

By the Council for Competitive Commerce and Committee on Insurance and Representatives Waters, Melvin, Brown, Berfield, Kallinger, McGriff, Clarke, Simmons, Sobel, Ross, Negron, Fields and Wiles

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 61.14, F.S.; requiring a judge of
4 compensation claims to consider the interests
5 of the worker and the worker's family when
6 approving settlements of workers' compensation
7 claims; requiring appropriate recovery of any
8 child support arrearage from such settlements;
9 amending s. 61.30, F.S.; providing that gross
10 income includes all workers' compensation
11 benefits and settlements; amending s. 112.3145,
12 F.S.; redefining the term "specified state
13 employee" to include the Deputy Chief Judge of
14 Compensation Claims; amending s. 120.65, F.S.;
15 establishing requirements for the Deputy Chief
16 Judge; amending s. 121.055, F.S.; including the
17 Deputy Chief Judge in the Senior Management
18 Service Class of the Florida Retirement System;
19 conforming provisions to the transfer of the
20 judges of compensation claims from the
21 Department of Labor and Employment Security to
22 the Division of Administrative Hearings;
23 amending s. 381.004, F.S.; conforming
24 provisions to the transfer of the judges of
25 compensation claims to the Division of
26 Administrative Hearings; amending s. 440.02,
27 F.S.; revising a monetary limit in a
28 definition; excluding certain sports officials
29 from the definition of "employee"; excluding
30 certain work done by state prisoners and county
31 inmates from the definition of "employment";

1 amending s. 440.09, F.S.; excluding employees
2 covered under the Defense Base Act from payment
3 of benefits; amending s. 440.105, F.S.;
4 reclassifying the Chief Judge of Compensation
5 Claims as the Deputy Chief Judge of
6 Compensation Claims; amending s. 440.12, F.S.;
7 providing for direct deposit of compensation
8 payments; amending s. 440.13, F.S.; revising
9 requirements for submission of certain medical
10 reports and bills; granting rehabilitation
11 providers access to medical records; revising
12 provider eligibility requirements; amending s.
13 440.134, F.S.; requiring certain insurers to
14 provide medically necessary remedial treatment,
15 care, and attendance under certain
16 circumstances; amending s. 440.14, F.S.;
17 requiring an employee to provide certain
18 information concerning concurrent employment;
19 amending s. 440.185, F.S.; authorizing the
20 division to contract with a private entity for
21 collection of certain policy information;
22 providing application; amending s. 440.192,
23 F.S.; revising requirements and procedures for
24 filing petitions for benefits; permitting
25 judges to dismiss portions of a petition;
26 specifying that dismissal of petitions is
27 without prejudice; amending grounds for
28 dismissal; redesignating the notice of denial
29 as a response to petition; amending s. 440.20,
30 F.S.; providing for payment of compensation by
31 direct deposit under certain circumstances;

1 providing procedural guidelines for certain
2 carriers for certain purposes; revising
3 lump-sum settlement requirements; amending s.
4 440.22, F.S.; excluding child support and
5 alimony claims from general exemption of
6 workers' compensation benefits from claims of
7 creditors; amending s. 440.25, F.S.; revising
8 mediation procedures; requiring written consent
9 for additional continuances; authorizing the
10 director of the Division of Administrative
11 Hearings to employ mediators; requiring judges
12 of compensation claims to file a report under
13 certain circumstances; eliminating local rule
14 adoption; removing the division's participation
15 in indigency proceedings; conforming provisions
16 to the reclassification of the Chief Judge as
17 the Deputy Chief Judge; amending s. 440.271,
18 F.S.; requiring the First District Court of
19 Appeal to establish a specialized division to
20 hear workers' compensation cases; amending s.
21 440.29, F.S.; conforming provisions to the
22 reclassification of the Chief Judge as the
23 Deputy Chief Judge; amending s. 440.34, F.S.;
24 providing for attorney's fees in a response to
25 petition; amending s. 440.345, F.S.; revising
26 reporting requirements; amending s. 440.38,
27 F.S.; providing for the type of qualifying
28 security deposit necessary to become a
29 self-insured employer; providing requirements,
30 procedures, and criteria; correcting a cross
31 reference; amending s. 440.44, F.S.; revising

1 record requirements; authorizing the director
2 of the Division of Administrative Hearings to
3 make expenditures relating to the Office of the
4 Judges of Compensation Claims; requiring the
5 office to maintain certain offices and
6 personnel; conforming provisions to the
7 transfer of the Office of the Judges of
8 Compensation Claims to the Division of
9 Administrative Hearings; amending s. 440.442,
10 F.S.; deleting Code of Judicial Conduct
11 requirements; providing for a Code of Judicial
12 Conduct as adopted by the Florida Supreme
13 Court; amending s. 440.45, F.S.; eliminating
14 the Chief Judge position; creating the position
15 of Deputy Chief Judge of Compensation Claims;
16 conforming provisions to the transfer of the
17 judges of compensation claims from the
18 Department of Labor and Employment Security to
19 the Division of Administrative Hearings within
20 the Department of Management Services;
21 requiring nominees for the judges of
22 compensation claims to meet additional
23 experience requirements; authorizing the
24 director of the Division of Administrative
25 Hearings to initiate and investigate complaints
26 against the Deputy Chief Judge and judges of
27 compensation claims and make recommendations to
28 the Governor; revising reporting requirements;
29 requiring the judicial nominating commission to
30 consider whether judges of compensation claims
31 have met certain requirements; providing

1 procedures; authorizing the Governor to appoint
2 certain judges of compensation claims; amending
3 s. 440.47, F.S.; conforming provisions to the
4 reclassification of the Chief Judge as the
5 Deputy Chief Judge; providing that the director
6 of the Division of Administrative Hearings must
7 approve travel expenses; amending s. 440.59,
8 F.S.; revising certain reporting requirements;
9 deleting an injury reporting requirement;
10 deleting an annual reporting requirement of the
11 Chief Judge; amending s. 440.593, F.S.;
12 providing the division with enforcement
13 authority relating to electronic reporting;
14 authorizing the division to assess a civil
15 penalty; authorizing the division to adopt
16 rules; amending ss. 489.114 and 489.510, F.S.;
17 providing an exception to certain workers'
18 compensation coverage evidence requirements;
19 amending ss. 489.115 and 489.515, F.S.;
20 revising certification and registration
21 requirements for initial licensure; amending s.
22 627.0915, F.S.; eliminating references to the
23 Division of Safety of the Department of Labor
24 and Employment Security in relation to rating
25 plans' workplace safety programs; amending s.
26 627.311, F.S.; clarifying language with respect
27 to joint underwriters' liability for monetary
28 damages; amending s. 627.914, F.S.; revising
29 the requirements for reports of information by
30 workers' compensation insurers; deleting a
31 reporting requirement for the Division of

1 Workers' Compensation; transferring the Office
2 of the Judges of Compensation Claims to the
3 Division of Administrative Hearings;
4 transferring certain positions from the
5 Division of Workers' Compensation to the Office
6 of Judges of Compensation Claims; providing
7 effective dates.

8

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

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11 Section 1. Subsection (8) of section 61.14, Florida
12 Statutes, is amended to read:

13 61.14 Enforcement and modification of support,
14 maintenance, or alimony agreements or orders.--

15 (8)(a) When reviewing and approving any lump-sum
16 settlement under s. 440.20(11)(a) and (b), a judge of
17 compensation claims must consider whether the settlement
18 serves the interests of the worker and the worker's family,
19 including, but not limited to, whether the settlement provides
20 for appropriate recovery of any child-support arrearage.

21 (b) In accordance with ~~Notwithstanding~~ the provisions
22 of s. 440.22, any compensation due or that may become due an
23 employee under chapter 440 is exempt from garnishment,
24 attachment, execution, and assignment of income, except for
25 the purposes of enforcing child or spousal support
26 obligations.

27 Section 2. Paragraph (a) of subsection (2) of section
28 61.30, Florida Statutes, is amended to read:

29 61.30 Child support guidelines; retroactive child
30 support.--

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1 (2) Income shall be determined on a monthly basis for
2 the obligor and for the obligee as follows:
3 (a) Gross income shall include, but is not limited to,
4 the following items:
5 1. Salary or wages.
6 2. Bonuses, commissions, allowances, overtime, tips,
7 and other similar payments.
8 3. Business income from sources such as
9 self-employment, partnership, close corporations, and
10 independent contracts. "Business income" means gross receipts
11 minus ordinary and necessary expenses required to produce
12 income.
13 4. Disability benefits.
14 5. All workers'~~worker's~~ compensation benefits and
15 settlements.
16 6. Unemployment compensation.
17 7. Pension, retirement, or annuity payments.
18 8. Social security benefits.
19 9. Spousal support received from a previous marriage
20 or court ordered in the marriage before the court.
21 10. Interest and dividends.
22 11. Rental income, which is gross receipts minus
23 ordinary and necessary expenses required to produce the
24 income.
25 12. Income from royalties, trusts, or estates.
26 13. Reimbursed expenses or in kind payments to the
27 extent that they reduce living expenses.
28 14. Gains derived from dealings in property, unless
29 the gain is nonrecurring.
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1 Section 3. Paragraph (b) of subsection (1) and
2 subsection (4) of section 112.3145, Florida Statutes, are
3 amended to read:

4 112.3145 Disclosure of financial interests and clients
5 represented before agencies.--

6 (1) For purposes of this section, unless the context
7 otherwise requires, the term:

8 (b) "Specified state employee" means:

9 1. Public counsel created by chapter 350, an assistant
10 state attorney, an assistant public defender, a full-time
11 state employee who serves as counsel or assistant counsel to
12 any state agency, the Deputy Chief Judge of Compensation
13 Claims, a judge of compensation claims, an administrative law
14 judge, or a hearing officer.

15 2. Any person employed in the office of the Governor
16 or in the office of any member of the Cabinet if that person
17 is exempt from the Career Service System, except persons
18 employed in clerical, secretarial, or similar positions.

19 3. Each appointed secretary, assistant secretary,
20 deputy secretary, executive director, assistant executive
21 director, or deputy executive director of each state
22 department, commission, board, or council; unless otherwise
23 provided, the division director, assistant division director,
24 deputy director, bureau chief, and assistant bureau chief of
25 any state department or division; or any person having the
26 power normally conferred upon such persons, by whatever title.

27 4. The superintendent or institute director of a state
28 mental health institute established for training and research
29 in the mental health field or the warden or director of any
30 major state institution or facility established for
31 corrections, training, treatment, or rehabilitation.

1 5. Business managers, purchasing agents having the
2 power to make any purchase exceeding the threshold amount
3 provided for in s. 287.017 for CATEGORY ONE, finance and
4 accounting directors, personnel officers, or grants
5 coordinators for any state agency.

6 6. Any person, other than a legislative assistant
7 exempted by the presiding officer of the house by which the
8 legislative assistant is employed, who is employed in the
9 legislative branch of government, except persons employed in
10 maintenance, clerical, secretarial, or similar positions.

11 7. Each employee of the Commission on Ethics.

12 (4) Each elected constitutional officer, state
13 officer, local officer, and specified state employee shall
14 file a quarterly report of the names of clients represented
15 for a fee or commission, except for appearances in ministerial
16 matters, before agencies at his or her level of government.
17 For the purposes of this part, agencies of government shall be
18 classified as state-level agencies or agencies below state
19 level. Each local officer shall file such report with the
20 supervisor of elections of the county in which the officer is
21 principally employed or is a resident. Each state officer,
22 elected constitutional officer, and specified state employee
23 shall file such report with the commission. The report shall
24 be filed only when a reportable representation is made during
25 the calendar quarter and shall be filed no later than the last
26 day of each calendar quarter, for the previous calendar
27 quarter. Representation before any agency shall be deemed to
28 include representation by such officer or specified state
29 employee or by any partner or associate of the professional
30 firm of which he or she is a member and of which he or she has
31 actual knowledge. For the purposes of this subsection, the

1 term "representation before any agency" does not include
2 appearances before any court or the Deputy Chief Judge ~~Judges~~
3 of Compensation Claims or judges of compensation claims or
4 representations on behalf of one's agency in one's official
5 capacity. Such term does not include the preparation and
6 filing of forms and applications merely for the purpose of
7 obtaining or transferring a license based on a quota or a
8 franchise of such agency or a license or operation permit to
9 engage in a profession, business, or occupation, so long as
10 the issuance or granting of such license, permit, or transfer
11 does not require substantial discretion, a variance, a special
12 consideration, or a certificate of public convenience and
13 necessity.

14 Section 4. Subsection (1) of section 120.65, Florida
15 Statutes, is amended to read:

16 120.65 Administrative law judges.--

17 (1) The Division of Administrative Hearings within the
18 Department of Management Services shall be headed by a
19 director who shall be appointed by the Administration
20 Commission and confirmed by the Senate. The director, who
21 shall also serve as the chief administrative law judge, and
22 any deputy chief administrative law judge must possess the
23 same minimum qualifications as the administrative law judges
24 employed by the division. The Deputy Chief Judge of
25 Compensation Claims must possess the minimum qualifications
26 established in s. 440.45(2) and shall report to the director.
27 The division shall be a separate budget entity, and the
28 director shall be its agency head for all purposes. The
29 Department of Management Services shall provide administrative
30 support and service to the division to the extent requested by
31 the director. The division shall not be subject to control,

1 supervision, or direction by the Department of Management
2 Services in any manner, including, but not limited to,
3 personnel, purchasing, transactions involving real or personal
4 property, and budgetary matters.

5 Section 5. Paragraph (i) of subsection (1) of section
6 121.055, Florida Statutes, is amended to read:

7 121.055 Senior Management Service Class.--There is
8 hereby established a separate class of membership within the
9 Florida Retirement System to be known as the "Senior
10 Management Service Class," which shall become effective
11 February 1, 1987.

12 (1)

13 (i)1. Except as provided in subparagraph 2., effective
14 July 1, 1999, participation in the Senior Management Service
15 Class is compulsory for any member of the Florida Retirement
16 System who is employed as the Deputy Chief Judge of
17 Compensation Claims or as a judge of compensation claims with
18 the Office of the Judges of Compensation Claims within the
19 Division of Administrative Hearings ~~Department of Labor and~~
20 ~~Employment Security~~.

21 2. In lieu of participating in the Senior Management
22 Service Class, the Deputy Chief Judge of Compensation Claims
23 or a judge of compensation claims may participate in the
24 Senior Management Service Optional Annuity Program established
25 under subsection (6).

26 Section 6. Paragraph (e) of subsection (3) of section
27 381.004, Florida Statutes, is amended to read:

28 381.004 HIV testing.--

29 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
30 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

31

1 (e) Except as provided in this section, the identity
2 of any person upon whom a test has been performed and test
3 results are confidential and exempt from the provisions of s.
4 119.07(1). No person who has obtained or has knowledge of a
5 test result pursuant to this section may disclose or be
6 compelled to disclose the identity of any person upon whom a
7 test is performed, or the results of such a test in a manner
8 which permits identification of the subject of the test,
9 except to the following persons:

10 1. The subject of the test or the subject's legally
11 authorized representative.

12 2. Any person, including third-party payors,
13 designated in a legally effective release of the test results
14 executed prior to or after the test by the subject of the test
15 or the subject's legally authorized representative. The test
16 subject may in writing authorize the disclosure of the test
17 subject's HIV test results to third party payors, who need not
18 be specifically identified, and to other persons to whom the
19 test subject subsequently issues a general release of medical
20 information. A general release without such prior written
21 authorization is not sufficient to release HIV test results.

22 3. An authorized agent or employee of a health
23 facility or health care provider if the health facility or
24 health care provider itself is authorized to obtain the test
25 results, the agent or employee participates in the
26 administration or provision of patient care or handles or
27 processes specimens of body fluids or tissues, and the agent
28 or employee has a need to know such information. The
29 department shall adopt a rule defining which persons have a
30 need to know pursuant to this subparagraph.

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1 4. Health care providers consulting between themselves
2 or with health care facilities to determine diagnosis and
3 treatment. For purposes of this subparagraph, health care
4 providers shall include licensed health care professionals
5 employed by or associated with state, county, or municipal
6 detention facilities when such health care professionals are
7 acting exclusively for the purpose of providing diagnoses or
8 treatment of persons in the custody of such facilities.

9 5. The department, in accordance with rules for
10 reporting and controlling the spread of disease, as otherwise
11 provided by state law.

12 6. A health facility or health care provider which
13 procures, processes, distributes, or uses:

14 a. A human body part from a deceased person, with
15 respect to medical information regarding that person; or

16 b. Semen provided prior to July 6, 1988, for the
17 purpose of artificial insemination.

18 7. Health facility staff committees, for the purposes
19 of conducting program monitoring, program evaluation, or
20 service reviews pursuant to chapters 395 and 766.

21 8. Authorized medical or epidemiological researchers
22 who may not further disclose any identifying characteristics
23 or information.

24 9. A person allowed access by a court order which is
25 issued in compliance with the following provisions:

26 a. No court of this state shall issue such order
27 unless the court finds that the person seeking the test
28 results has demonstrated a compelling need for the test
29 results which cannot be accommodated by other means. In
30 assessing compelling need, the court shall weigh the need for
31 disclosure against the privacy interest of the test subject

1 and the public interest which may be disserved by disclosure
2 which deters blood, organ, and semen donation and future human
3 immunodeficiency virus-related testing or which may lead to
4 discrimination. This paragraph shall not apply to blood bank
5 donor records.

6 b. Pleadings pertaining to disclosure of test results
7 shall substitute a pseudonym for the true name of the subject
8 of the test. The disclosure to the parties of the subject's
9 true name shall be communicated confidentially in documents
10 not filed with the court.

11 c. Before granting any such order, the court shall
12 provide the individual whose test result is in question with
13 notice and a reasonable opportunity to participate in the
14 proceedings if he or she is not already a party.

15 d. Court proceedings as to disclosure of test results
16 shall be conducted in camera, unless the subject of the test
17 agrees to a hearing in open court or unless the court
18 determines that a public hearing is necessary to the public
19 interest and the proper administration of justice.

20 e. Upon the issuance of an order to disclose test
21 results, the court shall impose appropriate safeguards against
22 unauthorized disclosure which shall specify the persons who
23 may have access to the information, the purposes for which the
24 information shall be used, and appropriate prohibitions on
25 future disclosure.

26 10. A person allowed access by order of a judge of
27 compensation claims of the Division of Administrative Hearings
28 ~~Workers' Compensation of the Department of Labor and~~
29 ~~Employment Security~~. A judge of compensation claims shall not
30 issue such order unless he or she finds that the person
31 seeking the test results has demonstrated a compelling need

1 for the test results which cannot be accommodated by other
2 means.

3 11. Those employees of the department or of
4 child-placing or child-caring agencies or of family foster
5 homes, licensed pursuant to s. 409.175, who are directly
6 involved in the placement, care, control, or custody of such
7 test subject and who have a need to know such information;
8 adoptive parents of such test subject; or any adult custodian,
9 any adult relative, or any person responsible for the child's
10 welfare, if the test subject was not tested under subparagraph
11 (b)2. and if a reasonable attempt has been made to locate and
12 inform the legal guardian of a test result. The department
13 shall adopt a rule to implement this subparagraph.

14 12. Those employees of residential facilities or of
15 community-based care programs that care for developmentally
16 disabled persons, pursuant to chapter 393, who are directly
17 involved in the care, control, or custody of such test subject
18 and who have a need to know such information.

19 13. A health care provider involved in the delivery of
20 a child can note the mother's HIV test results in the child's
21 medical record.

22 14. Medical personnel or nonmedical personnel who have
23 been subject to a significant exposure during the course of
24 medical practice or in the performance of professional duties,
25 or individuals who are the subject of the significant exposure
26 as provided in subparagraphs (h)10., 11., and 13.

27 15. The medical examiner shall disclose positive HIV
28 test results to the department in accordance with rules for
29 reporting and controlling the spread of disease.

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1 Section 7. Subsection (4), paragraph (d) of subsection
2 (14), and paragraph (c) of subsection (16) of section 440.02,
3 Florida Statutes, are amended 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 refers ~~shall be~~
8 ~~taken to refer~~ only to employments for when the work that is
9 anticipated contemplated is to be completed in ~~not exceeding~~
10 10 working days or less, without regard to the number of
11 persons employed, and at a when the total labor cost of ~~such~~
12 ~~work is~~ less than \$500~~\$100~~.

13 (14)

14 (d) "Employee" 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 b. The independent contractor holds or has applied for
20 a federal employer identification number, unless the
21 independent contractor is a sole proprietor who is not
22 required to obtain a federal employer identification number
23 under state or federal requirements;

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

28 d. The independent contractor incurs the principal
29 expenses related to the service or work that he or she
30 performs or agrees to perform;

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

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

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

10 h. The independent contractor has continuing or
11 recurring business liabilities or obligations; and

12 i. The success or failure of the independent
13 contractor's business depends on the relationship of business
14 receipts to expenditures.

15
16 However, the determination as to whether an individual
17 included in the Standard Industrial Classification Manual of
18 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
19 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
20 2448, or 2449, or a newspaper delivery person, is an
21 independent contractor is governed not by the criteria in this
22 paragraph but by common-law principles, giving due
23 consideration to the business activity of the individual.

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

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

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

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

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

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

1 b. Volunteers participating in federal programs
2 established under Pub. L. No. 93-113.

3 7. Any officer of a corporation who elects to be
4 exempt from this chapter.

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

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

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

26 11. A person who performs services as a sports
27 official for an entity sponsoring an interscholastic sports
28 event or for a public entity or private, nonprofit
29 organization that sponsors an amateur sports event. For
30 purposes of this subparagraph, such a person is an independent
31 contractor. For purposes of this subparagraph, the term

1 "sports official" means any person who is a neutral
2 participant in a sports event, including, but not limited to,
3 umpires, referees, judges, linespersons, scorekeepers, or
4 timekeepers. This subparagraph does not apply to any person
5 employed by a district school board who serves as a sports
6 official as required by the employing school board or who
7 serves as a sports official as part of his or her
8 responsibilities during normal school hours.

9 (16)

10 (c) "Employment" does not include service performed by
11 or as:

12 1. Domestic servants in private homes.

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

24 3. Professional athletes, such as professional boxers,
25 wrestlers, baseball, football, basketball, hockey, polo,
26 tennis, jai alai, and similar players, and motorsports teams
27 competing in a motor racing event as defined in s. 549.08.

28 4. Labor under a sentence of a court to perform
29 community services as provided in s. 316.193.

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1 5. State prisoners or county inmates, except those
2 performing services for private employers or those enumerated
3 in s. 948.03(8)(a).

4 Section 8. Subsection (2) of section 440.09, Florida
5 Statutes, is amended to read:

6 440.09 Coverage.--

7 (2) Benefits are not payable in respect of the
8 disability or death of any employee covered by the Federal
9 Employer's Liability Act, the Longshoremen's and Harbor
10 Worker's Compensation Act, the Defense Base Act, or the Jones
11 Act.

12 Section 9. Paragraph (b) of subsection (3) of section
13 440.105, Florida Statutes, is amended to read:

14 440.105 Prohibited activities; reports; penalties;
15 limitations.--

16 (3) Whoever violates any provision of this subsection
17 commits a misdemeanor of the first degree, punishable as
18 provided in s. 775.082 or s. 775.083.

19 (b) It is ~~shall be~~ unlawful for any attorney or other
20 person, in his or her individual capacity or in his or her
21 capacity as a public or private employee, or for any firm,
22 corporation, partnership, or association to receive any fee or
23 other consideration or any gratuity from a person on account
24 of services rendered for a person in connection with any
25 proceedings arising under this chapter, unless such fee,
26 consideration, or gratuity is approved by a judge of
27 compensation claims or by the Deputy Chief Judge of
28 Compensation Claims.

29 Section 10. Subsection (1) of section 440.12, Florida
30 Statutes, is amended to read:

31

1 440.12 Time for commencement and limits on weekly rate
2 of compensation.--

3 (1) No compensation shall be allowed for the first 7
4 days of the disability, except benefits provided for in s.
5 440.13. However, if the injury results in disability of more
6 than 21 days, compensation shall be allowed from the
7 commencement of the disability. All weekly compensation
8 payments, except for the first payment, shall be paid by check
9 or, if authorized by the employee, deposited directly into the
10 employee's account at a financial institution. As used in this
11 subsection, the term "financial institution" means a financial
12 institution as defined in s. 655.005(1)(h).

13 Section 11. Paragraph (a) of subsection (3) and
14 paragraphs (b) and (c) of subsection (4) of section 440.13,
15 Florida Statutes, are amended to read:

16 440.13 Medical services and supplies; penalty for
17 violations; limitations.--

18 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

11 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
12 DIVISION.--

13 (b) Upon the request of the Division of Workers'
14 Compensation, each medical report or bill obtained or received
15 by the employer, the carrier, or the injured employee, or the
16 attorney for the employer, carrier, or injured employee, with
17 respect to the remedial treatment, or care, and attendance of
18 the injured employee, including any report of an examination,
19 diagnosis, or disability evaluation, must be filed with the
20 Division of Workers' Compensation pursuant to rules adopted by
21 the division. The health care provider shall also furnish to
22 the injured employee or to his or her attorney, on demand, a
23 copy of his or her office chart, records, and reports, and may
24 charge the injured employee an amount authorized by the
25 division for the copies. Each such health care provider shall
26 provide to the division ~~any additional~~ information about the
27 remedial treatment, care, and attendance which ~~that~~ the
28 division reasonably requests.

29 (c) It is the policy for the administration of the
30 workers' compensation system that there be reasonable access
31 to medical information by all parties to facilitate the

1 self-executing features of the law. Notwithstanding the
2 limitations in s. 456.057 and subject to the limitations in s.
3 381.004, upon the request of the employer, the carrier, an
4 authorized qualified rehabilitation provider, or the attorney
5 for the employer or carrier ~~either of them~~, the medical
6 records of an injured employee must be furnished to those
7 persons and the medical condition of the injured employee must
8 be discussed with those persons, if the records and the
9 discussions are restricted to conditions relating to the
10 workplace injury. Any such discussions may be held before or
11 after the filing of a claim without the knowledge, consent, or
12 presence of any other party or his or her agent or
13 representative. A health care provider who willfully refuses
14 to provide medical records or to discuss the medical condition
15 of the injured employee, after a reasonable request is made
16 for such information pursuant to this subsection, shall be
17 subject by the division to one or more of the penalties set
18 forth in paragraph (8)(b).

19 Section 12. Paragraph (b) of subsection (2) of section
20 440.134, Florida Statutes, is amended to read:

21 440.134 Workers' compensation managed care
22 arrangement.--

23 (2)

24 (b) ~~Effective January 1, 1997,~~The employer shall,
25 subject to the limitations specified elsewhere in this
26 chapter, furnish to the employee solely through managed care
27 arrangements or without managed care arrangements such
28 medically necessary remedial treatment, care, and attendance
29 for such period as the nature of the injury or the process of
30 recovery requires.

31

1 Section 13. Subsection (5) is added to section 440.14,
2 Florida Statutes, to read:

3 440.14 Determination of pay.--

4 (5)(a) If the lost wages from concurrent employment
5 are used in calculating the average weekly wage, the employee
6 is responsible for providing information concerning the loss
7 of earnings from the concurrent employment.

8 (b) The employee waives any entitlement to interest,
9 penalties, and attorney's fees during the period in which the
10 employee has not provided information concerning the loss of
11 earnings from concurrent employment. Carriers are not subject
12 to penalties by the division under s. 440.20(8)(b) and (c) for
13 unpaid compensation related to concurrent employment during
14 the period in which the employee has not provided information
15 concerning the loss of earnings from concurrent employment.

16 Section 14. Subsection (7) of section 440.185, Florida
17 Statutes, is amended to read:

18 440.185 Notice of injury or death; reports; penalties
19 for violations.--

20 (7) Every carrier shall file with the division within
21 21 days after the issuance of a policy or contract of
22 insurance such policy information as the division requires ~~may~~
23 ~~require~~, including notice of whether the policy is a minimum
24 premium policy. Notice of cancellation or expiration of a
25 policy as set out in s. 440.42(3) shall be mailed to the
26 division in accordance with rules adopted ~~promulgated~~ by the
27 division under chapter 120. The division may contract with a
28 private entity for the collection of policy information
29 required to be filed by carriers under this subsection and the
30 receipt of notices of cancellation or expiration of a policy
31 required to be filed by carriers under s. 440.42(3). The

1 submission of policy information or notices of cancellation or
2 expiration to the contracted private entity satisfies the
3 filing requirements of this subsection and s. 440.42(3).

4 Section 15. Subsections (1), (2), (5), and (8) of
5 section 440.192, Florida Statutes, are amended to read:

6 440.192 Procedure for resolving benefit disputes.--

7 (1) Subject to s. 440.191, any employee who has not
8 received a benefit to which the employee believes she or he is
9 entitled under this chapter shall file by certified mail, or
10 by electronic means approved by the Deputy Chief Judge, with
11 the Office of the Judges of Compensation Claims a petition for
12 benefits which meets the requirements of this section. The
13 division shall inform employees of the location of the Office
14 of the Judges of Compensation Claims for purposes of filing a
15 petition for benefits. The employee shall also serve copies
16 of the petition for benefits by certified mail, or by
17 electronic means approved by the Deputy Chief Judge, upon the
18 employer and, the employer's carrier, and the division in
19 Tallahassee a petition for benefits that meets the
20 requirements of this section. The Deputy Chief Judge shall
21 refer the petitions to the judges of compensation claims. The
22 division shall refer the petition to the Office of the Judges
23 of Compensation Claims.

24 (2) Upon receipt, the Office of the Judges of
25 Compensation Claims shall review each petition and shall
26 dismiss each petition or any portion of such a petition, upon
27 the judge's ~~its~~ own motion or upon the motion of any party,
28 that does not on its face specifically identify or itemize the
29 following:

30 (a) Name, address, telephone number, and social
31 security number of the employee.

- 1 (b) Name, address, and telephone number of the
2 employer.
- 3 (c) A detailed description of the injury and cause of
4 the injury, including the location of the occurrence and the
5 date or dates of the accident.
- 6 (d) A detailed description of the employee's job, work
7 responsibilities, and work the employee was performing when
8 the injury occurred.
- 9 (e) The time period for which compensation and the
10 specific classification of compensation were ~~was~~ not timely
11 provided.
- 12 (f) Date of maximum medical improvement, character of
13 disability, and specific statement of all benefits or
14 compensation that the employee is seeking.
- 15 (g) All specific travel costs to which the employee
16 believes she or he is entitled, including dates of travel and
17 purpose of travel, means of transportation, and mileage and
18 including the date the request for mileage was filed with the
19 carrier and a copy of the request filed with the carrier.
- 20 (h) Specific listing of all medical charges alleged
21 unpaid, including the name and address of the medical
22 provider, the amounts due, and the specific dates of
23 treatment.
- 24 (i) The type or nature of treatment care or attendance
25 sought and the justification for such treatment.
- 26 (j) Specific explanation of any other disputed issue
27 that a judge of compensation claims will be called to rule
28 upon.
29
30
31

1 The dismissal of any petition or portion of such a petition
2 under this section is without prejudice and does not require a
3 hearing.

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

15 (8) Within 14 days after receipt of a petition for
16 benefits by certified mail, the carrier must either pay the
17 requested benefits without prejudice to its right to deny
18 within 120 days from receipt of the petition or file a
19 response to petition ~~notice of denial~~ with the Office of the
20 Judges of Compensation Claims ~~division~~. The carrier must list
21 all benefits requested but not paid and explain its
22 justification for nonpayment in the response to petition
23 ~~notice of denial~~. A carrier that does not deny compensability
24 in accordance with s. 440.20(4) is deemed to have accepted the
25 employee's injuries as compensable, unless it can establish
26 material facts relevant to the issue of compensability that
27 could not have been discovered through reasonable
28 investigation within the 120-day period. The carrier shall
29 provide copies of the response ~~notice~~ to the filing party,
30 employer, and claimant by certified mail.

31

1 Section 16. Paragraph (a) of subsection (1) and
2 subsections (4), (6), and (11) of section 440.20, Florida
3 Statutes, are amended to read:

4 440.20 Time for payment of compensation; penalties for
5 late payment.--

6 (1)(a) Unless it denies compensability or entitlement
7 to benefits, the carrier shall pay compensation directly to
8 the employee as required by ss. 440.14, 440.15, and 440.16, in
9 accordance with the obligations set forth in such sections. If
10 authorized by the employee, the carrier's obligation to pay
11 compensation directly to the employee is satisfied when the
12 carrier directly deposits, by electronic transfer or other
13 means, compensation into the employee's account at a financial
14 institution. As used in this paragraph, the term "financial
15 institution" means a financial institution as defined in s.
16 655.005(1)(h). Compensation by direct deposit is considered
17 paid on the date the funds become available for withdrawal by
18 the employee.

19 (4) If the carrier is uncertain of its obligation to
20 provide benefits or compensation, it may initiate payment
21 without prejudice and without admitting liability. The carrier
22 shall immediately and in good faith commence investigation of
23 the employee's entitlement to benefits under this chapter and
24 shall admit or deny compensability within 120 days after the
25 initial provision of compensation or benefits as required
26 under subsection (2) or s. 440.192(8). Upon commencement of
27 payment as required under subsection (2) or s. 440.192(8), the
28 carrier shall provide written notice to the employee that it
29 has elected to pay all or part of the claim pending further
30 investigation, and that it will advise the employee of claim
31 acceptance or denial within 120 days. A carrier that fails to

1 deny compensability within 120 days after the initial
2 provision of benefits or payment of compensation as required
3 under subsection (2) or s. 440.192(8) waives the right to deny
4 compensability, unless the carrier can establish material
5 facts relevant to the issue of compensability that it could
6 not have discovered through reasonable investigation within
7 the 120-day period. The initial provision of compensation or
8 benefits, for purposes of this subsection, means the first
9 installment of compensation or benefits to be paid by the
10 carrier under subsection (2) or pursuant to a petition for
11 benefits under s. 440.192(8).

12 (6) If any installment of compensation for death or
13 dependency benefits, disability, permanent impairment, or wage
14 loss payable without an award is not paid within 7 days after
15 it becomes due, as provided in subsection (2), subsection (3),
16 or subsection (4), there shall be added to such unpaid
17 installment a punitive penalty of an amount equal to 20
18 percent of the unpaid installment or \$5, which shall be paid
19 at the same time as, but in addition to, such installment of
20 compensation, unless notice is filed under subsection (4) or
21 unless such nonpayment results from conditions over which the
22 employer or carrier had no control. When any installment of
23 compensation payable without an award has not been paid within
24 7 days after it became due and the claimant concludes the
25 prosecution of the claim before a judge of compensation claims
26 without having specifically claimed additional compensation in
27 the nature of a penalty under this section, the claimant will
28 be deemed to have acknowledged that, owing to conditions over
29 which the employer or carrier had no control, such installment
30 could not be paid within the period prescribed for payment and
31 to have waived the right to claim such penalty. However,

1 during the course of a hearing, the judge of compensation
2 claims shall on her or his own motion raise the question of
3 whether such penalty should be awarded or excused. The
4 division may assess without a hearing the punitive penalty
5 against either the employer or the insurance carrier,
6 depending upon who was at fault in causing the delay. The
7 insurance policy cannot provide that this sum will be paid by
8 the carrier if the division or the judge of compensation
9 claims determines that the punitive penalty should be made by
10 the employer rather than the carrier. Any additional
11 installment of compensation paid by the carrier pursuant to
12 this section shall be paid directly to the employee by check
13 or, if authorized by the employee, by direct deposit into the
14 employee's account at a financial institution. As used in this
15 subsection, the term "financial institution" means a financial
16 institution as defined in s. 655.005(1)(h).

17 (11)(a) When a claimant is not represented by counsel,
18 upon joint petition of all interested parties, a lump-sum
19 payment in exchange for the employer's or carrier's release
20 from liability for future medical expenses, as well as future
21 payments of compensation expenses and any other benefits
22 provided under this chapter, shall be allowed at any time in
23 any case in which the employer or carrier has filed a written
24 notice of denial within 120 days after the employer receives
25 notice ~~date~~ of the injury, and the judge of compensation
26 claims at a hearing to consider the settlement proposal finds
27 a justiciable controversy as to legal or medical
28 compensability of the claimed injury or the alleged accident.
29 A judge of compensation claims is not required to hold a
30 hearing if the claimant is represented by an attorney and all
31 parties stipulate that a hearing is unnecessary.The employer

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

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

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

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

24 (c) Notwithstanding s. 440.21(2), when a claimant is
25 represented by counsel, the claimant may waive all rights to
26 any and all benefits under this chapter by entering into a
27 settlement agreement releasing the employer and the carrier
28 from liability for workers' compensation benefits in exchange
29 for a lump-sum payment to the claimant. The settlement
30 agreement requires approval by the judge of compensation
31 claims only as to the attorney's fees paid to the claimant's

1 attorney by the claimant. The parties need not submit any
2 information or documentation in support of the settlement,
3 except as needed to justify the amount of the attorney's fees.
4 Neither the employer nor the carrier is responsible for any
5 attorney's fees relating to the settlement and release of
6 claims under this section. Payment of the lump-sum settlement
7 amount must be made within 14 days after the date the judge of
8 compensation claims mails the order approving the attorney's
9 fees. Any order entered by a judge of compensation claims
10 approving the attorney's fees as set out in the settlement
11 under this subsection is not considered to be an award and is
12 not subject to modification or review. The judge of
13 compensation claims shall report these settlements to the
14 chief judge in accordance with the requirements set forth in
15 paragraphs (a) and (b). Settlements entered into under this
16 subsection are valid and apply to all dates of accident.

17 (d) When reviewing and approving any lump-sum
18 settlement under this subsection, a judge of compensation
19 claims must consider whether the settlement serves the
20 interests of the worker and the worker's family, including,
21 but not limited to, whether the settlement provides for
22 appropriate recovery of any child-support arrearage.

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

26 Section 17. Section 440.22, Florida Statutes, is
27 amended to read:

28 440.22 Assignment and exemption from claims of
29 creditors.--No assignment, release, or commutation of
30 compensation or benefits due or payable under this chapter
31 except as provided by this chapter shall be valid, and such

1 compensation and benefits shall be exempt from all claims of
2 creditors, and from levy, execution and attachments or other
3 remedy for recovery or collection of a debt, which exemption
4 may not be waived. However, the exemption of workers'
5 compensation claims from creditors does not extend to claims
6 based on an award of child support or alimony.

7 Section 18. Subsections (1), (2), (3), and (4) and
8 paragraph (b) of subsection (5) of section 440.25, Florida
9 Statutes, are amended to read:

10 440.25 Procedures for mediation and hearings.--

11 (1) Within 21 days after a petition for benefits is
12 filed under s. 440.192, a mediation conference concerning such
13 petition shall be held. Within 7 days after such petition is
14 filed, the judge of compensation claims shall notify the
15 interested parties that a mediation conference concerning such
16 petition will be held. Such notice shall give the date, time,
17 and location of the mediation conference. Such notice may be
18 served personally upon the interested parties or may be sent
19 to the interested parties by mail. The claimant or the
20 adjuster of the employer or carrier may, at the mediator's
21 discretion, attend the mediation conference by telephone or,
22 if agreed to by the parties, other electronic means.

23 (2) Any party who participates in a mediation
24 conference shall not be precluded from requesting a hearing
25 following the mediation conference should both parties not
26 agree to be bound by the results of the mediation conference.
27 A mediation conference is required to be held unless this
28 requirement is waived by the Deputy Chief Judge. No later than
29 3 days prior to the mediation conference, all parties must
30 submit any applicable motions, including, but not limited to,
31

1 a motion to waive the mediation conference, to the judge of
2 compensation claims.

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

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

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

1 days to conduct discovery unless the parties consent to an
2 earlier hearing date.

3 (b) The final hearing must be held and concluded
4 within 45 days after the pretrial hearing. Continuances may be
5 granted only if the requesting party demonstrates to the judge
6 of compensation claims that the reason for requesting the
7 continuance arises from circumstances beyond the party's
8 control. The written consent of the claimant must be obtained
9 before any request is granted for an additional continuance
10 after the initial continuance has been granted.

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

14 (d) The hearing shall be held in the county where the
15 injury occurred, if the injury occurred in this state, unless
16 otherwise agreed to between the parties and authorized by the
17 judge of compensation claims in the county where the injury
18 occurred. If the injury occurred without the state and is one
19 for which compensation is payable under this chapter, then the
20 hearing above referred to may be held in the county of the
21 employer's residence or place of business, or in any other
22 county of the state which will, in the discretion of the
23 Deputy Chief Judge, be the most convenient for a hearing. The
24 hearing shall be conducted by a judge of compensation claims,
25 who shall, within 30 ~~14~~ days after final hearing or closure of
26 the hearing record, unless otherwise agreed by the parties,
27 enter a final order on the merits of the disputed issues
28 ~~determine the dispute in a summary manner. The judge of~~
29 compensation claims may enter an abbreviated final order in
30 cases in which compensability is not disputed. Either party
31 may request separate findings of fact and conclusions of law.

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

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

26 (f) Each judge of compensation claims is required to
27 submit a special report to the Deputy Chief Judge in each
28 contested workers' compensation case in which the case is not
29 determined within 30 ~~14~~ days of final hearing or closure of
30 the hearing record. Said form shall be provided by the
31 director of the Division of Administrative Hearings ~~Chief~~

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

9 ~~(g) Judges of compensation claims shall adopt and~~
10 ~~enforce uniform local rules for workers' compensation.~~

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

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

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

1 any other claim filed in accordance with s. 440.192, upon the
2 written agreement of both parties and application by either
3 party, may similarly be resolved under this paragraph. For
4 purposes of expedited resolution pursuant to this paragraph,
5 the Deputy Chief Judge shall make provision by rule or order
6 for expedited and limited discovery and expedited docketing in
7 such cases. At least 15 days prior to hearing, the parties
8 shall exchange and file with the judge of compensation claims
9 a pretrial outline of all issues, defenses, and witnesses on a
10 form adopted ~~promulgated~~ by the Deputy Chief Judge; provided,
11 in no event shall such hearing be held without 15 days'
12 written notice to all parties. No pretrial hearing shall be
13 held. The judge of compensation claims shall limit all
14 argument and presentation of evidence at the hearing to a
15 maximum of 30 minutes, and such hearings shall not exceed 30
16 minutes in length. Neither party shall be required to be
17 represented by counsel. The employer or carrier may be
18 represented by an adjuster or other qualified representative.
19 The employer or carrier and any witness may appear at such
20 hearing by telephone. The rules of evidence shall be liberally
21 construed in favor of allowing introduction of evidence.

22 (5)

23 (b) An appellant may be relieved of any necessary
24 filing fee by filing a verified petition of indigency for
25 approval as provided in s. 57.081(1) and may be relieved in
26 whole or in part from the costs for preparation of the record
27 on appeal if, within 15 days after the date notice of the
28 estimated costs for the preparation is served, the appellant
29 files with the judge of compensation claims a copy of the
30 designation of the record on appeal, and a verified petition
31 to be relieved of costs. A verified petition filed prior to

1 the date of service of the notice of the estimated costs shall
2 be deemed not timely filed. The verified petition relating to
3 record costs shall contain a sworn statement that the
4 appellant is insolvent and a complete, detailed, and sworn
5 financial affidavit showing all the appellant's assets,
6 liabilities, and income. Failure to state in the affidavit all
7 assets and income, including marital assets and income, shall
8 be grounds for denying the petition with prejudice. The Office
9 of the Judges of Compensation Claims ~~division~~ shall adopt
10 ~~promulgate~~ rules as may be required pursuant to this
11 subsection, including forms for use in all petitions brought
12 under this subsection. The appellant's attorney, or the
13 appellant if she or he is not represented by an attorney,
14 shall include as a part of the verified petition relating to
15 record costs an affidavit or affirmation that, in her or his
16 opinion, the notice of appeal was filed in good faith and that
17 there is a probable basis for the District Court of Appeal,
18 First District, to find reversible error, and shall state with
19 particularity the specific legal and factual grounds for the
20 opinion. Failure to so affirm shall be grounds for denying the
21 petition. A copy of the verified petition relating to record
22 costs shall be served upon all interested parties, ~~including~~
23 ~~the division and the Office of the General Counsel, Department~~
24 ~~of Labor and Employment Security, in Tallahassee.~~ The judge of
25 compensation claims shall promptly conduct a hearing on the
26 verified petition relating to record costs, giving at least 15
27 days' notice to the appellant, the division, and all other
28 interested parties, all of whom shall be parties to the
29 proceedings. The judge of compensation claims may enter an
30 order without such hearing if no objection is filed by an
31 interested party within 20 days from the service date of the

1 verified petition relating to record costs. Such proceedings
2 shall be conducted in accordance with the provisions of this
3 section and with the workers' compensation rules of procedure,
4 to the extent applicable. In the event an insolvency petition
5 is granted, the judge of compensation claims shall direct the
6 division to pay record costs and filing fees from the Workers'
7 Compensation Trust Fund pending final disposition of the costs
8 of appeal. The division may transcribe or arrange for the
9 transcription of the record in any proceeding for which it is
10 ordered to pay the cost of the record. ~~In the event the~~
11 ~~insolvency petition is denied, the judge of compensation~~
12 ~~claims may enter an order requiring the petitioner to~~
13 ~~reimburse the division for costs incurred in opposing the~~
14 ~~petition, including investigation and travel expenses.~~

15 Section 19. Section 440.271, Florida Statutes, is
16 amended to read:

17 440.271 Appeal of order of judge of compensation
18 claims.--Review of any order of a judge of compensation claims
19 entered pursuant to this chapter shall be by appeal to the
20 District Court of Appeal, First District. To promote
21 consistency and uniformity in the application of this chapter,
22 the District Court of Appeal, First District, shall establish
23 a specialized division to hear all appeals of orders of judges
24 of compensation claims. The court may structure the division
25 to hear workers' compensation cases exclusively or in addition
26 to other appeals. Appeals shall be filed in accordance with
27 rules of procedure prescribed by the Supreme Court for review
28 of such orders. The division shall be given notice of any
29 proceedings pertaining to s. 440.25, regarding indigency, or
30 s. 440.49, regarding the Special Disability Trust Fund, and
31 shall have the right to intervene in any proceedings.

1 Section 20. Subsection (2) of section 440.29, Florida
2 Statutes, is amended to read:

3 440.29 Procedure before the judge of compensation
4 claims.--

5 (2) Hearings before the judge of compensation claims
6 shall be open to the public, and the Deputy Chief Judge is
7 authorized to designate the manner in which particular types
8 of hearings are recorded and reported and, when necessary, to
9 contract for the reporting of such hearings. The Deputy Chief
10 Judge shall arrange for the preparation of a record of the
11 hearings and other proceedings before judges of compensation
12 claims, as necessary, and is authorized to allow for the
13 attendance of court reporters at hearings, for preparation of
14 transcripts of testimony, for copies of any instrument, and
15 for other reporting or recording services. The Deputy Chief
16 Judge may charge the same fees allowed by law or court rule to
17 reporters, persons preparing transcripts, or clerks of courts
18 of this state for like services.

19 Section 21. Paragraph (b) of subsection (3) of section
20 440.34, Florida Statutes, is amended to read:

21 440.34 Attorney's fees; costs.--

22 (3) If the claimant should prevail in any proceedings
23 before a judge of compensation claims or court, there shall be
24 taxed against the employer the reasonable costs of such
25 proceedings, not to include the attorney's fees of the
26 claimant. A claimant shall be responsible for the payment of
27 her or his own attorney's fees, except that a claimant shall
28 be entitled to recover a reasonable attorney's fee from a
29 carrier or employer:

30 (b) In any case in which the employer or carrier files
31 a notice of denial or a response to petition with the division

1 and the injured person has employed an attorney in the
2 successful prosecution of the claim; or

3

4 In applying the factors set forth in subsection (1) to cases
5 arising under paragraphs (a), (b), (c), and (d), the judge of
6 compensation claims must only consider only such benefits and
7 the time reasonably spent in obtaining them as were secured
8 for the claimant within the scope of paragraphs (a), (b), (c),
9 and (d).

10 Section 22. Section 440.345, Florida Statutes, is
11 amended to read:

12 440.345 Reporting of attorney's fees.--All fees paid
13 to attorneys for services rendered under this chapter shall be
14 reported to the Office of the Judges of Compensation Claims
15 ~~division~~ as the Office of the Judges of Compensation Claims
16 ~~division~~ requires by rule. The Office of the Judges of
17 Compensation Claims ~~division~~ shall annually summarize such
18 data in a report to the Workers' Compensation Oversight Board.

19 Section 23. Paragraphs (b), (c), and (f) of subsection
20 (1) of section 440.38, Florida Statutes, are amended to read:

21 440.38 Security for compensation; insurance carriers
22 and self-insurers.--

23 (1) Every employer shall secure the payment of
24 compensation under this chapter:

25 (b) By furnishing satisfactory proof to the division
26 of its financial ability to pay such compensation individually
27 and on behalf of its subsidiary and affiliated companies with
28 employees in this state and receiving an authorization from
29 the division to pay such compensation directly in accordance
30 with the following provisions:

31

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

30 2. If the employer fails to maintain the foregoing
31 requirements, the division shall revoke the employer's

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

20 3. Upon the suspension or revocation of the employer's
21 authorization to self-insure, the employer shall provide to
22 the division and to the Florida Self-Insurers Guaranty
23 Association, Incorporated, created pursuant to s. 440.385 the
24 certified opinion of an independent actuary who is a member of
25 the American Society of Actuaries of the actuarial present
26 value of the determined and estimated future compensation
27 payments of the employer for claims incurred while the member
28 exercised the privilege of self-insurance, using a discount
29 rate of 4 percent. The employer shall provide such an opinion
30 at 6-month intervals thereafter until such time as the latest
31 opinion shows no remaining value of claims. With each such

1 opinion, the employer shall deposit with the division a
2 qualifying security deposit in an amount equal to the value
3 certified by the actuary. The association has a cause of
4 action against an employer, and against any successor of the
5 employer, who fails to timely provide such opinion or who
6 fails to timely maintain the required security deposit with
7 the division. The association shall recover a judgment in the
8 amount of the actuarial present value of the determined and
9 estimated future compensation payments of the employer for
10 claims incurred while the employer exercised the privilege of
11 self-insurance, together with attorney's fees. For purposes
12 of this section, the successor of an employer means any
13 person, business entity, or group of persons or business
14 entities, which holds or acquires legal or beneficial title to
15 the majority of the assets or the majority of the shares of
16 the employer.

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

19 a. Surety bonds, in a form and containing such terms
20 as prescribed by the division, issued by a corporation surety
21 authorized to transact surety business by the Department of
22 Insurance, and whose policyholders' and financial ratings, as
23 reported in A.M. Best's Insurance Reports, Property-Liability,
24 are not less than "A" and "V", respectively.

25 ~~b. Certificates of deposit with financial~~
26 ~~institutions, the deposits of which are insured through the~~
27 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
28 ~~and Loan Insurance Corporation.~~

29 ~~b.c.~~ Irrevocable letters of credit in favor of the
30 division issued by financial institutions located within this
31

1 state, the deposits of which are insured through the Federal
2 Deposit Insurance Corporation described in sub-subparagraph b.
3 ~~d. Direct obligations of the United States Treasury~~
4 ~~backed by the full faith and credit of the United States.~~
5 ~~e. Securities issued by this state and backed by the~~
6 ~~full faith and credit of this state.~~
7 5. The qualifying security deposit shall be held by
8 the division, ~~or by a depository authorized by the division,~~
9 exclusively for the benefit of workers' compensation
10 claimants. The security shall not be subject to assignment,
11 execution, attachment, or any legal process whatsoever, except
12 as necessary to guarantee the payment of compensation under
13 this chapter. No surety bond may be terminated, and no letter
14 of credit ~~other qualifying security~~ may be allowed to expire
15 ~~lapse~~, without 90 days' prior notice to the division and
16 deposit by the self-insuring employer of some other qualifying
17 security deposit of equal value within 10 business days after
18 such notice. Failure to provide such notice or failure to
19 timely provide qualifying replacement security after such
20 notice shall constitute grounds for the division to call or
21 sue upon the surety bond, ~~or to act with respect to other~~
22 ~~pledged security in any manner necessary to preserve its value~~
23 ~~for the purposes intended by this section, including the~~
24 ~~exercise its of rights under a letter of credit.~~ Current
25 self-insured employers must comply with this section on or
26 before December 31, 2001, or upon the maturity of existing
27 security deposits, whichever occurs later, ~~the sale of any~~
28 ~~security at then prevailing market rates, or the withdrawal of~~
29 ~~any funds represented by any certificate of deposit forming~~
30 ~~part of the qualifying security deposit.~~ The division may
31 specify by rule the amount of the qualifying security deposit

1 required prior to authorizing an employer to self-insure and
2 the amount of net worth required for an employer to qualify
3 for authorization to self-insure;

4 (c) By entering into a contract with a public utility
5 under an approved utility-provided self-insurance program as
6 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
7 1983. The division shall adopt rules to implement this
8 paragraph;

9 (f) By entering into a contract with an individual
10 self-insurer under an approved individual
11 self-insurer-provided self-insurance program as set forth in
12 s. 624.46225. The division may adopt rules to administer
13 ~~implement~~ this subsection.

14 Section 24. Subsections (3), (5), (6), and (7) of
15 section 440.44, Florida Statutes, are amended to read:

16 440.44 Workers' compensation; staff organization.--

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

29 (5) OFFICE.--The division and the Deputy Chief Judge
30 shall maintain and keep open during reasonable business hours
31 an office, which shall be provided in the Capitol or some

1 other suitable building in the City of Tallahassee, for the
2 transaction of business under this chapter, at which office
3 the official records and papers shall be kept. The office
4 shall be furnished and equipped. The division, any judge of
5 compensation claims, or the Deputy Chief Judge may hold
6 sessions and conduct hearings at any place within the state.
7 The Office of the Judges of Compensation Claims shall maintain
8 the 17 district offices, 31 judges of compensation claims, and
9 31 mediators as they exist on June 30, 2001.

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

16 (7) DESTRUCTION OF OBSOLETE RECORDS.--The division is
17 expressly authorized to provide by regulation for and to
18 destroy obsolete records of the division ~~and commission~~. The
19 Division of Administrative Hearings is expressly authorized to
20 provide by regulation for and to destroy obsolete records of
21 the Office of the Judges of Compensation Claims.

22 Section 25. Section 440.442, Florida Statutes, is
23 amended to read:

24 440.442 Code of Judicial Conduct.--The Deputy Chief
25 Judge, and judges of compensation claims shall observe and
26 abide by the Code of Judicial Conduct as adopted by the
27 Florida Supreme Court ~~provided in this section~~. Any material
28 violation of a provision of the Code of Judicial Conduct shall
29 constitute either malfeasance or misfeasance in office and
30 shall be grounds for suspension and removal of the Deputy ~~such~~
31 Chief Judge, or judge of compensation claims by the Governor.

1 ~~(1) A JUDGE SHOULD UPHOLD THE INTEGRITY AND~~
2 ~~INDEPENDENCE OF THE JUDICIARY.--An independent and honorable~~
3 ~~judiciary is indispensable to justice in our society. A judge~~
4 ~~should participate in establishing, maintaining, and~~
5 ~~enforcing, and should himself or herself observe, high~~
6 ~~standards of conduct so that the integrity and independence of~~
7 ~~the judiciary may be preserved. The provisions of this code~~
8 ~~should be construed and applied to further that objective.~~
9 ~~(2) A JUDGE SHOULD AVOID IMPROPRIETY AND THE~~
10 ~~APPEARANCE OF IMPROPRIETY IN ALL HIS OR HER ACTIVITIES.--~~
11 ~~(a) A judge should respect and comply with the law and~~
12 ~~should conduct himself or herself at all times in a manner~~
13 ~~that promotes public confidence in the integrity and~~
14 ~~impartiality of the judiciary.~~
15 ~~(b) A judge should not allow his or her personal~~
16 ~~relationships to influence his or her judicial conduct of~~
17 ~~judgment. A judge should not lend the prestige of the office~~
18 ~~to advance the private interest of others; nor convey or~~
19 ~~authorize others to convey the impression that they are in a~~
20 ~~special position to influence him or her. A judge should not~~
21 ~~testify voluntarily as a character witness.~~
22 ~~(3) A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE~~
23 ~~IMPARTIALLY AND DILIGENTLY.--The judicial duties of a judge~~
24 ~~take precedence over all his or her other activities. The~~
25 ~~judicial duties include all the duties of office prescribed by~~
26 ~~law. In the performance of these duties, the following~~
27 ~~standards with respect to adjudicative responsibilities apply:~~
28 ~~(a) A judge should be faithful to the law and maintain~~
29 ~~professional competence in it. A judge should be unswayed by~~
30 ~~partisan interests, public clamor, or fear of criticism.~~
31

1 ~~(b) A judge should maintain order and decorum in~~
2 ~~proceedings.~~

3 ~~(c) A judge should be patient, dignified, and~~
4 ~~courteous to litigants, jurors, witnesses, lawyers, and others~~
5 ~~with whom he or she must deal in an official capacity, and~~
6 ~~should request similar conduct of lawyers, and of his or her~~
7 ~~staff, court officials, and others subject to his or her~~
8 ~~direction and control.~~

9 ~~(4) A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE~~
10 ~~LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE.--A~~
11 ~~judge, subject to the proper performance of his or her~~
12 ~~judicial duties, may engage in the following quasi-judicial~~
13 ~~activities, if in doing so he or she does not cast doubt on~~
14 ~~his or her capacity to decide impartially on any issue that~~
15 ~~may come before him or her:~~

16 ~~(a) Speak, write, lecture, teach, and participate in~~
17 ~~other activities concerning the law, the legal system, and the~~
18 ~~administration of justice.~~

19 ~~(b) Appear at a public hearing before an executive or~~
20 ~~legislative body or official on matters concerning the law,~~
21 ~~the legal system, and the administration of justice, and may~~
22 ~~otherwise consult with an executive or legislative body or~~
23 ~~official, but only on matters concerning the administration of~~
24 ~~justice.~~

25 ~~(c) Serve as a member, officer, or director of an~~
26 ~~organization or governmental agency devoted to the improvement~~
27 ~~of the law, the legal system, or the administration of justice~~
28 ~~and assist such an organization in raising funds and may~~
29 ~~participate in their management and investment, but should not~~
30 ~~personally participate in public fundraising activities.~~

31

1 ~~(d) Make recommendations to public and private~~
2 ~~fund-granting agencies on projects and programs concerning the~~
3 ~~law, the legal system, and the administration of justice.~~

4 ~~(5) A JUDGE SHOULD REGULATE EXTRAJUDICIAL ACTIVITIES~~
5 ~~TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES.--~~

6 ~~(a) Avocational activities.--A judge may write,~~
7 ~~lecture, teach, and speak on nonlegal subjects, and engage in~~
8 ~~the arts, sports, or other social and recreational activities,~~
9 ~~if such avocational activities do not detract from the dignity~~
10 ~~of the office or interfere with the performance of judicial~~
11 ~~duties.~~

12 ~~(b) Civil and charitable activities.--A judge may not~~
13 ~~participate in civic and charitable activities that reflect~~
14 ~~adversely upon his or her impartiality or interfere with the~~
15 ~~performance of his or her duties. A judge may serve as an~~
16 ~~officer, director, trustee, or nonlegal advisory of an~~
17 ~~educational, religious, charitable, fraternal, or civic~~
18 ~~organization not conducted for the economic or political~~
19 ~~advantage of its members, subject to the following~~
20 ~~limitations:~~

21 ~~1. A judge should not serve if it is likely that the~~
22 ~~organization will be engaged in proceedings that would~~
23 ~~ordinarily come before him or her or will be regularly engaged~~
24 ~~in adversary proceedings in any court.~~

25 ~~2. A judge should not solicit funds for any~~
26 ~~educational, religious, charitable, fraternal, or civil~~
27 ~~organization, or use or permit the use of the prestige of the~~
28 ~~office for that purpose, but may be listed as an officer,~~
29 ~~director, or trustee of such an organization. A judge should~~
30 ~~not be a speaker or a guest of honor at any organization's~~
31 ~~fundraising events, but may attend such events.~~

1 ~~3. A judge should not give investment advice to such~~
2 ~~an organization, but may serve on its board of directors or~~
3 ~~trustees even though it has the responsibility for approving~~
4 ~~investment decisions.~~

5 ~~(c) Financial activities.--~~

6 ~~1. A judge should refrain from financial and business~~
7 ~~dealings that tend to reflect adversely on his or her~~
8 ~~impartiality, interfere with the proper performance of his or~~
9 ~~her judicial duties, exploit his or her judicial position, or~~
10 ~~involve the judge in frequent transactions with lawyers or~~
11 ~~persons likely to come before the court on which he or she~~
12 ~~serves.~~

13 ~~2. Subject to the requirements of subsection (1), a~~
14 ~~judge in an individual or corporate capacity may hold and~~
15 ~~manage investments, including real estate, and engage in other~~
16 ~~remunerative activity, but should not serve as an officer,~~
17 ~~director, manager, advisor, or employee of any business,~~
18 ~~except a closely held family business that does not conflict~~
19 ~~with subsection (1).~~

20 ~~3. A judge should manage his or her investments and~~
21 ~~other financial interests to minimize the number of cases in~~
22 ~~which he or she is disqualified. As soon as the judge can do~~
23 ~~so without serious financial detriment, he or she should~~
24 ~~divest himself or herself of investments and other financial~~
25 ~~interests that might require frequent disqualifications.~~

26 ~~4. A judge should not accept a gift, bequest, favor,~~
27 ~~or loan from anyone except as follows:~~

28 ~~a. A judge may accept a gift incident to a public~~
29 ~~testimonial to him or her; books supplied by publishers on a~~
30 ~~complimentary basis for official use; or an invitation to the~~
31 ~~judge and spouse to attend a bar-related function or activity~~

1 ~~devoted to the improvement of the law, the legal system, or~~
2 ~~the administration of justice;~~
3 ~~b. A judge may accept ordinary hospitality; a gift,~~
4 ~~bequest, favor, or loan from a relative; a wedding or an~~
5 ~~engagement gift; a loan from a lending institution in its~~
6 ~~regular course of business on the same terms generally~~
7 ~~available to persons who are not judges; or a scholarship or~~
8 ~~fellowship awarded on the same terms applied to other~~
9 ~~applicants;~~
10 ~~c. A judge may accept any other gift, bequest, favor,~~
11 ~~or loan exceeding \$100 only if the donor is not a party or~~
12 ~~other person whose interests have recently come or may likely~~
13 ~~come before him or her in the immediate future.~~
14 ~~5. A judge should make a reasonable effort to be~~
15 ~~informed about the personal financial interests of members of~~
16 ~~his or her family residing in the judge's household and shall~~
17 ~~report any gift, bequest, favor, or loan received thereby of~~
18 ~~which he or she has knowledge and which tends to reflect~~
19 ~~adversely on his or her impartiality, in the same manner as he~~
20 ~~or she reports compensation in subsection (6).~~
21 ~~6. For the purpose of this section, "member of his or~~
22 ~~her family residing in the judge's household" means any~~
23 ~~relative of a judge by blood or marriage, or a person treated~~
24 ~~by a judge as a member of his or her family, who resides in~~
25 ~~the judge's household.~~
26 ~~7. A judge is not required by this section to disclose~~
27 ~~his or her income, debts, or investments, except as provided~~
28 ~~in subsections (3) and (6).~~
29 ~~8. Information required by a judge in which his or her~~
30 ~~judicial capacity should not be used or disclosed by the judge~~
31

1 ~~in financial dealings or for any other purpose not related to~~
2 ~~his or her judicial duties.~~

3 ~~(6) FISCAL MATTERS OF JUDGES.--Fiscal matters of a~~
4 ~~judge should be conducted in a manner that will not give the~~
5 ~~appearance of influence or impropriety. A judge should~~
6 ~~regularly file public reports as required by s. 8, Art. II of~~
7 ~~the State Constitution, and should publicly report gifts.~~

8 ~~(a) Compensation for quasi-judicial and extrajudicial~~
9 ~~services and reimbursement of expenses.--A judge may receive~~
10 ~~compensation and reimbursement of expenses for the~~
11 ~~quasi-judicial and extrajudicial activities permitted by this~~
12 ~~section, if the source of such payments does not give the~~
13 ~~appearance of influencing the judge in his or her judicial~~
14 ~~duties or otherwise give the impression of impropriety subject~~
15 ~~to the following restrictions:~~

16 ~~1. Compensation: Compensation should not exceed a~~
17 ~~reasonable amount nor should it exceed what a person who is~~
18 ~~not a judge would receive for the same activity.~~

19 ~~2. Expense reimbursement: Expense reimbursement~~
20 ~~should be limited to the actual cost of travel, food, and~~
21 ~~lodging reasonably incurred by the judge and, where~~
22 ~~appropriate to the occasion, to his or her spouse. Any payment~~
23 ~~in excess of such an amount is compensation.~~

24 ~~(b) Public financial reporting.--~~

25 ~~1. Income and assets: A judge shall file such public~~
26 ~~reports as may be required by law for all public officials to~~
27 ~~comply fully with the provisions of s. 8, Art. II of the State~~
28 ~~Constitution. The form for public financial disclosure shall~~
29 ~~be that recommended or adopted by the Florida Commission on~~
30 ~~Ethics for use by all public officials. The form shall be~~

31

1 ~~filed in the office of the Commission on Ethics on the date~~
2 ~~prescribed by law.~~

3 ~~2. Gifts: A judge shall file a public report of all~~
4 ~~gifts which are required to be disclosed under Canons 5D(5)(h)~~
5 ~~and 6B(2) of the Code of Judicial Conduct. The report of gifts~~
6 ~~received in the preceding calendar year shall be filed in the~~
7 ~~office of the Commission on Ethics on or before July 1 of each~~
8 ~~year.~~

9 Section 26. Section 440.45, Florida Statutes, is
10 amended to read:

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

12 (1)(a) There is ~~hereby~~ created the Office of the
13 Judges of Compensation Claims within the Department of
14 Management Services ~~Labor and Employment Security~~. The Office
15 of the Judges of Compensation Claims shall be headed by the
16 Deputy a Chief Judge of Compensation Claims. The Deputy Chief
17 Judge shall report to the director of the Division of
18 Administrative Hearings. The Deputy Chief Judge shall be
19 appointed by the Governor for a term of 4 years from a list of
20 three names submitted by the statewide nominating commission
21 created under subsection (2). The Deputy Chief Judge must
22 demonstrate prior administrative experience and possess the
23 same qualifications for appointment as a judge of compensation
24 claims, and the procedure for reappointment of the Deputy
25 Chief Judge will be the same as for reappointment of a judge
26 of compensation claims. The office shall be a separate budget
27 entity and the director of the Division of Administrative
28 Hearings ~~Chief Judge~~ shall be its agency head for all
29 purposes. The Department of Management Services ~~Labor and~~
30 ~~Employment Security~~ shall provide administrative support and
31 service to the office to the extent requested by the director

1 of the Division of Administrative Hearings ~~Chief Judge~~ but
2 shall not direct, supervise, or control the Office of the
3 Judges of Compensation Claims in any manner, including, but
4 not limited to, personnel, purchasing, budgetary matters, or
5 property transactions. The operating budget of the Office of
6 the Judges of Compensation Claims shall be paid out of the
7 Workers' Compensation Administration Trust Fund established in
8 s. 440.50.

9 (b) The current term of the Chief Judge of
10 Compensation Claims shall expire October 1, 2001. Effective
11 October 1, 2001, the position of Deputy Chief Judge of
12 Compensation Claims is created.

13 (2)(a) The Governor shall appoint full-time judges of
14 compensation claims to conduct proceedings as required by this
15 chapter or other law. No person may be nominated to serve as a
16 judge of compensation claims unless he or she has been a
17 member of The Florida Bar in good standing for the previous 5
18 years and is experienced ~~knowledgeable~~ in the practice of law
19 of workers' compensation. No judge of compensation claims
20 shall engage in the private practice of law during a term of
21 office.

22 (b) Except as provided in paragraph (c), the Governor
23 shall appoint a judge of compensation claims from a list of
24 three persons nominated by a statewide nominating commission.
25 The statewide nominating commission shall be composed of the
26 following:

27 1. Five members, at least one of whom must be a member
28 of a minority group as defined in s. 288.703(3), one of each
29 who resides in each of the territorial jurisdictions of the
30 district courts of appeal, appointed by the Board of Governors
31 of The Florida Bar from among The Florida Bar members who are

1 engaged in the practice of law. On July 1, 1999, the term of
2 office of each person appointed by the Board of Governors of
3 The Florida Bar to the commission expires. The Board of
4 Governors shall appoint members who reside in the odd-numbered
5 district court of appeal jurisdictions to 4-year terms each,
6 beginning July 1, 1999, and members who reside in the
7 even-numbered district court of appeal jurisdictions to 2-year
8 terms each, beginning July 1, 1999. Thereafter, each member
9 shall be appointed for a 4-year term;

10 2. Five electors, at least one of whom must be a
11 member of a minority group as defined in s. 288.703(3), one of
12 each who resides in each of the territorial jurisdictions of
13 the district courts of appeal, appointed by the Governor. On
14 July 1, 1999, the term of office of each person appointed by
15 the Governor to the commission expires. The Governor shall
16 appoint members who reside in the odd-numbered district court
17 of appeal jurisdictions to 2-year terms each, beginning July
18 1, 1999, and members who reside in the even-numbered district
19 court of appeal jurisdictions to 4-year terms each, beginning
20 July 1, 1999. Thereafter, each member shall be appointed for a
21 4-year term; and

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

1 and members who reside in the even-numbered district court of
2 appeal jurisdictions to 4-year terms each, beginning October
3 1, 1999. Thereafter, each member shall be appointed for a
4 4-year term.

5
6 A vacancy occurring on the commission shall be filled by the
7 original appointing authority for the unexpired balance of the
8 term. No attorney who appears before any judge of compensation
9 claims more than four times a year is eligible to serve on the
10 statewide nominating commission. The meetings and
11 determinations of the nominating commission as to the judges
12 of compensation claims shall be open to the public.

13 (c) Each judge of compensation claims shall be
14 appointed for a term of 4 years, but during the term of office
15 may be removed by the Governor for cause. Prior to the
16 expiration of a judge's term of office, the statewide
17 nominating commission shall review the judge's conduct and
18 determine whether the judge's performance is satisfactory.
19 Effective July 1, 2002, in determining whether a judge's
20 performance is satisfactory, the commission shall consider the
21 extent to which the judge has met the requirements of this
22 chapter, including, but not limited to, the requirements of
23 ss. 440.192(2), 440.25(1) and (4)(a)-(f), 440.34(2), and
24 440.442.If the judge's performance is deemed satisfactory,
25 the commission shall report its finding to the Governor no
26 later than 6 months prior to the expiration of the judge's
27 term of office. The Governor shall review the commission's
28 report and may reappoint the judge for an additional 4-year
29 term. If the Governor does not reappoint the judge, the
30 Governor shall inform the commission. The judge shall remain
31 in office until the Governor has appointed a successor judge

1 in accordance with paragraphs (a) and (b). If a vacancy occurs
2 during a judge's unexpired term, the statewide nominating
3 commission does not find the judge's performance is
4 satisfactory, or the Governor does not reappoint the judge,
5 the Governor shall appoint a successor judge for a term of 4
6 years in accordance with paragraph (b).

7 (d) The Governor may appoint any attorney who has at
8 least 5 years of experience in the practice of law in this
9 state to serve as a judge of compensation claims pro hac vice
10 in the absence or disqualification of any full-time judge of
11 compensation claims or to serve temporarily as an additional
12 judge of compensation claims in any area of the state in which
13 the Governor determines that a need exists for such an
14 additional judge. However, an attorney who is so appointed by
15 the Governor may not serve for a period of more than 120
16 successive days.

17 (e) The director of the Division of Administrative
18 Hearings may receive or initiate complaints, conduct
19 investigations, and dismiss complaints against the Deputy
20 Chief Judge and the judges of compensation claims. The
21 director may recommend to the Governor the removal of the
22 Deputy Chief Judge or a judge of compensation claims or
23 recommend the discipline of a judge whose conduct during his
24 or her term of office warrants such discipline. For purposes
25 of this section, the term "discipline" includes reprimand,
26 fine, and suspension with or without pay. At the conclusion of
27 each investigation, the director shall submit preliminary
28 findings of fact and recommendations to the judge of
29 compensation claims who is the subject of the complaint. The
30 judge of compensation claims has 20 days within which to
31 respond to the preliminary findings. The response and the

1 director's rebuttal to the response must be included in the
2 final report submitted to the Governor.

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

17 ~~(3)(4) The Chief Judge shall have the discretion to~~
18 ~~require mediation and to designate qualified persons to act as~~
19 ~~mediators in any dispute pending before the judges of~~
20 ~~compensation claims and the division. The Deputy Chief Judge~~
21 ~~shall coordinate with the Director of the Division of Workers'~~
22 ~~Compensation to establish a mandatory mediation program to~~
23 ~~facilitate early and efficient resolution of disputes arising~~
24 ~~under this chapter and to establish training and continuing~~
25 ~~education for new and sitting judges.~~

26 ~~(4)(5) The Office of the Judges of Compensation Claims~~
27 ~~shall adopt ~~promulgate~~ rules to effect the purposes of this~~
28 ~~section. Such rules shall include procedural rules applicable~~
29 ~~to workers' compensation claim resolution and uniform criteria~~
30 ~~for measuring the performance of the office, including, but~~
31 ~~not limited to, the number of cases assigned and disposed, the~~

1 age of pending and disposed cases, timeliness of
2 decisionmaking, extraordinary fee awards, and other data
3 necessary for the judicial nominating commission to review the
4 performance of judges as required in paragraph (2)(c)
5 ~~performance indicators~~. The workers' compensation rules of
6 procedure approved by the Supreme Court ~~shall~~ apply until the
7 rules adopted ~~promulgated~~ by the Office of the Judges of
8 Compensation Claims pursuant to this section become effective.
9 (5)(6) Not later than December 1 of each year, the
10 Office of the Judges of Compensation Claims ~~and the Division~~
11 ~~of Workers' Compensation~~ shall jointly issue a written report
12 to the Governor, the House of Representatives, ~~and~~ the Senate,
13 The Florida Bar, and the statewide nominating commission
14 summarizing the amount, cost, and outcome of all litigation
15 resolved in the previous fiscal ~~prior~~ year, summarizing the
16 disposition of mediation conferences, the number of mediation
17 conferences held, the number of continuances granted for
18 mediations and final hearings, the number and outcome of
19 litigated cases, the amount of attorney's fees paid in each
20 case according to order year and accident year, and the number
21 of final orders not issued within 30 days after the final
22 hearing or closure of the hearing record, ~~applications and~~
23 ~~motions for mediation conferences~~ and recommending changes or
24 improvements to the dispute resolution elements of the
25 Workers' Compensation Law and regulations. If the Deputy Chief
26 Judge finds that judges generally are unable to meet a
27 particular statutory requirement for reasons beyond their
28 control, the Deputy Chief Judge shall submit such findings and
29 any recommendations to the Legislature.
30 Section 27. Section 440.47, Florida Statutes, is
31 amended to read:

1 440.47 Travel expenses.--The Deputy Chief Judge,
2 judges of compensation claims, and employees of the department
3 shall be reimbursed for travel expenses as provided in s.
4 112.061. Such expenses shall be sworn to by the person who
5 incurred the same and shall be allowed and paid as provided in
6 s. 440.50 upon the presentation of vouchers therefor approved
7 by the director of the Division of Administrative Hearings
8 ~~Chief Judge~~ or the department, whichever is applicable.

9 Section 28. Section 440.59, Florida Statutes, is
10 amended to read:

11 440.59 Reporting requirements.--

12 (1) The department ~~of Labor and Employment Security~~
13 shall annually prepare a report of the administration of this
14 chapter for the preceding calendar year, including a detailed
15 statement of the receipts of and expenditures from the fund
16 established in s. 440.50 and a statement of the causes of the
17 accidents leading to the injuries for which the awards were
18 made, together with such recommendations as the department
19 considers advisable. On or before September 15 of each year,
20 the department shall submit a copy of the report to the
21 Governor, the President of the Senate, the Speaker of the
22 House of Representatives, the Democratic and Republican
23 Leaders of the Senate and the House of Representatives, and
24 the chairs of the legislative committees having jurisdiction
25 over workers' compensation.

26 ~~(2) The Division of Workers' Compensation of the~~
27 ~~Department of Labor and Employment Security shall complete on~~
28 ~~a quarterly basis an analysis of the previous quarter's~~
29 ~~injuries which resulted in workers' compensation claims. The~~
30 ~~analysis shall be broken down by risk classification, shall~~
31 ~~show for each such risk classification the frequency and~~

1 ~~severity for the various types of injury, and shall include an~~
2 ~~analysis of the causes of such injuries. The division shall~~
3 ~~distribute to each employer and self-insurer in the state~~
4 ~~covered by the Workers' Compensation Law the data relevant to~~
5 ~~its workforce. The report shall also be distributed to the~~
6 ~~insurers authorized to write workers' compensation insurance~~
7 ~~in the state.~~

8 (2)~~(3)~~ The division shall annually prepare a closed
9 claim report for all claims for which the employee lost more
10 than 7 days from work and shall submit a copy of the report to
11 the Governor, the President of the Senate, the Speaker of the
12 House of Representatives, the Democratic and Republican
13 Leaders of the Senate and the House of Representatives, and
14 the chairs of the legislative committees having jurisdiction
15 over workers' compensation on or before September 15 of each
16 year. The closed claim report shall include, but not be
17 limited to, an analysis of all claims closed during the
18 preceding year as to the date of accident, age of the injured
19 employee, occupation of the injured employee, type of injury,
20 body part affected, type and duration of indemnity benefits
21 paid, permanent impairment rating, medical benefits identified
22 by type of health care provider, and type and cost of any
23 rehabilitation benefits provided.

24 (3)~~(4)~~ The division shall prepare an annual report for
25 all claims for which the employee lost more than 7 days from
26 work and shall submit a copy of the report to the Governor,
27 the President of the Senate, the Speaker of the House of
28 Representatives, the Democratic and Republican Leaders of the
29 Senate and the House of Representatives, and the chairs of the
30 legislative committees having jurisdiction over workers'
31 compensation, on or before September 15 of each year. The

1 annual report shall include a status report on all cases
2 involving work-related injuries in the previous 10 years. The
3 annual report shall include, but not be limited to, the number
4 of open and closed cases, the number of cases receiving
5 various types of benefits, and the cash and medical benefits
6 paid between the date of injury and the evaluation date, ~~the~~
7 ~~number of litigated cases, and the amount of attorney's fees~~
8 ~~paid in each case.~~

9 ~~(5) The Chief Judge must prepare an annual report~~
10 ~~summarizing the disposition of mediation conferences and must~~
11 ~~submit the report to the Governor, the President of the~~
12 ~~Senate, the Speaker of the House of Representatives, the~~
13 ~~Democratic and Republican Leaders of the Senate and the House~~
14 ~~of Representatives, and the chairs of the legislative~~
15 ~~committees having jurisdiction over workers' compensation, on~~
16 ~~or before September 15 of each year.~~

17 Section 29. Section 440.593, Florida Statutes, is
18 amended to read:

19 440.593 Electronic reporting.--

20 (1) The division may establish by rule an electronic
21 reporting system requiring or authorizing whereby an employer
22 or carrier ~~is required~~ to submit required forms, reports, or
23 other information electronically rather than by other means
24 ~~filing otherwise required forms or reports.~~ The division may
25 ~~by rule~~ establish different deadlines for submitting forms,
26 reports, or reporting information to the division, or to its
27 authorized agent, via the electronic reporting system than are
28 otherwise required when reporting information by other means.

29 (2) The division may require any carrier to submit
30 data electronically, either directly or through a third-party
31 vendor, and may require any carrier or vendor submitting data

1 to the division electronically to be certified by the
2 division. The division may specify performance requirements
3 for any carrier or vendor submitting data electronically.

4 (3) The division may revoke the certification of any
5 carrier or vendor determined by the division to be in
6 noncompliance with performance standards prescribed by rule
7 for electronic submissions.

8 (4) The division may assess a civil penalty, not to
9 exceed \$500 for each violation, as prescribed by rule.

10 (5) The division is authorized to adopt rules to
11 administer this section.

12 Section 30. Section 489.114, Florida Statutes, is
13 amended to read:

14 489.114 Evidence of workers' compensation
15 coverage.--Except as provided in s. 489.115(5)(d),any person,
16 business organization, or qualifying agent engaged in the
17 business of contracting in this state and certified or
18 registered under this part shall, as a condition precedent to
19 the issuance or renewal of a certificate, registration, or
20 certificate of authority of the contractor, provide to the
21 Construction Industry Licensing Board, as provided by board
22 rule, evidence of workers' compensation coverage pursuant to
23 chapter 440. In the event that the Division of Workers'
24 Compensation of the Department of Labor and Employment
25 Security receives notice of the cancellation of a policy of
26 workers' compensation insurance insuring a person or entity
27 governed by this section, the Division of Workers'
28 Compensation shall certify and identify all persons or
29 entities by certification or registration license number to
30 the department after verification is made by the Division of
31 Workers' Compensation that such cancellation has occurred or

1 that persons or entities governed by this section are no
2 longer covered by workers' compensation insurance. Such
3 certification and verification by the Division of Workers'
4 Compensation shall result solely from records furnished to the
5 Division of Workers' Compensation by the persons or entities
6 governed by this section. The department shall notify the
7 persons or entities governed by this section who have been
8 determined to be in noncompliance with chapter 440, and the
9 persons or entities notified shall provide certification of
10 compliance with chapter 440 to the department and pay an
11 administrative fine as provided by rule. The failure to
12 maintain workers' compensation coverage as required by law
13 shall be grounds for the board to revoke, suspend, or deny the
14 issuance or renewal of a certificate, registration, or
15 certificate of authority of the contractor under the
16 provisions of s. 489.129.

17 Section 31. Paragraph (d) is added to subsection (5)
18 of section 489.115, Florida Statutes, to read:

19 489.115 Certification and registration; endorsement;
20 reciprocity; renewals; continuing education.--

21 (5)

22 (d) An applicant for initial issuance of a certificate
23 or registration shall submit as a prerequisite to qualifying
24 for an exemption from workers' compensation coverage
25 requirements under s. 440.05 an affidavit attesting to the
26 fact that the applicant will obtain an exemption within 30
27 days after the date the initial certificate or registration is
28 issued by the board.

29 Section 32. Section 489.510, Florida Statutes, is
30 amended to read:

31

1 489.510 Evidence of workers' compensation
2 coverage.--Except as provided in s. 489.515(3)(b),any person,
3 business organization, or qualifying agent engaged in the
4 business of contracting in this state and certified or
5 registered under this part shall, as a condition precedent to
6 the issuance or renewal of a certificate or registration of
7 the contractor, provide to the Electrical Contractors'
8 Licensing Board, as provided by board rule, evidence of
9 workers' compensation coverage pursuant to chapter 440. In
10 the event that the Division of Workers' Compensation of the
11 Department of Labor and Employment Security receives notice of
12 the cancellation of a policy of workers' compensation
13 insurance insuring a person or entity governed by this
14 section, the Division of Workers' Compensation shall certify
15 and identify all persons or entities by certification or
16 registration license number to the department after
17 verification is made by the Division of Workers' Compensation
18 that such cancellation has occurred or that persons or
19 entities governed by this section are no longer covered by
20 workers' compensation insurance. Such certification and
21 verification by the Division of Workers' Compensation shall
22 result solely from records furnished to the Division of
23 Workers' Compensation by the persons or entities governed by
24 this section. The department shall notify the persons or
25 entities governed by this section who have been determined to
26 be in noncompliance with chapter 440, and the persons or
27 entities notified shall provide certification of compliance
28 with chapter 440 to the department and pay an administrative
29 fine as provided by rule. The failure to maintain workers'
30 compensation coverage as required by law shall be grounds for
31 the board to revoke, suspend, or deny the issuance or renewal

1 of a certificate or registration of the contractor under the
2 provisions of s. 489.533.

3 Section 33. Subsection (3) of section 489.515, Florida
4 Statutes, is amended to read:

5 489.515 Issuance of certificates; registrations.--

6 (3)(a) As a prerequisite to the initial issuance or
7 the renewal of a certificate or registration, the applicant
8 shall submit an affidavit on a form provided by the board
9 attesting to the fact that the applicant has obtained both
10 workers' compensation insurance or an acceptable exemption
11 certificate issued by the department and public liability and
12 property damage insurance for the health, safety, and welfare
13 of the public in amounts determined by rule of the board. The
14 board shall by rule establish a procedure to verify the
15 accuracy of such affidavits based upon a random audit method.

16 (b) An applicant for initial issuance of a certificate
17 or registration shall submit as a prerequisite to qualifying
18 for an exemption from workers' compensation coverage
19 requirements under s. 440.05 an affidavit attesting to the
20 fact that the applicant will obtain an exemption within 30
21 days after the date the initial certificate or registration is
22 issued by the board.

23 Section 34. Section 627.0915, Florida Statutes, is
24 amended to read:

25 627.0915 Rate filings; workers' compensation,
26 drug-free workplace, and safe employers.--The Department of
27 Insurance shall approve rating plans for workers' compensation
28 insurance that give specific identifiable consideration in the
29 setting of rates to employers that either implement a
30 drug-free workplace program pursuant to rules adopted by the
31 Division of Workers' Compensation of the Department of Labor

1 and Employment Security or implement a safety program pursuant
2 to provisions of the rating plan approved by the Division of
3 ~~Safety pursuant to rules adopted by the Division of Safety of~~
4 ~~the Department of Labor and Employment Security~~ or implement
5 both a drug-free workplace program and a safety program. ~~The~~
6 ~~Division of Safety may by rule require that the client of a~~
7 ~~help supply services company comply with the essential~~
8 ~~requirements of a workplace safety program as a condition for~~
9 ~~receiving a premium credit.~~The plans must take effect January
10 ~~1, 1994,~~ must be actuarially sound, and must state the savings
11 anticipated to result from such drug-testing and safety
12 programs.

13 Section 35. Paragraph (p) of subsection (4) of section
14 627.311, Florida Statutes, is amended to read:

15 627.311 Joint underwriters and joint reinsurers.--

16 (4)

17 (p) Neither the plan nor any member of the board of
18 governors is liable for monetary damages to any person for any
19 statement, vote, decision, or failure to act, regarding the
20 management or policies of the plan, unless:

21 1. The member breached or failed to perform her or his
22 duties as a member; and

23 2. The member's breach of, or failure to perform,
24 duties constitutes:

25 a. A violation of the criminal law, unless the member
26 had reasonable cause to believe her or his conduct was not
27 unlawful. A judgment or other final adjudication against a
28 member in any criminal proceeding for violation of the
29 criminal law estops that member from contesting the fact that
30 her or his breach, or failure to perform, constitutes a
31 violation of the criminal law; but does not estop the member

1 from establishing that she or he had reasonable cause to
2 believe that her or his conduct was lawful or had no
3 reasonable cause to believe that her or his conduct was
4 unlawful;

5 b. A transaction from which the member derived an
6 improper personal benefit, either directly or indirectly; or

7 c. Recklessness or any act or omission that was
8 committed in bad faith or with malicious purpose or in a
9 manner exhibiting wanton and willful disregard of human
10 rights, safety, or property. For purposes of this
11 sub-subparagraph, the term "recklessness" means the acting, or
12 omission to act, in conscious disregard of a risk:

13 (I) Known, or so obvious that it should have been
14 known, to the member; and

15 (II) Known to the member, or so obvious that it should
16 have been known, to be so great as to make it highly probable
17 that harm would follow from such act or omission.

18 Section 36. Effective July 1, 2001, section 627.914,
19 Florida Statutes, is amended to read:

20 627.914 Reports of information by workers'
21 compensation insurers required.--

22 (1) The department shall adopt ~~promulgate~~ rules and
23 statistical plans that must ~~which shall~~ thereafter be used by
24 each insurer and self-insurance fund as defined in s. 624.461
25 in the recording and reporting of loss, expense, and claims
26 experience, in order that the experience of all insurers and
27 self-insurance funds ~~self-insurers~~ may be made available at
28 least annually in such form and detail as may be necessary to
29 aid the department in determining whether Florida experience
30 for workers' compensation insurance is sufficient for
31 establishing rates.

1 ~~(2) Any insurer authorized to write a policy of~~
2 ~~workers' compensation insurance shall transmit the following~~
3 ~~information to the department each year with its annual~~
4 ~~report, and such information shall be reported on a net basis~~
5 ~~with respect to reinsurance for nationwide experience and on a~~
6 ~~direct basis for Florida experience:~~
7 ~~(a) Premiums written;~~
8 ~~(b) Premiums earned;~~
9 ~~(c) Dividends paid or credited to policyholders;~~
10 ~~(d) Losses paid;~~
11 ~~(e) Allocated loss adjustment expenses;~~
12 ~~(f) The ratio of allocated loss adjustment expenses to~~
13 ~~losses paid;~~
14 ~~(g) Unallocated loss adjustment expenses;~~
15 ~~(h) The ratio of unallocated loss adjustment expenses~~
16 ~~to losses paid;~~
17 ~~(i) The total of losses paid and unallocated and~~
18 ~~allocated loss adjustment expenses;~~
19 ~~(j) The ratio of losses paid and unallocated and~~
20 ~~allocated loss adjustment expenses to premiums earned;~~
21 ~~(k) The number of claims outstanding as of December 31~~
22 ~~of each year;~~
23 ~~(l) The total amount of losses unpaid as of December~~
24 ~~31 of each year;~~
25 ~~(m) The total amount of allocated and unallocated loss~~
26 ~~adjustment expenses unpaid as of December 31 of each year; and~~
27 ~~(n) The total of losses paid and allocated loss~~
28 ~~adjustment expenses and unallocated loss adjustment expenses,~~
29 ~~plus the total of losses unpaid as of December 31 of each year~~
30 ~~and loss adjustment expenses unpaid as of December 31 of each~~
31 ~~year.~~

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

7 ~~(2)~~(4) Each insurer and self-insurance fund authorized
8 to write a policy of workers' compensation insurance shall
9 transmit the following information for paragraphs ~~(a), (b),~~
10 ~~(d), and (e)~~ annually on both Florida experience and
11 nationwide experience separately:

- 12 (a) Payrolls by classification.
13 (b) Manual premiums by classification.
14 (c) Standard premiums by classification.
15 (d) Losses by classification and injury type.
16 (e) Expenses.

17
18 A report of this information shall be filed no later than July
19 ~~April~~ 1 of each year. All reports shall be filed in
20 accordance with standard reporting procedures for insurers,
21 which procedures have received approval by the department, and
22 shall contain data for the most recent policy period
23 available. A statistical or rating organization may be used
24 by insurers and self-insurance funds to report the data
25 required by this section. The statistical or rating
26 organization shall report each data element in the aggregate
27 only for insurers and self-insurance funds required to report
28 under this section who elect to have the ~~rating~~ organization
29 report on their behalf. Such insurers and self-insurance funds
30 shall be named in the report.

31

1 ~~(3)(5)~~ Individual self-insurers as defined ~~authorized~~
2 ~~to transact workers' compensation insurance as provided~~ in s.
3 440.02 shall report only Florida data as prescribed in
4 paragraphs (a)-(e) of subsection~~(2)(4)~~to the Division of
5 Workers' Compensation of the Department of Labor and
6 Employment Security.

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

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

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

17 ~~(4)(6)~~ The department shall provide a summary of
18 information provided pursuant to subsection ~~subsections~~ (2)
19 ~~and (4)~~in its annual report.

20 Section 37. (1) The Office of the Judges of
21 Compensation Claims is transferred by a type two transfer, as
22 defined in s. 20.06(2), Florida Statutes, from the Department
23 of Labor and Employment Security to the Division of
24 Administrative Hearings of the Department of Management
25 Services.

26 (2) Four positions within the Division of Workers'
27 Compensation of the Department of Labor and Employment
28 Security responsible for coding or entering data contained
29 within final orders issued by the judges of compensation
30 claims are transferred by a type two transfer, as defined in
31 s. 20.06(2), Florida Statutes, to the Office of the Judges of

1 Compensation Claims within the Division of Administrative
2 Hearings of the Department of Management Services.
3 (3) Ten positions within the Division of Workers'
4 Compensation of the Department of Labor and Employment
5 Security responsible for receiving and preparing docketing
6 orders for the petitions for benefits and for receiving and
7 entering data related to the petitions for benefits are
8 transferred by a type two transfer, as defined in s. 20.06(2),
9 Florida Statutes, to the Office of the Judges of Compensation
10 Claims within the Division of Administrative Hearings of the
11 Department of Management Services.

12 (4) Four positions within the Division of Workers'
13 Compensation of the Department of Labor and Employment
14 Security responsible for financial management, accounting, and
15 budgeting for the Office of the Judges of Compensation Claims
16 are transferred by a type two transfer, as defined in s.
17 20.06(2), Florida Statutes, to the Office of the Judges of
18 Compensation Claims within the Division of Administrative
19 Hearings of the Department of Management Services.

20 Section 38. Except as otherwise provided herein, this
21 act shall take effect October 1, 2001.
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