

1 A bill to be entitled
2 An act relating to The Department of Labor and
3 Employment Security; transferring the Division
4 of Workers' Compensation from the Department of
5 Labor and Employment Security to the Department
6 of Insurance; providing exceptions;
7 transferring various functions, powers, duties,
8 personnel, and assets relating to workers'
9 compensation to the Department of Education,
10 the Agency for Health Care Administration, and
11 the Department of Insurance; transferring
12 certain rules to the Agency for Health Care
13 Administration; amending s. 20.13, F.S.;
14 providing for certain employees of the Division
15 to be given hiring priority by the Department
16 of Insurance; providing pay and employment
17 guidelines for such employees; creating the
18 Division of Workers' Compensation in the
19 Department of Insurance; repealing s. 20.171,
20 F.S., which creates the Department of Labor and
21 Employment Security; amending s. 440.015, F.S.;
22 designating state agencies to administer the
23 workers' compensation law; amending s. 440.02,
24 F.S.; providing definitions; amending ss.
25 110.025, 440.05, 440.09, 440.10, 440.021,
26 440.102, 440.103, 440.105, 440.106, 440.107,
27 440.108, 440.125, 440.13, 440.134, 440.14,
28 440.15, 440.17, 440.185, 440.191, 440.192,
29 440.1925, 440.20, 440.207, 440.211, 440.24,
30 440.25, 440.271, 440.345, 440.35, 440.38,
31 440.381, 440.385, 440.386, 440.40, 440.41,

1 440.42, 440.44, 440.49, 440.491, 440.50,
2 440.51, 440.52, 440.525, 440.572, 440.59,
3 440.591, 440.593, 443.012, 443.036, 447.02,
4 447.205, 447.305, 450.12, 450.197, 450.28,
5 468.529, 626.88, 626.989, 627.0915, 627.914,
6 F.S., to conform to the transfers made by this
7 act; providing for the continuation of
8 contracts and agreements; amending s. 440.38,
9 F.S.; transferring operation of provisions
10 requiring the securing of payment of
11 compensation by employers from the Division of
12 Workers' Compensation of the Department of
13 Labor and Employment Security to the Florida
14 Self-Insurer's Guaranty Association,
15 Incorporated, and the Department of Insurance;
16 revising and clarifying requirements and
17 procedures; providing powers and duties of the
18 association and the departments; providing for
19 allocation or payment of state funds to the
20 association for certain purposes; providing
21 rulemaking authority; amending s. 440.4416,
22 F.S.; revising the composition of the Workers'
23 Compensation Oversight Board; providing for
24 substitution of a successor agency as a party
25 in judicial and administrative proceedings;
26 providing severability; amending s. 624.3161,
27 F.S.; providing for market conduct examinations
28 with respect to workers' compensation;
29 providing legislative intent; providing for a
30 type two transfer of the administration of
31 child labor laws to the Department of Business

1 and Professional Regulation; providing for a
 2 type two transfer of certain functions of the
 3 Office of the Secretary and the Office of
 4 Administrative Services of the Department of
 5 Labor and Employment Security relating to labor
 6 organizations and migrant and farm labor
 7 registration to the Department of Business and
 8 Professional Regulation; providing for a type
 9 two transfer of other workplace regulation
 10 functions to the Department of Business and
 11 Professional Regulation; providing
 12 appropriations; amending s. 447.02, F.S.;
 13 conforming the definition of "department" to
 14 the transfer of the regulation of labor
 15 organizations to the Department of Business and
 16 Professional Regulation; amending s. 450.012,
 17 F.S.; conforming the definition of "department"
 18 to the transfer of the regulation of child
 19 labor to the Department of Business and
 20 Professional Regulation; amending s. 450.191,
 21 F.S., relating to the duties of the Executive
 22 Office of the Governor with respect to migrant
 23 labor; conforming provisions to changes made by
 24 the act; amending s. 450.28, F.S.; conforming
 25 the definition of "department" to the transfer
 26 of the regulation of farm labor to the
 27 Department of Business and Professional
 28 Regulation; creating ss. 633.801, 633.802,
 29 633.803, 633.804, 633.805, 633.806, 633.807,
 30 633.808, 633.810, 633.812, 633.813, 633.814,
 31 633.815, 633.816, 633.817, 633.818, 633.819,

1 633.820, 633.823, 633.824, and 633.825, F.S.;

2 designating such sections as the Florida

3 Firefighter Occupational Safety and Health Act;

4 providing definitions; providing legislative

5 intent; authorizing the Division of State Fire

6 Marshal to adopt rules related to firefighter

7 safety inspections; requiring the division to

8 conduct a study; requiring firefighter

9 employers to provide safe employment

10 conditions; authorizing the division to adopt

11 rules that prescribe means for preventing

12 accidents in places of firefighter employment

13 and establish standards for construction,

14 repair, and maintenance; requiring the division

15 to inspect places of firefighter employment and

16 to develop safety and health programs for those

17 firefighter employers whose employees have a

18 high frequency or severity of work-related

19 injuries; requiring certain firefighter

20 employers to establish workplace safety

21 committees and to maintain certain records;

22 providing penalties for firefighter employers

23 who violate provisions of the act; providing

24 exemptions; providing for the source of funding

25 of the division; specifying firefighter

26 employee rights and responsibilities; providing

27 penalties for firefighter employers who make

28 false statements to the division or to an

29 insurer; specifying applicability to volunteer

30 firefighters and volunteer fire departments;

31 authorizing the division to adopt rules for

1 assuring safe working conditions for all
2 firefighter employees; amending s. 633.31,
3 F.S.; changing the name and membership of the
4 Firefighters Standards and Training Council;
5 amending ss. 383.3362, 633.30, and 633.32,
6 F.S., to conform; amending s. 633.33, F.S.;
7 revising certain powers of the council;
8 providing effective dates.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. (1) The Division of Workers' Compensation
13 of the Department of Labor and Employment Security is
14 transferred by a type two transfer, as defined in section
15 20.06(2), Florida Statutes, to the Department of Insurance,
16 except as otherwise provided in this section. The transfers to
17 the Department of Insurance shall include all resources, data,
18 records, property, and unexpended balances of appropriations,
19 allocations, or other funds. No personnel are transferred to
20 the Department of Insurance. The employees of the Department
21 of Labor and Employment Security's Division of Workers'
22 Compensation, Office of the Secretary, Office of
23 Administrative Services, and Office of General Counsel
24 employed by the Department of Labor and Employment Security as
25 of March 1, 2001 may be given hiring priority by the
26 Department of Insurance, and at least 300 of these employees
27 shall be offered employment by the Department of Insurance,
28 effective October 1, 2001. To the extent feasible, the
29 positions established by the Department of Insurance will be
30 at pay grades comparable to the positions established by the
31 Department of Labor and Employment Security based on the

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

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

8 (3) The Office of the Judges of Compensation Claims is
9 transferred by a type two transfer, as defined in section
10 20.06(2), Florida Statutes, from the Department of Labor and
11 Employment Security to the Division of Administrative Hearings
12 of the Department of Management Services.

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

22 (5) Ten positions within the Division of Workers'
23 Compensation of the Department of Labor and Employment
24 Security responsible for receiving and preparing docketing
25 orders for the petitions for benefits and for receiving and
26 entering data related to the petitions for benefits are
27 transferred by a type two transfer, as defined in section
28 20.06(2), Florida Statutes, to the Office of the Judges of
29 Compensation Claims within the Division of Administrative
30 Hearings of the Department of Management Services.

31

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

9 (7) Effective July 1, 2001, 29 full-time equivalent
10 positions from the Division of Workers' Compensation of the
11 Department of Labor and Employment Security and the records,
12 property, and unexpended balances of appropriations,
13 allocations, and other funds related to oversight of medical
14 services in workers' compensation provider relations, dispute
15 and complaint resolution, program evaluation, and data
16 management are transferred by a type two transfer, as defined
17 in section 20.06(2), Florida Statutes, from the Department of
18 Labor and Employment Security to the Agency for Health Care
19 Administration. However, the claims review functions and
20 three-member panel shall not be so transferred and shall be
21 retained by the Department of Insurance.

22 (8) All statutory powers, duties, functions, rules,
23 records, personnel, property, and unexpended balances of
24 appropriations, allocations, and other funds of the Division
25 of Workers' Compensation, Office of Medical Services and
26 Rehabilitation, related to reemployment, training and
27 education, obligations to rehire, and preferred worker
28 requirements, consisting of 98 full-time equivalent positions,
29 are transferred by a type two transfer, as defined in section
30 20.06(2), Florida Statutes, from the Department of Labor and
31 Employment Security to the Department of Education.

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

23 (10) All the personnel, records, property, and
 24 unexpended balances of appropriations, allocations, and other
 25 funds and resources of the Office of the Secretary and the
 26 Office of Administrative Services of the Department of Labor
 27 and Employment Security which support the activities and
 28 functions transferred under subsections (7) and (8) to the
 29 Department of Education are transferred by a type two transfer
 30 as defined in section 20.06(2), Florida Statutes, to the
 31 Department of Education.

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

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

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

26 (14) Effective July 1, 2001, the Office of Information
27 Systems is transferred by a type two transfer, as defined in
28 s. 20.06(2), Florida Statutes, from the Department of Labor
29 and Employment Security to the State Technology Office. Upon
30 completion of this transfer, the State Technology Office and
31 the Department of Insurance shall enter into discussions to

1 determine whether it would be technologically feasible and
2 cost effective to separate the Workers' Compensation
3 Integrated System from its current mainframe platform and
4 transfer ownership of this system to the Department of
5 Insurance. If the Department of Insurance ultimately
6 determines that it is technologically feasible and cost
7 effective to transfer ownership of the Workers' Compensation
8 Integrated System from the State Technology Office to the
9 Department of Insurance, the State Technology Office and the
10 Department of Insurance shall jointly develop and implement a
11 plan to transfer this system to the Department of Insurance.

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

21 (b) Effective July 1, 2001, the records, property, and
22 unexpended balances of appropriations, allocations, and other
23 funds and resources of the Office of the Secretary and the
24 Office of Administrative Services of the Department of Labor
25 and Employment Security which support the activities and
26 functions transferred under subsection (13) to the Department
27 of Management Services are transferred as provided in s.
28 20.06(2), Florida Statutes, to the Department of Management
29 Services.

30 (c) Effective July 1, 2001, the records, property, and
31 unexpended balances of appropriations, allocations, and other

1 funds and resources of the Office of the Secretary and the
 2 Office of Administrative Services of the Department of Labor
 3 and Employment Security which support the activities and
 4 functions transferred under subsection (14) to the State
 5 Technology Office are transferred as provided in s. 20.06(2),
 6 Florida Statutes, to the State Technology Office.

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

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

28 (18) Effective July 1, 2001, thirty full-time
 29 equivalent positions from the Compliance and Enforcement
 30 Program in the Office of the Secretary and Administrative
 31 Services and one senior attorney and one administrative

1 secretary from the Office of General Counsel in the Office of
 2 the Secretary and Administrative Services, and the powers,
 3 duties, functions, rules, records, personnel, property, and
 4 unexpended balances of appropriations, allocations, and other
 5 funds of the Office of the Secretary and Administrative
 6 Services of the Department of Labor and Employment Security
 7 related to the regulation of labor organizations under chapter
 8 447, Florida Statutes, and the administration of migrant labor
 9 and farm labor laws under chapter 450, Florida Statutes, are
 10 transferred by a type two transfer, as defined in section
 11 20.06 (2), Florida Statutes, from the Department of Labor and
 12 Employment Security to the Department of Business and
 13 Professional Regulation.

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

24 (20) Effective July 1, 2001, the records, property,
 25 and unexpended balances of appropriations, allocations, and
 26 other funds and resources of the Office of the Secretary and
 27 Administrative Services of the Department of Labor and
 28 Employment Security which support the activities and functions
 29 transferred under subsections (17), (18), and (19) to the
 30 Department of Business and Professional Regulation are
 31

1 transferred as provided in section 20.06(2), Florida Statutes,
2 to the Department of Business and Professional Regulation.

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

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

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

18 20.13 Department of Insurance.--There is created a
19 Department of Insurance.

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

22 (k) Division of Workers' Compensation.

23 Section 3. Section 20.171, Florida Statutes, is
24 repealed.

25 Section 4. Paragraph (1) of subsection (2) of section
26 110.205, Florida Statutes, is amended to read:

27 110.205 Career service; exemptions.--

28 (2) EXEMPT POSITIONS.--The exempt positions which are
29 not covered by this part include the following, provided that
30 no position, except for positions established for a limited
31

1 period of time pursuant to paragraph (h), shall be exempted if
2 the position reports to a position in the career service:

3 (1) All assistant division director, deputy division
4 director, and bureau chief positions in any department, and
5 those positions determined by the department to have
6 managerial responsibilities comparable to such positions,
7 which positions include, but are not limited to, positions in
8 the Department of Health, the Department of Children and
9 Family Services, and the Department of Corrections that are
10 assigned primary duties of serving as the superintendent or
11 assistant superintendent, or warden or assistant warden, of an
12 institution; positions in the Department of Corrections that
13 are assigned primary duties of serving as the circuit
14 administrator or deputy circuit administrator; positions in
15 the Department of Transportation that are assigned primary
16 duties of serving as regional toll managers and managers of
17 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
18 in the Department of Environmental Protection that are
19 assigned the duty of an Environmental Administrator or program
20 administrator; ~~those positions described in s. 20.171 as~~
21 ~~included in the Senior Management Service~~ and positions in
22 the Department of Health that are assigned the duties of
23 Environmental Administrator, Assistant County Health
24 Department Director, and County Health Department Financial
25 Administrator. Unless otherwise fixed by law, the department
26 shall set the salary and benefits of these positions in
27 accordance with the rules established for the Selected Exempt
28 Service.

29 Section 5. Section 440.015, Florida Statutes, is
30 amended to read:

31

1 440.015 Legislative intent.--It is the intent of the
 2 Legislature that the Workers' Compensation Law be interpreted
 3 so as to assure the quick and efficient delivery of disability
 4 and medical benefits to an injured worker and to facilitate
 5 the worker's return to gainful reemployment at a reasonable
 6 cost to the employer. It is the specific intent of the
 7 Legislature that workers' compensation cases shall be decided
 8 on their merits. The workers' compensation system in Florida
 9 is based on a mutual renunciation of common-law rights and
 10 defenses by employers and employees alike. In addition, it is
 11 the intent of the Legislature that the facts in a workers'
 12 compensation case are not to be interpreted liberally in favor
 13 of either the rights of the injured worker or the rights of
 14 the employer. Additionally, the Legislature hereby declares
 15 that disputes concerning the facts in workers' compensation
 16 cases are not to be given a broad liberal construction in
 17 favor of the employee on the one hand or of the employer on
 18 the other hand, and the laws pertaining to workers'
 19 compensation are to be construed in accordance with the basic
 20 principles of statutory construction and not liberally in
 21 favor of either employee or employer. It is the intent of the
 22 Legislature to ensure the prompt delivery of benefits to the
 23 injured worker. Therefore, an efficient and self-executing
 24 system must be created which is not an economic or
 25 administrative burden. The Division of Workers' Compensation
 26 of the Department of Insurance, the Department of Education,
 27 and the Agency for Health Care Administration shall administer
 28 the Workers' Compensation Law in a manner that ~~which~~
 29 facilitates the self-execution of the system and the process
 30 of ensuring a prompt and cost-effective delivery of payments.
 31

1 Section 6. Subsections (11), (13), and (14) of section
2 440.02, Florida Statutes, are amended, and subsection (40) is
3 added to that section, to read:

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

7 (11) "Department" means the Department of Insurance
8 ~~Labor and Employment Security~~.

9 (13) "Division" means the Division of Workers'
10 Compensation of the Department of Insurance ~~Labor and~~
11 ~~Employment Security~~.

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

17 (b) "Employee" includes any person who is an officer
18 of a corporation and who performs services for remuneration
19 for such corporation within this state, whether or not such
20 services are continuous.

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

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

29 3. An officer of a corporation who elects to be exempt
30 from this chapter by filing a written notice of the election
31

1 with the department ~~division~~ as provided in s. 440.05 is not
2 an employee.

3
4 Services are presumed to have been rendered to the corporation
5 if the officer is compensated by other than dividends upon
6 shares of stock of the corporation which the officer owns.

7 (c) "Employee" includes a sole proprietor or a partner
8 who devotes full time to the proprietorship or partnership
9 and, except as provided in this paragraph, elects to be
10 included in the definition of employee by filing notice
11 thereof as provided in s. 440.05. Partners or sole proprietors
12 actively engaged in the construction industry are considered
13 employees unless they elect to be excluded from the definition
14 of employee by filing written notice of the election with the
15 department ~~division~~ as provided in s. 440.05. However, no more
16 than three partners in a partnership that is actively engaged
17 in the construction industry may elect to be excluded. A sole
18 proprietor or partner who is actively engaged in the
19 construction industry and who elects to be exempt from this
20 chapter by filing a written notice of the election with the
21 department ~~division~~ as provided in s. 440.05 is not an
22 employee. For purposes of this chapter, an independent
23 contractor is an employee unless he or she meets all of the
24 conditions set forth in subparagraph (d)1.

25 (d) "Employee" does not include:

26 1. An independent contractor, if:

27 a. The independent contractor maintains a separate
28 business with his or her own work facility, truck, equipment,
29 materials, or similar accommodations;

30 b. The independent contractor holds or has applied for
31 a federal employer identification number, unless the

1 independent contractor is a sole proprietor who is not
2 required to obtain a federal employer identification number
3 under state or federal requirements;

4 c. The independent contractor performs or agrees to
5 perform specific services or work for specific amounts of
6 money and controls the means of performing the services or
7 work;

8 d. The independent contractor incurs the principal
9 expenses related to the service or work that he or she
10 performs or agrees to perform;

11 e. The independent contractor is responsible for the
12 satisfactory completion of work or services that he or she
13 performs or agrees to perform and is or could be held liable
14 for a failure to complete the work or services;

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

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

20 h. The independent contractor has continuing or
21 recurring business liabilities or obligations; and

22 i. The success or failure of the independent
23 contractor's business depends on the relationship of business
24 receipts to expenditures.

25
26 However, the determination as to whether an individual
27 included in the Standard Industrial Classification Manual of
28 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
29 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
30 2448, or 2449, or a newspaper delivery person, is an
31 independent contractor is governed not by the criteria in this

1 paragraph but by common-law principles, giving due
2 consideration to the business activity of the individual.

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

6 3. Bands, orchestras, and musical and theatrical
7 performers, including disk jockeys, performing in licensed
8 premises as defined in chapter 562, if a written contract
9 evidencing an independent contractor relationship is entered
10 into before the commencement of such entertainment.

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

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

25 6. A volunteer, except a volunteer worker for the
26 state or a county, municipality, or other governmental entity.
27 A person who does not receive monetary remuneration for
28 services is presumed to be a volunteer unless there is
29 substantial evidence that a valuable consideration was
30 intended by both employer and employee. For purposes of this
31 chapter, the term "volunteer" includes, but is not limited to:

1 a. Persons who serve in private nonprofit agencies and
2 who receive no compensation other than expenses in an amount
3 less than or equivalent to the standard mileage and per diem
4 expenses provided to salaried employees in the same agency or,
5 if such agency does not have salaried employees who receive
6 mileage and per diem, then such volunteers who receive no
7 compensation other than expenses in an amount less than or
8 equivalent to the customary mileage and per diem paid to
9 salaried workers in the community as determined by the
10 department ~~division~~; and

11 b. Volunteers participating in federal programs
12 established under Pub. L. No. 93-113.

13 7. Any officer of a corporation who elects to be
14 exempt from this chapter.

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

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

28 10. A taxicab, limousine, or other passenger
29 vehicle-for-hire driver who operates said vehicles pursuant to
30 a written agreement with a company which provides any
31 dispatch, marketing, insurance, communications, or other

1 services under which the driver and any fees or charges paid
2 by the driver to the company for such services are not
3 conditioned upon, or expressed as a proportion of, fare
4 revenues.

5 (40) "Agency" means the Agency for Health Care
6 Administration.

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

9 440.021 Exemption of workers' compensation from
10 chapter 120.--Workers' compensation adjudications by judges of
11 compensation claims are exempt from chapter 120, and no judge
12 of compensation claims shall be considered an agency or a part
13 thereof. Communications of the result of investigations by the
14 department division pursuant to s. 440.185(4) are exempt from
15 chapter 120. In all instances in which the department division
16 institutes action to collect a penalty or interest which may
17 be due pursuant to this chapter, the penalty or interest shall
18 be assessed without hearing, and the party against which such
19 penalty or interest is assessed shall be given written notice
20 of such assessment and shall have the right to protest within
21 20 days of such notice. Upon receipt of a timely notice of
22 protest and after such investigation as may be necessary, the
23 department division shall, if it agrees with such protest,
24 notify the protesting party that the assessment has been
25 revoked. If the department division does not agree with the
26 protest, it shall refer the matter to the judge of
27 compensation claims for determination pursuant to s.
28 440.25(2)-(5). Such action of the department division is
29 exempt from the provisions of chapter 120.

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

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

3 (1) Each corporate officer who elects not to accept
4 the provisions of this chapter or who, after electing such
5 exemption, revokes that exemption shall mail to the department
6 ~~division~~ in Tallahassee notice to such effect in accordance
7 with a form to be prescribed by the department ~~division~~.

8 (2) Each sole proprietor or partner who elects to be
9 included in the definition of "employee" or who, after such
10 election, revokes that election must mail to the department
11 ~~division~~ in Tallahassee notice to such effect, in accordance
12 with a form to be prescribed by the department ~~division~~.

13 (3) Each sole proprietor, partner, or officer of a
14 corporation who is actively engaged in the construction
15 industry and who elects an exemption from this chapter or who,
16 after electing such exemption, revokes that exemption, must
17 mail a written notice to such effect to the department
18 ~~division~~ on a form prescribed by the department ~~division~~
19 notice of election to be exempt from the provisions of this
20 chapter must be notarized and under oath. The notice of
21 election to be exempt which is submitted to the department
22 ~~division~~ by the sole proprietor, partner, or officer of a
23 corporation must list the name, federal tax identification
24 number, social security number, all certified or registered
25 licenses issued pursuant to chapter 489 held by the person
26 seeking the exemption, a copy of relevant documentation as to
27 employment status filed with the Internal Revenue Service as
28 specified by the department ~~division~~, a copy of the relevant
29 occupational license in the primary jurisdiction of the
30 business, and, for corporate officers and partners, the
31 registration number of the corporation or partnership filed

1 with the Division of Corporations of the Department of State.
 2 The notice of election to be exempt must identify each sole
 3 proprietorship, partnership, or corporation that employs the
 4 person electing the exemption and must list the social
 5 security number or federal tax identification number of each
 6 such employer and the additional documentation required by
 7 this section. In addition, the notice of election to be exempt
 8 must provide that the sole proprietor, partner, or officer
 9 electing an exemption is not entitled to benefits under this
 10 chapter, must provide that the election does not exceed
 11 exemption limits for officers and partnerships provided in s.
 12 440.02, and must certify that any employees of the sole
 13 proprietor, partner, or officer electing an exemption are
 14 covered by workers' compensation insurance. Upon receipt of
 15 the notice of the election to be exempt, receipt of all
 16 application fees, and a determination by the department
 17 ~~division~~ that the notice meets the requirements of this
 18 subsection, the department ~~division~~ shall issue a
 19 certification of the election to the sole proprietor, partner,
 20 or officer, unless the department ~~division~~ determines that the
 21 information contained in the notice is invalid. The department
 22 ~~division~~ shall revoke a certificate of election to be exempt
 23 from coverage upon a determination by the department ~~division~~
 24 that the person does not meet the requirements for exemption
 25 or that the information contained in the notice of election to
 26 be exempt is invalid. The certificate of election must list
 27 the names of the sole proprietorship, partnership, or
 28 corporation listed in the request for exemption. A new
 29 certificate of election must be obtained each time the person
 30 is employed by a new sole proprietorship, partnership, or
 31 corporation that is not listed on the certificate of election.

1 A copy of the certificate of election must be sent to each
 2 workers' compensation carrier identified in the request for
 3 exemption. Upon filing a notice of revocation of election, a
 4 sole proprietor, partner, or officer who is a subcontractor
 5 must notify her or his contractor. Upon revocation of a
 6 certificate of election of exemption by the department
 7 division, the department ~~division~~ shall notify the workers'
 8 compensation carriers identified in the request for exemption.

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

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

31

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

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

27 (8)(a) The department ~~division~~ must assess a fee of
28 \$50 with each request for a construction industry certificate
29 of election to be exempt or renewal of election to be exempt
30 under this section.

31

1 (b) The funds collected by the department ~~division~~
2 shall be used to administer this section, to audit the
3 businesses that pay the fee for compliance with any
4 requirements of this chapter, and to enforce compliance with
5 the provisions of this chapter.

6 (9) The department ~~division~~ may by rule prescribe
7 forms and procedures for filing an election of exemption,
8 revocation of election to be exempt, and notice of election of
9 coverage for all employers and require specified forms to be
10 submitted by all employers in filing for the election of
11 exemption. The department ~~division~~ may by rule prescribe forms
12 and procedures for issuing a certificate of the election of
13 exemption.

14 Section 9. Paragraph (d) of subsection (7) of section
15 440.09, Florida Statutes, is amended to read:

16 440.09 Coverage.--

17 (7)

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

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

24 440.10 Liability for compensation.--

25 (1)

26 (f) If an employer willfully fails to secure
27 compensation as required by this chapter, the department
28 ~~division~~ may assess against the employer a penalty not to
29 exceed \$5,000 for each employee of that employer who is
30 classified by the employer as an independent contractor but
31 who is found by the department ~~division~~ to not meet the

1 criteria for an independent contractor that are set forth in
2 s. 440.02.

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

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

8 2. The independent contractor provides the general
9 contractor with a valid certificate of workers' compensation
10 insurance or a valid certificate of exemption issued by the
11 department division.

12

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

25 Section 11. Subsection (2), paragraph (a) of
26 subsection (3), and paragraph (g) of subsection (7) of section
27 440.102, Florida Statutes, are amended to read:

28 440.102 Drug-free workplace program requirements.--The
29 following provisions apply to a drug-free workplace program
30 implemented pursuant to law or to rules adopted by the Agency
31 for Health Care Administration:

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

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

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

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

25 a. The types of drug testing an employee or job
26 applicant may be required to submit to, including
27 reasonable-suspicion drug testing or drug testing conducted on
28 any other basis.

29 b. The actions the employer may take against an
30 employee or job applicant on the basis of a positive confirmed
31 drug test result.

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

3 3. A general statement concerning confidentiality.

4 4. Procedures for employees and job applicants to
5 confidentially report to a medical review officer the use of
6 prescription or nonprescription medications to a medical
7 review officer both before and after being tested.

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

15 6. The consequences of refusing to submit to a drug
16 test.

17 7. A representative sampling of names, addresses, and
18 telephone numbers of employee assistance programs and local
19 drug rehabilitation programs.

20 8. A statement that an employee or job applicant who
21 receives a positive confirmed test result may contest or
22 explain the result to the medical review officer within 5
23 working days after receiving written notification of the test
24 result; that if an employee's or job applicant's explanation
25 or challenge is unsatisfactory to the medical review officer,
26 the medical review officer shall report a positive test result
27 back to the employer; and that a person may contest the drug
28 test result pursuant to law or to rules adopted by the Agency
29 for Health Care Administration.

30 9. A statement informing the employee or job applicant
31 of his or her responsibility to notify the laboratory of any

1 administrative or civil action brought pursuant to this
2 section.

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

6 11. A statement regarding any applicable collective
7 bargaining agreement or contract and the right to appeal to
8 the Public Employees Relations Commission or applicable court.

9 12. A statement notifying employees and job applicants
10 of their right to consult with a medical review officer for
11 technical information regarding prescription or
12 nonprescription medication.

13 (7) EMPLOYER PROTECTION.--

14 (g) This section does not prohibit an employer from
15 conducting medical screening or other tests required,
16 permitted, or not disallowed by any statute, rule, or
17 regulation for the purpose of monitoring exposure of employees
18 to toxic or other unhealthy substances in the workplace or in
19 the performance of job responsibilities. Such screening or
20 testing is limited to the specific substances expressly
21 identified in the applicable statute, rule, or regulation,
22 unless prior written consent of the employee is obtained for
23 other tests. Such screening or testing need not be in
24 compliance with the rules adopted by the Agency for Health
25 Care Administration under this chapter or under s. 112.0455. A
26 public employer may, through the use of an unbiased selection
27 procedure, conduct random drug tests of employees occupying
28 safety-sensitive or special-risk positions if the testing is
29 performed in accordance with drug-testing rules adopted by the
30 Agency for Health Care Administration and the Department of
31 Insurance ~~Labor and Employment Security~~. If applicable, random

1 drug testing must be specified in a collective bargaining
2 agreement as negotiated by the appropriate certified
3 bargaining agent before such testing is implemented.

4 Section 12. Section 440.103, Florida Statutes, is
5 amended to read:

6 440.103 Building permits; identification of minimum
7 premium policy.--Except as otherwise provided in this chapter,
8 every employer shall, as a condition to receiving a building
9 permit, show proof that it has secured compensation for its
10 employees under this chapter as provided in ss. 440.10 and
11 440.38. Such proof of compensation must be evidenced by a
12 certificate of coverage issued by the carrier, a valid
13 exemption certificate approved by the division or the
14 department, or a copy of the employer's authority to
15 self-insure and shall be presented each time the employer
16 applies for a building permit. As provided in s. 627.413(5),
17 each certificate of coverage must show, on its face, whether
18 or not coverage is secured under the minimum premium
19 provisions of rules adopted by rating organizations licensed
20 by the Department of Insurance. The words "minimum premium
21 policy" or equivalent language shall be typed, printed,
22 stamped, or legibly handwritten.

23 Section 13. Paragraph (a) of subsection (2) of section
24 440.105, Florida Statutes, is amended to read:

25 440.105 Prohibited activities; reports; penalties;
26 limitations.--

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

30 (a) It shall be unlawful for any employer to
31 knowingly:

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

4 2. Discharge or refuse to hire an employee or job
5 applicant because the employee or applicant has filed a claim
6 for benefits under this chapter.

7 3. Discharge, discipline, or take any other adverse
8 personnel action against any employee for disclosing
9 information to the department ~~division~~ or any law enforcement
10 agency relating to any violation or suspected violation of any
11 of the provisions of this chapter or rules promulgated
12 hereunder.

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

15 Section 14. Subsections (3) and (4) of section
16 440.106, Florida Statutes, are amended to read:

17 440.106 Civil remedies; administrative penalties.--

18 (3) Whenever any group or individual self-insurer,
19 carrier, rating bureau, or agent or other representative of
20 any carrier or rating bureau is determined to have violated s.
21 440.105, the department ~~of Insurance~~ may revoke or suspend the
22 authority or certification of any group or individual
23 self-insurer, carrier, agent, or broker.

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

28 Section 15. Section 440.107, Florida Statutes, is
29 amended to read:

30 440.107 Department ~~Division~~ powers to enforce employer
31 compliance with coverage requirements.--

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

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

28 (3) In discharging its duties, the department ~~division~~
 29 may administer oaths and affirmations, certify to official
 30 acts, issue subpoenas to compel the attendance of witnesses
 31 and the production of books, papers, correspondence,

1 memoranda, and other records deemed necessary by the
 2 department ~~division~~ as evidence in order to ensure proper
 3 compliance with the coverage provisions of this chapter.

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

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

31

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

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

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

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

21
22 Any penalty assessed under this subsection is due within 30
23 days after the date on which the employer is notified, except
24 that, if the department ~~division~~ has posted a stop-work order
25 or obtained injunctive relief against the employer, payment is
26 due, in addition to those conditions set forth in this
27 section, as a condition to relief from a stop-work order or an
28 injunction. Interest shall accrue on amounts not paid when due
29 at the rate of 1 percent per month.

30 (8) The department ~~division~~ may bring an action in
31 circuit court to recover penalties assessed under this

1 section, including any interest owed to the department
 2 ~~division~~ pursuant to this section. In any action brought by
 3 the department ~~division~~ pursuant to this section in which it
 4 prevails, the circuit court shall award costs, including the
 5 reasonable costs of investigation and a reasonable attorney's
 6 fee.

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

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

30 (11) Actions by the department ~~division~~ under this
 31 section must be contested as provided in chapter 120. All

1 civil penalties assessed by the department ~~division~~ must be
2 paid into the Workers' Compensation Administration Trust Fund.
3 The department ~~division~~ shall return any sums previously paid,
4 upon conclusion of an action, if the department ~~division~~ fails
5 to prevail and if so directed by an order of court or an
6 administrative hearing officer. The requirements of this
7 subsection may be met by posting a bond in an amount equal to
8 twice the penalty and in a form approved by the department
9 ~~division~~.

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

12 440.108 Investigatory records relating to workers'
13 compensation employer compliance; confidentiality.--

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

31

1 119.07(1) and s. 24(a), Art. I of the State Constitution if
2 disclosure would:

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

12 Section 17. Section 440.125, Florida Statutes, is
13 amended to read:

14 440.125 Medical records and reports; identifying
15 information in employee medical bills; confidentiality.--

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

25 (2) The Legislature finds that it is a public
26 necessity that an injured employee's medical records and
27 medical reports and information identifying the employee in
28 medical bills held by the department, agency, or Department of
29 Education ~~Division of Workers' Compensation~~ pursuant to s.
30 440.13 be confidential and exempt from the public records law.
31 Public access to such information is an invasion of the

1 injured employee's right to privacy in that personal,
2 sensitive information would be revealed, and public knowledge
3 of such information could lead to discrimination against the
4 employee by coworkers and others. Additionally, there is
5 little utility in providing public access to such information
6 in that the effectiveness and efficiency of the workers'
7 compensation program can be otherwise adequately monitored and
8 evaluated.

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

15 Section 18. Section 440.13, Florida Statutes, is
16 amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

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

20 (a) "Alternate medical care" means a change in
21 treatment or health care provider.

22 (b) "Attendant care" means care rendered by trained
23 professional attendants which is beyond the scope of household
24 duties. Family members may provide nonprofessional attendant
25 care, but may not be compensated under this chapter for care
26 that falls within the scope of household duties and other
27 services normally and gratuitously provided by family members.
28 "Family member" means a spouse, father, mother, brother,
29 sister, child, grandchild, father-in-law, mother-in-law, aunt,
30 or uncle.

31

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

4 (d) "Catastrophic injury" means an injury as defined
5 in s. 440.02.

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

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

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

21 (h) "Health care facility" means any hospital licensed
22 under chapter 395 and any health care institution licensed
23 under chapter 400.

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

30 (j) "Independent medical examiner" means a physician
31 selected by either an employee or a carrier to render one or

1 more independent medical examinations in connection with a
2 dispute arising under this chapter.

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

10 (l) "Instance of overutilization" means a specific
11 inappropriate service or level of service provided to an
12 injured employee.

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

28 (n) "Medicine" means a drug prescribed by an
29 authorized health care provider and includes only generic
30 drugs or single-source patented drugs for which there is no
31 generic equivalent, unless the authorized health care provider

1 writes or states that the brand-name drug as defined in s.
2 465.025 is medically necessary, or is a drug appearing on the
3 schedule of drugs created pursuant to s. 465.025(6), or is
4 available at a cost lower than its generic equivalent.

5 (o) "Palliative care" means noncurative medical
6 services that mitigate the conditions, effects, or pain of an
7 injury.

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

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

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

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

28 (t) "Utilization control" means a systematic process
29 of implementing measures that assure overall management and
30 cost containment of services delivered.

31

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

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

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

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

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

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

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

26 (c) If the employer fails to provide treatment or care
27 required by this section after request by the injured
28 employee, the employee may obtain such treatment at the
29 expense of the employer, if the treatment is compensable and
30 medically necessary. There must be a specific request for the
31 treatment, and the employer or carrier must be given a

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

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

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

30 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

31

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

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

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

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

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

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

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

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

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

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

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

31

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~~.

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

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).

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

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.

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

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

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

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

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

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

27 (9) EXPERT MEDICAL ADVISORS.--

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

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

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

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

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

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

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

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

1 exceed \$500 against any carrier that fails to timely
2 compensate an advisor in accordance with this section.

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

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

13 (a) The Agency for Health Care Administration Division
14 ~~of Workers' Compensation of the Department of Labor and~~
15 ~~Employment Security~~ may investigate health care providers to
16 determine whether providers are complying with this chapter
17 and with rules adopted by the agency division, whether the
18 providers are engaging in overutilization, and whether
19 providers are engaging in improper billing practices. If the
20 agency division finds that a health care provider has
21 improperly billed, overutilized, or failed to comply with
22 agency division rules or the requirements of this chapter it
23 must notify the provider of its findings and may determine
24 that the health care provider may not receive payment from the
25 carrier or may impose penalties as set forth in subsection (8)
26 or other sections of this chapter. If the health care provider
27 has received payment from a carrier for services that were
28 improperly billed or for overutilization, it must return those
29 payments to the carrier. The agency division may assess a
30 penalty not to exceed \$500 for each overpayment that is not
31

1 refunded within 30 days after notification of overpayment by
 2 the agency division or carrier.

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

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

26 (d) The following agency division actions do not
 27 constitute agency action subject to review under ss. 120.569
 28 and 120.57 and do not constitute actions subject to s. 120.56:
 29 referral by the entity responsible for utilization review; a
 30 decision by the agency division to refer a matter to a peer
 31 review committee; establishment by a health care provider or

1 entity of procedures by which a peer review committee reviews
 2 the rendering of health care services; and the review
 3 proceedings, report, and recommendation of the peer review
 4 committee.

5 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 6 REIMBURSEMENT ALLOWANCES.--

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

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

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

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

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

- 19 1. The levels of reimbursement for similar treatment,
 20 care, and attendance made by other health care programs or
 21 third-party providers;
- 22 2. The impact upon cost to employers for providing a
 23 level of reimbursement for treatment, care, and attendance
 24 which will ensure the availability of treatment, care, and
 25 attendance required by injured workers;
- 26 3. The financial impact of the reimbursement
 27 allowances upon health care providers and health care
 28 facilities, including trauma centers as defined in s.
 29 395.4001, and its effect upon their ability to make available
 30 to injured workers such medically necessary remedial
 31 treatment, care, and attendance. The uniform schedule of

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

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

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

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

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

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

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

31

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

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

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

11 (14) PAYMENT OF MEDICAL FEES.--

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

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

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

29 (15) PRACTICE PARAMETERS.--

30 (a) The Agency for Health Care Administration, in
31 conjunction with the department ~~division~~ and appropriate

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

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

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

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

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

3 440.134 Workers' compensation managed care
4 arrangement.--

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

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

13 440.14 Determination of pay.--

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

18 Section 21. Section 440.15, Florida Statutes, is
19 amended to read:

20 440.15 Compensation for disability.--Compensation for
21 disability shall be paid to the employee, subject to the
22 limits provided in s. 440.12(2), as follows:

23 (1) PERMANENT TOTAL DISABILITY.--

24 (a) In case of total disability adjudged to be
25 permanent, 66 2/3 percent of the average weekly wages shall
26 be paid to the employee during the continuance of such total
27 disability.

28 (b) Only a catastrophic injury as defined in s. 440.02
29 shall, in the absence of conclusive proof of a substantial
30 earning capacity, constitute permanent total disability. Only
31 claimants with catastrophic injuries are eligible for

1 permanent total benefits. In no other case may permanent total
2 disability be awarded.

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

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

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

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

1 3. Pursuant to an order of the judge of compensation
 2 claims, the employer or carrier may withhold payment of
 3 benefits for permanent total disability or supplements for any
 4 period during which the employee willfully fails or refuses to
 5 appear without good cause for the scheduled vocational
 6 evaluation or testing.

7 (f)1. If permanent total disability results from
 8 injuries that occurred subsequent to June 30, 1955, and for
 9 which the liability of the employer for compensation has not
 10 been discharged under s. 440.20(11), the injured employee
 11 shall receive additional weekly compensation benefits equal to
 12 5 percent of her or his weekly compensation rate, as
 13 established pursuant to the law in effect on the date of her
 14 or his injury, multiplied by the number of calendar years
 15 since the date of injury. The weekly compensation payable and
 16 the additional benefits payable under this paragraph, when
 17 combined, may not exceed the maximum weekly compensation rate
 18 in effect at the time of payment as determined pursuant to s.
 19 440.12(2). Entitlement to these supplemental payments shall
 20 cease at age 62 if the employee is eligible for social
 21 security benefits under 42 U.S.C. ss. 402 and 423, whether or
 22 not the employee has applied for such benefits. These
 23 supplemental benefits shall be paid by the division out of the
 24 Workers' Compensation Administration Trust Fund when the
 25 injury occurred subsequent to June 30, 1955, and before July
 26 1, 1984. These supplemental benefits shall be paid by the
 27 employer when the injury occurred on or after July 1, 1984.
 28 Supplemental benefits are not payable for any period prior to
 29 October 1, 1974.

30 2.a. The department ~~division~~ shall provide by rule for
 31 the periodic reporting to the department ~~division~~ of all

1 earnings of any nature and social security income by the
 2 injured employee entitled to or claiming additional
 3 compensation under subparagraph 1. Neither the department
 4 ~~division~~ nor the employer or carrier shall make any payment of
 5 those additional benefits provided by subparagraph 1. for any
 6 period during which the employee willfully fails or refuses to
 7 report upon request by the department ~~division~~ in the manner
 8 prescribed by such rules.

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

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

26 (2) TEMPORARY TOTAL DISABILITY.--

27 (a) In case of disability total in character but
 28 temporary in quality, 66 2/3 percent of the average weekly
 29 wages shall be paid to the employee during the continuance
 30 thereof, not to exceed 104 weeks except as provided in this
 31 subsection, s. 440.12(1), and s. 440.14(3). Once the employee

1 reaches the maximum number of weeks allowed, or the employee
 2 reaches the date of maximum medical improvement, whichever
 3 occurs earlier, temporary disability benefits shall cease and
 4 the injured worker's permanent impairment shall be determined.

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

25 (c) Temporary total disability benefits paid pursuant
 26 to this subsection shall include such period as may be
 27 reasonably necessary for training in the use of artificial
 28 members and appliances, and shall include such period as the
 29 employee may be receiving training and education under a
 30 program pursuant to s. 440.49(1). Notwithstanding s.
 31 440.02(9), the date of maximum medical improvement for

1 purposes of paragraph (3)(b) shall be no earlier than the last
2 day for which such temporary disability benefits are paid.

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

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

16 (a) Impairment benefits.--

17 1. Once the employee has reached the date of maximum
18 medical improvement, impairment benefits are due and payable
19 within 20 days after the carrier has knowledge of the
20 impairment.

21 2. The three-member panel, in cooperation with the
22 department ~~division~~, shall establish and use a uniform
23 permanent impairment rating schedule. This schedule must be
24 based on medically or scientifically demonstrable findings as
25 well as the systems and criteria set forth in the American
26 Medical Association's Guides to the Evaluation of Permanent
27 Impairment; the Snellen Charts, published by American Medical
28 Association Committee for Eye Injuries; and the Minnesota
29 Department of Labor and Industry Disability Schedules. The
30 schedule should be based upon objective findings. The schedule
31 shall be more comprehensive than the AMA Guides to the

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

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

1 temporary benefits, whichever occurs earlier, and continues
2 until the earlier of:

3 a. The expiration of a period computed at the rate of
4 3 weeks for each percentage point of impairment; or
5 b. The death of the employee.

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

29 5. The carrier shall pay the employee impairment
30 income benefits for a period based on the impairment rating.
31

1 6. The department ~~division~~ may by rule specify forms
2 and procedures governing the method of payment of wage loss
3 and impairment benefits for dates of accidents before January
4 1, 1994, and for dates of accidents on or after January 1,
5 1994.

6 (b) Supplemental benefits.--

7 1. All supplemental benefits must be paid in
8 accordance with this subsection. An employee is entitled to
9 supplemental benefits as provided in this paragraph as of the
10 expiration of the impairment period, if:

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

14 b. The employee has not returned to work or has
15 returned to work earning less than 80 percent of the
16 employee's average weekly wage as a direct result of the
17 employee's impairment; and

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

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

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

30 b. The employee meets the other requirements of
31 subparagraph 1.; and

1 c. The employee's decrease in earnings is a direct
2 result of the employee's impairment from the compensable
3 injury.

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

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

1 ~~of the employee and determine whether the carrier has~~
 2 ~~performed its duty with respect to whether the employee's~~
 3 ~~unemployment or underemployment is a direct result of~~
 4 ~~impairment from the compensable injury.~~

5 4.5. After the initial determination of supplemental
 6 benefits, the employee must file a statement with the carrier
 7 stating that the employee has earned less than 80 percent of
 8 the employee's average weekly wage as a direct result of the
 9 employee's impairment, stating the amount of wages the
 10 employee earned in the filing period, and stating that the
 11 employee has in good faith sought employment commensurate with
 12 the employee's ability to work. The statement must be filed
 13 quarterly on a form and in the manner prescribed by the
 14 department division. The department division may modify the
 15 filing period as appropriate to an individual case. Failure to
 16 file a statement relieves the carrier of liability for
 17 supplemental benefits for the period during which a statement
 18 is not filed.

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

26 6.7. Supplemental benefits are calculated quarterly
 27 and paid monthly. For purposes of calculating supplemental
 28 benefits, 80 percent of the employee's average weekly wage and
 29 the average wages the employee has earned per week are
 30 compared quarterly. For purposes of this paragraph, if the
 31 employee is offered a bona fide position of employment that

1 the employee is capable of performing, given the physical
2 condition of the employee and the geographic accessibility of
3 the position, the employee's weekly wages are considered
4 equivalent to the weekly wages for the position offered to the
5 employee.

6 ~~7.8.~~ Supplemental benefits are payable at the rate of
7 80 percent of the difference between 80 percent of the
8 employee's average weekly wage determined pursuant to s.
9 440.14 and the weekly wages the employee has earned during the
10 reporting period, not to exceed the maximum weekly income
11 benefit under s. 440.12.

12 ~~8.9.~~ The department ~~division~~ may by rule define terms
13 that are necessary for the administration of this section and
14 forms and procedures governing the method of payment of
15 supplemental benefits for dates of accidents before January 1,
16 1994, and for dates of accidents on or after January 1, 1994.

17 (c) Duration of temporary impairment and supplemental
18 income benefits.--The employee's eligibility for temporary
19 benefits, impairment income benefits, and supplemental
20 benefits terminates on the expiration of 401 weeks after the
21 date of injury.

22 (4) TEMPORARY PARTIAL DISABILITY.--

23 (a) In case of temporary partial disability,
24 compensation shall be equal to 80 percent of the difference
25 between 80 percent of the employee's average weekly wage and
26 the salary, wages, and other remuneration the employee is able
27 to earn, as compared weekly; however, the weekly benefits may
28 not exceed an amount equal to 66 2/3 percent of the
29 employee's average weekly wage at the time of injury. In order
30 to simplify the comparison of the preinjury average weekly
31 wage with the salary, wages, and other remuneration the

1 employee is able to earn, the department ~~division~~ may by rule
 2 provide for the modification of the weekly comparison so as to
 3 coincide as closely as possible with the injured worker's pay
 4 periods. The amount determined to be the salary, wages, and
 5 other remuneration the employee is able to earn shall in no
 6 case be less than the sum actually being earned by the
 7 employee, including earnings from sheltered employment.

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

18 (5) SUBSEQUENT INJURY.--

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

31

1 Compensation for temporary disability, medical benefits, and
 2 wage-loss benefits shall not be subject to apportionment.

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

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

1 subject to this subsection if the employee is receiving
2 permanent total disability benefits or if the employer has 50
3 or fewer employees.

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

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

31

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

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

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

29 (b) If the provisions of 42 U.S.C. s. 424(a) are
30 amended to provide for a reduction or increase of the
31 percentage of average current earnings that the sum of

1 compensation benefits payable under this chapter and the
2 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
3 the amount of the reduction of benefits provided in this
4 subsection shall be reduced or increased accordingly. The
5 department ~~division~~ may by rule specify forms and procedures
6 governing the method for calculating and administering the
7 offset of benefits payable under this chapter and benefits
8 payable under 42 U.S.C. ss. 402 and 423. The department
9 ~~division~~ shall have first priority in taking any available
10 social security offsets on dates of accidents occurring before
11 July 1, 1984.

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

1 such rules. The authority for release of disability
2 information granted by an employee under this paragraph shall
3 be effective for a period not to exceed 12 months, such
4 authority to be renewable as the department ~~division~~ may
5 prescribe by rule.

6 (d) If compensation benefits are reduced pursuant to
7 this subsection, the minimum compensation provisions of s.
8 440.12(2) do not apply.

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

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

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

23 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
24 OFFICERS.--Any law enforcement officer as defined in s.
25 943.10(1), (2), or (3) who, while acting within the course of
26 employment as provided by s. 440.091, is maliciously or
27 intentionally injured and who thereby sustains a job-connected
28 disability compensable under this chapter shall be carried in
29 full-pay status rather than being required to use sick,
30 annual, or other leave. Full-pay status shall be granted only
31 after submission to the employing agency's head of a medical

1 report which gives a current diagnosis of the employee's
2 recovery and ability to return to work. In no case shall the
3 employee's salary and workers' compensation benefits exceed
4 the amount of the employee's regular salary requirements.

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

14 Section 22. Section 440.17, Florida Statutes, is
15 amended to read:

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

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

1 440.185 Notice of injury or death; reports; penalties
2 for violations.--

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

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

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

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

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

20
21 In the event of death arising out of and in the course of
22 employment, the requirements of this subsection shall be
23 satisfied by the employee's agent or estate. Documents
24 prepared by counsel in connection with litigation, including
25 but not limited to notices of appearance, petitions, motions,
26 or complaints, shall not constitute notice for purposes of
27 this section.

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

1 employee's estate. The report of injury shall contain the
2 following information:

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

11

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

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

30 (4) Within 3 days after the employer or the employee
31 informs the carrier of an injury the carrier shall mail to the

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

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

30 (6) In the absence of a stipulation by the parties,
31 reports provided for in subsection (2), subsection (4), or

1 subsection (5) shall not be evidence of any fact stated in
2 such report in any proceeding relating thereto, except for
3 medical reports which, if otherwise qualified, may be admitted
4 at the discretion of the judge of compensation claims.

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

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

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

1 the carrier from liability for the civil penalty if it fails
2 to comply with subsections (4) and (5).

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

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

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

21 440.191 Employee Assistance and Ombudsman Office.--

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

1 ~~division's~~ efforts to resolve disagreements between the
2 parties. The department division may by rule prescribe
3 definitions that are necessary for the effective
4 administration of this section.

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

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

18 Section 25. Subsections (1) and (8) of section
19 440.192, Florida Statutes, are amended to read:

20 440.192 Procedure for resolving benefit disputes.--

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

29 (8) Within 14 days after receipt of a petition for
30 benefits by certified mail, the carrier must either pay the
31 requested benefits without prejudice to its right to deny

1 within 120 days from receipt of the petition or file a notice
2 of denial with the department ~~division~~. The carrier must list
3 all benefits requested but not paid and explain its
4 justification for nonpayment in the notice of denial. A
5 carrier that does not deny compensability in accordance with
6 s. 440.20(4) is deemed to have accepted the employee's
7 injuries as compensable, unless it can establish material
8 facts relevant to the issue of compensability that could not
9 have been discovered through reasonable investigation within
10 the 120-day period. The carrier shall provide copies of the
11 notice to the filing party, employer, and claimant by
12 certified mail.

13 Section 26. Subsections (1), (3), and (4) of section
14 440.1925, Florida Statutes, are amended to read:

15 440.1925 Procedure for resolving maximum medical
16 improvement or permanent impairment disputes.--

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

30 (3) Disputes shall be resolved under this section
31 when:

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

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

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

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

18 Section 27. Subsections (3), (6), (8), (9), (10),
19 (11), (12), (15), (16), and (17) of section 440.20, Florida
20 Statutes, are amended to read:

21 440.20 Time for payment of compensation; penalties for
22 late payment.--

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

30 (6) If any installment of compensation for death or
31 dependency benefits, disability, permanent impairment, or wage

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

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

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

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

24 (c) In order to ensure carrier compliance under this
 25 chapter and provisions of the insurance code, the department
 26 ~~division~~ shall monitor the performance of carriers by
 27 conducting market conduct examinations, as provided in s.
 28 624.3161, and conducting investigations, as provided in s.
 29 624.317. The department ~~division~~ shall impose penalties on
 30 ~~establish by rule minimum performance standards for carriers~~
 31 ~~to ensure that a minimum of 90 percent of all compensation~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 28. Subsections (1) and (2) of section
 24 440.207, Florida Statutes, are amended to read:

25 440.207 Workers' compensation system guide.--

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

31

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

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

17 440.211 Authorization of collective bargaining
18 agreement.--

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

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

31

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

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

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

10 (e) A vocational rehabilitation or retraining program.

11 Section 30. Subsections (1), (2), and (3) of section
12 440.24, Florida Statutes, are amended to read:

13 440.24 Enforcement of compensation orders;
14 penalties.--

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

31

1 (2) In any case where the employer is insured and the
2 carrier fails to comply with any compensation order of a judge
3 of compensation claims or court within 10 days after such
4 order becomes final, ~~the division shall notify the department~~
5 ~~of Insurance of such failure, and the Department of Insurance~~
6 shall thereupon suspend the license of such carrier to do an
7 insurance business in this state, until such carrier has
8 complied with such order.

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

17 Section 31. Subsections (4), (5), and (7) of section
18 440.25, Florida Statutes, are amended to read:

19 440.25 Procedures for mediation and hearings.--

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

30 (b) The final hearing must be held and concluded
31 within 45 days after the pretrial hearing. Continuances may be

1 granted only if the requesting party demonstrates to the judge
 2 of compensation claims that the reason for requesting the
 3 continuance arises from circumstances beyond the party's
 4 control.

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

8 (d) The hearing shall be held in the county where the
 9 injury occurred, if the injury occurred in this state, unless
 10 otherwise agreed to between the parties and authorized by the
 11 judge of compensation claims in the county where the injury
 12 occurred. If the injury occurred without the state and is one
 13 for which compensation is payable under this chapter, then the
 14 hearing above referred to may be held in the county of the
 15 employer's residence or place of business, or in any other
 16 county of the state which will, in the discretion of the Chief
 17 Judge, be the most convenient for a hearing. The hearing shall
 18 be conducted by a judge of compensation claims, who shall,
 19 within 14 days after final hearing, unless otherwise agreed by
 20 the parties, determine the dispute in a summary manner. At
 21 such hearing, the claimant and employer may each present
 22 evidence in respect of such claim and may be represented by
 23 any attorney authorized in writing for such purpose. When
 24 there is a conflict in the medical evidence submitted at the
 25 hearing, the provisions of s. 440.13 shall apply. The report
 26 or testimony of the expert medical advisor shall be made a
 27 part of the record of the proceeding and shall be given the
 28 same consideration by the judge of compensation claims as is
 29 accorded other medical evidence submitted in the proceeding;
 30 and all costs incurred in connection with such examination and
 31 testimony may be assessed as costs in the proceeding, subject

1 to the provisions of s. 440.13. No judge of compensation
 2 claims may make a finding of a degree of permanent impairment
 3 that is greater than the greatest permanent impairment rating
 4 given the claimant by any examining or treating physician,
 5 except upon stipulation of the parties.

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

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

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

30 (h) Notwithstanding any other provision of this
 31 section, the judge of compensation claims may require the

1 appearance of the parties and counsel before her or him
 2 without written notice for an emergency conference where there
 3 is a bona fide emergency involving the health, safety, or
 4 welfare of an employee. An emergency conference under this
 5 section may result in the entry of an order or the rendering
 6 of an adjudication by the judge of compensation claims.

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

14 (j) To further expedite dispute resolution and to
 15 enhance the self-executing features of the system, those
 16 petitions filed in accordance with s. 440.192 that involve a
 17 claim for benefits of \$5,000 or less shall, in the absence of
 18 compelling evidence to the contrary, be presumed to be
 19 appropriate for expedited resolution under this paragraph; and
 20 any other claim filed in accordance with s. 440.192, upon the
 21 written agreement of both parties and application by either
 22 party, may similarly be resolved under this paragraph. For
 23 purposes of expedited resolution pursuant to this paragraph,
 24 the Chief Judge shall make provision by rule or order for
 25 expedited and limited discovery and expedited docketing in
 26 such cases. At least 15 days prior to hearing, the parties
 27 shall exchange and file with the judge of compensation claims
 28 a pretrial outline of all issues, defenses, and witnesses on a
 29 form promulgated by the Chief Judge; provided, in no event
 30 shall such hearing be held without 15 days' written notice to
 31 all parties. No pretrial hearing shall be held. The judge of

1 compensation claims shall limit all argument and presentation
 2 of evidence at the hearing to a maximum of 30 minutes, and
 3 such hearings shall not exceed 30 minutes in length. Neither
 4 party shall be required to be represented by counsel. The
 5 employer or carrier may be represented by an adjuster or other
 6 qualified representative. The employer or carrier and any
 7 witness may appear at such hearing by telephone. The rules of
 8 evidence shall be liberally construed in favor of allowing
 9 introduction of evidence.

10 (5)(a) Procedures with respect to appeals from orders
 11 of judges of compensation claims shall be governed by rules
 12 adopted by the Supreme Court. Such an order shall become final
 13 30 days after mailing of copies of such order to the parties,
 14 unless appealed pursuant to such rules.

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

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

1 ~~division~~ may transcribe or arrange for the transcription of
2 the record in any proceeding for which it is ordered to pay
3 the cost of the record. In the event the insolvency petition
4 is denied, the judge of compensation claims may enter an order
5 requiring the petitioner to reimburse the department ~~division~~
6 for costs incurred in opposing the petition, including
7 investigation and travel expenses.

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

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

1 refuse to submit to examination. Any interested party shall
2 have the right in any case of death to require an autopsy, the
3 cost thereof to be borne by the party requesting it; and the
4 judge of compensation claims shall have authority to order and
5 require an autopsy and may, in her or his discretion, withhold
6 her or his findings and award until an autopsy is held.

7 Section 32. Section 440.271, Florida Statutes, is
8 amended to read:

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

19 Section 33. Section 440.345, Florida Statutes, is
20 amended to read:

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

27 Section 34. Section 440.35, Florida Statutes, is
28 amended to read:

29 440.35 Record of injury or death.--Every employer
30 shall keep a record in respect of any injury to an employee.
31 Such record shall contain such information of disability or

1 death in respect of such injury as the department ~~division~~ may
2 by regulation require, and shall be available to inspection by
3 the department ~~division~~ or by any state authority at such time
4 and under such conditions as the department ~~division~~ may by
5 regulation prescribe.

6 Section 35. Subsections (1), (2), and (3) of section
7 440.38, Florida Statutes, are amended to read:

8 Section 36. Subsections (1), (2), and (3) of section
9 440.38, Florida Statutes, are amended to read:

10 440.38 Security for compensation; insurance carriers
11 and self-insurers.--

12 (1) Every employer shall secure the payment of
13 compensation under this chapter:

14 (a) By insuring and keeping insured the payment of
15 such compensation with any stock company or mutual company or
16 association or exchange, authorized to do business in the
17 state;

18 (b) By furnishing satisfactory proof to the Florida
19 Self-Insurers Guaranty Association, Incorporated, created in
20 s. 440.385, that it has the financial strength necessary to
21 assure timely payment of all current and future claims
22 ~~division of its financial ability to pay such compensation~~
23 individually and on behalf of its subsidiary and affiliated
24 companies with employees in this state and receiving an
25 authorization from the Department of Insurance,~~division~~ to
26 pay such compensation directly. The association shall review
27 the financial strength of applicants for membership, current
28 members, and former members and make recommendations to the
29 department regarding their qualifications to self-insure in
30 accordance with this act and ss. 440.385 and 440.386. The
31

1 department shall consult with the association on any
 2 recommendation before taking action.~~the following provisions:~~
 3 1. The association division may recommend that the
 4 Department of Insurance, ~~as a condition to such authorization,~~
 5 ~~require an such~~ employer to deposit ~~with in a depository~~
 6 ~~designated by the association~~ a qualifying deposit. The
 7 association shall recommend the type and amount of the
 8 qualifying security deposit and shall division either an
 9 ~~indemnity bond or securities, at the option of the employer,~~
 10 ~~of a kind and in an amount determined by the division and~~
 11 ~~subject to such conditions as the division may prescribe~~
 12 conditions for the qualifying security deposit, which shall
 13 include authorization ~~for to~~ the association to call the
 14 qualifying security deposit division in the case of default ~~to~~
 15 ~~sell any such securities sufficient to pay compensation awards~~
 16 and related expenses of the association ~~or to bring suit upon~~
 17 ~~such bonds, to procure prompt payment of compensation under~~
 18 ~~this chapter. In addition, the division shall require,~~As a
 19 condition to authorization to self-insure, the employer shall
 20 provide proof that the employer has provided for competent
 21 personnel with whom to deliver benefits and to provide a safe
 22 working environment. Further,The employer division shall
 23 also provide evidence of ~~require such employer to carry~~
 24 reinsurance at levels that will ensure the financial strength
 25 and actuarial soundness of such employer in accordance with
 26 rules adopted promulgated by the Department of Insurance
 27 division. The Department of Insurance division may by rule
 28 require that, in the event of an individual self-insurer's
 29 insolvency, such qualifying security deposits ~~indemnity bonds,~~
 30 ~~securities,~~and reinsurance policies are ~~shall be~~ payable to
 31 the association ~~Florida Self-Insurers Guaranty Association,~~

1 ~~Incorporated, created pursuant to s. 440.385.~~ Any employer
2 securing compensation in accordance with the provisions of
3 this paragraph shall be known as a self-insurer and shall be
4 classed as a carrier of her or his own insurance. All such
5 employers shall, if requested, provide the association an
6 actuarial report signed by a member of the American Academy of
7 Actuaries providing an opinion of the appropriate present
8 value of the reserves for current and future compensation
9 claims. If any member or former member of the association
10 refuses to timely provide such a report, the association may
11 obtain an order from a circuit court requiring the member to
12 produce such a report and ordering such other relief as the
13 court determines appropriate. The association shall be
14 entitled to recover all reasonable costs and attorney's fees
15 in such proceedings.

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

1 amount equal to 1.5 times the value certified in the latest
 2 opinion, the association shall provide such information to the
 3 department along with a recommendation, and the Department of
 4 Insurance division shall then revoke an ~~such~~ employer's
 5 authorization to self-insure, ~~and such~~ Failure to comply with
 6 this provision shall be deemed to constitute an immediate
 7 serious danger to the public health, safety, or welfare
 8 sufficient to justify the summary suspension of the employer's
 9 authorization to self-insure pursuant to s. 120.68.

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

1 while the employer exercised the privilege of self-insurance,
2 together with attorney's fees. For purposes of this section,
3 the successor of an employer means any person, business
4 entity, or group of persons or business entities, which holds
5 or acquires legal or beneficial title to the majority of the
6 assets or the majority of the shares of the employer.

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

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

16 ~~b. Certificates of deposit with financial~~
17 ~~institutions, the deposits of which are insured through the~~
18 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
19 ~~and Loan Insurance Corporation.~~

20 ~~b.c.~~ Irrevocable letters of credit in favor of the
21 association division issued by financial institutions located
22 within this state, the deposits of which are insured through
23 the Federal Deposit Insurance Corporation described in
24 ~~sub-subparagraph b.~~

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

27 ~~e. Securities issued by this state and backed by the~~
28 ~~full faith and credit of this state.~~

29 5. The qualifying security deposit shall be held by
30 the association division, or by a depository authorized by the
31 ~~division~~, exclusively for the benefit of workers' compensation

1 claimants. The security shall not be subject to assignment,
2 execution, attachment, or any legal process whatsoever, except
3 as necessary to guarantee the payment of compensation under
4 this chapter. No surety bond may be terminated, and no letter
5 of credit ~~other qualifying security~~ may be allowed to expire
6 ~~lapse~~, without 90 days' prior written notice to the
7 association division and the deposit by the self-insuring
8 employer of some other qualifying security deposit of equal
9 value within 10 business days after such notice. Failure to
10 provide such written notice or failure to timely provide
11 qualifying replacement security after such notice shall
12 constitute grounds for the association division to call or sue
13 upon the surety bond, or to ~~act with respect to other pledged~~
14 ~~security in any manner necessary to preserve its value for the~~
15 ~~purposes intended by this section, including the exercise its~~
16 ~~of rights under a letter of credit.~~ Current self-insured
17 employers must comply with this section on or before December
18 31, 2001, or upon maturity of existing security deposits,
19 whichever occurs later ~~the sale of any security at then~~
20 ~~prevailing market rates, or the withdrawal of any funds~~
21 ~~represented by any certificate of deposit forming part of the~~
22 ~~qualifying security deposit.~~ The Department of Insurance
23 division may specify by rule the amount of the qualifying
24 security deposit required prior to authorizing an employer to
25 self-insure and the amount of net worth required for an
26 employer to qualify for authorization to self-insure;
27 (c) By entering into a contract with a public utility
28 under an approved utility-provided self-insurance program as
29 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
30 1983. The Department of Insurance division shall adopt rules
31 to implement this paragraph;

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

4 (e) In accordance with s. 440.135, an employer, other
 5 than a local government unit, may elect coverage under the
 6 Workers' Compensation Law and retain the benefit of the
 7 exclusiveness of liability provided in s. 440.11 by obtaining
 8 a 24-hour health insurance policy from an authorized property
 9 and casualty insurance carrier or an authorized life and
 10 health insurance carrier, or by participating in a fully or
 11 partially self-insured 24-hour health plan that is established
 12 or maintained by or for two or more employers, so long as the
 13 law of this state is not preempted by the Employee Retirement
 14 Income Security Act of 1974, Pub. L. No. 93-406, or any
 15 amendment to that law, which policy or plan must provide, for
 16 at least occupational injuries and illnesses, medical benefits
 17 that are comparable to those required by this chapter. A local
 18 government unit, as a single employer, in accordance with s.
 19 440.135, may participate in the 24-hour health insurance
 20 coverage plan referenced in this paragraph. Disputes and
 21 remedies arising under policies issued under this section are
 22 governed by the terms and conditions of the policies and under
 23 the applicable provisions of the Florida Insurance Code and
 24 rules adopted under the insurance code and other applicable
 25 laws of this state. The 24-hour health insurance policy may
 26 provide for health care by a health maintenance organization
 27 or a preferred provider organization. The premium for such
 28 24-hour health insurance policy shall be paid entirely by the
 29 employer. The 24-hour health insurance policy may use
 30 deductibles and coinsurance provisions that require the
 31 employee to pay a portion of the actual medical care received

1 by the employee. If an employer obtains a 24-hour health
2 insurance policy or self-insured plan to secure payment of
3 compensation as to medical benefits, the employer must also
4 obtain an insurance policy or policies that provide indemnity
5 benefits as follows:

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

9 2. If indemnity benefits are provided for both
10 occupational-related and nonoccupational-related disability,
11 such benefits must be comparable to those required by this
12 chapter, except that they must be based on 60 percent of the
13 average weekly wages.

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

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

31

1 (f) By entering into a contract with an individual
2 self-insurer under an approved individual
3 self-insurer-provided self-insurance program as set forth in
4 s. 624.46225. The Department of Insurance ~~division~~ may adopt
5 rules to implement this subsection.

6 (2)(a) The Department of Insurance ~~division~~ shall
7 adopt rules by which businesses may become qualified to
8 provide underwriting claims-adjusting, loss control, and
9 safety engineering services to self-insurers.

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

16 ~~(3)(a) The license of any stock company or mutual~~
17 ~~company or association or exchange authorized to do insurance~~
18 ~~business in the state shall for good cause, upon~~
19 ~~recommendation of the division, be suspended or revoked by the~~
20 ~~Department of Insurance. No suspension or revocation shall~~
21 ~~affect the liability of any carrier already incurred.~~

22 (a)(b) The Department of Insurance ~~division~~ shall
23 suspend or revoke any authorization to a self-insurer for
24 failure to comply with this act or for good cause, as defined
25 by rule of the department ~~division~~. No suspension or
26 revocation shall affect the liability of any self-insurer
27 already incurred.

28 (b)(c) Violation of s. 440.381 by a self-insurance
29 fund shall result in the imposition of a fine not to exceed
30 \$1,000 per audit if the self-insurance fund fails to act on
31 said audits by correcting errors in employee classification or

1 accepted applications for coverage where it knew employee
2 classifications were incorrect. Such fines shall be levied by
3 the Department of Insurance ~~division~~ and deposited into the
4 Workers' Compensation Administration Trust Fund.

5 Section 37. Subsections (3) and (7) of section
6 440.381, Florida Statutes, are amended to read:

7 440.381 Application for coverage; reporting payroll;
8 payroll audit procedures; penalties.--

9 (3) ~~The department of Insurance and the Department of~~
10 ~~Labor and Employment Security~~ shall establish by rule minimum
11 requirements for audits of payroll and classifications in
12 order to ensure that the appropriate premium is charged for
13 workers' compensation coverage. The rules shall ensure that
14 audits performed by both carriers and employers are adequate
15 to provide that all sources of payments to employees,
16 subcontractors, and independent contractors have been reviewed
17 and that the accuracy of classification of employees has been
18 verified. The rules shall provide that employers in all
19 classes other than the construction class be audited not less
20 frequently than biennially and may provide for more frequent
21 audits of employers in specified classifications based on
22 factors such as amount of premium, type of business, loss
23 ratios, or other relevant factors. In no event shall employers
24 in the construction class, generating more than the amount of
25 premium required to be experience rated, be audited less than
26 annually. The annual audits required for construction classes
27 shall consist of physical onsite audits. Payroll verification
28 audit rules must include, but need not be limited to, the use
29 of state and federal reports of employee income, payroll and
30 other accounting records, certificates of insurance maintained
31 by subcontractors, and duties of employees.

1 (7) If an employee suffering a compensable injury was
 2 not reported as earning wages on the last quarterly earnings
 3 report filed with the Division of Unemployment Compensation
 4 before the accident, the employer shall indemnify the carrier
 5 for all workers' compensation benefits paid to or on behalf of
 6 the employee unless the employer establishes that the employee
 7 was hired after the filing of the quarterly report, in which
 8 case the employer and employee shall attest to the fact that
 9 the employee was employed by the employer at the time of the
 10 injury. ~~It shall be the responsibility of the Division of~~
 11 ~~Workers' Compensation to collect all necessary data so as to~~
 12 ~~enable it to notify the carrier of the name of an injured~~
 13 ~~worker who was not reported as earning wages on the last~~
 14 ~~quarterly earnings report. The division is hereby authorized~~
 15 ~~to release such records to the carrier which will enable the~~
 16 ~~carrier to seek reimbursement as provided under this~~
 17 ~~subsection.~~ Failure of the employer to indemnify the insurer
 18 within 21 days after demand by the insurer shall constitute
 19 grounds for the insurer to immediately cancel coverage. Any
 20 action for indemnification brought by the carrier shall be
 21 cognizable in the circuit court having jurisdiction where the
 22 employer or carrier resides or transacts business. The
 23 insurer shall be entitled to a reasonable attorney's fee if it
 24 recovers any portion of the benefits paid in such action.

25 Section 38. Section 440.385, Florida Statutes, is
 26 amended to read:

27 440.385 Florida Self-Insurers Guaranty Association,
 28 Incorporated.--

29 (1) CREATION OF ASSOCIATION.--

30 (a) There is created a nonprofit corporation to be
 31 known as the "Florida Self-Insurers Guaranty Association,

1 Incorporated," hereinafter referred to as "the association."
2 Upon incorporation of the association, all individual
3 self-insurers as defined in ss. 440.02(23)(a) and
4 440.38(1)(b), other than individual self-insurers which are
5 public utilities or governmental entities, shall be members of
6 the association as a condition of their authority to
7 individually self-insure in this state. The association
8 ~~corporation~~ shall perform its functions under a plan of
9 operation as established and approved under subsection (5) and
10 shall exercise its powers and duties through a board of
11 directors as established under subsection (2). The association
12 ~~corporation~~ shall have those powers granted or permitted
13 associations ~~corporations~~ not for profit, as provided in
14 chapter 617. The activities of the association shall be
15 subject to review by the Department of Insurance. The
16 Department of Insurance shall have oversight responsibility as
17 set forth in this act. The association is specifically
18 authorized to enter into agreements with the State of Florida
19 to perform specified services.

20 (b) A member may voluntarily withdraw from the
21 association when the member voluntarily terminates the
22 self-insurance privilege and pays all assessments due to the
23 date of such termination. However, the withdrawing member
24 shall continue to be bound by the provisions of this section
25 relating to the period of his or her membership and any claims
26 charged pursuant thereto. The withdrawing member who is a
27 member on or after January 1, 1991, shall also be required to
28 provide to the association ~~division~~ upon withdrawal, and at
29 12-month intervals thereafter, satisfactory proof, including,
30 if requested by the association, a report of known and
31 potential claims certified by a member of the American Academy

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

1 member, and against any successor of a withdrawing member, who
2 fails to timely provide the required opinion or who fails to
3 maintain the required deposit with the division. The
4 association shall be entitled to recover a judgment in the
5 amount of the actuarial present value of the determined and
6 estimated future compensation payments of the withdrawing
7 member for claims incurred during the time that the
8 withdrawing member exercised the privilege of self-insurance,
9 together with reasonable attorney's fees. The association is
10 also entitled to recover reasonable attorney's fees in any
11 action to compel production of any actuarial report required
12 by this statute. For purposes of this section, the successor
13 of a withdrawing member means any person, business entity, or
14 group of persons or business entities, which holds or acquires
15 legal or beneficial title to the majority of the assets or the
16 majority of the shares of the withdrawing member.

17 (2) BOARD OF DIRECTORS.--The board of directors of the
18 association shall consist of nine persons and shall be
19 organized as established in the plan of operation. All board
20 members shall be experienced in self-insurance in this state.
21 As of December 31, 2003, six members of the board shall be
22 individual self-insurers in this state. The board members who
23 are individual self-insurers shall be officers or full-time
24 employees of the self-insured company they represent. If the
25 individual self-insurer board member's company voluntarily
26 withdraws such member's privilege to self-insure, the board
27 member may complete the remaining term of his or her
28 appointment. ~~With respect to initial appointments, the~~
29 ~~Secretary of Labor and Employment Security shall, by July 15,~~
30 ~~1982, approve and appoint to the board persons who are~~
31 ~~experienced with self-insurance in this state and who are~~

1 ~~recommended by the individual self-insurers in this state~~
 2 ~~required to become members of the association pursuant to the~~
 3 ~~provisions of paragraph (1)(a). In the event the secretary~~
 4 ~~finds that any person so recommended does not have the~~
 5 ~~necessary qualifications for service on the board and a~~
 6 ~~majority of the board has been appointed, the secretary shall~~
 7 ~~request the directors thus far approved and appointed to~~
 8 ~~recommend another person for appointment to the board.~~ Each
 9 director shall serve for a 4-year term and may be reappointed.
 10 Appointments after March 21, 2001, ~~other than initial~~
 11 ~~appointments~~ shall be made by the Insurance Commissioner
 12 ~~Secretary of Labor and Employment Security~~ upon recommendation
 13 of members of the association. Any vacancy on the board shall
 14 be filled for the remaining period of the term in the same
 15 manner as appointments other than initial appointments are
 16 made. Each director shall be reimbursed for expenses incurred
 17 in carrying out the duties of the board on behalf of the
 18 association.

19 (3) POWERS AND DUTIES.--

20 (a) Upon creation of the Insolvency Fund pursuant to
 21 the provisions of subsection (4), the association is obligated
 22 for payment of compensation under this chapter to insolvent
 23 members' employees resulting from incidents and injuries
 24 existing prior to the member becoming an insolvent member and
 25 from incidents and injuries occurring within 30 days after the
 26 member has become an insolvent member, provided the incidents
 27 giving rise to claims for compensation under this chapter
 28 occur during the year in which such insolvent member is a
 29 member of the guaranty fund and was assessable pursuant to the
 30 plan of operation, and provided the employee makes timely
 31 claim for such payments according to procedures set forth by a

1 court of competent jurisdiction over the delinquency or
2 bankruptcy proceedings of the insolvent member. Such
3 obligation includes only that amount due the injured worker or
4 workers of the insolvent member under this chapter. In no
5 event is the association obligated to a claimant in an amount
6 in excess of the obligation of the insolvent member. The
7 association shall be deemed the insolvent employer for
8 purposes of this chapter to the extent of its obligation on
9 the covered claims and, to such extent, shall have all rights,
10 duties, and obligations of the insolvent employer as if the
11 employer had not become insolvent. However, in no event shall
12 the association be liable for any penalties or interest.

13 (b) The association may:

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

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

18 3. Sue or be sued.

19 4. Negotiate and become a party to such contracts as
20 are necessary to carry out the purposes of this section.

21 5. Purchase such reinsurance as is determined
22 necessary pursuant to the plan of operation.

23 6. Review all applicants for membership in the
24 association to determine whether the applicant is qualified
25 for membership under the law. The association shall recommend
26 to the Department of Insurance that the application be
27 accepted or rejected based on the criteria set forth in s.
28 440.38(1)(b). The department shall approve or disapprove the
29 application. Prior to a final determination by the Division of
30 Workers' Compensation as to whether or not to approve any
31 applicant for membership in the association, the association

1 ~~may issue opinions to the division concerning any applicant,~~
2 ~~which opinions shall be considered by the division prior to~~
3 ~~any final determination.~~

4 7. Collect and review financial information from
5 employers and make recommendations to the Department of
6 Insurance regarding the appropriate security deposit and
7 reinsurance amounts necessary for an employer to demonstrate
8 that it has the financial strength necessary to assure the
9 timely payment of all current and future claims. The
10 association may audit and examine an employer to verify the
11 financial strength of its current and former members. If the
12 association determines that a current or former self-insured
13 employer does not have the financial strength necessary to
14 assure the timely payment of all current and estimated future
15 claims, the association may recommend to the department that
16 the department:

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

18 b. Require the employer to provide a certified opinion
19 of an independent actuary who is a member of the American
20 Academy of Actuaries as to the actuarial present value of the
21 employer's estimated current and future compensation payments,
22 using a 4-percent discount rate.

23 c. Require an increase in the employer's security
24 deposit in an amount determined by the association to be
25 necessary to assure payment of compensation claims. The
26 department shall act on such recommendations. The association
27 has a cause of action against an employer, and against any
28 successor of an employer, who fails to provide an additional
29 security deposit required by the department. The association
30 shall recover a judgment in the amount of the requested
31 additional security deposit together with reasonable

1 attorney's fees. For the purposes of this section, the
 2 successor of an employer is any person, business entity, or
 3 group of persons or business entities that holds or acquires
 4 legal or beneficial title to the majority of the assets or the
 5 majority of the shares of the employer.

6 ~~8.7.~~ Charge fees to any member of the association to
 7 cover the actual costs of examining the financial and safety
 8 conditions of that member.

9 ~~9.8.~~ Charge an applicant for membership in the
 10 association a fee sufficient to cover the actual costs of
 11 examining the financial condition of the applicant.

12 10. Implement any and all procedures necessary to
 13 ensure compliance with regulatory actions taken by the
 14 department.

15 (c)1. To the extent necessary to secure funds for the
 16 payment of covered claims and also to pay the reasonable costs
 17 to administer them, the association, subject to approval by
 18 the Department of Insurance Labor and Employment Security,
 19 ~~upon certification of the board of directors,~~ shall levy
 20 assessments based on the annual written normal premium each
 21 employer would have paid had the employer not been
 22 self-insured. Every assessment shall be made as a uniform
 23 percentage of the figure applicable to all individual
 24 self-insurers, provided that the assessment levied against any
 25 self-insurer in any one year shall not exceed 1 percent of the
 26 annual written normal premium during the calendar year
 27 preceding the date of the assessment. Assessments shall be
 28 remitted to and administered by the board of directors in the
 29 manner specified by the approved plan. Each employer so
 30 assessed shall have at least 30 days' written notice as to the
 31 date the assessment is due and payable. The association shall

1 levy assessments against any newly admitted member of the
 2 association so that the basis of contribution of any newly
 3 admitted member is the same as previously admitted members,
 4 provision for which shall be contained in the plan of
 5 operation.

6 2. If, in any one year, funds available from such
 7 assessments, together with funds previously raised, are not
 8 sufficient to make all the payments or reimbursements then
 9 owing, the funds available shall be prorated, and the unpaid
 10 portion shall be paid as soon thereafter as sufficient
 11 additional funds become available.

12 3. Funds may be allocated or paid from the Workers'
 13 Compensation Administration Trust Fund to contract with the
 14 association to perform services required by law. However, no
 15 state funds of any kind shall be allocated or paid to the
 16 association or any of its accounts for payment of covered
 17 claims or related expenses except those state funds accruing
 18 to the association by and through the assignment of rights of
 19 an insolvent employer. The department shall not levy any
 20 assessment on the Florida Self-Insurance Guaranty Association.

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

26 (a) The Insolvency Fund is created for purposes of
 27 meeting the obligations of insolvent members incurred while
 28 members of the association and after the exhaustion of any
 29 security deposit bond, as required under this chapter.
 30 However, if such security deposit bond, ~~surety~~, or reinsurance
 31 policy is payable to the Florida Self-Insurers Guaranty

1 Association, the association shall commence to provide
2 benefits out of the Insolvency Fund and be reimbursed from the
3 security deposit bond, surety, or reinsurance policy. The
4 method of operation of the Insolvency Fund shall be defined in
5 the plan of operation as provided in subsection (5).

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

8 (c) The department may offer certain amendments to the
9 plan of operation to the board of directors of the association
10 for purposes of assuring the ongoing financial soundness of
11 the Insolvency Fund and its ability to meet the obligations of
12 this section.

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

15 (5) PLAN OF OPERATION.--The association shall operate
16 pursuant to a plan of operation approved by the board of
17 directors. The plan of operation in effect on March 1, 2001,
18 and approved by the Department of Labor and Employment
19 Security shall remain in effect. However, any amendments to
20 the plan shall not become effective until approved by the
21 Department of Insurance.~~By September 15, 1982, the board of~~
22 ~~directors shall submit to the Department of Labor and~~
23 ~~Employment Security a proposed plan of operation for the~~
24 ~~administration of the association and the Insolvency Fund.~~

25 (a) The purpose of the plan of operation shall be to
26 provide the association and the board of directors with the
27 authority and responsibility to establish the necessary
28 programs and to take the necessary actions to protect against
29 the insolvency of a member of the association. In addition,
30 the plan shall provide that the members of the association
31 shall be responsible for maintaining an adequate Insolvency

1 Fund to meet the obligations of insolvent members provided for
2 under this act and shall authorize the board of directors to
3 contract and employ those persons with the necessary expertise
4 to carry out this stated purpose. By January 1, 2002, the
5 board of directors shall submit to the Department of Insurance
6 a proposed plan of operation for the administration of the
7 association. The Department of Insurance shall approve the
8 plan by order, consistent with this act. The Department of
9 Insurance shall approve any amendments to the plan, by order
10 consistent with this act, and determined appropriate to carry
11 out the duties and responsibilities of the association.

12 ~~(b) The plan of operation, and any amendments thereto,~~
13 ~~shall take effect upon approval in writing by the department.~~
14 ~~If the board of directors fails to submit a plan by September~~
15 ~~15, 1982, or fails to make required amendments to the plan~~
16 ~~within 30 days thereafter, the department shall promulgate~~
17 ~~such rules as are necessary to effectuate the provisions of~~
18 ~~this subsection. Such rules shall continue in force until~~
19 ~~modified by the department or superseded by a plan submitted~~
20 ~~by the board of directors and approved by the department.~~

21 (b)(c) All member employers shall comply with the plan
22 of operation.

23 (c)(d) The plan of operation shall:

24 1. Establish the procedures whereby all the powers and
25 duties of the association under subsection (3) will be
26 performed.

27 2. Establish procedures for handling assets of the
28 association.

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

31

1 4. Establish procedures by which claims may be filed
2 with the association and establish acceptable forms of proof
3 of covered claims. Notice of claims to the receiver or
4 liquidator of the insolvent employer shall be deemed notice to
5 the association or its agent, and a list of such claims shall
6 be submitted periodically to the association or similar
7 organization in another state by the receiver or liquidator.

8 5. Establish regular places and times for meetings of
9 the board of directors.

10 6. Establish procedures for records to be kept of all
11 financial transactions of the association and its agents and
12 the board of directors.

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

16 8. Establish the procedures whereby recommendations of
17 candidates for the board of directors shall be submitted to
18 the department.

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

21 ~~(d)(e)~~ The plan of operation may provide that any or
22 all of the powers and duties of the association, except those
23 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to
24 a corporation, association, or other organization which
25 performs or will perform functions similar to those of this
26 association or its equivalent in two or more states. Such a
27 corporation, association, or organization shall be reimbursed
28 as a servicing facility would be reimbursed and shall be paid
29 for its performance of any other functions of the association.
30 A delegation of powers or duties under this subsection shall
31 take effect only with the approval of both the board of

1 directors and the department and may be made only to a
2 corporation, association, or organization which extends
3 protection which is not substantially less favorable and
4 effective than the protection provided by this section.

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

7 (a) The department shall+

8 ~~1. review recommendations of the association~~
9 ~~concerning whether current or former self-insured employers or~~
10 ~~members of the association have the financial strength~~
11 ~~necessary to ensure the timely payment of all current and~~
12 ~~estimated future claims. If the association determines an~~
13 ~~employer does not have the financial strength necessary to~~
14 ~~ensure the timely payment of all current and future claims and~~
15 ~~recommends action pursuant to paragraph (3)(b), the Department~~
16 ~~of Insurance may take such action as necessary to order the~~
17 ~~employer to comply with the recommendation. Notify the~~
18 ~~association of the existence of an insolvent employer not~~
19 ~~later than 3 days after it receives notice of the~~
20 ~~determination of insolvency.~~

21 (b) The department may:

22 1. Contract with the association for services, which
23 may include, but not be limited to, the following:

24 a. Process applications for self-insurance.

25 b. Collect and review financial statements and loss
26 reserve information from individual self-insurers.

27 c. Collect and maintain files for original security
28 deposit documents and reinsurance policies from individual
29 self-insurers and, if necessary, perfect security interests in
30 security deposits.

31

1 d. Process compliance documentation for individual
2 self-insurers and provide same to the Department of Insurance.

3 e. Collect all data necessary to calculate annual
4 premium for all individual self-insurers, including individual
5 self-insurers that are public utilities or governmental
6 entities, and provide such calculated annual premium to the
7 Department of Insurance for assessment purposes.

8 f. Inspect and audit annually, if necessary, the
9 payroll and other records of each individual self-insurer,
10 including individual self-insurers that are public utilities
11 or governmental entities, in order to determine the wages paid
12 by each individual self-insurer, the premium such individual
13 self-insurer would have to pay if insured, and all payments of
14 compensation made by such individual self-insurer during each
15 prior period with the results of such audit provided to the
16 Department of Insurance. For the purposes of this section,
17 the payroll records of each individual self-insurer shall be
18 open to inspection and audit by the association, the
19 department, or their authorized representative, during regular
20 business hours.

21 g. Provide legal representation to implement the
22 administration and audit of individual self-insurers and make
23 recommendations regarding prosecution of any administrative or
24 legal proceedings necessitated by the department's regulation
25 of the individual self-insurers.

26 2. Contract with an attorney or attorneys recommended
27 by the association for representation of the department in any
28 administrative or legal proceedings necessitated by the
29 recommended regulation of the individual self-insurers.~~Upon~~
30 ~~request of the board of directors, provide the association~~
31

1 ~~with a statement of the annual normal premiums of each member~~
2 ~~employer.~~

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

4 3.1. Direct the association to require from each
5 individual self-insurer, at such time and in accordance with
6 such regulations as the department prescribes, reports in
7 respect to wages paid, the amount of premiums such individual
8 self-insurer would have to pay if insured, and all payments of
9 compensation made by such individual self-insurer during each
10 prior period and determine the amounts paid by each individual
11 self-insurer and the amounts paid by all individual
12 self-insurers during such period. For the purposes of this
13 section, the payroll records of each individual self-insurer
14 shall be open to annual inspection and audit by the
15 association, the department, or their authorized
16 representative, during regular business hours, and if any
17 audit of such records of an individual self-insurer discloses
18 a deficiency in the amount reported to the association or in
19 the amounts paid to the Department of Insurance by an
20 individual self-insurer for its assessment for the Workers'
21 Compensation Administration Trust Fund, the Department of
22 Insurance or the association may assess the cost of such audit
23 against the individual self-insurer.

24 4. Require that the association notify the member
25 employers and any other interested parties of the
26 determination of insolvency and of their rights under this
27 section. Such notification shall be by mail at the last known
28 address thereof when available; but, if sufficient information
29 for notification by mail is not available, notice by
30 publication in a newspaper of general circulation shall be
31 sufficient.

1 5.2. Suspend or revoke the authority of any member
2 employer failing to pay an assessment when due or failing to
3 comply with the plan of operation to self-insure in this
4 state. As an alternative, the department may levy a fine on
5 any member employer failing to pay an assessment when due.
6 Such fine shall not exceed 5 percent of the unpaid assessment
7 per month, except that no fine shall be less than \$100 per
8 month.

9 ~~3. Revoke the designation of any servicing facility if~~
10 ~~the department finds that claims are being handled~~
11 ~~unsatisfactorily.~~

12 (7) EFFECT OF PAID CLAIMS.--

13 (a) Any person who recovers from the association under
14 this section shall be deemed to have assigned his or her
15 rights to the association to the extent of such recovery.
16 Every claimant seeking the protection of this section shall
17 cooperate with the association to the same extent as such
18 person would have been required to cooperate with the
19 insolvent member. The association shall have no cause of
20 action against the employee of the insolvent member for any
21 sums the association has paid out, except such causes of
22 action as the insolvent member would have had if such sums had
23 been paid by the insolvent member. In the case of an
24 insolvent member operating on a plan with assessment
25 liability, payments of claims by the association shall not
26 operate to reduce the liability of the insolvent member to the
27 receiver, liquidator, or statutory successor for unpaid
28 assessments.

29 (b) The receiver, liquidator, or statutory successor
30 of an insolvent member shall be bound by settlements of
31 covered claims by the association or a similar organization in

1 another state. The court having jurisdiction shall grant such
 2 claims priority against the assets of the insolvent member
 3 equal to that to which the claimant would have been entitled
 4 in the absence of this section. The expense of the association
 5 or similar organization in handling claims shall be accorded
 6 the same priority as the expenses of the liquidator.

7 (c) The association shall file periodically with the
 8 receiver or liquidator of the insolvent member statements of
 9 the covered claims paid by the association and estimates of
 10 anticipated claims on the association, which shall preserve
 11 the rights of the association against the assets of the
 12 insolvent member.

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

15 ~~(a)~~ upon determination by majority vote that any
 16 member employer may be insolvent or in a financial condition
 17 hazardous to the employees thereof or to the public, it shall
 18 be the duty of the board of directors to notify the Department
 19 of Insurance Labor and Employment Security of any information
 20 indicating such condition.

21 ~~(b) The board of directors may, upon majority vote,~~
 22 ~~request that the department determine the condition of any~~
 23 ~~member employer which the board in good faith believes may no~~
 24 ~~longer be qualified to be a member of the association. Within~~
 25 ~~30 days of the receipt of such request or, for good cause~~
 26 ~~shown, within a reasonable time thereafter, the department~~
 27 ~~shall make such determination and shall forthwith advise the~~
 28 ~~board of its findings. Each request for a determination shall~~
 29 ~~be kept on file by the department, but the request shall not~~
 30 ~~be open to public inspection prior to the release of the~~
 31 ~~determination to the public.~~

1 ~~(c) It shall also be the duty of the department to~~
2 ~~report to the board of directors when it has reasonable cause~~
3 ~~to believe that a member employer may be in such a financial~~
4 ~~condition as to be no longer qualified to be a member of the~~
5 ~~association.~~

6 ~~(d) The board of directors may, upon majority vote,~~
7 ~~make reports and recommendations to the department upon any~~
8 ~~matter which is germane to the solvency, liquidation,~~
9 ~~rehabilitation, or conservation of any member employer. Such~~
10 ~~reports and recommendations shall not be considered public~~
11 ~~documents.~~

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

15 ~~(f) The board of directors shall, at the conclusion of~~
16 ~~any member's insolvency in which the association was obligated~~
17 ~~to pay covered claims, prepare a report on the history and~~
18 ~~cause of such insolvency, based on the information available~~
19 ~~to the association, and shall submit such report to the~~
20 ~~department.~~

21 (9) EXAMINATION OF THE ASSOCIATION.--The association
22 shall be subject to examination and regulation by the
23 Department of Insurance Labor and Employment Security. No
24 later than March 30 of each year, the board of directors shall
25 submit an audited a financial statement report for the
26 preceding calendar year in a form approved by the department.

27 (10) IMMUNITY.--There shall be no liability on the
28 part of, and no cause of action of any nature shall arise
29 against, any member employer, the association or its agents or
30 employees, the board of directors, or the Department of
31 Insurance Labor and Employment Security or its representatives

1 for any action taken by them in the performance of their
2 powers and duties under this section.

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

21 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
22 any other provision of this chapter, a covered claim, as
23 defined herein, with respect to which settlement is not
24 effected and pursuant to which suit is not instituted against
25 the insured of an insolvent member or the association within 1
26 year after the deadline for filing claims with the receiver of
27 the insolvent member, or any extension of the deadline, shall
28 thenceforth be barred as a claim against the association.

29 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
30 by a member by refund, dividend, or otherwise from the
31 association shall be payable within 30 days of receipt to the

1 Department of Insurance for deposit with the Treasurer to the
2 credit of the General Revenue Fund. All provisions of chapter
3 220 relating to penalties and interest on delinquent corporate
4 income tax payments apply to payments due under this
5 subsection.

6 Section 39. Subsections (2), (3), and (4) of section
7 440.386, Florida Statutes, are amended to read:

8 440.386 Individual self-insurers' insolvency;
9 conservation; liquidation.--

10 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
11 Department of Insurance or the Florida Self-Insurers Guaranty
12 Association, Incorporated, may commence a delinquency ~~any such~~
13 proceeding by application to the court for an order directing
14 the individual self-insurer to show cause why the department
15 or association should not have the relief prayed for. ~~The~~
16 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may
17 ~~petition the department to commence such proceedings, and upon~~
18 ~~receipt of such petition, the department shall commence such~~
19 ~~proceeding.~~ On the return of such order to show cause, and
20 after a full hearing, the court shall either deny the
21 application or grant the application, together with such other
22 relief as the nature of the case and the interests of the
23 claimants, creditors, stockholders, members, subscribers, or
24 public may require. The Department of Insurance and the
25 association shall give ~~Florida Self-Insurers Guaranty~~
26 ~~Association, Incorporated,~~ shall be given reasonable written
27 notice to each other ~~by the department~~ of all hearings which
28 pertain to an adjudication of insolvency of a member
29 individual self-insurer.

30 (3) GROUNDS FOR LIQUIDATION.--The Department of
31 Insurance or the association may apply to the court for an

1 order appointing a receiver and directing the receiver to
2 liquidate the business of a domestic individual self-insurer
3 if such individual self-insurer is insolvent. ~~Florida~~
4 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
5 ~~the department to apply to the court for such order. Upon~~
6 ~~receipt of such petition, the department shall apply to the~~
7 ~~court for such order.~~

8 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
9 SELF-INSURERS.--

10 (a) The Department of Insurance or the association may
11 apply to the court for an order appointing a receiver or
12 ancillary receiver, and directing the receiver to conserve the
13 assets within this state, of a foreign 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 for such order, and, upon receipt of~~
17 ~~such petition, the department shall apply to the court for~~
18 ~~such order.~~

19 (b) An order to conserve the assets of an individual
20 self-insurer shall require the receiver forthwith to take
21 possession of the property of the receiver within the state
22 and to conserve it, subject to the further direction of the
23 court.

24 Section 40. Section 440.40, Florida Statutes, is
25 amended to read:

26 440.40 Compensation notice.--Every employer who has
27 secured compensation under the provisions of this chapter
28 shall keep posted in a conspicuous place or places in and
29 about her or his place or places of business typewritten or
30 printed notices, in accordance with a form prescribed by the
31 department ~~division~~, stating that such employer has secured

1 the payment of compensation in accordance with the provisions
2 of this chapter. Such notices shall contain the name and
3 address of the carrier, if any, with whom the employer has
4 secured payment of compensation and the date of the expiration
5 of the policy. The department ~~division~~ may by rule prescribe
6 the form of the notices and require carriers to provide the
7 notices to policyholders.

8 Section 41. Section 440.41, Florida Statutes, is
9 amended to read:

10 440.41 Substitution of carrier for employer.--In any
11 case where the employer is not a self-insurer, in order that
12 the liability for compensation imposed by this chapter may be
13 most effectively discharged by the employer, and in order that
14 the administration of this chapter in respect of such
15 liability may be facilitated, the department ~~division~~ shall by
16 regulation provide for the discharge, by the carrier for such
17 employer, of such obligations and duties of the employer in
18 respect of such liability, imposed by this chapter upon the
19 employer, as it considers proper in order to effectuate the
20 provisions of this chapter. For such purposes:

21 (1) Notice to or knowledge of an employer of the
22 occurrence of the injury shall be notice to or knowledge of
23 the carrier.

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

27 (3) Any requirement by the judges of compensation
28 claims, the department ~~division~~, or any court under any
29 compensation order, finding, or decision shall be binding upon
30 the carrier in the same manner and to the same extent as upon
31 the employer.

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

3 440.42 Insurance policies; liability.--

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

23 Section 43. Section 440.44, Florida Statutes, is
24 amended to read:

25 440.44 Workers' compensation; staff organization.--

26 (1) INTERPRETATION OF LAW.--As a guide to the
27 interpretation of this chapter, the Legislature takes due
28 notice of federal social and labor acts and hereby creates an
29 agency to administer such acts passed for the benefit of
30 employees and employers in Florida industry, and desires to
31

1 meet the requirements of such federal acts wherever not
2 inconsistent with the Constitution and laws of Florida.

3 (2) INTENT.--It is the intent of the Legislature that
4 the department, the agency, and the Department of Education
5 ~~division~~ assume an active and forceful role in their ~~its~~
6 administration of this act, so as to ensure that the system
7 operates efficiently and with maximum benefit to both
8 employers and employees.

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

21 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL
22 ADMINISTRATION.--Subject to the other provisions of this
23 chapter, the department, the agency, and the Department of
24 Education ~~are~~ ~~division~~ ~~is~~ authorized to appoint, and prescribe
25 the duties and powers of, bureau chiefs, attorneys,
26 accountants, medical advisers, technical assistants,
27 inspectors, claims examiners, and such other employees as may
28 be necessary in the performance of its duties under this
29 chapter.

30 (5) OFFICE.--The department, the agency, the
31 Department of Education,~~division~~ and the Chief Judge shall

1 maintain and keep open during reasonable business hours an
 2 office, which shall be provided in the Capitol or some other
 3 suitable building in the City of Tallahassee, for the
 4 transaction of business under this chapter, at which office
 5 the official records and papers shall be kept. The office
 6 shall be furnished and equipped. The department, the agency
 7 division, any judge of compensation claims, or the Chief Judge
 8 may hold sessions and conduct hearings at any place within the
 9 state.

10 (6) SEAL.--The division and~~the~~ Office of the Judges
 11 of Compensation Claims ~~judges of compensation claims, and the~~
 12 ~~Chief Judge~~ shall have seals ~~a seal~~ upon which shall be
 13 inscribed the words "State of Florida Department of Insurance
 14 ...Seal" and the "Division of Administrative Hearings...
 15 Seal." ~~respectively. of Labor and Employment Security--Seal."~~

16 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
 17 ~~division~~ is expressly authorized to provide by regulation for
 18 and to destroy obsolete records of the department ~~division and~~
 19 ~~commission~~.

20 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
 21 and functions requiring administrative hearings, the
 22 department and the agency ~~division~~ shall proceed in accordance
 23 with the Administrative Procedure Act. The authority of the
 24 department and the agency ~~division~~ to issue orders resulting
 25 from administrative hearings as provided for in this chapter
 26 shall not infringe upon the jurisdiction of the judges of
 27 compensation claims.

28 Section 44. Section 440.4416, Florida Statutes, is
 29 hereby repealed.

30 Section 45. Subsection (1) of section 440.45, Florida
 31 Statutes, is amended to read:

1 440.45 Office of the Judges of Compensation Claims.--
2 (1) There is hereby created the Office of the Judges
3 of Compensation Claims within the Division of Administrative
4 Hearing of the Department of Management Services ~~Department of~~
5 ~~Labor and Employment Security~~. The Office of the Judges of
6 Compensation Claims shall be headed by a Chief Judge. The
7 Chief Judge shall be appointed by the Governor for a term of 4
8 years from a list of three names submitted by the statewide
9 nominating commission created under subsection (2). The Chief
10 Judge must possess the same qualifications for appointment as
11 a judge of compensation claims, and the procedure for
12 reappointment of the Chief Judge will be the same as for
13 reappointment of a judge of compensation claims. The office
14 shall be a separate budget entity and the Chief Judge shall be
15 its agency head for all purposes. The Division of
16 Administrative Hearings ~~Department of Labor and Employment~~
17 ~~Security~~ shall provide administrative support and service to
18 the office to the extent requested by the Chief Judge but
19 shall not direct, supervise, or control the Office of the
20 Judges of Compensation Claims in any manner, including, but
21 not limited to, personnel, purchasing, budgetary matters, or
22 property transactions. The operating budget of the Office of
23 the Judges of Compensation Claims shall be paid out of the
24 Workers' Compensation Administration Trust Fund established in
25 s. 440.50.

26 Section 46. Subsections (1), (2), (7), (8), (9), (10),
27 and (11) of section 440.49, Florida Statutes, are amended to
28 read:

29 440.49 Limitation of liability for subsequent injury
30 through Special Disability Trust Fund.--

31

1 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
 2 for workers with disabilities to achieve employment or to
 3 become reemployed following an injury, and it is the desire of
 4 the Legislature to facilitate the return of these workers to
 5 the workplace, it is the purpose of this section to encourage
 6 the employment, reemployment, and accommodation of the
 7 physically disabled by reducing an employer's insurance
 8 premium for reemploying an injured worker, to decrease
 9 litigation between carriers on apportionment issues, and to
 10 protect employers from excess liability for compensation and
 11 medical expense when an injury to a physically disabled worker
 12 merges with, aggravates, or accelerates her or his preexisting
 13 permanent physical impairment to cause either a greater
 14 disability or permanent impairment, or an increase in
 15 expenditures for temporary compensation or medical benefits
 16 than would have resulted from the injury alone. The department
 17 ~~division~~ or the administrator shall inform all employers of
 18 the existence and function of the fund and shall interpret
 19 eligibility requirements liberally. However, this subsection
 20 shall not be construed to create or provide any benefits for
 21 injured employees or their dependents not otherwise provided
 22 by this chapter. The entitlement of an injured employee or her
 23 or his dependents to compensation under this chapter shall be
 24 determined without regard to this subsection, the provisions
 25 of which shall be considered only in determining whether an
 26 employer or carrier who has paid compensation under this
 27 chapter is entitled to reimbursement from the Special
 28 Disability Trust Fund.

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

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

1 (b) "Preferred worker" means a worker who, because of
2 a permanent impairment resulting from a compensable injury or
3 occupational disease, is unable to return to the worker's
4 regular employment.

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

6 1. If the permanent physical impairment had not
7 existed, the subsequent accident or occupational disease would
8 not have occurred;

9 2. The permanent disability or permanent impairment
10 resulting from the subsequent accident or occupational disease
11 is materially and substantially greater than that which would
12 have resulted had the permanent physical impairment not
13 existed, and the employer has been required to pay, and has
14 paid, permanent total disability or permanent impairment
15 benefits for that materially and substantially greater
16 disability;

17 3. The preexisting permanent physical impairment is
18 aggravated or accelerated as a result of the subsequent injury
19 or occupational disease, or the preexisting impairment has
20 contributed, medically and circumstantially, to the need for
21 temporary compensation, medical, or attendant care and the
22 employer has been required to pay, and has paid, temporary
23 compensation, medical, or attendant care benefits for the
24 aggravated preexisting permanent impairment; or

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

27 (d) "Excess permanent compensation" means that
28 compensation for permanent impairment, or permanent total
29 disability or death benefits, for which the employer or
30 carrier is otherwise entitled to reimbursement from the
31 Special Disability Trust Fund.

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

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

6 (g) "Commission" means the Special Disability Trust
7 Fund Privatization Commission, as created under subsection
8 (13).

9
10 In addition to the definitions contained in this subsection,
11 the department ~~division~~ may by rule prescribe definitions that
12 are necessary for the effective administration of this
13 section.

14 (7) REIMBURSEMENT OF EMPLOYER.--

15 (a) The right to reimbursement as provided in this
16 section is barred unless written notice of claim of the right
17 to such reimbursement is filed by the employer or carrier
18 entitled to such reimbursement with the department ~~division~~ or
19 administrator at Tallahassee within 2 years after the date the
20 employee last reached maximum medical improvement, or within 2
21 years after the date of the first payment of compensation for
22 permanent total disability, wage loss, or death, whichever is
23 later. The notice of claim must contain such information as
24 the department ~~division~~ by rule requires or as established by
25 the administrator; and the employer or carrier claiming
26 reimbursement shall furnish such evidence in support of the
27 claim as the department ~~division~~ or administrator reasonably
28 may require.

29 (b) For notice of claims on the Special Disability
30 Trust Fund filed on or after July 1, 1978, the Special
31 Disability Trust Fund shall, within 120 days after receipt of

1 notice that a carrier has paid, been required to pay, or
 2 accepted liability for excess compensation, serve notice of
 3 the acceptance of the claim for reimbursement.

4 (c) A proof of claim must be filed on each notice of
 5 claim on file as of June 30, 1997, within 1 year after July 1,
 6 1997, or the right to reimbursement of the claim shall be
 7 barred. A notice of claim on file on or before June 30, 1997,
 8 may be withdrawn and refiled if, at the time refiled, the
 9 notice of claim remains within the limitation period specified
 10 in paragraph (a). Such refileing shall not toll, extend, or
 11 otherwise alter in any way the limitation period applicable to
 12 the withdrawn and subsequently refiled notice of claim. Each
 13 proof of claim filed shall be accompanied by a proof-of-claim
 14 fee as provided in paragraph (9)(d). The Special Disability
 15 Trust Fund shall, within 120 days after receipt of the proof
 16 of claim, serve notice of the acceptance of the claim for
 17 reimbursement. This paragraph shall apply to all claims
 18 notwithstanding the provisions of subsection (12).

19 (d) Each notice of claim filed or refiled on or after
 20 July 1, 1997, must be accompanied by a notification fee as
 21 provided in paragraph (9)(d). A proof of claim must be filed
 22 within 1 year after the date the notice of claim is filed or
 23 refiled, accompanied by a proof-of-claim fee as provided in
 24 paragraph (9)(d), or the claim shall be barred. The
 25 notification fee shall be waived if both the notice of claim
 26 and proof of claim are submitted together as a single filing.
 27 The Special Disability Trust Fund shall, within 180 days after
 28 receipt of the proof of claim, serve notice of the acceptance
 29 of the claim for reimbursement. This paragraph shall apply to
 30 all claims notwithstanding the provisions of subsection (12).

31

1 (e) For dates of accident on or after January 1, 1994,
2 the Special Disability Trust Fund shall, within 120 days of
3 receipt of notice that a carrier has been required to pay, and
4 has paid over \$10,000 in benefits, serve notice of the
5 acceptance of the claim for reimbursement. Failure of the
6 Special Disability Trust Fund to serve notice of acceptance
7 shall give rise to the right to request a hearing on the claim
8 for reimbursement. If the Special Disability Trust Fund
9 through its representative denies or controverts the claim,
10 the right to such reimbursement shall be barred unless an
11 application for a hearing thereon is filed with the department
12 ~~division~~ or administrator at Tallahassee within 60 days after
13 notice to the employer or carrier of such denial or
14 controversion. When such application for a hearing is timely
15 filed, the claim shall be heard and determined in accordance
16 with the procedure prescribed in s. 440.25, to the extent that
17 such procedure is applicable, and in accordance with the
18 workers' compensation rules of procedure. In such proceeding
19 on a claim for reimbursement, the Special Disability Trust
20 Fund shall be made the party respondent, and no findings of
21 fact made with respect to the claim of the injured employee or
22 the dependents for compensation, including any finding made or
23 order entered pursuant to s. 440.20(11), shall be res
24 judicata. The Special Disability Trust Fund may not be joined
25 or made a party to any controversy or dispute between an
26 employee and the dependents and the employer or between two or
27 more employers or carriers without the written consent of the
28 fund.

29 (f) When it has been determined that an employer or
30 carrier is entitled to reimbursement in any amount, the
31 employer or carrier shall be reimbursed annually from the

1 Special Disability Trust Fund for the compensation and medical
2 benefits paid by the employer or carrier for which the
3 employer or carrier is entitled to reimbursement, upon filing
4 request therefor and submitting evidence of such payment in
5 accordance with rules prescribed by the department ~~division~~,
6 which rules may include parameters for annual audits. The
7 Special Disability Trust Fund shall pay the approved
8 reimbursement requests on a first-in, first-out basis
9 reflecting the order in which the reimbursement requests were
10 received.

11 (g) The department ~~division~~ may by rule require
12 specific forms and procedures for the administration and
13 processing of claims made through the Special Disability Trust
14 Fund.

15 (8) PREFERRED WORKER PROGRAM.--The The Department of
16 Education ~~division~~ or administrator shall issue identity cards
17 to preferred workers upon request by qualified employees and
18 the department shall reimburse an employer, from the Special
19 Disability Trust Fund, for the cost of workers' compensation
20 premium related to the preferred workers payroll for up to 3
21 years of continuous employment upon satisfactory evidence of
22 placement and issuance of payroll and classification records
23 and upon the employee's certification of employment. The
24 department and the Department of Education ~~division~~ may by
25 rule prescribe definitions, forms, and procedures for the
26 administration of the preferred worker program. The Department
27 of Education ~~division~~ may by rule prescribe the schedule for
28 submission of forms for participation in the program.

29 (9) SPECIAL DISABILITY TRUST FUND.--

30 (a) There is established in the State Treasury a
31 special fund to be known as the "Special Disability Trust

1 Fund," which shall be available only for the purposes stated
2 in this section; and the assets thereof may not at any time be
3 appropriated or diverted to any other use or purpose. The
4 Treasurer shall be the custodian of such fund, and all moneys
5 and securities in such fund shall be held in trust by such
6 Treasurer and shall not be the money or property of the state.
7 The Treasurer is authorized to disburse moneys from such fund
8 only when approved by the department ~~division~~ or corporation
9 and upon the order of the Comptroller. The Treasurer shall
10 deposit any moneys paid into such fund into such depository
11 banks as the department ~~division~~ or corporation may designate
12 and is authorized to invest any portion of the fund which, in
13 the opinion of the division, is not needed for current
14 requirements, in the same manner and subject to all the
15 provisions of the law with respect to the deposits of state
16 funds by such Treasurer. All interest earned by such portion
17 of the fund as may be invested by the Treasurer shall be
18 collected by her or him and placed to the credit of such fund.

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

31

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

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

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

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

28 3. The net premiums written by the companies for
29 workers' compensation in this state and the net premium
30 written applicable to the self-insurers in this state are the
31 basis for computing the amount to be assessed as a percentage

1 of net premiums. Such payments shall be made by each carrier
 2 and self-insurer to the department ~~division~~ for the Special
 3 Disability Trust Fund in accordance with such regulations as
 4 the department ~~division~~ prescribes.

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

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

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

23 (e) The Department of Insurance ~~Labor and Employment~~
 24 ~~Security~~ or administrator shall report annually on the status
 25 of the Special Disability Trust Fund. The report shall update
 26 the estimated undiscounted and discounted fund liability, as
 27 determined by an independent actuary, change in the total
 28 number of notices of claim on file with the fund in addition
 29 to the number of newly filed notices of claim, change in the
 30 number of proofs of claim processed by the fund, the fee
 31 revenues refunded and revenues applied to pay down the

1 liability of the fund, the average time required to reimburse
2 accepted claims, and the average administrative costs per
3 claim. The department or administrator shall submit its
4 report to the Governor, the President of the Senate, and the
5 Speaker of the House of Representatives by December 1 of each
6 year.

7 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
8 CLAIMS; ADVISORY COMMITTEE; EXPENSES.--The department ~~division~~
9 or administrator shall administer the Special Disability Trust
10 Fund with authority to allow, deny, compromise, controvert,
11 and litigate claims made against it and to designate an
12 attorney to represent it in proceedings involving claims
13 against the fund, including negotiation and consummation of
14 settlements, hearings before judges of compensation claims,
15 and judicial review. The department ~~division~~ or administrator
16 or the attorney designated by it shall be given notice of all
17 hearings and proceedings involving the rights or obligations
18 of such fund and shall have authority to make expenditures for
19 such medical examinations, expert witness fees, depositions,
20 transcripts of testimony, and the like as may be necessary to
21 the proper defense of any claim. The department ~~division~~ shall
22 appoint an advisory committee composed of representatives of
23 management, compensation insurance carriers, and self-insurers
24 to aid it in formulating policies with respect to conservation
25 of the fund, who shall serve without compensation for such
26 terms as specified by it, but be reimbursed for travel
27 expenses as provided in s. 112.061. All expenditures made in
28 connection with conservation of the fund, including the salary
29 of the attorney designated to represent it and necessary
30 travel expenses, shall be allowed and paid from the Special
31 Disability Trust Fund as provided in this section upon the

1 presentation of itemized vouchers therefor approved by the
2 department division.

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

18 Section 47. Section 440.491, Florida Statutes, is
19 amended to read:

20 440.491 Reemployment of injured workers;
21 rehabilitation.--

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

23 (a) "Carrier" means group self-insurance funds or
24 individual self-insureds authorized under this chapter and
25 commercial funds or insurance entities authorized to write
26 workers' compensation insurance under chapter 624.

27 (b) "Medical care coordination" includes, but is not
28 limited to, coordinating physical rehabilitation services such
29 as medical, psychiatric, or therapeutic treatment for the
30 injured employee, providing health training to the employee
31 and family, and monitoring the employee's recovery. The

1 purposes of medical care coordination are to minimize the
2 disability and recovery period without jeopardizing medical
3 stability, to assure that proper medical treatment and other
4 restorative services are timely provided in a logical
5 sequence, and to contain medical costs.

6 (c) "Qualified rehabilitation provider" means a
7 rehabilitation nurse, rehabilitation counselor, vocational
8 evaluator, rehabilitation facility, or agency approved by the
9 Department of Education ~~division~~ as qualified to provide
10 reemployment assessments, medical care coordination,
11 reemployment services, or vocational evaluations under this
12 chapter.

13 (d) "Reemployment assessment" means a written
14 assessment performed by a qualified rehabilitation provider
15 which provides a comprehensive review of the medical
16 diagnosis, treatment, and prognosis; includes conferences with
17 the employer, physician, and claimant; and recommends a
18 cost-effective physical and vocational rehabilitation plan to
19 assist the employee in returning to suitable gainful
20 employment.

21 (e) "Reemployment services" means services that
22 include, but are not limited to, vocational counseling,
23 job-seeking skills training, ergonomic job analysis,
24 transferable skills analysis, selective job placement, labor
25 market surveys, and arranging other services such as education
26 or training, vocational and on-the-job, which may be needed by
27 the employee to secure suitable gainful employment.

28 (f) "Reemployment status review" means a review to
29 determine whether an injured employee is at risk of not
30 returning to work.

31

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

8 (h) "Vocational evaluation" means a review of the
9 employee's physical and intellectual capabilities, his or her
10 aptitudes and achievements, and his or her work-related
11 behaviors to identify the most cost-effective means toward the
12 employee's return to suitable gainful employment.

13 (2) INTENT.--It is the intent of this section to
14 implement a systematic review by carriers of the factors that
15 are predictive of longer-term disability and to encourage the
16 provision of medical care coordination and reemployment
17 services that are necessary to assist the employee in
18 returning to work as soon as is medically feasible.

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

20 (a) When an employee who has suffered an injury
21 compensable under this chapter is unemployed 60 days after the
22 date of injury and is receiving benefits for temporary total
23 disability, temporary partial disability, or wage loss, and
24 has not yet been provided medical care coordination and
25 reemployment services voluntarily by the carrier, the carrier
26 must determine whether the employee is likely to return to
27 work and must report its determination to the Department of
28 Education ~~division~~. The carrier must thereafter determine the
29 reemployment status of the employee at 90-day intervals as
30 long as the employee remains unemployed, is not receiving
31

1 medical care coordination or reemployment services, and is
2 receiving the benefits specified in this subsection.

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

7 (4) REEMPLOYMENT ASSESSMENTS.--

8 (a) The carrier may require the employee to receive a
9 reemployment assessment as it considers appropriate. However,
10 the carrier is encouraged to obtain a reemployment assessment
11 if:

12 1. The carrier determines that the employee is at risk
13 of remaining unemployed.

14 2. The case involves catastrophic or serious injury.

15 (b) The carrier shall authorize only a qualified
16 rehabilitation provider to provide the reemployment
17 assessment. The rehabilitation provider shall conduct its
18 assessment and issue a report to the carrier, the employee,
19 and the Department of Education ~~division~~ within 30 days after
20 the time such assessment is complete.

21 (c) If the rehabilitation provider recommends that the
22 employee receive medical care coordination or reemployment
23 services, the carrier shall advise the employee of the
24 recommendation and determine whether the employee wishes to
25 receive such services. The employee shall have 15 days after
26 the date of receipt of the recommendation in which to agree to
27 accept such services. If the employee elects to receive
28 services, the carrier may refer the employee to a
29 rehabilitation provider for such coordination or services
30 within 15 days of receipt of the assessment report or notice
31 of the employee's election, whichever is later.

1 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
2 SERVICES.--

3 (a) Once the carrier has assigned a case to a
4 qualified rehabilitation provider for medical care
5 coordination or reemployment services, the provider shall
6 develop a reemployment plan and submit the plan to the carrier
7 and the employee for approval.

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

21 (c) A carrier may voluntarily provide medical care
22 coordination or reemployment services to the employee at
23 intervals more frequent than those required in this section.
24 For the purpose of monitoring reemployment, the carrier or the
25 rehabilitation provider shall report to the Department of
26 Education ~~division~~, in the manner prescribed by the Department
27 of Education ~~division~~, the date of reemployment and wages of
28 the employee. The carrier shall report its voluntary service
29 activity to the Department of Education ~~division~~ as required
30 by rule. Voluntary services offered by the carrier for any of
31 the following injuries must be considered benefits for

1 purposes of ratemaking: traumatic brain injury; spinal cord
2 injury; amputation, including loss of an eye or eyes; burns of
3 5 percent or greater of the total body surface.

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

10 (6) TRAINING AND EDUCATION.--

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

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

24 (7) PROVIDER QUALIFICATIONS.--

25 (a) The Department of Education ~~division~~ shall
 26 investigate and maintain a directory of each qualified public
 27 and private rehabilitation provider, facility, and agency, and
 28 shall establish by rule the minimum qualifications,
 29 credentials, and requirements that each rehabilitation service
 30 provider, facility, and agency must satisfy to be eligible for
 31 listing in the directory. These minimum qualifications and

1 credentials must be based on those generally accepted within
2 the service specialty for which the provider, facility, or
3 agency is approved.

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

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

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

28 (e) The Department of Education ~~division~~, after
29 consultation with representatives of employees, employers,
30 carriers, rehabilitation providers, and qualified training and
31

1 education providers, shall adopt rules governing professional
2 practices and standards.

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

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

11 Section 48. Section 440.50, Florida Statutes, is
12 amended to read:

13 440.50 Workers' Compensation Administration Trust
14 Fund.--

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

26 (b) The department ~~division~~ is authorized to transfer
27 as a loan an amount not in excess of \$250,000 from such
28 special fund to the Special Disability Trust Fund established
29 by s. 440.49(9), which amount shall be repaid to said special
30 fund in annual payments equal to not less than 10 percent of
31 moneys received for such Special Disability Trust Fund.

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

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

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

17 Section 49. Section 440.51, Florida Statutes, is
18 amended to read:

19 440.51 Expenses of administration.--

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

23 (a) The department ~~division~~ shall, by July 1 of each
24 year, notify carriers and self-insurers of the assessment
25 rate, which shall be based on the anticipated expenses of the
26 administration of this chapter for the next calendar year.
27 Such assessment rate shall take effect January 1 of the next
28 calendar year and shall be included in workers' compensation
29 rate filings approved by the Department of Insurance which
30 become effective on or after January 1 of the next calendar
31 year. Assessments shall become due and be paid quarterly.

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

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

1 1, 2000, the department ~~division~~ shall not recover any past
2 underpayments of assessments related to ceded reinsurance
3 premiums prior to January 1, 2001, against such carriers.

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

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

15 (5) Any amount so assessed against and paid by an
16 insurance carrier, self-insurer authorized pursuant to s.
17 624.4621, or commercial self-insurance fund authorized under
18 ss. 624.460-624.488 shall be allowed as a deduction against
19 the amount of any other tax levied by the state upon the
20 premiums, assessments, or deposits for workers' compensation
21 insurance on contracts or policies of said insurance carrier,
22 self-insurer, or commercial self-insurance fund. Any insurance
23 carrier claiming such a deduction against the amount of any
24 such tax shall not be required to pay any additional
25 retaliatory tax levied pursuant to s. 624.5091 as a result of
26 claiming such deduction. Because deductions under this
27 subsection are available to insurance carriers, s. 624.5091
28 does not limit such deductions in any manner.

29 (6)(a) The department ~~division~~ may require from each
30 carrier, at such time and in accordance with such regulations
31 as the department ~~division~~ may prescribe, reports in respect

1 to all gross earned premiums and of all payments of
 2 compensation made by such carrier during each prior period,
 3 and may determine the amounts paid by each carrier and the
 4 amounts paid by all carriers during such period.

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

23 (7) The department ~~division~~ shall keep accumulated
 24 cost records of all injuries occurring within the state coming
 25 within the purview of this chapter on a policy and
 26 calendar-year basis. For the purpose of this chapter, a
 27 "calendar year" is defined as the year in which the injury is
 28 reported to the department ~~division~~; "policy year" is defined
 29 as that calendar year in which the policy becomes effective,
 30 and the losses under such policy shall be chargeable against
 31 the policy year so defined.

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

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

- 12 (a) Cause of the injury;
- 13 (b) Nature of the injury; and
- 14 (c) Type of disability.

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

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

28 (12) In addition to any other penalties provided by
29 this law, the failure to submit any report or other
30 information required by this law shall be just cause to
31 suspend the right of a self-insurer to operate as such, or

1 ~~upon certification by the division to the Department of~~
2 ~~insurance that a carrier has failed or refused to furnish such~~
3 ~~reports,~~ shall be just cause for the Department of Insurance
4 to suspend or revoke the license of such carrier.

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

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

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

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

21 Section 50. Section 440.52, Florida Statutes, is
22 amended to read:

23 440.52 Registration of insurance carriers; notice of
24 cancellation or expiration of policy; suspension or revocation
25 of authority.--

26 ~~(1) Each insurance carrier who desires to write such~~
27 ~~compensation insurance in compliance with this chapter shall~~
28 ~~be required, before writing such insurance, to register with~~
29 ~~the division and pay a registration fee of \$100. This shall be~~
30 ~~deposited by the division in the fund created by s. 440.50.~~

31

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

4 (2)~~(3)~~ If the department ~~division~~ finds, after due
5 notice and a hearing at which the insurance carrier is
6 entitled to be heard in person or by counsel and present
7 evidence, that the insurance carrier has repeatedly failed to
8 comply with its obligations under this chapter, the department
9 ~~division~~ may ~~request the Department of Insurance to~~ suspend or
10 revoke the authorization of such insurance carrier to write
11 workers' compensation insurance ~~under this chapter~~. Such
12 suspension or revocation shall not affect the liability of any
13 such insurance carrier under policies in force prior to the
14 suspension or revocation.

15 (3)~~(4)~~ In addition to the penalties prescribed in
16 subsection (3), violation of s. 440.381 by an insurance
17 carrier shall result in the imposition of a fine not to exceed
18 \$1,000 per audit, if the insurance carrier fails to act on
19 said audits by correcting errors in employee classification or
20 accepted applications for coverage where it knew employee
21 classifications were incorrect. Such fines shall be levied by
22 the Department of Insurance and deposited into the Insurance
23 Commissioner's Regulatory Trust Fund.

24 Section 51. Section 440.525, Florida Statutes, is
25 amended to read:

26 440.525 Examination of carriers.--~~Beginning July 1,~~
27 ~~1994, The Division of Workers' Compensation of the department~~
28 ~~of Labor and Employment Security~~ may examine each carrier as
29 often as is warranted to ensure that carriers are fulfilling
30 their obligations under the law, ~~and shall examine each~~
31 ~~carrier not less frequently than once every 3 years. The~~

1 ~~examination must cover the preceding 3 fiscal years of the~~
2 ~~carrier's operations and must commence within 12 months after~~
3 ~~the end of the most recent fiscal year being covered by the~~
4 ~~examination.~~The examination may cover any period of the
5 carrier's operations since the last previous examination.

6 Section 52. Section 440.572, Florida Statutes, is
7 amended to read:

8 440.572 Authorization for individual self-insurer to
9 provide coverage.--An individual self-insurer having a net
10 worth of not less than \$250 million as authorized by s.
11 440.38(1)(f) may assume by contract the liabilities under this
12 chapter of contractors and subcontractors, or each of them,
13 employed by or on behalf of such individual self-insurer when
14 performing work on or adjacent to property owned or used by
15 the individual self-insurer by the department division. The
16 net worth of the individual self-insurer shall include the
17 assets of the self-insurer's parent company and its
18 subsidiaries, sister companies, affiliated companies, and
19 other related entities, located within the geographic
20 boundaries of the state.

21 Section 53. Section 440.59, Florida Statutes, is
22 amended to read:

23 440.59 Reporting requirements.--

24 (1) The department ~~of Labor and Employment Security~~
25 shall annually prepare a report of the administration of this
26 chapter for the preceding calendar year, including a detailed
27 statement of the receipts of and expenditures from the fund
28 established in s. 440.50 and a statement of the causes of the
29 accidents leading to the injuries for which the awards were
30 made, together with such recommendations as the department
31 considers advisable. On or before September 15 of each year,

1 the department shall submit a copy of the report to the
 2 Governor, the President of the Senate, the Speaker of the
 3 House of Representatives, the Democratic and Republican
 4 Leaders of the Senate and the House of Representatives, and
 5 the chairs of the legislative committees having jurisdiction
 6 over workers' compensation.

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

23 (3) The department ~~division~~ shall annually prepare a
 24 closed claim report for all claims for which the employee lost
 25 more than 7 days from work and shall submit a copy of the
 26 report to the Governor, the President of the Senate, the
 27 Speaker of the House of Representatives, the Democratic and
 28 Republican Leaders of the Senate and the House of
 29 Representatives, and the chairs of the legislative committees
 30 having jurisdiction over workers' compensation on or before
 31 September 15 of each year. The closed claim report shall

1 include information, data, and statistics deemed relevant by
2 the department, ~~but not be limited to, an analysis of all~~
3 ~~claims closed during the preceding year as to the date of~~
4 ~~accident, age of the injured employee, occupation of the~~
5 ~~injured employee, type of injury, body part affected, type and~~
6 ~~duration of indemnity benefits paid, permanent impairment~~
7 ~~rating, medical benefits identified by type of health care~~
8 ~~provider, and type and cost of any rehabilitation benefits~~
9 ~~provided.~~

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

27 (5) The Chief Judge must prepare an annual report
28 summarizing the disposition of mediation conferences and must
29 submit the report to the Governor, the President of the
30 Senate, the Speaker of the House of Representatives, the
31 Democratic and Republican Leaders of the Senate and the House

1 of Representatives, and the chairs of the legislative
2 committees having jurisdiction over workers' compensation, on
3 or before September 15 of each year.

4 Section 54. Section 440.591, Florida Statutes, is
5 amended to read:

6 440.591 Administrative procedure; rulemaking
7 authority.--The department, the agency, and the Department of
8 Education have ~~division has~~ authority to adopt rules pursuant
9 to ss. 120.536(1) and 120.54 to implement the provisions of
10 this chapter conferring duties upon it.

11 Section 55. Section 440.593, Florida Statutes, is
12 amended to read:

13 440.593 Electronic reporting.--The department ~~division~~
14 may establish by rule an electronic reporting system whereby
15 an employer or carrier is required to submit information
16 electronically rather than by filing otherwise required forms
17 or reports. The department ~~division~~ may by rule establish
18 different deadlines for reporting information to the
19 department ~~division~~ via the electronic reporting system than
20 are otherwise required.

21 Section 56. Effective July 1, 2001, section 633.801,
22 Florida Statutes, is created to read:

23 633.801 Short title.--Sections 633.801 through 633.825
24 may be cited as the "Florida Firefighter Occupational Safety
25 and Health Act."

26 Section 57. Effective July 1, 2001, section 633.802,
27 Florida Statutes, is created to read:

28 633.802 Definitions.--As used in ss. 633.801-633.825,
29 unless the context clearly indicates otherwise, the term:

30 (1) "Department" means the Department of Insurance.
31

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

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

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

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

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

22 Section 58. Effective July 1, 2001, section 633.803,
23 Florida Statutes, is created to read:

24 633.803 Legislative intent.--It is the intent of the
25 Legislature to enhance firefighter occupational safety and
26 health in this state through the implementation and
27 maintenance of policies, procedures, practices, rules, and
28 standards that reduce the incidence of firefighter employee
29 accidents, firefighter occupational diseases, and firefighter
30 fatalities compensable under chapter 440 or otherwise. The
31 Legislature further intends that the division develop a means

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

11 Section 59. Effective July 1, 2001, section 633.804,
12 Florida Statutes, is created to read:

13 633.804 Safety inspections, consultations; rules.--The
14 division shall adopt rules governing the manner, means, and
15 frequency of firefighter employer and firefighter employee
16 safety inspections and consultations by all insurers and
17 self-insurers.

18 Section 60. Effective July 1, 2001, section 633.805,
19 Florida Statutes, is created to read:

20 633.805 Division to make study of firefighter
21 occupational diseases, etc.--The division shall make a
22 continuous study of firefighter occupational diseases and the
23 ways and means for their control and prevention and shall make
24 and enforce necessary regulations for such control. For this
25 purpose, the division is authorized to cooperate with
26 firefighter employers, firefighter employees, and insurers and
27 with the Department of Health.

28 Section 61. Effective July 1, 2001, section 633.806,
29 Florida Statutes, is created to read:

30 633.806 Investigations by the division; refusal to
31 admit; penalty.--

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

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

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

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

19 Section 62. Effective July 1, 2001, section 633.807,
20 Florida Statutes, is created to read:

21 633.807 Safety; firefighter employer
22 responsibilities.--Every firefighter employer shall furnish to
23 firefighters employment that is safe for the firefighter
24 employees, furnish and use safety devices and safeguards,
25 adopt and use methods and processes reasonably adequate to
26 render such an employment and place of employment safe, and do
27 every other thing reasonably necessary to protect the lives,
28 health, and safety of such firefighter employees. As used in
29 this section, the terms "safe" and "safety" as applied to any
30 employment or place of firefighter employment mean such
31 freedom from danger as is reasonably necessary for the

1 protection of the lives, health, and safety of firefighter
2 employees, including conditions and methods of sanitation and
3 hygiene. Safety devices and safeguards required to be
4 furnished by the firefighter employer by this section or by
5 the division under authority of this section shall not include
6 personal apparel and protective devices that replace personal
7 apparel normally worn by firefighter employees during regular
8 working hours.

9 Section 63. Effective July 1, 2001, section 633.808,
10 Florida Statutes, is created to read:

11 633.808 Division authority.--The division shall:

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

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

28 (3) Assist firefighter employers in the development
29 and implementation of firefighter employee safety training
30 programs by contracting with professional safety
31 organizations.

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

8 Section 64. Effective July 1, 2001, section 633.810,
9 Florida Statutes, is created to read:

10 633.810 Firefighter employers whose firefighter
11 employees have a high frequency or severity of work-related
12 injuries.--The division shall develop a means by which it can
13 identify individual firefighter employers whose firefighter
14 employees have a high frequency or severity of work-related
15 injuries. The division shall carry out safety inspections of
16 the facilities and operations of these firefighter employers
17 in order to assist them in reducing the frequency and severity
18 of work-related injuries. The division shall develop safety
19 and health programs for those firefighter employers. Insurers
20 shall distribute these safety and health programs to the
21 firefighter employers so identified by the division. Those
22 firefighter employers identified by the division as having a
23 high frequency or severity of work-related injuries shall
24 implement a division-developed safety and health program. The
25 division shall carry out safety inspections of those
26 firefighter employers so identified to ensure compliance with
27 the safety and health program and to assist such firefighter
28 employers in reducing the number of work-related injuries. The
29 division may not assess penalties as the result of such
30 inspections, except as provided by s. 633.813. Copies of any
31 report made as the result of such an inspection must be

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

13 Section 65. Effective July 1, 2001, section 633.812,
14 Florida Statutes, is created to read:

15 633.812 Workplace safety committees and safety
16 coordinators.--

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

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

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

30 (2) The division shall adopt rules:
31

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

6 (b) Requiring firefighter employers to make adequate
7 records of each meeting and to file and maintain the records
8 subject to inspection by the division.

9 (c) Prescribing the duties and functions of the
10 workplace safety committee and workplace safety coordinator,
11 which include, but are not limited to:

12 1. Establishing procedures for workplace safety
13 inspections by the committee.

14 2. Establishing procedures investigating all workplace
15 accidents, safety-related incidents, illnesses, and deaths.

16 3. Evaluating accident prevention and illness
17 prevention programs.

18 4. Prescribing guidelines for the training of
19 workplace safety committee members.

20 (3) The composition, selection, and function of
21 workplace safety committees shall be a mandatory topic of
22 negotiations with any certified collective bargaining agent
23 for firefighter employers that operate under a collective
24 bargaining agreement. Firefighter employers that operate under
25 a collective bargaining agreement that contains provisions
26 regulating the formation and operation of workplace safety
27 committees that meet or exceed the minimum requirements
28 contained in this section, or that otherwise have existing
29 workplace safety committees that meet or exceed the minimum
30 requirements established by this section, are in compliance
31 with this section.

1 (4) Firefighter employees must be compensated at their
2 regular hourly wages while engaged in workplace safety
3 committee or workplace safety coordinator training, meetings,
4 or other duties prescribed under this section.

5 Section 66. Effective July 1, 2001, section 633.813,
6 Florida Statutes, is created to read:

7 633.813 Firefighter employer penalties.--If any
8 firefighter employer violates or fails or refuses to comply
9 with ss. 633.801-633.825, any rule adopted by the division in
10 accordance with chapter 120 for the prevention of injuries,
11 accidents, or occupational diseases, or any lawful order of
12 the division in connection with ss. 633.801-633.825, or fails
13 or refuses to furnish or adopt any safety device, safeguard,
14 or other means of protection prescribed by the division under
15 ss. 633.801-633.825 for the prevention of accidents or
16 occupational diseases, the division may assess against the
17 firefighter employer a civil penalty of not less than \$100 nor
18 more than \$5,000 for each day the violation, failure, or
19 refusal continues after the firefighter employer has been
20 given notice thereof in writing. The total penalty for each
21 violation may not exceed \$50,000. The division shall adopt
22 rules requiring penalties commensurate with the frequency or
23 severity, or both, of safety violations. A hearing must be
24 held in the county where the violation, failure, or refusal is
25 alleged to have occurred unless otherwise agreed to by the
26 firefighter employer and authorized by the division. All
27 penalties assessed and collected under this section shall be
28 deposited in the Insurance Commissioner's Regulatory Trust
29 Fund.

30 Section 67. Effective July 1, 2001, section 633.814,
31 Florida Statutes, is created to read:

1 633.814 Division cooperation with Federal Government;
2 exemption from division requirements.--

3 (1) The division shall cooperate with the Federal
4 Government so that duplicate inspections will be avoided yet
5 assure safe places of firefighter employment for the citizens
6 of this state.

7 (2) Except as provided in this section, a private
8 firefighter employer is not subject to the requirements of the
9 division if:

10 (a) The private firefighter employer is subject to the
11 federal regulations in 29 C.F.R. ss. 1910 and 1926;

12 (b) The private firefighter employer has adopted and
13 implemented a written safety program that conforms to the
14 requirements of 29 C.F.R. ss. 1910 and 1926;

15 (c) A private firefighter employer with 20 or more
16 full-time firefighter employees includes provisions for a
17 workplace safety committee in its safety program. The
18 workplace safety committee must include firefighter employee
19 representation and must meet at least once each calendar
20 quarter. The private firefighter employer must make adequate
21 records of each meeting and maintain the records subject to
22 inspections under subsection (3). The workplace safety
23 committee shall, if appropriate, make recommendations
24 regarding improvements to the safety program and corrections
25 of hazards affecting workplace safety; and

26 (d) The private firefighter employer provides the
27 division with a written statement that certifies compliance
28 with this subsection.

29 (3) The division may enter at any reasonable time any
30 place of firefighter employment for the purpose of verifying
31 the accuracy of the written certification required pursuant to

1 paragraph (2)(d). If the division determines that the
2 firefighter employer has not complied with the requirements of
3 subsection (2), the firefighter employer shall be subject to
4 the rules of the division until the firefighter employer
5 complies with subsection (2) and recertifies that fact to the
6 division.

7 (4) This section shall not restrict the division from
8 performing any duties pursuant to a written contract between
9 the division and the federal Occupational Safety and Health
10 Administration (OSHA).

11 Section 68. Effective July 1, 2001, section 633.815,
12 Florida Statutes, is created to read:

13 633.815 Failure to implement a safety and health
14 program; cancellations.--If a firefighter employer that is
15 found by the division to have a high frequency or severity of
16 work-related injuries fails to implement a safety and health
17 program, the insurer or self-insurer's fund that is providing
18 coverage for the firefighter employer may cancel the contract
19 for insurance with the firefighter employer. In the
20 alternative, the insurer or fund may terminate any discount or
21 deviation granted to the firefighter employer for the
22 remainder of the term of the policy. If the contract is
23 canceled or the discount or deviation is terminated, the
24 insurer must make such reports as are required by law.

25 Section 69. Effective July 1, 2001, section 633.816,
26 Florida Statutes, is created to read:

27 633.816 Expenses of administration.--The amounts that
28 are needed to administer ss. 633.801-633.825 shall be
29 disbursed from the Insurance Commissioner's Regulatory Trust
30 Fund.

31

1 Section 70. 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 71. 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
31

1 (a) The firefighter employee has testified or is about
2 to testify, on her or his own behalf or on behalf of others,
3 in any proceeding instituted under ss. 633.801-633.825;

4 (b) The firefighter employee has exercised any other
5 right afforded under ss. 633.801-633.825; or

6 (c) The firefighter employee is engaged in activities
7 relating to the workplace safety committee.

8 (3) Neither pay, position, seniority, nor other
9 benefit may be lost for exercising any right under, or for
10 seeking compliance with any requirement of, ss.
11 633.801-633.825.

12 Section 72. Effective July 1, 2001, section 633.819,
13 Florida Statutes, is created to read:

14 633.819 Compliance.--Failure of a firefighter employer
15 or an insurer to comply with ss. 633.801-633.825 or with any
16 rules adopted thereunder constitutes grounds for the division
17 to seek remedies, including injunctive relief, for
18 noncompliance by making appropriate filings with the circuit
19 court.

20 Section 73. Effective July 1, 2001, section 633.820,
21 Florida Statutes, is created to read:

22 633.820 False statements to insurers.--A firefighter
23 employer who knowingly and willfully falsifies or conceals a
24 material fact, makes a false, fictitious, or fraudulent
25 statement or representation, or makes or uses any false
26 document knowing the document to contain any false,
27 fictitious, or fraudulent entry or statement to an insurer of
28 workers' compensation insurance under ss. 633.801-633.825
29 commits a misdemeanor of the second degree, punishable as
30 provided in s. 775.082 or s. 775.083.

31

1 Section 74. Effective July 1, 2001, section 633.823,
2 Florida Statutes, is created to read:

3 633.823 Matters within jurisdiction of the division;
4 false, fictitious, or fraudulent acts, statements, and
5 representations prohibited; penalty; statute of
6 limitations.--A person may not, in any matter within the
7 jurisdiction of the division, knowingly and willfully falsify
8 or conceal a material fact; make any false, fictitious, or
9 fraudulent statement or representation; or make or use any
10 false document, knowing the same to contain any false,
11 fictitious, or fraudulent statement or entry. A person who
12 violates this section commits a misdemeanor of the second
13 degree, punishable as provided in s. 775.082 or s. 775.083.
14 The statute of limitations for prosecution of an act committed
15 in violation of this section is 5 years after the date the act
16 was committed or, if not discovered within 30 days after the
17 act was committed, 5 years after the date the act was
18 discovered.

19 Section 75. Effective July 1, 2001, section 633.824,
20 Florida Statutes, is created to read:

21 633.824 Volunteer firefighters; volunteer fire
22 departments.--Sections 633.803-633.825 apply to volunteer
23 firefighters and volunteer fire departments.

24 Section 76. Effective July 1, 2001, section 633.825,
25 Florida Statutes, is created to read:

26 633.825 Workplace safety.--

27 (1) The division shall assist in making places of
28 firefighter employment safer places to work and decreasing the
29 frequency and severity of work-related injuries.

30 (2) The division shall have the authority to adopt
31 rules for the purpose of assuring safe working conditions for

1 all firefighter employees by authorizing the enforcement of
2 effective standards, assisting and encouraging firefighter
3 employers to maintain safe working conditions, and providing
4 for education and training in the field of safety.

5 Specifically, the division may by rule adopt all or any part
6 of subparts C through T and subpart Z of 29 C.F.R. part 1910
7 as revised April 8, 1998; the National Fire Protection
8 Association, Inc., Standard 1500, paragraph 5-7 (Personal
9 Alert Safety System) (1992 edition); and ANSI A 10.4-1990.

10 (3) With respect to 29 C.F.R. s. 1910.134(g)(4), the
11 two individuals located outside the immediately dangerous to
12 life and health atmosphere may be assigned to an additional
13 rule, such as incident commander, pumper operator, engineer,
14 or driver, so long as such individual is able to immediately
15 perform assistance or rescue activities without jeopardizing
16 the safety or health of any firefighter working at an
17 incident. Also with respect to 29 C.F.R. s. 1910.134(g)(4):

18 (a) Each county, municipality, or special district
19 shall implement such provision by April 1, 2002, except as
20 provided in paragraph (b).

21 (b) If any county, municipality, or special district
22 is unable to implement such provision by April 1, 2002,
23 without adding additional personnel to its firefighting staff
24 or expending significant additional funds, such county,
25 municipality, or special district shall have an additional 6
26 months within which to implement such provision. Such county,
27 municipality, or special district shall notify the division
28 that the 6-month extension to implement such provision is in
29 effect in such county, municipality, or special district
30 within 30 days after its decision to extend the time for an
31

1 additional 6 months. The decision to extend the time for
 2 implementation shall be made prior to April 1, 2002.

3 (c) If, after the extension granted in paragraph (b),
 4 the county, municipality, or special district, after having
 5 worked with and cooperated fully with the division and the
 6 Firefighters Employment, Standards, and Training Council, is
 7 still unable to implement such provision without adding
 8 additional personnel to its firefighting staff or expending
 9 significant additional funds, such county, municipality, or
 10 special district shall be exempt from the requirements of 29
 11 C.F.R. s. 1910.134(g)(4). Nevertheless, each year thereafter
 12 the division shall review each such county, municipality, or
 13 special district to determine if such county, municipality, or
 14 special district has the ability to implement such provision
 15 without adding additional personnel to its firefighting staff
 16 or expending significant additional funds. If the division
 17 determines that any county, municipality, or special district
 18 has the ability to implement such provision without adding
 19 additional personnel to its firefighting staff or expending
 20 significant additional funds, the division shall require such
 21 county, municipality, or special district to implement such
 22 provision. Such requirement by the division under this
 23 paragraph constitutes final agency action subject to chapter
 24 120.

25 (4) The provisions of chapter 440 which pertain to
 26 workplace safety shall be applicable to the division.

27 (5) The division shall have the authority to adopt any
 28 rule necessary to implement, interpret, and make specific the
 29 provisions of this section; however, the division may not
 30 adopt by rule any other standard or standards of the
 31 Occupational Safety and Health Administration or the National

1 Fire Protection Association without specific legislative
2 authority.

3 Section 77. Paragraph (c) of subsection (3) of section
4 383.3362, Florida Statutes, is amended to read:

5 383.3362 Sudden Infant Death Syndrome.--

6 (3) TRAINING.--

7 (c) The Department of Health, in consultation with the
8 Emergency Medical Services Advisory Council, the Firefighters
9 Employment, Standards, and Training Council, and the Criminal
10 Justice Standards and Training Commission, shall develop and
11 adopt, by rule, curriculum that, at a minimum, includes
12 training in the nature of SIDS, standard procedures to be
13 followed by law enforcement agencies in investigating cases
14 involving sudden deaths of infants, and training in responding
15 appropriately to the parents or caretakers who have requested
16 assistance.

17 Section 78. Subsection (4) of section 633.30, Florida
18 Statutes, is amended to read:

19 633.30 Standards for firefighting; definitions.--As
20 used in this chapter:

21 (4) "Council" means the Firefighters Employment,
22 Standards, and Training Council.

23 Section 79. Effective July 1, 2001, subsections (1)
24 and (2) of section 633.31, Florida Statutes, are amended to
25 read:

26 633.31 Firefighters Employment, Standards, and
27 Training Council.--

28 (1) There is created within the Department of
29 Insurance a Firefighters Employment, Standards, and Training
30 Council of ~~thirteen~~ ~~nine~~ members appointed by the State Fire
31 Marshal. Two members shall be fire chiefs who shall be

1 appointed by the Florida Fire Chiefs Association, two members
 2 shall be firefighters who are not officers who shall be
 3 appointed by the Florida Professional Firefighters'
 4 Association, two members shall be firefighter officers who are
 5 not fire chiefs who shall be appointed by the State Fire
 6 Marshal, one member shall be appointed by the Florida League
 7 of Cities, one member shall be appointed by the Florida
 8 Association of Counties, one member shall be appointed by the
 9 Florida Association of Special Districts, one member shall be
 10 appointed by the Florida Fire Marshal's Association, one
 11 member shall be appointed by the State Fire Marshal, and one
 12 member shall be a director or instructor of a state-certified
 13 firefighting training facility who shall be appointed by the
 14 State Fire Marshal. To be eligible for appointment as a fire
 15 chief member, firefighter officer member, firefighter member,
 16 or a director or instructor of a state-certified firefighting
 17 facility, a person shall have had at least 4 years' experience
 18 in the firefighting profession. The remaining member, who
 19 shall be appointed by the State Fire Marshal, two members
 20 shall not be a member or representative members of the
 21 firefighting profession or of any local government. Members
 22 shall serve only as long as they continue to meet the criteria
 23 under which they were appointed, or unless a member has failed
 24 to appear at three consecutive and properly noticed meetings
 25 unless excused by the chair.

26 (2) ~~Initially, the State Fire Marshal shall appoint~~
 27 ~~three members for terms of 4 years, two members for terms of 3~~
 28 ~~years, two members for terms of 2 years, and two members for~~
 29 ~~terms of 1 year. Thereafter, Members shall be appointed for~~
 30 ~~4-year terms and in no event shall a member serve more than~~
 31 ~~two consecutive terms. Any vacancy shall be filled in the~~

1 manner of the original appointment for the remaining time of
2 the term.

3 Section 80. Subsection (4) of section 633.32, Florida
4 Statutes, is amended to read:

5 633.32 Organization; meetings; quorum; compensation;
6 seal.--

7 (4) The council may adopt a seal for its use
8 containing the words "Firefighters Employment, Standards, and
9 Training Council."

10 Section 81. Subsections (4) and (5) of section 633.33,
11 Florida Statutes, are amended to read:

12 633.33 Special powers; firefighter training.--The
13 council shall have special powers in connection with the
14 employment and training of firefighters to:

15 (4) Consult and cooperate with any employing agency,
16 university, college, community college, the Florida State Fire
17 College, or other educational institution concerning the
18 employment and safety of firefighters, including, but not
19 limited to, the safety of firefighters while at the scene of a
20 fire and at the scene of any incident related to emergency
21 services to which a firefighter responds, development of
22 firefighter training schools and programs of courses of
23 instruction, including, but not limited to, education and
24 training in the areas of fire science, fire technology, fire
25 administration, and all allied and supporting fields.

26 (5) Make or support studies on any aspect of
27 firefighting employment, education, and training or
28 recruitment.

29 Section 82. Subsections (1), (4), and (5) of section
30 443.012, Florida Statutes, are amended to read:

31 443.012 Unemployment Appeals Commission.--

1 (1) There is created within the Agency for Workforce
2 Innovation ~~Department of Labor and Employment Security~~ an
3 Unemployment Appeals Commission, hereinafter referred to as
4 the "commission." The commission shall consist of a chair and
5 two other members to be appointed by the Governor, subject to
6 confirmation by the Senate. Not more than one appointee must
7 be a person who, on account of previous vocation, employment,
8 or affiliation, is classified as a representative of
9 employers; and not more than one such appointee must be a
10 person who, on account of previous vocation, employment, or
11 affiliation, is classified as a representative of employees.

12 (a) The chair shall devote his or her entire time to
13 commission duties and shall be responsible for the
14 administrative functions of the commission.

15 (b) The chair shall have the authority to appoint a
16 general counsel and such other personnel as may be necessary
17 to carry out the duties and responsibilities of the
18 commission.

19 (c) The chair shall have the qualifications required
20 by law for a judge of the circuit court and shall not engage
21 in any other business vocation or employment. Notwithstanding
22 any other provisions of existing law, the chair shall be paid
23 a salary equal to that paid under state law to a judge of the
24 circuit court.

25 (d) The remaining members shall be paid a stipend of
26 \$100 for each day they are engaged in the work of the
27 commission. The chair and other members shall also be
28 reimbursed for travel expenses, as provided in s. 112.061.

29 (e) The total salary and travel expenses of each
30 member of the commission shall be paid from the Employment
31 Security Administration Trust Fund.

1 (4) The property, personnel, and appropriations
2 relating to the specified authority, powers, duties, and
3 responsibilities of the commission shall be provided to the
4 commission by the Agency for Workforce Innovation ~~Department~~
5 ~~of Labor and Employment Security~~.

6 (5) The commission shall not be subject to control,
7 supervision, or direction by the Agency for Workforce
8 Innovation ~~Department of Labor and Employment Security~~ in the
9 performance of its powers and duties under this chapter.

10 Section 83. Subsection (12) of section 443.036,
11 Florida Statutes, is amended to read:

12 443.036 Definitions.--As used in this chapter, unless
13 the context clearly requires otherwise:

14 (12) COMMISSION.--"Commission" means the Unemployment
15 Appeals Commission ~~of the Department of Labor and Employment~~
16 ~~Security~~.

17 Section 84. Subsection (3) of section 447.02, Florida
18 Statutes, is amended to read:

19 447.02 Definitions.--The following terms, when used in
20 this chapter, shall have the meanings ascribed to them in this
21 section:

22 (3) The term "department" means the Department of
23 Business and Professional Regulation ~~Labor and Employment~~
24 ~~Security~~.

25 Section 85. Subsections (1), (3), and (4) of section
26 447.205, Florida Statutes, are amended to read:

27 447.205 Public Employees Relations Commission.--

28 (1) There is hereby created within the Department of
29 Management Services ~~Labor and Employment Security~~ the Public
30 Employees Relations Commission, hereinafter referred to as the
31 "commission." The commission shall be composed of a chair and

1 two full-time members to be appointed by the Governor, subject
2 to confirmation by the Senate, from persons representative of
3 the public and known for their objective and independent
4 judgment, who shall not be employed by, or hold any commission
5 with, any governmental unit in the state or any employee
6 organization, as defined in this part, while in such office.
7 In no event shall more than one appointee be a person who, on
8 account of previous vocation, employment, or affiliation, is,
9 or has been, classified as a representative of employers; and
10 in no event shall more than one such appointee be a person
11 who, on account of previous vocation, employment, or
12 affiliation, is, or has been, classified as a representative
13 of employees or employee organizations. The commissioners
14 shall devote full time to commission duties and shall not
15 engage in any other business, vocation, or employment while in
16 such office. ~~Beginning January 1, 1980, the chair shall be~~
17 ~~appointed for a term of 4 years, one commissioner for a term~~
18 ~~of 1 year, and one commissioner for a term of 2 years.~~
19 Thereafter, Every term of office shall be for 4 years; and
20 each term of the office of chair shall commence on January 1
21 of the second year following each regularly scheduled general
22 election at which a Governor is elected to a full term of
23 office. In the event of a vacancy prior to the expiration of
24 a term of office, an appointment shall be made for the
25 unexpired term of that office. The chair shall be responsible
26 for the administrative functions of the commission and shall
27 have the authority to employ such personnel as may be
28 necessary to carry out the provisions of this part. Once
29 appointed to the office of chair, the chair shall serve as
30 chair for the duration of the term of office of chair.
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1 Nothing contained herein prohibits a chair or commissioner
2 from serving multiple terms.

3 (3) The commission, in the performance of its powers
4 and duties under this part, shall not be subject to control,
5 supervision, or direction by the Department of Management
6 Services ~~Labor and Employment Security~~.

7 (4) The property, personnel, and appropriations
8 related to the commission's specified authority, powers,
9 duties, and responsibilities shall be provided to the
10 commission by the Department of Management Services ~~Labor and~~
11 ~~Employment Security~~.

12 Section 86. Subsection (4) of section 447.305, Florida
13 Statutes, is amended to read:

14 447.305 Registration of employee organization.--

15 (4) Notification of registrations and renewals of
16 registration shall be furnished at regular intervals by the
17 commission to the Department of Business and Professional
18 Regulation ~~Labor and Employment Security~~.

19 Section 87. Subsection (4) of section 450.012, Florida
20 Statutes, is amended to read:

21 450.012 Definitions.--For the purpose of this chapter,
22 the word, phrase, or term:

23 (4) "Department" means the Department of Business and
24 Professional Regulation ~~Labor and Employment Security~~.

25 Section 88. Subsection (2) of section 450.28, Florida
26 Statutes, is amended to read:

27 450.28 Definitions.--

28 (2) "Department" means the Department of Business and
29 Professional Regulation ~~Labor and Employment Security~~.

30 Section 89. Subsection (1) of section 450.191, Florida
31 Statutes, is amended to read:

1 450.191 Executive Office of the Governor; powers and
2 duties.--
3 (1) The Executive Office of the Governor is authorized
4 and directed to:
5 (a) Advise and consult with employers of migrant
6 workers as to the ways and means of improving living
7 conditions of seasonal workers;
8 (b) Cooperate with the Department of Health in
9 establishing minimum standards of preventive and curative
10 health and of housing and sanitation in migrant labor camps
11 and in making surveys to determine the adequacy of preventive
12 and curative health services available to occupants of migrant
13 labor camps;
14 (c) Provide coordination for the enforcement of ss.
15 381.008-381.0088;
16 (d) Cooperate with the other departments of government
17 in coordinating all applicable labor laws, including, but not
18 limited to, those relating to private employment agencies,
19 child labor, wage payments, wage claims, and crew leaders;
20 (e) Cooperate with the Department of Education to
21 provide educational facilities for the children of migrant
22 laborers;
23 (f) Cooperate with the Department of Highway Safety
24 and Motor Vehicles to establish minimum standards for the
25 transporting of migrant laborers;
26 (g) Cooperate with the Department of Agriculture and
27 Consumer Services to conduct an education program for
28 employers of migrant laborers pertaining to the standards,
29 methods, and objectives of the office;
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1 (h) Cooperate with the Department of Children and
2 Family Services in coordinating all public assistance programs
3 as they may apply to migrant laborers;

4 (i) Coordinate all federal, state, and local programs
5 pertaining to migrant laborers; and

6 (j) Cooperate with the farm labor office of the
7 Department of Business and Professional Regulation ~~Labor and~~
8 ~~Employment Security~~ in the recruitment and referral of migrant
9 laborers and other persons for the planting, cultivation, and
10 harvesting of agricultural crops in Florida.

11 Section 90. Subsection (3) of section 468.529, Florida
12 Statutes, is amended to read:

13 468.529 Licensee's insurance; employment tax; benefit
14 plans.--

15 (3) A licensed employee leasing company shall within
16 30 days of initiation or termination notify its workers'
17 compensation insurance carrier, the Department of Insurance
18 ~~Division of Workers' Compensation~~, and the Division of
19 Unemployment Compensation of the Department of Revenue ~~Labor~~
20 ~~and Employment Security~~ of both the initiation or the
21 termination of the company's relationship with any client
22 company.

23 Section 91. Subsections (1) and (5) of section
24 624.3161, Florida Statutes, are amended to read:

25 624.3161 Market conduct examinations.--

26 (1) As often as it deems necessary, the department
27 shall examine each licensed rating organization, each advisory
28 organization, each group, association carrier as defined in s.
29 440.02,, or other organization of insurers which engages in
30 joint underwriting or joint reinsurance, and each authorized
31 insurer transacting in this state any class of insurance to

1 which the provisions of chapter 627 are applicable. The
2 examination shall be for the purpose of ascertaining
3 compliance by the person examined with the applicable
4 provisions of chapters 440,624, 626, 627, and 635.

5 (5) Such examinations shall also be subject to the
6 applicable provisions of ss. 624.318, 624.319, 624.321, and
7 624.322 and chapter 440.

8 Section 92. Paragraph (m) of subsection (1) of section
9 626.88, Florida Statutes, is amended to read:

10 626.88 Definitions of "administrator" and "insurer".--

11 (1) For the purposes of this part, an "administrator"
12 is any person who directly or indirectly solicits or effects
13 coverage of, collects charges or premiums from, or adjusts or
14 settles claims on residents of this state in connection with
15 authorized commercial self-insurance funds or with insured or
16 self-insured programs which provide life or health insurance
17 coverage or coverage of any other expenses described in s.
18 624.33(1), other than any of the following persons:

19 (m) A person approved by the Department of Insurance
20 ~~Division of Workers' Compensation of the Department of Labor~~
21 ~~and Employment Security~~ who administers only self-insured
22 workers' compensation plans.

23 Section 93. Subsection (9) of section 626.989, Florida
24 Statutes, is amended to read:

25 626.989 Investigation by department or Division of
26 Insurance Fraud; compliance; immunity; confidential
27 information; reports to division; division investigator's
28 power of arrest.--

29 (9) In recognition of the complementary roles of
30 investigating instances of workers' compensation fraud and
31 enforcing compliance with the workers' compensation coverage

1 requirements under chapter 440, the Division of Insurance
 2 Fraud of the Department of Insurance is ~~and the Division of~~
 3 ~~Workers' Compensation of the Department of Labor and~~
 4 ~~Employment Security~~ are directed to prepare and submit a joint
 5 performance report to the President of the Senate and the
 6 Speaker of the House of Representatives by November 1 of each
 7 year for each of the next 2 years, and then every 3 years
 8 thereafter, describing the results obtained in achieving
 9 compliance with the workers' compensation coverage
 10 requirements and reducing the incidence of workers'
 11 compensation fraud.

12 Section 94. Section 627.0915, Florida Statutes, is
 13 amended to read:

14 627.0915 Rate filings; workers' compensation,
 15 drug-free workplace, and safe employers.--The Department of
 16 Insurance shall approve rating plans for workers' compensation
 17 insurance that give specific identifiable consideration in the
 18 setting of rates to employers that either implement a
 19 drug-free workplace program pursuant to rules adopted by the
 20 Division of Workers' Compensation of the Department of Labor
 21 and Employment Security or implement a safety program pursuant
 22 to provisions of the rating plan approved by the Division of
 23 ~~Safety pursuant to rules adopted by the Division of Safety of~~
 24 ~~the Department of Labor and Employment Security~~ or implement
 25 both a drug-free workplace program and a safety program. ~~The~~
 26 ~~Division of Safety may by rule require that the client of a~~
 27 ~~help supply services company comply with the essential~~
 28 ~~requirements of a workplace safety program as a condition for~~
 29 ~~receiving a premium credit.~~The plans must ~~take effect January~~
 30 ~~1, 1994,~~ must be actuarially sound, and must state the savings
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1 anticipated to result from such drug-testing and safety
2 programs.

3 Section 95. Subsection (5) of section 627.914, Florida
4 Statutes, is amended to read:

5 627.914 Reports of information by workers'
6 compensation insurers required.--

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

13 (a) The department ~~Division of Workers' Compensation~~
14 shall publish the dates and forms necessary to enable
15 self-insurers to comply with this section.

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

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

22 Section 96. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 invalidity does not affect other provisions or applications of
25 the act which can be given effect without the invalid
26 provision or application, and to this end the provisions of
27 this act are severable.

28 Section 97. To the extent that any conflict exists
29 between this act and the provisions of SB 1926, or similar
30 legislation, which transfers the Office of Judges of
31 Compensation Claims to the Division of Administration

1 Hearings, the provisions of SB 1926 or the similar legislation
2 shall control.

3 Section 98. Unless otherwise expressly provided for in
4 this act, this act shall take effect October 1, 2001.

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