

1                                   A bill to be entitled  
2           An act relating to workplace regulation;  
3           transferring the Division of Workers'  
4           Compensation from the Department of Labor and  
5           Employment Security to the Department of  
6           Insurance; providing exceptions; transferring  
7           various functions, powers, duties, personnel,  
8           and assets relating to workers' compensation to  
9           the Department of Education, the Agency for  
10          Health Care Administration, and the Department  
11          of Insurance; transferring certain rules to the  
12          Agency for Health Care Administration; amending  
13          s. 20.13, F.S.; providing for certain employees  
14          of the Division to be given hiring priority by  
15          the Department of Insurance; providing pay and  
16          employment guidelines for such employees;  
17          creating the Division of Workers' Compensation  
18          in the Department of Insurance; repealing s.  
19          20.171, F.S., which creates the Department of  
20          Labor and Employment Security; amending s.  
21          440.015, F.S.; designating state agencies to  
22          administer the workers' compensation law;  
23          amending s. 440.02, F.S.; providing  
24          definitions; amending ss. 110.025, 440.05,  
25          440.09, 440.10, 440.021, 440.102, 440.103,  
26          440.105, 440.106, 440.107, 440.108, 440.125,  
27          440.13, 440.134, 440.14, 440.15, 440.17,  
28          440.185, 440.191, 440.192, 440.1925, 440.20,  
29          440.207, 440.211, 440.24, 440.25, 440.271,  
30          440.345, 440.35, 440.38, 440.381, 440.385,  
31          440.386, 440.40, 440.41, 440.42, 440.44,

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

1 Services of the Department of Labor and  
2 Employment Security relating to labor  
3 organizations and migrant and farm labor  
4 registration to the Department of Business and  
5 Professional Regulation; providing for a type  
6 two transfer of other workplace regulation  
7 functions to the Department of Business and  
8 Professional Regulation; providing  
9 appropriations; amending s. 447.02, F.S.;  
10 conforming the definition of "department" to  
11 the transfer of the regulation of labor  
12 organizations to the Department of Business and  
13 Professional Regulation; amending s. 450.012,  
14 F.S.; conforming the definition of "department"  
15 to the transfer of the regulation of child  
16 labor to the Department of Business and  
17 Professional Regulation; amending s. 450.191,  
18 F.S., relating to the duties of the Executive  
19 Office of the Governor with respect to migrant  
20 labor; conforming provisions to changes made by  
21 the act; amending s. 450.28, F.S.; conforming  
22 the definition of "department" to the transfer  
23 of the regulation of farm labor to the  
24 Department of Business and Professional  
25 Regulation; creating ss. 633.801, 633.802,  
26 633.803, 633.804, 633.805, 633.806, 633.807,  
27 633.808, 633.810, 633.812, 633.813, 633.814,  
28 633.815, 633.816, 633.817, 633.818, 633.819,  
29 633.820, 633.823, 633.824, and 633.825, F.S.;  
30 designating such sections as the Florida  
31 Firefighter Occupational Safety and Health Act;

1 providing definitions; providing legislative  
 2 intent; authorizing the Division of State Fire  
 3 Marshal to adopt rules related to firefighter  
 4 safety inspections; requiring the division to  
 5 conduct a study; requiring firefighter  
 6 employers to provide safe employment  
 7 conditions; authorizing the division to adopt  
 8 rules that prescribe means for preventing  
 9 accidents in places of firefighter employment  
 10 and establish standards for construction,  
 11 repair, and maintenance; requiring the division  
 12 to inspect places of firefighter employment and  
 13 to develop safety and health programs for those  
 14 firefighter employers whose employees have a  
 15 high frequency or severity of work-related  
 16 injuries; requiring certain firefighter  
 17 employers to establish workplace safety  
 18 committees and to maintain certain records;  
 19 providing penalties for firefighter employers  
 20 who violate provisions of the act; providing  
 21 exemptions; providing for the source of funding  
 22 of the division; specifying firefighter  
 23 employee rights and responsibilities; providing  
 24 penalties for firefighter employers who make  
 25 false statements to the division or to an  
 26 insurer; specifying applicability to volunteer  
 27 firefighters and volunteer fire departments;  
 28 authorizing the division to adopt rules for  
 29 assuring safe working conditions for all  
 30 firefighter employees; amending s. 633.31,  
 31 F.S.; changing the name and membership of the

1 Firefighters Standards and Training Council;  
2 amending ss. 383.3362, 633.30, and 633.32,  
3 F.S., to conform; amending s. 633.33, F.S.;  
4 revising certain powers of the council;  
5 specifying controlling legislation in the event  
6 of a conflict; providing effective dates.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. (1) The Division of Workers' Compensation  
11 of the Department of Labor and Employment Security is  
12 transferred by a type two transfer, as defined in section  
13 20.06(2), Florida Statutes, to the Department of Insurance,  
14 except as otherwise provided in this section. The transfers to  
15 the Department of Insurance shall include all resources, data,  
16 records, property, and unexpended balances of appropriations,  
17 allocations, or other funds. No personnel are transferred to  
18 the Department of Insurance. The employees of the Department  
19 of Labor and Employment Security's Division of Workers'  
20 Compensation, Office of the Secretary, Office of  
21 Administrative Services, and Office of General Counsel  
22 employed by the Department of Labor and Employment Security as  
23 of March 1, 2001 may be given hiring priority by the  
24 Department of Insurance, and at least 300 of these employees  
25 shall be offered employment by the Department of Insurance,  
26 effective October 1, 2001. To the extent feasible, the  
27 positions established by the Department of Insurance will be  
28 at pay grades comparable to the positions established by the  
29 Department of Labor and Employment Security based on the  
30 classification code and specifications of the positions for  
31 work to be performed at the Department of Insurance. Offers of

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

30 (2) Four attorney positions and one administrative  
 31 assistant III position, and the related property and

1 unexpended balances of appropriations, allocations, and other  
2 funds, are transferred from the Office of General Counsel of  
3 the Department of Labor and Employment Security to the  
4 Department of Insurance by a type two transfer, as defined in  
5 section 20.06(2), Florida Statutes.

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

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

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

29 (6) Four positions within the Division of Workers'  
30 Compensation of the Department of Labor and Employment  
31 Security responsible for financial management, accounting, and

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

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

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

29 (9) Except as provided in this section, the records,  
30 property, and unexpended balances of appropriations,  
31 allocations, and other funds and resources of the Office of

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

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

29 (11) The records, property, and unexpended balances of  
 30 appropriations, allocations, and other funds and resources of  
 31 the Office of the Secretary and the Office of Administrative

1 Services of the Department of Labor and Employment Security  
2 which support the activities and functions transferred under  
3 subsection (7) to the Agency for Health Care Administration  
4 are transferred by a type two transfer as defined in section  
5 20.06(2), Florida Statutes, to the Agency for Health Care  
6 Administration.

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

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

23 (14) Effective July 1, 2001, the Office of Information  
24 Systems is transferred by a type two transfer, as defined in  
25 s. 20.06(2), Florida Statutes, from the Department of Labor  
26 and Employment Security to the State Technology Office. Upon  
27 completion of this transfer, the State Technology Office and  
28 the Department of Insurance shall enter into discussions to  
29 determine whether it would be technologically feasible and  
30 cost effective to separate the Workers' Compensation  
31 Integrated System from its current mainframe platform and

1 transfer ownership of this system to the Department of  
2 Insurance. If the Department of Insurance ultimately  
3 determines that it is technologically feasible and cost  
4 effective to transfer ownership of the Workers' Compensation  
5 Integrated System from the State Technology Office to the  
6 Department of Insurance, the State Technology Office and the  
7 Department of Insurance shall jointly develop and implement a  
8 plan to transfer this system to the Department of Insurance.

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

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

27 (c) Effective July 1, 2001, the records, property, and  
28 unexpended balances of appropriations, allocations, and other  
29 funds and resources of the Office of the Secretary and the  
30 Office of Administrative Services of the Department of Labor  
31 and Employment Security which support the activities and

1 functions transferred under subsection (14) to the State  
2 Technology Office are transferred as provided in s. 20.06(2),  
3 Florida Statutes, to the State Technology Office.

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

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

25 (18) Effective July 1, 2001, thirty full-time  
26 equivalent positions from the Compliance and Enforcement  
27 Program in the Office of the Secretary and Administrative  
28 Services and one senior attorney and one administrative  
29 secretary from the Office of General Counsel in the Office of  
30 the Secretary and Administrative Services, and the powers,  
31 duties, functions, rules, records, personnel, property, and

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

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

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

30 (21) Notwithstanding any other provision of law, any  
31 binding contract or interagency agreement existing on or

1 before October 1, 2001, between the Department of Labor and  
2 Employment Security, or an entity or agent of the department,  
3 and any other agency, entity, or person shall continue as a  
4 binding contract or agreement for the remainder of the term of  
5 such contract or agreement with the successor department,  
6 agency, or entity responsible for the program, activity, or  
7 functions relative to the contract or agreement.

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

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

14 20.13 Department of Insurance.--There is created a  
15 Department of Insurance.

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

18 (k) Division of Workers' Compensation.

19 Section 3. Section 20.171, Florida Statutes, is  
20 repealed.

21 Section 4. Paragraph (1) of subsection (2) of section  
22 110.205, Florida Statutes, is amended to read:

23 110.205 Career service; exemptions.--

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

29 (1) All assistant division director, deputy division  
30 director, and bureau chief positions in any department, and  
31 those positions determined by the department to have

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

24 Section 5. Section 440.015, Florida Statutes, is  
 25 amended to read:

26 440.015 Legislative intent.--It is the intent of the  
 27 Legislature that the Workers' Compensation Law be interpreted  
 28 so as to assure the quick and efficient delivery of disability  
 29 and medical benefits to an injured worker and to facilitate  
 30 the worker's return to gainful reemployment at a reasonable  
 31 cost to the employer. It is the specific intent of the

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

25 Section 6. Subsections (11), (13), and (14) of section  
 26 440.02, Florida Statutes, are amended, and subsection (40) is  
 27 added to that section, to read:

28 440.02 Definitions.--When used in this chapter, unless  
 29 the context clearly requires otherwise, the following terms  
 30 shall have the following meanings:

31

1           (11) "Department" means the Department of Insurance  
2 ~~Labor and Employment Security~~.

3           (13) "Division" means the Division of Workers'  
4 Compensation of the Department of Insurance ~~Labor and~~  
5 ~~Employment Security~~.

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

11           (b) "Employee" includes any person who is an officer  
12 of a corporation and who performs services for remuneration  
13 for such corporation within this state, whether or not such  
14 services are continuous.

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

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

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

27  
28 Services are presumed to have been rendered to the corporation  
29 if the officer is compensated by other than dividends upon  
30 shares of stock of the corporation which the officer owns.

31

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

- 19           (d) "Employee" does not include:
- 20           1. An independent contractor, if:
    - 21           a. The independent contractor maintains a separate  
22 business with his or her own work facility, truck, equipment,  
23 materials, or similar accommodations;
    - 24           b. The independent contractor holds or has applied for  
25 a federal employer identification number, unless the  
26 independent contractor is a sole proprietor who is not  
27 required to obtain a federal employer identification number  
28 under state or federal requirements;
    - 29           c. The independent contractor performs or agrees to  
30 perform specific services or work for specific amounts of  
31

1 money and controls the means of performing the services or  
2 work;

3 d. The independent contractor incurs the principal  
4 expenses related to the service or work that he or she  
5 performs or agrees to perform;

6 e. The independent contractor is responsible for the  
7 satisfactory completion of work or services that he or she  
8 performs or agrees to perform and is or could be held liable  
9 for a failure to complete the work or services;

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

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

15 h. The independent contractor has continuing or  
16 recurring business liabilities or obligations; and

17 i. The success or failure of the independent  
18 contractor's business depends on the relationship of business  
19 receipts to expenditures.

20

21 However, the determination as to whether an individual  
22 included in the Standard Industrial Classification Manual of  
23 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
24 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
25 2448, or 2449, or a newspaper delivery person, is an  
26 independent contractor is governed not by the criteria in this  
27 paragraph but by common-law principles, giving due  
28 consideration to the business activity of the individual.

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

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

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

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

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

27           a. Persons who serve in private nonprofit agencies and  
28 who receive no compensation other than expenses in an amount  
29 less than or equivalent to the standard mileage and per diem  
30 expenses provided to salaried employees in the same agency or,  
31 if such agency does not have salaried employees who receive

1 mileage and per diem, then such volunteers who receive no  
2 compensation other than expenses in an amount less than or  
3 equivalent to the customary mileage and per diem paid to  
4 salaried workers in the community as determined by the  
5 department division; and

6           b. Volunteers participating in federal programs  
7 established under Pub. L. No. 93-113.

8           7. Any officer of a corporation who elects to be  
9 exempt from this chapter.

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

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

23           10. A taxicab, limousine, or other passenger  
24 vehicle-for-hire driver who operates said vehicles pursuant to  
25 a written agreement with a company which provides any  
26 dispatch, marketing, insurance, communications, or other  
27 services under which the driver and any fees or charges paid  
28 by the driver to the company for such services are not  
29 conditioned upon, or expressed as a proportion of, fare  
30 revenues.

31

1           (40) "Agency" means the Agency for Health Care  
2 Administration.

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

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

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

28           440.05 Election of exemption; revocation of election;  
29 notice; certification.--

30           (1) Each corporate officer who elects not to accept  
31 the provisions of this chapter or who, after electing such

1 exemption, revokes that exemption shall mail to the department  
2 ~~division~~ in Tallahassee notice to such effect in accordance  
3 with a form to be prescribed by the department ~~division~~.

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

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

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

1 must notify her or his contractor. Upon revocation of a  
 2 certificate of election of exemption by the department  
 3 division, the department ~~division~~ shall notify the workers'  
 4 compensation carriers identified in the request for exemption.

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

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

27 (6) A construction industry certificate of election to  
 28 be exempt which is issued in accordance with this section  
 29 shall be valid for 2 years after the effective date stated  
 30 thereon. Both the effective date and the expiration date must  
 31 be listed on the face of the certificate by the department

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

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

22 (8)(a) The department ~~division~~ must assess a fee of  
 23 \$50 with each request for a construction industry certificate  
 24 of election to be exempt or renewal of election to be exempt  
 25 under this section.

26 (b) The funds collected by the department ~~division~~  
 27 shall be used to administer this section, to audit the  
 28 businesses that pay the fee for compliance with any  
 29 requirements of this chapter, and to enforce compliance with  
 30 the provisions of this chapter.

31

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

9           Section 9. Paragraph (d) of subsection (7) of section  
10 440.09, Florida Statutes, is amended to read:

11           440.09 Coverage.--

12           (7)

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

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

19           440.10 Liability for compensation.--

20           (1)

21           (f) If an employer willfully fails to secure  
22 compensation as required by this chapter, the department  
23 ~~division~~ may assess against the employer a penalty not to  
24 exceed \$5,000 for each employee of that employer who is  
25 classified by the employer as an independent contractor but  
26 who is found by the department ~~division~~ to not meet the  
27 criteria for an independent contractor that are set forth in  
28 s. 440.02.

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

31

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

4           2. The independent contractor provides the general  
5 contractor with a valid certificate of workers' compensation  
6 insurance or a valid certificate of exemption issued by the  
7 department division.

8  
9 A sole proprietor, partner, or officer of a corporation who  
10 elects exemption from this chapter by filing a certificate of  
11 election under s. 440.05 may not recover benefits or  
12 compensation under this chapter. An independent contractor  
13 who provides the general contractor with both an affidavit  
14 stating that he or she meets the requirements of s.  
15 440.02(14)(d) and a certificate of exemption is not an  
16 employee under s. 440.02(14)(c) and may not recover benefits  
17 under this chapter. For purposes of determining the  
18 appropriate premium for workers' compensation coverage,  
19 carriers may not consider any person who meets the  
20 requirements of this paragraph to be an employee.

21           Section 11. Subsection (2), paragraph (a) of  
22 subsection (3), and paragraph (g) of subsection (7) of section  
23 440.102, Florida Statutes, are amended to read:

24           440.102 Drug-free workplace program requirements.--The  
25 following provisions apply to a drug-free workplace program  
26 implemented pursuant to law or to rules adopted by the Agency  
27 for Health Care Administration:

28           (2) DRUG TESTING.--An employer may test an employee or  
29 job applicant for any drug described in paragraph (1)(c). In  
30 order to qualify as having established a drug-free workplace  
31 program which affords an employer the ability to qualify for

1 the discounts provided under s. 627.0915 and deny medical and  
2 indemnity benefits, under this chapter all drug testing  
3 conducted by employers shall be in conformity with the  
4 standards and procedures established in this section and all  
5 applicable rules adopted pursuant to this section. However, an  
6 employer does not have a legal duty under this section to  
7 request an employee or job applicant to undergo drug testing.  
8 If an employer fails to maintain a drug-free workplace program  
9 in accordance with the standards and procedures established in  
10 this section and in applicable rules, the employer shall not  
11 be eligible for discounts under s. 627.0915. All employers  
12 qualifying for and receiving discounts provided under s.  
13 627.0915 must be reported annually by the insurer to the  
14 department division.

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

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

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

21 a. The types of drug testing an employee or job  
22 applicant may be required to submit to, including  
23 reasonable-suspicion drug testing or drug testing conducted on  
24 any other basis.

25 b. The actions the employer may take against an  
26 employee or job applicant on the basis of a positive confirmed  
27 drug test result.

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

30 3. A general statement concerning confidentiality.

31

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

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

12           6. The consequences of refusing to submit to a drug  
13 test.

14           7. A representative sampling of names, addresses, and  
15 telephone numbers of employee assistance programs and local  
16 drug rehabilitation programs.

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

27           9. A statement informing the employee or job applicant  
28 of his or her responsibility to notify the laboratory of any  
29 administrative or civil action brought pursuant to this  
30 section.

31

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

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

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

11           (7) EMPLOYER PROTECTION.--

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

1 agreement as negotiated by the appropriate certified  
2 bargaining agent before such testing is implemented.

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

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

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

24 440.105 Prohibited activities; reports; penalties;  
25 limitations.--

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

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

31

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:

8 440.38 Security for compensation; insurance carriers  
9 and self-insurers.--

10 (1) Every employer shall secure the payment of  
11 compensation under this chapter:

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

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

1           1. The association division may recommend that the  
2 Department of Insurance, ~~as a condition to such authorization,~~  
3 ~~require an~~ such employer to deposit with in a depository  
4 ~~designated by the~~ association a qualifying deposit. The  
5 association shall recommend the type and amount of the  
6 qualifying security deposit and shall ~~division either an~~  
7 ~~indemnity bond or securities, at the option of the employer,~~  
8 ~~of a kind and in an amount determined by the division and~~  
9 ~~subject to such conditions as the division may prescribe~~  
10 conditions for the qualifying security deposit, which shall  
11 include authorization for to the association to call the  
12 qualifying security deposit ~~division~~ in the case of default to  
13 ~~sell any such securities sufficient to pay compensation awards~~  
14 and related expenses of the association ~~or to bring suit upon~~  
15 ~~such bonds, to procure prompt payment of compensation under~~  
16 ~~this chapter. In addition, the division shall require,~~ As a  
17 condition to authorization to self-insure, the employer shall  
18 provide proof that the employer has provided for competent  
19 personnel with whom to deliver benefits and to provide a safe  
20 working environment. ~~Further,~~ The employer division shall  
21 also provide evidence of ~~require such employer to carry~~  
22 reinsurance at levels that will ensure the financial strength  
23 and actuarial soundness of such employer in accordance with  
24 rules adopted ~~promulgated~~ by the Department of Insurance  
25 division. The Department of Insurance ~~division~~ may by rule  
26 require that, in the event of an individual self-insurer's  
27 insolvency, such qualifying security deposits ~~indemnity bonds,~~  
28 ~~securities,~~ and reinsurance policies are ~~shall be~~ payable to  
29 the association ~~Florida Self-Insurers Guaranty Association,~~  
30 ~~incorporated, created pursuant to s. 440.385.~~ Any employer  
31 securing compensation in accordance with the provisions of

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

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

1 department along with a recommendation, and the Department of  
 2 Insurance division shall then revoke an ~~such~~ employer's  
 3 authorization to self-insure, ~~and such~~ Failure to comply with  
 4 this provision shall be deemed to constitute an immediate  
 5 serious danger to the public health, safety, or welfare  
 6 sufficient to justify the summary suspension of the employer's  
 7 authorization to self-insure pursuant to s. 120.68.

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

1 the successor of an employer means any person, business  
2 entity, or group of persons or business entities, which holds  
3 or acquires legal or beneficial title to the majority of the  
4 assets or the majority of the shares of the employer.

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

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

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

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

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

25 ~~e. Securities issued by this state and backed by the~~  
26 ~~full faith and credit of this state.~~

27 5. The qualifying security deposit shall be held by  
28 the association division, or by a depository authorized by the  
29 ~~division~~, exclusively for the benefit of workers' compensation  
30 claimants. The security shall not be subject to assignment,  
31 execution, attachment, or any legal process whatsoever, except

1 as necessary to guarantee the payment of compensation under  
2 this chapter. No surety bond may be terminated, and no letter  
3 of credit ~~other qualifying security~~ may be allowed to expire  
4 ~~lapse~~, without 90 days' prior written notice to the  
5 association ~~division~~ and the deposit by the self-insuring  
6 employer of some other qualifying security deposit of equal  
7 value within 10 business days after such notice. Failure to  
8 provide such written notice or failure to timely provide  
9 qualifying replacement security after such notice shall  
10 constitute grounds for the association ~~division~~ to call or sue  
11 upon the surety bond, or to ~~act with respect to other pledged~~  
12 ~~security in any manner necessary to preserve its value for the~~  
13 ~~purposes intended by this section, including the exercise its~~  
14 ~~of~~ rights under a letter of credit. Current self-insured  
15 employers must comply with this section on or before December  
16 31, 2001, or upon maturity of existing security deposits,  
17 whichever occurs later ~~the sale of any security at then~~  
18 ~~prevailing market rates, or the withdrawal of any funds~~  
19 ~~represented by any certificate of deposit forming part of the~~  
20 ~~qualifying security deposit.~~ The Department of Insurance  
21 ~~division~~ may specify by rule the amount of the qualifying  
22 security deposit required prior to authorizing an employer to  
23 self-insure and the amount of net worth required for an  
24 employer to qualify for authorization to self-insure;

25 (c) By entering into a contract with a public utility  
26 under an approved utility-provided self-insurance program as  
27 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,  
28 1983. The Department of Insurance ~~division~~ shall adopt rules  
29 to implement this paragraph;

30  
31

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 36. 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 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. Section 440.4416, Florida Statutes, is  
 29 repealed.

30 Section 44. 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 45. 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 refiling 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).

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 46. 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 47. 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 48. 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 49. 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 50. 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 51. 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 52. 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 53. 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 54. 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 55. 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. Effective July 1, 2001, section 633.817,  
2 Florida Statutes, is created to read:

3           633.817 Refusal to admit; penalty.--The division and  
4 its authorized representatives may enter and inspect any place  
5 of firefighter employment at any reasonable time for the  
6 purpose of investigating compliance with ss. 633.801-633.825  
7 and conducting inspections for the proper enforcement of ss.  
8 633.801-633.825. A firefighter employer who refuses to admit  
9 any member of the division or its authorized representative to  
10 any place of employment or to allow investigation and  
11 inspection pursuant to this section commits a misdemeanor of  
12 the second degree, punishable as provided in s. 775.082 or s.  
13 775.083.

14           Section 70. Effective July 1, 2001, section 633.818,  
15 Florida Statutes, is created to read:

16           633.818 Firefighter employee rights and  
17 responsibilities.--

18           (1) Each firefighter employee of a firefighter  
19 employer covered under ss. 633.801-633.825 shall comply with  
20 rules adopted by the division and with reasonable workplace  
21 safety and health standards, rules, policies, procedures, and  
22 work practices established by the firefighter employer and the  
23 workplace safety committee. A firefighter employee who  
24 knowingly fails to comply with this subsection may be  
25 disciplined or discharged by the firefighter employer.

26           (2) A firefighter employer may not discharge, threaten  
27 to discharge, cause to be discharged, intimidate, coerce,  
28 otherwise discipline, or in any manner discriminate against a  
29 firefighter employee for any of the following reasons:  
30  
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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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;  
30  
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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 89. 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 90. 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 91. 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 92. 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 93. 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  
 31

1 anticipated to result from such drug-testing and safety  
2 programs.

3 Section 94. 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 95. 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 96. 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 97. Unless otherwise expressly provided for in  
4 this act, this act shall take effect October 1, 2001.

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