such
3 as medical, psychiatric, or therapeutic treatment for the
4 injured employee, providing health training to the employee
5 and family, and monitoring the employee's recovery. The
6 purposes of medical care coordination are to minimize the
7 disability and recovery period without jeopardizing medical
8 stability, to assure that proper medical treatment and other
9 restorative services are timely provided in a logical
10 sequence, and to contain medical costs.

11 (c) "Qualified rehabilitation provider" means a
12 rehabilitation nurse, rehabilitation counselor, vocational
13 evaluator, rehabilitation facility, or agency approved by the
14 Department of Education ~~division~~ as qualified to provide
15 reemployment assessments, medical care coordination,
16 reemployment services, or vocational evaluations under this
17 chapter.

18 (d) "Reemployment assessment" means a written
19 assessment performed by a qualified rehabilitation provider
20 which provides a comprehensive review of the medical
21 diagnosis, treatment, and prognosis; includes conferences with
22 the employer, physician, and claimant; and recommends a
23 cost-effective physical and vocational rehabilitation plan to
24 assist the employee in returning to suitable gainful
25 employment.

26 (e) "Reemployment services" means services that
27 include, but are not limited to, vocational counseling,
28 job-seeking skills training, ergonomic job analysis,
29 transferable skills analysis, selective job placement, labor
30 market surveys, and arranging other services such as education
31 or training, vocational and on-the-job, which may be needed by

Amendment No. ____ (for drafter's use only)

1 the employee to secure suitable gainful employment.

2 (f) "Reemployment status review" means a review to
3 determine whether an injured employee is at risk of not
4 returning to work.

5 (g) "Suitable gainful employment" means employment or
6 self-employment that is reasonably attainable in light of the
7 employee's age, education, work history, transferable skills,
8 previous occupation, and injury, and which offers an
9 opportunity to restore the individual as soon as practicable
10 and as nearly as possible to his or her average weekly
11 earnings at the time of injury.

12 (h) "Vocational evaluation" means a review of the
13 employee's physical and intellectual capabilities, his or her
14 aptitudes and achievements, and his or her work-related
15 behaviors to identify the most cost-effective means toward the
16 employee's return to suitable gainful employment.

17 (2) INTENT.--It is the intent of this section to
18 implement a systematic review by carriers of the factors that
19 are predictive of longer-term disability and to encourage the
20 provision of medical care coordination and reemployment
21 services that are necessary to assist the employee in
22 returning to work as soon as is medically feasible.

23 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.--

24 (a) When an employee who has suffered an injury
25 compensable under this chapter is unemployed 60 days after the
26 date of injury and is receiving benefits for temporary total
27 disability, temporary partial disability, or wage loss, and
28 has not yet been provided medical care coordination and
29 reemployment services voluntarily by the carrier, the carrier
30 must determine whether the employee is likely to return to
31 work and must report its determination to the Department of

Amendment No. ____ (for drafter's use only)

1 Education division. The carrier must thereafter determine the
2 reemployment status of the employee at 90-day intervals as
3 long as the employee remains unemployed, is not receiving
4 medical care coordination or reemployment services, and is
5 receiving the benefits specified in this subsection.

6 (b) If medical care coordination or reemployment
7 services are voluntarily undertaken within 60 days of the date
8 of injury, such services may continue to be provided as agreed
9 by the employee and the carrier.

10 (4) REEMPLOYMENT ASSESSMENTS.--

11 (a) The carrier may require the employee to receive a
12 reemployment assessment as it considers appropriate. However,
13 the carrier is encouraged to obtain a reemployment assessment
14 if:

15 1. The carrier determines that the employee is at risk
16 of remaining unemployed.

17 2. The case involves catastrophic or serious injury.

18 (b) The carrier shall authorize only a qualified
19 rehabilitation provider to provide the reemployment
20 assessment. The rehabilitation provider shall conduct its
21 assessment and issue a report to the carrier, the employee,
22 and the Department of Education ~~division~~ within 30 days after
23 the time such assessment is complete.

24 (c) If the rehabilitation provider recommends that the
25 employee receive medical care coordination or reemployment
26 services, the carrier shall advise the employee of the
27 recommendation and determine whether the employee wishes to
28 receive such services. The employee shall have 15 days after
29 the date of receipt of the recommendation in which to agree to
30 accept such services. If the employee elects to receive
31 services, the carrier may refer the employee to a

Amendment No. ____ (for drafter's use only)

1 rehabilitation provider for such coordination or services
2 within 15 days of receipt of the assessment report or notice
3 of the employee's election, whichever is later.

4 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
5 SERVICES.--

6 (a) Once the carrier has assigned a case to a
7 qualified rehabilitation provider for medical care
8 coordination or reemployment services, the provider shall
9 develop a reemployment plan and submit the plan to the carrier
10 and the employee for approval.

11 (b) If the rehabilitation provider concludes that
12 training and education are necessary to return the employee to
13 suitable gainful employment, or if the employee has not
14 returned to suitable gainful employment within 180 days after
15 referral for reemployment services or receives \$2,500 in
16 reemployment services, whichever comes first, the carrier must
17 discontinue reemployment services and refer the employee to
18 the Department of Education ~~division~~ for a vocational
19 evaluation. Notwithstanding any provision of chapter 289 or
20 chapter 627, the cost of a reemployment assessment and the
21 first \$2,500 in reemployment services to an injured employee
22 must not be treated as loss adjustment expense for workers'
23 compensation ratemaking purposes.

24 (c) A carrier may voluntarily provide medical care
25 coordination or reemployment services to the employee at
26 intervals more frequent than those required in this section.
27 For the purpose of monitoring reemployment, the carrier or the
28 rehabilitation provider shall report to the Department of
29 Education ~~division~~, in the manner prescribed by the Department
30 of Education ~~division~~, the date of reemployment and wages of
31 the employee. The carrier shall report its voluntary service

Amendment No. ____ (for drafter's use only)

1 activity to the Department of Education ~~division~~ as required
2 by rule. Voluntary services offered by the carrier for any of
3 the following injuries must be considered benefits for
4 purposes of ratemaking: traumatic brain injury; spinal cord
5 injury; amputation, including loss of an eye or eyes; burns of
6 5 percent or greater of the total body surface.

7 (d) If medical care coordination or reemployment
8 services have not been undertaken as prescribed in paragraph
9 (3)(b), a qualified rehabilitation service provider, facility,
10 or agency that performs a reemployment assessment shall not
11 provide medical care coordination or reemployment services for
12 the employees it assesses.

13 (6) TRAINING AND EDUCATION.--

14 (a) Upon referral of an injured employee by the
15 carrier, or upon the request of an injured employee, the
16 Department of Education ~~division~~ shall conduct a training and
17 education screening to determine whether it should refer the
18 employee for a vocational evaluation and, if appropriate,
19 approve training and education or other vocational services
20 for the employee. The Department of Education ~~division~~ may
21 not approve formal training and education programs unless it
22 determines, after consideration of the reemployment
23 assessment, pertinent reemployment status reviews or reports,
24 and such other relevant factors as it prescribes by rule, that
25 the reemployment plan is likely to result in return to
26 suitable gainful employment. The Department of Education
27 ~~division~~ is authorized to expend moneys from the Workers'
28 Compensation Administration Trust Fund, established by s.
29 440.50, to secure appropriate training and education or other
30 vocational services when necessary to satisfy the
31 recommendation of a vocational evaluator. The Department of

Amendment No. ____ (for drafter's use only)

1 Education division shall establish training and education
2 standards pertaining to employee eligibility, course curricula
3 and duration, and associated costs.

4 (b) When it appears that an employee who has attained
5 maximum medical improvement requires training and education to
6 obtain suitable gainful employment, the employer shall pay the
7 employee additional temporary total compensation while the
8 employee receives such training and education for a period not
9 to exceed 26 weeks, which period may be extended for an
10 additional 26 weeks or less, if such extended period is
11 determined to be necessary and proper by a judge of
12 compensation claims. However, a carrier or employer is not
13 precluded from voluntarily paying additional temporary total
14 disability compensation beyond that period. If an employee
15 requires temporary residence at or near a facility or an
16 institution providing training and education which is located
17 more than 50 miles away from the employee's customary
18 residence, the reasonable cost of board, lodging, or travel
19 must be borne by the Department of Insurance division from the
20 Workers' Compensation Administration Trust Fund established by
21 s. 440.50. An employee who refuses to accept training and
22 education that is recommended by the vocational evaluator and
23 considered necessary by the Department of Education division
24 is subject to a 50-percent reduction in weekly compensation
25 benefits, including wage-loss benefits, as determined under s.
26 440.15(3)(b).

27 (7) PROVIDER QUALIFICATIONS.--

28 (a) The Department of Education division shall
29 investigate and maintain a directory of each qualified public
30 and private rehabilitation provider, facility, and agency, and
31 shall establish by rule the minimum qualifications,

Amendment No. ____ (for drafter's use only)

1 credentials, and requirements that each rehabilitation service
2 provider, facility, and agency must satisfy to be eligible for
3 listing in the directory. These minimum qualifications and
4 credentials must be based on those generally accepted within
5 the service specialty for which the provider, facility, or
6 agency is approved.

7 (b) The Department of Education ~~division~~ shall impose
8 a biennial application fee of \$25 for each listing in the
9 directory, and all such fees must be deposited in the Workers'
10 Compensation Administration Trust Fund.

11 (c) The Department of Education ~~division~~ shall monitor
12 and evaluate each rehabilitation service provider, facility,
13 and agency qualified under this subsection to ensure its
14 compliance with the minimum qualifications and credentials
15 established by the Department of Education ~~division~~. The
16 failure of a qualified rehabilitation service provider,
17 facility, or agency to provide the Department of Education
18 ~~division~~ with information requested or access necessary for
19 the Department of Education ~~division~~ to satisfy its
20 responsibilities under this subsection is grounds for
21 disqualifying the provider, facility, or agency from further
22 referrals.

23 (d) A qualified rehabilitation service provider,
24 facility, or agency may not be authorized by an employer, a
25 carrier, or the Department of Education ~~division~~ to provide
26 any services, including expert testimony, under this section
27 in this state unless the provider, facility, or agency is
28 listed or has been approved for listing in the directory. This
29 restriction does not apply to services provided outside this
30 state under this section.

31 (e) The Department of Education ~~division~~, after

Amendment No. ____ (for drafter's use only)

1 consultation with representatives of employees, employers,
2 carriers, rehabilitation providers, and qualified training and
3 education providers, shall adopt rules governing professional
4 practices and standards.

5 (8) CARRIER PRACTICES.--The department ~~division~~ shall
6 monitor the selection of providers and the provision of
7 services by carriers under this section for consistency with
8 legislative intent set forth in subsection (2).

9 (9) PERMANENT DISABILITY.--The judge of compensation
10 claims may not adjudicate an injured employee as permanently
11 and totally disabled until or unless the carrier is given the
12 opportunity to provide a reemployment assessment.

13 Section 48. Section 440.50, Florida Statutes, is
14 amended to read:

15 440.50 Workers' Compensation Administration Trust
16 Fund.--

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

28 (b) The department ~~division~~ is authorized to transfer
29 as a loan an amount not in excess of \$250,000 from such
30 special fund to the Special Disability Trust Fund established
31 by s. 440.49(9), which amount shall be repaid to said special

Amendment No. ____ (for drafter's use only)

1 fund in annual payments equal to not less than 10 percent of
2 moneys received for such Special Disability Trust Fund.

3 (2) The Treasurer is authorized to disburse moneys
4 from such fund only when approved by the department ~~division~~
5 and upon the order of the Comptroller.

6 (3) The Treasurer shall deposit any moneys paid into
7 such fund into such depository banks as the department
8 ~~division~~ may designate and is authorized to invest any portion
9 of the fund which, in the opinion of the department ~~division~~,
10 is not needed for current requirements, in the same manner and
11 subject to all the provisions of the law with respect to the
12 deposit of state funds by such Treasurer. All interest earned
13 by such portion of the fund as may be invested by the
14 Treasurer shall be collected by him or her and placed to the
15 credit of such fund.

16 (4) All civil penalties provided in this chapter, if
17 not voluntarily paid, may be collected by civil suit brought
18 by the department ~~division~~ and shall be paid into such fund.

19 Section 49. Section 440.51, Florida Statutes, is
20 amended to read:

21 440.51 Expenses of administration.--

22 (1) The department ~~division~~ shall estimate annually in
23 advance the amounts necessary for the administration of this
24 chapter, in the following manner.

25 (a) The department ~~division~~ shall, by July 1 of each
26 year, notify carriers and self-insurers of the assessment
27 rate, which shall be based on the anticipated expenses of the
28 administration of this chapter for the next calendar year.
29 Such assessment rate shall take effect January 1 of the next
30 calendar year and shall be included in workers' compensation
31 rate filings approved by the Department of Insurance which

Amendment No. ____ (for drafter's use only)

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

24 (2) The department ~~division~~ shall provide by
25 regulation for the collection of the amounts assessed against
26 each carrier. Such amounts shall be paid within 30 days from
27 the date that notice is served upon such carrier. If such
28 amounts are not paid within such period, there may be assessed
29 for each 30 days the amount so assessed remains unpaid, a
30 civil penalty equal to 10 percent of the amount so unpaid,
31 which shall be collected at the same time and a part of the

Amendment No. ____ (for drafter's use only)

1 amount assessed. For those carriers who excluded ceded
2 reinsurance premiums from their assessments prior to January
3 1, 2000, the department division shall not recover any past
4 underpayments of assessments related to ceded reinsurance
5 premiums prior to January 1, 2001, against such carriers.

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

15 (4) All amounts collected under the provisions of this
16 section shall be paid into the fund established in s. 440.50.

17 (5) Any amount so assessed against and paid by an
18 insurance carrier, self-insurer authorized pursuant to s.
19 624.4621, or commercial self-insurance fund authorized under
20 ss. 624.460-624.488 shall be allowed as a deduction against
21 the amount of any other tax levied by the state upon the
22 premiums, assessments, or deposits for workers' compensation
23 insurance on contracts or policies of said insurance carrier,
24 self-insurer, or commercial self-insurance fund. Any insurance
25 carrier claiming such a deduction against the amount of any
26 such tax shall not be required to pay any additional
27 retaliatory tax levied pursuant to s. 624.5091 as a result of
28 claiming such deduction. Because deductions under this
29 subsection are available to insurance carriers, s. 624.5091
30 does not limit such deductions in any manner.

31 (6)(a) The department division may require from each

Amendment No. ____ (for drafter's use only)

1 carrier, at such time and in accordance with such regulations
2 as the department ~~division~~ may prescribe, reports in respect
3 to all gross earned premiums and of all payments of
4 compensation made by such carrier during each prior period,
5 and may determine the amounts paid by each carrier and the
6 amounts paid by all carriers during such period.

7 (b) The Department of Insurance may require from each
8 self-insurer, at such time and in accordance with such
9 regulations as the Department of Insurance prescribes, reports
10 in respect to wages paid, the amount of premiums such
11 self-insurer would have to pay if insured, and all payments of
12 compensation made by such self-insurer during each prior
13 period, and may determine the amounts paid by each
14 self-insurer and the amounts paid by all self-insurers during
15 such period. For the purposes of this section, the payroll
16 records of each self-insurer shall be open to annual
17 inspection and audit by the Department of Insurance or its
18 authorized representative, during regular business hours; and
19 if any audit of such records of a self-insurer discloses a
20 deficiency in the amounts reported to the Department of
21 Insurance or in the amounts paid to the Department of
22 Insurance by a self-insurer pursuant to this section, the
23 Department of Insurance may assess the cost of such audit
24 against the self-insurer.

25 (7) The department ~~division~~ shall keep accumulated
26 cost records of all injuries occurring within the state coming
27 within the purview of this chapter on a policy and
28 calendar-year basis. For the purpose of this chapter, a
29 "calendar year" is defined as the year in which the injury is
30 reported to the department ~~division~~; "policy year" is defined
31 as that calendar year in which the policy becomes effective,

Amendment No. ____ (for drafter's use only)

1 and the losses under such policy shall be chargeable against
2 the policy year so defined.

3 (8) The department ~~division~~ shall assign an account
4 number to each employer under this chapter and an account
5 number to each insurance carrier authorized to write workers'
6 compensation insurance in the state; and it shall be the duty
7 of the department ~~division~~ under the account number so
8 assigned to keep the cost experience of each carrier and the
9 cost experience of each employer under the account number so
10 assigned by calendar and policy year, as above defined.

11 (9) In addition to the above, it shall be the duty of
12 the department ~~division~~ to keep the accident experience, as
13 classified by the department ~~division~~, by industry as follows:

- 14 (a) Cause of the injury;
15 (b) Nature of the injury; and
16 (c) Type of disability.

17 (10) In every case where the duration of disability
18 exceeds 30 days, the carrier shall establish a sufficient
19 reserve to pay all benefits to which the injured employee, or
20 in case of death, his or her dependents, may be entitled to
21 under the law. In establishing the reserve, consideration
22 shall be given to the nature of the injury, the probable
23 period of disability, and the estimated cost of medical
24 benefits.

25 (11) The department ~~division~~ shall furnish to any
26 employer or carrier, upon request, its individual experience.
27 ~~The division shall furnish to the Department of Insurance,~~
28 ~~upon request, the Florida experience as developed under~~
29 ~~accident year or calendar year.~~

30 (12) In addition to any other penalties provided by
31 this law, the failure to submit any report or other

Amendment No. ____ (for drafter's use only)

1 information required by this law shall be just cause to
2 suspend the right of a self-insurer to operate as such, or,
3 ~~upon certification by the division to the Department of~~
4 ~~Insurance that a carrier has failed or refused to furnish such~~
5 ~~reports,~~ shall be just cause for the Department of Insurance
6 to suspend or revoke the license of such carrier.

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

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

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

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

23 Section 50. Section 440.52, Florida Statutes, is
24 amended to read:

25 440.52 Registration of insurance carriers; notice of
26 cancellation or expiration of policy; suspension or revocation
27 of authority.--

28 ~~(1) Each insurance carrier who desires to write such~~
29 ~~compensation insurance in compliance with this chapter shall~~
30 ~~be required, before writing such insurance, to register with~~
31 ~~the division and pay a registration fee of \$100. This shall be~~

Amendment No. ____ (for drafter's use only)

1 ~~deposited by the division in the fund created by s. 440.50.~~

2 (1)~~(2)~~ A carrier or self-insurance fund that receives
3 notice pursuant to s. 440.05 shall notify the contractor of
4 the cancellation or expiration of the insurance.

5 (2)~~(3)~~ If the department ~~division~~ finds, after due
6 notice and a hearing at which the insurance carrier is
7 entitled to be heard in person or by counsel and present
8 evidence, that the insurance carrier has repeatedly failed to
9 comply with its obligations under this chapter, the department
10 ~~division~~ may ~~request the Department of Insurance to~~ suspend or
11 revoke the authorization of such insurance carrier to write
12 workers' compensation insurance ~~under this chapter~~. Such
13 suspension or revocation shall not affect the liability of any
14 such insurance carrier under policies in force prior to the
15 suspension or revocation.

16 (3)~~(4)~~ In addition to the penalties prescribed in
17 subsection (3), violation of s. 440.381 by an insurance
18 carrier shall result in the imposition of a fine not to exceed
19 \$1,000 per audit, if the insurance carrier fails to act on
20 said audits by correcting errors in employee classification or
21 accepted applications for coverage where it knew employee
22 classifications were incorrect. Such fines shall be levied by
23 the Department of Insurance and deposited into the Insurance
24 Commissioner's Regulatory Trust Fund.

25 Section 51. Section 440.525, Florida Statutes, is
26 amended to read:

27 440.525 Examination of carriers.--~~Beginning July 1,~~
28 ~~1994, The Division of Workers' Compensation of the department~~
29 ~~of Labor and Employment Security~~ may examine each carrier as
30 often as is warranted to ensure that carriers are fulfilling
31 their obligations under the law, ~~and shall examine each~~

Amendment No. ____ (for drafter's use only)

1 ~~carrier not less frequently than once every 3 years. The~~
2 ~~examination must cover the preceding 3 fiscal years of the~~
3 ~~carrier's operations and must commence within 12 months after~~
4 ~~the end of the most recent fiscal year being covered by the~~
5 ~~examination.~~The examination may cover any period of the
6 carrier's operations since the last previous examination.

7 Section 52. Section 440.572, Florida Statutes, is
8 amended to read:

9 440.572 Authorization for individual self-insurer to
10 provide coverage.--An individual self-insurer having a net
11 worth of not less than \$250 million as authorized by s.
12 440.38(1)(f) may assume by contract the liabilities under this
13 chapter of contractors and subcontractors, or each of them,
14 employed by or on behalf of such individual self-insurer when
15 performing work on or adjacent to property owned or used by
16 the individual self-insurer by the department ~~division~~. The
17 net worth of the individual self-insurer shall include the
18 assets of the self-insurer's parent company and its
19 subsidiaries, sister companies, affiliated companies, and
20 other related entities, located within the geographic
21 boundaries of the state.

22 Section 53. Section 440.59, Florida Statutes, is
23 amended to read:

24 440.59 Reporting requirements.--
25 (1) ~~The department of Labor and Employment Security~~
26 shall annually prepare a report of the administration of this
27 chapter for the preceding calendar year, including a detailed
28 statement of the receipts of and expenditures from the fund
29 established in s. 440.50 and a statement of the causes of the
30 accidents leading to the injuries for which the awards were
31 made, together with such recommendations as the department

Amendment No. ____ (for drafter's use only)

1 considers advisable. On or before September 15 of each year,
2 the department shall submit a copy of the report to the
3 Governor, the President of the Senate, the Speaker of the
4 House of Representatives, the Democratic and Republican
5 Leaders of the Senate and the House of Representatives, and
6 the chairs of the legislative committees having jurisdiction
7 over workers' compensation.

8 (2) ~~The Division of Workers' Compensation of the~~
9 ~~department of Labor and Employment Security shall~~ periodically
10 ~~complete on a quarterly basis an analysis of the~~ previous
11 ~~quarter's~~ injuries which resulted in workers' compensation
12 claims as deemed necessary by the department. The analysis
13 shall include the information, data, and statistics deemed
14 relevant by the department ~~be broken down by risk~~
15 ~~classification, shall show for each such risk classification~~
16 ~~the frequency and severity for the various types of injury,~~
17 ~~and shall include an analysis of the causes of such injuries.~~
18 The department division shall make available ~~distribute~~ to
19 each employer and self-insurer in the state covered by the
20 Workers' Compensation Law the data relevant to its workforce.
21 The report shall also be distributed to the insurers
22 authorized to write workers' compensation insurance in the
23 state.

24 (3) The department division shall annually prepare a
25 closed claim report for all claims for which the employee lost
26 more than 7 days from work and shall submit a copy of the
27 report to the Governor, the President of the Senate, the
28 Speaker of the House of Representatives, the Democratic and
29 Republican Leaders of the Senate and the House of
30 Representatives, and the chairs of the legislative committees
31 having jurisdiction over workers' compensation on or before

Amendment No. ____ (for drafter's use only)

1 September 15 of each year. The closed claim report shall
2 include information, data, and statistics deemed relevant by
3 the department, but not be limited to, ~~an analysis of all~~
4 ~~claims closed during the preceding year as to the date of~~
5 ~~accident, age of the injured employee, occupation of the~~
6 ~~injured employee, type of injury, body part affected, type and~~
7 ~~duration of indemnity benefits paid, permanent impairment~~
8 ~~rating, medical benefits identified by type of health care~~
9 ~~provider, and type and cost of any rehabilitation benefits~~
10 ~~provided.~~

11 (4) The department ~~division~~ shall prepare an annual
12 report for all claims for which the employee lost more than 7
13 days from work and shall submit a copy of the report to the
14 Governor, the President of the Senate, the Speaker of the
15 House of Representatives, the Democratic and Republican
16 Leaders of the Senate and the House of Representatives, and
17 the chairs of the legislative committees having jurisdiction
18 over workers' compensation, on or before September 15 of each
19 year. The annual report shall include information, data, and
20 statistics deemed relevant by the department ~~a status report~~
21 ~~on all cases involving work-related injuries in the previous~~
22 ~~10 years. The annual report shall include, but not be limited~~
23 ~~to, the number of open and closed cases, the number of cases~~
24 ~~receiving various types of benefits, the cash and medical~~
25 ~~benefits paid between the date of injury and the evaluation~~
26 ~~date, the number of litigated cases, and the amount of~~
27 ~~attorney's fees paid in each case.~~

28 (5) The Chief Judge must prepare an annual report
29 summarizing the disposition of mediation conferences and must
30 submit the report to the Governor, the President of the
31 Senate, the Speaker of the House of Representatives, the

Amendment No. ____ (for drafter's use only)

1 Democratic and Republican Leaders of the Senate and the House
2 of Representatives, and the chairs of the legislative
3 committees having jurisdiction over workers' compensation, on
4 or before September 15 of each year.

5 Section 54. Section 440.591, Florida Statutes, is
6 amended to read:

7 440.591 Administrative procedure; rulemaking
8 authority.--The department, the agency, and the Department of
9 Education have ~~division has~~ authority to adopt rules pursuant
10 to ss. 120.536(1) and 120.54 to implement the provisions of
11 this chapter conferring duties upon it.

12 Section 55. Section 440.593, Florida Statutes, is
13 amended to read:

14 440.593 Electronic reporting.--The department ~~division~~
15 may establish by rule an electronic reporting system whereby
16 an employer or carrier is required to submit information
17 electronically rather than by filing otherwise required forms
18 or reports. The department ~~division~~ may by rule establish
19 different deadlines for reporting information to the
20 department ~~division~~ via the electronic reporting system than
21 are otherwise required.

22 Section 56. Subsections (1), (4), and (5) of section
23 443.012, Florida Statutes, are amended to read:

24 443.012 Unemployment Appeals Commission.--

25 (1) There is created within the Agency for Workforce
26 Innovation ~~Department of Labor and Employment Security~~ an
27 Unemployment Appeals Commission, hereinafter referred to as
28 the "commission." The commission shall consist of a chair and
29 two other members to be appointed by the Governor, subject to
30 confirmation by the Senate. Not more than one appointee must
31 be a person who, on account of previous vocation, employment,

Amendment No. ____ (for drafter's use only)

1 or affiliation, is classified as a representative of
2 employers; and not more than one such appointee must be a
3 person who, on account of previous vocation, employment, or
4 affiliation, is classified as a representative of employees.

5 (a) The chair shall devote his or her entire time to
6 commission duties and shall be responsible for the
7 administrative functions of the commission.

8 (b) The chair shall have the authority to appoint a
9 general counsel and such other personnel as may be necessary
10 to carry out the duties and responsibilities of the
11 commission.

12 (c) The chair shall have the qualifications required
13 by law for a judge of the circuit court and shall not engage
14 in any other business vocation or employment. Notwithstanding
15 any other provisions of existing law, the chair shall be paid
16 a salary equal to that paid under state law to a judge of the
17 circuit court.

18 (d) The remaining members shall be paid a stipend of
19 \$100 for each day they are engaged in the work of the
20 commission. The chair and other members shall also be
21 reimbursed for travel expenses, as provided in s. 112.061.

22 (e) The total salary and travel expenses of each
23 member of the commission shall be paid from the Employment
24 Security Administration Trust Fund.

25 (4) The property, personnel, and appropriations
26 relating to the specified authority, powers, duties, and
27 responsibilities of the commission shall be provided to the
28 commission by the Agency for Workforce Innovation ~~Department~~
29 ~~of Labor and Employment Security~~.

30 (5) The commission shall not be subject to control,
31 supervision, or direction by the Agency for Workforce

Amendment No. ____ (for drafter's use only)

1 ~~Innovation Department of Labor and Employment Security~~ in the
2 performance of its powers and duties under this chapter.

3 Section 57. Subsection (12) of section 443.036,
4 Florida Statutes, is amended to read:

5 443.036 Definitions.--As used in this chapter, unless
6 the context clearly requires otherwise:

7 (12) COMMISSION.--"Commission" means the Unemployment
8 Appeals Commission ~~of the Department of Labor and Employment~~
9 ~~Security~~.

10 Section 58. Subsection (3) of section 447.02, Florida
11 Statutes, is amended to read:

12 447.02 Definitions.--The following terms, when used in
13 this chapter, shall have the meanings ascribed to them in this
14 section:

15 (3) The term "department" means the Department of
16 Business and Professional Regulation ~~Labor and Employment~~
17 ~~Security~~.

18 Section 59. Subsections (1), (3), and (4) of section
19 447.205, Florida Statutes, are amended to read:

20 447.205 Public Employees Relations Commission.--

21 (1) There is hereby created within the Department of
22 Management Services ~~Labor and Employment Security~~ the Public
23 Employees Relations Commission, hereinafter referred to as the
24 "commission." The commission shall be composed of a chair and
25 two full-time members to be appointed by the Governor, subject
26 to confirmation by the Senate, from persons representative of
27 the public and known for their objective and independent
28 judgment, who shall not be employed by, or hold any commission
29 with, any governmental unit in the state or any employee
30 organization, as defined in this part, while in such office.

31 In no event shall more than one appointee be a person who, on

Amendment No. ____ (for drafter's use only)

1 account of previous vocation, employment, or affiliation, is,
2 or has been, classified as a representative of employers; and
3 in no event shall more than one such appointee be a person
4 who, on account of previous vocation, employment, or
5 affiliation, is, or has been, classified as a representative
6 of employees or employee organizations. The commissioners
7 shall devote full time to commission duties and shall not
8 engage in any other business, vocation, or employment while in
9 such office. ~~Beginning January 1, 1980, the chair shall be~~
10 ~~appointed for a term of 4 years, one commissioner for a term~~
11 ~~of 1 year, and one commissioner for a term of 2 years.~~
12 ~~Thereafter,~~Every term of office shall be for 4 years; and
13 each term of the office of chair shall commence on January 1
14 of the second year following each regularly scheduled general
15 election at which a Governor is elected to a full term of
16 office. In the event of a vacancy prior to the expiration of
17 a term of office, an appointment shall be made for the
18 unexpired term of that office. The chair shall be responsible
19 for the administrative functions of the commission and shall
20 have the authority to employ such personnel as may be
21 necessary to carry out the provisions of this part. Once
22 appointed to the office of chair, the chair shall serve as
23 chair for the duration of the term of office of chair.
24 Nothing contained herein prohibits a chair or commissioner
25 from serving multiple terms.

26 (3) The commission, in the performance of its powers
27 and duties under this part, shall not be subject to control,
28 supervision, or direction by the Department of Management
29 Services ~~Labor and Employment Security~~.

30 (4) The property, personnel, and appropriations
31 related to the commission's specified authority, powers,

Amendment No. ____ (for drafter's use only)

1 duties, and responsibilities shall be provided to the
2 commission by the Department of Management Services ~~labor and~~
3 ~~Employment Security~~.

4 Section 60. Subsection (4) of section 447.305, Florida
5 Statutes, is amended to read:

6 447.305 Registration of employee organization.--

7 (4) Notification of registrations and renewals of
8 registration shall be furnished at regular intervals by the
9 commission to the Department of Business and Professional
10 Regulation ~~Labor and Employment Security~~.

11 Section 61. Subsection (4) of section 450.012, Florida
12 Statutes, is amended to read:

13 450.012 Definitions.--For the purpose of this chapter,
14 the word, phrase, or term:

15 (4) "Department" means the Department of Business and
16 Professional Regulation ~~Labor and Employment Security~~.

17 Section 62. Subsection (2) of section 450.28, Florida
18 Statutes, is amended to read:

19 450.28 Definitions.--

20 (2) "Department" means the Department of Business and
21 Professional Regulation ~~Labor and Employment Security~~.

22 Section 63. Subsection (1) of section 450.191, Florida
23 Statutes, is amended to read:

24 450.191 Executive Office of the Governor; powers and
25 duties.--

26 (1) The Executive Office of the Governor is authorized
27 and directed to:

28 (a) Advise and consult with employers of migrant
29 workers as to the ways and means of improving living
30 conditions of seasonal workers;

31 (b) Cooperate with the Department of Health in

Amendment No. ____ (for drafter's use only)

1 establishing minimum standards of preventive and curative
2 health and of housing and sanitation in migrant labor camps
3 and in making surveys to determine the adequacy of preventive
4 and curative health services available to occupants of migrant
5 labor camps;

6 (c) Provide coordination for the enforcement of ss.
7 381.008-381.0088;

8 (d) Cooperate with the other departments of government
9 in coordinating all applicable labor laws, including, but not
10 limited to, those relating to private employment agencies,
11 child labor, wage payments, wage claims, and crew leaders;

12 (e) Cooperate with the Department of Education to
13 provide educational facilities for the children of migrant
14 laborers;

15 (f) Cooperate with the Department of Highway Safety
16 and Motor Vehicles to establish minimum standards for the
17 transporting of migrant laborers;

18 (g) Cooperate with the Department of Agriculture and
19 Consumer Services to conduct an education program for
20 employers of migrant laborers pertaining to the standards,
21 methods, and objectives of the office;

22 (h) Cooperate with the Department of Children and
23 Family Services in coordinating all public assistance programs
24 as they may apply to migrant laborers;

25 (i) Coordinate all federal, state, and local programs
26 pertaining to migrant laborers; and

27 (j) Cooperate with the farm labor office of the
28 Department of Business and Professional Regulation ~~Labor and~~
29 ~~Employment Security~~ in the recruitment and referral of migrant
30 laborers and other persons for the planting, cultivation, and
31 harvesting of agricultural crops in Florida.

Amendment No. ____ (for drafter's use only)

1 Section 64. Subsection (3) of section 468.529, Florida
2 Statutes, is amended to read:

3 468.529 Licensee's insurance; employment tax; benefit
4 plans.--

5 (3) A licensed employee leasing company shall within
6 30 days of initiation or termination notify its workers'
7 compensation insurance carrier, the Department of Insurance
8 ~~Division of Workers' Compensation~~, and the Division of
9 Unemployment Compensation of the Department of Revenue Labor
10 ~~and Employment Security~~ of both the initiation or the
11 termination of the company's relationship with any client
12 company.

13 Section 65. Subsections (1) and (5) of section
14 624.3161, Florida Statutes, are amended to read:

15 624.3161 Market conduct examinations.--

16 (1) As often as it deems necessary, the department
17 shall examine each licensed rating organization, each advisory
18 organization, each group, association carrier as defined in s.
19 440.02,, or other organization of insurers which engages in
20 joint underwriting or joint reinsurance, and each authorized
21 insurer transacting in this state any class of insurance to
22 which the provisions of chapter 627 are applicable. The
23 examination shall be for the purpose of ascertaining
24 compliance by the person examined with the applicable
25 provisions of chapters 440, 624, 626, 627, and 635.

26 (5) Such examinations shall also be subject to the
27 applicable provisions of ss. 624.318, 624.319, 624.321, and
28 624.322 and chapter 440.

29 Section 66. Paragraph (m) of subsection (1) of section
30 626.88, Florida Statutes, is amended to read:

31 626.88 Definitions of "administrator" and "insurer".--

Amendment No. ____ (for drafter's use only)

1 (1) For the purposes of this part, an "administrator"
2 is any person who directly or indirectly solicits or effects
3 coverage of, collects charges or premiums from, or adjusts or
4 settles claims on residents of this state in connection with
5 authorized commercial self-insurance funds or with insured or
6 self-insured programs which provide life or health insurance
7 coverage or coverage of any other expenses described in s.
8 624.33(1), other than any of the following persons:

9 (m) A person approved by the Department of Insurance
10 ~~Division of Workers' Compensation of the Department of Labor~~
11 ~~and Employment Security~~ who administers only self-insured
12 workers' compensation plans.

13 Section 67. Subsection (9) of section 626.989, Florida
14 Statutes, is amended to read:

15 626.989 Investigation by department or Division of
16 Insurance Fraud; compliance; immunity; confidential
17 information; reports to division; division investigator's
18 power of arrest.--

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

Amendment No. ____ (for drafter's use only)

1 compensation fraud.

2 Section 68. Section 627.0915, Florida Statutes, is
3 amended to read:

4 627.0915 Rate filings; workers' compensation,
5 drug-free workplace, and safe employers.--The Department of
6 Insurance shall approve rating plans for workers' compensation
7 insurance that give specific identifiable consideration in the
8 setting of rates to employers that either implement a
9 drug-free workplace program pursuant to rules adopted by the
10 department ~~Division of Workers' Compensation of the Department~~
11 ~~of Labor and Employment Security or implement a safety program~~
12 ~~approved by the Division of Safety pursuant to rules adopted~~
13 ~~by the Division of Safety of the Department of Labor and~~
14 ~~Employment Security or implement both a drug-free workplace~~
15 ~~program and a safety program. The Division of Safety may by~~
16 ~~rule require that the client of a help supply services company~~
17 ~~comply with the essential requirements of a workplace safety~~
18 ~~program as a condition for receiving a premium credit.~~The
19 plans must ~~take effect January 1, 1994,~~ must be actuarially
20 sound, and must state the savings anticipated to result from
21 such drug-testing program ~~and safety programs.~~

22 Section 69. Subsection (5) of section 627.914, Florida
23 Statutes, is amended to read:

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

26 (5) Self-insurers authorized to transact workers'
27 compensation insurance as provided in s. 440.02 shall report
28 only Florida data as prescribed in paragraphs (a)-(e) of
29 subsection (4) to the department ~~Division of Workers'~~
30 ~~Compensation of the Department of Labor and Employment~~
31 ~~Security.~~

Amendment No. ____ (for drafter's use only)

1 (a) The department ~~Division of Workers' Compensation~~
2 shall publish the dates and forms necessary to enable
3 self-insurers to comply with this section.

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

7 (b)(c) A statistical or rating organization may be
8 used by self-insurers for the purposes of reporting the data
9 required by this section and calculating experience ratings.

10 Section 70. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 invalidity does not affect other provisions or applications of
13 the act which can be given effect without the invalid
14 provision or application, and to this end the provisions of
15 this act are severable.

16 Section 71. To the extent that any conflict exists
17 between this act and the provisions of SB 1926, or similar
18 legislation, which transfers the Office of Judges of
19 Compensation Claims to the Division of Administration
20 Hearings, the provisions of SB 1926 or the similar legislation
21 shall control.

22 Section 72. Unless otherwise expressly provided for in
23 this act, this act shall take effect October 1, 2001.

24
25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, line 1, through 5, line 29,
29 remove the entire title of the bill:

30
31 and insert in lieu thereof:

Amendment No. ____ (for drafter's use only)

1 A bill to be entitled
2 An act relating to The Department of Labor and
3 Employment Security; transferring the Division
4 of Workers' Compensation from the Department of
5 Labor and Employment Security to the Department
6 of Insurance; providing exceptions;
7 transferring various functions, powers, duties,
8 personnel, and assets relating to workers'
9 compensation to the Department of Education,
10 the Agency for Health Care Administration, and
11 the Department of Insurance; amending s. 20.13,
12 F.S.; providing for certain employees of the
13 Division to be given hiring priority by the
14 Department of Insurance; providing pay and
15 employment guidelines for such employees;
16 creating the Division of Workers' Compensation
17 in the Department of Insurance; repealing s.
18 20.171, F.S., which creates the Department of
19 Labor and Employment Security; amending s.
20 440.015, F.S.; designating state agencies to
21 administer the workers' compensation law;
22 amending s. 440.02, F.S.; providing
23 definitions; amending ss. 110.025, 440.05,
24 440.09, 440.10, 440.021, 440.102, 440.103,
25 440.105, 440.106, 440.107, 440.108, 440.125,
26 440.13, 440.134, 440.14, 440.15, 440.17,
27 440.185, 440.191, 440.192, 440.1925, 440.20,
28 440.207, 440.211, 440.24, 440.25, 440.271,
29 440.345, 440.35, 440.38, 440.381, 440.385,
30 440.386, 440.40, 440.41, 440.42, 440.44,
31 440.49, 440.491, 440.50, 440.51, 440.52,

Amendment No. ____ (for drafter's use only)

1 440.525, 440.572, 440.59, 440.591, 440.593,
2 443.012, 443.036, 447.02, 447.205, 447.305,
3 450.12, 450.197, 450.28, 468.529, 626.88,
4 626.989, 627.0915, 627.914, F.S., to conform to
5 the transfers made by this act; providing for
6 the continuation of contracts and agreements;
7 amending s. 440.4416, F.S.; revising the
8 composition of the Workers' Compensation
9 Oversight Board; providing for substitution of
10 a successor agency as a party in judicial and
11 administrative proceedings; providing
12 severability; amending s. 624.3161, F.S.;
13 providing for market conduct examinations with
14 respect to workers' compensation; providing
15 legislative intent; providing for a type two
16 transfer of the administration of child labor
17 laws to the Department of Business and
18 Professional Regulation; providing for a type
19 two transfer of certain functions of the Office
20 of the Secretary and the Office of
21 Administrative Services of the Department of
22 Labor and Employment Security relating to labor
23 organizations and migrant and farm labor
24 registration to the Department of Business and
25 Professional Regulation; providing for a type
26 two transfer of other workplace regulation
27 functions to the Department of Business and
28 Professional Regulation; providing
29 appropriations; amending s. 447.02, F.S.;
30 conforming the definition of "department" to
31 the transfer of the regulation of labor

Amendment No. ____ (for drafter's use only)

1 organizations to the Department of Business and
2 Professional Regulation; amending s. 450.012,
3 F.S.; conforming the definition of "department"
4 to the transfer of the regulation of child
5 labor to the Department of Business and
6 Professional Regulation; amending s. 450.191,
7 F.S., relating to the duties of the Executive
8 Office of the Governor with respect to migrant
9 labor; conforming provisions to changes made by
10 the act; amending s. 450.28, F.S.; conforming
11 the definition of "department" to the transfer
12 of the regulation of farm labor to the
13 Department of Business and Professional
14 Regulation; providing effective dates.

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