

By Representative Melvin

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending ss. 61.13 and 440.22, F.S.; specifying
4 nonapplication of a workers' compensation
5 exemption from creditors' claims to child
6 support; amending s. 61.30, F.S.; clarifying
7 inclusion of all workers' compensation benefits
8 and settlements in child support calculations;
9 amending ss. 112.19 and 112.191, F.S., to
10 conform to deleting a definition of
11 catastrophic injury; amending s. 440.02, F.S.;
12 revising definitions; amending s. 440.05, F.S.;
13 providing for substantial revision of election
14 of exemption provisions; providing for
15 application solely to sole proprietors,
16 partners, or officers of corporations; revising
17 requirements, procedures, and limitations;
18 excluding from exemption eligibility persons
19 and entities engaged in the construction
20 industry; amending s. 440.09, F.S.; excluding
21 compensation from impairment ratings for
22 psychiatric impairments from coverage; amending
23 s. 440.10, F.S., to conform; amending s.
24 440.13, F.S.; providing a limitation on certain
25 hourly rates for a family member under certain
26 circumstances; authorizing carriers to provide
27 certain financial incentives for certain
28 purposes; providing a definition; clarifying
29 independent medical examination provisions;
30 specifying certain physician's actions as an
31 independent medical examination for certain

1 purposes; providing for admissibility of
2 certain evaluations and reports into evidence
3 in certain proceedings; amending s. 440.14,
4 F.S.; specifying employee responsibility for
5 providing concurrent employment earnings in
6 certain wage calculations; amending s. 440.15,
7 F.S.; limiting eligibility for permanent total
8 disability; revising permanent impairment
9 benefits provisions; revising the rate for
10 benefit payments; amending s. 440.185, F.S.;
11 clarifying certain notice requirements;
12 amending s. 440.191, F.S.; revising provisions
13 relating to the Employee Assistance and
14 Ombudsman Office; authorizing participation in
15 early intervention programs; providing for
16 determinations of certain medical-only claims;
17 deleting a prohibition against an employee
18 filing a petition for benefits under certain
19 circumstances; providing additional
20 requirements for filing such a petition;
21 amending s. 440.192, F.S.; revising and
22 clarifying various provisions relating to a
23 petition for benefits; deleting a service by
24 certified mail requirement for filing a
25 petition for benefits; revising requirements
26 for a petition for benefits; deleting a
27 petition requirement for certification of good
28 faith effort to resolve the dispute; amending
29 s. 440.20, F.S.; providing criteria for
30 satisfaction of an employer's obligation to pay
31 compensation; providing for direct deposit of

1 compensation; authorizing a judge of
2 compensation claims to not hold a hearing under
3 certain circumstances; revising procedures and
4 requirements for hearings by judges of
5 compensation claims; amending s. 440.25, F.S.;
6 revising procedures and requirements for
7 mediation and hearings; providing for a motion
8 to dismiss for lack of prosecution; prohibiting
9 award of interest on unpaid medical bills;
10 amending s. 440.29, F.S.; providing for receipt
11 into evidence certain peer review reports and
12 independent medical examinations; amending s.
13 440.34, F.S.; prohibiting award of attorney's
14 fees on certain issues; deleting criteria for
15 determining award of attorney's fees; deleting
16 entitlement for claimant recovery of attorney
17 fees; limiting attorney's fees under certain
18 circumstances; deleting a prohibition against a
19 judge of compensation claims entering certain
20 orders; amending s. 440.39, F.S.; providing
21 construction relating to an employer's duty to
22 preserve certain evidence; amending s. 440.42,
23 F.S.; specifying expiration of certain
24 insurance policies; amending s. 440.4416, F.S.;
25 substantially revising Workers' Compensation
26 Oversight Board provisions; replacing the board
27 with the Workers' Compensation Appeals
28 Commission; creating the commission; providing
29 for appointment of commissioners; providing for
30 salaries and benefits for commissioners;
31 providing for powers, duties, and

1 responsibilities of the commission; providing
2 for a presiding commissioner; providing for
3 duties and responsibilities of the presiding
4 commissioner; providing for appointment of a
5 commission clerk; providing duties and
6 responsibilities of the clerk; authorizing the
7 commission and clerk to charge fees for certain
8 purposes; amending s. 440.45, F.S.;
9 transferring the Office of Judges of
10 Compensation Claims from the Department of
11 Labor and Employment Security to the Division
12 of Administrative Hearings; providing for
13 statewide nominating commission determinations
14 of judges of compensation claims satisfactory
15 performance; providing for legislative review;
16 providing for the Governor's appointment of
17 certain judges of compensation claims under
18 certain circumstances; requiring the office to
19 provide certain performance review data to the
20 commission; requiring the office to provide
21 draft rules to the Governor and Legislature for
22 certain actions; amending s. 627.311, F.S.;
23 providing for funding certain deficits through
24 certain policyholder surpluses; amending s.
25 627.914, F.S.; providing for the department to
26 adopt rules for use by self-insurance funds for
27 certain purposes; deleting certain annual
28 reporting information requirements for
29 insurers; applying certain insurer related
30 provisions to self-insurance funds; deleting a
31 reporting requirement of the Division of

1 Workers' Compensation; repealing ss. 440.02(37)
2 and 440.13(1)(d), F.S., relating to a
3 definition of catastrophic injury; providing an
4 effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Paragraph (b) of subsection (1) of section
9 61.13, Florida Statutes, is amended to read:

10 61.13 Custody and support of children; visitation
11 rights; power of court in making orders.--

12 (1)

13 (b) Each order for child support shall contain a
14 provision for health insurance for the minor child when the
15 insurance is reasonably available. Insurance is reasonably
16 available if either the obligor or obligee has access at a
17 reasonable rate to group insurance. The court may require the
18 obligor either to provide health insurance coverage or to
19 reimburse the obligee for the cost of health insurance
20 coverage for the minor child when coverage is provided by the
21 obligee. In either event, the court shall apportion the cost
22 of coverage, and any noncovered medical, dental, and
23 prescription medication expenses of the child, to both parties
24 by adding the cost to the basic obligation determined pursuant
25 to s. 61.30(6). The court may order that payment of uncovered
26 medical, dental, and prescription medication expenses of the
27 minor child be made directly to the payee on a percentage
28 basis.

29 1. A copy of the court order for insurance coverage
30 shall be served on the obligor's payor or union by the obligee
31 or the IV-D agency when the following conditions are met:

1 a. The obligor fails to provide written proof to the
2 obligee or the IV-D agency within 30 days of receiving
3 effective notice of the court order, that the insurance has
4 been obtained or that application for insurability has been
5 made;

6 b. The obligee or IV-D agency serves written notice of
7 its intent to enforce medical support on the obligor by mail
8 at the obligor's last known address; and

9 c. The obligor fails within 15 days after the mailing
10 of the notice to provide written proof to the obligee or the
11 IV-D agency that the insurance coverage existed as of the date
12 of mailing.

13 2. In cases in which the noncustodial parent provides
14 health care coverage and the noncustodial parent changes
15 employment and the new employer provides health care coverage,
16 the IV-D agency shall transfer notice of the provision to the
17 employer, which notice shall operate to enroll the child in
18 the noncustodial parent's health plan, unless the noncustodial
19 parent contests the notice. Notice to enforce medical
20 coverage under this section shall be served by the IV-D agency
21 upon the obligor by mail at the obligor's last known address.
22 The obligor shall have 15 days from the date of mailing of the
23 notice to contest the notice with the IV-D agency.

24 3. Upon receipt of the order pursuant to subparagraph
25 1. or the notice pursuant to subparagraph 2., or upon
26 application of the obligor pursuant to the order, the payor,
27 union, or employer shall enroll the minor child as a
28 beneficiary in the group insurance plan and withhold any
29 required premium from the obligor's income. If more than one
30 plan is offered by the payor, union, or employer, the child
31

1 shall be enrolled in the insurance plan in which the obligor
2 is enrolled.

3 4. The Department of Revenue shall have the authority
4 to adopt rules to implement the child support enforcement
5 provisions of this section.

6 5. Exemption from creditors' claims pursuant to s.
7 440.22 does not extend to claims of child support.

8 Section 2. Paragraph (a) of subsection (2) of section
9 61.30, Florida Statutes, is amended to read:

10 61.30 Child support guidelines; retroactive child
11 support.--

12 (2) Income shall be determined on a monthly basis for
13 the obligor and for the obligee as follows:

14 (a) Gross income shall include, but is not limited to,
15 the following items:

16 1. Salary or wages.

17 2. Bonuses, commissions, allowances, overtime, tips,
18 and other similar payments.

19 3. Business income from sources such as
20 self-employment, partnership, close corporations, and
21 independent contracts. "Business income" means gross receipts
22 minus ordinary and necessary expenses required to produce
23 income.

24 4. Disability benefits.

25 5. All worker's compensation benefits and settlements.

26 6. Unemployment compensation.

27 7. Pension, retirement, or annuity payments.

28 8. Social security benefits.

29 9. Spousal support received from a previous marriage
30 or court ordered in the marriage before the court.

31 10. Interest and dividends.

1 11. Rental income, which is gross receipts minus
2 ordinary and necessary expenses required to produce the
3 income.

4 12. Income from royalties, trusts, or estates.

5 13. Reimbursed expenses or in kind payments to the
6 extent that they reduce living expenses.

7 14. Gains derived from dealings in property, unless
8 the gain is nonrecurring.

9 Section 3. Paragraph (h) of subsection (2) of section
10 112.19, Florida Statutes, is amended to read:

11 112.19 Law enforcement, correctional, and correctional
12 probation officers; death benefits.--

13 (2)

14 (h)1. Any employer who employs a full-time law
15 enforcement, correctional, or correctional probation officer
16 who, on or after January 1, 1995, suffers a catastrophic
17 injury, ~~as defined in s. 440.02(37)~~, in the line of duty shall
18 pay the entire premium of the employer's health insurance plan
19 for the injured employee, the injured employee's spouse, and
20 for each dependent child of the injured employee until the
21 child reaches the age of majority or until the end of the
22 calendar year in which the child reaches the age of 25 if the
23 child continues to be dependent for support, or the child is a
24 full-time or part-time student and is dependent for support.
25 The term "health insurance plan" does not include supplemental
26 benefits that are not part of the basic group health insurance
27 plan. If the injured employee subsequently dies, the employer
28 shall continue to pay the entire health insurance premium for
29 the surviving spouse until remarried, and for the dependent
30 children, under the conditions outlined in this paragraph.
31 However:

1 a. Health insurance benefits payable from any other
2 source shall reduce benefits payable under this section.

3 b. It is unlawful for a person to willfully and
4 knowingly make, or cause to be made, or to assist, conspire
5 with, or urge another to make, or cause to be made, any false,
6 fraudulent, or misleading oral or written statement to obtain
7 health insurance coverage as provided under this paragraph. A
8 person who violates this sub-subparagraph commits a
9 misdemeanor of the first degree, punishable as provided in s.
10 775.082 or s. 775.083.

11 c. In addition to any applicable criminal penalty,
12 upon conviction for a violation as described in
13 sub-subparagraph b., a law enforcement, correctional, or
14 correctional probation officer or other beneficiary who
15 receives or seeks to receive health insurance benefits under
16 this paragraph shall forfeit the right to receive such health
17 insurance benefits, and shall reimburse the employer for all
18 benefits paid due to the fraud or other prohibited activity.
19 For purposes of this sub-subparagraph, "conviction" means a
20 determination of guilt that is the result of a plea or trial,
21 regardless of whether adjudication is withheld.

22 2. In order for the officer, spouse, and dependent
23 children to be eligible for such insurance coverage, the
24 injury must have occurred as the result of the officer's
25 response to fresh pursuit, the officer's response to what is
26 reasonably believed to be an emergency, or an unlawful act
27 perpetrated by another. Except as otherwise provided herein,
28 nothing in this paragraph shall be construed to limit health
29 insurance coverage for which the officer, spouse, or dependent
30 children may otherwise be eligible, except that a person who
31 qualifies under this section shall not be eligible for the

1 health insurance subsidy provided under chapter 121, chapter
2 175, or chapter 185.

3 Section 4. Paragraph (g) of subsection (2) of section
4 112.191, Florida Statutes, is amended to read:

5 112.191 Firefighters; death benefits.--

6 (2)

7 (g)1. Any employer who employs a full-time firefighter
8 who, on or after January 1, 1995, suffers a catastrophic
9 injury, ~~as defined in s. 440.02(37)~~, in the line of duty shall
10 pay the entire premium of the employer's health insurance plan
11 for the injured employee, the injured employee's spouse, and
12 for each dependent child of the injured employee until the
13 child reaches the age of majority or until the end of the
14 calendar year in which the child reaches the age of 25 if the
15 child continues to be dependent for support, or the child is a
16 full-time or part-time student and is dependent for support.
17 The term "health insurance plan" does not include supplemental
18 benefits that are not part of the basic group health insurance
19 plan. If the injured employee subsequently dies, the employer
20 shall continue to pay the entire health insurance premium for
21 the surviving spouse until remarried, and for the dependent
22 children, under the conditions outlined in this paragraph.

23 However:

24 a. Health insurance benefits payable from any other
25 source shall reduce benefits payable under this section.

26 b. It is unlawful for a person to willfully and
27 knowingly make, or cause to be made, or to assist, conspire
28 with, or urge another to make, or cause to be made, any false,
29 fraudulent, or misleading oral or written statement to obtain
30 health insurance coverage as provided under this paragraph. A
31 person who violates this sub-subparagraph commits a

1 misdemeanor of the first degree, punishable as provided in s.
2 775.082 or s. 775.083.

3 c. In addition to any applicable criminal penalty,
4 upon conviction for a violation as described in
5 sub-subparagraph b., a firefighter or other beneficiary who
6 receives or seeks to receive health insurance benefits under
7 this paragraph shall forfeit the right to receive such health
8 insurance benefits, and shall reimburse the employer for all
9 benefits paid due to the fraud or other prohibited activity.
10 For purposes of this sub-subparagraph, "conviction" means a
11 determination of guilt that is the result of a plea or trial,
12 regardless of whether adjudication is withheld.

13 2. In order for the firefighter, spouse, and dependent
14 children to be eligible for such insurance coverage, the
15 injury must have occurred as the result of the firefighter's
16 response to what is reasonably believed to be an emergency
17 involving the protection of life or property, or an unlawful
18 act perpetrated by another. Except as otherwise provided
19 herein, nothing in this paragraph shall be construed to limit
20 health insurance coverage for which the firefighter, spouse,
21 or dependent children may otherwise be eligible, except that a
22 person who qualifies for benefits under this section shall not
23 be eligible for the health insurance subsidy provided under
24 chapter 121, chapter 175, or chapter 185.

25
26 Notwithstanding any provision of this section to the contrary,
27 the death benefits provided in paragraphs (b), (c), and (f)
28 shall also be applicable and paid in cases where a firefighter
29 received bodily injury prior to July 1, 1993, and subsequently
30 died on or after July 1, 1993, as a result of such
31 in-line-of-duty injury.

1 Section 5. Subsections (4), (7), (14), (15), and (16)
2 of section 440.02, Florida Statutes, are amended, and
3 subsection (40) is added to said section, to read:
4 440.02 Definitions.--When used in this chapter, unless
5 the context clearly requires otherwise, the following terms
6 shall have the following meanings:
7 (4) "Casual" as used in this section shall be taken to
8 refer only to employments when the work contemplated is to be
9 completed in not exceeding 10 working days, without regard to
10 the number of persons employed, and when the total labor cost
11 of such work is less than ~~\$1,000~~\$100.
12 (7) "Construction industry" means any business
13 carrying out for-profit activities involving ~~the carrying out~~
14 ~~of~~ any building, clearing, filling, excavation, or substantial
15 improvement in the size or use of any structure or the
16 appearance of any land. ~~When appropriate to the context,~~
17 ~~"construction" refers to the act of construction or the result~~
18 ~~of construction.~~ However, "construction" shall not mean a
19 homeowner's ~~landowner's~~ act of construction or the result of a
20 construction upon his or her own premises, provided such
21 premises are not intended to be sold or resold or leased by
22 the owner within 1 year after the commencement of the
23 construction.
24 (14)(a) "Employee" means any person receiving
25 remuneration from an employer for the performance of any work
26 or service or the provision of any goods or supplies whether
27 by engaged in any employment under any appointment, or
28 contract for of hire, or apprenticeship, express or implied,
29 oral or written, whether lawfully or unlawfully employed, and
30 includes, but is not limited to, aliens and minors.
31

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

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

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

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

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

20 (c) The division may by rule establish those standard
21 industrial classification codes and their definitions which
22 meet the criteria of the definition of the term "construction"
23 as set forth in this section. ~~"Employee" includes a sole~~
24 ~~proprietor or a partner who devotes full time to the~~
25 ~~proprietorship or partnership and, except as provided in this~~
26 ~~paragraph, elects to be included in the definition of employee~~
27 ~~by filing notice thereof as provided in s. 440.05. Partners or~~
28 ~~sole proprietors actively engaged in the construction industry~~
29 ~~are considered employees unless they elect to be excluded from~~
30 ~~the definition of employee by filing written notice of the~~
31 ~~election with the division as provided in s. 440.05. However,~~

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

10 (d) For purposes of this chapter, all persons being
11 paid by a general contractor for work performed by or as a
12 subcontractor, or employee of a subcontractor, are employees
13 of the general contractor, except any person who~~"Employee"~~
14 ~~does not include:~~

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

16 a. ~~The independent contractor~~ Maintains a separate
17 business with his or her own work facility, truck, equipment,
18 materials, or similar accommodations;

19 2.b. The independent contractor Holds or has applied
20 for a federal employer identification number if required to do
21 so by any federal, state, or local law or rule, or who
22 otherwise has a social security number,~~unless the independent~~
23 ~~contractor is a sole proprietor who is not required to obtain~~
24 ~~a federal employer identification number under state or~~
25 ~~federal requirements;~~

26 3.c. The independent contractor Performs or agrees to
27 perform specific services or work for specific amounts of
28 money and controls the means of performing the services or
29 work he or she was hired to perform or supply;

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1 ~~4.d. The independent contractor~~ Incurs the principal
2 expenses related to the service or work that he or she
3 performs or agrees to perform;

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

8 ~~6.f. The independent contractor~~ Receives compensation
9 for work or services performed for a commission or on a
10 per-job or competitive-bid basis and not on any other basis
11 such as for salary or wages; and

12 ~~7.g. The independent contractor~~ May realize a profit
13 or suffer a loss in connection with performing work or
14 services and

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, under no circumstances shall more than one person per
22 trade per job site be a nonemployee of the general contractor.
23 The employer shall post in a conspicuous place on each job
24 site the name and federal employer identification number, or
25 if none is required, the social security number, of each
26 person being paid by the general contractor for work performed
27 on that job site who is a nonemployee of the general
28 contractor. For purposes of this subparagraph, "job site"
29 means the project as defined by the relevant building permit
30 and "trade" means a trade required to be licensed as such by
31 the Department of Business and Professional Regulation. Any

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

11 (e) An employee is not:

12 1. A domestic servant in a private house.

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

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

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

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

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

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

21 b. Volunteers participating in federal programs
22 established under Pub. L. No. 93-113.

23 7. Agricultural labor performed on a farm in the
24 employ of a bona fide farmer, or association of farmers, who
25 employs five or fewer regular employees and who employs fewer
26 than 12 other employees at one time for seasonal agricultural
27 labor that is completed in less than 30 days, provided such
28 seasonal employment does not exceed 45 days in the same
29 calendar year. The term "farm" includes stock, dairy, poultry,
30 fruit, fur-bearing animals, fish, and truck farms, ranches,
31 nurseries, and orchards. The term "agricultural labor"

1 includes field foremen, timekeepers, checkers, and other farm
2 labor supervisory personnel.~~Any officer of a corporation who~~
3 ~~elects to be exempt from this chapter.~~

4 8. Professional athletes, such as professional boxers,
5 wrestlers, baseball, football, basketball, hockey, polo,
6 tennis, jai alai, and similar players, and motorsports teams
7 competing in a motor racing event as defined in s. 549.08.~~A~~
8 ~~sole proprietor or officer of a corporation who actively~~
9 ~~engages in the construction industry, and a partner in a~~
10 ~~partnership that is actively engaged in the construction~~
11 ~~industry, who elects to be exempt from the provisions of this~~
12 ~~chapter. Such sole proprietor, officer, or partner is not an~~
13 ~~employee for any reason until the notice of revocation of~~
14 ~~election filed pursuant to s. 440.05 is effective.~~

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

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

29 11. Persons performing labor under a sentence of a
30 court to perform public service or community work as provided
31 in s. 316.193.

1 (15)(a) "Employer" means the state and all political
2 subdivisions thereof, all public and quasi-public corporations
3 therein, every person carrying on any employment, and the
4 legal representative of a deceased person or the receiver or
5 trustees of any person. If the employer is a corporation,
6 parties in actual control of the corporation, including, but
7 not limited to, the president, officers who exercise broad
8 corporate powers, directors, and all shareholders who directly
9 or indirectly own a controlling interest in the corporation,
10 are considered the employer for the purposes of ss. 440.105
11 and 440.106.

12 (b) However, a landowner shall not be considered the
13 employer of any person hired by the landowner to carry out
14 construction on his or her own premises, provided such
15 premises are not intended for immediate sale or resale.

16 (16)~~(a)~~ "Employment~~7~~" means, except as provided in
17 subsection (4), the payment of any remuneration for work or
18 services rendered or promised, or goods or services provided
19 or promised and, subject to the other provisions of this
20 chapter, means any service performed by an employee for the
21 person employing him or her.

22 (b) "Employment" includes:

23 1. Employment by the state and all political
24 subdivisions thereof and all public and quasi-public
25 corporations therein, including officers elected at the polls.

26 2. All private employments in which four or more
27 employees are employed by the same employer or, with respect
28 to the construction industry, all private employment in which
29 one or more employees are employed by the same employer.

30
31

1 3. Volunteer firefighters responding to or assisting
2 with fire or medical emergencies whether or not the
3 firefighters are on duty.

4 ~~(c) "Employment" does not include service performed by~~
5 ~~or as:~~

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

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

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

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

24 (40) "Medically necessary remedial treatment, care,
25 and attendance" means remedial treatment, care, and attendance
26 which an authorized treating physician has recommended in
27 writing.

28 Section 6. Section 440.05, Florida Statutes, is
29 amended to read:

30 (Substantial rewording of section.

31 See s. 440.05, F.S., for existing text.)

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

3 (1) Sole proprietors, partners, and corporate
4 officers, as defined in s. 440.02, who are not primarily
5 engaged in the construction industry as that term is defined
6 in s. 440.02, are exempt from the provisions of this chapter
7 unless they elect otherwise pursuant to subsection (2).

8 (2) Any person exempted from the provisions of this
9 chapter pursuant to this section who secures or whose employer
10 secures for them, workers' compensation insurance coverage,
11 shall be deemed to have waived the right to such exemption and
12 shall be governed by the provisions of this chapter.

13 (3) Every enterprise conducting business in the state
14 shall maintain business records as specified by rule by the
15 division, which rules shall include that any corporation with
16 exempt office and any partnership with exempt partners must
17 maintain written statements of those exempted persons
18 affirmatively acknowledging that individual's exempt status.

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

26 (a) For sole proprietors, a copy of federal income tax
27 form 1040 and schedule C.

28 (b) For partners, a copy of the partner's federal
29 income tax schedule K-1 (form 1065) and federal income tax
30 form 1040 and schedule E. The sole proprietor or partner in
31 question shall produce, upon request by the division, a copy

1 of the foregoing along with a statement by the sole proprietor
2 that the tax records provided are true and accurate copies of
3 what the sole proprietor or partner has filed with the United
4 States Internal Revenue Service. Such statement shall be
5 signed under oath by the sole proprietor or partner in
6 question and shall be notarized. The division shall issue a
7 stop-work order pursuant to s. 440.107(5) to any sole
8 proprietor or partner who fails or refuses to produce a copy
9 of the foregoing tax records and affidavit to the division
10 within 3 business days after that request and who has failed
11 to otherwise secure insurance for the provision of workers'
12 compensation benefits for himself or herself if required to do
13 so by this chapter.

14 (5) Any corporate officer claiming an exemption
15 pursuant to this section shall be listed on the records of the
16 the Division of Corporations of the Department of State as a
17 corporate officer. If the person claiming exemption as a
18 corporate officer is not so listed on the records of the
19 Secretary of State, that individual shall provide a notarized
20 affidavit to the division upon request by the division,
21 stating that the individual is a bona fide officer of the
22 corporation and stating the date such appointment or election
23 became or shall become effective. Such statement shall be
24 signed under oath by both the officer in question and the
25 president or chief operating officer of the corporation and
26 notarized. The division shall issue a stop-work order pursuant
27 to s. 440.107(5) to any person who claims to be exempt as a
28 corporate officer but who fails or refuses to produce a copy
29 of the foregoing to the division within 3 business days upon
30 request to the corporate officer and who has failed to
31 otherwise secure the insurance of workers' compensation

1 benefits for himself or herself if required to do so by this
2 chapter.

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

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

16 (8) Sole proprietors, partners, and corporate
17 officers, as those terms are defined in s. 440.02, or sole
18 proprietorships, partnerships, and corporations, which are
19 primarily engaged in the construction industry, as that term
20 is defined by s. 440.02, are not eligible for exemption from
21 the provisions of this chapter.

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

24 440.09 Coverage.--

25 (1) The employer shall pay compensation or furnish
26 benefits required by this chapter if the employee suffers an
27 accidental compensable injury or death arising out of work
28 performed in the course and the scope of employment. The
29 injury, its occupational cause, and any resulting
30 manifestations, ~~or~~ disability, or impairment shall be
31 established to a reasonable degree of medical certainty and by

1 objective medical findings. Mental or nervous injuries
2 occurring as a manifestation of an injury compensable under
3 this section shall be demonstrated by clear and convincing
4 evidence through objective medical findings as a result of the
5 injury from a psychiatrist certified by the division. In no
6 event is compensation payable as a result of any impairment
7 rating for psychiatric impairments.

8 (a) This chapter does not require any compensation or
9 benefits for any subsequent injury the employee suffers as a
10 result of an original injury arising out of and in the course
11 of employment unless the original injury is the major
12 contributing cause of the subsequent injury.

13 (b) If an injury arising out of and in the course of
14 employment combines with a preexisting disease or condition to
15 cause or prolong disability or need for treatment, the
16 employer must pay compensation or benefits required by this
17 chapter only to the extent that the injury arising out of and
18 in the course of employment is and remains the major
19 contributing cause of the disability or need for treatment.

20 (c) Death resulting from an operation by a surgeon
21 furnished by the employer for the cure of hernia as required
22 in s. 440.15(6) shall for the purpose of this chapter be
23 considered to be a death resulting from the accident causing
24 the hernia.

25 (d) If an accident happens while the employee is
26 employed elsewhere than in this state, which would entitle the
27 employee or his or her dependents to compensation if it had
28 happened in this state, the employee or his or her dependents
29 are entitled to compensation if the contract of employment was
30 made in this state, or the employment was principally
31 localized in this state. However, if an employee receives

1 compensation or damages under the laws of any other state, the
2 total compensation for the injury may not be greater than is
3 provided in this chapter.

4 Section 8. Section 440.10, Florida Statutes, is
5 amended to read:

6 440.10 Liability for compensation.--

7 (1)(a) Every employer coming within the provisions of
8 this chapter, including any brought within the chapter by
9 ~~waiver of exclusion or of exemption~~, shall be liable for, and
10 shall secure, the payment to his or her employees, or any
11 physician, surgeon, or pharmacist providing services under the
12 provisions of s. 440.13, of the compensation payable under ss.
13 440.13, 440.15, and 440.16. Any contractor or subcontractor
14 who engages in any public or private construction in the state
15 shall secure and maintain compensation for his or her
16 employees under this chapter as provided in s. 440.38.

17 (b) In case a contractor sublets any part or parts of
18 his or her contract work to a subcontractor or subcontractors,
19 all of the employees of such contractor and subcontractor or
20 subcontractors engaged on such contract work shall be deemed
21 to be employed in one and the same business or establishment;
22 and the contractor shall be liable for, and shall secure, the
23 payment of compensation to all such employees, except to
24 employees of a subcontractor who has secured such payment.

25 (c) A contractor may require a subcontractor to
26 provide evidence of workers' compensation insurance or a copy
27 of his or her certificate of election. A subcontractor
28 electing to be exempt ~~as a sole proprietor, partner, or~~
29 ~~officer of a corporation~~ shall provide a copy of his or her
30 certificate of election to the contractor.

31

1 (d)1. If a contractor becomes liable for the payment
2 of compensation to the employees of a subcontractor who has
3 failed to secure such payment in violation of s. 440.38, the
4 contractor or other third-party payor shall be entitled to
5 recover from the subcontractor all benefits paid or payable
6 plus interest unless the contractor and subcontractor have
7 agreed in writing that the contractor will provide coverage.

8 2. If a contractor or third-party payor becomes liable
9 for the payment of compensation to the employee of a
10 subcontractor who is actively engaged in the construction
11 industry and has elected to be exempt from the provisions of
12 this chapter, but whose election is invalid, the contractor or
13 third-party payor may recover from the claimant, partnership,
14 or corporation all benefits paid or payable plus interest,
15 unless the contractor and the subcontractor have agreed in
16 writing that the contractor will provide coverage.

17 (e) A subcontractor is not liable for the payment of
18 compensation to the employees of another subcontractor on such
19 contract work and is not protected by the
20 exclusiveness-of-liability provisions of s. 440.11 from action
21 at law or in admiralty on account of injury of such employee
22 of another subcontractor.

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

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

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 ~~division.~~

8
9 An ~~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 (2) Compensation shall be payable irrespective of
22 fault as a cause for the injury, except as provided in s.
23 440.09(3).

24 Section 9. Subsections (2), (3), (4), (5), and (6) of
25 section 440.13, Florida Statutes, are amended to read:

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

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

29 (a) Subject to the limitations specified elsewhere in
30 this chapter, the employer shall furnish to the employee such
31 medically necessary remedial treatment, care, and attendance

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

24 (b) The employer shall provide appropriate
25 professional or nonprofessional attendant care performed only
26 at the direction and control of a physician when such care is
27 medically necessary. The value of nonprofessional attendant
28 care provided by a family member must be determined as
29 follows:

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

1 2. If the family member is employed and elects to
2 leave that employment to provide attendant or custodial care,
3 the per-hour value of that care equals the per-hour value of
4 the family member's former employment, not to exceed the
5 per-hour value of such care available in the community at
6 large. However, the hourly rate paid to the family member
7 shall not exceed the hourly rate received in employment that
8 the family member quit to provide such care, but in no event
9 shall the amount equal more than the amount earned on a weekly
10 basis. A family member or a combination of family members
11 providing nonprofessional attendant care under this paragraph
12 may not be compensated for more than a total of 12 hours per
13 day.

14 (c) When no medical treatment has been provided and ~~if~~
15 the employer fails to provide any treatment or care required
16 by this section after request by the injured employee, the
17 employee may obtain such treatment at the expense of the
18 employer, if the treatment is compensable and medically
19 necessary. There must be a specific request for the treatment,
20 and the employer or carrier must be given a reasonable time
21 period within which to provide the treatment or care. However,
22 the employee is not entitled to recover any amount personally
23 expended for the treatment or service unless he or she has
24 requested the employer to furnish that treatment or service
25 and the employer has failed, refused, or neglected to provide
26 any medical treatment ~~do so~~ within a reasonable time or unless
27 the nature of the injury requires such treatment, nursing, and
28 services and the employer or his or her superintendent or
29 foreman, having knowledge of the injury, has neglected to
30 provide the treatment or service.

31

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

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

20 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

21 (a) As a condition to eligibility for payment under
22 this chapter, a health care provider who renders services must
23 be a certified health care provider and must receive
24 authorization from the carrier before providing treatment.
25 This paragraph does not apply to emergency care. The division
26 shall adopt rules to implement the certification of health
27 care providers. As a one-time prerequisite to obtaining
28 certification, the division shall require each physician to
29 demonstrate proof of completion of a minimum 5-hour course
30 that covers the subject areas of cost containment, utilization
31 control, ergonomics, and the practice parameters adopted by

1 the division governing the physician's field of practice. The
2 division shall coordinate with the Agency for Health Care
3 Administration, the Florida Medical Association, the Florida
4 Osteopathic Medical Association, the Florida Chiropractic
5 Association, the Florida Podiatric Medical Association, the
6 Florida Optometric Association, the Florida Dental
7 Association, and other health professional organizations and
8 their respective boards as deemed necessary by the Agency for
9 Health Care Administration in complying with this subsection.
10 ~~No later than October 1, 1994,~~The division shall adopt rules
11 regarding the criteria and procedures for approval of courses
12 and the filing of proof of completion by the physicians.

13 (b) A health care provider who renders emergency care
14 must notify the carrier by the close of the third business day
15 after it has rendered such care. If the emergency care results
16 in admission of the employee to a health care facility, the
17 health care provider must notify the carrier by telephone
18 within 24 hours after initial treatment. Emergency care is not
19 compensable under this chapter unless the injury requiring
20 emergency care arose as a result of a work-related accident.
21 Pursuant to chapter 395, all licensed physicians and health
22 care providers in this state shall be required to make their
23 services available for emergency treatment of any employee
24 eligible for workers' compensation benefits. To refuse to make
25 such treatment available is cause for revocation of a license.

26 (c) A health care provider may not refer the employee
27 to another health care provider, diagnostic facility, therapy
28 center, or other facility without prior authorization from the
29 carrier, except when emergency care is rendered. Any referral
30 must be to a health care provider that has been certified by
31 the division, unless the referral is for emergency treatment.

1 (d) A carrier must respond to a request for
2 authorization made directly from a health care provider, by
3 telephone or in writing, ~~to a request for authorization~~ by the
4 close of the third business day after receipt of the request.
5 A carrier who fails to respond to a written request for
6 authorization for referral for medical treatment by the close
7 of the third business day after receipt of the request
8 directly from a health care provider consents to the medical
9 necessity for such treatment. All such requests must be made
10 to the carrier. Notice to the carrier does not include notice
11 to the employer.

12 (e) Carriers shall adopt procedures for receiving,
13 reviewing, documenting, and responding to requests for
14 authorization. Such procedures shall be for a health care
15 provider certified under this section.

16 (f) By accepting payment under this chapter for
17 treatment rendered to an injured employee, a health care
18 provider consents to the jurisdiction of the division as set
19 forth in subsection (11) and to the submission of all records
20 and other information concerning such treatment to the
21 division in connection with a reimbursement dispute, audit, or
22 review as provided by this section. The health care provider
23 must further agree to comply with any decision of the division
24 rendered under this section.

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

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

31

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

21 (j) Notwithstanding anything in this chapter to the
22 contrary, a sick or injured employee shall be entitled, at all
23 times, to free, full, and absolute choice in the selection of
24 the pharmacy or pharmacist dispensing and filling
25 prescriptions for medicines required under this chapter. It is
26 expressly forbidden for the division, an employer, or a
27 carrier, or any agent or representative of the division, an
28 employer, or a carrier to select the pharmacy or pharmacist
29 which the sick or injured employee must use; condition
30 coverage or payment on the basis of the pharmacy or pharmacist
31

1 utilized; or to otherwise interfere in the selection by the
2 sick or injured employee of a pharmacy or pharmacist.

3 (k) Notwithstanding subsection (12), the carrier may
4 be allowed to provide for appropriate financial incentives to
5 reduce service costs and utilization without sacrificing the
6 quality of service.

7 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
8 DIVISION.--

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

24 (b) Each medical report or bill obtained or received
25 by the employer, the carrier, or the injured employee, or the
26 attorney for the employer, carrier, or injured employee, with
27 respect to the remedial treatment or care of the injured
28 employee, including any report of an examination, diagnosis,
29 or disability evaluation, must be filed with the Division of
30 Workers' Compensation pursuant to rules adopted by the
31 division. The health care provider shall also furnish to the

1 injured employee or to his or her attorney, on demand, a copy
2 of his or her office chart, records, and reports, and may
3 charge the injured employee an amount authorized by the
4 division for the copies. Each such health care provider shall
5 provide to the division any additional information about the
6 remedial treatment, care, and attendance that the division
7 reasonably requests.

8 (c) It is the policy for the administration of the
9 workers' compensation system that there be reasonable access
10 to medical information by all parties to facilitate the
11 self-executing features of the law. Notwithstanding the
12 limitations in s. 456.057 and subject to the limitations in s.
13 381.004, upon the request of the employer, the carrier, a
14 rehabilitation provider, or the attorney for either of them,
15 the medical records of an injured employee must be furnished
16 to those persons and the medical condition of the injured
17 employee must be discussed with those persons, if the records
18 and the discussions are restricted to conditions relating to
19 the workplace injury. Any such discussions may be held before
20 or after the filing of a claim without the knowledge, consent,
21 or presence of any other party or his or her agent or
22 representative. A health care provider who willfully refuses
23 to provide medical records or to discuss the medical condition
24 of the injured employee, after a reasonable request is made
25 for such information pursuant to this subsection, shall be
26 subject by the division to one or more of the penalties set
27 forth in paragraph (8)(b). For purposes of this paragraph, the
28 term "discussion" means the free interchange of ideas, facts,
29 and findings among the parties and health care providers
30 designed to aid the parties in reaching conclusions that will
31

1 enable them to carry out their legal obligations and
2 responsibilities.

3 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

13 (b) Each party is bound by his or her selection and is
14 entitled to only one ~~of an~~ independent medical examiner as a
15 result of injury and in only one specialty and is entitled to
16 an alternate 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 a division medical advisor as an
29 independent medical examiner. The opinion of the advisors
30 acting as examiners shall not be afforded the presumption set
31 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) Except when compensability has been denied,no
26 medical opinion other than the opinion of a medical advisor
27 appointed by the judge of compensation claims or division, an
28 independent medical examiner, a peer review consultant
29 pursuant to a utilization review set forth in subsection (6),
30 or an authorized treating provider is admissible in
31 proceedings before the judges of compensation claims.

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

5 (6) UTILIZATION REVIEW.--Carriers shall review all
6 bills, invoices, and other claims for payment submitted by
7 health care providers in order to identify overutilization and
8 billing errors, and may hire peer review consultants or
9 conduct independent medical evaluations. Such consultants,
10 including peer review organizations, are immune from liability
11 in the execution of their functions under this subsection to
12 the extent provided in s. 766.101. If a carrier finds that
13 overutilization of medical services or a billing error has
14 occurred, it must disallow or adjust payment for such services
15 or error without order of a judge of compensation claims or
16 the division, if the carrier, in making its determination, has
17 complied with this section and rules adopted by the division.
18 Any physician's action as a peer review consultant or as an
19 independent medical examiner is an independent medical
20 examination for purposes of resolving disputes arising as a
21 result of the peer review or independent medical examination.
22 The evaluation and such reports shall be admissible before the
23 judge of compensation claims if the carrier determines to
24 enter such report into evidence, however, such independent
25 medical evaluations shall not be included in the number as
26 provided in subsection (5).

27 Section 10. Paragraph (a) of subsection (1) of section
28 440.14, Florida Statutes, is amended, and subsection (5) is
29 added to said section, to read:

30 440.14 Determination of pay.--

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

6 (a) If the injured employee has worked in the
7 employment in which she or he was working at the time of the
8 injury, whether for the same or another employer, during
9 substantially the whole of 13 weeks immediately preceding the
10 injury, her or his average weekly wage shall be one-thirteenth
11 of the total amount of wages earned in such employment during
12 the 13 weeks. As used in this paragraph, the term
13 "substantially the whole of 13 weeks" shall be deemed to mean
14 and refer to an actual ~~a constructive~~ period of 13 weeks as a
15 whole, which shall be defined as the 13 complete weeks, in
16 accordance with the employer's regular payroll periods, prior
17 to the week in which the injury occurs ~~a consecutive period of~~
18 ~~91 days~~, and the term "during substantially the whole of 13
19 weeks" shall be deemed to mean during not less than 90 percent
20 of the total customary full-time hours of employment within
21 such period considered as a whole.

22 (5) If concurrent employment is to be used in the
23 calculation of the average weekly wage, the employee shall be
24 responsible for providing earnings from concurrent employment
25 to the employer or carrier within 45 days after injury or
26 after the first payment of compensation. Failure to provide
27 such information shall result in concurrent employment not
28 being included in such calculation.

29 Section 11. Paragraph (b) of subsection (1), paragraph
30 (a) of subsection (3), and paragraph (a) of subsection (10) of
31 section 440.15, Florida Statutes, are amended to read:

1 440.15 Compensation for disability.--Compensation for
2 disability shall be paid to the employee, subject to the
3 limits provided in s. 440.12(2), as follows:
4 (1) PERMANENT TOTAL DISABILITY.--
5 (b) Any compensable injury eligible for permanent
6 total benefits must be of a nature and severity that prevents
7 the employee from being able to perform his or her prior work
8 or any work available in substantial numbers within the
9 national economy. If the employee is engaged in, or is
10 physically capable of engaging in, any gainful employment,
11 including sheltered employment, he or she shall not be
12 entitled to permanent total disability. The burden shall be
13 on the employee to establish that he or she is not able to
14 perform, due to physical limitations, even part-time sedentary
15 work if such work is available within a 100 mile radius of the
16 employee's residence.~~Only a catastrophic injury as defined in~~
17 ~~s. 440.02 shall, in the absence of conclusive proof of a~~
18 ~~substantial earning capacity, constitute permanent total~~
19 ~~disability. Only claimants with catastrophic injuries are~~
20 ~~eligible for permanent total benefits.~~In no other case may
21 permanent total disability be awarded.
22 (3) PERMANENT IMPAIRMENT LOSS ~~AND WAGE-LOSS~~
23 BENEFITS.--
24 (a) Impairment benefits.--
25 1. Once the employee has reached the date of maximum
26 medical improvement, impairment benefits are due and payable
27 within 20 days after the carrier has knowledge of the
28 impairment.
29 2. The three-member panel, in cooperation with the
30 division, shall establish and use a uniform permanent
31 impairment rating schedule. This schedule must be based on

1 medically or scientifically demonstrable findings as well as
2 the systems and criteria set forth in the American Medical
3 Association's Guides to the Evaluation of Permanent
4 Impairment; the Snellen Charts, published by American Medical
5 Association Committee for Eye Injuries; and the Minnesota
6 Department of Labor and Industry Disability Schedules. The
7 schedule should be based upon objective findings. The schedule
8 shall be more comprehensive than the AMA Guides to the
9 Evaluation of Permanent Impairment and shall expand the areas
10 already addressed and address additional areas not currently
11 contained in the guides. On August 1, 1979, and pending the
12 adoption, by rule, of a permanent schedule, Guides to the
13 Evaluation of Permanent Impairment, copyright 1977, 1971,
14 1988, by the American Medical Association, shall be the
15 temporary schedule and shall be used for the purposes hereof.
16 For injuries after July 1, 1990, pending the adoption by
17 division rule of a uniform disability rating schedule, the
18 Minnesota Department of Labor and Industry Disability Schedule
19 shall be used unless that schedule does not address an injury.
20 In such case, the Guides to the Evaluation of Permanent
21 Impairment by the American Medical Association shall be used.
22 Determination of permanent impairment under this schedule must
23 be made by a physician licensed under chapter 458, a doctor of
24 osteopathic medicine licensed under chapters 458 and 459, a
25 chiropractic physician licensed under chapter 460, a podiatric
26 physician licensed under chapter 461, an optometrist licensed
27 under chapter 463, or a dentist licensed under chapter 466, as
28 appropriate considering the nature of the injury. No other
29 persons are authorized to render opinions regarding the
30 existence of or the extent of permanent impairment.
31

1 3. All impairment income benefits shall be based on an
2 impairment rating using the impairment schedule referred to in
3 subparagraph 2. Impairment income benefits are paid weekly at
4 the rate of 66 and 2/3 ~~50~~ percent of the employee's average
5 weekly wage ~~temporary total disability benefit~~ not to exceed
6 the maximum weekly benefit under s. 440.12. An employee's
7 entitlement to impairment income benefits begins the day after
8 the employee reaches maximum medical improvement or the
9 expiration of temporary benefits, whichever occurs earlier,
10 and continues until the earlier of:
11 a. The expiration of a period computed at the rate of
12 3 weeks for each percentage point of impairment; or
13 b. The death of the employee.
14 4. After the employee has been certified by a doctor
15 as having reached maximum medical improvement or 6 weeks
16 before the expiration of temporary benefits, whichever occurs
17 earlier, the certifying doctor shall evaluate the condition of
18 the employee and assign an impairment rating, using the
19 impairment schedule referred to in subparagraph 2.
20 Compensation is not payable for the mental, psychological, or
21 emotional injury arising out of depression from being out of
22 work or from preexisting mental, psychological, or emotional
23 conditions. If the certification and evaluation are performed
24 by a doctor other than the employee's treating doctor, the
25 certification and evaluation must be submitted to the treating
26 doctor, and the treating doctor must indicate agreement or
27 disagreement with the certification and evaluation. The
28 certifying doctor shall issue a written report to the
29 division, the employee, and the carrier certifying that
30 maximum medical improvement has been reached, stating the
31 impairment rating, and providing any other information

1 required by the division. If the employee has not been
2 certified as having reached maximum medical improvement before
3 the expiration of 102 weeks after the date temporary total
4 disability benefits begin to accrue, the carrier shall notify
5 the treating doctor of the requirements of this section.

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

8 6. The division may by rule specify forms and
9 procedures governing the method of payment of wage loss and
10 impairment benefits for dates of accidents before January 1,
11 1994, and impairment benefits for dates of accidents on or
12 after January 1, 1994.

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

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

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

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

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

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

10 Section 12. Subsection (7) of section 440.185, Florida
11 Statutes, is amended to read:

12 440.185 Notice of injury or death; reports; penalties
13 for violations.--

14 (7) Every carrier shall file with the division within
15 21 calendar days after the effective date ~~issuance~~ of a new
16 policy or contract of insurance such policy information as the
17 division may require, including notice of whether the policy
18 is a minimum premium policy. Notice of cancellation or
19 expiration of a policy as set out in s. 440.42(3) shall be
20 filed with ~~mailed to~~ the division in accordance with rules
21 promulgated by the division under chapter 120.

22 Section 13. Section 440.191, Florida Statutes, is
23 amended to read:

24 440.191 Employee Assistance and Ombudsman Office.--

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

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

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

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

21 (d) The Employee Assistance and Ombudsman Office shall
22 be authorized to participate in an early intervention program.
23 Upon notification of an industrial accident, the office may
24 contact the injured employee and advise the employee of his or
25 her rights and responsibilities under this chapter and the
26 services available to him or her under this section.

27 (e) All medical-only claims of \$5,000 or less, or
28 disputed issues as to the average weekly wage, medical mileage
29 reimbursement, or disputed issues as to independent medical
30 evaluations, shall be determined with or without a hearing by
31 the judge of compensation claims having jurisdiction over the

1 dispute. Neither party shall be represented by counsel during
2 such hearings if a hearing is deemed necessary by the judge of
3 compensation claims. Such matters shall be handled pursuant to
4 rules adopted by the Division of Administrative Hearings. Any
5 order of the judge of compensation claims is revocable
6 pursuant to s. 440.271.

7 ~~(2)(a) An employee may not file a petition requesting~~
8 ~~any benefit under this chapter unless the employee has~~
9 ~~exhausted the procedures for informal dispute resolution under~~
10 ~~this section.~~

11 ~~(a)(b)~~ If at any time the employer or its carrier
12 fails to provide benefits to which the employee believes she
13 or he is entitled, the employee shall file with the division,
14 the carrier, the carrier's attorney, the Division of
15 Administrative Hearings, and the judge of compensation claims
16 with jurisdiction over the petition for benefits, a petition
17 for benefits which meets the requirements of s. 440.192(1),
18 ~~(2), and (3) contact the office to request assistance in~~
19 ~~resolving the dispute.~~ The office may ~~shall~~ investigate the
20 dispute and shall attempt to facilitate an agreement between
21 the employee and the employer or carrier. The employee, the
22 employer, and the carrier shall cooperate with the office and
23 shall timely provide the office with any documents or other
24 information that it may require in connection with its efforts
25 under this section.

26 ~~(b)(c)~~ The office may compel parties to attend
27 conferences in person or by telephone in an attempt to resolve
28 disputes quickly and in the most efficient manner possible.
29 Settlement agreements resulting from such conferences must be
30 submitted to the Office of the Judges of Compensation Claims
31 for approval.

1 (c)~~(d)~~ The Employee Assistance and Ombudsman Office
2 may assign an ombudsman to assist the employee in resolving
3 any disputed issue presented in the dispute ~~or-if the~~
4 disputed issue ~~dispute~~ is not resolved within 30 days after
5 the employee files the petition for benefits ~~contacts the~~
6 ~~office, the ombudsman shall, at the employee's request, assist~~
7 ~~the employee in drafting a petition for benefits and explain~~
8 ~~the procedures for filing petitions. The division may by rule~~
9 ~~determine the method used to calculate the 30-day period.~~The
10 Employee Assistance and Ombudsman Office may not represent
11 employees before the judges of compensation claims. An
12 employer or carrier may not pay any attorneys' fees on behalf
13 of the employee for services rendered or costs incurred in
14 connection with this section, unless expressly authorized
15 elsewhere in this chapter.

16 Section 14. Section 440.192, Florida Statutes, is
17 amended to read:

18 440.192 Procedure for resolving benefit disputes.--

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

26 (1)~~(2)~~ The judge ~~Office of the Judges~~ of compensation
27 claims shall review each petition and shall dismiss each
28 petition or any portion of such petition, upon its own motion
29 or upon the motion of any party, that does not on its face
30 specifically identify or itemize the following:

31

- 1 (a) Name, address, telephone number, and social
2 security number of the employee.
- 3 (b) Name, address, and telephone number of the
4 employer.
- 5 (c) A detailed description of the injury and cause of
6 the injury, including the location of the occurrence and the
7 date or dates of the accident.
- 8 (d) A detailed description of the employee's job, work
9 responsibilities, and work the employee was performing when
10 the injury occurred.
- 11 (e) The time period for which compensation, and the
12 specific classification of compensation, was not timely
13 provided.
- 14 (f) The medical treatment which has not been provided
15 which has been recommended by an authorized treating
16 physician. A copy of the written documentation by the
17 authorized treating physician recommending such care must be
18 attached to the petition.
- 19 ~~(g)~~(f) Date of maximum medical improvement, character
20 of disability, and specific statement of all benefits or
21 compensation that the employee is seeking.
- 22 ~~(h)~~(g) The specific ~~At~~ travel costs to which the
23 employee believes she or he is entitled, including dates of
24 travel and purpose of travel, means of transportation, and
25 mileage, including the date such request was filed with the
26 carrier and a copy of the request which was filed.
- 27 ~~(i)~~(h) Specific listing of all medical charges alleged
28 unpaid, including the name and address of the medical
29 provider, the amounts due, and the specific dates of
30 treatment.
- 31

1 ~~(j)(i)~~ The type or nature of treatment care or
2 attendance sought and the justification for such treatment.

3 ~~(k)(j)~~ Specific explanation of any other disputed
4 issue that a judge of compensation claims will be called to
5 rule upon.

6 (1) If the petition is for average weekly wage, the
7 petition shall include a copy of the 13-week wage statement,
8 the specific details as to why the 13-week wage statement is
9 incorrect, including the check stubs or other documentation to
10 support the petition and, if the issue is concurrent
11 employment, the name and address of the concurrent employer,
12 all check stubs, days worked, and the amount which should be
13 included in the average weekly wage and the reason for the
14 petition. The dismissal of any petition or any portion of a
15 petition under this section shall be without prejudice and
16 shall not require a hearing.

17 (3) A petition for benefits may contain a claim for
18 past benefits and continuing benefits in any benefit category,
19 but is limited to those in default and ripe, due, and owing on
20 the date the petition is filed. If the employer has elected to
21 satisfy its obligation to provide medical treatment, care, and
22 attendance through a managed care arrangement designated under
23 this chapter, the employee must exhaust all managed care
24 grievance procedures before filing a petition for benefits
25 under this section.

26 ~~(4) The petition must include a certification by the~~
27 ~~claimant or, if the claimant is represented by counsel, the~~
28 ~~claimant's attorney, stating that the claimant, or attorney if~~
29 ~~the claimant is represented by counsel, has made a good faith~~
30 ~~effort to resolve the dispute and that the claimant or~~
31 ~~attorney was unable to resolve the dispute with the carrier.~~

1 ~~(4)~~(5) All motions to dismiss must state with
2 particularity the basis for the motion. The judge of
3 compensation claims shall enter an order upon such motions
4 without hearing, unless good cause for hearing is shown. When
5 any petition or portion of such petition is dismissed for lack
6 of specificity under this subsection, the claimant must be
7 allowed 20 days after the date of the order of dismissal in
8 which to file an amended petition. Any grounds for dismissal
9 for lack of specificity under this section may be raised until
10 the filing of the pretrial stipulation ~~not asserted within 30~~
11 ~~days after receipt of the petition for benefits are thereby~~
12 ~~waived.~~

13 ~~(5)~~(6) If the claimant is not represented by counsel,
14 the Office of the Judges of Compensation Claims may request
15 the Employee Assistance and Ombudsman Office to assist the
16 claimant in filing a petition that meets the requirements of
17 this section.

18 ~~(6)~~(7) Notwithstanding the provisions of s. 440.34, a
19 judge of compensation claims may not award attorney's fees
20 payable by the carrier for services expended or costs incurred
21 prior to 30 days after the filing of a petition ~~that does not~~
22 ~~meet the requirements of this section.~~

23 ~~(7)~~(8) Within 30 ~~14~~ days after receipt of a petition
24 for benefits by certified mail, the carrier must either pay
25 the requested benefits ~~without prejudice to its right to deny~~
26 ~~within 120 days from receipt of the petition~~ or file a
27 response to petition ~~notice of denial~~ with the division. The
28 carrier must list all benefits requested but not paid and
29 explain its justification for nonpayment in the response to
30 petition ~~notice of denial~~. The carrier shall also state those
31 benefits that have been paid or authorized in the response to

1 ~~petition. A carrier that does not deny compensability in~~
2 ~~accordance with s. 440.20(4) is deemed to have accepted the~~
3 ~~employee's injuries as compensable, unless it can establish~~
4 ~~material facts relevant to the issue of compensability that~~
5 ~~could not have been discovered through reasonable~~
6 ~~investigation within the 120-day period. The carrier shall~~
7 provide copies of the notice to the filing party, employer,
8 and claimant by certified mail.

9 Section 15. Paragraph (a) of subsection (1) and
10 subsections (6), (7), and (11) of section 440.20, Florida
11 Statutes, are amended to read:

12 440.20 Time for payment of compensation; penalties for
13 late payment.--

14 (1)(a) Unless it denies compensability or entitlement
15 to benefits, the carrier shall pay compensation directly to
16 the employee as required by ss. 440.14, 440.15, and 440.16, in
17 accordance with the obligations set forth in such sections. If
18 authorized by the employee, the carrier's obligation to pay
19 compensation directly to the employee is satisfied when the
20 carrier directly deposits, by electronic transfer or other
21 means, compensation into the employee's bank account or into a
22 bank account which has been established by the carrier for the
23 employee. Compensation by direct deposit shall be deemed paid
24 on the date the funds become available for withdrawal by the
25 employee.

26 (6) If any installment of compensation for death or
27 dependency benefits, disability, permanent impairment, or wage
28 loss payable without an award is not paid within 7 days after
29 it becomes due, as provided in subsection (2), subsection (3),
30 or subsection (4), there shall be added to such unpaid
31 installment a punitive penalty of an amount equal to 20

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

30 (7) If any compensation, payable under the terms of an
31 award, is not paid within 30 ~~7~~ days after it becomes due,

1 there shall be added to such unpaid compensation an amount
2 equal to 20 percent thereof, which shall be paid at the same
3 time as, but in addition to, such compensation, unless review
4 of the compensation order making such award is had as provided
5 in s. 440.25.

6 (11)(a) Upon joint petition of all interested parties,
7 a lump-sum payment in exchange for the employer's or carrier's
8 release from liability for future medical expenses, as well as
9 future payments of compensation expenses and any other
10 benefits provided under this chapter, shall be allowed at any
11 time in any case in which the employer or carrier has filed a
12 written notice of denial within 120 days after the the
13 employer receives notice date of the injury, and the judge of
14 compensation claims at a hearing to consider the settlement
15 proposal finds a justiciable controversy as to legal or
16 medical compensability of the claimed injury or the alleged
17 accident. A judge of compensation claims shall not be required
18 to hold a hearing if the claimant is represented by an
19 attorney and all parties stipulate that a hearing is
20 unnecessary.The employer or carrier may not pay any
21 attorney's fees on behalf of the claimant for any settlement
22 under this section unless expressly authorized elsewhere in
23 this chapter. Upon the joint petition of all interested
24 parties ~~and after giving due consideration to the interests of~~
25 ~~all interested parties~~, the judge of compensation claims shall
26 ~~may~~ enter a compensation order approving and authorizing the
27 discharge of the liability of the employer for compensation
28 and remedial treatment, care, and attendance, as well as
29 rehabilitation expenses, by the payment of a lump sum. Such a
30 compensation order so entered upon joint petition of all
31 interested parties is not subject to modification or review

1 under s. 440.28. ~~If the settlement proposal together with~~
2 ~~supporting evidence is not approved by the judge of~~
3 ~~compensation claims, it shall be considered void.~~ Upon
4 approval of a lump-sum settlement under this subsection, the
5 judge of compensation claims shall send a report to the Chief
6 Judge of the amount of the settlement and a statement of the
7 nature of the controversy. The Chief Judge shall keep a record
8 of all such reports filed by each judge of compensation claims
9 and shall submit to the Legislature a summary of all such
10 reports filed under this subsection annually by September 15.

11 (b) Upon joint petition of all interested parties, a
12 lump-sum payment in exchange for the employer's or carrier's
13 release from liability for future medical expenses, as well as
14 future payments of compensation and rehabilitation expenses,
15 and any other benefits provided under this chapter, may be
16 allowed at any time in any case after the injured employee has
17 attained maximum medical improvement. An employer or carrier
18 may not pay any attorney's fees on behalf of the claimant for
19 any settlement, unless expressly authorized elsewhere in this
20 chapter. A compensation order so entered upon joint petition
21 of all interested parties shall not be subject to modification
22 or review under s. 440.28. When the claimant is not
23 represented by an attorney, ~~However, a judge of compensation~~
24 ~~claims is not required to approve any award for lump-sum~~
25 ~~payment when it is determined by the judge of compensation~~
26 ~~claims that the payment being made is in excess of the value~~
27 ~~of benefits the claimant would be entitled to under this~~
28 ~~chapter.~~ the judge of compensation claims shall make or cause
29 to be made such investigations as she or he considers
30 necessary, in each case in which the parties have stipulated
31 that a proposed final settlement of liability of the employer

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

1 Health and Human Services. The probability of the happening of
2 any other contingency affecting the amount or duration of the
3 compensation, except the possibility of the remarriage of a
4 surviving spouse, shall not be disregarded. As a condition of
5 approving a lump-sum payment to a surviving spouse, the judge
6 of compensation claims, in the judge of compensation claims'
7 discretion, may require security which will ensure that, in
8 the event of the remarriage of such surviving spouse, any
9 unaccrued future payments so paid may be recovered or recouped
10 by the employer or carrier. Such applications shall be
11 considered and determined in accordance with s. 440.25.

12 Section 16. Section 440.22, Florida Statutes, is
13 amended to read:

14 440.22 Assignment and exemption from claims of
15 creditors.--No assignment, release, or commutation of
16 compensation or benefits due or payable under this chapter
17 except as provided by this chapter shall be valid, and such
18 compensation and benefits shall be exempt from all claims of
19 creditors, and from levy, execution and attachments or other
20 remedy for recovery or collection of a debt, which exemption
21 may not be waived. However, the exemption of workers'
22 compensation claims from creditors does not extend to claims
23 based on an award of child support or alimony.

24 Section 17. Section 440.25, Florida Statutes, is
25 amended to read:

26 440.25 Procedures for mediation and hearings.--

27 (1) Within 40 ~~21~~ days after a petition for benefits is
28 filed ~~under s. 440.192, a mediation conference concerning such~~
29 ~~petition shall be held. Within 7 days after such petition is~~
30 ~~filed~~, the judge of compensation claims shall notify the
31 interested parties that a mediation conference concerning such

1 petition has been scheduled ~~will be held~~. All pending
2 petitions which have been filed for 30 days shall be scheduled
3 for mediation at the same time.Such notice shall give the
4 dates of petitions being mediated and the date, time, and
5 location of the mediation conference. Such notice may be
6 served personally upon the interested parties or may be sent
7 to the interested parties by mail. Such mediation must be held
8 within 60 days after the filing of the petition unless there
9 is a showing of good cause presented to the judge of
10 compensation claims. If the judge of compensation claims
11 grants a continuance, the date of the rescheduled mediation
12 shall be set forth in the order and shall be held on that
13 date. However, if the employee and the employer or carrier are
14 represented by counsel, the representative of the employer or
15 carrier shall be allowed to attend such mediation via
16 telephone if the representative lives outside the county in
17 which the mediation is being held. At no time shall a
18 mediation conference be used for the sole purpose of mediating
19 attorney's fees.

20 (2) Any party who participates in a mediation
21 conference shall not be precluded from requesting a hearing
22 following the mediation conference should both parties not
23 agree to be bound by the results of the mediation conference.
24 A mediation conference is required to be held unless this
25 requirement is waived by the Chief Judge. No later than 3 days
26 prior to the mediation conference, all parties must submit any
27 applicable motions, including, but not limited to, a motion to
28 waive the mediation conference, to the judge of compensation
29 claims.

30 (3) Such mediation conference shall be conducted
31 informally and does not require the use of formal rules of

1 evidence or procedure. Any information from the files,
2 reports, case summaries, mediator's notes, or other
3 communications or materials, oral or written, relating to a
4 mediation conference under this section obtained by any person
5 performing mediation duties is privileged and confidential and
6 may not be disclosed without the written consent of all
7 parties to the conference. Any research or evaluation effort
8 directed at assessing the mediation program activities or
9 performance must protect the confidentiality of such
10 information. Each party to a mediation conference has a
11 privilege during and after the conference to refuse to
12 disclose and to prevent another from disclosing communications
13 made during the conference whether or not the contested issues
14 are successfully resolved. This subsection and paragraphs
15 (4)(a) and (b) shall not be construed to prevent or inhibit
16 the discovery or admissibility of any information that is
17 otherwise subject to discovery or that is admissible under
18 applicable law or rule of procedure, except that any conduct
19 or statements made during a mediation conference or in
20 negotiations concerning the conference are inadmissible in any
21 proceeding under this chapter. The Division of Administrative
22 Hearings shall maintain a list of mediators who have been
23 certified pursuant to s. 44.106. Mediators shall be
24 compensated and paid by the employer or carrier according to
25 rules adopted by the Supreme Court as set forth in s.
26 44.102(5)(b).~~The Chief Judge shall select a mediator. The~~
27 ~~mediator shall be employed on a full-time basis by the Office~~
28 ~~of the Judges of Compensation Claims.~~A mediator must be a
29 member of The Florida Bar, for at least 5 years and must
30 complete a mediation training program pursuant to s. 44.106,
31 and must be certified by the division as having completed a

1 ~~workers' compensation training program approved by the Chief~~
2 ~~Judge. Adjunct mediators may be employed by the Office of the~~
3 ~~Judges of Compensation Claims on an as-needed basis and shall~~
4 ~~be selected from a list prepared by the Chief Judge. An~~
5 ~~adjunct mediator must be independent of all parties~~
6 ~~participating in the mediation conference. An adjunct mediator~~
7 ~~must be a member of The Florida Bar for at least 5 years and~~
8 ~~must complete a mediation training program approved by the~~
9 ~~Chief Judge. An adjunct mediator shall have access to the~~
10 ~~office, equipment, and supplies of the judge of compensation~~
11 ~~claims in each district.~~In the event both parties agree, the
12 results of the mediation conference shall be binding and
13 neither party shall have a right to appeal the results. In the
14 event either party refuses to ~~agree to the results of the~~
15 mediation conference, the results of the mediation conference
16 as well as the testimony, witnesses, and evidence presented at
17 the conference shall not be admissible at any subsequent
18 proceeding on the claim. The mediator shall not be called in
19 to testify or give deposition to resolve any claim for any
20 hearing before the judge of compensation claims. The employer
21 may be represented by an attorney at the mediation conference
22 if the employee is also represented by an attorney at the
23 mediation conference.

24 (4)(a) If, on the 7th ~~10th~~ day following commencement
25 of mediation, the questions in dispute have not been resolved,
26 the judge of compensation claims shall schedule ~~hold~~ a
27 pretrial hearing to be held within 90 days after the filing of
28 the petition. The judge of compensation claims shall give the
29 interested parties at least 7 days' advance notice of the
30 pretrial hearing by mail. The notice shall give the time,
31 date, and location for the pretrial conference.At the

1 pretrial hearing, the judge of compensation claims shall,
2 subject to paragraph (b), set a date for the final hearing
3 that allows the parties 90 ~~at least 30~~ days from the date of
4 the pretrial conference to conduct discovery unless the
5 parties consent to an earlier hearing date.

6 (b) The final hearing must be held and concluded
7 within 210 ~~45~~ days after the filing of the petition ~~pretrial~~
8 ~~hearing~~. Continuances may be granted only if the requesting
9 party demonstrates to the judge of compensation claims that
10 the reason for requesting the continuance arises from
11 circumstances beyond the party's control and was not
12 foreseeable. Any order on a continuance shall set forth the
13 date the final hearing is rescheduled.

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

17 (c)~~(d)~~ The hearing shall be held in the county where
18 the injury occurred, if the injury occurred in this state,
19 unless otherwise agreed to between the parties and authorized
20 by the judge of compensation claims in the county where the
21 injury occurred. If the injury occurred without the state and
22 is one for which compensation is payable under this chapter,
23 then the hearing above referred to may be held in the county
24 of the employer's residence or place of business, or in any
25 other county of the state which will, in the discretion of the
26 Chief Judge, be the most convenient for a hearing. The hearing
27 shall be conducted by a judge of compensation claims, who
28 shall, within 14 days after final hearing, unless otherwise
29 agreed by the parties, determine the dispute in a summary
30 manner. At such hearing, the claimant and employer may each
31 present evidence in respect of such claim and may be

1 represented by any attorney authorized in writing for such
2 purpose. When there is a conflict in the medical evidence
3 submitted at the hearing, the provisions of s. 440.13 shall
4 apply. The report or testimony of the expert medical advisor
5 shall be made a part of the record of the proceeding and shall
6 be given the same consideration by the judge of compensation
7 claims as is accorded other medical evidence submitted in the
8 proceeding; and all costs incurred in connection with such
9 examination and testimony may be assessed as costs in the
10 proceeding, subject to the provisions of s. 440.13. No judge
11 of compensation claims may make a finding of a degree of
12 permanent impairment that is greater than the greatest
13 permanent impairment rating given the claimant by any
14 examining or treating physician, except upon stipulation of
15 the parties.

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

25 (e)~~(f)~~ Each judge of compensation claims is required
26 to submit a special report to the Chief Judge in each
27 contested workers' compensation case in which a final order is
28 not issued ~~the case is not determined~~ within 30 ~~14~~ days
29 following the ~~of~~ final hearing. Said form shall be provided by
30 the Chief Judge and shall contain the names of the judge of
31 compensation claims and of the attorneys involved and a brief

1 explanation by the judge of compensation claims as to the
2 reason for such a delay in issuing a final order. The Chief
3 Judge shall compile these special reports into an annual
4 public report to the Governor, the Secretary of Labor and
5 Employment Security, the Legislature, The Florida Bar, and the
6 appellate district judicial nominating commissions.

7 (f)~~(g)~~ Judges of compensation claims shall adopt and
8 enforce uniform local rules for workers' compensation.

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

17 (h)~~(i)~~ To expedite dispute resolution and to enhance
18 the self-executing features of the Workers' Compensation Law,
19 the Chief Judge shall make provision by rule or order for the
20 resolution of appropriate motions by judges of compensation
21 claims without oral hearing upon submission of brief written
22 statements in support and opposition, and for expedited
23 discovery and docketing.

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

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

20 (j) A motion to dismiss for lack of prosecution may be
21 filed if it appears that no recorded activity has been taken
22 on any petition for a period of 1 year regardless of whether
23 or not compensation or medical benefits have been or are being
24 paid. The judge shall, on the judge's own motion or on a
25 motion by a party, if in the judge's discretion a hearing is
26 determined to be necessary, serve notice of hearing on the
27 parties by regular mail at their last known address. The
28 notice to dismiss shall be granted by the judge without a
29 hearing or by the judge with a hearing unless a party shows
30 good cause why the petition should remain pending.

31

1 (k) No judge of compensation claims shall award
2 interest on unpaid medical bills nor shall such amounts be
3 used to calculate such interest.

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

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

1 opinion, the notice of appeal was filed in good faith and that
2 there is a probable basis for the District Court of Appeal,
3 First District, to find reversible error, and shall state with
4 particularity the specific legal and factual grounds for the
5 opinion. Failure to so affirm shall be grounds for denying the
6 petition. A copy of the verified petition relating to record
7 costs shall be served upon all interested parties, ~~including~~
8 ~~the division and the Office of the General Counsel, Department~~
9 ~~of Labor and Employment Security, in Tallahassee.~~ The judge of
10 compensation claims shall promptly conduct a hearing on the
11 verified petition relating to record costs, giving at least 15
12 days' notice to the appellant, the division, and all other
13 interested parties, all of whom shall be parties to the
14 proceedings. The judge of compensation claims may enter an
15 order without such hearing if no objection is filed by an
16 interested party within 20 days from the service date of the
17 verified petition relating to record costs. Such proceedings
18 shall be conducted in accordance with the provisions of this
19 section and with the workers' compensation rules of procedure,
20 to the extent applicable. In the event an insolvency petition
21 is granted, the judge of compensation claims shall direct the
22 division to pay record costs and filing fees from the Workers'
23 Compensation Trust Fund pending final disposition of the costs
24 of appeal. The division may transcribe or arrange for the
25 transcription of the record in any proceeding for which it is
26 ordered to pay the cost of the record. ~~In the event the~~
27 ~~insolvency petition is denied, the judge of compensation~~
28 ~~claims may enter an order requiring the petitioner to~~
29 ~~reimburse the division for costs incurred in opposing the~~
30 ~~petition, including investigation and travel expenses.~~
31

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

14 (6) An award of compensation for disability may be
15 made after the death of an injured employee.

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

1 in her or his discretion, withhold her or his findings and
2 award until an autopsy is held.

3 Section 18. Subsection (4) of section 440.29, Florida
4 Statutes, is amended to read:

5 440.29 Procedure before the judge of compensation
6 claims.--

7 (4) All medical reports of authorized treating health
8 care providers, peer review reports pursuant to utilization
9 review, and independent medical examinations relating to the
10 claimant and subject accident shall be received into evidence
11 by the judge of compensation claims upon proper motion.

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

16 Section 19. Section 440.34, Florida Statutes, is
17 amended to read:

18 440.34 Attorney's fees; costs.--

19 (1) A fee, gratuity, or other consideration may not be
20 paid for services rendered for a claimant in connection with
21 any proceedings arising under this chapter, unless approved as
22 reasonable by the judge of compensation claims or court having
23 jurisdiction over such proceedings. Except as provided by this
24 subsection, any attorney's fee approved by a judge of
25 compensation claims for services rendered to a claimant must
26 equal to 20 percent of the first \$5,000 of the amount of the
27 benefits secured, 15 percent of the next \$5,000 of the amount
28 of the benefits secured, 10 percent of the remaining amount of
29 the benefits secured to be provided during the first 10 years
30 after the date the claim is filed, and 5 percent of the
31 benefits secured after 10 years. However, there shall be no

1 fees payable on issues of average weekly wage, medical issues
2 under \$5,000, or issues relating to independent medical
3 examinations. ~~However, the judge of compensation claims shall~~
4 ~~consider the following factors in each case and may increase~~
5 ~~or decrease the attorney's fee if, in her or his judgment, the~~
6 ~~circumstances of the particular case warrant such action:~~
7 ~~(a) The time and labor required, the novelty and~~
8 ~~difficulty of the questions involved, and the skill requisite~~
9 ~~to perform the legal service properly.~~
10 ~~(b) The fee customarily charged in the locality for~~
11 ~~similar legal services.~~
12 ~~(c) The amount involved in the controversy and the~~
13 ~~benefits resulting to the claimant.~~
14 ~~(d) The time limitation imposed by the claimant or the~~
15 ~~circumstances.~~
16 ~~(e) The experience, reputation, and ability of the~~
17 ~~lawyer or lawyers performing services.~~
18 ~~(f) The contingency or certainty of a fee.~~
19 (2) In awarding a reasonable claimant's attorney's
20 fee, the judge of compensation claims shall consider only
21 those benefits to the claimant that the attorney is
22 responsible for securing. The amount, statutory basis, and
23 type of benefits obtained through legal representation shall
24 be listed on all attorney's fees awarded by the judge of
25 compensation claims. For purposes of this section, the term
26 "benefits secured" means benefits obtained as a result of the
27 claimant's attorney's legal services rendered in connection
28 with the claim for benefits. However, such term does not
29 include future medical benefits to be provided on any date
30 more than 5 years after the date the claim is filed.
31

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

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

14 ~~(b) In any case in which the employer or carrier files~~
15 ~~a notice of denial with the division and the injured person~~
16 ~~has employed an attorney in the successful prosecution of the~~
17 ~~claim; or~~

18 ~~(c) In a proceeding in which a carrier or employer~~
19 ~~denies that an injury occurred for which compensation benefits~~
20 ~~are payable, and the claimant prevails on the issue of~~
21 ~~compensability; or~~

22 ~~(d) In cases where the claimant successfully prevails~~
23 ~~in proceedings filed under s. 440.24 or s. 440.28.~~

24
25 ~~In applying the factors set forth in subsection (1) to cases~~
26 ~~arising under paragraphs (a), (b), (c), and (d), the judge of~~
27 ~~compensation claims must only consider only such benefits and~~
28 ~~the time reasonably spent in obtaining them as were secured~~
29 ~~for the claimant within the scope of paragraphs (a), (b), (c),~~
30 ~~and (d).~~

31

1 (4) In such cases in which the claimant is responsible
2 for the payment of her or his own attorney's fees, such fees
3 are a lien upon compensation payable to the claimant,
4 notwithstanding s. 440.22.

5 (5) If any proceedings are had for review of any
6 claim, award, or compensation order before the workers'
7 compensation appeals commission or appellate ~~any~~ court, the
8 commission or court may award the injured employee or
9 dependent an attorney's fee to be paid by the employer or
10 carrier, in its discretion, which shall be paid as the court
11 may direct, provided such fee shall be paid at no more than
12 \$125 per hour and may not exceed \$3,000 per appeal.

13 ~~(6) A judge of compensation claims may not enter an~~
14 ~~order approving the contents of a retainer agreement that~~
15 ~~permits the escrowing of any portion of the employee's~~
16 ~~compensation until benefits have been secured.~~

17 Section 20. Subsection (8) is added to section 440.39,
18 Florida Statutes, to read:

19 440.39 Compensation for injuries when third persons
20 are liable.--

21 (8) Nothing in this section creates a duty of the
22 employer to preserve evidence pertaining to the industrial
23 accident or injuries arising from such accident.

24 Section 21. Subsection (3) of section 440.42, Florida
25 Statutes, is amended to read:

26 440.42 Insurance policies; liability.--

27 (3) Every ~~No~~ contract or policy of insurance issued by
28 a carrier under this chapter shall expire 1 year from the
29 effective date of the contract or policy. No contract or
30 policy of insurance issued by a carrier shall ~~or~~ be canceled
31 prior to its expiration date unless ~~until~~ at least 30 days

1 have elapsed after a notice of such cancellation has been sent
2 by the carrier to the division and to the employer in
3 accordance with the provisions of s. 440.185(7). However,
4 when duplicate or dual coverage exists by reason of two
5 different carriers having issued policies of insurance to the
6 same employer securing the same liability, it shall be
7 presumed that only that policy with the later effective date
8 shall be in force and that the earlier policy terminated upon
9 the effective date of the latter. In the event that both
10 policies carry the same effective date, one of the policies
11 may be canceled instanter upon filing a notice of cancellation
12 with the division and serving a copy thereof upon the employer
13 in such manner as the division prescribes by rule. The
14 division may by rule prescribe the content of the notice of
15 retroactive cancellation and specify the time, place, and
16 manner in which the notice of cancellation is to be served.

17 Section 22. Section 440.4416, Florida Statutes, is
18 amended to read:

19 (Substantial rewording of section.

20 See s. 440.4416, F.S., for existing text.)

21 440.4416 Workers' Compensation Appeals Commission.--

22 (1)(a)1. There is created under the Cabinet a Workers'
23 Compensation Appeals Commission to consist of a presiding
24 commissioner and four other commissioners, all to be appointed
25 by the Governor after October 1, 2001, but before May 15,
26 2002, and all to serve full time. Each commissioner shall be
27 selected by the Governor from a list of three commissioners
28 nominated by the judges of each of the five district courts of
29 appeal. The seats on the commission shall be numbered one
30 through five. Nominations for the commissioner of seat one
31 shall be made by all the judges of the First District Court of

1 Appeal. Nominations for the commissioner of seat two shall be
2 made by all the judges of the Second District Court of Appeal.
3 Nominations for the commissioner of seat three shall be made
4 by all the judges of the Third District Court of Appeal.
5 Nominations for the commissioner of seat four shall be made by
6 all the judges of the Fourth District Court of Appeal.
7 Nominations for the commissioner of seat five shall be made by
8 all the judges of the Fifth District Court of Appeal. The
9 commissioners shall elect a presiding commissioner from among
10 their number by majority vote. Each commissioner shall have
11 the qualifications required by law for judges of the district
12 courts of appeal. In addition to these qualifications, the
13 commissioners nominated by the judges from the five district
14 courts of appeal shall be substantially experienced in the
15 field of workers' compensation.
16 2. Each commissioner shall be appointed for a term of
17 4 years, but may be removed for cause by the Governor.
18 3. Each appeal from an order of a judge of
19 compensation claims shall be considered by a commission panel
20 which shall consist of two commissioners and the presiding
21 commissioner.
22 4. Prior to the expiration of the term of office of a
23 commissioner, the conduct of such commissioner shall be
24 reviewed by the statewide nominating commission. A report of
25 the statewide nominating commission regarding retention shall
26 be furnished to the Governor no later than 6 months prior to
27 the expiration of the term of the commissioner. If the
28 statewide nominating commission recommends retention, the
29 Governor shall reappoint the commissioner. However, if the
30 statewide nominating commission does not recommend retention,
31 the judges of the respective District Courts of Appeal shall

1 issue a report to the Governor which shall include a list of
2 three candidates for appointment. In the event a vacancy
3 occurs during an unexpired term of a commissioner on the
4 Workers' Compensation Appeals Commission, the judges of the
5 respective District Courts of Appeal shall nominate at least
6 three candidates in accordance with the procedures set forth
7 in this section.

8 5. The commission is subject to the Code of Judicial
9 Conduct set forth in s. 440.442.

10 (b) The presiding commissioner may, by order filed in
11 the records of the commission and with the approval of the
12 Governor, appoint associate commissioners to serve as
13 temporary commissioners of the commission. Such appointment
14 may be made only of a currently commissioned judge of
15 compensation claims. This appointment shall be for such
16 periods of time as not to cause an undue burden on the
17 caseload in the judge's jurisdiction. Each associate
18 commissioner appointed shall receive no additional pay during
19 the appointment except for expenses incurred in the
20 performance of the additional duties.

21 (c) The total salaries and benefits of all
22 commissioners of the commission are to be paid from the trust
23 fund created by s. 440.50. Notwithstanding any other provision
24 of law, the commissioners shall be paid a salary equal to that
25 paid under state law to the judges of district courts of
26 appeal.

27 (2)(a) The commission is vested with all authority,
28 powers, duties, and responsibilities relating to review of
29 orders of judges of compensation claims in workers'
30 compensation proceedings under chapter 440. The commission
31 shall review by appeal final orders of the judges of

1 compensation claims entered pursuant to chapter 440. The
2 First District Court of Appeal shall retain jurisdiction over
3 all workers' compensation proceedings pending before it on
4 October 1, 2001. The commission may hold sessions and conduct
5 hearings at any place within the state. A panel of three
6 commissioners shall consider each case and the concurrence of
7 two shall be necessary to a decision. Any commissioner may
8 request an en banc hearing for review of a final order of a
9 judge of compensation claims.

10 (b) The commission shall be located within the
11 Department of Administration but, in the performance of its
12 powers and duties under chapter 440, shall not be subject to
13 control, supervision, or direction by the department. The
14 commission is not an agency for purposes of chapter 120.

15 (c) The property, personnel, and appropriations
16 related to the commission's specified authority, powers,
17 duties, and responsibilities shall be provided to the
18 commission by the Department of Labor and Employment Security.

19 (3) The commission shall make such expenditures,
20 including expenditures for personnel services and rent at the
21 seat of the government and elsewhere, for law books, reference
22 materials, periodicals, furniture, equipment, and supplies,
23 and for printing and binding, as may be necessary in
24 exercising its authority and powers and carrying out its
25 duties and responsibilities. Expenditures of the commission
26 shall be allowed and paid from the trust fund created by s.
27 440.50, upon the presentation of itemized vouchers therefor
28 approved by the presiding commissioner.

29 (4) The commission may charge, in its discretion, for
30 publications, subscriptions, and copies of records and
31

1 documents. Such fees shall be deposited in the trust fund
2 established in s. 440.50.

3 (5)(a) The presiding commissioner shall exercise
4 administrative supervision over the Workers' Compensation
5 Appeals Commission and over the judges and other officers of
6 such courts.

7 (b) The presiding commissioner of the Workers'
8 Compensation Appeals Commission shall have the power to:

9 1. Assign commissioners to hear appeals from final
10 orders of judges of compensation claims.

11 2. Hire and assign clerks and staff.

12 3. Regulate use of courtrooms.

13 4. Supervise dockets and calendars.

14 5. Do everything necessary to promote the prompt and
15 efficient administration of justice in the courts over which
16 he or she presides.

17 (c) The presiding commissioner may appoint an
18 executive assistant to perform such duties as the presiding
19 judge may direct. The commission shall be authorized to employ
20 research assistants or law clerks to assist the judges in
21 performing their duties under this section.

22 (6)(a) The commission shall maintain and keep open
23 during reasonable business hours a clerk's office, provided in
24 the Capitol Complex or some other suitable building in Leon
25 County for the transaction of its business. All books, papers,
26 records, files, and the seal of the commission shall be kept
27 at this office. The office shall be furnished and equipped by
28 the commission.

29 (b) The commission shall appoint a clerk who shall
30 hold office at the pleasure of the commission. Before entering
31 upon the discharge of his or her duties, the clerk shall give

1 bond in the sum of \$5,000 payable to the Governor of this
2 state, to be approved by a majority of the members of the
3 commission conditioned upon the faithful discharge of the
4 duties of the office, which bond shall be filed in the office
5 of the Secretary of State.
6 (c) The clerk shall be paid an annual salary pursuant
7 to chapter 25.
8 (d) The clerk is authorized to employ such deputies
9 and clerical assistants as may be necessary. Their number and
10 compensation shall be approved by the commission and paid from
11 the annual appropriation for the commission from the Workers'
12 Compensation Administration Trust Fund.
13 (e) The clerk, upon filing of a certified copy of a
14 notice of appeal or petition, shall charge and collect a
15 filing fee of \$250 for each case docketed, and shall charge
16 and collect for copying, certifying, or furnishing opinions,
17 records, papers, or other instruments, and for the other
18 services the same service charges as provided for in s. 28.24.
19 The state or its agencies, when appearing as appellant or
20 petitioner, is exempt from the filing fee required in this
21 subsection.
22 (f) The clerk of the commission shall prepare a
23 statement of all fees collected in duplicate each month and
24 remit one copy of said statement, together with all fees
25 collected by him or her, to the Comptroller who shall place
26 the same to the credit of the Workers' Compensation
27 Administration Trust Fund.
28 (7) The commission shall have a seal for
29 authentication of its orders, awards, and proceedings, upon
30 which shall be inscribed the words "State of Florida Workers'
31

1 Compensation Appeals Commission - - Seal," and it shall be
2 judicially noticed.

3 (8) The commission is expressly authorized to destroy
4 obsolete records of the commission.

5 (9) Commissioners shall be reimbursed for travel
6 expenses as provided in s. 112.061.

7 (10) The practice and procedure before the commission
8 and judges of compensation claims shall be governed by rules
9 adopted by the commission except to the extent that such rules
10 conflict with the provisions of chapter 440.

11 Section 23. Section 440.45, Florida Statutes, is
12 amended to read:

13 440.45 Office of the Judges of Compensation Claims.--

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

1 not limited to, personnel, purchasing, budgetary matters, or
2 property transactions. The operating budget of the Office of
3 the Judges of Compensation Claims shall be paid out of the
4 Workers' Compensation Administration Trust Fund established in
5 s. 440.50.

6 (2)(a) The Governor shall appoint full-time judges of
7 compensation claims to conduct proceedings as required by this
8 chapter or other law. No person may be nominated to serve as a
9 judge of compensation claims unless he or she has been a
10 member of The Florida Bar in good standing and is
11 knowledgeable in the practice of law of workers' compensation.
12 No judge of compensation claims shall engage in the private
13 practice of law during a term of office.

14 (b) Except as provided in paragraph (c), the Governor
15 shall appoint a judge of compensation claims from a list of
16 three persons nominated by a statewide nominating commission.
17 The statewide nominating commission shall be composed of the
18 following:

19 1. Five members, at least one of whom must be a member
20 of a minority group as defined in s. 288.703(3), one of each
21 who resides in each of the territorial jurisdictions of the
22 district courts of appeal, appointed by the Board of Governors
23 of The Florida Bar from among The Florida Bar members who are
24 engaged in the practice of law. On July 1, 1999, the term of
25 office of each person appointed by the Board of Governors of
26 The Florida Bar to the commission expires. The Board of
27 Governors shall appoint members who reside in the odd-numbered
28 district court of appeal jurisdictions to 4-year terms each,
29 beginning July 1, 1999, and members who reside in the
30 even-numbered district court of appeal jurisdictions to 2-year
31

1 terms each, beginning July 1, 1999. Thereafter, each member
2 shall be appointed for a 4-year term;

3 2. Five electors, at least one of whom must be a
4 member of a minority group as defined in s. 288.703(3), one of
5 each who resides in each of the territorial jurisdictions of
6 the district courts of appeal, appointed by the Governor. On
7 July 1, 1999, the term of office of each person appointed by
8 the Governor to the commission expires. The Governor shall
9 appoint members who reside in the odd-numbered district court
10 of appeal jurisdictions to 2-year terms each, beginning July
11 1, 1999, and members who reside in the even-numbered district
12 court of appeal jurisdictions to 4-year terms each, beginning
13 July 1, 1999. Thereafter, each member shall be appointed for a
14 4-year term; and

15 3. Five electors, at least one of whom must be a
16 member of a minority group as defined in s. 288.703(3), one of
17 each who resides in the territorial jurisdictions of the
18 district courts of appeal, selected and appointed by a
19 majority vote of the other 10 members of the commission. On
20 October 1, 1999, the term of office of each person appointed
21 to the commission by its other members expires. A majority of
22 the other members of the commission shall appoint members who
23 reside in the odd-numbered district court of appeal
24 jurisdictions to 2-year terms each, beginning October 1, 1999,
25 and members who reside in the even-numbered district court of
26 appeal jurisdictions to 4-year terms each, beginning October
27 1, 1999. Thereafter, each member shall be appointed for a
28 4-year term.

29
30 A vacancy occurring on the commission shall be filled by the
31 original appointing authority for the unexpired balance of the

1 term. No attorney who appears before any judge of compensation
2 claims more than four times a year is eligible to serve on the
3 statewide nominating commission. The meetings and
4 determinations of the nominating commission as to the judges
5 of compensation claims shall be open to the public.

6 (c) Each judge of compensation claims shall be
7 appointed for a term of 4 years, but during the term of office
8 may be removed by the Governor for cause. Prior to the
9 expiration of a judge's term of office, the statewide
10 nominating commission shall review the judge's conduct and
11 determine whether the judge's performance is satisfactory. In
12 determining whether a judge's performance is satisfactory, the
13 commission shall consider the extent to which the judge has
14 met the requirements of this chapter, including, but not
15 limited to, the requirements of ss. 440.192(2), 440.25(1),
16 440.25(4)(a)-(f), 440.34(2), and 440.442. If the commission
17 finds that judges generally are unable to meet a particular
18 requirement of law for reasons beyond their control, the
19 commission shall request the Legislature to review that
20 particular requirement. If the judge's performance is deemed
21 satisfactory, the commission shall report its finding to the
22 Governor no later than 6 months prior to the expiration of the
23 judge's term of office. The Governor shall review the
24 commission's report and may reappoint the judge for an
25 additional 4-year term. If the Governor does not reappoint the
26 judge, the Governor shall inform the commission. The judge
27 shall remain in office until the Governor has appointed a
28 successor judge in accordance with paragraphs (a) and (b). If
29 a vacancy occurs during a judge's unexpired term, the
30 statewide nominating commission does not find the judge's
31 performance is satisfactory, or the Governor does not

1 reappoint the judge, the Governor shall appoint a successor
2 judge for a term of 4 years in accordance with paragraph (b).
3 (d) The Governor may appoint any attorney with 5 years
4 of experience in the practice of law in this state and who has
5 expertise in workers' compensation to serve as a judge of
6 compensation claims pro hac vice in the absence or
7 disqualification of any full-time judge of compensation claims
8 or to serve temporarily as an additional judge of compensation
9 claims in any area of the state in which the Governor
10 determines that a need exists for such additional judge.
11 However, an attorney so appointed by the Governor shall not
12 serve for a period to exceed 90 successive days.

13 (3) The Chief Judge shall select from among the full
14 time judges of the office two or more judges to rotate as
15 docketing judges. Docketing judges shall review all claims for
16 benefits for consistency with the requirements of this chapter
17 and the rules of procedure, including, but not limited to,
18 specificity requirements, and shall dismiss any claim that
19 fails to comport with such rules and requirements. The
20 docketing judge shall not dismiss any claim with prejudice
21 without offering the parties an opportunity to appear and
22 present argument. The Chief Judge may as he or she deems
23 appropriate expand the duties of the docketing judges to
24 include resolution without hearing of other types of
25 procedural and substantive matters, including resolution of
26 fee disputes.

27 (4) The Chief Judge shall have the discretion to
28 require mediation and to designate qualified persons to act as
29 mediators in any dispute pending before the judges of
30 compensation claims and the division. The Chief Judge shall
31 coordinate with the Director of the Division of Workers'

1 Compensation to establish a mandatory mediation program to
2 facilitate early and efficient resolution of disputes arising
3 under this chapter and to establish training and continuing
4 education for new and sitting judges.

5 (5) The Office of the Judges of Compensation Claims
6 shall promulgate rules to effect the purposes of this section.
7 Such rules shall include procedural rules applicable to
8 workers' compensation claim resolution and uniform criteria
9 for measuring the performance of the office, including, but
10 not limited to, the number of cases assigned and disposed, the
11 age of pending and disposed cases, timeliness of
12 decisionmaking, extraordinary fee awards, and the data
13 necessary for the judicial nominating commission to review the
14 performance of judges as required in paragraph (2)(c) and
15 other performance indicators. On or before November 1, 2001,
16 the Office of the Judges of Compensation Claims shall submit a
17 draft of such rules to the Governor, the Speaker of the House
18 of Representatives, and the President of the Senate. The
19 Legislature shall review the draft rules and may approve,
20 modify and approve, disapprove, or take no action on the
21 rules. If the Legislature approves the draft rules, or
22 modifies and approves the draft rules, the office shall adopt
23 the draft rules pursuant to chapter 120. If the Legislature
24 disapproves the draft rules, the Legislature shall convey the
25 reasons for disapproval to the office for use in redrafting
26 the rules.The workers' compensation rules of procedure
27 approved by the Supreme Court shall apply until the rules
28 promulgated by the Office of the Judges of Compensation Claims
29 pursuant to this section become effective.

30 (6) Not later than December 1 of each year, the Office
31 of the Judges of Compensation Claims and the Division of

1 Workers' Compensation shall jointly issue a written report to
2 the Governor, the House of Representatives, and the Senate
3 summarizing the amount, cost, and outcome of all litigation
4 resolved in the prior year, summarizing the disposition of
5 applications and motions for mediation conferences and
6 recommending changes or improvements to the dispute resolution
7 elements of the Workers' Compensation Law and regulations.

8 Section 24. Paragraph (g) of subsection (4) of section
9 627.311, Florida Statutes, is amended to read:

10 627.311 Joint underwriters and joint reinsurers.--

11 (4)

12 (g) Whenever a deficit exists, the plan shall, within
13 90 days, provide the department with a program to eliminate
14 the deficit within a reasonable time. The deficit may be
15 funded through increased premiums charged to insureds of the
16 plan for subsequent years, through the use of policyholder
17 surplus attributable to any year, through the use of
18 policyholder surplus attributable to any year, and through
19 assessments on insureds in the plan if the plan uses
20 assessable policies.

21 Section 25. Section 627.914, Florida Statutes, is
22 amended to read:

23 627.914 Reports of information by workers'
24 compensation insurers required.--

25 (1) The department shall promulgate rules and
26 statistical plans which shall thereafter be used by each
27 insurer, and self-insurance fund as defined in s. 624.461, in
28 the recording and reporting of loss, expense, and claims
29 experience, in order that the experience of all insurers and
30 self-insurance funds ~~self-insurers~~ may be made available at
31 least annually in such form and detail as may be necessary to

1 aid the department in determining whether Florida experience
2 for workers' compensation insurance is sufficient for
3 establishing rates.

4 ~~(2) Any insurer authorized to write a policy of~~
5 ~~workers' compensation insurance shall transmit the following~~
6 ~~information to the department each year with its annual~~
7 ~~report, and such information shall be reported on a net basis~~
8 ~~with respect to reinsurance for nationwide experience and on a~~
9 ~~direct basis for Florida experience:~~

10 ~~(a) Premiums written;~~

11 ~~(b) Premiums earned;~~

12 ~~(c) Dividends paid or credited to policyholders;~~

13 ~~(d) Losses paid;~~

14 ~~(e) Allocated loss adjustment expenses;~~

15 ~~(f) The ratio of allocated loss adjustment expenses to~~
16 ~~losses paid;~~

17 ~~(g) Unallocated loss adjustment expenses;~~

18 ~~(h) The ratio of unallocated loss adjustment expenses~~
19 ~~to losses paid;~~

20 ~~(i) The total of losses paid and unallocated and~~
21 ~~allocated loss adjustment expenses;~~

22 ~~(j) The ratio of losses paid and unallocated and~~
23 ~~allocated loss adjustment expenses to premiums earned;~~

24 ~~(k) The number of claims outstanding as of December 31~~
25 ~~of each year;~~

26 ~~(l) The total amount of losses unpaid as of December~~
27 ~~31 of each year;~~

28 ~~(m) The total amount of allocated and unallocated loss~~
29 ~~adjustment expenses unpaid as of December 31 of each year; and~~

30 ~~(n) The total of losses paid and allocated loss~~
31 ~~adjustment expenses and unallocated loss adjustment expenses,~~

1 ~~plus the total of losses unpaid as of December 31 of each year~~
2 ~~and loss adjustment expenses unpaid as of December 31 of each~~
3 ~~year.~~

4 ~~(3) A report of the information required in subsection~~
5 ~~(2) shall be filed no later than April 1 of each year and~~
6 ~~shall include the information for the preceding year ending~~
7 ~~December 31. All reports shall be on a calendar-accident year~~
8 ~~basis, and each calendar-accident year shall be reported at~~
9 ~~eight stages of development.~~

10 (2)(4) Each insurer and self-insurance fund authorized
11 to write a policy of workers' compensation insurance shall
12 transmit the following information ~~for paragraphs (a), (b),~~
13 ~~(d), and (e)~~ annually on both Florida experience and
14 nationwide experience separately:

- 15 (a) Payrolls by classification.
- 16 (b) Manual premiums by classification.
- 17 (c) Standard premiums by classification.
- 18 (d) Losses by classification and injury type.
- 19 (e) Expenses.

20
21 A report of this information shall be filed no later than July
22 ~~April~~ 1 of each year. All reports shall be filed in
23 accordance with standard reporting procedures for insurers,
24 which procedures have received approval by the department, and
25 shall contain data for the most recent policy period
26 available. A statistical rating organization may be used by
27 insurers and self-insurance funds to report the data required
28 by this section. The statistical rating organization shall
29 report each data element in the aggregate only for insurers
30 and self-insurance funds required to report under this section
31

1 who elect to have the rating organization report on their
2 behalf. Such insurers shall be named in the report.

3 ~~(3)(5)~~ Individual self-insurers as defined ~~authorized~~
4 ~~to transact workers' compensation insurance as provided~~ in s.
5 440.02 shall report only Florida data as prescribed in
6 paragraphs (a)-(e) of subsection ~~(2)(4)~~ to the Division of
7 Workers' Compensation of the Department of Labor and
8 Employment Security.

9 (a) The Division of Workers' Compensation shall
10 publish the dates and forms necessary to enable self-insurers
11 to comply with this section.

12 ~~(b) The Division of Workers' Compensation shall report~~
13 ~~the information collected under this section to the Department~~
14 ~~of Insurance in a manner prescribed by the department.~~

15 ~~(b)(c)~~ A statistical or rating organization may be
16 used by self-insurers for the purposes of reporting the data
17 required by this section and calculating experience ratings.

18 ~~(4)(6)~~ The department shall provide a summary of
19 information provided pursuant to subsection ~~subsections~~ (2)
20 ~~and (4)~~ in its annual report.

21 Section 26. Subsection (37) of section 440.02, Florida
22 Statutes, and paragraph (d) of subsection (1) of section
23 440.13, Florida Statutes, are repealed.

24 Section 27. This act shall take effect October 1,
25 2001.

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HOUSE SUMMARY

Revises various provisions of workers' compensation law. Substantially revises election of exemption provisions. Revises provisions relating to the Employee Assistance and Ombudsman Office. Revises petition for benefits provisions. Revises procedures and requirements for mediation and hearings. Revises provisions relating to award of attorney's fees. Revises provisions relating to judges of compensation claims. Substantially revises Workers' Compensation Oversight Board provisions by replacing the board with the Workers' Compensation Appeals Commission. See bill for details.