

Bill No. HB 1655, 2nd Eng.

Amendment No. Barcode 435872

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Clary moved the following amendment:

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13 **Senate Amendment (with title amendment)**

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Delete everything after the enacting clause

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16 and insert:

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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

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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

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

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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) Effective July 1, 2001, 29 full-time equivalent
14 positions from the Division of Workers' Compensation of the
15 Department of Labor and Employment Security and the records,
16 property, and unexpended balances of appropriations,
17 allocations, and other funds related to oversight of medical
18 services in workers' compensation provider relations, dispute
19 and complaint resolution, program evaluation, and data
20 management are transferred by a type two transfer, as defined
21 in section 20.06(2), Florida Statutes, from the Department of
22 Labor and 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

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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

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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

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1 s. 20.06(2), Florida Statutes, from the Department of Labor
2 and Employment Security to the State Technology Office. Upon
3 completion of this transfer, the State Technology Office and
4 the Department of Insurance shall enter into discussions to
5 determine whether it would be technologically feasible and
6 cost effective to separate the Workers' Compensation
7 Integrated System from its current mainframe platform and
8 transfer ownership of this system to the Department of
9 Insurance. If the Department of Insurance ultimately
10 determines that it is technologically feasible and cost
11 effective to transfer ownership of the Workers' Compensation
12 Integrated System from the State Technology Office to the
13 Department of Insurance, the State Technology Office and the
14 Department of Insurance shall jointly develop and implement a
15 plan to transfer this system to the Department of Insurance.

16 (15)(a) Effective July 1, 2001, the records, property,
17 and unexpended balances of appropriations, allocations, and
18 other funds and resources of the Office of the Secretary and
19 the Office of Administrative Services of the Department of
20 Labor and Employment Security which support the activities and
21 functions transferred under subsection (12) to the Agency for
22 Workforce Innovation are transferred as provided in s.
23 20.06(2), Florida Statutes, to the Agency for Workforce
24 Innovation.

25 (b) Effective July 1, 2001, the records, property, and
26 unexpended balances of appropriations, allocations, and other
27 funds and resources of the Office of the Secretary and the
28 Office of Administrative Services of the Department of Labor
29 and Employment Security which support the activities and
30 functions transferred under subsection (13) to the Department
31 of Management Services are transferred as provided in s.

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1 20.06(2), Florida Statutes, to the Department of Management
2 Services.

3 (c) Effective July 1, 2001, the records, property, and
4 unexpended balances of appropriations, allocations, and other
5 funds and resources of the Office of the Secretary and the
6 Office of Administrative Services of the Department of Labor
7 and Employment Security which support the activities and
8 functions transferred under subsection (14) to the State
9 Technology Office are transferred as provided in s. 20.06(2),
10 Florida Statutes, to the State Technology Office.

11 (16) This act does not affect the validity of any
12 judicial or administrative proceeding involving the Department
13 of Labor and Employment Security, which is pending as of the
14 effective date of any transfer under this act. The successor
15 department, agency, or entity responsible for the program,
16 activity, or function relative to the proceeding shall be
17 substituted, as of the effective date of the applicable
18 transfer under this act, for the Department of Labor and
19 Employment Security as a party in interest in any such
20 proceedings.

21 (17) Effective July 1, 2001, eleven full-time
22 equivalent positions from the Division of Workers'
23 Compensation of the Department of Labor and Employment
24 Security, and the powers, duties, functions, rules, records,
25 personnel, property, and unexpended balances of
26 appropriations, allocations, and other funds related to the
27 administration of child labor laws under chapter 450, Florida
28 Statutes, are transferred by a type two transfer, as defined
29 in section 20.06(2), Florida Statutes, from the Department of
30 Labor and Employment Security to the Department of Business
31 and Professional Regulation.

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1 (18) Effective July 1, 2001, thirty full-time
2 equivalent positions from the Compliance and Enforcement
3 Program in the Office of the Secretary and Administrative
4 Services and one senior attorney and one administrative
5 secretary from the Office of General Counsel in the Office of
6 the Secretary and Administrative Services, and the powers,
7 duties, functions, rules, records, personnel, property, and
8 unexpended balances of appropriations, allocations, and other
9 funds of the Office of the Secretary and Administrative
10 Services of the Department of Labor and Employment Security
11 related to the regulation of labor organizations under chapter
12 447, Florida Statutes, and the administration of migrant labor
13 and farm labor laws under chapter 450, Florida Statutes, are
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 Department of Business and
17 Professional Regulation.

18 (19) Effective July 1, 2001, any other powers, duties,
19 functions, rules, records, property, and unexpended balances
20 of appropriations, allocations, and other funds of the
21 Department of Labor and Employment Security not otherwise
22 transferred by this act, relating to workplace regulation and
23 enforcement, including, but not limited to, those under
24 chapter 448, Florida Statutes, are transferred by a type two
25 transfer, as defined in section 20.06(2), Florida Statutes,
26 from the Department of Labor and Employment Security to the
27 Department of Business and Professional Regulation.

28 (20) Effective July 1, 2001, the records, property,
29 and unexpended balances of appropriations, allocations, and
30 other funds and resources of the Office of the Secretary and
31 Administrative Services of the Department of Labor and

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1 Employment Security which support the activities and functions
2 transferred under subsections (17), (18), and (19) to the
3 Department of Business and Professional Regulation are
4 transferred as provided in section 20.06(2), Florida Statutes,
5 to the Department of Business and Professional Regulation.

6 (21) Notwithstanding any other provision of law, any
7 binding contract or interagency agreement existing on or
8 before October 1, 2001, between the Department of Labor and
9 Employment Security, or an entity or agent of the department,
10 and any other agency, entity, or person shall continue as a
11 binding contract or agreement for the remainder of the term of
12 such contract or agreement with the successor department,
13 agency, or entity responsible for the program, activity, or
14 functions relative to the contract or agreement.

15 (22) All rules adopted by the Department of Labor and
16 Employment Security and the authority for such rules relating
17 to the regulation of workers' compensation medical services
18 are transferred to the Agency for Health Care Administration.

19 (23) The sum of \$520,726 is appropriated from the
20 General Revenue Fund to the Department of Business and
21 Professional Regulation for the purpose of administering the
22 regulation of labor organizations under chapter 447, Florida
23 Statutes, and administering migrant labor and farm labor laws
24 under chapter 450, Florida Statutes. This appropriation shall
25 be in addition to the amount of funding appropriated for this
26 purpose in the fiscal year 2001-2002 General Appropriations
27 Act.

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

30 20.13 Department of Insurance.--There is created a
31 Department of Insurance.

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

3 (k) Division of Workers' Compensation.

4 Section 3. Section 20.171, Florida Statutes, is
5 repealed.

6 Section 4. Paragraph (1) of subsection (2) of section
7 110.205, Florida Statutes, is amended to read:

8 110.205 Career service; exemptions.--

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

14 (1) All assistant division director, deputy division
15 director, and bureau chief positions in any department, and
16 those positions determined by the department to have
17 managerial responsibilities comparable to such positions,
18 which positions include, but are not limited to, positions in
19 the Department of Health, the Department of Children and
20 Family Services, and the Department of Corrections that are
21 assigned primary duties of serving as the superintendent or
22 assistant superintendent, or warden or assistant warden, of an
23 institution; positions in the Department of Corrections that
24 are assigned primary duties of serving as the circuit
25 administrator or deputy circuit administrator; positions in
26 the Department of Transportation that are assigned primary
27 duties of serving as regional toll managers and managers of
28 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
29 in the Department of Environmental Protection that are
30 assigned the duty of an Environmental Administrator or program
31 administrator; ~~those positions described in s. 20.171 as~~

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1 ~~included in the Senior Management Service~~ and positions in
 2 the Department of Health that are assigned the duties of
 3 Environmental Administrator, Assistant County Health
 4 Department Director, and County Health Department Financial
 5 Administrator. Unless otherwise fixed by law, the department
 6 shall set the salary and benefits of these positions in
 7 accordance with the rules established for the Selected Exempt
 8 Service.

9 Section 5. Section 440.015, Florida Statutes, is
 10 amended to read:

11 440.015 Legislative intent.--It is the intent of the
 12 Legislature that the Workers' Compensation Law be interpreted
 13 so as to assure the quick and efficient delivery of disability
 14 and medical benefits to an injured worker and to facilitate
 15 the worker's return to gainful reemployment at a reasonable
 16 cost to the employer. It is the specific intent of the
 17 Legislature that workers' compensation cases shall be decided
 18 on their merits. The workers' compensation system in Florida
 19 is based on a mutual renunciation of common-law rights and
 20 defenses by employers and employees alike. In addition, it is
 21 the intent of the Legislature that the facts in a workers'
 22 compensation case are not to be interpreted liberally in favor
 23 of either the rights of the injured worker or the rights of
 24 the employer. Additionally, the Legislature hereby declares
 25 that disputes concerning the facts in workers' compensation
 26 cases are not to be given a broad liberal construction in
 27 favor of the employee on the one hand or of the employer on
 28 the other hand, and the laws pertaining to workers'
 29 compensation are to be construed in accordance with the basic
 30 principles of statutory construction and not liberally in
 31 favor of either employee or employer. It is the intent of the

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1 Legislature to ensure the prompt delivery of benefits to the
2 injured worker. Therefore, an efficient and self-executing
3 system must be created which is not an economic or
4 administrative burden. The Division of Workers' Compensation
5 of the Department of Insurance, the Department of Education,
6 and the Agency for Health Care Administration shall administer
7 the Workers' Compensation Law in a manner that ~~which~~
8 facilitates the self-execution of the system and the process
9 of ensuring a prompt and cost-effective delivery of payments.

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

13 440.02 Definitions.--When used in this chapter, unless
14 the context clearly requires otherwise, the following terms
15 shall have the following meanings:

16 (11) "Department" means the Department of Insurance
17 ~~Labor and Employment Security~~.

18 (13) "Division" means the Division of Workers'
19 Compensation of the Department of Insurance ~~Labor and~~
20 ~~Employment Security~~.

21 (14)(a) "Employee" means any person engaged in any
22 employment under any appointment or contract of hire or
23 apprenticeship, express or implied, oral or written, whether
24 lawfully or unlawfully employed, and includes, but is not
25 limited to, aliens and minors.

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

30 1. Any officer of a corporation may elect to be exempt
31 from this chapter by filing written notice of the election

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1 with the department division as provided in s. 440.05.

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

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

11

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

15 (c) "Employee" includes a sole proprietor or a partner
16 who devotes full time to the proprietorship or partnership
17 and, except as provided in this paragraph, elects to be
18 included in the definition of employee by filing notice
19 thereof as provided in s. 440.05. Partners or sole proprietors
20 actively engaged in the construction industry are considered
21 employees unless they elect to be excluded from the definition
22 of employee by filing written notice of the election with the
23 department division as provided in s. 440.05. However, no more
24 than three partners in a partnership that is actively engaged
25 in the construction industry may elect to be excluded. A sole
26 proprietor or partner who is actively engaged in the
27 construction industry and who elects to be exempt from this
28 chapter by filing a written notice of the election with the
29 department division as provided in s. 440.05 is not an
30 employee. For purposes of this chapter, an independent
31 contractor is an employee unless he or she meets all of the

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1 conditions set forth in subparagraph (d)1.

2 (d) "Employee" does not include:

3 1. An independent contractor, if:

4 a. The independent contractor maintains a separate
5 business with his or her own work facility, truck, equipment,
6 materials, or similar accommodations;

7 b. The independent contractor holds or has applied for
8 a federal employer identification number, unless the
9 independent contractor is a sole proprietor who is not
10 required to obtain a federal employer identification number
11 under state or federal requirements;

12 c. The independent contractor performs or agrees to
13 perform specific services or work for specific amounts of
14 money and controls the means of performing the services or
15 work;

16 d. The independent contractor incurs the principal
17 expenses related to the service or work that he or she
18 performs or agrees to perform;

19 e. The independent contractor is responsible for the
20 satisfactory completion of work or services that he or she
21 performs or agrees to perform and is or could be held liable
22 for a failure to complete the work or services;

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

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

28 h. The independent contractor has continuing or
29 recurring business liabilities or obligations; and

30 i. The success or failure of the independent
31 contractor's business depends on the relationship of business

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1 receipts to expenditures.

2

3 However, the determination as to whether an individual
4 included in the Standard Industrial Classification Manual of
5 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
6 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
7 2448, or 2449, or a newspaper delivery person, is an
8 independent contractor is governed not by the criteria in this
9 paragraph but by common-law principles, giving due
10 consideration to the business activity of the individual.

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

14 3. Bands, orchestras, and musical and theatrical
15 performers, including disk jockeys, performing in licensed
16 premises as defined in chapter 562, if a written contract
17 evidencing an independent contractor relationship is entered
18 into before the commencement of such entertainment.

19 4. An owner-operator of a motor vehicle who transports
20 property under a written contract with a motor carrier which
21 evidences a relationship by which the owner-operator assumes
22 the responsibility of an employer for the performance of the
23 contract, if the owner-operator is required to furnish the
24 necessary motor vehicle equipment and all costs incidental to
25 the performance of the contract, including, but not limited
26 to, fuel, taxes, licenses, repairs, and hired help; and the
27 owner-operator is paid a commission for transportation service
28 and is not paid by the hour or on some other time-measured
29 basis.

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

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1 of the employer.

2 6. A volunteer, except a volunteer worker for the
3 state or a county, municipality, or other governmental entity.

4 A person who does not receive monetary remuneration for
5 services is presumed to be a volunteer unless there is
6 substantial evidence that a valuable consideration was
7 intended by both employer and employee. For purposes of this
8 chapter, the term "volunteer" includes, but is not limited to:

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

19 b. Volunteers participating in federal programs
20 established under Pub. L. No. 93-113.

21 7. Any officer of a corporation who elects to be
22 exempt from this chapter.

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

30 9. An exercise rider who does not work for a single
31 horse farm or breeder, and who is compensated for riding on a

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1 case-by-case basis, provided a written contract is entered
2 into prior to the commencement of such activity which
3 evidences that an employee/employer relationship does not
4 exist.

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

13 (40) "Agency" means the Agency for Health Care
14 Administration.

15 Section 7. Section 440.021, Florida Statutes, is
16 amended to read:

17 440.021 Exemption of workers' compensation from
18 chapter 120.--Workers' compensation adjudications by judges of
19 compensation claims are exempt from chapter 120, and no judge
20 of compensation claims shall be considered an agency or a part
21 thereof. Communications of the result of investigations by the
22 department division pursuant to s. 440.185(4) are exempt from
23 chapter 120. In all instances in which the department division
24 institutes action to collect a penalty or interest which may
25 be due pursuant to this chapter, the penalty or interest shall
26 be assessed without hearing, and the party against which such
27 penalty or interest is assessed shall be given written notice
28 of such assessment and shall have the right to protest within
29 20 days of such notice. Upon receipt of a timely notice of
30 protest and after such investigation as may be necessary, the
31 department division shall, if it agrees with such protest,

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1 notify the protesting party that the assessment has been
2 revoked. If the department division does not agree with the
3 protest, it shall refer the matter to the judge of
4 compensation claims for determination pursuant to s.
5 440.25(2)-(5). Such action of the department division is
6 exempt from the provisions of chapter 120.

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

9 440.05 Election of exemption; revocation of election;
10 notice; certification.--

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

16 (2) Each sole proprietor or partner who elects to be
17 included in the definition of "employee" or who, after such
18 election, revokes that election must 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 (3) Each sole proprietor, partner, or officer of a
22 corporation who is actively engaged in the construction
23 industry and who elects an exemption from this chapter or who,
24 after electing such exemption, revokes that exemption, must
25 mail a written notice to such effect to the department
26 division on a form prescribed by the department division
27 notice of election to be exempt from the provisions of this
28 chapter must be notarized and under oath. The notice of
29 election to be exempt which is submitted to the department
30 division by the sole proprietor, partner, or officer of a
31 corporation must list the name, federal tax identification

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

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

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

28 (5) A notice given under subsection (1), subsection
29 (2), or subsection (3) shall become effective when issued by
30 the department ~~division~~ or 30 days after an application for an
31 exemption is received by the department ~~division~~, whichever

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1 occurs first. However, if an accident or occupational disease
2 occurs less than 30 days after the effective date of the
3 insurance policy under which the payment of compensation is
4 secured or the date the employer qualified as a self-insurer,
5 such notice is effective as of 12:01 a.m. of the day following
6 the date it is mailed to the department ~~division~~ in
7 Tallahassee.

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

29 (7) Any contractor responsible for compensation under
30 s. 440.10 may register in writing with the workers'
31 compensation carrier for any subcontractor and shall

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1 thereafter be entitled to receive written notice from the
2 carrier of any cancellation or nonrenewal of the policy.

3 (8)(a) The department ~~division~~ must assess a fee of
4 \$50 with each request for a construction industry certificate
5 of election to be exempt or renewal of election to be exempt
6 under this section.

7 (b) The funds collected by the department ~~division~~
8 shall be used to administer this section, to audit the
9 businesses that pay the fee for compliance with any
10 requirements of this chapter, and to enforce compliance with
11 the provisions of this chapter.

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

20 Section 9. Paragraph (d) of subsection (7) of section
21 440.09, Florida Statutes, is amended to read:

22 440.09 Coverage.--

23 (7)

24 (d) The department ~~division~~ shall provide by rule for
25 the authorization and regulation of drug-testing policies,
26 procedures, and methods. Testing of injured employees shall
27 not commence until such rules are adopted.

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

30 440.10 Liability for compensation.--

31 (1)

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

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

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

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

18
19 A sole proprietor, partner, or officer of a corporation who
20 elects exemption from this chapter by filing a certificate of
21 election under s. 440.05 may not recover benefits or
22 compensation under this chapter. An independent contractor
23 who provides the general contractor with both an affidavit
24 stating that he or she meets the requirements of s.
25 440.02(14)(d) and a certificate of exemption is not an
26 employee under s. 440.02(14)(c) and may not recover benefits
27 under this chapter. For purposes of determining the
28 appropriate premium for workers' compensation coverage,
29 carriers may not consider any person who meets the
30 requirements of this paragraph to be an employee.

31 Section 11. Subsection (2), paragraph (a) of

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1 subsection (3), and paragraph (g) of subsection (7) of section
2 440.102, Florida Statutes, are amended to read:

3 440.102 Drug-free workplace program requirements.--The
4 following provisions apply to a drug-free workplace program
5 implemented pursuant to law or to rules adopted by the Agency
6 for Health Care Administration:

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

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

26 (a) One time only, prior to testing, an employer shall
27 give all employees and job applicants for employment a written
28 policy statement which contains:

29 1. A general statement of the employer's policy on
30 employee drug use, which must identify:

31 a. The types of drug testing an employee or job

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1 applicant may be required to submit to, including
2 reasonable-suspicion drug testing or drug testing conducted on
3 any other basis.

4 b. The actions the employer may take against an
5 employee or job applicant on the basis of a positive confirmed
6 drug test result.

7 2. A statement advising the employee or job applicant
8 of the existence of this section.

9 3. A general statement concerning confidentiality.

10 4. Procedures for employees and job applicants to
11 confidentially report to a medical review officer the use of
12 prescription or nonprescription medications to a medical
13 review officer both before and after being tested.

14 5. A list of the most common medications, by brand
15 name or common name, as applicable, as well as by chemical
16 name, which may alter or affect a drug test. A list of such
17 medications as developed by the Agency for Health Care
18 Administration shall be available to employers through the
19 Division of Workers' Compensation ~~of the Department of Labor~~
20 ~~and Employment Security.~~

21 6. The consequences of refusing to submit to a drug
22 test.

23 7. A representative sampling of names, addresses, and
24 telephone numbers of employee assistance programs and local
25 drug rehabilitation programs.

26 8. A statement that an employee or job applicant who
27 receives a positive confirmed test result may contest or
28 explain the result to the medical review officer within 5
29 working days after receiving written notification of the test
30 result; that if an employee's or job applicant's explanation
31 or challenge is unsatisfactory to the medical review officer,

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1 the medical review officer shall report a positive test result
2 back to the employer; and that a person may contest the drug
3 test result pursuant to law or to rules adopted by the Agency
4 for Health Care Administration.

5 9. A statement informing the employee or job applicant
6 of his or her responsibility to notify the laboratory of any
7 administrative or civil action brought pursuant to this
8 section.

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

12 11. A statement regarding any applicable collective
13 bargaining agreement or contract and the right to appeal to
14 the Public Employees Relations Commission or applicable court.

15 12. A statement notifying employees and job applicants
16 of their right to consult with a medical review officer for
17 technical information regarding prescription or
18 nonprescription medication.

19 (7) EMPLOYER PROTECTION.--

20 (g) This section does not prohibit an employer from
21 conducting medical screening or other tests required,
22 permitted, or not disallowed by any statute, rule, or
23 regulation for the purpose of monitoring exposure of employees
24 to toxic or other unhealthy substances in the workplace or in
25 the performance of job responsibilities. Such screening or
26 testing is limited to the specific substances expressly
27 identified in the applicable statute, rule, or regulation,
28 unless prior written consent of the employee is obtained for
29 other tests. Such screening or testing need not be in
30 compliance with the rules adopted by the Agency for Health
31 Care Administration under this chapter or under s. 112.0455. A

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1 public employer may, through the use of an unbiased selection
2 procedure, conduct random drug tests of employees occupying
3 safety-sensitive or special-risk positions if the testing is
4 performed in accordance with drug-testing rules adopted by the
5 Agency for Health Care Administration and the Department of
6 Insurance ~~Labor and Employment Security~~. If applicable, random
7 drug testing must be specified in a collective bargaining
8 agreement as negotiated by the appropriate certified
9 bargaining agent before such testing is implemented.

10 Section 12. Section 440.103, Florida Statutes, is
11 amended to read:

12 440.103 Building permits; identification of minimum
13 premium policy.--Except as otherwise provided in this chapter,
14 every employer shall, as a condition to receiving a building
15 permit, show proof that it has secured compensation for its
16 employees under this chapter as provided in ss. 440.10 and
17 440.38. Such proof of compensation must be evidenced by a
18 certificate of coverage issued by the carrier, a valid
19 exemption certificate approved by the division or the
20 department, or a copy of the employer's authority to
21 self-insure and shall be presented each time the employer
22 applies for a building permit. As provided in s. 627.413(5),
23 each certificate of coverage must show, on its face, whether
24 or not coverage is secured under the minimum premium
25 provisions of rules adopted by rating organizations licensed
26 by the Department of Insurance. The words "minimum premium
27 policy" or equivalent language shall be typed, printed,
28 stamped, or legibly handwritten.

29 Section 13. Paragraph (a) of subsection (2) of section
30 440.105, Florida Statutes, is amended to read:

31 440.105 Prohibited activities; reports; penalties;

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1 limitations.--

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

5 (a) It shall be unlawful for any employer to
6 knowingly:

7 1. Coerce or attempt to coerce, as a precondition to
8 employment or otherwise, an employee to obtain a certificate
9 of election of exemption pursuant to s. 440.05.

10 2. Discharge or refuse to hire an employee or job
11 applicant because the employee or applicant has filed a claim
12 for benefits under this chapter.

13 3. Discharge, discipline, or take any other adverse
14 personnel action against any employee for disclosing
15 information to the department ~~division~~ or any law enforcement
16 agency relating to any violation or suspected violation of any
17 of the provisions of this chapter or rules promulgated
18 hereunder.

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

21 Section 14. Subsections (3) and (4) of section
22 440.106, Florida Statutes, are amended to read:

23 440.106 Civil remedies; administrative penalties.--

24 (3) Whenever any group or individual self-insurer,
25 carrier, rating bureau, or agent or other representative of
26 any carrier or rating bureau is determined to have violated s.
27 440.105, the department ~~of insurance~~ may revoke or suspend the
28 authority or certification of any group or individual
29 self-insurer, carrier, agent, or broker.

30 (4) The department ~~division~~ shall report any
31 contractor determined in violation of requirements of this

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1 chapter to the appropriate state licensing board for
2 disciplinary action.

3 Section 15. Section 440.107, Florida Statutes, is
4 amended to read:

5 440.107 Department ~~Division~~ powers to enforce employer
6 compliance with coverage requirements.--

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

15 (2) The department ~~division~~ and its authorized
16 representatives may enter and inspect any place of business at
17 any reasonable time for the limited purpose of investigating
18 compliance with workers' compensation coverage requirements
19 under this chapter. Each employer shall keep true and accurate
20 business records that contain such information as the
21 department ~~division~~ prescribes by rule. The business records
22 must contain information necessary for the department ~~division~~
23 to determine compliance with workers' compensation coverage
24 requirements and must be maintained within this state by the
25 business, in such a manner as to be accessible within a
26 reasonable time upon request by the department ~~division~~. The
27 business records must be open to inspection and be available
28 for copying by the department ~~division~~ at any reasonable time
29 and place and as often as necessary. The department ~~division~~
30 may require from any employer any sworn or unsworn reports,
31 pertaining to persons employed by that employer, deemed

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1 necessary for the effective administration of the workers'
2 compensation coverage requirements.

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

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

21 (5) Whenever the department division determines that
22 an employer who is required to secure the payment to his or
23 her employees of the compensation provided for by this chapter
24 has failed to do so, such failure shall be deemed an immediate
25 serious danger to public health, safety, or welfare sufficient
26 to justify service by the department division of a stop-work
27 order on the employer, requiring the cessation of all business
28 operations at the place of employment or job site. The order
29 shall take effect upon the date of service upon the employer,
30 unless the employer provides evidence satisfactory to the
31 department division of having secured any necessary insurance

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1 or self-insurance and pays a civil penalty to the department
2 division, to be deposited by the department division into the
3 Workers' Compensation Administration Trust Fund, in the amount
4 of \$100 per day for each day the employer was not in
5 compliance with this chapter.

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

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

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

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

26
27 Any penalty assessed under this subsection is due within 30
28 days after the date on which the employer is notified, except
29 that, if the department division has posted a stop-work order
30 or obtained injunctive relief against the employer, payment is
31 due, in addition to those conditions set forth in this

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1 section, as a condition to relief from a stop-work order or an
2 injunction. Interest shall accrue on amounts not paid when due
3 at the rate of 1 percent per month.

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

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

29 (10) Any law enforcement agency in the state may, at
30 the request of the department ~~division~~, render any assistance
31 necessary to carry out the provisions of this section,

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1 including, but not limited to, preventing any employee or
2 other person from remaining at a place of employment or job
3 site after a stop-work order or injunction has taken effect.

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

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

17 440.108 Investigatory records relating to workers'
18 compensation employer compliance; confidentiality.--

19 (1) All investigatory records of the department
20 ~~Division of Workers' Compensation~~ made or received pursuant to
21 s. 440.107 and any records necessary to complete an
22 investigation are confidential and exempt from the provisions
23 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
24 until the investigation is completed or ceases to be active.
25 For purposes of this section, an investigation is considered
26 "active" while such investigation is being conducted by the
27 department ~~division~~ with a reasonable, good-faith ~~good faith~~
28 belief that it may lead to the filing of administrative,
29 civil, or criminal proceedings. An investigation does not
30 cease to be active if the agency is proceeding with reasonable
31 dispatch and there is a good faith belief that action may be

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1 initiated by the agency or other administrative or law
2 enforcement agency. After an investigation is completed or
3 ceases to be active, records relating to the investigation
4 remain confidential and exempt from the provisions of s.
5 119.07(1) and s. 24(a), Art. I of the State Constitution if
6 disclosure would:

- 7 (a) Jeopardize the integrity of another active
8 investigation;
- 9 (b) Reveal a trade secret, as defined in s. 688.002;
- 10 (c) Reveal business or personal financial information;
- 11 (d) Reveal the identity of a confidential source;
- 12 (e) Defame or cause unwarranted damage to the good
13 name or reputation of an individual or jeopardize the safety
14 of an individual; or

15 (f) Reveal investigative techniques or procedures.
16 Section 17. Section 440.125, Florida Statutes, is
17 amended to read:

18 440.125 Medical records and reports; identifying
19 information in employee medical bills; confidentiality.--

20 (1) Any medical records and medical reports of an
21 injured employee and any information identifying an injured
22 employee in medical bills which are provided to the
23 department, agency, or Department of Education ~~Division of~~
24 ~~Workers' Compensation of the Department of Labor and~~
25 ~~Employment Security~~ pursuant to s. 440.13 are confidential and
26 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
27 I of the State Constitution, except as otherwise provided by
28 this chapter.

29 (2) The Legislature finds that it is a public
30 necessity that an injured employee's medical records and
31 medical reports and information identifying the employee in

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

13 (3) The department may share any confidential and
14 exempt information received pursuant to s. 440.13 with the
15 Agency for Health Care Administration in furtherance of the
16 agency's official duties under ss. 440.13 and 440.134. The
17 agency shall maintain the confidential and exempt status of
18 the information.

19 Section 18. Section 440.13, Florida Statutes, is
20 amended to read:

21 440.13 Medical services and supplies; penalty for
22 violations; limitations.--

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

24 (a) "Alternate medical care" means a change in
25 treatment or health care provider.

26 (b) "Attendant care" means care rendered by trained
27 professional attendants which is beyond the scope of household
28 duties. Family members may provide nonprofessional attendant
29 care, but may not be compensated under this chapter for care
30 that falls within the scope of household duties and other
31 services normally and gratuitously provided by family members.

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1 "Family member" means a spouse, father, mother, brother,
2 sister, child, grandchild, father-in-law, mother-in-law, aunt,
3 or uncle.

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

7 (d) "Catastrophic injury" means an injury as defined
8 in s. 440.02.

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

18 (f) "Compensable" means a determination by a carrier
19 or judge of compensation claims that a condition suffered by
20 an employee results from an injury arising out of and in the
21 course of employment.

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

24 (h) "Health care facility" means any hospital licensed
25 under chapter 395 and any health care institution licensed
26 under chapter 400.

27 (i) "Health care provider" means a physician or any
28 recognized practitioner who provides skilled services pursuant
29 to a prescription or under the supervision or direction of a
30 physician and who has been certified by the agency division as
31 a health care provider. The term "health care provider"

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1 includes a health care facility.

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

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

13 (l) "Instance of overutilization" means a specific
14 inappropriate service or level of service provided to an
15 injured employee.

16 (m) "Medically necessary" means any medical service or
17 medical supply which is used to identify or treat an illness
18 or injury, is appropriate to the patient's diagnosis and
19 status of recovery, and is consistent with the location of
20 service, the level of care provided, and applicable practice
21 parameters. The service should be widely accepted among
22 practicing health care providers, based on scientific
23 criteria, and determined to be reasonably safe. The service
24 must not be of an experimental, investigative, or research
25 nature, except in those instances in which prior approval of
26 the Agency for Health Care Administration has been obtained.
27 The Agency for Health Care Administration shall adopt rules
28 providing for such approval on a case-by-case basis when the
29 service or supply is shown to have significant benefits to the
30 recovery and well-being of the patient.

31 (n) "Medicine" means a drug prescribed by an

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1 authorized health care provider and includes only generic
2 drugs or single-source patented drugs for which there is no
3 generic equivalent, unless the authorized health care provider
4 writes or states that the brand-name drug as defined in s.
5 465.025 is medically necessary, or is a drug appearing on the
6 schedule of drugs created pursuant to s. 465.025(6), or is
7 available at a cost lower than its generic equivalent.

8 (o) "Palliative care" means noncurative medical
9 services that mitigate the conditions, effects, or pain of an
10 injury.

11 (p) "Pattern or practice of overutilization" means
12 repetition of instances of overutilization within a specific
13 medical case or multiple cases by a single health care
14 provider.

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

21 (r) "Physician" or "doctor" means a physician licensed
22 under chapter 458, an osteopathic physician licensed under
23 chapter 459, a chiropractic physician licensed under chapter
24 460, a podiatric physician licensed under chapter 461, an
25 optometrist licensed under chapter 463, or a dentist licensed
26 under chapter 466, each of whom must be certified by the
27 agency ~~division~~ as a health care provider.

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

31 (t) "Utilization control" means a systematic process

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1 of implementing measures that assure overall management and
2 cost containment of services delivered.

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

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

16 (a) Subject to the limitations specified elsewhere in
17 this chapter, the employer shall furnish to the employee such
18 medically necessary remedial treatment, care, and attendance
19 for such period as the nature of the injury or the process of
20 recovery may require, including medicines, medical supplies,
21 durable medical equipment, orthoses, prostheses, and other
22 medically necessary apparatus. Remedial treatment, care, and
23 attendance, including work-hardening programs or
24 pain-management programs accredited by the Commission on
25 Accreditation of Rehabilitation Facilities or Joint Commission
26 on the Accreditation of Health Organizations or
27 pain-management programs affiliated with medical schools,
28 shall be considered as covered treatment only when such care
29 is given based on a referral by a physician as defined in this
30 chapter. Each facility shall maintain outcome data, including
31 work status at discharges, total program charges, total number

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1 of visits, and length of stay. ~~The department shall utilize~~
2 ~~such data and report to the President of the Senate and the~~
3 ~~Speaker of the House of Representatives regarding the efficacy~~
4 ~~and cost-effectiveness of such program, no later than October~~
5 ~~1, 1994.~~ Medically necessary treatment, care, and attendance
6 does not include chiropractic services in excess of 18
7 treatments or rendered 8 weeks beyond the date of the initial
8 chiropractic treatment, whichever comes first, unless the
9 carrier authorizes additional treatment or the employee is
10 catastrophically injured.

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

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

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

28 (c) If the employer fails to provide treatment or care
29 required by this section after request by the injured
30 employee, the employee may obtain such treatment at the
31 expense of the employer, if the treatment is compensable and

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1 medically necessary. There must be a specific request for the
2 treatment, and the employer or carrier must be given a
3 reasonable time period within which to provide the treatment
4 or care. However, the employee is not entitled to recover any
5 amount personally expended for the treatment or service unless
6 he or she has requested the employer to furnish that treatment
7 or service and the employer has failed, refused, or neglected
8 to do so within a reasonable time or unless the nature of the
9 injury requires such treatment, nursing, and services and the
10 employer or his or her superintendent or foreman, having
11 knowledge of the injury, has neglected to provide the
12 treatment or service.

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

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

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1 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

26 (b) A health care provider who renders emergency care
27 must notify the carrier by the close of the third business day
28 after it has rendered such care. If the emergency care results
29 in admission of the employee to a health care facility, the
30 health care provider must notify the carrier by telephone
31 within 24 hours after initial treatment. Emergency care is not

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1 compensable under this chapter unless the injury requiring
2 emergency care arose as a result of a work-related accident.
3 Pursuant to chapter 395, all licensed physicians and health
4 care providers in this state shall be required to make their
5 services available for emergency treatment of any employee
6 eligible for workers' compensation benefits. To refuse to make
7 such treatment available is cause for revocation of a license.

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

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

24 (e) Carriers shall adopt procedures for receiving,
25 reviewing, documenting, and responding to requests for
26 authorization. Such procedures shall be for a health care
27 provider certified under this section.

28 (f) By accepting payment under this chapter for
29 treatment rendered to an injured employee, a health care
30 provider consents to the jurisdiction of the agency division
31 as set forth in subsection (11) and to the submission of all

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1 records and other information concerning such treatment to the
2 agency division in connection with a reimbursement dispute,
3 audit, or review as provided by this section. The health care
4 provider must further agree to comply with any decision of the
5 agency division rendered under this section.

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

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

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

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

14 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
15 DEPARTMENT ~~DIVISION~~.--

16 (a) Any health care provider providing necessary
17 remedial treatment, care, or attendance to any injured worker
18 shall submit treatment reports to the carrier in a format
19 prescribed by the department in consultation with the agency
20 ~~division~~. A claim for medical or surgical treatment is not
21 valid or enforceable against such employer or employee,
22 unless, by the close of the third business day following the
23 first treatment, the physician providing the treatment
24 furnishes to the employer or carrier a preliminary notice of
25 the injury and treatment on forms prescribed by the department
26 in consultation with the agency ~~division~~ and, within 15 days
27 thereafter, furnishes to the employer or carrier a complete
28 report, and subsequent thereto furnishes progress reports, if
29 requested by the employer or insurance carrier, at intervals
30 of not less than 3 weeks apart or at less frequent intervals
31 if requested on forms prescribed by the department ~~division~~.

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1 (b) Each medical report or bill obtained or received
2 by the employer, the carrier, or the injured employee, or the
3 attorney for the employer, carrier, or injured employee, with
4 respect to the remedial treatment or care of the injured
5 employee, including any report of an examination, diagnosis,
6 or disability evaluation, must be filed with the department
7 ~~Division of Workers' Compensation~~ pursuant to rules adopted by
8 the department in consultation with the agency division. The
9 health care provider shall also furnish to the injured
10 employee or to his or her attorney, on demand, a copy of his
11 or her office chart, records, and reports, and may charge the
12 injured employee an amount authorized by the department
13 ~~division~~ for the copies. Each such health care provider shall
14 provide to the agency or department division any additional
15 information about the remedial treatment, care, and attendance
16 that the agency or department division reasonably requests.

17 (c) It is the policy for the administration of the
18 workers' compensation system that there be reasonable access
19 to medical information by all parties to facilitate the
20 self-executing features of the law. Notwithstanding the
21 limitations in s. 456.057 and subject to the limitations in s.
22 381.004, upon the request of the employer, the carrier, or the
23 attorney for either of them, the medical records of an injured
24 employee must be furnished to those persons and the medical
25 condition of the injured employee must be discussed with those
26 persons, if the records and the discussions are restricted to
27 conditions relating to the workplace injury. Any such
28 discussions may be held before or after the filing of a claim
29 without the knowledge, consent, or presence of any other party
30 or his or her agent or representative. A health care provider
31 who willfully refuses to provide medical records or to discuss

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1 the medical condition of the injured employee, after a
2 reasonable request is made for such information pursuant to
3 this subsection, shall be subject by the agency ~~division~~ to
4 one or more of the penalties set forth in paragraph (8)(b).

5 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

22 3. The examiner is unavailable due to injury, death,
23 or relocation outside a reasonably accessible geographic area;
24 or

25 4. The parties agree to an alternate examiner.

26
27 Any party may request, or a judge of compensation claims may
28 require, designation of an agency ~~a division~~ medical advisor
29 as an independent medical examiner. The opinion of the
30 advisors acting as examiners shall not be afforded the
31 presumption set forth in paragraph (9)(c).

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

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

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

30 (f) Attorney's fees incurred by an injured employee in
31 connection with delay of or opposition to an independent

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1 medical examination, including, but not limited to, motions
2 for protective orders, are not recoverable under this chapter.

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

17 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

29 (b) The carrier must submit to the agency division
30 within 10 days after receipt of the petition all documentation
31 substantiating the carrier's disallowance or adjustment.

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1 Failure of the carrier to submit the requested documentation
2 to the agency division within 10 days constitutes a waiver of
3 all objections to the petition.

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

11 (d) If the agency division finds an improper
12 disallowance or improper adjustment of payment by an insurer,
13 the insurer shall reimburse the health care provider,
14 facility, insurer, or employer within 30 days, subject to the
15 penalties provided in this subsection.

16 (e) The agency division shall adopt rules to carry out
17 this subsection. The rules may include provisions for
18 consolidating petitions filed by a petitioner and expanding
19 the timetable for rendering a determination upon a
20 consolidated petition.

21 (f) Any carrier that engages in a pattern or practice
22 of arbitrarily or unreasonably disallowing or reducing
23 payments to health care providers may be subject to one or
24 more of the following penalties imposed by the agency
25 division:

26 1. Repayment of the appropriate amount to the health
27 care provider.

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

31 3. Award of the health care provider's costs,

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1 including a reasonable attorney's fee, for prosecuting the
2 petition.

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

4 (a) Carriers must report to the agency division all
5 instances of overutilization including, but not limited to,
6 all instances in which the carrier disallows or adjusts
7 payment. The agency division shall determine whether a pattern
8 or practice of overutilization exists.

9 (b) If the agency division determines that a health
10 care provider has engaged in a pattern or practice of
11 overutilization or a violation of this chapter or rules
12 adopted by the agency division, it may impose one or more of
13 the following penalties:

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

26 (9) EXPERT MEDICAL ADVISORS.--

27 (a) The agency division shall certify expert medical
28 advisors in each specialty to assist the agency division and
29 the judges of compensation claims within the advisor's area of
30 expertise as provided in this section. The agency division
31 shall, in a manner prescribed by rule, in certifying,

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1 recertifying, or decertifying an expert medical advisor,
2 consider the qualifications, training, impartiality, and
3 commitment of the health care provider to the provision of
4 quality medical care at a reasonable cost. As a prerequisite
5 for certification or recertification, the agency division
6 shall require, at a minimum, that an expert medical advisor
7 have specialized workers' compensation training or experience
8 under the workers' compensation system of this state and board
9 certification or board eligibility.

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

24 (c) If there is disagreement in the opinions of the
25 health care providers, if two health care providers disagree
26 on medical evidence supporting the employee's complaints or
27 the need for additional medical treatment, or if two health
28 care providers disagree that the employee is able to return to
29 work, the agency division may, and the judge of compensation
30 claims shall, upon his or her own motion or within 15 days
31 after receipt of a written request by either the injured

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1 employee, the employer, or the carrier, order the injured
2 employee to be evaluated by an expert medical advisor. The
3 opinion of the expert medical advisor is presumed to be
4 correct unless there is clear and convincing evidence to the
5 contrary as determined by the judge of compensation claims.
6 The expert medical advisor appointed to conduct the evaluation
7 shall have free and complete access to the medical records of
8 the employee. An employee who fails to report to and cooperate
9 with such evaluation forfeits entitlement to compensation
10 during the period of failure to report or cooperate.

11 (d) The expert medical advisor must complete his or
12 her evaluation and issue his or her report to the agency
13 ~~division~~ or to the judge of compensation claims within 45 days
14 after receipt of all medical records. The expert medical
15 advisor must furnish a copy of the report to the carrier and
16 to the employee.

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

24 (f) If the agency ~~division~~ or a judge of compensation
25 claims determines that the services of a certified expert
26 medical advisor are required to resolve a dispute under this
27 section, the carrier must compensate the advisor for his or
28 her time in accordance with a schedule adopted by the agency
29 ~~division~~. The agency ~~division~~ may assess a penalty not to
30 exceed \$500 against any carrier that fails to timely
31 compensate an advisor in accordance with this section.

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

9 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
10 DIVISION; JURISDICTION.--

11 (a) The Agency for Health Care Administration Division
12 ~~of Workers' Compensation of the Department of Labor and~~
13 ~~Employment Security~~ may investigate health care providers to
14 determine whether providers are complying with this chapter
15 and with rules adopted by the agency division, whether the
16 providers are engaging in overutilization, and whether
17 providers are engaging in improper billing practices. If the
18 agency division finds that a health care provider has
19 improperly billed, overutilized, or failed to comply with
20 agency division rules or the requirements of this chapter it
21 must notify the provider of its findings and may determine
22 that the health care provider may not receive payment from the
23 carrier or may impose penalties as set forth in subsection (8)
24 or other sections of this chapter. If the health care provider
25 has received payment from a carrier for services that were
26 improperly billed or for overutilization, it must return those
27 payments to the carrier. The agency division may assess a
28 penalty not to exceed \$500 for each overpayment that is not
29 refunded within 30 days after notification of overpayment by
30 the agency division or carrier.

31 (b) The department division shall monitor and audit

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

18 (c) The agency division has exclusive jurisdiction to
19 decide any matters concerning reimbursement, to resolve any
20 overutilization dispute under subsection (7), and to decide
21 any question concerning overutilization under subsection (8),
22 which question or dispute arises after January 1, 1994.

23 (d) The following agency division actions do not
24 constitute agency action subject to review under ss. 120.569
25 and 120.57 and do not constitute actions subject to s. 120.56:
26 referral by the entity responsible for utilization review; a
27 decision by the agency division to refer a matter to a peer
28 review committee; establishment by a health care provider or
29 entity of procedures by which a peer review committee reviews
30 the rendering of health care services; and the review
31 proceedings, report, and recommendation of the peer review

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1 committee.

2 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
3 REIMBURSEMENT ALLOWANCES.--

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

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1 maximum percentage of increase in the individual reimbursement
2 allowance may not exceed the percentage of increase in the
3 Consumer Price Index for the previous year. An individual
4 physician, hospital, ambulatory surgical center, pain program,
5 or work-hardening program shall be reimbursed either the usual
6 and customary charge for treatment, care, and attendance, the
7 agreed-upon contract price, the per diem rate for hospital
8 inpatient stay, or the maximum reimbursement allowance in the
9 appropriate schedule, whichever is less.

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

21 (c) Reimbursement for all fees and other charges for
22 such treatment, care, and attendance, including treatment,
23 care, and attendance provided by any hospital or other health
24 care provider, ambulatory surgical center, work-hardening
25 program, or pain program, must not exceed the amounts provided
26 by the uniform schedule of maximum reimbursement allowances as
27 determined by the panel or as otherwise provided in this
28 section. This subsection also applies to independent medical
29 examinations performed by health care providers under this
30 chapter. Until the three-member panel approves a uniform
31 schedule of maximum reimbursement allowances and it becomes

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1 effective, all compensable charges for treatment, care, and
2 attendance provided by physicians, ambulatory surgical
3 centers, work-hardening programs, or pain programs shall be
4 reimbursed at the lowest maximum reimbursement allowance
5 across all 1992 schedules of maximum reimbursement allowances
6 for the services provided regardless of the place of service.
7 In determining the uniform schedule, the panel shall first
8 approve the data which it finds representative of prevailing
9 charges in the state for similar treatment, care, and
10 attendance of injured persons. Each health care provider,
11 health care facility, ambulatory surgical center,
12 work-hardening program, or pain program receiving workers'
13 compensation payments shall maintain records verifying their
14 usual charges. In establishing the uniform schedule of maximum
15 reimbursement allowances, the panel must consider:

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

19 2. The impact upon cost to employers for providing a
20 level of reimbursement for treatment, care, and attendance
21 which will ensure the availability of treatment, care, and
22 attendance required by injured workers;

23 3. The financial impact of the reimbursement
24 allowances upon health care providers and health care
25 facilities, including trauma centers as defined in s.
26 395.4001, and its effect upon their ability to make available
27 to injured workers such medically necessary remedial
28 treatment, care, and attendance. The uniform schedule of
29 maximum reimbursement allowances must be reasonable, must
30 promote health care cost containment and efficiency with
31 respect to the workers' compensation health care delivery

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1 system, and must be sufficient to ensure availability of such
2 medically necessary remedial treatment, care, and attendance
3 to injured workers; and

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

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

13 (a) Engaged in professional or other misconduct or
14 incompetency in connection with medical services rendered
15 under this chapter;

16 (b) Exceeded the limits of his or her or its
17 professional competence in rendering medical care under this
18 chapter, or to have made materially false statements regarding
19 his or her or its qualifications in his or her application;

20 (c) Failed to transmit copies of medical reports to
21 the employer or carrier, or failed to submit full and truthful
22 medical reports of all his or her or its findings to the
23 employer or carrier as required under this chapter;

24 (d) Solicited, or employed another to solicit for
25 himself or herself or itself or for another, professional
26 treatment, examination, or care of an injured employee in
27 connection with any claim under this chapter;

28 (e) Refused to appear before, or to answer upon
29 request of, the agency ~~division~~ or any duly authorized officer
30 of the state, any legal question, or to produce any relevant
31 book or paper concerning his or her conduct under any

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1 authorization granted to him or her under this chapter;

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

4 (g) Engaged in a pattern of practice of
5 overutilization or a violation of this chapter or rules
6 adopted by the agency division.

7 (14) PAYMENT OF MEDICAL FEES.--

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

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

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

25 (15) PRACTICE PARAMETERS.--

26 (a) The Agency for Health Care Administration, in
27 conjunction with the department division and appropriate
28 health professional associations and health-related
29 organizations shall develop and may adopt by rule
30 scientifically sound practice parameters for medical
31 procedures relevant to workers' compensation claimants.

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1 Practice parameters developed under this section must focus on
2 identifying effective remedial treatments and promoting the
3 appropriate utilization of health care resources. Priority
4 must be given to those procedures that involve the greatest
5 utilization of resources either because they are the most
6 costly or because they are the most frequently performed.
7 Practice parameters for treatment of the 10 top procedures
8 associated with workers' compensation injuries including the
9 remedial treatment of lower-back injuries must be developed by
10 December 31, 1994.

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

19 (c) Procedures must be instituted which provide for
20 the periodic review and revision of practice parameters based
21 on the latest outcomes data, research findings, technological
22 advancements, and clinical experiences, at least once every 3
23 years.

24 (d) Practice parameters developed under this section
25 must be used by carriers and the agency ~~division~~ in evaluating
26 the appropriateness and overutilization of medical services
27 provided to injured employees.

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

30 440.134 Workers' compensation managed care
31 arrangement.--

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

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

9 440.14 Determination of pay.--

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

14 Section 21. Section 440.15, Florida Statutes, is
15 amended to read:

16 440.15 Compensation for disability.--Compensation for
17 disability shall be paid to the employee, subject to the
18 limits provided in s. 440.12(2), as follows:

19 (1) PERMANENT TOTAL DISABILITY.--

20 (a) In case of total disability adjudged to be
21 permanent, 66 2/3 percent of the average weekly wages shall
22 be paid to the employee during the continuance of such total
23 disability.

24 (b) Only a catastrophic injury as defined in s. 440.02
25 shall, in the absence of conclusive proof of a substantial
26 earning capacity, constitute permanent total disability. Only
27 claimants with catastrophic injuries are eligible for
28 permanent total benefits. In no other case may permanent total
29 disability be awarded.

30 (c) In cases of permanent total disability resulting
31 from injuries that occurred prior to July 1, 1955, such

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1 payments shall not be made in excess of 700 weeks.

2 (d) If an employee who is being paid compensation for
3 permanent total disability becomes rehabilitated to the extent
4 that she or he establishes an earning capacity, the employee
5 shall be paid, instead of the compensation provided in
6 paragraph (a), benefits pursuant to subsection (3). The
7 department ~~division~~ shall adopt rules to enable a permanently
8 and totally disabled employee who may have reestablished an
9 earning capacity to undertake a trial period of reemployment
10 without prejudicing her or his return to permanent total
11 status in the case that such employee is unable to sustain an
12 earning capacity.

13 (e)1. The employer's or carrier's right to conduct
14 vocational evaluations or testing pursuant to s. 440.491
15 continues even after the employee has been accepted or
16 adjudicated as entitled to compensation under this chapter.
17 This right includes, but is not limited to, instances in which
18 such evaluations or tests are recommended by a treating
19 physician or independent medical-examination physician,
20 instances warranted by a change in the employee's medical
21 condition, or instances in which the employee appears to be
22 making appropriate progress in recuperation. This right may
23 not be exercised more than once every calendar year.

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

28 3. Pursuant to an order of the judge of compensation
29 claims, the employer or carrier may withhold payment of
30 benefits for permanent total disability or supplements for any
31 period during which the employee willfully fails or refuses to

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1 appear without good cause for the scheduled vocational
2 evaluation or testing.

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

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

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1 those additional benefits provided by subparagraph 1. for any
2 period during which the employee willfully fails or refuses to
3 report upon request by the department ~~division~~ in the manner
4 prescribed by such rules.

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

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

22 (2) TEMPORARY TOTAL DISABILITY.--

23 (a) In case of disability total in character but
24 temporary in quality, $66 \frac{2}{3}$ percent of the average weekly
25 wages shall be paid to the employee during the continuance
26 thereof, not to exceed 104 weeks except as provided in this
27 subsection, s. 440.12(1), and s. 440.14(3). Once the employee
28 reaches the maximum number of weeks allowed, or the employee
29 reaches the date of maximum medical improvement, whichever
30 occurs earlier, temporary disability benefits shall cease and
31 the injured worker's permanent impairment shall be determined.

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

21 (c) Temporary total disability benefits paid pursuant
22 to this subsection shall include such period as may be
23 reasonably necessary for training in the use of artificial
24 members and appliances, and shall include such period as the
25 employee may be receiving training and education under a
26 program pursuant to s. 440.49(1). Notwithstanding s.
27 440.02(9), the date of maximum medical improvement for
28 purposes of paragraph (3)(b) shall be no earlier than the last
29 day for which such temporary disability benefits are paid.

30 (d) The department ~~division~~ shall, by rule, provide
31 for the periodic reporting to the department ~~division~~,

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1 employer, or carrier of all earned income, including income
2 from social security, by the injured employee who is entitled
3 to or claiming benefits for temporary total disability. The
4 employer or carrier is not required to make any payment of
5 benefits for temporary total disability for any period during
6 which the employee willfully fails or refuses to report upon
7 request by the employer or carrier in the manner prescribed by
8 the rules. The rule must require the claimant to personally
9 sign the claim form and attest that she or he has reviewed,
10 understands, and acknowledges the foregoing.

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

12 (a) Impairment benefits.--

13 1. Once the employee has reached the date of maximum
14 medical improvement, impairment benefits are due and payable
15 within 20 days after the carrier has knowledge of the
16 impairment.

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

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1 Evaluation of Permanent Impairment, copyright 1977, 1971,
2 1988, by the American Medical Association, shall be the
3 temporary schedule and shall be used for the purposes hereof.
4 For injuries after July 1, 1990, pending the adoption by
5 department ~~division~~ rule of a uniform disability rating
6 schedule, the Minnesota Department of Labor and Industry
7 Disability Schedule shall be used unless that schedule does
8 not address an injury. In such case, the Guides to the
9 Evaluation of Permanent Impairment by the American Medical
10 Association shall be used. Determination of permanent
11 impairment under this schedule must be made by a physician
12 licensed under chapter 458, a doctor of osteopathic medicine
13 licensed under chapters 458 and 459, a chiropractic physician
14 licensed under chapter 460, a podiatric physician licensed
15 under chapter 461, an optometrist licensed under chapter 463,
16 or a dentist licensed under chapter 466, as appropriate
17 considering the nature of the injury. No other persons are
18 authorized to render opinions regarding the existence of or
19 the extent of permanent impairment.

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

30 a. The expiration of a period computed at the rate of
31 3 weeks for each percentage point of impairment; or

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1 b. The death of the employee.

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

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

27 6. The department ~~division~~ may by rule specify forms
28 and procedures governing the method of payment of wage loss
29 and impairment benefits for dates of accidents before January
30 1, 1994, and for dates of accidents on or after January 1,
31 1994.

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1 (b) Supplemental benefits.--

2 1. All supplemental benefits must be paid in
3 accordance with this subsection. An employee is entitled to
4 supplemental benefits as provided in this paragraph as of the
5 expiration of the impairment period, if:

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

9 b. The employee has not returned to work or has
10 returned to work earning less than 80 percent of the
11 employee's average weekly wage as a direct result of the
12 employee's impairment; and

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

15 2. If an employee is not entitled to supplemental
16 benefits at the time of payment of the final weekly impairment
17 income benefit because the employee is earning at least 80
18 percent of the employee's average weekly wage, the employee
19 may become entitled to supplemental benefits at any time
20 within 1 year after the impairment income benefit period ends
21 if:

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

25 b. The employee meets the other requirements of
26 subparagraph 1.; and

27 c. The employee's decrease in earnings is a direct
28 result of the employee's impairment from the compensable
29 injury.

30 3. If an employee earns wages that are at least 80
31 percent of the employee's average weekly wage for a period of

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1 at least 90 days during which the employee is receiving
2 supplemental benefits, the employee ceases to be entitled to
3 supplemental benefits for the filing period. Supplemental
4 benefits that have been terminated shall be reinstated when
5 the employee satisfies the conditions enumerated in
6 subparagraph 2. and files the statement required under
7 subparagraph 5. Notwithstanding any other provision, if an
8 employee is not entitled to supplemental benefits for 12
9 consecutive months, the employee ceases to be entitled to any
10 additional income benefits for the compensable injury. If the
11 employee is discharged within 12 months after losing
12 entitlement under this subsection, benefits may be reinstated
13 if the employee was discharged at that time with the intent to
14 deprive the employee of supplemental benefits.

15 ~~4. During the period that impairment income benefits~~
16 ~~or supplemental income benefits are being paid, the carrier~~
17 ~~has the affirmative duty to determine at least annually~~
18 ~~whether any extended unemployment or underemployment is a~~
19 ~~direct result of the employee's impairment. To accomplish this~~
20 ~~purpose, the division may require periodic reports from the~~
21 ~~employee and the carrier, and it may, at the carrier's~~
22 ~~expense, require any physical or other examinations,~~
23 ~~vocational assessments, or other tests or diagnoses necessary~~
24 ~~to verify that the carrier is performing its duty. Not more~~
25 ~~than once in each 12 calendar months, the employee and the~~
26 ~~carrier may each request that the division review the status~~
27 ~~of the employee and determine whether the carrier has~~
28 ~~performed its duty with respect to whether the employee's~~
29 ~~unemployment or underemployment is a direct result of~~
30 ~~impairment from the compensable injury.~~

31 4.5. After the initial determination of supplemental

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1 benefits, the employee must file a statement with the carrier
2 stating that the employee has earned less than 80 percent of
3 the employee's average weekly wage as a direct result of the
4 employee's impairment, stating the amount of wages the
5 employee earned in the filing period, and stating that the
6 employee has in good faith sought employment commensurate with
7 the employee's ability to work. The statement must be filed
8 quarterly on a form and in the manner prescribed by the
9 department division. The department division may modify the
10 filing period as appropriate to an individual case. Failure to
11 file a statement relieves the carrier of liability for
12 supplemental benefits for the period during which a statement
13 is not filed.

14 ~~5.6.~~ The carrier shall begin payment of supplemental
15 benefits not later than the seventh day after the expiration
16 date of the impairment income benefit period and shall
17 continue to timely pay those benefits. The carrier may request
18 a mediation conference for the purpose of contesting the
19 employee's entitlement to or the amount of supplemental income
20 benefits.

21 ~~6.7.~~ Supplemental benefits are calculated quarterly
22 and paid monthly. For purposes of calculating supplemental
23 benefits, 80 percent of the employee's average weekly wage and
24 the average wages the employee has earned per week are
25 compared quarterly. For purposes of this paragraph, if the
26 employee is offered a bona fide position of employment that
27 the employee is capable of performing, given the physical
28 condition of the employee and the geographic accessibility of
29 the position, the employee's weekly wages are considered
30 equivalent to the weekly wages for the position offered to the
31 employee.

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1 7.8. Supplemental benefits are payable at the rate of
2 80 percent of the difference between 80 percent of the
3 employee's average weekly wage determined pursuant to s.
4 440.14 and the weekly wages the employee has earned during the
5 reporting period, not to exceed the maximum weekly income
6 benefit under s. 440.12.

7 8.9. The department ~~division~~ may by rule define terms
8 that are necessary for the administration of this section and
9 forms and procedures governing the method of payment of
10 supplemental benefits for dates of accidents before January 1,
11 1994, and for dates of accidents on or after January 1, 1994.

12 (c) Duration of temporary impairment and supplemental
13 income benefits.--The employee's eligibility for temporary
14 benefits, impairment income benefits, and supplemental
15 benefits terminates on the expiration of 401 weeks after the
16 date of injury.

17 (4) TEMPORARY PARTIAL DISABILITY.--

18 (a) In case of temporary partial disability,
19 compensation shall be equal to 80 percent of the difference
20 between 80 percent of the employee's average weekly wage and
21 the salary, wages, and other remuneration the employee is able
22 to earn, as compared weekly; however, the weekly benefits may
23 not exceed an amount equal to $66 \frac{2}{3}$ percent of the
24 employee's average weekly wage at the time of injury. In order
25 to simplify the comparison of the preinjury average weekly
26 wage with the salary, wages, and other remuneration the
27 employee is able to earn, the department ~~division~~ may by rule
28 provide for the modification of the weekly comparison so as to
29 coincide as closely as possible with the injured worker's pay
30 periods. The amount determined to be the salary, wages, and
31 other remuneration the employee is able to earn shall in no

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1 case be less than the sum actually being earned by the
2 employee, including earnings from sheltered employment.

3 (b) Such benefits shall be paid during the continuance
4 of such disability, not to exceed a period of 104 weeks, as
5 provided by this subsection and subsection (2). Once the
6 injured employee reaches the maximum number of weeks,
7 temporary disability benefits cease and the injured worker's
8 permanent impairment must be determined. The department
9 ~~division~~ may by rule specify forms and procedures governing
10 the method of payment of temporary disability benefits for
11 dates of accidents before January 1, 1994, and for dates of
12 accidents on or after January 1, 1994.

13 (5) SUBSEQUENT INJURY.--

14 (a) The fact that an employee has suffered previous
15 disability, impairment, anomaly, or disease, or received
16 compensation therefor, shall not preclude her or him from
17 benefits for a subsequent aggravation or acceleration of the
18 preexisting condition nor preclude benefits for death
19 resulting therefrom, except that no benefits shall be payable
20 if the employee, at the time of entering into the employment
21 of the employer by whom the benefits would otherwise be
22 payable, falsely represents herself or himself in writing as
23 not having previously been disabled or compensated because of
24 such previous disability, impairment, anomaly, or disease and
25 the employer detrimentally relies on the misrepresentation.
26 Compensation for temporary disability, medical benefits, and
27 wage-loss benefits shall not be subject to apportionment.

28 (b) If a compensable permanent impairment, or any
29 portion thereof, is a result of aggravation or acceleration of
30 a preexisting condition, or is the result of merger with a
31 preexisting impairment, an employee eligible to receive

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1 impairment benefits under paragraph (3)(a) shall receive such
2 benefits for the total impairment found to result, excluding
3 the degree of impairment existing at the time of the subject
4 accident or injury or which would have existed by the time of
5 the impairment rating without the intervention of the
6 compensable accident or injury. The degree of permanent
7 impairment attributable to the accident or injury shall be
8 compensated in accordance with paragraph (3)(a). As used in
9 this paragraph, "merger" means the combining of a preexisting
10 permanent impairment with a subsequent compensable permanent
11 impairment which, when the effects of both are considered
12 together, result in a permanent impairment rating which is
13 greater than the sum of the two permanent impairment ratings
14 when each impairment is considered individually.

15 (6) OBLIGATION TO REHIRE.--If the employer has not in
16 good faith made available to the employee, within a 100-mile
17 radius of the employee's residence, work appropriate to the
18 employee's physical limitations within 30 days after the
19 carrier notifies the employer of maximum medical improvement
20 and the employee's physical limitations, the employer shall
21 pay to the department division for deposit into the Workers'
22 Compensation Administration Trust Fund a fine of \$250 for
23 every \$5,000 of the employer's workers' compensation premium
24 or payroll, not to exceed \$2,000 per violation, as the
25 department division requires by rule. The employer is not
26 subject to this subsection if the employee is receiving
27 permanent total disability benefits or if the employer has 50
28 or fewer employees.

29 (7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
30 employee refuses employment suitable to the capacity thereof,
31 offered to or procured therefor, such employee shall not be

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1 entitled to any compensation at any time during the
2 continuance of such refusal unless at any time in the opinion
3 of the judge of compensation claims such refusal is
4 justifiable.

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

25 (9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case
26 an employee becomes an inmate of a public institution, then no
27 compensation shall be payable unless she or he has dependent
28 upon her or him for support a person or persons defined as
29 dependents elsewhere in this chapter, whose dependency shall
30 be determined as if the employee were deceased and to whom
31 compensation would be paid in case of death; and such

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1 compensation as is due such employee shall be paid such
2 dependents during the time she or he remains such inmate.

3 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
4 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
5 ACT.--

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

22 (b) If the provisions of 42 U.S.C. s. 424(a) are
23 amended to provide for a reduction or increase of the
24 percentage of average current earnings that the sum of
25 compensation benefits payable under this chapter and the
26 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
27 the amount of the reduction of benefits provided in this
28 subsection shall be reduced or increased accordingly. The
29 department ~~division~~ may by rule specify forms and procedures
30 governing the method for calculating and administering the
31 offset of benefits payable under this chapter and benefits

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1 payable under 42 U.S.C. ss. 402 and 423. The department
2 ~~division~~ shall have first priority in taking any available
3 social security offsets on dates of accidents occurring before
4 July 1, 1984.

5 (c) No disability compensation benefits payable for
6 any week, including those benefits provided by paragraph
7 (1)(f), shall be reduced pursuant to this subsection until the
8 Social Security Administration determines the amount otherwise
9 payable to the employee under 42 U.S.C. ss. 402 and 423 and
10 the employee has begun receiving such social security benefit
11 payments. The employee shall, upon demand by the department
12 ~~division~~, the employer, or the carrier, authorize the Social
13 Security Administration to release disability information
14 relating to her or him and authorize the Division of
15 Unemployment Compensation to release unemployment compensation
16 information relating to her or him, in accordance with rules
17 to be promulgated by the department ~~division~~ prescribing the
18 procedure and manner for requesting the authorization and for
19 compliance by the employee. Neither the department ~~division~~
20 nor the employer or carrier shall make any payment of benefits
21 for total disability or those additional benefits provided by
22 paragraph (1)(f) for any period during which the employee
23 willfully fails or refuses to authorize the release of
24 information in the manner and within the time prescribed by
25 such rules. The authority for release of disability
26 information granted by an employee under this paragraph shall
27 be effective for a period not to exceed 12 months, such
28 authority to be renewable as the department ~~division~~ may
29 prescribe by rule.

30 (d) If compensation benefits are reduced pursuant to
31 this subsection, the minimum compensation provisions of s.

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1 440.12(2) do not apply.

2 (11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
4 COMPENSATION.--

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

9 (b) If an employee is entitled to temporary partial
10 benefits pursuant to subsection (4) and unemployment
11 compensation benefits, such unemployment compensation benefits
12 shall be primary and the temporary partial benefits shall be
13 supplemental only, the sum of the two benefits not to exceed
14 the amount of temporary partial benefits which would otherwise
15 be payable.

16 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
17 OFFICERS.--Any law enforcement officer as defined in s.
18 943.10(1), (2), or (3) who, while acting within the course of
19 employment as provided by s. 440.091, is maliciously or
20 intentionally injured and who thereby sustains a job-connected
21 disability compensable under this chapter shall be carried in
22 full-pay status rather than being required to use sick,
23 annual, or other leave. Full-pay status shall be granted only
24 after submission to the employing agency's head of a medical
25 report which gives a current diagnosis of the employee's
26 recovery and ability to return to work. In no case shall the
27 employee's salary and workers' compensation benefits exceed
28 the amount of the employee's regular salary requirements.

29 (13) REPAYMENT.--If an employee has received a sum as
30 an indemnity benefit under any classification or category of
31 benefit under this chapter to which she or he is not entitled,

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1 the employee is liable to repay that sum to the employer or
2 the carrier or to have that sum deducted from future benefits,
3 regardless of the classification of benefits, payable to the
4 employee under this chapter; however, a partial payment of the
5 total repayment may not exceed 20 percent of the amount of the
6 biweekly payment.

7 Section 22. Section 440.17, Florida Statutes, is
8 amended to read:

9 440.17 Guardian for minor or incompetent.--Prior to
10 the filing of a claim, the department ~~division~~, and after the
11 filing of a claim, a judge of compensation claims, may require
12 the appointment by a court of competent jurisdiction, for any
13 person who is mentally incompetent or a minor, of a guardian
14 or other representative to receive compensation payable to
15 such person under this chapter and to exercise the powers
16 granted to or to perform the duties required of such person
17 under this chapter; however, the judge of compensation claims,
18 in the judge of compensation claims' discretion, may designate
19 in the compensation award a person to whom payment of
20 compensation may be paid for a minor or incompetent, in which
21 event payment to such designated person shall discharge all
22 liability for such compensation.

23 Section 23. Section 440.185, Florida Statutes, is
24 amended to read:

25 440.185 Notice of injury or death; reports; penalties
26 for violations.--

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

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

3 (b) The cause of the injury could not be identified
4 without a medical opinion and the employee advised the
5 employer within 30 days after obtaining a medical opinion
6 indicating that the injury arose out of and in the course of
7 employment;

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

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

13
14 In the event of death arising out of and in the course of
15 employment, the requirements of this subsection shall be
16 satisfied by the employee's agent or estate. Documents
17 prepared by counsel in connection with litigation, including
18 but not limited to notices of appearance, petitions, motions,
19 or complaints, shall not constitute notice for purposes of
20 this section.

21 (2) Within 7 days after actual knowledge of injury or
22 death, the employer shall report such injury or death to its
23 carrier, in a format prescribed by the department division,
24 and shall provide a copy of such report to the employee or the
25 employee's estate. The report of injury shall contain the
26 following information:

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

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

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

31 (d) The year, month, day, and hour when, and the

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1 particular locality where, the injury or death occurred; and
2 (e) Such other information as the department division
3 may require.

4
5 The carrier shall, within 14 days after the employer's receipt
6 of the form reporting the injury, file the information
7 required by this subsection with the department division in
8 Tallahassee. However, the department division may by rule
9 provide for a different reporting system for those types of
10 injuries which it determines should be reported in a different
11 manner and for those cases which involve minor injuries
12 requiring professional medical attention in which the employee
13 does not lose more than 7 days of work as a result of the
14 injury and is able to return to the job immediately after
15 treatment and resume regular work.

16 (3) In addition to the requirements of subsection (2),
17 the employer shall notify the department division within 24
18 hours by telephone or telegraph of any injury resulting in
19 death. However, this special notice shall not be required
20 when death results subsequent to the submission to the
21 department division of a previous report of the injury
22 pursuant to subsection (2).

23 (4) Within 3 days after the employer or the employee
24 informs the carrier of an injury the carrier shall mail to the
25 injured worker an informational brochure approved by the
26 department division which sets forth in clear and
27 understandable language an explanation of the rights,
28 benefits, procedures for obtaining benefits and assistance,
29 criminal penalties, and obligations of injured workers and
30 their employers under the Florida Workers' Compensation Law.
31 Annually, the carrier or its third-party administrator shall

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

13 (5) Additional reports with respect to such injury and
14 of the condition of such employee, including copies of medical
15 reports, funeral expenses, and wage statements, shall be filed
16 by the employer or carrier to the department ~~division~~ at such
17 times and in such manner as the department ~~division~~ may
18 prescribe by rule. In carrying out ~~its~~ responsibilities under
19 this chapter, the department and agency ~~division~~ may by rule
20 provide for the obtaining of any medical records relating to
21 medical treatment provided pursuant to this chapter,
22 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

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

29 (7) Every carrier shall file with the department
30 ~~division~~ within 21 days after the issuance of a policy or
31 contract of insurance such policy information as the

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1 ~~department division~~ may require, including notice of whether
2 the policy is a minimum premium policy. Notice of cancellation
3 or expiration of a policy as set out in s. 440.42(3) shall be
4 mailed to the ~~department division~~ in accordance with rules
5 ~~adopted promulgated~~ by the ~~department division~~ under chapter
6 120.

7 (8) When a claimant, employer, or carrier has the
8 right, or is required, to mail a report or notice with
9 required copies within the times prescribed in subsection (2),
10 subsection (4), or subsection (5), such mailing will be
11 completed and in compliance with this section if it is
12 postmarked and mailed prepaid to the appropriate recipient
13 prior to the expiration of the time periods prescribed in this
14 section.

15 (9) Any employer or carrier who fails or refuses to
16 timely send any form, report, or notice required by this
17 section shall be subject to a civil penalty not to exceed \$500
18 for each such failure or refusal. However, any employer who
19 fails to notify the carrier of the injury on the prescribed
20 form or by letter within the 7 days required in subsection (2)
21 shall be liable for the civil penalty, which shall be paid by
22 the employer and not the carrier. Failure by the employer to
23 meet its obligations under subsection (2) shall not relieve
24 the carrier from liability for the civil penalty if it fails
25 to comply with subsections (4) and (5).

26 (10) The ~~department division~~ may by rule prescribe
27 forms and procedures governing the submission of the change in
28 claims administration report and the risk class code and
29 standard industry code report for all lost time and denied
30 lost-time cases. The ~~department division~~ may by rule define
31 terms that are necessary for the effective administration of

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1 this section.

2 (11) Any information in a report of injury or illness
3 filed pursuant to this section that would identify an ill or
4 injured employee is confidential and exempt from the
5 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
6 Constitution. This subsection is subject to the Open
7 Government Sunset Review Act of 1995 in accordance with s.
8 119.15, and shall stand repealed on October 2, 2003, unless
9 reviewed and saved from repeal through reenactment by the
10 Legislature.

11 Section 24. Subsection (1) of section 440.191, Florida
12 Statutes, is amended to read:

13 440.191 Employee Assistance and Ombudsman Office.--

14 (1)(a) In order to effect the self-executing features
15 of the Workers' Compensation Law, this chapter shall be
16 construed to permit injured employees and employers or the
17 employer's carrier to resolve disagreements without undue
18 expense, costly litigation, or delay in the provisions of
19 benefits. It is the duty of all who participate in the
20 workers' compensation system, including, but not limited to,
21 carriers, service providers, health care providers, attorneys,
22 employers, and employees, to attempt to resolve disagreements
23 in good faith and to cooperate with the department's
24 ~~division's~~ efforts to resolve disagreements between the
25 parties. The department ~~division~~ may by rule prescribe
26 definitions that are necessary for the effective
27 administration of this section.

28 (b) An Employee Assistance and Ombudsman Office is
29 created within the department ~~Division of Workers'~~
30 ~~Compensation~~ to inform and assist injured workers, employers,
31 carriers, and health care providers in fulfilling their

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1 responsibilities under this chapter. The department division
2 may by rule specify forms and procedures for administering
3 requests for assistance provided by this section.

4 (c) The Employee Assistance and Ombudsman Office,
5 ~~Division of Workers' Compensation~~, shall be a resource
6 available to all employees who participate in the workers'
7 compensation system and shall take all steps necessary to
8 educate and disseminate information to employees and
9 employers.

10 Section 25. Subsections (1) and (8) of section
11 440.192, Florida Statutes, are amended to read:

12 440.192 Procedure for resolving benefit disputes.--

13 (1) Subject to s. 440.191, any employee who has not
14 received a benefit to which the employee believes she or he is
15 entitled under this chapter shall serve by certified mail upon
16 the employer, the employer's carrier, and the department
17 ~~division~~ in Tallahassee a petition for benefits that meets the
18 requirements of this section. The department division shall
19 refer the petition to the Office of the Judges of Compensation
20 Claims.

21 (8) Within 14 days after receipt of a petition for
22 benefits by certified mail, the carrier must either pay the
23 requested benefits without prejudice to its right to deny
24 within 120 days from receipt of the petition or file a notice
25 of denial with the department division. The carrier must list
26 all benefits requested but not paid and explain its
27 justification for nonpayment in the notice of denial. A
28 carrier that does not deny compensability in accordance with
29 s. 440.20(4) is deemed to have accepted the employee's
30 injuries as compensable, unless it can establish material
31 facts relevant to the issue of compensability that could not

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1 have been discovered through reasonable investigation within
2 the 120-day period. The carrier shall provide copies of the
3 notice to the filing party, employer, and claimant by
4 certified mail.

5 Section 26. Subsections (1), (3), and (4) of section
6 440.1925, Florida Statutes, are amended to read:

7 440.1925 Procedure for resolving maximum medical
8 improvement or permanent impairment disputes.--

9 (1) Notwithstanding the limitations on carrier
10 independent medical examinations in s. 440.13, an employee or
11 carrier who wishes to obtain an opinion other than the opinion
12 of the treating physician or an agency ~~a division~~ advisor on
13 the issue of permanent impairment may obtain one independent
14 medical examination, except that the employee or carrier who
15 selects the treating physician is not entitled to obtain an
16 alternate opinion on the issue of permanent impairment, unless
17 the parties otherwise agree. This section and s. 440.13(2) do
18 not permit an employee or a carrier to obtain an additional
19 medical opinion on the issue of permanent impairment by
20 requesting an alternate treating physician pursuant to s.
21 440.13.

22 (3) Disputes shall be resolved under this section
23 when:

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

27 (b) The independent medical examiner's opinion on the
28 date of the employee's maximum medical improvement and degree
29 or permanent impairment differs from the opinion of the
30 employee's treating physician on either of those issues, or
31 from the opinion of the expert medical advisor appointed by

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1 the agency division on the degree of permanent impairment; or
2 (c) The carrier denies any portion of an employee's
3 claim petition for benefits due to disputed maximum medical
4 improvement or permanent impairment issues.

5 (4) Only opinions of the employee's treating
6 physician, an agency ~~a division~~ medical advisor, or an
7 independent medical examiner are admissible in proceedings
8 before a judge of compensation claims to resolve maximum
9 medical improvement or impairment disputes.

10 Section 27. Subsections (3), (6), (8), (9), (10),
11 (11), (12), (15), (16), and (17) of section 440.20, Florida
12 Statutes, are amended to read:

13 440.20 Time for payment of compensation; penalties for
14 late payment.--

15 (3) Upon making payment, or upon suspension or
16 cessation of payment for any reason, the carrier shall
17 immediately notify the department ~~division~~ that it has
18 commenced, suspended, or ceased payment of compensation. The
19 department ~~division~~ may require such notification in any
20 format and manner it deems necessary to obtain accurate and
21 timely reporting.

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

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

24 (8) In addition to any other penalties provided by
25 this chapter for late payment, if any installment of
26 compensation is not paid when it becomes due, the employer,
27 carrier, or servicing agent shall pay interest thereon at the
28 rate of 12 percent per year from the date the installment
29 becomes due until it is paid, whether such installment is
30 payable without an order or under the terms of an order. The
31 interest payment shall be the greater of the amount of

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1 interest due or \$5.

2 (a) Within 30 days after final payment of compensation
3 has been made, the employer, carrier, or servicing agent shall
4 send to the department ~~division~~ a notice, in accordance with a
5 ~~form~~ format and manner prescribed by the department ~~division~~,
6 stating that such final payment has been made and stating the
7 total amount of compensation paid, the name of the employee
8 and of any other person to whom compensation has been paid,
9 the date of the injury or death, and the date to which
10 compensation has been paid.

11 (b) If the employer, carrier, or servicing agent fails
12 to so notify the department ~~division~~ within such time, the
13 department ~~division~~ shall assess against such employer,
14 carrier, or servicing agent a civil penalty in an amount not
15 over \$100.

16 (c) In order to ensure carrier compliance under this
17 chapter and provisions of the insurance code, the department
18 ~~division~~ shall monitor the performance of carriers by
19 conducting market conduct examinations, as provided in s.
20 624.3161, and conducting investigations, as provided in s.
21 624.317. The department ~~division~~ shall impose penalties on
22 ~~establish by rule minimum performance standards for carriers~~
23 ~~to ensure that a minimum of 90 percent of all compensation~~
24 ~~benefits are timely paid. The division shall fine a carrier as~~
25 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~
26 ~~of compensation pursuant to s. 624.4211 that is below the~~
27 ~~minimum 90 percent performance standard.~~ This paragraph does
28 not affect the imposition of any penalties or interest due to
29 the claimant. If a carrier contracts with a servicing agent to
30 fulfill its administrative responsibilities under this
31 chapter, the payment practices of the servicing agent are

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1 deemed the payment practices of the carrier for the purpose of
2 assessing penalties against the carrier.

3 (9) The department ~~division~~ may upon its own
4 initiative at any time in a case in which payments are being
5 made without an award investigate same and shall, in any case
6 in which the right to compensation is controverted, or in
7 which payments of compensation have been stopped or suspended,
8 upon receipt of notice from any person entitled to
9 compensation or from the employer that the right to
10 compensation is controverted or that payments of compensation
11 have been stopped or suspended, make such investigations,
12 cause such medical examination to be made, or hold such
13 hearings, and take such further action as it considers will
14 properly protect the rights of all parties.

15 (10) Whenever the department ~~division~~ deems it
16 advisable, it may require any employer to make a deposit with
17 the Treasurer to secure the prompt and convenient payments of
18 such compensation; and payments therefrom upon any awards
19 shall be made upon order of the department ~~division~~ or judge
20 of compensation claims.

21 (11)(a) Upon joint petition of all interested parties,
22 a lump-sum payment in exchange for the employer's or carrier's
23 release from liability for future medical expenses, as well as
24 future payments of compensation expenses and any other
25 benefits provided under this chapter, shall be allowed at any
26 time in any case in which the employer or carrier has filed a
27 written notice of denial within 120 days after the date of the
28 injury, and the judge of compensation claims at a hearing to
29 consider the settlement proposal finds a justiciable
30 controversy as to legal or medical compensability of the
31 claimed injury or the alleged accident. The employer or

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1 carrier may not pay any attorney's fees on behalf of the
2 claimant for any settlement under this section unless
3 expressly authorized elsewhere in this chapter. Upon the joint
4 petition of all interested parties and after giving due
5 consideration to the interests of all interested parties, the
6 judge of compensation claims may enter a compensation order
7 approving and authorizing the discharge of the liability of
8 the employer for compensation and remedial treatment, care,
9 and attendance, as well as rehabilitation expenses, by the
10 payment of a lump sum. Such a compensation order so entered
11 upon joint petition of all interested parties is not subject
12 to modification or review under s. 440.28. If the settlement
13 proposal together with supporting evidence is not approved by
14 the judge of compensation claims, it shall be considered void.
15 Upon approval of a lump-sum settlement under this subsection,
16 the judge of compensation claims shall send a report to the
17 Chief Judge of the amount of the settlement and a statement of
18 the nature of the controversy. The Chief Judge shall keep a
19 record of all such reports filed by each judge of compensation
20 claims and shall submit to the Legislature a summary of all
21 such reports filed under this subsection annually by September
22 15.

23 (b) Upon joint petition of all interested parties, a
24 lump-sum payment in exchange for the employer's or carrier's
25 release from liability for future medical expenses, as well as
26 future payments of compensation and rehabilitation expenses,
27 and any other benefits provided under this chapter, may be
28 allowed at any time in any case after the injured employee has
29 attained maximum medical improvement. An employer or carrier
30 may not pay any attorney's fees on behalf of the claimant for
31 any settlement, unless expressly authorized elsewhere in this

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1 chapter. A compensation order so entered upon joint petition
2 of all interested parties shall not be subject to modification
3 or review under s. 440.28. However, a judge of compensation
4 claims is not required to approve any award for lump-sum
5 payment when it is determined by the judge of compensation
6 claims that the payment being made is in excess of the value
7 of benefits the claimant would be entitled to under this
8 chapter. The judge of compensation claims shall make or cause
9 to be made such investigations as she or he considers
10 necessary, in each case in which the parties have stipulated
11 that a proposed final settlement of liability of the employer
12 for compensation shall not be subject to modification or
13 review under s. 440.28, to determine whether such final
14 disposition will definitely aid the rehabilitation of the
15 injured worker or otherwise is clearly for the best interests
16 of the person entitled to compensation and, in her or his
17 discretion, may have an investigation made by the Department
18 of Education Rehabilitation Section of the Division of
19 ~~Workers' Compensation~~. The joint petition and the report of
20 any investigation so made will be deemed a part of the
21 proceeding. An employer shall have the right to appear at any
22 hearing pursuant to this subsection which relates to the
23 discharge of such employer's liability and to present
24 testimony at such hearing. The carrier shall provide
25 reasonable notice to the employer of the time and date of any
26 such hearing and inform the employer of her or his rights to
27 appear and testify. When the claimant is represented by
28 counsel or when the claimant and carrier or employer are
29 represented by counsel, final approval of the lump-sum
30 settlement agreement, as provided for in a joint petition and
31 stipulation, shall be approved by entry of an order within 7

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1 days after the filing of such joint petition and stipulation
2 without a hearing, unless the judge of compensation claims
3 determines, in her or his discretion, that additional
4 testimony is needed before such settlement can be approved or
5 disapproved and so notifies the parties. The probability of
6 the death of the injured employee or other person entitled to
7 compensation before the expiration of the period during which
8 such person is entitled to compensation shall, in the absence
9 of special circumstances making such course improper, be
10 determined in accordance with the most recent United States
11 Life Tables published by the National Office of Vital
12 Statistics of the United States Department of Health and Human
13 Services. The probability of the happening of any other
14 contingency affecting the amount or duration of the
15 compensation, except the possibility of the remarriage of a
16 surviving spouse, shall be disregarded. As a condition of
17 approving a lump-sum payment to a surviving spouse, the judge
18 of compensation claims, in the judge of compensation claims'
19 discretion, may require security which will ensure that, in
20 the event of the remarriage of such surviving spouse, any
21 unaccrued future payments so paid may be recovered or recouped
22 by the employer or carrier. Such applications shall be
23 considered and determined in accordance with s. 440.25.

24 (c) This section applies to all claims that the
25 parties have not previously settled, regardless of the date of
26 accident.

27 (12)(a) Liability of an employer for future payments
28 of compensation may not be discharged by advance payment
29 unless prior approval of a judge of compensation claims or the
30 department division has been obtained as hereinafter provided.
31 The approval shall not constitute an adjudication of the

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1 claimant's percentage of disability.

2 (b) When the claimant has reached maximum recovery and
3 returned to her or his former or equivalent employment with no
4 substantial reduction in wages, such approval of a reasonable
5 advance payment of a part of the compensation payable to the
6 claimant may be given informally by letter by a judge of
7 compensation claims ~~or by the department division director,~~
8 ~~or by the administrator of claims of the division.~~

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

13 1. An advance payment of compensation not in excess of
14 \$2,000 may be approved informally by letter, without hearing,
15 by any judge of compensation claims or the Chief Judge.

16 2. An advance payment of compensation not in excess of
17 \$2,000 may be ordered by any judge of compensation claims
18 after giving the interested parties an opportunity for a
19 hearing thereon pursuant to not less than 10 days' notice by
20 mail, unless such notice is waived, and after giving due
21 consideration to the interests of the person entitled thereto.
22 When the parties have stipulated to an advance payment of
23 compensation not in excess of \$2,000, such advance may be
24 approved by an order of a judge of compensation claims, with
25 or without hearing, or informally by letter by any such judge
26 of compensation claims, or by the department division
27 ~~director~~, if such advance is found to be for the best
28 interests of the person entitled thereto.

29 3. When the parties have stipulated to an advance
30 payment in excess of \$2,000, subject to the approval of the
31 department division, such payment may be approved by a judge

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1 of compensation claims by order if the judge finds that such
2 advance payment is for the best interests of the person
3 entitled thereto and is reasonable under the circumstances of
4 the particular case. The judge of compensation claims shall
5 make or cause to be made such investigations as she or he
6 considers necessary concerning the stipulation and, in her or
7 his discretion, may have an investigation of the matter made
8 by the Department of Education ~~Rehabilitation Section of the~~
9 ~~division~~. The stipulation and the report of any investigation
10 shall be deemed a part of the record of the proceedings.

11 (d) When an application for an advance payment in
12 excess of \$2,000 is opposed by the employer or carrier, it
13 shall be heard by a judge of compensation claims after giving
14 the interested parties not less than 10 days' notice of such
15 hearing by mail, unless such notice is waived. In her or his
16 discretion, the judge of compensation claims may have an
17 investigation of the matter made by the Department of
18 Education ~~Rehabilitation Section of the division~~, in which
19 event the report and recommendation of that section will be
20 deemed a part of the record of the proceedings. If the judge
21 of compensation claims finds that such advance payment is for
22 the best interests of the person entitled to compensation,
23 will not materially prejudice the rights of the employer and
24 carrier, and is reasonable under the circumstances of the
25 case, she or he may order the same paid. However, in no event
26 may any such advance payment under this paragraph be granted
27 in excess of \$7,500 or 26 weeks of benefits in any 48-month
28 period, whichever is greater, from the date of the last
29 advance payment.

30 (15)(a) The department ~~division~~ shall examine on an
31 ongoing basis claims files in accordance with ss. 624.3161 and

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1 624.310(5)in order to identify questionable claims-handling
 2 techniques, questionable patterns or practices of claims, or a
 3 pattern of repeated unreasonably controverted claims by
 4 employers, carriers, and self-insurers, ~~health care providers,~~
 5 ~~health care facilities, training and education providers, or~~
 6 ~~any others~~ providing services to employees pursuant to this
 7 chapter ~~and may certify its findings to the Department of~~
 8 ~~Insurance.~~ If the department finds such questionable
 9 techniques, patterns, or repeated unreasonably controverted
 10 claims as constitute a general business practice of a carrier,
 11 ~~in the judgment of the division shall be certified in its~~
 12 ~~findings by the division to the Department of Insurance or~~
 13 ~~such other appropriate licensing agency. Such certification by~~
 14 ~~the division is exempt from the provisions of chapter 120.~~
 15 ~~Upon receipt of any such certification,~~the department of
 16 ~~Insurance~~ shall take appropriate action so as to bring such
 17 general business practices to a halt pursuant to s.
 18 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.
 19 The department ~~division~~ may initiate investigations of
 20 questionable techniques, patterns, practices, or repeated
 21 unreasonably controverted claims. The department ~~division~~ may
 22 by rule establish penalties for violations and forms and
 23 procedures for corrective action plans and for auditing
 24 carriers.

25 (b) As to any examination, investigation, or hearing
 26 being conducted under this chapter, the Treasurer or his or
 27 her designee ~~Secretary of Labor and Employment Security or the~~
 28 ~~secretary's designee:~~

- 29 1. May administer oaths, examine and cross-examine
- 30 witnesses, receive oral and documentary evidence; and
- 31 2. Shall have the power to subpoena witnesses, compel

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1 their attendance and testimony, and require by subpoena the
2 production of books, papers, records, files, correspondence,
3 documents, or other evidence which is relevant to the inquiry.

4 (c) If any person refuses to comply with any such
5 subpoena or to testify as to any matter concerning which she
6 or he may be lawfully interrogated, the Circuit Court of Leon
7 County or of the county wherein such examination,
8 investigation, or hearing is being conducted, or of the county
9 wherein such person resides, may, on the application of the
10 department, issue an order requiring such person to comply
11 with the subpoena and to testify.

12 (d) Subpoenas shall be served, and proof of such
13 service made, in the same manner as if issued by a circuit
14 court. Witness fees, costs, and reasonable travel expenses, if
15 claimed, shall be allowed the same as for testimony in a
16 circuit court.

17 ~~(e) The division shall publish annually a report which~~
18 ~~indicates the promptness of first payment of compensation~~
19 ~~records of each carrier or self-insurer so as to focus~~
20 ~~attention on those carriers or self-insurers with poor payment~~
21 ~~records for the preceding year. A copy of such report shall be~~
22 ~~certified to The department of Insurance which shall take~~
23 ~~appropriate steps so as to cause such poor carrier payment~~
24 ~~practices to halt pursuant to s. 440.38(3)(a). In addition,~~
25 ~~the department ~~division~~ shall take appropriate action so as to~~
26 ~~halt such poor payment practices of self-insurers. "Poor~~
27 ~~payment practice" means a practice of late payment sufficient~~
28 ~~to constitute a general business practice.~~

29 (f) The department ~~division~~ shall promulgate rules
30 providing guidelines to carriers, self-insurers, and employers
31 to indicate behavior that may be construed as questionable

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1 claims-handling techniques, questionable patterns of claims,
2 repeated unreasonably controverted claims, or poor payment
3 practices.

4 (16) No penalty assessed under this section may be
5 recouped by any carrier or self-insurer in the rate base, the
6 premium, or any rate filing. ~~In the case of carriers, The~~
7 ~~Department of Insurance shall enforce this subsection; and in~~
8 ~~the case of self-insurers, the division shall enforce this~~
9 ~~subsection.~~

10 (17) The department ~~division~~ may by rule establish
11 audit procedures and set standards for the Automated Carrier
12 Performance System.

13 Section 28. Subsections (1) and (2) of section
14 440.207, Florida Statutes, are amended to read:

15 440.207 Workers' compensation system guide.--

16 (1) The department ~~Division of Workers' Compensation~~
17 ~~of the Department of Labor and Employment Security~~ shall
18 educate all persons providing or receiving benefits pursuant
19 to this chapter as to their rights and responsibilities under
20 this chapter.

21 (2) The department ~~division~~ shall publish an
22 understandable guide to the workers' compensation system which
23 shall contain an explanation of benefits provided; services
24 provided by the Employee Assistance and Ombudsman Office;
25 procedures regarding mediation, the hearing process, and civil
26 and criminal penalties; relevant rules of the department
27 ~~division~~; and such other information as the department
28 ~~division~~ believes will inform employees, employers, carriers,
29 and those providing services pursuant to this chapter of their
30 rights and responsibilities under this chapter and the rules
31 of the department ~~division~~. For the purposes of this

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1 subsection, a guide is understandable if the text of the guide
2 is written at a level of readability not exceeding the eighth
3 grade level, as determined by a recognized readability test.

4 Section 29. Subsection (1) of section 440.211, Florida
5 Statutes, is amended to read:

6 440.211 Authorization of collective bargaining
7 agreement.--

8 (1) Subject to the limitation stated in subsection
9 (2), a provision that is mutually agreed upon in any
10 collective bargaining agreement filed with the department
11 ~~division~~ between an individually self-insured employer or
12 other employer upon consent of the employer's carrier and a
13 recognized or certified exclusive bargaining representative
14 establishing any of the following shall be valid and binding:

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

20 (b) The use of an agreed-upon list of certified health
21 care providers of medical treatment which may be the exclusive
22 source of all medical treatment under this chapter.

23 (c) The use of a limited list of physicians to conduct
24 independent medical examinations which the parties may agree
25 shall be the exclusive source of independent medical examiners
26 pursuant to this chapter.

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

29 (e) A vocational rehabilitation or retraining program.

30 Section 30. Subsections (1), (2), and (3) of section
31 440.24, Florida Statutes, are amended to read:

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1 440.24 Enforcement of compensation orders;
2 penalties.--

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

19 (2) In any case where the employer is insured and the
20 carrier fails to comply with any compensation order of a judge
21 of compensation claims or court within 10 days after such
22 order becomes final, ~~the division shall notify the department~~
23 ~~of Insurance of such failure, and the Department of Insurance~~
24 shall thereupon suspend the license of such carrier to do an
25 insurance business in this state, until such carrier has
26 complied with such order.

27 (3) In any case where the employer is a self-insurer
28 and fails to comply with any compensation order of a judge of
29 compensation claims or court within 10 days after such order
30 becomes final, the department ~~division~~ may suspend or revoke
31 any authorization previously given to the employer to become a

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1 self-insurer, and the department division may sell such of the
2 securities deposited by such self-insurer with the department
3 division as may be necessary to satisfy such order.

4 Section 31. Subsections (4), (5), and (7) of section
5 440.25, Florida Statutes, are amended to read:

6 440.25 Procedures for mediation and hearings.--

7 (4)(a) If, on the 10th day following commencement of
8 mediation, the questions in dispute have not been resolved,
9 the judge of compensation claims shall hold a pretrial
10 hearing. The judge of compensation claims shall give the
11 interested parties at least 7 days' advance notice of the
12 pretrial hearing by mail. At the pretrial hearing, the judge
13 of compensation claims shall, subject to paragraph (b), set a
14 date for the final hearing that allows the parties at least 30
15 days to conduct discovery unless the parties consent to an
16 earlier hearing date.

17 (b) The final hearing must be held and concluded
18 within 45 days after the pretrial hearing. Continuances may be
19 granted only if the requesting party demonstrates to the judge
20 of compensation claims that the reason for requesting the
21 continuance arises from circumstances beyond the party's
22 control.

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

26 (d) The hearing shall be held in the county where the
27 injury occurred, if the injury occurred in this state, unless
28 otherwise agreed to between the parties and authorized by the
29 judge of compensation claims in the county where the injury
30 occurred. If the injury occurred without the state and is one
31 for which compensation is payable under this chapter, then the

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1 hearing above referred to may be held in the county of the
2 employer's residence or place of business, or in any other
3 county of the state which will, in the discretion of the Chief
4 Judge, be the most convenient for a hearing. The hearing shall
5 be conducted by a judge of compensation claims, who shall,
6 within 14 days after final hearing, unless otherwise agreed by
7 the parties, determine the dispute in a summary manner. At
8 such hearing, the claimant and employer may each present
9 evidence in respect of such claim and may be represented by
10 any attorney authorized in writing for such purpose. When
11 there is a conflict in the medical evidence submitted at the
12 hearing, the provisions of s. 440.13 shall apply. The report
13 or testimony of the expert medical advisor shall be made a
14 part of the record of the proceeding and shall be given the
15 same consideration by the judge of compensation claims as is
16 accorded other medical evidence submitted in the proceeding;
17 and all costs incurred in connection with such examination and
18 testimony may be assessed as costs in the proceeding, subject
19 to the provisions of s. 440.13. No judge of compensation
20 claims may make a finding of a degree of permanent impairment
21 that is greater than the greatest permanent impairment rating
22 given the claimant by any examining or treating physician,
23 except upon stipulation of the parties.

24 (e) The order making an award or rejecting the claim,
25 referred to in this chapter as a "compensation order," shall
26 set forth the findings of ultimate facts and the mandate; and
27 the order need not include any other reason or justification
28 for such mandate. The compensation order shall be filed in the
29 office of the department ~~division~~ at Tallahassee. A copy of
30 such compensation order shall be sent by mail to the parties
31 and attorneys of record at the last known address of each,

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1 with the date of mailing noted thereon.

2 (f) Each judge of compensation claims is required to
3 submit a special report to the Chief Judge in each contested
4 workers' compensation case in which the case is not determined
5 within 14 days of final hearing. Said form shall be provided
6 by the Chief Judge and shall contain the names of the judge of
7 compensation claims and of the attorneys involved and a brief
8 explanation by the judge of compensation claims as to the
9 reason for such a delay in issuing a final order. The Chief
10 Judge shall compile these special reports into an annual
11 public report to the Governor, the department ~~Secretary of~~
12 ~~Labor and Employment Security~~, the Legislature, The Florida
13 Bar, and the appellate district judicial nominating
14 commissions.

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

17 (h) Notwithstanding any other provision of this
18 section, the judge of compensation claims may require the
19 appearance of the parties and counsel before her or him
20 without written notice for an emergency conference where there
21 is a bona fide emergency involving the health, safety, or
22 welfare of an employee. An emergency conference under this
23 section may result in the entry of an order or the rendering
24 of an adjudication by the judge of compensation claims.

25 (i) To expedite dispute resolution and to enhance the
26 self-executing features of the Workers' Compensation Law, the
27 Chief Judge shall make provision by rule or order for the
28 resolution of appropriate motions by judges of compensation
29 claims without oral hearing upon submission of brief written
30 statements in support and opposition, and for expedited
31 discovery and docketing.

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

28 (5)(a) Procedures with respect to appeals from orders
29 of judges of compensation claims shall be governed by rules
30 adopted by the Supreme Court. Such an order shall become final
31 30 days after mailing of copies of such order to the parties,

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1 unless appealed pursuant to such rules.

2 (b) An appellant may be relieved of any necessary
3 filing fee by filing a verified petition of indigency for
4 approval as provided in s. 57.081(1) and may be relieved in
5 whole or in part from the costs for preparation of the record
6 on appeal if, within 15 days after the date notice of the
7 estimated costs for the preparation is served, the appellant
8 files with the judge of compensation claims a copy of the
9 designation of the record on appeal, and a verified petition
10 to be relieved of costs. A verified petition filed prior to
11 the date of service of the notice of the estimated costs shall
12 be deemed not timely filed. The verified petition relating to
13 record costs shall contain a sworn statement that the
14 appellant is insolvent and a complete, detailed, and sworn
15 financial affidavit showing all the appellant's assets,
16 liabilities, and income. Failure to state in the affidavit all
17 assets and income, including marital assets and income, shall
18 be grounds for denying the petition with prejudice. The
19 department ~~division~~ shall promulgate rules as may be required
20 pursuant to this subsection, including forms for use in all
21 petitions brought under this subsection. The appellant's
22 attorney, or the appellant if she or he is not represented by
23 an attorney, shall include as a part of the verified petition
24 relating to record costs an affidavit or affirmation that, in
25 her or his opinion, the notice of appeal was filed in good
26 faith and that there is a probable basis for the District
27 Court of Appeal, First District, to find reversible error, and
28 shall state with particularity the specific legal and factual
29 grounds for the opinion. Failure to so affirm shall be grounds
30 for denying the petition. A copy of the verified petition
31 relating to record costs shall be served upon all interested

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1 parties, including the department division and the Office of
2 the General Counsel, Department of Labor and Employment
3 Security, in Tallahassee. The judge of compensation claims
4 shall promptly conduct a hearing on the verified petition
5 relating to record costs, giving at least 15 days' notice to
6 the appellant, the department division, and all other
7 interested parties, all of whom shall be parties to the
8 proceedings. The judge of compensation claims may enter an
9 order without such hearing if no objection is filed by an
10 interested party within 20 days from the service date of the
11 verified petition relating to record costs. Such proceedings
12 shall be conducted in accordance with the provisions of this
13 section and with the workers' compensation rules of procedure,
14 to the extent applicable. In the event an insolvency petition
15 is granted, the judge of compensation claims shall direct the
16 department division to pay record costs and filing fees from
17 the Workers' Compensation Administrative Trust Fund pending
18 final disposition of the costs of appeal. The department
19 division may transcribe or arrange for the transcription of
20 the record in any proceeding for which it is ordered to pay
21 the cost of the record. In the event the insolvency petition
22 is denied, the judge of compensation claims may enter an order
23 requiring the petitioner to reimburse the department division
24 for costs incurred in opposing the petition, including
25 investigation and travel expenses.

26 (c) As a condition of filing a notice of appeal to the
27 District Court of Appeal, First District, an employer who has
28 not secured the payment of compensation under this chapter in
29 compliance with s. 440.38 shall file with the notice of appeal
30 a good and sufficient bond, as provided in s. 59.13,
31 conditioned to pay the amount of the demand and any interest

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1 and costs payable under the terms of the order if the appeal
2 is dismissed, or if the District Court of Appeal, First
3 District, affirms the award in any amount. Upon the failure of
4 such employer to file such bond with the judge of compensation
5 claims or the District Court of Appeal, First District, along
6 with the notice of appeal, the District Court of Appeal, First
7 District, shall dismiss the notice of appeal.

8 (7) An injured employee claiming or entitled to
9 compensation shall submit to such physical examination by a
10 certified expert medical advisor approved by the agency
11 ~~division~~ or the judge of compensation claims as the agency
12 ~~division~~ or the judge of compensation claims may require. The
13 place or places shall be reasonably convenient for the
14 employee. Such physician or physicians as the employee,
15 employer, or carrier may select and pay for may participate in
16 an examination if the employee, employer, or carrier so
17 requests. Proceedings shall be suspended and no compensation
18 shall be payable for any period during which the employee may
19 refuse to submit to examination. Any interested party shall
20 have the right in any case of death to require an autopsy, the
21 cost thereof to be borne by the party requesting it; and the
22 judge of compensation claims shall have authority to order and
23 require an autopsy and may, in her or his discretion, withhold
24 her or his findings and award until an autopsy is held.

25 Section 32. Section 440.271, Florida Statutes, is
26 amended to read:

27 440.271 Appeal of order of judge of compensation
28 claims.--Review of any order of a judge of compensation claims
29 entered pursuant to this chapter shall be by appeal to the
30 District Court of Appeal, First District. Appeals shall be
31 filed in accordance with rules of procedure prescribed by the

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1 Supreme Court for review of such orders. The department
2 ~~division~~ shall be given notice of any proceedings pertaining
3 to s. 440.25, regarding indigency, or s. 440.49, regarding the
4 Special Disability Trust Fund, and shall have the right to
5 intervene in any proceedings.

6 Section 33. Section 440.345, Florida Statutes, is
7 amended to read:

8 440.345 Reporting of attorney's fees.--All fees paid
9 to attorneys for services rendered under this chapter shall be
10 reported to the department division as the department division
11 requires by rule. The department division shall annually
12 summarize such data in a report to the Workers' Compensation
13 Oversight Board.

14 Section 34. Section 440.35, Florida Statutes, is
15 amended to read:

16 440.35 Record of injury or death.--Every employer
17 shall keep a record in respect of any injury to an employee.
18 Such record shall contain such information of disability or
19 death in respect of such injury as the department division may
20 by regulation require, and shall be available to inspection by
21 the department division or by any state authority at such time
22 and under such conditions as the department division may by
23 regulation prescribe.

24 Section 35. Subsections (1), (2), and (3) of section
25 440.38, Florida Statutes, are amended to read:

26 440.38 Security for compensation; insurance carriers
27 and self-insurers.--

28 (1) Every employer shall secure the payment of
29 compensation under this chapter:

30 (a) By insuring and keeping insured the payment of
31 such compensation with any stock company or mutual company or

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1 association or exchange, authorized to do business in the
2 state;

3 (b) By furnishing satisfactory proof to the Florida
4 Self-Insurers Guaranty Association, Incorporated, created in
5 s. 440.385, that it has the financial strength necessary to
6 assure timely payment of all current and future claims
7 ~~division of its financial ability to pay such compensation~~
8 individually and on behalf of its subsidiary and affiliated
9 companies with employees in this state and receiving an
10 authorization from the Department of Insurance,~~division to~~
11 pay such compensation directly. The association shall review
12 the financial strength of applicants for membership, current
13 members, and former members and make recommendations to the
14 department regarding their qualifications to self-insure in
15 accordance with this act and ss. 440.385 and 440.386. The
16 department shall consult with the association on any
17 recommendation before taking action.~~the following provisions:~~

18 1. The association ~~division~~ may recommend that the
19 Department of Insurance, ~~as a condition to such authorization,~~
20 require an such employer to deposit with ~~in a depository~~
21 ~~designated by the association~~ a qualifying deposit. The
22 association shall recommend the type and amount of the
23 qualifying security deposit and shall ~~division either an~~
24 ~~indemnity bond or securities, at the option of the employer,~~
25 ~~of a kind and in an amount determined by the division and~~
26 ~~subject to such conditions as the division may prescribe~~
27 conditions for the qualifying security deposit, which shall
28 include authorization for ~~to~~ the association to call the
29 qualifying security deposit ~~division~~ in the case of default ~~to~~
30 ~~sell any such securities sufficient to pay compensation awards~~
31 and related expenses of the association ~~or to bring suit upon~~

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1 ~~such bonds, to procure prompt payment of compensation under~~
2 ~~this chapter. In addition, the division shall require,~~As a
3 condition to authorization to self-insure, the employer shall
4 provide proof that the employer has provided for competent
5 personnel with whom to deliver benefits and to provide a safe
6 working environment. ~~Further,~~The employer division shall
7 also provide evidence of ~~require such employer to carry~~
8 reinsurance at levels that will ensure the financial strength
9 and actuarial soundness of such employer in accordance with
10 rules adopted ~~promulgated~~ by the Department of Insurance
11 division. The Department of Insurance division may by rule
12 require that, in the event of an individual self-insurer's
13 insolvency, such qualifying security deposits indemnity bonds,
14 securities,and reinsurance policies are ~~shall be~~ payable to
15 the association ~~Florida Self-Insurers Guaranty Association,~~
16 ~~incorporated, created pursuant to s. 440.385.~~ Any employer
17 securing compensation in accordance with the provisions of
18 this paragraph shall be known as a self-insurer and shall be
19 classed as a carrier of her or his own insurance. All such
20 employers shall, if requested, provide the association an
21 actuarial report signed by a member of the American Academy of
22 Actuaries providing an opinion of the appropriate present
23 value of the reserves for current and future compensation
24 claims. If any member or former member of the association
25 refuses to timely provide such a report, the association may
26 obtain an order from a circuit court requiring the member to
27 produce such a report and ordering such other relief as the
28 court determines appropriate. The association shall be
29 entitled to recover all reasonable costs and attorney's fees
30 in such proceedings.

31 2. If the employer fails to maintain the foregoing

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

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

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

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

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

31 ~~b. Certificates of deposit with financial~~

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1 ~~institutions, the deposits of which are insured through the~~
2 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
3 ~~and Loan Insurance Corporation.~~

4 ~~b.e.~~ Irrevocable letters of credit in favor of the
5 association division issued by financial institutions located
6 within this state, the deposits of which are insured through
7 the Federal Deposit Insurance Corporation described in
8 sub-subparagraph b.

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

11 ~~e.~~ ~~Securities issued by this state and backed by the~~
12 ~~full faith and credit of this state.~~

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

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1 employers must comply with this section on or before December
2 31, 2001, or upon maturity of existing security deposits,
3 whichever occurs later the sale of any security at then
4 prevailing market rates, or the withdrawal of any funds
5 represented by any certificate of deposit forming part of the
6 qualifying security deposit. The Department of Insurance
7 division may specify by rule the amount of the qualifying
8 security deposit required prior to authorizing an employer to
9 self-insure and the amount of net worth required for an
10 employer to qualify for authorization to self-insure;

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

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

19 (e) In accordance with s. 440.135, an employer, other
20 than a local government unit, may elect coverage under the
21 Workers' Compensation Law and retain the benefit of the
22 exclusiveness of liability provided in s. 440.11 by obtaining
23 a 24-hour health insurance policy from an authorized property
24 and casualty insurance carrier or an authorized life and
25 health insurance carrier, or by participating in a fully or
26 partially self-insured 24-hour health plan that is established
27 or maintained by or for two or more employers, so long as the
28 law of this state is not preempted by the Employee Retirement
29 Income Security Act of 1974, Pub. L. No. 93-406, or any
30 amendment to that law, which policy or plan must provide, for
31 at least occupational injuries and illnesses, medical benefits

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1 that are comparable to those required by this chapter. A local
2 government unit, as a single employer, in accordance with s.
3 440.135, may participate in the 24-hour health insurance
4 coverage plan referenced in this paragraph. Disputes and
5 remedies arising under policies issued under this section are
6 governed by the terms and conditions of the policies and under
7 the applicable provisions of the Florida Insurance Code and
8 rules adopted under the insurance code and other applicable
9 laws of this state. The 24-hour health insurance policy may
10 provide for health care by a health maintenance organization
11 or a preferred provider organization. The premium for such
12 24-hour health insurance policy shall be paid entirely by the
13 employer. The 24-hour health insurance policy may use
14 deductibles and coinsurance provisions that require the
15 employee to pay a portion of the actual medical care received
16 by the employee. If an employer obtains a 24-hour health
17 insurance policy or self-insured plan to secure payment of
18 compensation as to medical benefits, the employer must also
19 obtain an insurance policy or policies that provide indemnity
20 benefits as follows:

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

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

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

31 4. Policies providing coverage under this subsection

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

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

20 (2)(a) The Department of Insurance division shall
21 adopt rules by which businesses may become qualified to
22 provide underwriting claims-adjusting, loss control, and
23 safety engineering services to self-insurers.

24 (b) The Department of Insurance division shall adopt
25 rules requiring self-insurers to file any reports necessary to
26 fulfill the requirements of this chapter. Any self-insurer
27 who fails to file any report as prescribed by the rules
28 adopted by the department division shall be subject to a civil
29 penalty ~~not to exceed \$100 for each such failure.~~

30 ~~(3)(a) The license of any stock company or mutual~~
31 ~~company or association or exchange authorized to do insurance~~

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1 ~~business in the state shall for good cause, upon~~
2 ~~recommendation of the division, be suspended or revoked by the~~
3 ~~Department of Insurance. No suspension or revocation shall~~
4 ~~affect the liability of any carrier already incurred.~~

5 (a)(b) The Department of Insurance ~~division~~ shall
6 suspend or revoke any authorization to a self-insurer for
7 failure to comply with this act or for good cause, as defined
8 by rule of the department ~~division~~. No suspension or
9 revocation shall affect the liability of any self-insurer
10 already incurred.

11 (b)(c) Violation of s. 440.381 by a self-insurance
12 fund shall result in the imposition of a fine not to exceed
13 \$1,000 per audit if the self-insurance fund fails to act on
14 said audits by correcting errors in employee classification or
15 accepted applications for coverage where it knew employee
16 classifications were incorrect. Such fines shall be levied by
17 the Department of Insurance ~~division~~ and deposited into the
18 Workers' Compensation Administration Trust Fund.

19 Section 36. Subsections (3) and (7) of section
20 440.381, Florida Statutes, are amended to read:

21 440.381 Application for coverage; reporting payroll;
22 payroll audit procedures; penalties.--

23 (3) ~~The department of Insurance and the Department of~~
24 ~~Labor and Employment Security~~ shall establish by rule minimum
25 requirements for audits of payroll and classifications in
26 order to ensure that the appropriate premium is charged for
27 workers' compensation coverage. The rules shall ensure that
28 audits performed by both carriers and employers are adequate
29 to provide that all sources of payments to employees,
30 subcontractors, and independent contractors have been reviewed
31 and that the accuracy of classification of employees has been

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1 verified. The rules shall provide that employers in all
2 classes other than the construction class be audited not less
3 frequently than biennially and may provide for more frequent
4 audits of employers in specified classifications based on
5 factors such as amount of premium, type of business, loss
6 ratios, or other relevant factors. In no event shall employers
7 in the construction class, generating more than the amount of
8 premium required to be experience rated, be audited less than
9 annually. The annual audits required for construction classes
10 shall consist of physical onsite audits. Payroll verification
11 audit rules must include, but need not be limited to, the use
12 of state and federal reports of employee income, payroll and
13 other accounting records, certificates of insurance maintained
14 by subcontractors, and duties of employees.

15 (7) If an employee suffering a compensable injury was
16 not reported as earning wages on the last quarterly earnings
17 report filed with the Division of Unemployment Compensation
18 before the accident, the employer shall indemnify the carrier
19 for all workers' compensation benefits paid to or on behalf of
20 the employee unless the employer establishes that the employee
21 was hired after the filing of the quarterly report, in which
22 case the employer and employee shall attest to the fact that
23 the employee was employed by the employer at the time of the
24 injury. ~~It shall be the responsibility of the Division of~~
25 ~~Workers' Compensation to collect all necessary data so as to~~
26 ~~enable it to notify the carrier of the name of an injured~~
27 ~~worker who was not reported as earning wages on the last~~
28 ~~quarterly earnings report. The division is hereby authorized~~
29 ~~to release such records to the carrier which will enable the~~
30 ~~carrier to seek reimbursement as provided under this~~
31 ~~subsection.~~ Failure of the employer to indemnify the insurer

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1 within 21 days after demand by the insurer shall constitute
2 grounds for the insurer to immediately cancel coverage. Any
3 action for indemnification brought by the carrier shall be
4 cognizable in the circuit court having jurisdiction where the
5 employer or carrier resides or transacts business. The
6 insurer shall be entitled to a reasonable attorney's fee if it
7 recovers any portion of the benefits paid in such action.

8 Section 37. Section 440.385, Florida Statutes, is
9 amended to read:

10 440.385 Florida Self-Insurers Guaranty Association,
11 Incorporated.--

12 (1) CREATION OF ASSOCIATION.--

13 (a) There is created a nonprofit corporation to be
14 known as the "Florida Self-Insurers Guaranty Association,
15 Incorporated," hereinafter referred to as "the association."
16 Upon incorporation of the association, all individual
17 self-insurers as defined in ss. 440.02(23)(a) and
18 440.38(1)(b), other than individual self-insurers which are
19 public utilities or governmental entities, shall be members of
20 the association as a condition of their authority to
21 individually self-insure in this state. The association
22 ~~corporation~~ shall perform its functions under a plan of
23 operation as established and approved under subsection (5) and
24 shall exercise its powers and duties through a board of
25 directors as established under subsection (2). The association
26 ~~corporation~~ shall have those powers granted or permitted
27 associations corporations not for profit, as provided in
28 chapter 617. The activities of the association shall be
29 subject to review by the Department of Insurance. The
30 Department of Insurance shall have oversight responsibility as
31 set forth in this act. The association is specifically

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1 authorized to enter into agreements with the State of Florida
2 to perform specified services.

3 (b) A member may voluntarily withdraw from the
4 association when the member voluntarily terminates the
5 self-insurance privilege and pays all assessments due to the
6 date of such termination. However, the withdrawing member
7 shall continue to be bound by the provisions of this section
8 relating to the period of his or her membership and any claims
9 charged pursuant thereto. The withdrawing member who is a
10 member on or after January 1, 1991, shall also be required to
11 provide to the association ~~division~~ upon withdrawal, and at
12 12-month intervals thereafter, satisfactory proof, including,
13 if requested by the association, a report of known and
14 potential claims certified by a member of the American Academy
15 of Actuaries, that it continues to meet the standards of s.
16 440.38(1)(b)1. in relation to claims incurred while the
17 withdrawing member exercised the privilege of self-insurance.
18 Such reporting shall continue until the withdrawing member
19 demonstrates to ~~satisfies~~ the association ~~division~~ that there
20 is no remaining value to claims incurred while the withdrawing
21 member was self-insured. If a withdrawing member fails or
22 refuses to timely provide an actuarial report to the
23 association, the association may obtain an order from a
24 circuit court requiring the member to produce such a report
25 and ordering such other relief as the court determines
26 appropriate. The association shall be entitled to recover all
27 reasonable costs and attorney's fees expended in such
28 proceedings. If during this reporting period the withdrawing
29 member fails to meet the standards of s. 440.38(1)(b)1., the
30 withdrawing member who is a member on or after January 1,
31 1991, shall thereupon, and at 6-month intervals thereafter,

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1 provide to the ~~division and the~~ association the certified
2 opinion of an independent actuary who is a member of the
3 American Academy Society of Actuaries of the actuarial present
4 value of the determined and estimated future compensation
5 payments of the member for claims incurred while the member
6 was a self-insurer, using a discount rate of 4 percent. With
7 each such opinion, the withdrawing member shall deposit with
8 the association ~~division~~ security in an amount equal to the
9 value certified by the actuary and of a type that is
10 acceptable for qualifying security deposits under s.
11 440.38(1)(b). The withdrawing member shall continue to
12 provide such opinions and to provide such security until such
13 time as the latest opinion shows no remaining value of claims.
14 The association has a cause of action against a withdrawing
15 member, and against any successor of a withdrawing member, who
16 fails to timely provide the required opinion or who fails to
17 maintain the required deposit with the division. The
18 association shall be entitled to recover a judgment in the
19 amount of the actuarial present value of the determined and
20 estimated future compensation payments of the withdrawing
21 member for claims incurred during the time that the
22 withdrawing member exercised the privilege of self-insurance,
23 together with reasonable attorney's fees. The association is
24 also entitled to recover reasonable attorney's fees in any
25 action to compel production of any actuarial report required
26 by this statute. For purposes of this section, the successor
27 of a withdrawing member means any person, business entity, or
28 group of persons or business entities, which holds or acquires
29 legal or beneficial title to the majority of the assets or the
30 majority of the shares of the withdrawing member.

31 (2) BOARD OF DIRECTORS.--The board of directors of the

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1 association shall consist of nine persons and shall be
2 organized as established in the plan of operation. All board
3 members shall be experienced in self-insurance in this state.
4 As of December 31, 2003, six members of the board shall be
5 individual self-insurers in this state. The board members who
6 are individual self-insurers shall be officers or full-time
7 employees of the self-insured company they represent. If the
8 individual self-insurer board member's company voluntarily
9 withdraws such member's privilege to self-insure, the board
10 member may complete the remaining term of his or her
11 appointment.~~With respect to initial appointments, the~~
12 ~~Secretary of Labor and Employment Security shall, by July 15,~~
13 ~~1982, approve and appoint to the board persons who are~~
14 ~~experienced with self-insurance in this state and who are~~
15 ~~recommended by the individual self-insurers in this state~~
16 ~~required to become members of the association pursuant to the~~
17 ~~provisions of paragraph (1)(a). In the event the secretary~~
18 ~~finds that any person so recommended does not have the~~
19 ~~necessary qualifications for service on the board and a~~
20 ~~majority of the board has been appointed, the secretary shall~~
21 ~~request the directors thus far approved and appointed to~~
22 ~~recommend another person for appointment to the board.~~Each
23 director shall serve for a 4-year term and may be reappointed.
24 Appointments after March 21, 2001, other than initial
25 appointments shall be made by the Insurance Commissioner
26 ~~Secretary of Labor and Employment Security~~ upon recommendation
27 of members of the association. Any vacancy on the board shall
28 be filled for the remaining period of the term in the same
29 manner as appointments other than initial appointments are
30 made. Each director shall be reimbursed for expenses incurred
31 in carrying out the duties of the board on behalf of the

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1 association.

2 (3) POWERS AND DUTIES.--

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

27 (b) The association may:

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

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

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- 1 3. Sue or be sued.
- 2 4. Negotiate and become a party to such contracts as
3 are necessary to carry out the purposes of this section.
- 4 5. Purchase such reinsurance as is determined
5 necessary pursuant to the plan of operation.
- 6 6. Review all applicants for membership in the
7 association to determine whether the applicant is qualified
8 for membership under the law. The association shall recommend
9 to the Department of Insurance that the application be
10 accepted or rejected based on the criteria set forth in s.
11 440.38(1)(b). The department shall approve or disapprove the
12 application. Prior to a final determination by the Division of
13 Workers' Compensation as to whether or not to approve any
14 applicant for membership in the association, the association
15 may issue opinions to the division concerning any applicant,
16 which opinions shall be considered by the division prior to
17 any final determination.
- 18 7. Collect and review financial information from
19 employers and make recommendations to the Department of
20 Insurance regarding the appropriate security deposit and
21 reinsurance amounts necessary for an employer to demonstrate
22 that it has the financial strength necessary to assure the
23 timely payment of all current and future claims. The
24 association may audit and examine an employer to verify the
25 financial strength of its current and former members. If the
26 association determines that a current or former self-insured
27 employer does not have the financial strength necessary to
28 assure the timely payment of all current and estimated future
29 claims, the association may recommend to the department that
30 the department:
- 31 a. Revoke the employer's self-insurance privilege.

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

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

26 3. Funds may be allocated or paid from the Workers'
27 Compensation Administration Trust Fund to contract with the
28 association to perform services required by law. However, no
29 state funds of any kind shall be allocated or paid to the
30 association or any of its accounts for payment of covered
31 claims or related expenses except those state funds accruing

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1 to the association by and through the assignment of rights of
2 an insolvent employer. The department shall not levy any
3 assessment on the Florida Self-Insurance Guaranty Association.

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

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

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

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

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

29 (5) PLAN OF OPERATION.--The association shall operate
30 pursuant to a plan of operation approved by the board of
31 directors. The plan of operation in effect on March 1, 2001,

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

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

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

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1 ~~this subsection. Such rules shall continue in force until~~
2 ~~modified by the department or superseded by a plan submitted~~
3 ~~by the board of directors and approved by the department.~~

4 (b)~~(c)~~ All member employers shall comply with the plan
5 of operation.

6 (c)~~(d)~~ The plan of operation shall:

7 1. Establish the procedures whereby all the powers and
8 duties of the association under subsection (3) will be
9 performed.

10 2. Establish procedures for handling assets of the
11 association.

12 3. Establish the amount and method of reimbursing
13 members of the board of directors under subsection (2).

14 4. Establish procedures by which claims may be filed
15 with the association and establish acceptable forms of proof
16 of covered claims. Notice of claims to the receiver or
17 liquidator of the insolvent employer shall be deemed notice to
18 the association or its agent, and a list of such claims shall
19 be submitted periodically to the association or similar
20 organization in another state by the receiver or liquidator.

21 5. Establish regular places and times for meetings of
22 the board of directors.

23 6. Establish procedures for records to be kept of all
24 financial transactions of the association and its agents and
25 the board of directors.

26 7. Provide that any member employer aggrieved by any
27 final action or decision of the association may appeal to the
28 department within 30 days after the action or decision.

29 8. Establish the procedures whereby recommendations of
30 candidates for the board of directors shall be submitted to
31 the department.

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1 9. Contain additional provisions necessary or proper
2 for the execution of the powers and duties of the association.

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

18 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE LABOR
19 ~~AND EMPLOYMENT SECURITY~~.--

20 (a) The department shall+

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

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

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1 business hours.

2 g. Provide legal representation to implement the
3 administration and audit of individual self-insurers and make
4 recommendations regarding prosecution of any administrative or
5 legal proceedings necessitated by the department's regulation
6 of the individual self-insurers.

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

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

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

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1 Compensation Administration Trust Fund, the Department of
2 Insurance or the association may assess the cost of such audit
3 against the individual self-insurer.

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

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

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

23 (7) EFFECT OF PAID CLAIMS.--

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

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1 sums the association has paid out, except such causes of
2 action as the insolvent member would have had if such sums had
3 been paid by the insolvent member. In the case of an
4 insolvent member operating on a plan with assessment
5 liability, payments of claims by the association shall not
6 operate to reduce the liability of the insolvent member to the
7 receiver, liquidator, or statutory successor for unpaid
8 assessments.

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

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

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

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

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

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

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

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

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

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1 (9) EXAMINATION OF THE ASSOCIATION.--The association
2 shall be subject to examination and regulation by the
3 Department of Insurance Labor and Employment Security. No
4 later than March 30 of each year, the board of directors shall
5 submit an audited ~~a~~ financial statement ~~report~~ for the
6 preceding calendar year in a form approved by the department.

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

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

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

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

19 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
20 SELF-INSURERS.--

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

30 (b) An order to conserve the assets of an individual
31 self-insurer shall require the receiver forthwith to take

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1 possession of the property of the receiver within the state
2 and to conserve it, subject to the further direction of the
3 court.

4 Section 39. Section 440.40, Florida Statutes, is
5 amended to read:

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

19 Section 40. Section 440.41, Florida Statutes, is
20 amended to read:

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

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1 (1) Notice to or knowledge of an employer of the
2 occurrence of the injury shall be notice to or knowledge of
3 the carrier.

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

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

12 Section 41. Subsection (3) of section 440.42, Florida
13 Statutes, is amended to read:

14 440.42 Insurance policies; liability.--

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

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1 cancellation and specify the time, place, and manner in which
2 the notice of cancellation is to be served.

3 Section 42. Section 440.44, Florida Statutes, is
4 amended to read:

5 440.44 Workers' compensation; staff organization.--

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

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

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

31 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL

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

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

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

26 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
 27 ~~division~~ is expressly authorized to provide by regulation for
 28 and to destroy obsolete records of the department ~~division and~~
 29 ~~commission.~~

30 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
 31 and functions requiring administrative hearings, the

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1 department and the agency division shall proceed in accordance
2 with the Administrative Procedure Act. The authority of the
3 department and the agency division to issue orders resulting
4 from administrative hearings as provided for in this chapter
5 shall not infringe upon the jurisdiction of the judges of
6 compensation claims.

7 Section 43. Section 440.4416, Florida Statutes, is
8 repealed.

9 Section 44. Subsection (1) of section 440.45, Florida
10 Statutes, is amended to read:

11 440.45 Office of the Judges of Compensation Claims.--

12 (1) There is hereby created the Office of the Judges
13 of Compensation Claims within the Division of Administrative
14 Hearing of the Department of Management Services ~~Department of~~
15 ~~Labor and Employment Security~~. The Office of the Judges of
16 Compensation Claims shall be headed by a Chief Judge. The
17 Chief Judge shall be appointed by the Governor for a term of 4
18 years from a list of three names submitted by the statewide
19 nominating commission created under subsection (2). The Chief
20 Judge must possess the same qualifications for appointment as
21 a judge of compensation claims, and the procedure for
22 reappointment of the Chief Judge will be the same as for
23 reappointment of a judge of compensation claims. The office
24 shall be a separate budget entity and the Chief Judge shall be
25 its agency head for all purposes. The Division of
26 Administrative Hearings ~~Department of Labor and Employment~~
27 ~~Security~~ shall provide administrative support and service to
28 the office to the extent requested by the Chief Judge but
29 shall not direct, supervise, or control the Office of the
30 Judges of Compensation Claims in any manner, including, but
31 not limited to, personnel, purchasing, budgetary matters, or

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1 property transactions. The operating budget of the Office of
2 the Judges of Compensation Claims shall be paid out of the
3 Workers' Compensation Administration Trust Fund established in
4 s. 440.50.

5 Section 45. Subsections (1), (2), (7), (8), (9), (10),
6 and (11) of section 440.49, Florida Statutes, are amended to
7 read:

8 440.49 Limitation of liability for subsequent injury
9 through Special Disability Trust Fund.--

10 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
11 for workers with disabilities to achieve employment or to
12 become reemployed following an injury, and it is the desire of
13 the Legislature to facilitate the return of these workers to
14 the workplace, it is the purpose of this section to encourage
15 the employment, reemployment, and accommodation of the
16 physically disabled by reducing an employer's insurance
17 premium for reemploying an injured worker, to decrease
18 litigation between carriers on apportionment issues, and to
19 protect employers from excess liability for compensation and
20 medical expense when an injury to a physically disabled worker
21 merges with, aggravates, or accelerates her or his preexisting
22 permanent physical impairment to cause either a greater
23 disability or permanent impairment, or an increase in
24 expenditures for temporary compensation or medical benefits
25 than would have resulted from the injury alone. The department
26 division or the administrator shall inform all employers of
27 the existence and function of the fund and shall interpret
28 eligibility requirements liberally. However, this subsection
29 shall not be construed to create or provide any benefits for
30 injured employees or their dependents not otherwise provided
31 by this chapter. The entitlement of an injured employee or her

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1 or his dependents to compensation under this chapter shall be
2 determined without regard to this subsection, the provisions
3 of which shall be considered only in determining whether an
4 employer or carrier who has paid compensation under this
5 chapter is entitled to reimbursement from the Special
6 Disability Trust Fund.

7 (2) DEFINITIONS.--As used in this section, the term:

8 (a) "Permanent physical impairment" means and is
9 limited to the conditions listed in paragraph (6)(a).

10 (b) "Preferred worker" means a worker who, because of
11 a permanent impairment resulting from a compensable injury or
12 occupational disease, is unable to return to the worker's
13 regular employment.

14 (c) "Merger" describes or means that:

15 1. If the permanent physical impairment had not
16 existed, the subsequent accident or occupational disease would
17 not have occurred;

18 2. The permanent disability or permanent impairment
19 resulting from the subsequent accident or occupational disease
20 is materially and substantially greater than that which would
21 have resulted had the permanent physical impairment not
22 existed, and the employer has been required to pay, and has
23 paid, permanent total disability or permanent impairment
24 benefits for that materially and substantially greater
25 disability;

26 3. The preexisting permanent physical impairment is
27 aggravated or accelerated as a result of the subsequent injury
28 or occupational disease, or the preexisting impairment has
29 contributed, medically and circumstantially, to the need for
30 temporary compensation, medical, or attendant care and the
31 employer has been required to pay, and has paid, temporary

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1 compensation, medical, or attendant care benefits for the
2 aggravated preexisting permanent impairment; or

3 4. Death would not have been accelerated if the
4 permanent physical impairment had not existed.

5 (d) "Excess permanent compensation" means that
6 compensation for permanent impairment, or permanent total
7 disability or death benefits, for which the employer or
8 carrier is otherwise entitled to reimbursement from the
9 Special Disability Trust Fund.

10 (e) "Administrator" means the entity selected by the
11 commission to review, allow, deny, compromise, controvert, and
12 litigate claims of the Special Disability Trust Fund.

13 (f) "Corporation" means the Special Disability Trust
14 Fund Financing Corporation, as created under subsection (14).

15 (g) "Commission" means the Special Disability Trust
16 Fund Privatization Commission, as created under subsection
17 (13).

18

19 In addition to the definitions contained in this subsection,
20 the department ~~division~~ may by rule prescribe definitions that
21 are necessary for the effective administration of this
22 section.

23 (7) REIMBURSEMENT OF EMPLOYER.--

24 (a) The right to reimbursement as provided in this
25 section is barred unless written notice of claim of the right
26 to such reimbursement is filed by the employer or carrier
27 entitled to such reimbursement with the department ~~division~~ or
28 administrator at Tallahassee within 2 years after the date the
29 employee last reached maximum medical improvement, or within 2
30 years after the date of the first payment of compensation for
31 permanent total disability, wage loss, or death, whichever is

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1 later. The notice of claim must contain such information as
2 the department ~~division~~ by rule requires or as established by
3 the administrator; and the employer or carrier claiming
4 reimbursement shall furnish such evidence in support of the
5 claim as the department ~~division~~ or administrator reasonably
6 may require.

7 (b) For notice of claims on the Special Disability
8 Trust Fund filed on or after July 1, 1978, the Special
9 Disability Trust Fund shall, within 120 days after receipt of
10 notice that a carrier has paid, been required to pay, or
11 accepted liability for excess compensation, serve notice of
12 the acceptance of the claim for reimbursement.

13 (c) A proof of claim must be filed on each notice of
14 claim on file as of June 30, 1997, within 1 year after July 1,
15 1997, or the right to reimbursement of the claim shall be
16 barred. A notice of claim on file on or before June 30, 1997,
17 may be withdrawn and refiled if, at the time refiled, the
18 notice of claim remains within the limitation period specified
19 in paragraph (a). Such refiling shall not toll, extend, or
20 otherwise alter in any way the limitation period applicable to
21 the withdrawn and subsequently refiled notice of claim. Each
22 proof of claim filed shall be accompanied by a proof-of-claim
23 fee as provided in paragraph (9)(d). The Special Disability
24 Trust Fund shall, within 120 days after receipt of the proof
25 of claim, serve notice of the acceptance of the claim for
26 reimbursement. This paragraph shall apply to all claims
27 notwithstanding the provisions of subsection (12).

28 (d) Each notice of claim filed or refiled on or after
29 July 1, 1997, must be accompanied by a notification fee as
30 provided in paragraph (9)(d). A proof of claim must be filed
31 within 1 year after the date the notice of claim is filed or

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1 refiled, accompanied by a proof-of-claim fee as provided in
2 paragraph (9)(d), or the claim shall be barred. The
3 notification fee shall be waived if both the notice of claim
4 and proof of claim are submitted together as a single filing.
5 The Special Disability Trust Fund shall, within 180 days after
6 receipt of the proof of claim, serve notice of the acceptance
7 of the claim for reimbursement. This paragraph shall apply to
8 all claims notwithstanding the provisions of subsection (12).

9 (e) For dates of accident on or after January 1, 1994,
10 the Special Disability Trust Fund shall, within 120 days of
11 receipt of notice that a carrier has been required to pay, and
12 has paid over \$10,000 in benefits, serve notice of the
13 acceptance of the claim for reimbursement. Failure of the
14 Special Disability Trust Fund to serve notice of acceptance
15 shall give rise to the right to request a hearing on the claim
16 for reimbursement. If the Special Disability Trust Fund
17 through its representative denies or controverts the claim,
18 the right to such reimbursement shall be barred unless an
19 application for a hearing thereon is filed with the department
20 ~~division~~ or administrator at Tallahassee within 60 days after
21 notice to the employer or carrier of such denial or
22 controversion. When such application for a hearing is timely
23 filed, the claim shall be heard and determined in accordance
24 with the procedure prescribed in s. 440.25, to the extent that
25 such procedure is applicable, and in accordance with the
26 workers' compensation rules of procedure. In such proceeding
27 on a claim for reimbursement, the Special Disability Trust
28 Fund shall be made the party respondent, and no findings of
29 fact made with respect to the claim of the injured employee or
30 the dependents for compensation, including any finding made or
31 order entered pursuant to s. 440.20(11), shall be res

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1 judicata. The Special Disability Trust Fund may not be joined
2 or made a party to any controversy or dispute between an
3 employee and the dependents and the employer or between two or
4 more employers or carriers without the written consent of the
5 fund.

6 (f) When it has been determined that an employer or
7 carrier is entitled to reimbursement in any amount, the
8 employer or carrier shall be reimbursed annually from the
9 Special Disability Trust Fund for the compensation and medical
10 benefits paid by the employer or carrier for which the
11 employer or carrier is entitled to reimbursement, upon filing
12 request therefor and submitting evidence of such payment in
13 accordance with rules prescribed by the department ~~division~~,
14 which rules may include parameters for annual audits. The
15 Special Disability Trust Fund shall pay the approved
16 reimbursement requests on a first-in, first-out basis
17 reflecting the order in which the reimbursement requests were
18 received.

19 (g) The department ~~division~~ may by rule require
20 specific forms and procedures for the administration and
21 processing of claims made through the Special Disability Trust
22 Fund.

23 (8) PREFERRED WORKER PROGRAM.--The The Department of
24 Education ~~division~~ or administrator shall issue identity cards
25 to preferred workers upon request by qualified employees and
26 the department shall reimburse an employer, from the Special
27 Disability Trust Fund, for the cost of workers' compensation
28 premium related to the preferred workers payroll for up to 3
29 years of continuous employment upon satisfactory evidence of
30 placement and issuance of payroll and classification records
31 and upon the employee's certification of employment. The

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1 department and the Department of Education division may by
2 rule prescribe definitions, forms, and procedures for the
3 administration of the preferred worker program. The Department
4 of Education division may by rule prescribe the schedule for
5 submission of forms for participation in the program.

6 (9) SPECIAL DISABILITY TRUST FUND.--

7 (a) There is established in the State Treasury a
8 special fund to be known as the "Special Disability Trust
9 Fund," which shall be available only for the purposes stated
10 in this section; and the assets thereof may not at any time be
11 appropriated or diverted to any other use or purpose. The
12 Treasurer shall be the custodian of such fund, and all moneys
13 and securities in such fund shall be held in trust by such
14 Treasurer and shall not be the money or property of the state.
15 The Treasurer is authorized to disburse moneys from such fund
16 only when approved by the department division or corporation
17 and upon the order of the Comptroller. The Treasurer shall
18 deposit any moneys paid into such fund into such depository
19 banks as the department division or corporation may designate
20 and is authorized to invest any portion of the fund which, in
21 the opinion of the division, is not needed for current
22 requirements, in the same manner and subject to all the
23 provisions of the law with respect to the deposits of state
24 funds by such Treasurer. All interest earned by such portion
25 of the fund as may be invested by the Treasurer shall be
26 collected by her or him and placed to the credit of such fund.

27 (b)1. The Special Disability Trust Fund shall be
28 maintained by annual assessments upon the insurance companies
29 writing compensation insurance in the state, the commercial
30 self-insurers under ss. 624.462 and 624.4621, the assessable
31 mutuals under s. 628.601, and the self-insurers under this

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1 chapter, which assessments shall become due and be paid
2 quarterly at the same time and in addition to the assessments
3 provided in s. 440.51. The department ~~division~~ shall estimate
4 annually in advance the amount necessary for the
5 administration of this subsection and the maintenance of this
6 fund and shall make such assessment in the manner hereinafter
7 provided.

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

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

15 b. Two times the disbursements of the most recent
16 calendar year.

17

18 Such amount shall be prorated among the insurance companies
19 writing compensation insurance in the state and the
20 self-insurers. Provided however, for those carriers that have
21 excluded ceded reinsurance premiums from their assessments on
22 or before January 1, 2000, no assessments on ceded reinsurance
23 premiums shall be paid by those carriers until such time as
24 the Division of Workers' Compensation of the Department of
25 Labor and Employment Security or the department advises each
26 of those carriers of the impact that the inclusion of ceded
27 reinsurance premiums has on their assessment. The department
28 ~~division~~ may not recover any past underpayments of assessments
29 levied against any carrier that on or before January 1, 2000,
30 excluded ceded reinsurance premiums from their assessment
31 prior to the point that the Division of Workers' Compensation

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1 of the Department of Labor and Employment Security or the
2 department advises of the appropriate assessment that should
3 have been paid.

4 3. The net premiums written by the companies for
5 workers' compensation in this state and the net premium
6 written applicable to the self-insurers in this state are the
7 basis for computing the amount to be assessed as a percentage
8 of net premiums. Such payments shall be made by each carrier
9 and self-insurer to the department division for the Special
10 Disability Trust Fund in accordance with such regulations as
11 the department division prescribes.

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

18 (c) Notwithstanding the Special Disability Trust Fund
19 assessment rate calculated pursuant to this section, the rate
20 assessed shall not exceed 4.52 percent.

21 (d) The Special Disability Trust Fund shall be
22 supplemented by a \$250 notification fee on each notice of
23 claim filed or refiled after July 1, 1997, and a \$500 fee on
24 each proof of claim filed in accordance with subsection (7).
25 Revenues from the fee shall be deposited into the Special
26 Disability Trust Fund and are exempt from the deduction
27 required by s. 215.20. The fees provided in this paragraph
28 shall not be imposed upon any insurer which is in receivership
29 with the Department of Insurance.

30 (e) The Department of Insurance ~~Labor and Employment~~
31 ~~Security~~ or administrator shall report annually on the status

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1 of the Special Disability Trust Fund. The report shall update
2 the estimated undiscounted and discounted fund liability, as
3 determined by an independent actuary, change in the total
4 number of notices of claim on file with the fund in addition
5 to the number of newly filed notices of claim, change in the
6 number of proofs of claim processed by the fund, the fee
7 revenues refunded and revenues applied to pay down the
8 liability of the fund, the average time required to reimburse
9 accepted claims, and the average administrative costs per
10 claim. The department or administrator shall submit its
11 report to the Governor, the President of the Senate, and the
12 Speaker of the House of Representatives by December 1 of each
13 year.

14 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
15 CLAIMS; ADVISORY COMMITTEE; EXPENSES.--The department ~~division~~
16 or administrator shall administer the Special Disability Trust
17 Fund with authority to allow, deny, compromise, controvert,
18 and litigate claims made against it and to designate an
19 attorney to represent it in proceedings involving claims
20 against the fund, including negotiation and consummation of
21 settlements, hearings before judges of compensation claims,
22 and judicial review. The department ~~division~~ or administrator
23 or the attorney designated by it shall be given notice of all
24 hearings and proceedings involving the rights or obligations
25 of such fund and shall have authority to make expenditures for
26 such medical examinations, expert witness fees, depositions,
27 transcripts of testimony, and the like as may be necessary to
28 the proper defense of any claim. The department ~~division~~ shall
29 appoint an advisory committee composed of representatives of
30 management, compensation insurance carriers, and self-insurers
31 to aid it in formulating policies with respect to conservation

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1 of the fund, who shall serve without compensation for such
2 terms as specified by it, but be reimbursed for travel
3 expenses as provided in s. 112.061. All expenditures made in
4 connection with conservation of the fund, including the salary
5 of the attorney designated to represent it and necessary
6 travel expenses, shall be allowed and paid from the Special
7 Disability Trust Fund as provided in this section upon the
8 presentation of itemized vouchers therefor approved by the
9 department division.

10 (11) EFFECTIVE DATES.--This section does not apply to
11 any case in which the accident causing the subsequent injury
12 or death or the disablement or death from a subsequent
13 occupational disease occurred prior to July 1, 1955, or on or
14 after January 1, 1998. In no event shall the Special
15 Disability Trust Fund be liable for, or reimburse employers or
16 carriers for, any case in which the accident causing the
17 subsequent injury or death or the disablement or death from a
18 subsequent occupational disease occurred on or after January
19 1, 1998. The Special Disability Trust Fund shall continue to
20 reimburse employers or carriers for subsequent injuries
21 occurring prior to January 1, 1998, and the department
22 ~~division~~ shall continue to assess for and the department
23 ~~division~~ or administrator shall fund reimbursements as
24 provided in subsection (9) for this purpose.

25 Section 46. Section 440.491, Florida Statutes, is
26 amended to read:

27 440.491 Reemployment of injured workers;
28 rehabilitation.--

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

30 (a) "Carrier" means group self-insurance funds or
31 individual self-insureds authorized under this chapter and

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1 commercial funds or insurance entities authorized to write
2 workers' compensation insurance under chapter 624.

3 (b) "Medical care coordination" includes, but is not
4 limited to, coordinating physical rehabilitation services such
5 as medical, psychiatric, or therapeutic treatment for the
6 injured employee, providing health training to the employee
7 and family, and monitoring the employee's recovery. The
8 purposes of medical care coordination are to minimize the
9 disability and recovery period without jeopardizing medical
10 stability, to assure that proper medical treatment and other
11 restorative services are timely provided in a logical
12 sequence, and to contain medical costs.

13 (c) "Qualified rehabilitation provider" means a
14 rehabilitation nurse, rehabilitation counselor, vocational
15 evaluator, rehabilitation facility, or agency approved by the
16 Department of Education ~~division~~ as qualified to provide
17 reemployment assessments, medical care coordination,
18 reemployment services, or vocational evaluations under this
19 chapter.

20 (d) "Reemployment assessment" means a written
21 assessment performed by a qualified rehabilitation provider
22 which provides a comprehensive review of the medical
23 diagnosis, treatment, and prognosis; includes conferences with
24 the employer, physician, and claimant; and recommends a
25 cost-effective physical and vocational rehabilitation plan to
26 assist the employee in returning to suitable gainful
27 employment.

28 (e) "Reemployment services" means services that
29 include, but are not limited to, vocational counseling,
30 job-seeking skills training, ergonomic job analysis,
31 transferable skills analysis, selective job placement, labor

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1 market surveys, and arranging other services such as education
2 or training, vocational and on-the-job, which may be needed by
3 the employee to secure suitable gainful employment.

4 (f) "Reemployment status review" means a review to
5 determine whether an injured employee is at risk of not
6 returning to work.

7 (g) "Suitable gainful employment" means employment or
8 self-employment that is reasonably attainable in light of the
9 employee's age, education, work history, transferable skills,
10 previous occupation, and injury, and which offers an
11 opportunity to restore the individual as soon as practicable
12 and as nearly as possible to his or her average weekly
13 earnings at the time of injury.

14 (h) "Vocational evaluation" means a review of the
15 employee's physical and intellectual capabilities, his or her
16 aptitudes and achievements, and his or her work-related
17 behaviors to identify the most cost-effective means toward the
18 employee's return to suitable gainful employment.

19 (2) INTENT.--It is the intent of this section to
20 implement a systematic review by carriers of the factors that
21 are predictive of longer-term disability and to encourage the
22 provision of medical care coordination and reemployment
23 services that are necessary to assist the employee in
24 returning to work as soon as is medically feasible.

25 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.--

26 (a) When an employee who has suffered an injury
27 compensable under this chapter is unemployed 60 days after the
28 date of injury and is receiving benefits for temporary total
29 disability, temporary partial disability, or wage loss, and
30 has not yet been provided medical care coordination and
31 reemployment services voluntarily by the carrier, the carrier

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1 must determine whether the employee is likely to return to
2 work and must report its determination to the Department of
3 Education division. The carrier must thereafter determine the
4 reemployment status of the employee at 90-day intervals as
5 long as the employee remains unemployed, is not receiving
6 medical care coordination or reemployment services, and is
7 receiving the benefits specified in this subsection.

8 (b) If medical care coordination or reemployment
9 services are voluntarily undertaken within 60 days of the date
10 of injury, such services may continue to be provided as agreed
11 by the employee and the carrier.

12 (4) REEMPLOYMENT ASSESSMENTS.--

13 (a) The carrier may require the employee to receive a
14 reemployment assessment as it considers appropriate. However,
15 the carrier is encouraged to obtain a reemployment assessment
16 if:

17 1. The carrier determines that the employee is at risk
18 of remaining unemployed.

19 2. The case involves catastrophic or serious injury.

20 (b) The carrier shall authorize only a qualified
21 rehabilitation provider to provide the reemployment
22 assessment. The rehabilitation provider shall conduct its
23 assessment and issue a report to the carrier, the employee,
24 and the Department of Education division within 30 days after
25 the time such assessment is complete.

26 (c) If the rehabilitation provider recommends that the
27 employee receive medical care coordination or reemployment
28 services, the carrier shall advise the employee of the
29 recommendation and determine whether the employee wishes to
30 receive such services. The employee shall have 15 days after
31 the date of receipt of the recommendation in which to agree to

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1 accept such services. If the employee elects to receive
2 services, the carrier may refer the employee to a
3 rehabilitation provider for such coordination or services
4 within 15 days of receipt of the assessment report or notice
5 of the employee's election, whichever is later.

6 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
7 SERVICES.--

8 (a) Once the carrier has assigned a case to a
9 qualified rehabilitation provider for medical care
10 coordination or reemployment services, the provider shall
11 develop a reemployment plan and submit the plan to the carrier
12 and the employee for approval.

13 (b) If the rehabilitation provider concludes that
14 training and education are necessary to return the employee to
15 suitable gainful employment, or if the employee has not
16 returned to suitable gainful employment within 180 days after
17 referral for reemployment services or receives \$2,500 in
18 reemployment services, whichever comes first, the carrier must
19 discontinue reemployment services and refer the employee to
20 the Department of Education ~~division~~ for a vocational
21 evaluation. Notwithstanding any provision of chapter 289 or
22 chapter 627, the cost of a reemployment assessment and the
23 first \$2,500 in reemployment services to an injured employee
24 must not be treated as loss adjustment expense for workers'
25 compensation ratemaking purposes.

26 (c) A carrier may voluntarily provide medical care
27 coordination or reemployment services to the employee at
28 intervals more frequent than those required in this section.
29 For the purpose of monitoring reemployment, the carrier or the
30 rehabilitation provider shall report to the Department of
31 Education ~~division~~, in the manner prescribed by the Department

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1 of Education division, the date of reemployment and wages of
2 the employee. The carrier shall report its voluntary service
3 activity to the Department of Education division as required
4 by rule. Voluntary services offered by the carrier for any of
5 the following injuries must be considered benefits for
6 purposes of ratemaking: traumatic brain injury; spinal cord
7 injury; amputation, including loss of an eye or eyes; burns of
8 5 percent or greater of the total body surface.

9 (d) If medical care coordination or reemployment
10 services have not been undertaken as prescribed in paragraph
11 (3)(b), a qualified rehabilitation service provider, facility,
12 or agency that performs a reemployment assessment shall not
13 provide medical care coordination or reemployment services for
14 the employees it assesses.

15 (6) TRAINING AND EDUCATION.--

16 (a) Upon referral of an injured employee by the
17 carrier, or upon the request of an injured employee, the
18 Department of Education division shall conduct a training and
19 education screening to determine whether it should refer the
20 employee for a vocational evaluation and, if appropriate,
21 approve training and education or other vocational services
22 for the employee. The Department of Education division may
23 not approve formal training and education programs unless it
24 determines, after consideration of the reemployment
25 assessment, pertinent reemployment status reviews or reports,
26 and such other relevant factors as it prescribes by rule, that
27 the reemployment plan is likely to result in return to
28 suitable gainful employment. The Department of Education
29 division is authorized to expend moneys from the Workers'
30 Compensation Administration Trust Fund, established by s.
31 440.50, to secure appropriate training and education or other

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1 vocational services when necessary to satisfy the
2 recommendation of a vocational evaluator. The Department of
3 Education ~~division~~ shall establish training and education
4 standards pertaining to employee eligibility, course curricula
5 and duration, and associated costs.

6 (b) When it appears that an employee who has attained
7 maximum medical improvement requires training and education to
8 obtain suitable gainful employment, the employer shall pay the
9 employee additional temporary total compensation while the
10 employee receives such training and education for a period not
11 to exceed 26 weeks, which period may be extended for an
12 additional 26 weeks or less, if such extended period is
13 determined to be necessary and proper by a judge of
14 compensation claims. However, a carrier or employer is not
15 precluded from voluntarily paying additional temporary total
16 disability compensation beyond that period. If an employee
17 requires temporary residence at or near a facility or an
18 institution providing training and education which is located
19 more than 50 miles away from the employee's customary
20 residence, the reasonable cost of board, lodging, or travel
21 must be borne by the Department of Insurance ~~division~~ from the
22 Workers' Compensation Administration Trust Fund established by
23 s. 440.50. An employee who refuses to accept training and
24 education that is recommended by the vocational evaluator and
25 considered necessary by the Department of Education ~~division~~
26 is subject to a 50-percent reduction in weekly compensation
27 benefits, including wage-loss benefits, as determined under s.
28 440.15(3)(b).

29 (7) PROVIDER QUALIFICATIONS.--

30 (a) The Department of Education ~~division~~ shall
31 investigate and maintain a directory of each qualified public

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1 and private rehabilitation provider, facility, and agency, and
2 shall establish by rule the minimum qualifications,
3 credentials, and requirements that each rehabilitation service
4 provider, facility, and agency must satisfy to be eligible for
5 listing in the directory. These minimum qualifications and
6 credentials must be based on those generally accepted within
7 the service specialty for which the provider, facility, or
8 agency is approved.

9 (b) The Department of Education ~~division~~ shall impose
10 a biennial application fee of \$25 for each listing in the
11 directory, and all such fees must be deposited in the Workers'
12 Compensation Administration Trust Fund.

13 (c) The Department of Education ~~division~~ shall monitor
14 and evaluate each rehabilitation service provider, facility,
15 and agency qualified under this subsection to ensure its
16 compliance with the minimum qualifications and credentials
17 established by the Department of Education ~~division~~. The
18 failure of a qualified rehabilitation service provider,
19 facility, or agency to provide the Department of Education
20 ~~division~~ with information requested or access necessary for
21 the Department of Education ~~division~~ to satisfy its
22 responsibilities under this subsection is grounds for
23 disqualifying the provider, facility, or agency from further
24 referrals.

25 (d) A qualified rehabilitation service provider,
26 facility, or agency may not be authorized by an employer, a
27 carrier, or the Department of Education ~~division~~ to provide
28 any services, including expert testimony, under this section
29 in this state unless the provider, facility, or agency is
30 listed or has been approved for listing in the directory. This
31 restriction does not apply to services provided outside this

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1 state under this section.

2 (e) The Department of Education ~~division~~, after
3 consultation with representatives of employees, employers,
4 carriers, rehabilitation providers, and qualified training and
5 education providers, shall adopt rules governing professional
6 practices and standards.

7 (8) CARRIER PRACTICES.--The department ~~division~~ shall
8 monitor the selection of providers and the provision of
9 services by carriers under this section for consistency with
10 legislative intent set forth in subsection (2).

11 (9) PERMANENT DISABILITY.--The judge of compensation
12 claims may not adjudicate an injured employee as permanently
13 and totally disabled until or unless the carrier is given the
14 opportunity to provide a reemployment assessment.

15 Section 47. Section 440.50, Florida Statutes, is
16 amended to read:

17 440.50 Workers' Compensation Administration Trust
18 Fund.--

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

30 (b) The department ~~division~~ is authorized to transfer
31 as a loan an amount not in excess of \$250,000 from such

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1 special fund to the Special Disability Trust Fund established
2 by s. 440.49(9), which amount shall be repaid to said special
3 fund in annual payments equal to not less than 10 percent of
4 moneys received for such Special Disability Trust Fund.

5 (2) The Treasurer is authorized to disburse moneys
6 from such fund only when approved by the department ~~division~~
7 and upon the order of the Comptroller.

8 (3) The Treasurer shall deposit any moneys paid into
9 such fund into such depository banks as the department
10 ~~division~~ may designate and is authorized to invest any portion
11 of the fund which, in the opinion of the department ~~division~~,
12 is not needed for current requirements, in the same manner and
13 subject to all the provisions of the law with respect to the
14 deposit of state funds by such Treasurer. All interest earned
15 by such portion of the fund as may be invested by the
16 Treasurer shall be collected by him or her and placed to the
17 credit of such fund.

18 (4) All civil penalties provided in this chapter, if
19 not voluntarily paid, may be collected by civil suit brought
20 by the department ~~division~~ and shall be paid into such fund.

21 Section 48. Section 440.51, Florida Statutes, is
22 amended to read:

23 440.51 Expenses of administration.--

24 (1) The department ~~division~~ shall estimate annually in
25 advance the amounts necessary for the administration of this
26 chapter, in the following manner.

27 (a) The department ~~division~~ shall, by July 1 of each
28 year, notify carriers and self-insurers of the assessment
29 rate, which shall be based on the anticipated expenses of the
30 administration of this chapter for the next calendar year.

31 Such assessment rate shall take effect January 1 of the next

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1 calendar year and shall be included in workers' compensation
2 rate filings approved by the Department of Insurance which
3 become effective on or after January 1 of the next calendar
4 year. Assessments shall become due and be paid quarterly.

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

26 (2) The department division shall provide by
27 regulation for the collection of the amounts assessed against
28 each carrier. Such amounts shall be paid within 30 days from
29 the date that notice is served upon such carrier. If such
30 amounts are not paid within such period, there may be assessed
31 for each 30 days the amount so assessed remains unpaid, a

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1 civil penalty equal to 10 percent of the amount so unpaid,
2 which shall be collected at the same time and a part of the
3 amount assessed. For those carriers who excluded ceded
4 reinsurance premiums from their assessments prior to January
5 1, 2000, the department division shall not recover any past
6 underpayments of assessments related to ceded reinsurance
7 premiums prior to January 1, 2001, against such carriers.

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

17 (4) All amounts collected under the provisions of this
18 section shall be paid into the fund established in s. 440.50.

19 (5) Any amount so assessed against and paid by an
20 insurance carrier, self-insurer authorized pursuant to s.
21 624.4621, or commercial self-insurance fund authorized under
22 ss. 624.460-624.488 shall be allowed as a deduction against
23 the amount of any other tax levied by the state upon the
24 premiums, assessments, or deposits for workers' compensation
25 insurance on contracts or policies of said insurance carrier,
26 self-insurer, or commercial self-insurance fund. Any insurance
27 carrier claiming such a deduction against the amount of any
28 such tax shall not be required to pay any additional
29 retaliatory tax levied pursuant to s. 624.5091 as a result of
30 claiming such deduction. Because deductions under this
31 subsection are available to insurance carriers, s. 624.5091

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1 does not limit such deductions in any manner.

2 (6)(a) The department ~~division~~ may require from each
3 carrier, at such time and in accordance with such regulations
4 as the department ~~division~~ may prescribe, reports in respect
5 to all gross earned premiums and of all payments of
6 compensation made by such carrier during each prior period,
7 and may determine the amounts paid by each carrier and the
8 amounts paid by all carriers during such period.

9 (b) The Department of Insurance may require from each
10 self-insurer, at such time and in accordance with such
11 regulations as the Department of Insurance prescribes, reports
12 in respect to wages paid, the amount of premiums such
13 self-insurer would have to pay if insured, and all payments of
14 compensation made by such self-insurer during each prior
15 period, and may determine the amounts paid by each
16 self-insurer and the amounts paid by all self-insurers during
17 such period. For the purposes of this section, the payroll
18 records of each self-insurer shall be open to annual
19 inspection and audit by the Department of Insurance or its
20 authorized representative, during regular business hours; and
21 if any audit of such records of a self-insurer discloses a
22 deficiency in the amounts reported to the Department of
23 Insurance or in the amounts paid to the Department of
24 Insurance by a self-insurer pursuant to this section, the
25 Department of Insurance may assess the cost of such audit
26 against the self-insurer.

27 (7) The department ~~division~~ shall keep accumulated
28 cost records of all injuries occurring within the state coming
29 within the purview of this chapter on a policy and
30 calendar-year basis. For the purpose of this chapter, a
31 "calendar year" is defined as the year in which the injury is

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1 reported to the department ~~division~~; "policy year" is defined
2 as that calendar year in which the policy becomes effective,
3 and the losses under such policy shall be chargeable against
4 the policy year so defined.

5 (8) The department ~~division~~ shall assign an account
6 number to each employer under this chapter and an account
7 number to each insurance carrier authorized to write workers'
8 compensation insurance in the state; and it shall be the duty
9 of the department ~~division~~ under the account number so
10 assigned to keep the cost experience of each carrier and the
11 cost experience of each employer under the account number so
12 assigned by calendar and policy year, as above defined.

13 (9) In addition to the above, it shall be the duty of
14 the department ~~division~~ to keep the accident experience, as
15 classified by the department ~~division~~, by industry as follows:

- 16 (a) Cause of the injury;
17 (b) Nature of the injury; and
18 (c) Type of disability.

19 (10) In every case where the duration of disability
20 exceeds 30 days, the carrier shall establish a sufficient
21 reserve to pay all benefits to which the injured employee, or
22 in case of death, his or her dependents, may be entitled to
23 under the law. In establishing the reserve, consideration
24 shall be given to the nature of the injury, the probable
25 period of disability, and the estimated cost of medical
26 benefits.

27 (11) The department ~~division~~ shall furnish to any
28 employer or carrier, upon request, its individual experience.
29 ~~The division shall furnish to the Department of Insurance,~~
30 ~~upon request, the Florida experience as developed under~~
31 ~~accident year or calendar year.~~

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1 (12) In addition to any other penalties provided by
2 this law, the failure to submit any report or other
3 information required by this law shall be just cause to
4 suspend the right of a self-insurer to operate as such, or
5 ~~upon certification by the division to the Department of~~
6 ~~Insurance that a carrier has failed or refused to furnish such~~
7 ~~reports,~~ shall be just cause for the Department of Insurance
8 to suspend or revoke the license of such carrier.

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

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

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

17 (14) Before July 1 in each year, the plan shall notify
18 the department ~~division~~ of the amount of the plan's gross
19 written premiums for the preceding calendar year. Whenever the
20 plan's gross written premiums reported to the department
21 ~~division~~ are less than \$30 million, the department ~~division~~
22 shall transfer to the plan, subject to appropriation by the
23 Legislature, an amount not to exceed the plan's fixed
24 administrative expenses for the preceding calendar year.

25 Section 49. Section 440.52, Florida Statutes, is
26 amended to read:

27 440.52 Registration of insurance carriers; notice of
28 cancellation or expiration of policy; suspension or revocation
29 of authority.--

30 ~~(1) Each insurance carrier who desires to write such~~
31 ~~compensation insurance in compliance with this chapter shall~~

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1 ~~be required, before writing such insurance, to register with~~
2 ~~the division and pay a registration fee of \$100. This shall be~~
3 ~~deposited by the division in the fund created by s. 440.50.~~

4 (1)~~(2)~~ A carrier or self-insurance fund that receives
5 notice pursuant to s. 440.05 shall notify the contractor of
6 the cancellation or expiration of the insurance.

7 (2)~~(3)~~ If the department ~~division~~ finds, after due
8 notice and a hearing at which the insurance carrier is
9 entitled to be heard in person or by counsel and present
10 evidence, that the insurance carrier has repeatedly failed to
11 comply with its obligations under this chapter, the department
12 ~~division~~ may ~~request the Department of Insurance to~~ suspend or
13 revoke the authorization of such insurance carrier to write
14 workers' compensation insurance ~~under this chapter~~. Such
15 suspension or revocation shall not affect the liability of any
16 such insurance carrier under policies in force prior to the
17 suspension or revocation.

18 (3)~~(4)~~ In addition to the penalties prescribed in
19 subsection (3), violation of s. 440.381 by an insurance
20 carrier shall result in the imposition of a fine not to exceed
21 \$1,000 per audit, if the insurance carrier fails to act on
22 said audits by correcting errors in employee classification or
23 accepted applications for coverage where it knew employee
24 classifications were incorrect. Such fines shall be levied by
25 the Department of Insurance and deposited into the Insurance
26 Commissioner's Regulatory Trust Fund.

27 Section 50. Section 440.525, Florida Statutes, is
28 amended to read:

29 440.525 Examination of carriers.--~~Beginning July 1,~~
30 ~~1994, The Division of Workers' Compensation of the department~~
31 ~~of Labor and Employment Security~~ may examine each carrier as

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1 often as is warranted to ensure that carriers are fulfilling
2 their obligations under the law, ~~and shall examine each~~
3 ~~carrier not less frequently than once every 3 years. The~~
4 ~~examination must cover the preceding 3 fiscal years of the~~
5 ~~carrier's operations and must commence within 12 months after~~
6 ~~the end of the most recent fiscal year being covered by the~~
7 ~~examination.~~The examination may cover any period of the
8 carrier's operations since the last previous examination.

9 Section 51. Section 440.572, Florida Statutes, is
10 amended to read:

11 440.572 Authorization for individual self-insurer to
12 provide coverage.--An individual self-insurer having a net
13 worth of not less than \$250 million as authorized by s.
14 440.38(1)(f) may assume by contract the liabilities under this
15 chapter of contractors and subcontractors, or each of them,
16 employed by or on behalf of such individual self-insurer when
17 performing work on or adjacent to property owned or used by
18 the individual self-insurer by the department division. The
19 net worth of the individual self-insurer shall include the
20 assets of the self-insurer's parent company and its
21 subsidiaries, sister companies, affiliated companies, and
22 other related entities, located within the geographic
23 boundaries of the state.

24 Section 52. Section 440.59, Florida Statutes, is
25 amended to read:

26 440.59 Reporting requirements.--

27 (1) The department ~~of Labor and Employment Security~~
28 shall annually prepare a report of the administration of this
29 chapter for the preceding calendar year, including a detailed
30 statement of the receipts of and expenditures from the fund
31 established in s. 440.50 and a statement of the causes of the

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1 accidents leading to the injuries for which the awards were
2 made, together with such recommendations as the department
3 considers advisable. On or before September 15 of each year,
4 the department shall submit a copy of the report to the
5 Governor, the President of the Senate, the Speaker of the
6 House of Representatives, the Democratic and Republican
7 Leaders of the Senate and the House of Representatives, and
8 the chairs of the legislative committees having jurisdiction
9 over workers' compensation.

10 (2) ~~The Division of Workers' Compensation of the~~
11 ~~department of Labor and Employment Security shall~~ periodically
12 ~~complete on a quarterly basis an analysis of the previous~~
13 ~~quarter's~~ injuries which resulted in workers' compensation
14 claims as deemed necessary by the department. The analysis
15 shall include the information, data, and statistics deemed
16 relevant by the department ~~be broken down by risk~~
17 ~~classification, shall show for each such risk classification~~
18 ~~the frequency and severity for the various types of injury,~~
19 ~~and shall include an analysis of the causes of such injuries.~~
20 The department division shall make available ~~distribute~~ to
21 each employer and self-insurer in the state covered by the
22 Workers' Compensation Law the data relevant to its workforce.
23 The report shall also be distributed to the insurers
24 authorized to write workers' compensation insurance in the
25 state.

26 (3) The department division shall annually prepare a
27 closed claim report for all claims for which the employee lost
28 more than 7 days from work and shall submit a copy of the
29 report to the Governor, the President of the Senate, the
30 Speaker of the House of Representatives, the Democratic and
31 Republican Leaders of the Senate and the House of

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1 Representatives, and the chairs of the legislative committees
2 having jurisdiction over workers' compensation on or before
3 September 15 of each year. The closed claim report shall
4 include information, data, and statistics deemed relevant by
5 the department, ~~but not be limited to, an analysis of all~~
6 ~~claims closed during the preceding year as to the date of~~
7 ~~accident, age of the injured employee, occupation of the~~
8 ~~injured employee, type of injury, body part affected, type and~~
9 ~~duration of indemnity benefits paid, permanent impairment~~
10 ~~rating, medical benefits identified by type of health care~~
11 ~~provider, and type and cost of any rehabilitation benefits~~
12 ~~provided.~~

13 (4) The department ~~division~~ shall prepare an annual
14 report for all claims for which the employee lost more than 7
15 days from work and shall submit a copy of the report to the
16 Governor, the President of the Senate, the Speaker of the
17 House of Representatives, the Democratic and Republican
18 Leaders of the Senate and the House of Representatives, and
19 the chairs of the legislative committees having jurisdiction
20 over workers' compensation, on or before September 15 of each
21 year. The annual report shall include information, data, and
22 statistics deemed relevant by the department ~~a status report~~
23 ~~on all cases involving work-related injuries in the previous~~
24 ~~10 years. The annual report shall include, but not be limited~~
25 ~~to, the number of open and closed cases, the number of cases~~
26 ~~receiving various types of benefits, the cash and medical~~
27 ~~benefits paid between the date of injury and the evaluation~~
28 ~~date, the number of litigated cases, and the amount of~~
29 ~~attorney's fees paid in each case.~~

30 (5) The Chief Judge must prepare an annual report
31 summarizing the disposition of mediation conferences and must

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1 submit the report to the Governor, the President of the
2 Senate, the Speaker of the House of Representatives, the
3 Democratic and Republican Leaders of the Senate and the House
4 of Representatives, and the chairs of the legislative
5 committees having jurisdiction over workers' compensation, on
6 or before September 15 of each year.

7 Section 53. Section 440.591, Florida Statutes, is
8 amended to read:

9 440.591 Administrative procedure; rulemaking
10 authority.--The department, the agency, and the Department of
11 Education have ~~division has~~ authority to adopt rules pursuant
12 to ss. 120.536(1) and 120.54 to implement the provisions of
13 this chapter conferring duties upon it.

14 Section 54. Section 440.593, Florida Statutes, is
15 amended to read:

16 440.593 Electronic reporting.--The department ~~division~~
17 may establish by rule an electronic reporting system whereby
18 an employer or carrier is required to submit information
19 electronically rather than by filing otherwise required forms
20 or reports. The department ~~division~~ may by rule establish
21 different deadlines for reporting information to the
22 department ~~division~~ via the electronic reporting system than
23 are otherwise required.

24 Section 55. Effective July 1, 2001, section 633.801,
25 Florida Statutes, is created to read:

26 633.801 Short title.--Sections 633.801 through 633.825
27 may be cited as the "Florida Firefighter Occupational Safety
28 and Health Act."

29 Section 56. Effective July 1, 2001, section 633.802,
30 Florida Statutes, is created to read:

31 633.802 Definitions.--As used in ss. 633.801-633.825,

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1 unless the context clearly indicates otherwise, the term:

2 (1) "Department" means the Department of Insurance.

3 (2) "Division" means the Division of State Fire
4 Marshal of the Department of Insurance.

5 (3) "Firefighter employee" means any person engaged in
6 any employment, public or private, as a firefighter under any
7 appointment or contract of hire or apprenticeship, express or
8 implied, oral or written, whether lawfully or unlawfully
9 employed, and responding to or assisting with fire and medical
10 emergencies whether or not the firefighter is on duty, except
11 those appointed under s. 590.02(1)(d).

12 (4) "Firefighter employer" means the state and all
13 political subdivisions thereof, all public and quasi-public
14 corporations therein, and any person carrying on any
15 employment thereof, which employs firefighters or which uses
16 volunteer firefighters, except those appointed under s.
17 590.02(1)(d).

18 (5) "Firefighter employment" or "employment" means any
19 service performed by a firefighter employee for the
20 firefighter employer.

21 (6) "Place of firefighter employment" or "place of
22 employment" means the physical location at which the
23 firefighter is employed.

24 Section 57. Effective July 1, 2001, section 633.803,
25 Florida Statutes, is created to read:

26 633.803 Legislative intent.--It is the intent of the
27 Legislature to enhance firefighter occupational safety and
28 health in this state through the implementation and
29 maintenance of policies, procedures, practices, rules, and
30 standards that reduce the incidence of firefighter employee
31 accidents, firefighter occupational diseases, and firefighter

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1 fatalities compensable under chapter 440 or otherwise. The
2 Legislature further intends that the division develop a means
3 by which it can identify individual firefighter employers with
4 a high frequency or severity of work-related injuries, conduct
5 safety inspections of those firefighter employers, and assist
6 those firefighter employers in the development and
7 implementation of firefighter employee safety and health
8 programs. In addition, it is the intent of the Legislature
9 that the division administer the provisions of ss.
10 633.801-633.825; provide assistance to firefighter employers,
11 firefighter employees, and insurers; and enforce the policies,
12 rules, and standards set forth in ss. 633.801-633.825.

13 Section 58. Effective July 1, 2001, section 633.804,
14 Florida Statutes, is created to read:

15 633.804 Safety inspections, consultations; rules.--The
16 division shall adopt rules governing the manner, means, and
17 frequency of firefighter employer and firefighter employee
18 safety inspections and consultations by all insurers and
19 self-insurers.

20 Section 59. Effective July 1, 2001, section 633.805,
21 Florida Statutes, is created to read:

22 633.805 Division to make study of firefighter
23 occupational diseases, etc.--The division shall make a
24 continuous study of firefighter occupational diseases and the
25 ways and means for their control and prevention and shall make
26 and enforce necessary regulations for such control. For this
27 purpose, the division is authorized to cooperate with
28 firefighter employers, firefighter employees, and insurers and
29 with the Department of Health.

30 Section 60. Effective July 1, 2001, section 633.806,
31 Florida Statutes, is created to read:

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1 633.806 Investigations by the division; refusal to
2 admit; penalty.--

3 (1) The division shall make studies and investigations
4 with respect to safety provisions and the causes of
5 firefighter injuries in places of firefighter employment, and
6 shall make to the Legislature and firefighter employers and
7 insurers such recommendations as it considers proper as to the
8 best means of preventing firefighter injuries. In making such
9 studies and investigations, the division may:

10 (a) Cooperate with any agency of the United States
11 charged with the duty of enforcing any law securing safety
12 against injury in any place of firefighter employment covered
13 by ss. 633.801-633.825, or any agency or department of the
14 state engaged in enforcing any law to assure safety for
15 firefighter employees.

16 (b) Allow any such agency or department to have access
17 to the records of the division.

18 (2) The division by rule may adopt procedures for
19 conducting investigations of firefighter employers under ss.
20 633.801-633.825.

21 Section 61. Effective July 1, 2001, section 633.807,
22 Florida Statutes, is created to read:

23 633.807 Safety; firefighter employer
24 responsibilities.--Every firefighter employer shall furnish to
25 firefighters employment that is safe for the firefighter
26 employees, furnish and use safety devices and safeguards,
27 adopt and use methods and processes reasonably adequate to
28 render such an employment and place of employment safe, and do
29 every other thing reasonably necessary to protect the lives,
30 health, and safety of such firefighter employees. As used in
31 this section, the terms "safe" and "safety" as applied to any

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1 employment or place of firefighter employment mean such
2 freedom from danger as is reasonably necessary for the
3 protection of the lives, health, and safety of firefighter
4 employees, including conditions and methods of sanitation and
5 hygiene. Safety devices and safeguards required to be
6 furnished by the firefighter employer by this section or by
7 the division under authority of this section shall not include
8 personal apparel and protective devices that replace personal
9 apparel normally worn by firefighter employees during regular
10 working hours.

11 Section 62. Effective July 1, 2001, section 633.808,
12 Florida Statutes, is created to read:

13 633.808 Division authority.--The division shall:

14 (1) Investigate and prescribe by rule what safety
15 devices, safeguards, or other means of protection must be
16 adopted for the prevention of accidents in every place of
17 firefighter employment or at any fire scene; determine what
18 suitable devices, safeguards, or other means of protection for
19 the prevention of occupational diseases must be adopted or
20 followed in any or all such places of firefighter employment
21 or at any fire scene; and adopt reasonable rules for the
22 prevention of accidents, the safety, protection, and security
23 of firefighters engaged in interior firefighting, and the
24 prevention of occupational diseases.

25 (2) Ascertain, fix, and order such reasonable
26 standards and rules for the construction, repair, and
27 maintenance of places of firefighter employment as shall
28 render them safe. Such rules and standards must be adopted in
29 accordance with chapter 120.

30 (3) Assist firefighter employers in the development
31 and implementation of firefighter employee safety training

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1 programs by contracting with professional safety
2 organizations.

3 (4) Adopt rules prescribing recordkeeping
4 responsibilities for firefighter employers, which may include
5 rules for maintaining a log and summary of occupational
6 injuries, diseases, and illnesses and for producing on request
7 a notice of injury and firefighter employee accident
8 investigation records, and rules prescribing a retention
9 schedule for such records.

10 Section 63. Effective July 1, 2001, section 633.810,
11 Florida Statutes, is created to read:

12 633.810 Firefighter employers whose firefighter
13 employees have a high frequency or severity of work-related
14 injuries.--The division shall develop a means by which it can
15 identify individual firefighter employers whose firefighter
16 employees have a high frequency or severity of work-related
17 injuries. The division shall carry out safety inspections of
18 the facilities and operations of these firefighter employers
19 in order to assist them in reducing the frequency and severity
20 of work-related injuries. The division shall develop safety
21 and health programs for those firefighter employers. Insurers
22 shall distribute these safety and health programs to the
23 firefighter employers so identified by the division. Those
24 firefighter employers identified by the division as having a
25 high frequency or severity of work-related injuries shall
26 implement a division-developed safety and health program. The
27 division shall carry out safety inspections of those
28 firefighter employers so identified to ensure compliance with
29 the safety and health program and to assist such firefighter
30 employers in reducing the number of work-related injuries. The
31 division may not assess penalties as the result of such

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1 inspections, except as provided by s. 633.813. Copies of any
2 report made as the result of such an inspection must be
3 provided to the firefighter employer and its insurer.
4 Firefighter employers may submit their own safety and health
5 programs to the division for approval in lieu of using the
6 division-developed safety and health program. The division
7 must promptly review the program submitted and approve or
8 disapprove it. Upon approval by the division, the program must
9 be implemented by the firefighter employer. If the program is
10 not approved or if a program is not submitted, the firefighter
11 employer must implement the division-developed program. The
12 division shall adopt rules setting forth the criteria for
13 safety and health programs, as such rules relate to this
14 section.

15 Section 64. Effective July 1, 2001, section 633.812,
16 Florida Statutes, is created to read:

17 633.812 Workplace safety committees and safety
18 coordinators.--

19 (1) In order to promote health and safety in places of
20 firefighter employment in this state:

21 (a) Each firefighter employer of 20 or more
22 firefighter employees shall establish and administer a
23 workplace safety committee in accordance with rules adopted
24 under this section.

25 (b) Each firefighter employer of fewer than 20
26 firefighter employees that is identified by the division as
27 having a high frequency or severity of work-related injuries
28 shall establish and administer a workplace safety committee or
29 designate a workplace safety coordinator who shall establish
30 and administer workplace safety activities in accordance with
31 rules adopted under this section.

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1 (2) The division shall adopt rules:

2 (a) Prescribing the membership of the workplace safety
3 committees so as to ensure an equal number of firefighter
4 employee representatives, who are volunteers or are elected by
5 their peers, and of firefighter employer representatives and
6 specifying the frequency of meetings.

7 (b) Requiring firefighter employers to make adequate
8 records of each meeting and to file and maintain the records
9 subject to inspection by the division.

10 (c) Prescribing the duties and functions of the
11 workplace safety committee and workplace safety coordinator,
12 which include, but are not limited to:

13 1. Establishing procedures for workplace safety
14 inspections by the committee.

15 2. Establishing procedures investigating all workplace
16 accidents, safety-related incidents, illnesses, and deaths.

17 3. Evaluating accident prevention and illness
18 prevention programs.

19 4. Prescribing guidelines for the training of
20 workplace safety committee members.

21 (3) The composition, selection, and function of
22 workplace safety committees shall be a mandatory topic of
23 negotiations with any certified collective bargaining agent
24 for firefighter employers that operate under a collective
25 bargaining agreement. Firefighter employers that operate under
26 a collective bargaining agreement that contains provisions
27 regulating the formation and operation of workplace safety
28 committees that meet or exceed the minimum requirements
29 contained in this section, or that otherwise have existing
30 workplace safety committees that meet or exceed the minimum
31 requirements established by this section, are in compliance

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1 with this section.

2 (4) Firefighter employees must be compensated at their
3 regular hourly wages while engaged in workplace safety
4 committee or workplace safety coordinator training, meetings,
5 or other duties prescribed under this section.

6 Section 65. Effective July 1, 2001, section 633.813,
7 Florida Statutes, is created to read:

8 633.813 Firefighter employer penalties.--If any
9 firefighter employer violates or fails or refuses to comply
10 with ss. 633.801-633.825, any rule adopted by the division in
11 accordance with chapter 120 for the prevention of injuries,
12 accidents, or occupational diseases, or any lawful order of
13 the division in connection with ss. 633.801-633.825, or fails
14 or refuses to furnish or adopt any safety device, safeguard,
15 or other means of protection prescribed by the division under
16 ss. 633.801-633.825 for the prevention of accidents or
17 occupational diseases, the division may assess against the
18 firefighter employer a civil penalty of not less than \$100 nor
19 more than \$5,000 for each day the violation, failure, or
20 refusal continues after the firefighter employer has been
21 given notice thereof in writing. The total penalty for each
22 violation may not exceed \$50,000. The division shall adopt
23 rules requiring penalties commensurate with the frequency or
24 severity, or both, of safety violations. A hearing must be
25 held in the county where the violation, failure, or refusal is
26 alleged to have occurred unless otherwise agreed to by the
27 firefighter employer and authorized by the division. All
28 penalties assessed and collected under this section shall be
29 deposited in the Insurance Commissioner's Regulatory Trust
30 Fund.

31 Section 66. Effective July 1, 2001, section 633.814,

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1 Florida Statutes, is created to read:

2 633.814 Division cooperation with Federal Government;
3 exemption from division requirements.--

4 (1) The division shall cooperate with the Federal
5 Government so that duplicate inspections will be avoided yet
6 assure safe places of firefighter employment for the citizens
7 of this state.

8 (2) Except as provided in this section, a private
9 firefighter employer is not subject to the requirements of the
10 division if:

11 (a) The private firefighter employer is subject to the
12 federal regulations in 29 C.F.R. ss. 1910 and 1926;

13 (b) The private firefighter employer has adopted and
14 implemented a written safety program that conforms to the
15 requirements of 29 C.F.R. ss. 1910 and 1926;

16 (c) A private firefighter employer with 20 or more
17 full-time firefighter employees includes provisions for a
18 workplace safety committee in its safety program. The
19 workplace safety committee must include firefighter employee
20 representation and must meet at least once each calendar
21 quarter. The private firefighter employer must make adequate
22 records of each meeting and maintain the records subject to
23 inspections under subsection (3). The workplace safety
24 committee shall, if appropriate, make recommendations
25 regarding improvements to the safety program and corrections
26 of hazards affecting workplace safety; and

27 (d) The private firefighter employer provides the
28 division with a written statement that certifies compliance
29 with this subsection.

30 (3) The division may enter at any reasonable time any
31 place of firefighter employment for the purpose of verifying

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1 the accuracy of the written certification required pursuant to
2 paragraph (2)(d). If the division determines that the
3 firefighter employer has not complied with the requirements of
4 subsection (2), the firefighter employer shall be subject to
5 the rules of the division until the firefighter employer
6 complies with subsection (2) and recertifies that fact to the
7 division.

8 (4) This section shall not restrict the division from
9 performing any duties pursuant to a written contract between
10 the division and the federal Occupational Safety and Health
11 Administration (OSHA).

12 Section 67. Effective July 1, 2001, section 633.815,
13 Florida Statutes, is created to read:

14 633.815 Failure to implement a safety and health
15 program; cancellations.--If a firefighter employer that is
16 found by the division to have a high frequency or severity of
17 work-related injuries fails to implement a safety and health
18 program, the insurer or self-insurer's fund that is providing
19 coverage for the firefighter employer may cancel the contract
20 for insurance with the firefighter employer. In the
21 alternative, the insurer or fund may terminate any discount or
22 deviation granted to the firefighter employer for the
23 remainder of the term of the policy. If the contract is
24 canceled or the discount or deviation is terminated, the
25 insurer must make such reports as are required by law.

26 Section 68. Effective July 1, 2001, section 633.816,
27 Florida Statutes, is created to read:

28 633.816 Expenses of administration.--The amounts that
29 are needed to administer ss. 633.801-633.825 shall be
30 disbursed from the Insurance Commissioner's Regulatory Trust
31 Fund.

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1 Section 69. Effective July 1, 2001, section 633.817,
2 Florida Statutes, is created to read:

3 633.817 Refusal to admit; penalty.--The division and
4 its authorized representatives may enter and inspect any place
5 of firefighter employment at any reasonable time for the
6 purpose of investigating compliance with ss. 633.801-633.825
7 and conducting inspections for the proper enforcement of ss.
8 633.801-633.825. A firefighter employer who refuses to admit
9 any member of the division or its authorized representative to
10 any place of employment or to allow investigation and
11 inspection pursuant to this section commits a misdemeanor of
12 the second degree, punishable as provided in s. 775.082 or s.
13 775.083.

14 Section 70. Effective July 1, 2001, section 633.818,
15 Florida Statutes, is created to read:

16 633.818 Firefighter employee rights and
17 responsibilities.--

18 (1) Each firefighter employee of a firefighter
19 employer covered under ss. 633.801-633.825 shall comply with
20 rules adopted by the division and with reasonable workplace
21 safety and health standards, rules, policies, procedures, and
22 work practices established by the firefighter employer and the
23 workplace safety committee. A firefighter employee who
24 knowingly fails to comply with this subsection may be
25 disciplined or discharged by the firefighter employer.

26 (2) A firefighter employer may not discharge, threaten
27 to discharge, cause to be discharged, intimidate, coerce,
28 otherwise discipline, or in any manner discriminate against a
29 firefighter employee for any of the following reasons:

30 (a) The firefighter employee has testified or is about
31 to testify, on her or his own behalf or on behalf of others,

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1 in any proceeding instituted under ss. 633.801-633.825;

2 (b) The firefighter employee has exercised any other
3 right afforded under ss. 633.801-633.825; or

4 (c) The firefighter employee is engaged in activities
5 relating to the workplace safety committee.

6 (3) Neither pay, position, seniority, nor other
7 benefit may be lost for exercising any right under, or for
8 seeking compliance with any requirement of, ss.
9 633.801-633.825.

10 Section 71. Effective July 1, 2001, section 633.819,
11 Florida Statutes, is created to read:

12 633.819 Compliance.--Failure of a firefighter employer
13 or an insurer to comply with ss. 633.801-633.825 or with any
14 rules adopted thereunder constitutes grounds for the division
15 to seek remedies, including injunctive relief, for
16 noncompliance by making appropriate filings with the circuit
17 court.

18 Section 72. Effective July 1, 2001, section 633.820,
19 Florida Statutes, is created to read:

20 633.820 False statements to insurers.--A firefighter
21 employer who knowingly and willfully falsifies or conceals a
22 material fact, makes a false, fictitious, or fraudulent
23 statement or representation, or makes or uses any false
24 document knowing the document to contain any false,
25 fictitious, or fraudulent entry or statement to an insurer of
26 workers' compensation insurance under ss. 633.801-633.825
27 commits a misdemeanor of the second degree, punishable as
28 provided in s. 775.082 or s. 775.083.

29 Section 73. Effective July 1, 2001, section 633.823,
30 Florida Statutes, is created to read:

31 633.823 Matters within jurisdiction of the division;

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1 false, fictitious, or fraudulent acts, statements, and
2 representations prohibited; penalty; statute of
3 limitations.--A person may not, in any matter within the
4 jurisdiction of the division, knowingly and willfully falsify
5 or conceal a material fact; make any false, fictitious, or
6 fraudulent statement or representation; or make or use any
7 false document, knowing the same to contain any false,
8 fictitious, or fraudulent statement or entry. A person who
9 violates this section commits a misdemeanor of the second
10 degree, punishable as provided in s. 775.082 or s. 775.083.
11 The statute of limitations for prosecution of an act committed
12 in violation of this section is 5 years after the date the act
13 was committed or, if not discovered within 30 days after the
14 act was committed, 5 years after the date the act was
15 discovered.

16 Section 74. Effective July 1, 2001, section 633.824,
17 Florida Statutes, is created to read:

18 633.824 Volunteer firefighters; volunteer fire
19 departments.--Sections 633.803-633.825 apply to volunteer
20 firefighters and volunteer fire departments.

21 Section 75. Effective July 1, 2001, section 633.825,
22 Florida Statutes, is created to read:

23 633.825 Workplace safety.--

24 (1) The division shall assist in making places of
25 firefighter employment safer places to work and decreasing the
26 frequency and severity of work-related injuries.

27 (2) The division shall have the authority to adopt
28 rules for the purpose of assuring safe working conditions for
29 all firefighter employees by authorizing the enforcement of
30 effective standards, assisting and encouraging firefighter
31 employers to maintain safe working conditions, and providing

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1 for education and training in the field of safety.
2 Specifically, the division may by rule adopt all or any part
3 of subparts C through T and subpart Z of 29 C.F.R. part 1910
4 as revised April 8, 1998; the National Fire Protection
5 Association, Inc., Standard 1500, paragraph 5-7 (Personal
6 Alert Safety System) (1992 edition); and ANSI A 10.4-1990.

7 (3) With respect to 29 C.F.R. s. 1910.134(g)(4), the
8 two individuals located outside the immediately dangerous to
9 life and health atmosphere may be assigned to an additional
10 rule, such as incident commander, pumper operator, engineer,
11 or driver, so long as such individual is able to immediately
12 perform assistance or rescue activities without jeopardizing
13 the safety or health of any firefighter working at an
14 incident. Also with respect to 29 C.F.R. s. 1910.134(g)(4):

15 (a) Each county, municipality, or special district
16 shall implement such provision by April 1, 2002, except as
17 provided in paragraph (b).

18 (b) If any county, municipality, or special district
19 is unable to implement such provision by April 1, 2002,
20 without adding additional personnel to its firefighting staff
21 or expending significant additional funds, such county,
22 municipality, or special district shall have an additional 6
23 months within which to implement such provision. Such county,
24 municipality, or special district shall notify the division
25 that the 6-month extension to implement such provision is in
26 effect in such county, municipality, or special district
27 within 30 days after its decision to extend the time for an
28 additional 6 months. The decision to extend the time for
29 implementation shall be made prior to April 1, 2002.

30 (c) If, after the extension granted in paragraph (b),
31 the county, municipality, or special district, after having

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1 worked with and cooperated fully with the division and the
2 Firefighters Employment, Standards, and Training Council, is
3 still unable to implement such provision without adding
4 additional personnel to its firefighting staff or expending
5 significant additional funds, such county, municipality, or
6 special district shall be exempt from the requirements of 29
7 C.F.R. s. 1910.134(g)(4). Nevertheless, each year thereafter
8 the division shall review each such county, municipality, or
9 special district to determine if such county, municipality, or
10 special district has the ability to implement such provision
11 without adding additional personnel to its firefighting staff
12 or expending significant additional funds. If the division
13 determines that any county, municipality, or special district
14 has the ability to implement such provision without adding
15 additional personnel to its firefighting staff or expending
16 significant additional funds, the division shall require such
17 county, municipality, or special district to implement such
18 provision. Such requirement by the division under this
19 paragraph constitutes final agency action subject to chapter
20 120.

21 (4) The provisions of chapter 440 which pertain to
22 workplace safety shall be applicable to the division.

23 (5) The division shall have the authority to adopt any
24 rule necessary to implement, interpret, and make specific the
25 provisions of this section; however, the division may not
26 adopt by rule any other standard or standards of the
27 Occupational Safety and Health Administration or the National
28 Fire Protection Association without specific legislative
29 authority.

30 Section 76. Paragraph (c) of subsection (3) of section
31 383.3362, Florida Statutes, is amended to read:

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1 383.3362 Sudden Infant Death Syndrome.--

2 (3) TRAINING.--

3 (c) The Department of Health, in consultation with the
4 Emergency Medical Services Advisory Council, the Firefighters
5 Employment, Standards, and Training Council, and the Criminal
6 Justice Standards and Training Commission, shall develop and
7 adopt, by rule, curriculum that, at a minimum, includes
8 training in the nature of SIDS, standard procedures to be
9 followed by law enforcement agencies in investigating cases
10 involving sudden deaths of infants, and training in responding
11 appropriately to the parents or caretakers who have requested
12 assistance.

13 Section 77. Subsection (4) of section 633.30, Florida
14 Statutes, is amended to read:

15 633.30 Standards for firefighting; definitions.--As
16 used in this chapter:

17 (4) "Council" means the Firefighters Employment,
18 Standards, and Training Council.

19 Section 78. Effective July 1, 2001, subsections (1)
20 and (2) of section 633.31, Florida Statutes, are amended to
21 read:

22 633.31 Firefighters Employment, Standards, and
23 Training Council.--

24 (1) There is created within the Department of
25 Insurance a Firefighters Employment, Standards, and Training
26 Council of ~~thirteen~~ ~~nine~~ members appointed by the State Fire
27 Marshal. Two members shall be fire chiefs who shall be
28 appointed by the Florida Fire Chiefs Association, two members
29 shall be firefighters who are not officers who shall be
30 appointed by the Florida Professional Firefighters'
31 Association, two members shall be firefighter officers who are

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1 not fire chiefs who shall be appointed by the State Fire
2 Marshal, one member shall be appointed by the Florida League
3 of Cities, one member shall be appointed by the Florida
4 Association of Counties, one member shall be appointed by the
5 Florida Association of Special Districts, one member shall be
6 appointed by the Florida Fire Marshal's Association, one
7 member shall be appointed by the State Fire Marshal, and one
8 member shall be a director or instructor of a state-certified
9 firefighting training facility who shall be appointed by the
10 State Fire Marshal. To be eligible for appointment as a fire
11 chief member, firefighter officer member, firefighter member,
12 or a director or instructor of a state-certified firefighting
13 facility, a person shall have had at least 4 years' experience
14 in the firefighting profession. The remaining member, who
15 shall be appointed by the State Fire Marshal, two members
16 shall not be a member or representative members of the
17 firefighting profession or of any local government. Members
18 shall serve only as long as they continue to meet the criteria
19 under which they were appointed, or unless a member has failed
20 to appear at three consecutive and properly noticed meetings
21 unless excused by the chair.

22 (2) ~~Initially, the State Fire Marshal shall appoint~~
23 ~~three members for terms of 4 years, two members for terms of 3~~
24 ~~years, two members for terms of 2 years, and two members for~~
25 ~~terms of 1 year. Thereafter, Members shall be appointed for~~
26 4-year terms and in no event shall a member serve more than
27 two consecutive terms. Any vacancy shall be filled in the
28 manner of the original appointment for the remaining time of
29 the term.

30 Section 79. Subsection (4) of section 633.32, Florida
31 Statutes, is amended to read:

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1 633.32 Organization; meetings; quorum; compensation;
2 seal.--

3 (4) The council may adopt a seal for its use
4 containing the words "Firefighters Employment, Standards, and
5 Training Council."

6 Section 80. Subsections (4) and (5) of section 633.33,
7 Florida Statutes, are amended to read:

8 633.33 Special powers; firefighter training.--The
9 council shall have special powers in connection with the
10 employment and training of firefighters to:

11 (4) Consult and cooperate with any employing agency,
12 university, college, community college, the Florida State Fire
13 College, or other educational institution concerning the
14 employment and safety of firefighters, including, but not
15 limited to, the safety of firefighters while at the scene of a
16 fire and at the scene of any incident related to emergency
17 services to which a firefighter responds, development of
18 firefighter training schools and programs of courses of
19 instruction, including, but not limited to, education and
20 training in the areas of fire science, fire technology, fire
21 administration, and all allied and supporting fields.

22 (5) Make or support studies on any aspect of
23 firefighting employment, education, and training or
24 recruitment.

25 Section 81. Subsections (1), (4), and (5) of section
26 443.012, Florida Statutes, are amended to read:

27 443.012 Unemployment Appeals Commission.--

28 (1) There is created within the Agency for Workforce
29 Innovation ~~Department of Labor and Employment Security~~ an
30 Unemployment Appeals Commission, hereinafter referred to as
31 the "commission." The commission shall consist of a chair and

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1 two other members to be appointed by the Governor, subject to
2 confirmation by the Senate. Not more than one appointee must
3 be a person who, on account of previous vocation, employment,
4 or affiliation, is classified as a representative of
5 employers; and not more than one such appointee must be a
6 person who, on account of previous vocation, employment, or
7 affiliation, is classified as a representative of employees.

8 (a) The chair shall devote his or her entire time to
9 commission duties and shall be responsible for the
10 administrative functions of the commission.

11 (b) The chair shall have the authority to appoint a
12 general counsel and such other personnel as may be necessary
13 to carry out the duties and responsibilities of the
14 commission.

15 (c) The chair shall have the qualifications required
16 by law for a judge of the circuit court and shall not engage
17 in any other business vocation or employment. Notwithstanding
18 any other provisions of existing law, the chair shall be paid
19 a salary equal to that paid under state law to a judge of the
20 circuit court.

21 (d) The remaining members shall be paid a stipend of
22 \$100 for each day they are engaged in the work of the
23 commission. The chair and other members shall also be
24 reimbursed for travel expenses, as provided in s. 112.061.

25 (e) The total salary and travel expenses of each
26 member of the commission shall be paid from the Employment
27 Security Administration Trust Fund.

28 (4) The property, personnel, and appropriations
29 relating to the specified authority, powers, duties, and
30 responsibilities of the commission shall be provided to the
31 commission by the Agency for Workforce Innovation Department

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1 ~~of Labor and Employment Security.~~

2 (5) The commission shall not be subject to control,
 3 supervision, or direction by the Agency for Workforce
 4 Innovation ~~Department of Labor and Employment Security~~ in the
 5 performance of its powers and duties under this chapter.

6 Section 82. Subsection (12) of section 443.036,
 7 Florida Statutes, is amended to read:

8 443.036 Definitions.--As used in this chapter, unless
 9 the context clearly requires otherwise:

10 (12) COMMISSION.--"Commission" means the Unemployment
 11 Appeals Commission ~~of the Department of Labor and Employment~~
 12 ~~Security.~~

13 Section 83. Subsection (3) of section 447.02, Florida
 14 Statutes, is amended to read:

15 447.02 Definitions.--The following terms, when used in
 16 this chapter, shall have the meanings ascribed to them in this
 17 section:

18 (3) The term "department" means the Department of
 19 Business and Professional Regulation ~~Labor and Employment~~
 20 ~~Security.~~

21 Section 84. Subsections (1), (3), and (4) of section
 22 447.205, Florida Statutes, are amended to read:

23 447.205 Public Employees Relations Commission.--

24 (1) There is hereby created within the Department of
 25 Management Services ~~Labor and Employment Security~~ the Public
 26 Employees Relations Commission, hereinafter referred to as the
 27 "commission." The commission shall be composed of a chair and
 28 two full-time members to be appointed by the Governor, subject
 29 to confirmation by the Senate, from persons representative of
 30 the public and known for their objective and independent
 31 judgment, who shall not be employed by, or hold any commission

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1 with, any governmental unit in the state or any employee
2 organization, as defined in this part, while in such office.
3 In no event shall more than one appointee be a person who, on
4 account of previous vocation, employment, or affiliation, is,
5 or has been, classified as a representative of employers; and
6 in no event shall more than one such appointee be a person
7 who, on account of previous vocation, employment, or
8 affiliation, is, or has been, classified as a representative
9 of employees or employee organizations. The commissioners
10 shall devote full time to commission duties and shall not
11 engage in any other business, vocation, or employment while in
12 such office. ~~Beginning January 1, 1980, the chair shall be~~
13 ~~appointed for a term of 4 years, one commissioner for a term~~
14 ~~of 1 year, and one commissioner for a term of 2 years.~~
15 ~~Thereafter,~~Every term of office shall be for 4 years; and
16 each term of the office of chair shall commence on January 1
17 of the second year following each regularly scheduled general
18 election at which a Governor is elected to a full term of
19 office. In the event of a vacancy prior to the expiration of
20 a term of office, an appointment shall be made for the
21 unexpired term of that office. The chair shall be responsible
22 for the administrative functions of the commission and shall
23 have the authority to employ such personnel as may be
24 necessary to carry out the provisions of this part. Once
25 appointed to the office of chair, the chair shall serve as
26 chair for the duration of the term of office of chair.
27 Nothing contained herein prohibits a chair or commissioner
28 from serving multiple terms.

29 (3) The commission, in the performance of its powers
30 and duties under this part, shall not be subject to control,
31 supervision, or direction by the Department of Management

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1 ~~Services Labor and Employment Security.~~

2 (4) The property, personnel, and appropriations
3 related to the commission's specified authority, powers,
4 duties, and responsibilities shall be provided to the
5 commission by the Department of Management Services ~~Labor and~~
6 ~~Employment Security.~~

7 Section 85. Subsection (4) of section 447.305, Florida
8 Statutes, is amended to read:

9 447.305 Registration of employee organization.--

10 (4) Notification of registrations and renewals of
11 registration shall be furnished at regular intervals by the
12 commission to the Department of Business and Professional
13 Regulation ~~Labor and Employment Security.~~

14 Section 86. Subsection (4) of section 450.012, Florida
15 Statutes, is amended to read:

16 450.012 Definitions.--For the purpose of this chapter,
17 the word, phrase, or term:

18 (4) "Department" means the Department of Business and
19 Professional Regulation ~~Labor and Employment Security.~~

20 Section 87. Subsection (2) of section 450.28, Florida
21 Statutes, is amended to read:

22 450.28 Definitions.--

23 (2) "Department" means the Department of Business and
24 Professional Regulation ~~Labor and Employment Security.~~

25 Section 88. Subsection (1) of section 450.191, Florida
26 Statutes, is amended to read:

27 450.191 Executive Office of the Governor; powers and
28 duties.--

29 (1) The Executive Office of the Governor is authorized
30 and directed to:

31 (a) Advise and consult with employers of migrant

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1 workers as to the ways and means of improving living
2 conditions of seasonal workers;
3 (b) Cooperate with the Department of Health in
4 establishing minimum standards of preventive and curative
5 health and of housing and sanitation in migrant labor camps
6 and in making surveys to determine the adequacy of preventive
7 and curative health services available to occupants of migrant
8 labor camps;
9 (c) Provide coordination for the enforcement of ss.
10 381.008-381.0088;
11 (d) Cooperate with the other departments of government
12 in coordinating all applicable labor laws, including, but not
13 limited to, those relating to private employment agencies,
14 child labor, wage payments, wage claims, and crew leaders;
15 (e) Cooperate with the Department of Education to
16 provide educational facilities for the children of migrant
17 laborers;
18 (f) Cooperate with the Department of Highway Safety
19 and Motor Vehicles to establish minimum standards for the
20 transporting of migrant laborers;
21 (g) Cooperate with the Department of Agriculture and
22 Consumer Services to conduct an education program for
23 employers of migrant laborers pertaining to the standards,
24 methods, and objectives of the office;
25 (h) Cooperate with the Department of Children and
26 Family Services in coordinating all public assistance programs
27 as they may apply to migrant laborers;
28 (i) Coordinate all federal, state, and local programs
29 pertaining to migrant laborers; and
30 (j) Cooperate with the farm labor office of the
31 Department of Business and Professional Regulation ~~Labor and~~

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1 ~~Employment Security~~ in the recruitment and referral of migrant
2 laborers and other persons for the planting, cultivation, and
3 harvesting of agricultural crops in Florida.

4 Section 89. Subsection (3) of section 468.529, Florida
5 Statutes, is amended to read:

6 468.529 Licensee's insurance; employment tax; benefit
7 plans.--

8 (3) A licensed employee leasing company shall within
9 30 days of initiation or termination notify its workers'
10 compensation insurance carrier, the Department of Insurance
11 ~~Division of Workers' Compensation~~, and the Division of
12 Unemployment Compensation of the Department of Revenue Labor
13 ~~and Employment Security~~ of both the initiation or the
14 termination of the company's relationship with any client
15 company.

16 Section 90. Subsections (1) and (5) of section
17 624.3161, Florida Statutes, are amended to read:

18 624.3161 Market conduct examinations.--

19 (1) As often as it deems necessary, the department
20 shall examine each licensed rating organization, each advisory
21 organization, each group, association carrier as defined in s.
22 440.02,, or other organization of insurers which engages in
23 joint underwriting or joint reinsurance, and each authorized
24 insurer transacting in this state any class of insurance to
25 which the provisions of chapter 627 are applicable. The
26 examination shall be for the purpose of ascertaining
27 compliance by the person examined with the applicable
28 provisions of chapters 440,624, 626, 627, and 635.

29 (5) Such examinations shall also be subject to the
30 applicable provisions of ss. 624.318, 624.319, 624.321, and
31 624.322 and chapter 440.

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1 Section 91. Paragraph (m) of subsection (1) of section
2 626.88, Florida Statutes, is amended to read:

3 626.88 Definitions of "administrator" and "insurer".--

4 (1) For the purposes of this part, an "administrator"
5 is any person who directly or indirectly solicits or effects
6 coverage of, collects charges or premiums from, or adjusts or
7 settles claims on residents of this state in connection with
8 authorized commercial self-insurance funds or with insured or
9 self-insured programs which provide life or health insurance
10 coverage or coverage of any other expenses described in s.
11 624.33(1), other than any of the following persons:

12 (m) A person approved by the Department of Insurance
13 ~~Division of Workers' Compensation of the Department of Labor~~
14 ~~and Employment Security~~ who administers only self-insured
15 workers' compensation plans.

16 Section 92. Subsection (9) of section 626.989, Florida
17 Statutes, is amended to read:

18 626.989 Investigation by department or Division of
19 Insurance Fraud; compliance; immunity; confidential
20 information; reports to division; division investigator's
21 power of arrest.--

22 (9) In recognition of the complementary roles of
23 investigating instances of workers' compensation fraud and
24 enforcing compliance with the workers' compensation coverage
25 requirements under chapter 440, the Division of Insurance
26 Fraud of the Department of Insurance is ~~and the Division of~~
27 ~~Workers' Compensation of the Department of Labor and~~
28 ~~Employment Security~~ are directed to prepare and submit a joint
29 performance report to the President of the Senate and the
30 Speaker of the House of Representatives by November 1 of each
31 year for each of the next 2 years, and then every 3 years

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1 thereafter, describing the results obtained in achieving
2 compliance with the workers' compensation coverage
3 requirements and reducing the incidence of workers'
4 compensation fraud.

5 Section 93. Section 627.0915, Florida Statutes, is
6 amended to read:

7 627.0915 Rate filings; workers' compensation,
8 drug-free workplace, and safe employers.--The Department of
9 Insurance shall approve rating plans for workers' compensation
10 insurance that give specific identifiable consideration in the
11 setting of rates to employers that either implement a
12 drug-free workplace program pursuant to rules adopted by the
13 ~~Division of Workers' Compensation of the department of Labor~~
14 ~~and Employment Security~~ or implement a safety program pursuant
15 to provisions of the rating plan approved by the Division of
16 Safety pursuant to rules adopted by the Division of Safety of
17 ~~the Department of Labor and Employment Security~~ or implement
18 both a drug-free workplace program and a safety program. ~~The~~
19 ~~Division of Safety may by rule require that the client of a~~
20 ~~help supply services company comply with the essential~~
21 ~~requirements of a workplace safety program as a condition for~~
22 ~~receiving a premium credit.~~The plans must ~~take effect January~~
23 ~~1, 1994,~~ must be actuarially sound, and must state the savings
24 anticipated to result from such drug-testing and safety
25 programs.

26 Section 94. Subsection (5) of section 627.914, Florida
27 Statutes, is amended to read:

28 627.914 Reports of information by workers'
29 compensation insurers required.--

30 (5) Self-insurers authorized to transact workers'
31 compensation insurance as provided in s. 440.02 shall report

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1 only Florida data as prescribed in paragraphs (a)-(e) of
2 subsection (4) to the department ~~Division of Workers'~~
3 ~~Compensation of the Department of Labor and Employment~~
4 ~~Security.~~

5 (a) The department ~~Division of Workers' Compensation~~
6 shall publish the dates and forms necessary to enable
7 self-insurers to comply with this section.

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

11 ~~(b)(c)~~ A statistical or rating organization may be
12 used by self-insurers for the purposes of reporting the data
13 required by this section and calculating experience ratings.

14 Section 95. All powers, duties, responsibilities,
15 obligations, liabilities, assets and definitions currently
16 under part V of chapter 631, Florida Statutes, consisting of
17 sections 631.901, 631.902, 631.903, 631.904, 631.911, 631.912,
18 631.913, 631.914, 631.916, 631.917, 631.918, 631.919, 631.921,
19 631.922, 631.923, 631.924, 631.926, 631.927, 631.928, 631.929,
20 631.931, and 631.932, Florida Statutes, are transferred to
21 the Florida Insurance Guaranty Association established in part
22 II of chapter 531, Florida Statutes. For purposes of
23 administration and assessment, a separate account shall be
24 established.

25 Section 96. Part V of chapter 631, Florida Statutes,
26 consisting of sections 631.901, 631.902, 631.903, 631.904,
27 631.911, 631.912, 631.913, 631.914, 631.916, 631.917, 631.918,
28 631.919, 631.921, 631.922, 631.923, 631.924, 631.926, 631.927,
29 631.928, 631.929, 631.931, and 631.932, Florida Statutes, is
30 repealed.

31 Section 97. If any provision of this act or its

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

6 Section 98. To the extent that any conflict exists
7 between this act and the provisions of SB 1926, or similar
8 legislation, which transfers the Office of Judges of
9 Compensation Claims to the Division of Administration
10 Hearings, the provisions of SB 1926 or the similar legislation
11 shall control.

12 Section 99. Unless otherwise expressly provided for in
13 this act, this act shall take effect October 1, 2001.

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15

16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete everything before the enacting clause

19

20 and insert:

21

 A bill to be entitled

22

 An act relating to workplace regulation;

23

 transferring the Division of Workers'

24

 Compensation from the Department of Labor and

25

 Employment Security to the Department of

26

 Insurance; providing exceptions; transferring

27

 various functions, powers, duties, personnel,

28

 and assets relating to workers' compensation to

29

 the Department of Education, the Agency for

30

 Health Care Administration, the Department of

31

 Management Services, and the Department of

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1 Insurance; transferring certain rules to the
2 Agency for Health Care Administration; amending
3 s. 20.13, F.S.; providing for certain employees
4 of the Division to be given hiring priority by
5 the Department of Insurance; providing pay and
6 employment guidelines for such employees;
7 creating the Division of Workers' Compensation
8 in the Department of Insurance; repealing s.
9 20.171, F.S., which creates the Department of
10 Labor and Employment Security; amending s.
11 440.015, F.S.; designating state agencies to
12 administer the workers' compensation law;
13 providing an appropriation; amending s. 440.02,
14 F.S.; providing definitions; amending ss.
15 110.025, 440.05, 440.09, 440.10, 440.021,
16 440.102, 440.103, 440.105, 440.106, 440.107,
17 440.108, 440.125, 440.13, 440.134, 440.14,
18 440.15, 440.17, 440.185, 440.191, 440.192,
19 440.1925, 440.20, 440.207, 440.211, 440.24,
20 440.25, 440.271, 440.345, 440.35, 440.38,
21 440.381, 440.385, 440.386, 440.40, 440.41,
22 440.42, 440.44, 440.49, 440.491, 440.50,
23 440.51, 440.52, 440.525, 440.572, 440.59,
24 440.591, 440.593, 443.012, 443.036, 447.02,
25 447.205, 447.305, 450.12, 450.197, 450.28,
26 468.529, 626.88, 626.989, 627.0915, 627.914,
27 F.S., to conform to the transfers made by this
28 act; providing for the continuation of
29 contracts and agreements; amending s. 440.38,
30 F.S.; transferring operation of provisions
31 requiring the securing of payment of

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1 compensation by employers from the Division of
2 Workers' Compensation of the Department of
3 Labor and Employment Security to the Florida
4 Self-Insurer's Guaranty Association,
5 Incorporated, and the Department of Insurance;
6 revising and clarifying requirements and
7 procedures; providing powers and duties of the
8 association and the departments; providing for
9 allocation or payment of state funds to the
10 association for certain purposes; providing
11 rulemaking authority; repealing s. 440.4416,
12 F.S., relating to the Workers' Compensation
13 Oversight Board; amending s. 624.3161, F.S.;
14 providing for market conduct examinations with
15 respect to workers' compensation; providing
16 legislative intent; providing for a type two
17 transfer of the administration of child labor
18 laws to the Department of Business and
19 Professional Regulation; providing for a type
20 two transfer of certain functions of the Office
21 of the Secretary and the Office of
22 Administrative Services of the Department of
23 Labor and Employment Security relating to labor
24 organizations and migrant and farm labor
25 registration to the Department of Business and
26 Professional Regulation; providing for a type
27 two transfer of other workplace regulation
28 functions to the Department of Business and
29 Professional Regulation; providing
30 appropriations; amending s. 447.02, F.S.;
31 conforming the definition of "department" to

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1 the transfer of the regulation of labor
2 organizations to the Department of Business and
3 Professional Regulation; amending s. 450.012,
4 F.S.; conforming the definition of "department"
5 to the transfer of the regulation of child
6 labor to the Department of Business and
7 Professional Regulation; amending s. 450.191,
8 F.S., relating to the duties of the Executive
9 Office of the Governor with respect to migrant
10 labor; conforming provisions to changes made by
11 the act; amending s. 450.28, F.S.; conforming
12 the definition of "department" to the transfer
13 of the regulation of farm labor to the
14 Department of Business and Professional
15 Regulation; creating ss. 633.801, 633.802,
16 633.803, 633.804, 633.805, 633.806, 633.807,
17 633.808, 633.810, 633.812, 633.813, 633.814,
18 633.815, 633.816, 633.817, 633.818, 633.819,
19 633.820, 633.823, 633.824, and 633.825, F.S.;
20 designating such sections as the Florida
21 Firefighter Occupational Safety and Health Act;
22 providing definitions; providing legislative
23 intent; authorizing the Division of State Fire
24 Marshal to adopt rules related to firefighter
25 safety inspections; requiring the division to
26 conduct a study; requiring firefighter
27 employers to provide safe employment
28 conditions; authorizing the division to adopt
29 rules that prescribe means for preventing
30 accidents in places of firefighter employment
31 and establish standards for construction,

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1 repair, and maintenance; requiring the division
2 to inspect places of firefighter employment and
3 to develop safety and health programs for those
4 firefighter employers whose employees have a
5 high frequency or severity of work-related
6 injuries; requiring certain firefighter
7 employers to establish workplace safety
8 committees and to maintain certain records;
9 providing penalties for firefighter employers
10 who violate provisions of the act; providing
11 exemptions; providing for the source of funding
12 of the division; specifying firefighter
13 employee rights and responsibilities; providing
14 penalties for firefighter employers who make
15 false statements to the division or to an
16 insurer; specifying applicability to volunteer
17 firefighters and volunteer fire departments;
18 authorizing the division to adopt rules for
19 assuring safe working conditions for all
20 firefighter employees; amending s. 633.31,
21 F.S.; changing the name and membership of the
22 Firefighters Standards and Training Council;
23 amending ss. 383.3362, 633.30, and 633.32,
24 F.S., to conform; amending s. 633.33, F.S.;
25 revising certain powers of the council;
26 transferring all powers, duties, liabilities,
27 assets, and definitions under part V of chapter
28 631, F.S., related to the Florida Workers'
29 Compensation Insurance Guaranty Association, to
30 the Florida Insurance Guaranty Association
31 established in part II of chapter 631, F.S.;

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1 repealing ss. 631.901, 631.902, 631.903,
2 631.904, 631.911, 631.912, 631.913, 631.914,
3 631.916, 631.917, 631.918, 631.919, 631.921,
4 631.922, 631.923, 631.924, 631.926, 631.927,
5 631.928, 631.929, 631.931, and 631.932, F.S.;
6 related to the Florida Workers' Compensation
7 Insurance Guaranty Association; specifying
8 controlling legislation in the event of a
9 conflict; providing effective dates.
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