

By Senator King

8-661A-01

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.02, F.S.; revising a monetary  
4           limit in the definition of the term "casual";  
5           excluding work done by state prisoners and  
6           county inmates from the definition of  
7           employment; amending s. 440.09, F.S.; excluding  
8           employees covered under the Defense Base Act  
9           from payment of benefits; amending s. 440.12,  
10          F.S.; providing for electronic payment of  
11          compensation payments; amending s. 440.13,  
12          F.S.; revising requirements for submission of  
13          certain medical reports and bills; granting  
14          rehabilitation providers access to medical  
15          records; revising provider eligibility  
16          requirements; amending s. 440.14, F.S.;  
17          requiring the employee to provide information  
18          concerning concurrent employment; amending s.  
19          440.185, F.S.; authorizing the division to  
20          contract with a private entity for collection  
21          of certain policy information; providing  
22          application; amending s. 440.192, F.S.;  
23          revising requirements and procedures for filing  
24          petitions for benefits; permitting judges to  
25          dismiss portions of a petition; specifying that  
26          dismissal of petitions is without prejudice;  
27          amending grounds for dismissal; redesignating  
28          the notice of denial as the "response to  
29          petition"; amending s. 440.20, F.S.; providing  
30          for payment of compensation by direct deposit  
31          under certain circumstances; authorizing not

1 holding a hearing under certain circumstances;  
2 revising the period for payment; 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; removing the division's  
9 participation in indigency proceedings;  
10 amending s. 440.271, F.S.; requiring the First  
11 District Court of Appeal to establish a  
12 specialized division to hear workers'  
13 compensation cases; amending s. 440.34, F.S.;  
14 providing for a response to petition; amending  
15 s. 440.38, F.S.; providing for the type of  
16 qualifying security deposit necessary to become  
17 a self-insured employer; providing  
18 requirements, procedures, and criteria;  
19 conforming cross-references; amending s.  
20 440.345, F.S.; revising reporting requirements;  
21 amending s. 440.44, F.S.; revising record  
22 requirements; amending s. 440.45, F.S.;  
23 revising reporting requirements; requiring the  
24 judicial nominating commission to consider  
25 whether judges of compensation claims have met  
26 certain requirements; providing procedures;  
27 authorizing the Governor to appoint certain  
28 judges of compensation claims; amending s.  
29 440.59, F.S., eliminating injury report;  
30 revising reporting requirements; amending s.  
31 440.593, F.S., providing enforcement authority

1 relating to electronic reporting; amending s.  
2 61.14, F.S.; requiring judges of compensation  
3 claims to consider the interests of the worker  
4 and the worker's family when approving  
5 settlements of workers' compensation claims;  
6 requiring appropriate recovery of any  
7 child-support arrearage from those settlements;  
8 amending s. 61.30, F.S.; providing that gross  
9 income includes all workers' compensation  
10 benefits and settlements; amending ss. 489.114,  
11 489.510, F.S.; providing an exception to  
12 certain workers' compensation coverage evidence  
13 requirements; amending ss. 489.115, 489.515,  
14 F.S.; revising certification and registration  
15 requirements for initial licensure; amending s.  
16 627.311, F.S.; providing for use of  
17 policyholder surplus for purposes of funding  
18 certain deficits; amending s. 627.914, F.S.;  
19 revising the requirements for reports of  
20 information by workers' compensation insurers;  
21 deleting a reporting requirement for the  
22 Division of Workers' Compensation; repealing s.  
23 440.45(3), F.S., relating to judges of  
24 compensation claims serving as docketing  
25 judges; repealing s. 440.49(13), F.S., relating  
26 to the Special Disability Trust Fund  
27 Privatization Commission; providing effective  
28 dates.

29  
30 Be It Enacted by the Legislature of the State of Florida:  
31

1           Section 1. Subsection (4) and paragraph (c) of  
2 subsection (16) of section 440.02, Florida Statutes, are  
3 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           (16)

14           (c) "Employment" does not include service performed by  
15 or as:

16           1. Domestic servants in private homes.

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

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

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

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

6           Section 2. Subsection (2) of section 440.09, Florida  
7 Statutes, is amended to read:

8           440.09 Coverage.--

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

14           Section 3. Subsection (1) of section 440.12, Florida  
15 Statutes, is amended to read:

16           440.12 Time for commencement and limits on weekly rate  
17 of compensation.--

18           (1) No compensation shall be allowed for the first 7  
19 days of the disability, except benefits provided for in s.  
20 440.13. However, if the injury results in disability of more  
21 than 21 days, compensation shall be allowed from the  
22 commencement of the disability. All weekly compensation  
23 payments, except for the first payment, shall be paid by check  
24 or, if authorized by the employee, deposited directly into the  
25 employee's account at a financial institution. As used in this  
26 subsection, the term "financial institution," means a  
27 financial institution as defined in s. 655.005(1)(h).

28           Section 4. Paragraph (a) of subsection (3) and  
29 paragraphs (b) and (c) of subsection (4) of section 440.13,  
30 Florida Statutes, are amended to read:

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1           440.13 Medical services and supplies; penalty for  
2 violations; limitations.--

3           (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

27           (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
28 DIVISION.--

29           (b) Upon the request of the Division of Workers'  
30 Compensation, each medical report or bill obtained or received  
31 by the employer, the carrier, or the injured employee, or the

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

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

1 for such information pursuant to this subsection, shall be  
2 subject by the division to one or more of the penalties set  
3 forth in paragraph (8)(b).

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

6 440.14 Determination of pay.--

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

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

19 Section 6. Subsection (7) of section 440.185, Florida  
20 Statutes, is amended to read:

21 440.185 Notice of injury or death; reports; penalties  
22 for violations.--

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



1 required to be filed by carriers under this subsection and the  
2 receipt of notices of cancellation or expiration of a policy  
3 required to be filed by carriers under s. 440.42(3). The  
4 submission of policy information or notices of cancellation or  
5 expiration to the contracted private entity satisfies the  
6 filing requirements of this subsection and s. 440.42(3).

7 Section 7. Subsections (1), (2), (5), and (8) of  
8 section 440.192, Florida Statutes, are amended to read:

9 440.192 Procedure for resolving benefit disputes.--

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

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

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

1 The dismissal of any petition or any portion of such a  
2 petition under this section must be without prejudice and does  
3 not require a 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 8. Paragraph (a) of subsection (1), subsection  
2 (6), and paragraph (a) of subsection (11) of section 440.20,  
3 Florida Statutes, are amended and paragraph (d) is added to  
4 subsection (11) of that section, to read:

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

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

20           (6) If any installment of compensation for death or  
21 dependency benefits, disability, permanent impairment, or wage  
22 loss payable without an award is not paid within 7 days after  
23 it becomes due, as provided in subsection (2), subsection (3),  
24 or subsection (4), there shall be added to such unpaid  
25 installment a punitive penalty of an amount equal to 20  
26 percent of the unpaid installment or \$5, which shall be paid  
27 at the same time as, but in addition to, such installment of  
28 compensation, unless notice is filed under subsection (4) or  
29 unless such nonpayment results from conditions over which the  
30 employer or carrier had no control. When any installment of  
31 compensation payable without an award has not been paid within

1 7 days after it became due and the claimant concludes the  
2 prosecution of the claim before a judge of compensation claims  
3 without having specifically claimed additional compensation in  
4 the nature of a penalty under this section, the claimant will  
5 be deemed to have acknowledged that, owing to conditions over  
6 which the employer or carrier had no control, such installment  
7 could not be paid within the period prescribed for payment and  
8 to have waived the right to claim such penalty. However,  
9 during the course of a hearing, the judge of compensation  
10 claims shall on her or his own motion raise the question of  
11 whether such penalty should be awarded or excused. The  
12 division may assess without a hearing the punitive penalty  
13 against either the employer or the insurance carrier,  
14 depending upon who was at fault in causing the delay. The  
15 insurance policy cannot provide that this sum will be paid by  
16 the carrier if the division or the judge of compensation  
17 claims determines that the punitive penalty should be made by  
18 the employer rather than the carrier. Any additional  
19 installment of compensation paid by the carrier pursuant to  
20 this section shall be paid directly to the employee by check  
21 or, if authorized by the employee, by direct deposit into the  
22 employee's account at a financial institution. As used in this  
23 subsection, the term "financial institution" means a financial  
24 institution as defined in s. 655.005(1)(h).

25 (11)(a) Upon joint petition of all interested parties,  
26 a lump-sum payment in exchange for the employer's or carrier's  
27 release from liability for future medical expenses, as well as  
28 future payments of compensation expenses and any other  
29 benefits provided under this chapter, shall be allowed at any  
30 time in any case in which the employer or carrier has filed a  
31 written notice of denial within 120 days after the employer

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

30 (d) When reviewing and approving any lump-sum  
31 settlement under this subsection, a judge of compensation

1 claims must consider whether the settlement serves the  
2 interests of the worker and the worker's family, including,  
3 but not limited to, whether the settlement provides for  
4 appropriate recovery of any child-support arrearage.

5 Section 9. Section 440.22, Florida Statutes, is  
6 amended to read:

7 440.22 Assignment and exemption from claims of  
8 creditors.--No assignment, release, or commutation of  
9 compensation or benefits due or payable under this chapter  
10 except as provided by this chapter shall be valid, and such  
11 compensation and benefits shall be exempt from all claims of  
12 creditors, and from levy, execution and attachments or other  
13 remedy for recovery or collection of a debt, which exemption  
14 may not be waived. However, the exemption of workers'  
15 compensation claims from creditors does not extend to claims  
16 based on an award of child support or alimony.

17 Section 10. Subsection (1), paragraph (e) of  
18 subsection (4), and paragraph (b) of subsection (5) of section  
19 440.25, Florida Statutes, are amended to read:

20 440.25 Procedures for mediation and hearings.--

21 (1) Within 21 days after a petition for benefits is  
22 filed under s. 440.192, a mediation conference concerning such  
23 petition shall be held. Within 7 days after such petition is  
24 filed, the judge of compensation claims shall notify the  
25 interested parties that a mediation conference concerning such  
26 petition will be held. Such notice shall give the date, time,  
27 and location of the mediation conference. Such notice may be  
28 served personally upon the interested parties or may be sent  
29 to the interested parties by mail. The claimant, or the  
30 adjuster of the employer or carrier, may, at the mediator's  
31

1 discretion, attend the mediation conference by telephone or,  
2 if agreed to by the parties, other electronic means.

3 (4)

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

14 (5)

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



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

1 ordered to pay the cost of the record. ~~In the event the~~  
2 ~~insolvency petition is denied, the judge of compensation~~  
3 ~~claims may enter an order requiring the petitioner to~~  
4 ~~reimburse the division for costs incurred in opposing the~~  
5 ~~petition, including investigation and travel expenses.~~

6 Section 11. Section 440.271, Florida Statutes, is  
7 amended to read:

8 440.271 Appeal of order of judge of compensation  
9 claims.--Review of any order of a judge of compensation claims  
10 entered pursuant to this chapter shall be by appeal to the  
11 District Court of Appeal, First District. To promote  
12 consistency and uniformity in the application of this chapter,  
13 the District Court of Appeal, First District, shall establish  
14 a specialized division to hear all appeals of orders of judges  
15 of compensation claims. The court may structure the division  
16 to hear workers' compensation cases exclusively or in addition  
17 to other appeals. Appeals shall be filed in accordance with  
18 rules of procedure prescribed by the Supreme Court for review  
19 of such orders. The division shall be given notice of any  
20 proceedings pertaining to s. 440.25, regarding indigency, or  
21 s. 440.49, regarding the Special Disability Trust Fund, and  
22 shall have the right to intervene in any proceedings.

23 Section 12. Subsection (3) of section 440.34, Florida  
24 Statutes, is amended to read:

25 440.34 Attorney's fees; costs.--

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

1 be entitled to recover a reasonable attorney's fee from a  
2 carrier or employer:

3 (a) Against whom she or he successfully asserts a  
4 claim for medical benefits only, if the claimant has not filed  
5 or is not entitled to file at such time a claim for  
6 disability, permanent impairment, wage-loss, or death  
7 benefits, arising out of the same accident; or

8 (b) In any case in which the employer or carrier files  
9 a notice of denial or a response to petition with the division  
10 and the injured person has employed an attorney in the  
11 successful prosecution of the claim; or

12 (c) In a proceeding in which a carrier or employer  
13 denies that an injury occurred for which compensation benefits  
14 are payable, and the claimant prevails on the issue of  
15 compensability; or

16 (d) In cases where the claimant successfully prevails  
17 in proceedings filed under s. 440.24 or s. 440.28.

18  
19 In applying the factors set forth in subsection (1) to cases  
20 arising under paragraphs (a), (b), (c), and (d), the judge of  
21 compensation claims must only consider only such benefits and  
22 the time reasonably spent in obtaining them as were secured  
23 for the claimant within the scope of paragraphs (a), (b), (c),  
24 and (d).

25 Section 13. Section 440.345, Florida Statutes, is  
26 amended to read:

27 440.345 Reporting of attorney's fees.--All fees paid  
28 to attorneys for services rendered under this chapter shall be  
29 reported to the Office of the Judges of Compensation Claims  
30 ~~division~~ as the Office of the Judges of Compensation Claims  
31 ~~division~~ requires by rule. The Office of the Judges of

1 Compensation Claims ~~division~~ shall annually summarize such  
2 data in a report to the Workers' Compensation Oversight Board.

3 Section 14. Subsection (1) of section 440.38, Florida  
4 Statutes, is amended to read:

5 440.38 Security for compensation; insurance carriers  
6 and self-insurers.--

7 (1) Every employer shall secure the payment of  
8 compensation under this chapter:

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

13 (b) By furnishing satisfactory proof to the division  
14 of its financial ability to pay such compensation individually  
15 and on behalf of its subsidiary and affiliated companies with  
16 employees in this state and receiving an authorization from  
17 the division to pay such compensation directly in accordance  
18 with the following provisions:

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

1 ~~compensation under this chapter.~~ In addition, the division  
2 shall require, as a condition to authorization to self-insure,  
3 proof that the employer has provided for competent personnel  
4 with whom to deliver benefits and to provide a safe working  
5 environment. Further, the division shall require such  
6 employer to carry reinsurance at levels that will ensure the  
7 actuarial soundness of such employer in accordance with rules  
8 promulgated by the division. The division may by rule require  
9 that, in the event of an individual self-insurer's insolvency,  
10 such qualifying security deposits ~~indemnity bonds, securities,~~  
11 and reinsurance policies are ~~shall be~~ payable to the Florida  
12 Self-Insurers Guaranty Association, Incorporated, created  
13 pursuant to s. 440.385. Any employer securing compensation in  
14 accordance with the provisions of this paragraph shall be  
15 known as a self-insurer and shall be classed as a carrier of  
16 her or his own insurance.

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

1 times the value certified in the latest opinion, the division  
2 shall then revoke such employer's authorization to  
3 self-insure, and such failure shall be deemed to constitute an  
4 immediate serious danger to the public health, safety, or  
5 welfare sufficient to justify the summary suspension of the  
6 employer's authorization to self-insure pursuant to s. 120.68.

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

1 entities, which holds or acquires legal or beneficial title to  
2 the majority of the assets or the majority of the shares of  
3 the employer.

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

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

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

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

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

22 ~~e. Securities issued by this state and backed by the~~  
23 ~~full faith and credit of this state.~~

24 5. The qualifying security deposit shall be held by  
25 the division, ~~or by a depository authorized by the division,~~  
26 exclusively for the benefit of workers' compensation  
27 claimants. The security shall not be subject to assignment,  
28 execution, attachment, or any legal process whatsoever, except  
29 as necessary to guarantee the payment of compensation under  
30 this chapter. No surety bond may be terminated, and no letter  
31 of credit ~~other qualifying security~~ may be allowed to expire

1 ~~lapse~~, without 90 days' prior notice to the division and  
2 deposit by the self-insuring employer of some other qualifying  
3 security deposit of equal value within 10 business days after  
4 such notice. Failure to provide such notice or failure to  
5 timely provide qualifying replacement security after such  
6 notice shall constitute grounds for the division to call or  
7 sue upon the surety bond, or to ~~act with respect to other~~  
8 ~~pledged security in any manner necessary to preserve its value~~  
9 ~~for the purposes intended by this section, including the~~  
10 ~~exercise its of rights under a letter of credit.~~ Current  
11 self-insured employers must comply with this section on or  
12 before December 31, 2001, or upon the maturity of existing  
13 security deposits, whichever occurs later, ~~the sale of any~~  
14 ~~security at then prevailing market rates, or the withdrawal of~~  
15 ~~any funds represented by any certificate of deposit forming~~  
16 ~~part of the qualifying security deposit.~~ The division may  
17 specify by rule the amount of the qualifying security deposit  
18 required prior to authorizing an employer to self-insure and  
19 the amount of net worth required for an employer to qualify  
20 for authorization to self-insure;

21 (c) By entering into a contract with a public utility  
22 under an approved utility-provided self-insurance program as  
23 set forth in s. 624.46225 ~~s. 440.571~~ in effect as of July 1,  
24 1983. The division shall adopt rules to implement this  
25 paragraph;

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

29 (e) In accordance with s. 440.135, an employer, other  
30 than a local government unit, may elect coverage under the  
31 Workers' Compensation Law and retain the benefit of the



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

31

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

4           2. If indemnity benefits are provided for both  
5 occupational-related and nonoccupational-related disability,  
6 such benefits must be comparable to those required by this  
7 chapter, except that they must be based on 60 percent of the  
8 average weekly wages.

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

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

25           (f) By entering into a contract with an individual  
26 self-insurer under an approved individual  
27 self-insurer-provided self-insurance program as set forth in  
28 s. 624.46225. The division may adopt rules to administer  
29 ~~implement~~ this subsection.

30           Section 15. Subsections (6) and (7) of section 440.44,  
31 Florida Statutes, are amended to read:

1           440.44 Workers' compensation; staff organization.--

2           (6) SEAL.--The division, the judges of compensation  
3 claims, and the Chief Judge shall have a seal upon which shall  
4 be inscribed the words "State of Florida Department of  
5 Insurance--Seal" and "Division of Administrative  
6 Hearings--Seal." ~~"State of Florida Department of Labor and~~  
7 ~~Employment Security--Seal."~~

8           (7) DESTRUCTION OF OBSOLETE RECORDS.--The division is  
9 expressly authorized to provide by regulation for and to  
10 destroy obsolete records of the division ~~and commission.~~ The  
11 Division of Administrative Hearings is expressly authorized to  
12 provide by regulation for and to destroy records of the Office  
13 of the Judges of Compensation Claims.

14           Section 16. Subsections (2), (4), (5), and (6) of  
15 section 440.45, Florida Statutes, are amended to read:

16           440.45 Office of the Judges of Compensation Claims.--

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

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

30           1. Five members, at least one of whom must be a member  
31 of a minority group as defined in s. 288.703(3), one of each

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

13         2. Five electors, at least one of whom must be a  
14 member of a minority group as defined in s. 288.703(3), one of  
15 each who resides in each of the territorial jurisdictions of  
16 the district courts of appeal, appointed by the Governor. On  
17 July 1, 1999, the term of office of each person appointed by  
18 the Governor to the commission expires. The Governor shall  
19 appoint members who reside in the odd-numbered district court  
20 of appeal jurisdictions to 2-year terms each, beginning July  
21 1, 1999, and members who reside in the even-numbered district  
22 court of appeal jurisdictions to 4-year terms each, beginning  
23 July 1, 1999. Thereafter, each member shall be appointed for a  
24 4-year term; and

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

1 the other members of the commission shall appoint members who  
2 reside in the odd-numbered district court of appeal  
3 jurisdictions to 2-year terms each, beginning October 1, 1999,  
4 and members who reside in the even-numbered district court of  
5 appeal jurisdictions to 4-year terms each, beginning October  
6 1, 1999. Thereafter, each member shall be appointed for a  
7 4-year term.

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

16 (c) Each judge of compensation claims shall be  
17 appointed for a term of 4 years, but during the term of office  
18 may be removed by the Governor for cause. Prior to the  
19 expiration of a judge's term of office, the statewide  
20 nominating commission shall review the judge's conduct and  
21 determine whether the judge's performance is satisfactory.  
22 Effective July 1, 2002, in determining whether a judge's  
23 performance is satisfactory, the commission shall consider the  
24 extent to which the judge has met the requirements of this  
25 chapter, including, but not limited to, the requirements of  
26 ss. 440.192(2), 440.25(1), 440.25(4)(a)-(f), 440.34(2), and  
27 440.442. If the commission finds that judges generally are  
28 unable to meet a particular statutory requirement for reasons  
29 beyond their control, the commission shall request the  
30 Legislature to review that particular requirement.If the  
31 judge's performance is deemed satisfactory, the commission

1 shall report its finding to the Governor no later than 6  
2 months prior to the expiration of the judge's term of office.  
3 The Governor shall review the commission's report and may  
4 reappoint the judge for an additional 4-year term. If the  
5 Governor does not reappoint the judge, the Governor shall  
6 inform the commission. The judge shall remain in office until  
7 the Governor has appointed a successor judge in accordance  
8 with paragraphs (a) and (b). If a vacancy occurs during a  
9 judge's unexpired term, the statewide nominating commission  
10 does not find the judge's performance is satisfactory, or the  
11 Governor does not reappoint the judge, the Governor shall  
12 appoint a successor judge for a term of 4 years in accordance  
13 with paragraph (b).

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

24 (4) The Chief Judge shall have the discretion to  
25 require mediation and to designate qualified persons to act as  
26 mediators in any dispute pending before the judges of  
27 compensation claims and the division. ~~The Chief Judge shall~~  
28 ~~coordinate with the Director of the Division of Workers'~~  
29 ~~Compensation to establish a mandatory mediation program to~~  
30 ~~facilitate early and efficient resolution of disputes arising~~  
31

1 ~~under this chapter and to establish training and continuing~~  
2 ~~education for new and sitting judges.~~

3 (5) The Office of the Judges of Compensation Claims  
4 shall adopt ~~promulgate~~ rules to effect the purposes of this  
5 section. Such rules shall include procedural rules applicable  
6 to workers' compensation claim resolution and uniform criteria  
7 for measuring the performance of the office, including, but  
8 not limited to, the number of cases assigned and disposed, the  
9 age of pending and disposed cases, timeliness of  
10 decisionmaking, extraordinary fee awards, and the data  
11 necessary for the judicial nominating commission to review the  
12 performance of judges as required in paragraph (2)(c) and  
13 ~~other performance indicators~~. The workers' compensation rules  
14 of procedure approved by the Supreme Court ~~shall~~ apply until  
15 the rules adopted ~~promulgated~~ by the Office of the Judges of  
16 Compensation Claims pursuant to this section become effective.

17 (6) Not later than December 1 of each year, the Office  
18 of the Judges of Compensation Claims ~~and the Division of~~  
19 ~~Workers' Compensation~~ shall jointly issue a written report to  
20 the Governor, the House of Representatives, ~~and the Senate,~~  
21 The Florida Bar, and the statewide nominating commission  
22 summarizing the amount, cost, and outcome of all litigation  
23 resolved in the previous fiscal ~~prior~~ year, summarizing the  
24 disposition of mediation conferences, the number of mediation  
25 conferences held, the number of continuances granted for  
26 mediations and final hearings, the number and outcome of  
27 litigated cases, the amount of attorney's fees paid in each  
28 case, and the number of final orders not issued within 30 days  
29 after the final hearing or closure of the hearing record  
30 ~~applications and motions for mediation conferences and~~

1 recommending changes or improvements to the dispute resolution  
2 elements of the Workers' Compensation Law and regulations.

3 Section 17. Section 440.59, Florida Statutes, is  
4 amended to read:

5 440.59 Reporting requirements.--

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

20 ~~(2) The Division of Workers' Compensation of the~~  
21 ~~Department of Labor and Employment Security shall complete on~~  
22 ~~a quarterly basis an analysis of the previous quarter's~~  
23 ~~injuries which resulted in workers' compensation claims. The~~  
24 ~~analysis shall be broken down by risk classification, shall~~  
25 ~~show for each such risk classification the frequency and~~  
26 ~~severity for the various types of injury, and shall include an~~  
27 ~~analysis of the causes of such injuries. The division shall~~  
28 ~~distribute to each employer and self-insurer in the state~~  
29 ~~covered by the Workers' Compensation Law the data relevant to~~  
30 ~~its workforce. The report shall also be distributed to the~~

31



1 ~~insurers authorized to write workers' compensation insurance~~  
2 ~~in the state.~~

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

19       (3)~~(4)~~ The division shall prepare an annual report for  
20 all claims for which the employee lost more than 7 days from  
21 work and shall submit a copy of the report to the Governor,  
22 the President of the Senate, the Speaker of the House of  
23 Representatives, the Democratic and Republican Leaders of the  
24 Senate and the House of Representatives, and the chairs of the  
25 legislative committees having jurisdiction over workers'  
26 compensation, on or before September 15 of each year. The  
27 annual report shall include a status report on all cases  
28 involving work-related injuries in the previous 10 years. The  
29 annual report shall include, but not be limited to, the number  
30 of open and closed cases, the number of cases receiving  
31 various types of benefits, the cash and medical benefits paid

1 between the date of injury and the evaluation date, ~~the number~~  
2 ~~of litigated cases, and the amount of attorney's fees paid in~~  
3 each case.

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

12 Section 18. Section 440.593, Florida Statutes, is  
13 amended to read:

14 440.593 Electronic reporting.--

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

24 (2) The division may require any carrier to submit  
25 data electronically, either directly or through a third-party  
26 vendor, and may require any carrier or vendor submitting data  
27 to the division electronically to be certified by the  
28 division. The division may specify performance requirements  
29 for any carrier or vendor submitting data electronically.

30 (3) The division may revoke the certification of any  
31 carrier or vendor determined by the division to be in

1 noncompliance with performance standards prescribed by rule  
2 for electronic submissions.

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

5 (5) The division is authorized to adopt rules  
6 necessary to administer this section.

7 Section 19. Subsection (8) of section 61.14, Florida  
8 Statutes, is amended to read:

9 61.14 Enforcement and modification of support,  
10 maintenance, or alimony agreements or orders.--

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

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

23 Section 20. Paragraph (a) of subsection (2) of section  
24 61.30, Florida Statutes, is amended to read:

25 61.30 Child support guidelines; retroactive child  
26 support.--

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

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

31 1. Salary or wages.

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

3           3. Business income from sources such as  
4 self-employment, partnership, close corporations, and  
5 independent contracts. "Business income" means gross receipts  
6 minus ordinary and necessary expenses required to produce  
7 income.

8           4. Disability benefits.

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

10          6. Unemployment compensation.

11          7. Pension, retirement, or annuity payments.

12          8. Social security benefits.

13          9. Spousal support received from a previous marriage  
14 or court ordered in the marriage before the court.

15          10. Interest and dividends.

16          11. Rental income, which is gross receipts minus  
17 ordinary and necessary expenses required to produce the  
18 income.

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

20          13. Reimbursed expenses or in kind payments to the  
21 extent that they reduce living expenses.

22          14. Gains derived from dealings in property, unless  
23 the gain is nonrecurring.

24          Section 21. Section 489.114, Florida Statutes, is  
25 amended to read:

26           489.114 Evidence of workers' compensation  
27 coverage.--Except as provided in s. 489.115(5)(d),any person,  
28 business organization, or qualifying agent engaged in the  
29 business of contracting in this state and certified or  
30 registered under this part shall, as a condition precedent to  
31 the issuance or renewal of a certificate, registration, or

1 certificate of authority of the contractor, provide to the  
2 Construction Industry Licensing Board, as provided by board  
3 rule, evidence of workers' compensation coverage pursuant to  
4 chapter 440. In the event that the Division of Workers'  
5 Compensation of the Department of Labor and Employment  
6 Security receives notice of the cancellation of a policy of  
7 workers' compensation insurance insuring a person or entity  
8 governed by this section, the Division of Workers'  
9 Compensation shall certify and identify all persons or  
10 entities by certification or registration license number to  
11 the department after verification is made by the Division of  
12 Workers' Compensation that such cancellation has occurred or  
13 that persons or entities governed by this section are no  
14 longer covered by workers' compensation insurance. Such  
15 certification and verification by the Division of Workers'  
16 Compensation shall result solely from records furnished to the  
17 Division of Workers' Compensation by the persons or entities  
18 governed by this section. The department shall notify the  
19 persons or entities governed by this section who have been  
20 determined to be in noncompliance with chapter 440, and the  
21 persons or entities notified shall provide certification of  
22 compliance with chapter 440 to the department and pay an  
23 administrative fine as provided by rule. The failure to  
24 maintain workers' compensation coverage as required by law  
25 shall be grounds for the board to revoke, suspend, or deny the  
26 issuance or renewal of a certificate, registration, or  
27 certificate of authority of the contractor under the  
28 provisions of s. 489.129.

29 Section 22. Paragraph (d) is added to subsection (5)  
30 of section 489.115, Florida Statutes, to read:

31

1           489.115 Certification and registration; endorsement;  
2 reciprocity; renewals; continuing education.--

3           (5)

4           (d) An applicant for initial issuance of a certificate  
5 or registration shall submit, as a prerequisite to qualifying  
6 for an exemption from workers' compensation coverage  
7 requirements under s. 440.05, an affidavit attesting to the  
8 fact that the applicant will obtain an exemption within 30  
9 days after the date the initial certificate or registration is  
10 issued by the board.

11           Section 23. Section 489.510, Florida Statutes, is  
12 amended to read:

13           489.510 Evidence of workers' compensation  
14 coverage.--Except as provided in s. 489.515(3)(b),any person,  
15 business organization, or qualifying agent engaged in the  
16 business of contracting in this state and certified or  
17 registered under this part shall, as a condition precedent to  
18 the issuance or renewal of a certificate or registration of  
19 the contractor, provide to the Electrical Contractors'  
20 Licensing Board, as provided by board rule, evidence of  
21 workers' compensation coverage pursuant to chapter 440. In  
22 the event that the Division of Workers' Compensation of the  
23 Department of Labor and Employment Security receives notice of  
24 the cancellation of a policy of workers' compensation  
25 insurance insuring a person or entity governed by this  
26 section, the Division of Workers' Compensation shall certify  
27 and identify all persons or entities by certification or  
28 registration license number to the department after  
29 verification is made by the Division of Workers' Compensation  
30 that such cancellation has occurred or that persons or  
31 entities governed by this section are no longer covered by

1 workers' compensation insurance. Such certification and  
2 verification by the Division of Workers' Compensation shall  
3 result solely from records furnished to the Division of  
4 Workers' Compensation by the persons or entities governed by  
5 this section. The department shall notify the persons or  
6 entities governed by this section who have been determined to  
7 be in noncompliance with chapter 440, and the persons or  
8 entities notified shall provide certification of compliance  
9 with chapter 440 to the department and pay an administrative  
10 fine as provided by rule. The failure to maintain workers'  
11 compensation coverage as required by law shall be grounds for  
12 the board to revoke, suspend, or deny the issuance or renewal  
13 of a certificate or registration of the contractor under the  
14 provisions of s. 489.533.

15 Section 24. Subsection (3) of section 489.515, Florida  
16 Statutes, is amended to read:

17 489.515 Issuance of certificates; registrations.--

18 (3)(a) As a prerequisite to the initial issuance or  
19 the renewal of a certificate or registration, the applicant  
20 shall submit an affidavit on a form provided by the board  
21 attesting to the fact that the applicant has obtained both  
22 workers' compensation insurance or an acceptable exemption  
23 certificate issued by the department and public liability and  
24 property damage insurance for the health, safety, and welfare  
25 of the public in amounts determined by rule of the board. The  
26 board shall by rule establish a procedure to verify the  
27 accuracy of such affidavits based upon a random audit method.

28 (b) An applicant for initial issuance of a certificate  
29 or registration shall submit, as a prerequisite to qualifying  
30 for an exemption from workers' compensation coverage  
31 requirements under s. 440.05, an affidavit attesting to the

1 fact that the applicant will obtain an exemption within 30  
2 days after the date the initial certificate or registration is  
3 issued by the board.

4 Section 25. Paragraph (p) of subsection (4) of section  
5 627.311, Florida Statutes, is amended to read:

6 627.311 Joint underwriters and joint reinsurers.--

7 (4)

8 (p) Neither the plan nor any member of the board of  
9 governors is liable for monetary damages to any person for any  
10 statement, vote, decision, or failure to act, regarding the  
11 management or policies of the plan, unless:

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

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

16 a. A violation of the criminal law, unless the member  
17 had reasonable cause to believe her or his conduct was not  
18 unlawful. A judgment or other final adjudication against a  
19 member in any criminal proceeding for violation of the  
20 criminal law estops that member from contesting the fact that  
21 her or his breach, or failure to perform, constitutes a  
22 violation of the criminal law; but does not estop the member  
23 from establishing that she or he had reasonable cause to  
24 believe that her or his conduct was lawful or had no  
25 reasonable cause to believe that her or his conduct was  
26 unlawful;

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

29 c. Recklessness or any act or omission that was  
30 committed in bad faith or with malicious purpose or in a  
31 manner exhibiting wanton and willful disregard of human



1 rights, safety, or property. For purposes of this  
2 sub-subparagraph, the term "recklessness" means the acting, or  
3 omission to act, in conscious disregard of a risk:

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

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

9 Section 26. Effective July 1, 2001, section 627.914,  
10 Florida Statutes, is amended to read:

11 627.914 Reports of information by workers'  
12 compensation insurers required.--

13 (1) The department shall adopt ~~promulgate~~ rules and  
14 statistical plans that must ~~which shall~~ thereafter be used by  
15 each insurer and self-insurance fund as defined in s. 624.461  
16 in the recording and reporting of loss, expense, and claims  
17 experience, in order that the experience of all insurers and  
18 self-insurance funds ~~self-insurers~~ may be made available at  
19 least annually in such form and detail as may be necessary to  
20 aid the department in determining whether Florida experience  
21 for workers' compensation insurance is sufficient for  
22 establishing rates.

23 ~~(2) Any insurer authorized to write a policy of~~  
24 ~~workers' compensation insurance shall transmit the following~~  
25 ~~information to the department each year with its annual~~  
26 ~~report, and such information shall be reported on a net basis~~  
27 ~~with respect to reinsurance for nationwide experience and on a~~  
28 ~~direct basis for Florida experience:~~

29 ~~(a) Premiums written;~~

30 ~~(b) Premiums earned;~~

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

1           ~~(d) Losses paid;~~  
2           ~~(e) Allocated loss adjustment expenses;~~  
3           ~~(f) The ratio of allocated loss adjustment expenses to~~  
4 ~~losses paid;~~  
5           ~~(g) Unallocated loss adjustment expenses;~~  
6           ~~(h) The ratio of unallocated loss adjustment expenses~~  
7 ~~to losses paid;~~  
8           ~~(i) The total of losses paid and unallocated and~~  
9 ~~allocated loss adjustment expenses;~~  
10           ~~(j) The ratio of losses paid and unallocated and~~  
11 ~~allocated loss adjustment expenses to premiums earned;~~  
12           ~~(k) The number of claims outstanding as of December 31~~  
13 ~~of each year;~~  
14           ~~(l) The total amount of losses unpaid as of December~~  
15 ~~31 of each year;~~  
16           ~~(m) The total amount of allocated and unallocated loss~~  
17 ~~adjustment expenses unpaid as of December 31 of each year; and~~  
18           ~~(n) The total of losses paid and allocated loss~~  
19 ~~adjustment expenses and unallocated loss adjustment expenses,~~  
20 ~~plus the total of losses unpaid as of December 31 of each year~~  
21 ~~and loss adjustment expenses unpaid as of December 31 of each~~  
22 ~~year.~~  
23           ~~(3) A report of the information required in subsection~~  
24 ~~(2) shall be filed no later than April 1 of each year and~~  
25 ~~shall include the information for the preceding year ending~~  
26 ~~December 31. All reports shall be on a calendar-accident year~~  
27 ~~basis, and each calendar-accident year shall be reported at~~  
28 ~~eight stages of development.~~  
29           (2)(4) Each insurer and self-insurance fund authorized  
30 to write a policy of workers' compensation insurance shall  
31 transmit the information for paragraphs (a), (b), (c), (d),

1 and (e) annually on both Florida experience and nationwide  
2 experience separately:

- 3 (a) Payrolls by classification.  
4 (b) Manual premiums by classification.  
5 (c) Standard premiums by classification.  
6 (d) Losses by classification and injury type.  
7 (e) Expenses.

8  
9 A report of this information shall be filed no later than July  
10 ~~April~~ 1 of each year. All reports shall be filed in  
11 accordance with standard reporting procedures for insurers,  
12 which procedures have received approval by the department, and  
13 shall contain data for the most recent policy period  
14 available. A statistical or rating organization may be used  
15 by insurers and self-insurance funds to report the data  
16 required by this section. The statistical or rating  
17 organization shall report each data element in the aggregate  
18 only for insurers and self-insurance funds required to report  
19 under this section who elect to have the ~~rating~~ organization  
20 report on their behalf. Such insurers and self-insurance funds  
21 shall be named in the report.

22 ~~(3)(5)~~ Individual self-insurers as defined ~~authorized~~  
23 ~~to transact workers' compensation insurance as provided in s.~~  
24 440.02 shall report only Florida data as prescribed in  
25 paragraphs (a) through (e) of subsection ~~(2)(4)~~ to the  
26 Division of Workers' Compensation of the Department of Labor  
27 and Employment Security.

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

31

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

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

8           ~~(4)~~~~(6)~~ The department shall provide a summary of  
9 information provided pursuant to subsection ~~subsections~~ (2)  
10 ~~and (4)~~ in its annual report.

11           Section 27. Subsection (3) of section 440.45, Florida  
12 Statutes, is repealed.

13           Section 28. Effective January 1, 2002, subsection (13)  
14 of section 440.49, Florida Statutes, is repealed.

15           Section 29. Except as otherwise expressly provided in  
16 this act, this act shall take effect October 1, 2001.

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SENATE SUMMARY

Revises provisions relating to workers' compensation. Raises the monetary limit for the total maximum cost of labor provided in the definition of "casual" employment. Excludes work done by state prisoners and county inmates from the definition of employment. Excludes employees who are covered under the Defense Base Act from receiving workers' compensation benefits. Provides for the electronic payment of compensation payments. Revises requirements for submission of certain medical reports and bills. Grants rehabilitation providers access to medical records. Revises provider eligibility requirements. Revises the definition of the term "grievance." Requires certain insurers to provide medically necessary remedial treatment, care, and attendance in certain circumstances. Requires the employee to provide information concerning concurrent employment. Authorizes the Division of Workers' Compensation to contract with a private entity for collection of certain policy information. Revises requirements and procedures for filing petitions for benefits. Allows judges to dismiss portions of a petition. Specifies that dismissal of petitions is without prejudice. Amends grounds for dismissal. Redesignates the notice of denial as the "response to petition." Provides for the payment of compensation by direct deposit in certain circumstances. Authorizes not holding a hearing in certain circumstances. Revises the period for payment. Revises requirements relating to lump-sum settlements. Excludes child support and alimony claims from the general exemption of workers' compensation benefits from claims of creditors. Revises mediation procedures. Removes the division from participation in indigency proceedings. Requires the First District Court of Appeal to establish a specialized division to hear workers' compensation cases. Provides for a response to petition. Prescribes the type of qualifying security deposit necessary to become a self-insured employer. Provides requirements, procedures, and criteria. Revises requirements pertaining to reporting and records. Requires the judicial nominating commission to consider whether judges of compensation claims have met certain requirements. Provides procedures. Authorizes the Governor to appoint certain judges of compensation claims. Eliminates injury reports. Requires judges of compensation claims to consider the interests of the worker and the worker's family when approving settlements of workers' compensation claims. Requires appropriate recovery of any child-support arrearage from those settlements. Provides that gross income includes all workers' compensation benefits and settlements. Provides an exception to certain workers' compensation coverage evidence requirements. Revises certification and registration requirements for initial licensure. Provides for the use of policyholder surplus for purposes of funding certain deficits. Revises the requirements for reports of information by workers' compensation insurers. Deletes a reporting requirement for the division. Repeals s. 440.45(3), F.S., relating to

1 judges of compensation claims serving as docketing  
2 judges. Repeals s. 440.49(13), F.S., relating to the  
3 Special Disability Trust Fund Privatization Commission.  
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