

By the Committee on Banking and Insurance; and Senator King

311-1519A-01

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 112.3145, F.S.; redefining the term
4 "specified state employee" to include the
5 Deputy Chief Judge of Compensation Claims;
6 amending s. 120.65, F.S.; establishing
7 requirements for the Deputy Chief Judge;
8 amending s. 121.055, F.S.; including the Deputy
9 Chief Judge in the Senior Management Service
10 Class; conforming provisions to the transfer of
11 the judges of compensation claims from the
12 Department of Labor and Employment Security to
13 the Division of Administrative Hearings;
14 amending s. 381.004, F.S.; conforming
15 provisions to the transfer of the judges of
16 compensation claims to the Division of
17 Administrative Hearings; amending s. 440.02,
18 F.S.; revising a monetary limit in the
19 definition of the term "casual"; excluding
20 certain sports officials from the definition of
21 the term "employee"; excluding work done by
22 state prisoners and county inmates from the
23 definition of employment; amending s. 440.09,
24 F.S.; excluding employees covered under the
25 Defense Base Act from payment of benefits;
26 amending s. 440.105, F.S.; reclassifying the
27 Chief Judge of Compensation Claims as the
28 Deputy Chief Judge of Compensation Claims;
29 amending s. 440.12, F.S.; providing for
30 electronic payment of compensation payments;
31 amending s. 440.13, F.S.; revising requirements

1 for submission of certain medical reports and
2 bills; granting rehabilitation providers access
3 to medical records; revising provider
4 eligibility requirements; amending s. 440.134,
5 F.S.; requiring certain insurers to provide
6 medically necessary remedial treatment, care,
7 and attendance under certain circumstances;
8 amending s. 440.14, F.S.; requiring the
9 employee to provide information concerning
10 concurrent employment; amending s. 440.185,
11 F.S.; authorizing the division to contract with
12 a private entity for collection of certain
13 policy information; providing application;
14 amending s. 440.192, F.S.; revising
15 requirements and procedures for filing
16 petitions for benefits; permitting judges to
17 dismiss portions of a petition; specifying that
18 dismissal of petitions is without prejudice;
19 amending grounds for dismissal; redesignating
20 the notice of denial as the "response to
21 petition"; amending s. 440.20, F.S.; providing
22 for payment of compensation by direct deposit
23 under certain circumstances; providing
24 procedural guidelines for a carrier that is
25 uncertain of its obligations to provide
26 benefits or compensation; waiving hearing
27 requirements under certain circumstances;
28 revising the period for payment; revising
29 lump-sum settlement requirements; amending s.
30 440.22, F.S.; excluding child support and
31 alimony claims from general exemption of

1 workers' compensation benefits from claims of
2 creditors; amending s. 440.25, F.S.; revising
3 mediation procedures; requiring written consent
4 for continuances; authorizing the director of
5 the Division of Administrative Hearings to
6 employ mediators; requiring judges of
7 compensation claims to file a report in certain
8 circumstances; eliminating local rule adoption;
9 removing the division's participation in
10 indigency proceedings; amending s. 440.271,
11 F.S.; requiring the First District Court of
12 Appeal to establish a specialized division to
13 hear workers' compensation cases; amending s.
14 440.29, F.S.; conforming provisions to the
15 reclassification of the Chief Judge as the
16 Deputy Chief Judge of Compensation Claims;
17 amending s. 440.34, F.S.; providing for a
18 response to petition; amending s. 440.345,
19 F.S.; revising reporting requirements; amending
20 s. 440.38, F.S.; providing for the type of
21 qualifying security deposit necessary to become
22 a self-insured employer; providing
23 requirements, procedures, and criteria;
24 conforming cross-references; amending s.
25 440.44, F.S.; revising record requirements;
26 authorizing the director of the Division of
27 Administrative Hearings to make expenditures
28 relating to the Office of the Judges of
29 Compensation Claims; requiring legislative
30 approval before modifying the number or
31 location of the judges or mediators; conforming

1 provisions to the transfer of the Office of the
2 Judges of Compensation Claims to the Division
3 of Administrative Hearings; amending s.
4 440.442, F.S.; revising Judicial Code of
5 Conduct requirements; amending s. 440.45, F.S.;
6 eliminating the Chief Judge position; creating
7 the position of Deputy Chief Judge of
8 Compensation Claims; conforming provisions to
9 the transfer of the judges of compensation
10 claims from the Department of Labor and
11 Employment Security to the Division of
12 Administrative Hearings within the Department
13 of Management Services; requiring nominees for
14 the judges of compensation claims to meet
15 additional experience requirements; authorizing
16 the director of the Division of Administrative
17 Hearings to initiate and investigate complaints
18 against the Deputy Chief Judge and judges of
19 compensation claims and make recommendations to
20 the Governor; revising reporting requirements;
21 requiring the judicial nominating commission to
22 consider whether judges of compensation claims
23 have met certain requirements; providing
24 procedures; authorizing the Governor to appoint
25 certain judges of compensation claims; amending
26 s. 440.47, F.S.; conforming provisions to the
27 reclassification of the Chief Judge as the
28 Deputy Chief Judge; providing that the director
29 of the Division of Administrative Hearings must
30 approve travel expenses; amending s. 440.59,
31 F.S.; eliminating injury report; revising

1 reporting requirements; transferring reporting
2 responsibilities from the Department of Labor
3 and Employment Security to the Department of
4 Insurance; amending s. 440.593, F.S., providing
5 enforcement authority relating to electronic
6 reporting; amending s. 61.14, F.S.; requiring
7 judges of compensation claims to consider the
8 interests of the worker and the worker's family
9 when approving settlements of workers'
10 compensation claims; requiring appropriate
11 recovery of any child-support arrearage from
12 those settlements; amending s. 61.30, F.S.;
13 providing that gross income includes all
14 workers' compensation benefits and settlements;
15 amending ss. 489.114, 489.510, F.S.; providing
16 an exception to certain workers' compensation
17 coverage evidence requirements; amending ss.
18 489.115, 489.515, F.S.; revising certification
19 and registration requirements for initial
20 licensure; amending s. 627.311, F.S.; providing
21 for use of policyholder surplus for purposes of
22 funding certain deficits; amending s. 627.0915,
23 F.S.; eliminating references to the Division of
24 Safety of the Department of Labor and
25 Employment Security in relation to rating
26 plans' workplace safety programs; amending s.
27 627.914, F.S.; revising the requirements for
28 reports of information by workers' compensation
29 insurers; deleting a reporting requirement for
30 the Division of Workers' Compensation;
31 transferring the Office of the Judges of

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

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

9 Section 1. Paragraph (b) of subsection (1) and
10 subsection (4) of section 112.3145, Florida Statutes, are
11 amended to read:

12 112.3145 Disclosure of financial interests and clients
13 represented before agencies.--

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

16 (b) "Specified state employee" means:

17 1. Public counsel created by chapter 350, an assistant
18 state attorney, an assistant public defender, a full-time
19 state employee who serves as counsel or assistant counsel to
20 any state agency, the Deputy Chief Judge of Compensation
21 Claims, a judge of compensation claims, an administrative law
22 judge, or a hearing officer.

23 2. Any person employed in the office of the Governor
24 or in the office of any member of the Cabinet if that person
25 is exempt from the Career Service System, except persons
26 employed in clerical, secretarial, or similar positions.

27 3. Each appointed secretary, assistant secretary,
28 deputy secretary, executive director, assistant executive
29 director, or deputy executive director of each state
30 department, commission, board, or council; unless otherwise
31 provided, the division director, assistant division director,

1 deputy director, bureau chief, and assistant bureau chief of
2 any state department or division; or any person having the
3 power normally conferred upon such persons, by whatever title.

4 4. The superintendent or institute director of a state
5 mental health institute established for training and research
6 in the mental health field or the warden or director of any
7 major state institution or facility established for
8 corrections, training, treatment, or rehabilitation.

9 5. Business managers, purchasing agents having the
10 power to make any purchase exceeding the threshold amount
11 provided for in s. 287.017 for CATEGORY ONE, finance and
12 accounting directors, personnel officers, or grants
13 coordinators for any state agency.

14 6. Any person, other than a legislative assistant
15 exempted by the presiding officer of the house by which the
16 legislative assistant is employed, who is employed in the
17 legislative branch of government, except persons employed in
18 maintenance, clerical, secretarial, or similar positions.

19 7. Each employee of the Commission on Ethics.

20 (4) Each elected constitutional officer, state
21 officer, local officer, and specified state employee shall
22 file a quarterly report of the names of clients represented
23 for a fee or commission, except for appearances in ministerial
24 matters, before agencies at his or her level of government.
25 For the purposes of this part, agencies of government shall be
26 classified as state-level agencies or agencies below state
27 level. Each local officer shall file such report with the
28 supervisor of elections of the county in which the officer is
29 principally employed or is a resident. Each state officer,
30 elected constitutional officer, and specified state employee
31 shall file such report with the commission. The report shall

1 be filed only when a reportable representation is made during
2 the calendar quarter and shall be filed no later than the last
3 day of each calendar quarter, for the previous calendar
4 quarter. Representation before any agency shall be deemed to
5 include representation by such officer or specified state
6 employee or by any partner or associate of the professional
7 firm of which he or she is a member and of which he or she has
8 actual knowledge. For the purposes of this subsection, the
9 term "representation before any agency" does not include
10 appearances before any court or the Deputy Chief Judge ~~Judges~~
11 of Compensation Claims or judges of compensation claims or
12 representations on behalf of one's agency in one's official
13 capacity. Such term does not include the preparation and
14 filing of forms and applications merely for the purpose of
15 obtaining or transferring a license based on a quota or a
16 franchise of such agency or a license or operation permit to
17 engage in a profession, business, or occupation, so long as
18 the issuance or granting of such license, permit, or transfer
19 does not require substantial discretion, a variance, a special
20 consideration, or a certificate of public convenience and
21 necessity.

22 Section 2. Subsection (1) of section 120.65, Florida
23 Statutes, is amended to read:

24 120.65 Administrative law judges.--

25 (1) The Division of Administrative Hearings within the
26 Department of Management Services shall be headed by a
27 director who shall be appointed by the Administration
28 Commission and confirmed by the Senate. The director, who
29 shall also serve as the chief administrative law judge, and
30 any deputy chief administrative law judge must possess the
31 same minimum qualifications as the administrative law judges

1 employed by the division. The Deputy Chief Judge of
2 Compensation Claims must possess the minimum qualifications
3 established in s. 440.45(2) and shall report to the director.
4 The division shall be a separate budget entity, and the
5 director shall be its agency head for all purposes. The
6 Department of Management Services shall provide administrative
7 support and service to the division to the extent requested by
8 the director. The division shall not be subject to control,
9 supervision, or direction by the Department of Management
10 Services in any manner, including, but not limited to,
11 personnel, purchasing, transactions involving real or personal
12 property, and budgetary matters.

13 Section 3. Paragraph (i) of subsection (1) of section
14 121.055, Florida Statutes, is amended to read:

15 121.055 Senior Management Service Class.--There is
16 hereby established a separate class of membership within the
17 Florida Retirement System to be known as the "Senior
18 Management Service Class," which shall become effective
19 February 1, 1987.

20 (1)

21 (i)1. Except as provided in subparagraph 2., effective
22 July 1, 1999, participation in the Senior Management Service
23 Class is compulsory for any member of the Florida Retirement
24 System who is employed as the Deputy Chief Judge of
25 Compensation Claims or as a judge of compensation claims with
26 the Office of the Judges of Compensation Claims within the
27 Division of Administrative Hearings ~~Department of Labor and~~
28 ~~Employment Security.~~

29 2. In lieu of participating in the Senior Management
30 Service Class, the Deputy Chief Judge of Compensation Claims
31 or a judge of compensation claims may participate in the

1 Senior Management Service Optional Annuity Program established
2 under subsection (6).

3 Section 4. Paragraph (e) of subsection (3) of section
4 381.004, Florida Statutes, is amended to read:

5 381.004 HIV testing.--

6 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
7 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

8 (e) Except as provided in this section, the identity
9 of any person upon whom a test has been performed and test
10 results are confidential and exempt from the provisions of s.
11 119.07(1). No person who has obtained or has knowledge of a
12 test result pursuant to this section may disclose or be
13 compelled to disclose the identity of any person upon whom a
14 test is performed, or the results of such a test in a manner
15 which permits identification of the subject of the test,
16 except to the following persons:

17 1. The subject of the test or the subject's legally
18 authorized representative.

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

29 3. An authorized agent or employee of a health
30 facility or health care provider if the health facility or
31 health care provider itself is authorized to obtain the test

1 results, the agent or employee participates in the
2 administration or provision of patient care or handles or
3 processes specimens of body fluids or tissues, and the agent
4 or employee has a need to know such information. The
5 department shall adopt a rule defining which persons have a
6 need to know pursuant to this subparagraph.

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

15 5. The department, in accordance with rules for
16 reporting and controlling the spread of disease, as otherwise
17 provided by state law.

18 6. A health facility or health care provider which
19 procures, processes, distributes, or uses:

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

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

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

27 8. Authorized medical or epidemiological researchers
28 who may not further disclose any identifying characteristics
29 or information.

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

1 a. No court of this state shall issue such order
2 unless the court finds that the person seeking the test
3 results has demonstrated a compelling need for the test
4 results which cannot be accommodated by other means. In
5 assessing compelling need, the court shall weigh the need for
6 disclosure against the privacy interest of the test subject
7 and the public interest which may be disserved by disclosure
8 which deters blood, organ, and semen donation and future human
9 immunodeficiency virus-related testing or which may lead to
10 discrimination. This paragraph shall not apply to blood bank
11 donor records.

12 b. Pleadings pertaining to disclosure of test results
13 shall substitute a pseudonym for the true name of the subject
14 of the test. The disclosure to the parties of the subject's
15 true name shall be communicated confidentially in documents
16 not filed with the court.

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

21 d. Court proceedings as to disclosure of test results
22 shall be conducted in camera, unless the subject of the test
23 agrees to a hearing in open court or unless the court
24 determines that a public hearing is necessary to the public
25 interest and the proper administration of justice.

26 e. Upon the issuance of an order to disclose test
27 results, the court shall impose appropriate safeguards against
28 unauthorized disclosure which shall specify the persons who
29 may have access to the information, the purposes for which the
30 information shall be used, and appropriate prohibitions on
31 future disclosure.

1 10. A person allowed access by order of a judge of
2 compensation claims of the Division of Administrative Hearings
3 ~~Workers' Compensation of the Department of Labor and~~
4 ~~Employment Security~~. A judge of compensation claims shall not
5 issue such order unless he or she finds that the person
6 seeking the test results has demonstrated a compelling need
7 for the test results which cannot be accommodated by other
8 means.

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

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

25 13. A health care provider involved in the delivery of
26 a child can note the mother's HIV test results in the child's
27 medical record.

28 14. Medical personnel or nonmedical personnel who have
29 been subject to a significant exposure during the course of
30 medical practice or in the performance of professional duties,
31

1 or individuals who are the subject of the significant exposure
2 as provided in subparagraphs (h)10., 11., and 13.

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

6 Section 5. Subsection (4), paragraph (d) of subsection
7 (14), and paragraph (c) of subsection (16) of section 440.02,
8 Florida Statutes, are amended to read:

9 440.02 Definitions.--When used in this chapter, unless
10 the context clearly requires otherwise, the following terms
11 shall have the following meanings:

12 (4) "Casual" as used in this section refers ~~shall be~~
13 ~~taken to refer~~ only to employments for ~~when the~~ work that is
14 anticipated ~~contemplated is~~ to be completed in not exceeding
15 10 working days or less, without regard to the number of
16 persons employed, and at a ~~when the~~ total labor cost of ~~such~~
17 ~~work is~~ less than \$500~~\$100~~.

18 (14)

19 (d) "Employee" does not include:

20 1. An independent contractor, if:

21 a. The independent contractor maintains a separate
22 business with his or her own work facility, truck, equipment,
23 materials, or similar accommodations;

24 b. The independent contractor holds or has applied for
25 a federal employer identification number, unless the
26 independent contractor is a sole proprietor who is not
27 required to obtain a federal employer identification number
28 under state or federal requirements;

29 c. The independent contractor performs or agrees to
30 perform specific services or work for specific amounts of
31

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

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

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

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

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

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

31 |

1 11. A person who performs services as a sports
2 official for an entity sponsoring an interscholastic sports
3 event or for a public entity or private, nonprofit
4 organization that sponsors an amateur sports event. For
5 purposes of this subparagraph, such a person is an independent
6 contractor. For purposes of this subparagraph, the term
7 "sports official" means any person who is a neutral
8 participant in a sports event, including, but not limited to,
9 umpires, referees, judges, linespersons, scorekeepers, or
10 timekeepers. This subparagraph does not apply to any person
11 employed by a district school board who serves as a sports
12 official as required by the employing school board or who
13 serves as a sports official as part of his or her
14 responsibilities during normal school hours.

15 (16)

16 (c) "Employment" does not include service performed by
17 or as:

18 1. Domestic servants in private homes.

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

30 3. Professional athletes, such as professional boxers,
31 wrestlers, baseball, football, basketball, hockey, polo,

1 tennis, jai alai, and similar players, and motorsports teams
2 competing in a motor racing event as defined in s. 549.08.

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

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

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

10 440.09 Coverage.--

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

16 Section 7. Paragraph (b) of section (3) of section
17 440.105, Florida Statutes, is amended to read:

18 440.105 Prohibited activities; reports; penalties;
19 limitations.--

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

23 (b) It is ~~shall be~~ unlawful for any attorney or other
24 person, in his or her individual capacity or in his or her
25 capacity as a public or private employee, or for any firm,
26 corporation, partnership, or association to receive any fee or
27 other consideration or any gratuity from a person on account
28 of services rendered for a person in connection with any
29 proceedings arising under this chapter, unless such fee,
30 consideration, or gratuity is approved by a judge of
31

1 compensation claims or by the Deputy Chief Judge of
2 Compensation Claims.

3 Section 8. Subsection (1) of section 440.12, Florida
4 Statutes, is amended to read:

5 440.12 Time for commencement and limits on weekly rate
6 of compensation.--

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

17 Section 9. Paragraph (a) of subsection (3) and
18 paragraphs (b) and (c) of subsection (4) of section 440.13,
19 Florida Statutes, are amended to read:

20 440.13 Medical services and supplies; penalty for
21 violations; limitations.--

22 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

15 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
16 DIVISION.--

17 (b) Upon the request of the Division of Workers'
18 Compensation, each medical report or bill obtained or received
19 by the employer, the carrier, or the injured employee, or the
20 attorney for the employer, carrier, or injured employee, with
21 respect to the remedial treatment, or care, and attendance of
22 the injured employee, including any report of an examination,
23 diagnosis, or disability evaluation, must be filed with the
24 Division of Workers' Compensation pursuant to rules adopted by
25 the division. The health care provider shall also furnish to
26 the injured employee or to his or her attorney, on demand, a
27 copy of his or her office chart, records, and reports, and may
28 charge the injured employee an amount authorized by the
29 division for the copies. Each such health care provider shall
30 provide to the division ~~any additional~~ information about the
31

1 remedial treatment, care, and attendance which ~~that~~ the
2 division reasonably requests.

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

24 Section 10. Paragraph (b) of subsection (2) of section
25 440.134, Florida Statutes, is amended to read:

26 440.134 Workers' compensation managed care
27 arrangement.--

28 (2)

29 (b) ~~Effective January 1, 1997,~~The employer shall,
30 subject to the limitations specified elsewhere in this
31 chapter, furnish to the employee solely through managed care

1 arrangements or without managed care arrangements such
2 medically necessary remedial treatment, care, and attendance
3 for such period as the nature of the injury or the process of
4 recovery requires.

5 Section 11. Subsection (5) is added to section 440.14,
6 Florida Statutes, to read:

7 440.14 Determination of pay.--

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

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

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

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

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

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

8 Section 13. Subsections (1), (2), (5), and (8) of
9 section 440.192, Florida Statutes, are amended to read:

10 440.192 Procedure for resolving benefit disputes.--

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

28 (2) Upon receipt, the Office of the Judges of
29 Compensation Claims shall review each petition and shall
30 dismiss each petition or any portion of such a petition, upon
31 the judge's ~~its~~ own motion or upon the motion of any party,

1 that does not on its face specifically identify or itemize the
2 following:

3 (a) Name, address, telephone number, and social
4 security number of the employee.

5 (b) Name, address, and telephone number of the
6 employer.

7 (c) A detailed description of the injury and cause of
8 the injury, including the location of the occurrence and the
9 date or dates of accident.

10 (d) A detailed description of the employee's job, work
11 responsibilities, and work the employee was performing when
12 the injury occurred.

13 (e) The time period for which compensation and the
14 specific classification of compensation were ~~was~~ not timely
15 provided.

16 (f) Date of maximum medical improvement, character of
17 disability, and specific statement of all benefits or
18 compensation that the employee is seeking.

19 (g) All specific travel costs to which the employee
20 believes she or he is entitled, including dates of travel and
21 purpose of travel, means of transportation, and mileage and
22 including the date the request for mileage was filed with the
23 carrier and a copy of the request filed with the carrier.

24 (h) Specific listing of all medical charges alleged
25 unpaid, including the name and address of the medical
26 provider, the amounts due, and the specific dates of
27 treatment.

28 (i) The type or nature of treatment care or attendance
29 sought and the justification for such treatment.

30
31

1 (j) Specific explanation of any other disputed issue
2 that a judge of compensation claims will be called to rule
3 upon.

4
5 The dismissal of any petition or any portion of such a
6 petition under this section must be without prejudice and does
7 not require a hearing.

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

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

1 investigation within the 120-day period. The carrier shall
2 provide copies of the response ~~notice~~ to the filing party,
3 employer, and claimant by certified mail.

4 Section 14. Paragraph (a) of subsection (1) and
5 subsections (4), (6), and (11) of section 440.20, Florida
6 Statutes, are amended to read:

7 440.20 Time for payment of compensation; penalties for
8 late payment.--

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

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

1 has elected to pay all or part of the claim pending further
2 investigation, and that it will advise the employee of claim
3 acceptance or denial within 120 days. A carrier that fails to
4 deny compensability within 120 days after the initial
5 provision of benefits or payment of compensation as required
6 under subsection (2) or s. 440.192(8) waives the right to deny
7 compensability, unless the carrier can establish material
8 facts relevant to the issue of compensability that it could
9 not have discovered through reasonable investigation within
10 the 120-day period. The initial provision of compensation or
11 benefits, for purposes of this subsection, means the first
12 installment of compensation or benefits to be paid by the
13 carrier under subsection (2) or pursuant to a petition for
14 benefits under s. 440.192(8).

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

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

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

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

26 (b) When a claimant is not represented by counsel,
27 upon joint petition of all interested parties, a lump-sum
28 payment in exchange for the employer's or carrier's release
29 from liability for future medical expenses, as well as future
30 payments of compensation and rehabilitation expenses, and any
31 other benefits provided under this chapter, may be allowed at

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

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

27 (c) Notwithstanding s. 440.21(2), when a claimant is
28 represented by counsel, the claimant may waive all rights to
29 any and all benefits under this chapter by entering into a
30 settlement agreement releasing the employer and the carrier
31 from liability for workers' compensation benefits in exchange

1 for a lump-sum payment to the claimant. The settlement
2 agreement requires approval by the judge of compensation
3 claims only as to the attorney's fees paid to the claimant's
4 attorney by the claimant. The parties need not submit any
5 information or documentation in support of the settlement,
6 except as needed to justify the amount of the attorney's fees.
7 Neither the employer nor the carrier is responsible for any
8 attorney's fees relating to the settlement and release of
9 claims under this section. Payment of the lump-sum settlement
10 amount must be made within 14 days after the date the judge of
11 compensation claims mails the order approving the attorney's
12 fees. Any order entered by a judge of compensation claims
13 approving the attorney's fees as set out in the settlement
14 under this subsection is not considered to be an award and is
15 not subject to modification or review. The judge of
16 compensation claims shall report these settlements to the
17 chief judge in accordance with the requirements set forth in
18 s. 440.11(a) and (b). Settlements entered into under this
19 subsection are valid and apply to all dates of accident.

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

26 (e)~~(e)~~ This section applies to all claims that the
27 parties have not previously settled, regardless of the date of
28 accident.

29 Section 15. Section 440.22, Florida Statutes, is
30 amended to read:

31

1 440.22 Assignment and exemption from claims of
2 creditors.--No assignment, release, or commutation of
3 compensation or benefits due or payable under this chapter
4 except as provided by this chapter shall be valid, and such
5 compensation and benefits shall be exempt from all claims of
6 creditors, and from levy, execution and attachments or other
7 remedy for recovery or collection of a debt, which exemption
8 may not be waived. However, the exemption of workers'
9 compensation claims from creditors does not extend to claims
10 based on an award of child support or alimony.

11 Section 16. Subsections (1), (2), (3), and (4), and
12 paragraph (b) of subsection (5) of section 440.25, Florida
13 Statutes, are amended to read:

14 440.25 Procedures for mediation and hearings.--

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

27 (2) Any party who participates in a mediation
28 conference shall not be precluded from requesting a hearing
29 following the mediation conference should both parties not
30 agree to be bound by the results of the mediation conference.
31 A mediation conference is required to be held unless this

1 requirement is waived by the Deputy Chief Judge. No later than
2 3 days prior to the mediation conference, all parties must
3 submit any applicable motions, including, but not limited to,
4 a motion to waive the mediation conference, to the judge of
5 compensation claims.

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

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

27 (4)(a) If, on the 10th day following commencement of
28 mediation, the questions in dispute have not been resolved,
29 the judge of compensation claims shall hold a pretrial
30 hearing. The judge of compensation claims shall give the
31 interested parties at least 7 days' advance notice of the

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

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

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

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

1 compensation claims may enter an abbreviated final order in
2 cases in which compensability is not disputed. Either party
3 may request separate findings of fact and conclusions of law.
4 At such hearing, the claimant and employer may each present
5 evidence in respect of such claim and may be represented by
6 any attorney authorized in writing for such purpose. When
7 there is a conflict in the medical evidence submitted at the
8 hearing, the provisions of s. 440.13 shall apply. The report
9 or testimony of the expert medical advisor shall be made a
10 part of the record of the proceeding and shall be given the
11 same consideration by the judge of compensation claims as is
12 accorded other medical evidence submitted in the proceeding;
13 and all costs incurred in connection with such examination and
14 testimony may be assessed as costs in the proceeding, subject
15 to the provisions of s. 440.13. No judge of compensation
16 claims may make a finding of a degree of permanent impairment
17 that is greater than the greatest permanent impairment rating
18 given the claimant by any examining or treating physician,
19 except upon stipulation of the parties.

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

30 (f) Each judge of compensation claims is required to
31 submit a special report to the Deputy Chief Judge in each

1 | contested workers' compensation case in which the case is not
2 | determined within 30 ~~14~~ days of final hearing or closure of
3 | the hearing record. Said form shall be provided by the
4 | director of the Division of Administrative Hearings ~~Chief~~
5 | ~~Judge~~ and shall contain the names of the judge of compensation
6 | claims and of the attorneys involved and a brief explanation
7 | by the judge of compensation claims as to the reason for such
8 | a delay in issuing a final order. ~~The Chief Judge shall~~
9 | ~~compile these special reports into an annual public report to~~
10 | ~~the Governor, the Secretary of Labor and Employment Security,~~
11 | ~~the Legislature, The Florida Bar, and the appellate district~~
12 | ~~judicial nominating commissions.~~

13 | ~~(g) Judges of compensation claims shall adopt and~~
14 | ~~enforce uniform local rules for workers' compensation.~~

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

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

30 | (i)~~(j)~~ To further expedite dispute resolution and to
31 | enhance the self-executing features of the system, those

1 petitions filed in accordance with s. 440.192 that involve a
2 claim for benefits of \$5,000 or less shall, in the absence of
3 compelling evidence to the contrary, be presumed to be
4 appropriate for expedited resolution under this paragraph; and
5 any other claim filed in accordance with s. 440.192, upon the
6 written agreement of both parties and application by either
7 party, may similarly be resolved under this paragraph. For
8 purposes of expedited resolution pursuant to this paragraph,
9 the Deputy Chief Judge shall make provision by rule or order
10 for expedited and limited discovery and expedited docketing in
11 such cases. At least 15 days prior to hearing, the parties
12 shall exchange and file with the judge of compensation claims
13 a pretrial outline of all issues, defenses, and witnesses on a
14 form promulgated by the Deputy Chief Judge; provided, in no
15 event shall such hearing be held without 15 days' written
16 notice to all parties. No pretrial hearing shall be held. The
17 judge of compensation claims shall limit all argument and
18 presentation of evidence at the hearing to a maximum of 30
19 minutes, and such hearings shall not exceed 30 minutes in
20 length. Neither party shall be required to be represented by
21 counsel. The employer or carrier may be represented by an
22 adjuster or other qualified representative. The employer or
23 carrier and any witness may appear at such hearing by
24 telephone. The rules of evidence shall be liberally construed
25 in favor of allowing introduction of evidence.

26 (5)

27 (b) An appellant may be relieved of any necessary
28 filing fee by filing a verified petition of indigency for
29 approval as provided in s. 57.081(1) and may be relieved in
30 whole or in part from the costs for preparation of the record
31 on appeal if, within 15 days after the date notice of the

1 estimated costs for the preparation is served, the appellant
2 files with the judge of compensation claims a copy of the
3 designation of the record on appeal, and a verified petition
4 to be relieved of costs. A verified petition filed prior to
5 the date of service of the notice of the estimated costs shall
6 be deemed not timely filed. The verified petition relating to
7 record costs shall contain a sworn statement that the
8 appellant is insolvent and a complete, detailed, and sworn
9 financial affidavit showing all the appellant's assets,
10 liabilities, and income. Failure to state in the affidavit all
11 assets and income, including marital assets and income, shall
12 be grounds for denying the petition with prejudice. The Office
13 of the Judges of Compensation Claims ~~division~~ shall promulgate
14 rules as may be required pursuant to this subsection,
15 including forms for use in all petitions brought under this
16 subsection. The appellant's attorney, or the appellant if she
17 or he is not represented by an attorney, shall include as a
18 part of the verified petition relating to record costs an
19 affidavit or affirmation that, in her or his opinion, the
20 notice of appeal was filed in good faith and that there is a
21 probable basis for the District Court of Appeal, First
22 District, to find reversible error, and shall state with
23 particularity the specific legal and factual grounds for the
24 opinion. Failure to so affirm shall be grounds for denying the
25 petition. A copy of the verified petition relating to record
26 costs shall be served upon all interested parties, ~~including~~
27 ~~the division and the Office of the General Counsel, Department~~
28 ~~of Labor and Employment Security, in Tallahassee.~~ The judge of
29 compensation claims shall promptly conduct a hearing on the
30 verified petition relating to record costs, giving at least 15
31 days' notice to the appellant, the division, and all other

1 interested parties, all of whom shall be parties to the
2 proceedings. The judge of compensation claims may enter an
3 order without such hearing if no objection is filed by an
4 interested party within 20 days from the service date of the
5 verified petition relating to record costs. Such proceedings
6 shall be conducted in accordance with the provisions of this
7 section and with the workers' compensation rules of procedure,
8 to the extent applicable. In the event an insolvency petition
9 is granted, the judge of compensation claims shall direct the
10 division to pay record costs and filing fees from the Workers'
11 Compensation Trust Fund pending final disposition of the costs
12 of appeal. The division may transcribe or arrange for the
13 transcription of the record in any proceeding for which it is
14 ordered to pay the cost of the record. ~~In the event the~~
15 ~~insolvency petition is denied, the judge of compensation~~
16 ~~claims may enter an order requiring the petitioner to~~
17 ~~reimburse the division for costs incurred in opposing the~~
18 ~~petition, including investigation and travel expenses.~~

19 Section 17. Section 440.271, Florida Statutes, is
20 amended to read:

21 440.271 Appeal of order of judge of compensation
22 claims.--Review of any order of a judge of compensation claims
23 entered pursuant to this chapter shall be by appeal to the
24 District Court of Appeal, First District. To promote
25 consistency and uniformity in the application of this chapter,
26 the District Court of Appeal, First District, shall establish
27 a specialized division to hear all appeals of orders of judges
28 of compensation claims. The court may structure the division
29 to hear workers' compensation cases exclusively or in addition
30 to other appeals. Appeals shall be filed in accordance with
31 rules of procedure prescribed by the Supreme Court for review

1 of such orders. The division shall be given notice of any
2 proceedings pertaining to s. 440.25, regarding indigency, or
3 s. 440.49, regarding the Special Disability Trust Fund, and
4 shall have the right to intervene in any proceedings.

5 Section 18. Subsection (2) of section 440.29, Florida
6 Statutes, is amended to read:

7 440.29 Procedure before the judge of compensation
8 claims.--

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

23 Section 19. 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 20. 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 21. 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 22. Subsections (3), (5), (6), and (7) of
31 section 440.44, Florida Statutes, are amended to read:

1 440.44 Workers' compensation; staff organization.--
2 (3) EXPENDITURES.--The division and the director of
3 the Division of Administrative Hearings ~~Chief Judge~~ shall make
4 such expenditures, including expenditures for personal
5 services and rent at the seat of government and elsewhere, for
6 law books; for telephone services and WATS lines; for books of
7 reference, periodicals, equipment, and supplies; and for
8 printing and binding as may be necessary in the administration
9 of this chapter. All expenditures in the administration of
10 this chapter shall be allowed and paid as provided in s.
11 440.50 upon the presentation of itemized vouchers therefor
12 approved by the division or the director of the Division of
13 Administrative Hearings ~~Chief Judge~~.

14 (5) OFFICE.--The division and the Deputy Chief Judge
15 shall maintain and keep open during reasonable business hours
16 an office, which shall be provided in the Capitol or some
17 other suitable building in the City of Tallahassee, for the
18 transaction of business under this chapter, at which office
19 the official records and papers shall be kept. The office
20 shall be furnished and equipped. The division, any judge of
21 compensation claims, or the Deputy Chief Judge may hold
22 sessions and conduct hearings at any place within the state.
23 The Office of the Judges of Compensation Claims shall maintain
24 the 17 district offices, 31 judges of compensation claims, and
25 31 mediators as they exist on June 30, 2001.

26 (6) SEAL.--The division and ~~the~~ judges of
27 compensation claims, ~~and the Chief Judge~~ shall have a seal
28 upon which shall be inscribed the words "State of Florida
29 Department of Insurance--Seal" and "Division of Administrative
30 Hearings--Seal," respectively. "~~State of Florida Department of~~
31 ~~Labor and Employment Security--Seal.~~"

1 (7) DESTRUCTION OF OBSOLETE RECORDS.--The division is
2 expressly authorized to provide by regulation for and to
3 destroy obsolete records of the division ~~and commission~~. The
4 Division of Administrative Hearings is expressly authorized to
5 provide by regulation for and to destroy records of the Office
6 of the Judges of Compensation Claims.

7 Section 23. Section 440.442, Florida Statutes, is
8 amended to read:

9 440.442 Code of Judicial Conduct.--The Deputy Chief
10 Judge, and judges of compensation claims shall observe and
11 abide by the Code of Judicial Conduct as adopted by the
12 Florida Supreme Court ~~provided in this section~~. Any material
13 violation of a provision of the Code of Judicial Conduct shall
14 constitute either malfeasance or misfeasance in office and
15 shall be grounds for suspension and removal of the Deputy ~~such~~
16 Chief Judge, or judge of compensation claims by the Governor.

17 ~~(1) A JUDGE SHOULD UPHOLD THE INTEGRITY AND~~
18 ~~INDEPENDENCE OF THE JUDICIARY.--An independent and honorable~~
19 ~~judiciary is indispensable to justice in our society. A judge~~
20 ~~should participate in establishing, maintaining, and~~
21 ~~enforcing, and should himself or herself observe, high~~
22 ~~standards of conduct so that the integrity and independence of~~
23 ~~the judiciary may be preserved. The provisions of this code~~
24 ~~should be construed and applied to further that objective.~~

25 ~~(2) A JUDGE SHOULD AVOID IMPROPRIETY AND THE~~
26 ~~APPEARANCE OF IMPROPRIETY IN ALL HIS OR HER ACTIVITIES.--~~

27 ~~(a) A judge should respect and comply with the law and~~
28 ~~should conduct himself or herself at all times in a manner~~
29 ~~that promotes public confidence in the integrity and~~
30 ~~impartiality of the judiciary.~~

31

1 ~~(b) A judge should not allow his or her personal~~
2 ~~relationships to influence his or her judicial conduct of~~
3 ~~judgment. A judge should not lend the prestige of the office~~
4 ~~to advance the private interest of others; nor convey or~~
5 ~~authorize others to convey the impression that they are in a~~
6 ~~special position to influence him or her. A judge should not~~
7 ~~testify voluntarily as a character witness.~~

8 ~~(3) A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE~~
9 ~~IMPARTIALLY AND DILIGENTLY.--The judicial duties of a judge~~
10 ~~take precedence over all his or her other activities. The~~
11 ~~judicial duties include all the duties of office prescribed by~~
12 ~~law. In the performance of these duties, the following~~
13 ~~standards with respect to adjudicative responsibilities apply:~~

14 ~~(a) A judge should be faithful to the law and maintain~~
15 ~~professional competence in it. A judge should be unswayed by~~
16 ~~partisan interests, public clamor, or fear of criticism.~~

17 ~~(b) A judge should maintain order and decorum in~~
18 ~~proceedings.~~

19 ~~(c) A judge should be patient, dignified, and~~
20 ~~courteous to litigants, jurors, witnesses, lawyers, and others~~
21 ~~with whom he or she must deal in an official capacity, and~~
22 ~~should request similar conduct of lawyers, and of his or her~~
23 ~~staff, court officials, and others subject to his or her~~
24 ~~direction and control.~~

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

1 ~~(a) Speak, write, lecture, teach, and participate in~~
2 ~~other activities concerning the law, the legal system, and the~~
3 ~~administration of justice.~~

4 ~~(b) Appear at a public hearing before an executive or~~
5 ~~legislative body or official on matters concerning the law,~~
6 ~~the legal system, and the administration of justice, and may~~
7 ~~otherwise consult with an executive or legislative body or~~
8 ~~official, but only on matters concerning the administration of~~
9 ~~justice.~~

10 ~~(c) Serve as a member, officer, or director of an~~
11 ~~organization or governmental agency devoted to the improvement~~
12 ~~of the law, the legal system, or the administration of justice~~
13 ~~and assist such an organization in raising funds and may~~
14 ~~participate in their management and investment, but should not~~
15 ~~personally participate in public fundraising activities.~~

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

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

21 ~~(a) Avocational activities.--A judge may write,~~
22 ~~lecture, teach, and speak on nonlegal subjects, and engage in~~
23 ~~the arts, sports, or other social and recreational activities,~~
24 ~~if such avocational activities do not detract from the dignity~~
25 ~~of the office or interfere with the performance of judicial~~
26 ~~duties.~~

27 ~~(b) Civil and charitable activities.--A judge may not~~
28 ~~participate in civic and charitable activities that reflect~~
29 ~~adversely upon his or her impartiality or interfere with the~~
30 ~~performance of his or her duties. A judge may serve as an~~
31 ~~officer, director, trustee, or nonlegal advisory of an~~

1 ~~educational, religious, charitable, fraternal, or civic~~
2 ~~organization not conducted for the economic or political~~
3 ~~advantage of its members, subject to the following~~
4 ~~limitations:~~

5 1. ~~A judge should not serve if it is likely that the~~
6 ~~organization will be engaged in proceedings that would~~
7 ~~ordinarily come before him or her or will be regularly engaged~~
8 ~~in adversary proceedings in any court.~~

9 2. ~~A judge should not solicit funds for any~~
10 ~~educational, religious, charitable, fraternal, or civil~~
11 ~~organization, or use or permit the use of the prestige of the~~
12 ~~office for that purpose, but may be listed as an officer,~~
13 ~~director, or trustee of such an organization. A judge should~~
14 ~~not be a speaker or a guest of honor at any organization's~~
15 ~~fundraising events, but may attend such events.~~

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

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

21 1. ~~A judge should refrain from financial and business~~
22 ~~dealings that tend to reflect adversely on his or her~~
23 ~~impartiality, interfere with the proper performance of his or~~
24 ~~her judicial duties, exploit his or her judicial position, or~~
25 ~~involve the judge in frequent transactions with lawyers or~~
26 ~~persons likely to come before the court on which he or she~~
27 ~~serves.~~

28 2. ~~Subject to the requirements of subsection (1), a~~
29 ~~judge in an individual or corporate capacity may hold and~~
30 ~~manage investments, including real estate, and engage in other~~
31 ~~remunerative activity, but should not serve as an officer,~~

1 ~~director, manager, advisor, or employee of any business,~~
2 ~~except a closely held family business that does not conflict~~
3 ~~with subsection (1).~~

4 ~~3. A judge should manage his or her investments and~~
5 ~~other financial interests to minimize the number of cases in~~
6 ~~which he or she is disqualified. As soon as the judge can do~~
7 ~~so without serious financial detriment, he or she should~~
8 ~~divest himself or herself of investments and other financial~~
9 ~~interests that might require frequent disqualifications.~~

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

12 ~~a. A judge may accept a gift incident to a public~~
13 ~~testimonial to him or her; books supplied by publishers on a~~
14 ~~complimentary basis for official use; or an invitation to the~~
15 ~~judge and spouse to attend a bar-related function or activity~~
16 ~~devoted to the improvement of the law, the legal system, or~~
17 ~~the administration of justice;~~

18 ~~b. A judge may accept ordinary hospitality; a gift,~~
19 ~~bequest, favor, or loan from a relative; a wedding or an~~
20 ~~engagement gift; a loan from a lending institution in its~~
21 ~~regular course of business on the same terms generally~~
22 ~~available to persons who are not judges; or a scholarship or~~
23 ~~fellowship awarded on the same terms applied to other~~
24 ~~applicants;~~

25 ~~c. A judge may accept any other gift, bequest, favor,~~
26 ~~or loan exceeding \$100 only if the donor is not a party or~~
27 ~~other person whose interests have recently come or may likely~~
28 ~~come before him or her in the immediate future.~~

29 ~~5. A judge should make a reasonable effort to be~~
30 ~~informed about the personal financial interests of members of~~
31 ~~his or her family residing in the judge's household and shall~~

1 ~~report any gift, bequest, favor, or loan received thereby of~~
2 ~~which he or she has knowledge and which tends to reflect~~
3 ~~adversely on his or her impartiality, in the same manner as he~~
4 ~~or she reports compensation in subsection (6).~~

5 ~~6. For the purpose of this section, "member of his or~~
6 ~~her family residing in the judge's household" means any~~
7 ~~relative of a judge by blood or marriage, or a person treated~~
8 ~~by a judge as a member of his or her family, who resides in~~
9 ~~the judge's household.~~

10 ~~7. A judge is not required by this section to disclose~~
11 ~~his or her income, debts, or investments, except as provided~~
12 ~~in subsections (3) and (6).~~

13 ~~8. Information required by a judge in which his or her~~
14 ~~judicial capacity should not be used or disclosed by the judge~~
15 ~~in financial dealings or for any other purpose not related to~~
16 ~~his or her judicial duties.~~

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

22 ~~(a) Compensation for quasi-judicial and extrajudicial~~
23 ~~services and reimbursement of expenses.--A judge may receive~~
24 ~~compensation and reimbursement of expenses for the~~
25 ~~quasi-judicial and extrajudicial activities permitted by this~~
26 ~~section, if the source of such payments does not give the~~
27 ~~appearance of influencing the judge in his or her judicial~~
28 ~~duties or otherwise give the impression of impropriety subject~~
29 ~~to the following restrictions:~~

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

4 ~~2. Expense reimbursement: Expense reimbursement~~
5 ~~should be limited to the actual cost of travel, food, and~~
6 ~~lodging reasonably incurred by the judge and, where~~
7 ~~appropriate to the occasion, to his or her spouse. Any payment~~
8 ~~in excess of such an amount is compensation.~~

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

10 ~~1. Income and assets: A judge shall file such public~~
11 ~~reports as may be required by law for all public officials to~~
12 ~~comply fully with the provisions of s. 8, Art. II of the State~~
13 ~~Constitution. The form for public financial disclosure shall~~
14 ~~be that recommended or adopted by the Florida Commission on~~
15 ~~Ethics for use by all public officials. The form shall be~~
16 ~~filed in the office of the Commission on Ethics on the date~~
17 ~~prescribed by law.~~

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

24 Section 24. Section 440.45, Florida Statutes, is
25 amended to read:

26 440.45 Office of the Judges of Compensation Claims.--

27 (1)(a) There is ~~hereby~~ created the Office of the
28 Judges of Compensation Claims within the Department of
29 Management Services Labor and Employment Security. The Office
30 of the Judges of Compensation Claims shall be headed by the
31 Deputy Chief Judge of Compensation Claims. The Deputy Chief

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

24 (b) The current term of the Chief Judge of
25 Compensation Claims expires October 1, 2001. The position of
26 Deputy Chief Judge of Compensation Claims is created and
27 becomes effective October 1, 2001.

28 (2)(a) The Governor shall appoint full-time judges of
29 compensation claims to conduct proceedings as required by this
30 chapter or other law. No person may be nominated to serve as a
31 judge of compensation claims unless he or she has been a

1 member of The Florida Bar in good standing for the previous 5
2 years and is experienced ~~knowledgeable~~ in the practice of law
3 of workers' compensation. No judge of compensation claims
4 shall engage in the private practice of law during a term of
5 office.

6 (b) Except as provided in paragraph (c), the Governor
7 shall appoint a judge of compensation claims from a list of
8 three persons nominated by a statewide nominating commission.
9 The statewide nominating commission shall be composed of the
10 following:

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

25 2. 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 each of the territorial jurisdictions of
28 the district courts of appeal, appointed by the Governor. On
29 July 1, 1999, the term of office of each person appointed by
30 the Governor to the commission expires. The Governor shall
31 appoint members who reside in the odd-numbered district court

1 of appeal jurisdictions to 2-year terms each, beginning July
2 1, 1999, and members who reside in the even-numbered district
3 court of appeal jurisdictions to 4-year terms each, beginning
4 July 1, 1999. Thereafter, each member shall be appointed for a
5 4-year term; and

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

20
21 A vacancy occurring on the commission shall be filled by the
22 original appointing authority for the unexpired balance of the
23 term. No attorney who appears before any judge of compensation
24 claims more than four times a year is eligible to serve on the
25 statewide nominating commission. The meetings and
26 determinations of the nominating commission as to the judges
27 of compensation claims shall be open to the public.

28 (c) Each judge of compensation claims shall be
29 appointed for a term of 4 years, but during the term of office
30 may be removed by the Governor for cause. Prior to the
31 expiration of a judge's term of office, the statewide

1 nominating commission shall review the judge's conduct and
2 determine whether the judge's performance is satisfactory.
3 Effective July 1, 2002, in determining whether a judge's
4 performance is satisfactory, the commission shall consider the
5 extent to which the judge has met the requirements of this
6 chapter, including, but not limited to, the requirements of
7 ss. 440.192(2), 440.25(1), 440.25(4)(a)-(f), 440.34(2), and
8 440.442.If the judge's performance is deemed satisfactory,
9 the commission shall report its finding to the Governor no
10 later than 6 months prior to the expiration of the judge's
11 term of office. The Governor shall review the commission's
12 report and may reappoint the judge for an additional 4-year
13 term. If the Governor does not reappoint the judge, the
14 Governor shall inform the commission. The judge shall remain
15 in office until the Governor has appointed a successor judge
16 in accordance with paragraphs (a) and (b). If a vacancy occurs
17 during a judge's unexpired term, the statewide nominating
18 commission does not find the judge's performance is
19 satisfactory, or the Governor does not reappoint the judge,
20 the Governor shall appoint a successor judge for a term of 4
21 years in accordance with paragraph (b).

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

1 (e) The director of the Division of Administrative
2 Hearings may receive or initiate complaints, conduct
3 investigations, and dismiss complaints against the Deputy
4 Chief Judge and the judges of compensation claims. The
5 director may recommend to the Governor the removal of the
6 Deputy Chief Judge or a judge of compensation claims or
7 recommend the discipline of a judge whose conduct during his
8 or her term of office warrants such discipline. For purposes
9 of this section, the term "discipline" includes reprimand,
10 fine, and suspension with or without pay. At the conclusion of
11 each investigation, the director shall submit preliminary
12 findings of fact and recommendations to the judge of
13 compensation claims who is the subject of the complaint. The
14 judge of compensation claims has 20 days within which to
15 respond to the tentative findings. The response and the
16 director's rebuttal to the response must be included in the
17 final report submitted to the Governor.

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

1 ~~(3)(4)~~ The Chief Judge shall have the discretion to
2 require mediation and to designate qualified persons to act as
3 mediators in any dispute pending before the judges of
4 compensation claims and the division. The Deputy Chief Judge
5 shall coordinate with the Director of the Division of Workers'
6 Compensation to establish a mandatory mediation program to
7 facilitate early and efficient resolution of disputes arising
8 under this chapter and to establish training and continuing
9 education for new and sitting judges.

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

24 ~~(5)(6)~~ Not later than December 1 of each year, the
25 Office of the Judges of Compensation Claims ~~and the Division~~
26 ~~of Workers' Compensation~~ shall jointly issue a written report
27 to the Governor, the House of Representatives, ~~and~~ the Senate,
28 The Florida Bar, and the statewide nominating commission
29 summarizing the amount, cost, and outcome of all litigation
30 resolved in the previous fiscal ~~prior~~ year, summarizing the
31 disposition of mediation conferences, the number of mediation

1 conferences held, the number of continuances granted for
2 mediations and final hearings, the number and outcome of
3 litigated cases, the amount of attorney's fees paid in each
4 case, and the number of final orders not issued within 30 days
5 after the final hearing or closure of the hearing record
6 ~~applications and motions for mediation conferences and~~
7 recommending changes or improvements to the dispute resolution
8 elements of the Workers' Compensation Law and regulations. If
9 the Deputy Chief Judge finds that judges generally are unable
10 to meet a particular statutory requirement for reasons beyond
11 their control, the Deputy Chief Judge shall submit such
12 findings and any recommendations to the Legislature.

13 Section 25. Section 440.47, Florida Statutes, is
14 amended to read:

15 440.47 Travel expenses.--The Deputy Chief Judge,
16 judges of compensation claims, and employees of the department
17 shall be reimbursed for travel expenses as provided in s.
18 112.061. Such expenses shall be sworn to by the person who
19 incurred the same and shall be allowed and paid as provided in
20 s. 440.50 upon the presentation of vouchers therefor approved
21 by the director of the Division of Administrative Hearings
22 ~~Chief Judge~~ or the department, whichever is applicable.

23 Section 26. Section 440.59, Florida Statutes, is
24 amended to read:

25 440.59 Reporting requirements.--

26 (1) The Department of Insurance ~~Labor and Employment~~
27 ~~Security~~ shall annually prepare a report of the administration
28 of this chapter for the preceding calendar year, including a
29 detailed statement of the receipts of and expenditures from
30 the fund established in s. 440.50 and a statement of the
31 causes of the accidents leading to the injuries for which the

1 awards were made, together with such recommendations as the
2 department considers advisable. On or before September 15 of
3 each year, the department shall submit a copy of the report to
4 the Governor, the President of the Senate, the Speaker of the
5 House of Representatives, the Democratic and Republican
6 Leaders of the Senate and the House of Representatives, and
7 the chairs of the legislative committees having jurisdiction
8 over workers' compensation.

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

22 (2)~~(3)~~ The division shall annually prepare a closed
23 claim report for all claims for which the employee lost more
24 than 7 days from work and shall submit a copy of the report to
25 the Governor, the President of the Senate, the Speaker of the
26 House of Representatives, the Democratic and Republican
27 Leaders of the Senate and the House of Representatives, and
28 the chairs of the legislative committees having jurisdiction
29 over workers' compensation on or before September 15 of each
30 year. The closed claim report shall include, but not be
31 limited to, an analysis of all claims closed during the

1 preceding year as to the date of accident, age of the injured
2 employee, occupation of the injured employee, type of injury,
3 body part affected, type and duration of indemnity benefits
4 paid, permanent impairment rating, medical benefits identified
5 by type of health care provider, and type and cost of any
6 rehabilitation benefits provided.

7 (3)~~(4)~~ The division shall prepare an annual report for
8 all claims for which the employee lost more than 7 days from
9 work and shall submit a copy of the report to the Governor,
10 the President of the Senate, the Speaker of the House of
11 Representatives, the Democratic and Republican Leaders of the
12 Senate and the House of Representatives, and the chairs of the
13 legislative committees having jurisdiction over workers'
14 compensation, on or before September 15 of each year. The
15 annual report shall include a status report on all cases
16 involving work-related injuries in the previous 10 years. The
17 annual report shall include, but not be limited to, the number
18 of open and closed cases, the number of cases receiving
19 various types of benefits, the cash and medical benefits paid
20 between the date of injury and the evaluation date, ~~the number~~
21 ~~of litigated cases, and the amount of attorney's fees paid in~~
22 each case.

23 ~~(5) The Chief Judge must prepare an annual report~~
24 ~~summarizing the disposition of mediation conferences and must~~
25 ~~submit the report to the Governor, the President of the~~
26 ~~Senate, the Speaker of the House of Representatives, the~~
27 ~~Democratic and Republican Leaders of the Senate and the House~~
28 ~~of Representatives, and the chairs of the legislative~~
29 ~~committees having jurisdiction over workers' compensation, on~~
30 ~~or before September 15 of each year.~~

31

1 Section 27. Section 440.593, Florida Statutes, is
2 amended to read:

3 440.593 Electronic reporting.--

4 (1) The division may establish by rule an electronic
5 reporting system requiring or authorizing ~~whereby~~ an employer
6 or carrier is required to submit required forms, reports, or
7 other information electronically rather than by other means
8 ~~filing otherwise required forms or reports.~~ The division may
9 ~~by rule~~ establish different deadlines for submitting forms,
10 reports, or reporting information to the division, or to its
11 authorized agent, via the electronic reporting system than are
12 otherwise required when reporting information by other means.

13 (2) The division may require any carrier to submit
14 data electronically, either directly or through a third-party
15 vendor, and may require any carrier or vendor submitting data
16 to the division electronically to be certified by the
17 division. The division may specify performance requirements
18 for any carrier or vendor submitting data electronically.

19 (3) The division may revoke the certification of any
20 carrier or vendor determined by the division to be in
21 noncompliance with performance standards prescribed by rule
22 for electronic submissions.

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

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

27 Section 28. Subsection (8) of section 61.14, Florida
28 Statutes, is amended to read:

29 61.14 Enforcement and modification of support,
30 maintenance, or alimony agreements or orders.--

31

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

7 (b) In accordance with ~~Notwithstanding~~ the provisions
8 of s. 440.22, any compensation due or that may become due an
9 employee under chapter 440 is exempt from garnishment,
10 attachment, execution, and assignment of income, except for
11 the purposes of enforcing child or spousal support
12 obligations.

13 Section 29. Paragraph (a) of subsection (2) of section
14 61.30, Florida Statutes, is amended to read:

15 61.30 Child support guidelines; retroactive child
16 support.--

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

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

21 1. Salary or wages.

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

24 3. Business income from sources such as
25 self-employment, partnership, close corporations, and
26 independent contracts. "Business income" means gross receipts
27 minus ordinary and necessary expenses required to produce
28 income.

29 4. Disability benefits.

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

31 6. Unemployment compensation.

- 1 7. Pension, retirement, or annuity payments.
- 2 8. Social security benefits.
- 3 9. Spousal support received from a previous marriage
- 4 or court ordered in the marriage before the court.
- 5 10. Interest and dividends.
- 6 11. Rental income, which is gross receipts minus
- 7 ordinary and necessary expenses required to produce the
- 8 income.
- 9 12. Income from royalties, trusts, or estates.
- 10 13. Reimbursed expenses or in kind payments to the
- 11 extent that they reduce living expenses.
- 12 14. Gains derived from dealings in property, unless
- 13 the gain is nonrecurring.

14 Section 30. Section 489.114, Florida Statutes, is
15 amended to read:

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

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

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

21 489.115 Certification and registration; endorsement;
22 reciprocity; renewals; continuing education.--

23 (5)

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

31

1 Section 32. Section 489.510, Florida Statutes, is
2 amended to read:
3 489.510 Evidence of workers' compensation
4 coverage.--Except as provided in s. 489.515(3)(b), any person,
5 business organization, or qualifying agent engaged in the
6 business of contracting in this state and certified or
7 registered under this part shall, as a condition precedent to
8 the issuance or renewal of a certificate or registration of
9 the contractor, provide to the Electrical Contractors'
10 Licensing Board, as provided by board rule, evidence of
11 workers' compensation coverage pursuant to chapter 440. In
12 the event that the Division of Workers' Compensation of the
13 Department of Labor and Employment Security receives notice of
14 the cancellation of a policy of workers' compensation
15 insurance insuring a person or entity governed by this
16 section, the Division of Workers' Compensation shall certify
17 and identify all persons or entities by certification or
18 registration license number to the department after
19 verification is made by the Division of Workers' Compensation
20 that such cancellation has occurred or that persons or
21 entities governed by this section are no longer covered by
22 workers' compensation insurance. Such certification and
23 verification by the Division of Workers' Compensation shall
24 result solely from records furnished to the Division of
25 Workers' Compensation by the persons or entities governed by
26 this section. The department shall notify the persons or
27 entities governed by this section who have been determined to
28 be in noncompliance with chapter 440, and the persons or
29 entities notified shall provide certification of compliance
30 with chapter 440 to the department and pay an administrative
31 fine as provided by rule. The failure to maintain workers'

1 compensation coverage as required by law shall be grounds for
2 the board to revoke, suspend, or deny the issuance or renewal
3 of a certificate or registration of the contractor under the
4 provisions of s. 489.533.

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

7 489.515 Issuance of certificates; registrations.--

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

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

25 Section 34. Section 627.0915, Florida Statutes, is
26 amended to read:

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

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

15 Section 35. Paragraph (p) of subsection (4) of section
16 627.311, Florida Statutes, is amended to read:

17 627.311 Joint underwriters and joint reinsurers.--
18 (4)

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

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

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

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

1 her or his breach, or failure to perform, constitutes a
2 violation of the criminal law; but does not estop the member
3 from establishing that she or he had reasonable cause to
4 believe that her or his conduct was lawful or had no
5 reasonable cause to believe that her or his conduct was
6 unlawful;

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

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

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

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

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

22 627.914 Reports of information by workers'
23 compensation insurers required.--

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

1 for workers' compensation insurance is sufficient for
2 establishing rates.

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

9 ~~(a) Premiums written;~~

10 ~~(b) Premiums earned;~~

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

12 ~~(d) Losses paid;~~

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

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

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

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

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

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

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

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

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

29 ~~(n) The total of losses paid and allocated loss~~
30 ~~adjustment expenses and unallocated loss adjustment expenses,~~
31 ~~plus the total of losses unpaid as of December 31 of each year~~

1 ~~and loss adjustment expenses unpaid as of December 31 of each~~
2 ~~year.~~

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

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

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

19
20 A report of this information shall be filed no later than July
21 ~~April~~ 1 of each year. All reports shall be filed in
22 accordance with standard reporting procedures for insurers,
23 which procedures have received approval by the department, and
24 shall contain data for the most recent policy period
25 available. A statistical or rating organization may be used
26 by insurers and self-insurance funds to report the data
27 required by this section. The statistical or rating
28 organization shall report each data element in the aggregate
29 only for insurers and self-insurance funds required to report
30 under this section who elect to have the ~~rating~~ organization
31

1 report on their behalf. Such insurers and self-insurance funds
2 shall be named in the report.

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

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

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

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

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

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

28 (2) Four positions within the Division of Workers'
29 Compensation of the Department of Labor and Employment
30 Security responsible for coding or entering data contained
31 within final orders issued by the judges of compensation

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

6 (3) Ten positions within the Division of Workers'
7 Compensation of the Department of Labor and Employment
8 Security responsible for receiving and preparing docketing
9 orders for the petitions for benefits and for receiving and
10 entering data related to the petitions for benefits are
11 transferred by a type two transfer, as defined in section
12 20.06(2), Florida Statutes, to the Office of the Judges of
13 Compensation Claims within the Division of Administrative
14 Hearings of the Department of Management Services.

15 (4) Four positions within the Division of Workers'
16 Compensation of the Department of Labor and Employment
17 Security responsible for financial management, accounting, and
18 budgeting for the Office of the Judges of Compensation Claims
19 are transferred by a type two transfer, as defined in section
20 20.06(2), Florida Statutes, to the Office of the Judges of
21 Compensation Claims within the Division of Administrative
22 Hearings of the Department of Management Services.

23 Section 38. Except as otherwise expressly provided in
24 this act, this act shall take effect October 1, 2001.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1926

4 Eliminates mandatory managed care for the provision of medical
5 treatment for employees.

6 Authorizes the Office of the Judges of Compensation Claims,
7 rather than the Division of Workers' Compensation to adopt
8 rules regarding petitions for indigency.

9 Reestablishes and authorizes carriers to provide a credit for
10 employers that institute a safety program in the workplace,
11 pursuant to the provisions of the rating plan. Previously, the
12 Division of Safety was responsible for approving safety
13 programs; however, the division was abolished in 2000.

14 Provides that a person who performs services as a sports
15 official for an entity sponsoring interscholastic sports event
16 is an independent contractor, rather than a n employee. A
17 person employed by a school district who serves as a sports
18 official as required by a school district is exempted from the
19 provision.

20 Eliminates the mandatory hearing for a lump-sum settlement
21 without any pre-conditions, if both parties are represented,
22 except the attorney fees would be required to be approved by
23 the judge of compensation claims.

24 Clarifies when the 120-day investigatory period for payment of
25 claims commences, either 14 days within the receipt of the
26 notice of injury or 120 days from the receipt of the petition.
27 The carrier has a 120-day period after this initial payment of
28 benefits to investigate a claim and admit or deny benefits.
29
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