

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Ross, Waters, and Alexander offered the
12 following amendment to Senate Amendment (984530):

14 **Amendment (with title amendment)**

15 On page 1 ,
16 remove from the amendment: The entire amendment
17
18 and insert in lieu thereof:

19 Section 1. Paragraph (b) of subsection (14) and
20 subsection (37) of section 440.02, Florida Statutes, are
21 amended to read:

22 440.02 Definitions.--When used in this chapter, unless
23 the context clearly requires otherwise, the following terms
24 shall have the following meanings:

25 (14)

26 (b) "Employee" includes any person who is an officer
27 of a corporation and who performs services for remuneration
28 for such corporation within this state, whether or not such
29 services are continuous.

30 1. Any officer of a corporation may elect to be exempt
31 from this chapter by filing written notice of the election

1 with the division as provided in s. 440.05.

2 2. Effective January 1, 2002,as to officers of a
3 corporation who are actively engaged in the construction
4 industry, no more than two ~~three~~ officers of such corporation
5 or of any group of affiliated corporations may elect to be
6 exempt from this chapter by filing written notice of the
7 election with the division as provided in s. 440.05, however;

8 a. Such election is valid only with respect to an
9 officer who is the president, vice president, secretary, or
10 treasurer of the corporation.

11 b. Such election is valid only with respect to an
12 officer who owns not less than 10 percent of the stock of the
13 corporation.

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

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

21 The term "affiliated" means and includes one or more
22 corporations or entities, any one of which is a corporation
23 actively engaged in the construction industry, under the same
24 or substantially the same control or ownership. The term
25 "affiliated" includes the officers, directors, executives, and
26 shareholders active in management; employees; and agents of
27 the affiliated corporation. The ownership by one business
28 entity of a controlling interest in another business entity or
29 a pooling of equipment or income among business entities shall
30 be prima facie evidence that one business entity is affiliated
31 with another.

1 (37) "Catastrophic injury" means a permanent
2 impairment constituted by:

3 (a) Spinal cord injury involving severe paralysis of
4 an arm, a leg, or the trunk;

5 (b) Amputation of an arm, a hand, a foot, or a leg
6 involving the effective loss of use of that appendage;

7 (c) Severe brain or closed-head injury as evidenced
8 by:

9 1. Severe sensory or motor disturbances;

10 2. Severe communication disturbances;

11 3. Severe complex integrated disturbances of cerebral
12 function;

13 4. Severe episodic neurological disorders; or

14 5. Other severe brain and closed-head injury
15 conditions at least as severe in nature as any condition
16 provided in subparagraphs 1.-4.;

17 (d) Second-degree or third-degree burns of 25 percent
18 or more of the total body surface or third-degree burns of 5
19 percent or more to the face and hands; or

20 (e) Total or industrial blindness; or

21 ~~(f) Any other injury that would otherwise qualify
22 under this chapter of a nature and severity that would qualify
23 an employee to receive disability income benefits under Title
24 II or supplemental security income benefits under Title XVI of
25 the federal Social Security Act as the Social Security Act
26 existed on July 1, 1992, without regard to any time
27 limitations provided under that act.~~

28 Section 2. Subsections (10), (11), (12), and (13) are
29 added to section 440.05, Florida Statutes, to read:

30 440.05 Election of exemption; revocation of election;
31 notice; certification.--

1 (10) Any person exempted from this chapter under this
2 section who secures, or whose employer secures for him or her,
3 workers' compensation insurance coverage is considered to have
4 waived the right to such an exemption and is subject to the
5 provisions of this chapter.

6 (11) Every enterprise conducting business in this
7 state shall maintain business records as specified by the
8 division by rule, which rules must include the provision that
9 any corporation with exempt officers and any partnership with
10 exempt partners must maintain written statements of those
11 exempted persons affirmatively acknowledging each such
12 individual's exempt status.

13 (12) Any sole proprietor or partner claiming an
14 exemption under this section shall maintain a copy of his or
15 her federal income tax records for each of the immediately
16 previous 3 years in which he or she claims an exemption. Such
17 federal income tax records must include a complete copy of the
18 following for each year in which an exemption is claimed:

19 (a) For sole proprietors, a copy of Federal Income Tax
20 Form 1040 and its accompanying Schedule C;

21 (b) For partners, a copy of the partner's Federal
22 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
23 Form 1040 and its accompanying Schedule E.

24
25 The sole proprietor or partner in question shall produce, upon
26 request by the division, a copy of those documents together
27 with a statement by the sole proprietor that the tax records
28 provided are true and accurate copies of what the sole
29 proprietor or partner has filed with the federal Internal
30 Revenue Service. The statement must be signed under oath by
31 the sole proprietor or partner in question and must be

1 notarized. The division shall issue a stop-work order under s.
2 440.107(5) to any sole proprietor or partner who fails or
3 refuses to produce a copy of the tax records and affidavit
4 required under this paragraph to the division within 3
5 business days after the request is made.

6 (13) Any corporate officer claiming an exemption under
7 this section must be listed on the records of this state's
8 Secretary of State, Division of Corporations, as a corporate
9 officer. If the person who claims an exemption as a corporate
10 officer is not so listed on the records of the Secretary of
11 State, the individual must provide to the division, upon
12 request by the division, a notarized affidavit stating that
13 the individual is a bona fide officer of the corporation and
14 stating the date his or her appointment or election as a
15 corporate officer became or will become effective. The
16 statement must be signed under oath by both the officer in
17 question and the president or chief operating officer of the
18 corporation and must be notarized. The division shall issue a
19 stop-work order under s. 440.107(1) to any person who claims
20 to be exempt as a corporate officer but who fails or refuses
21 to produce the documents required under this subsection to the
22 division within 3 business days after the request is made.

23 Section 3. Subsection (1) of section 440.09, Florida
24 Statutes, is amended, and subsection (9) is added to that
25 section, to read:

26 440.09 Coverage.--

27 (1) The employer shall pay compensation or furnish
28 benefits required by this chapter if the employee suffers an
29 accidental compensable injury or death arising out of work
30 performed in the course and the scope of employment. The
31 injury, its occupational cause, and any resulting

1 manifestations or disability shall be established to a
2 reasonable degree of medical certainty and by objective
3 medical findings. Mental or nervous injuries occurring as a
4 manifestation of an injury compensable under this section
5 shall be demonstrated by clear and convincing evidence. In
6 cases involving occupational disease or repetitive exposure,
7 both causation and sufficient exposure to support causation
8 shall be proven by the preponderance of evidence.

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

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

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

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

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

5 (9) Notwithstanding any other provision of this
6 chapter, effective January 1, 2004, any partnership,
7 corporation, or sole proprietor, regardless of the number of
8 employees, actively engaged in the construction industry shall
9 secure and maintain workers' compensation insurance coverage
10 at all times.

11 Section 4. Section 440.1025, Florida Statutes, is
12 created to read:

13 440.1025 Consideration of public employer workplace
14 safety program in rate-setting; program requirements;
15 rulemaking.--For a public employer to be eligible for receipt
16 of specific identifiable consideration under s. 627.0915 for a
17 workplace safety program in the setting of rates, the public
18 employer must have a workplace safety program. At a minimum,
19 the program must include a written safety policy and safety
20 rules, and make provision for safety inspections, preventative
21 maintenance, safety training, first-aid, accident
22 investigation, and necessary record keeping. For purposes of
23 this section, "public employer" means "any agency within
24 state, county, or municipal government employing individuals
25 for salary, wages, or other remuneration." The Division may
26 promulgate rules for insurers to utilize in determining public
27 employer compliance with the requirements of this section.

28 Section 5. Subsection (5) of section 440.107, Florida
29 Statutes, is amended to read:

30 440.107 Division powers to enforce employer compliance
31 with coverage requirements.--

1 (5) Whenever the division determines that an employer
2 who is required to secure the payment to his or her employees
3 of the compensation provided for by this chapter has failed to
4 do so or the division determines that an employer has
5 misrepresented to a carrier the size or classification of the
6 employer's payroll, such failure or misrepresentation shall be
7 deemed an immediate serious danger to public health, safety,
8 or welfare sufficient to justify service by the division of a
9 stop-work order on the employer, requiring the cessation of
10 all business operations within the state at the place of
11 employment or job site. The order shall take effect upon the
12 date of service upon the employer, unless the employer
13 provides evidence satisfactory to the division of having
14 secured any necessary insurance or self-insurance and pays a
15 civil penalty to the division, to be deposited by the division
16 into the Workers' Compensation Administration Trust Fund, in
17 the amount of \$100 per day for each day the employer was not
18 in compliance with this chapter.

19 Section 6. Subsection (1) of section 440.11, Florida
20 Statutes, is amended to read:

21 440.11 Exclusiveness of liability.--

22 (1) The liability of an employer prescribed in s.
23 440.10 shall be exclusive and in place of all other liability
24 of such employer to any third-party tortfeasor and to the
25 employee, the legal representative thereof, husband or wife,
26 parents, dependents, next of kin, and anyone otherwise
27 entitled to recover damages from such employer at law or in
28 admiralty on account of such injury or death, except that if
29 an employer fails to secure payment of compensation as
30 required by this chapter, an injured employee, or the legal
31 representative thereof in case death results from the injury,

Amendment No. 1 (for drafter's use only)

1 may elect to claim compensation under this chapter or to
2 maintain an action at law or in admiralty for damages on
3 account of such injury or death. In such action the defendant
4 may not plead as a defense that the injury was caused by
5 negligence of a fellow employee, that the employee assumed the
6 risk of the employment, or that the injury was due to the
7 comparative negligence of the employee. The same immunities
8 from liability enjoyed by an employer shall extend as well to
9 each employee of the employer when such employee is acting in
10 furtherance of the employer's business and the injured
11 employee is entitled to receive benefits under this chapter.
12 Such fellow-employee immunities shall not be applicable to an
13 employee who acts, with respect to a fellow employee, with
14 willful and wanton disregard or unprovoked physical aggression
15 or with gross negligence when such acts result in injury or
16 death or such acts proximately cause such injury or death, ~~nor~~
17 ~~shall such immunities be applicable to employees of the same~~
18 ~~employer when each is operating in the furtherance of the~~
19 ~~employer's business but they are assigned primarily to~~
20 ~~unrelated works within private or public employment.~~ The same
21 immunity provisions enjoyed by an employer shall also apply to
22 any sole proprietor, partner, corporate officer or director,
23 supervisor, or other person who in the course and scope of his
24 or her duties acts in a managerial or policymaking capacity
25 and the conduct which caused the alleged injury arose within
26 the course and scope of said managerial or policymaking duties
27 and was not a violation of a law, whether or not a violation
28 was charged, for which the maximum penalty which may be
29 imposed does not exceed 60 days' imprisonment as set forth in
30 s. 775.082. The immunity from liability provided in this
31 subsection extends to county governments with respect to

1 employees of county constitutional officers whose offices are
2 funded by the board of county commissioners. If an employee
3 recovers damages from an employer either by judgment or
4 settlement under this subsection, the workers' compensation
5 carrier for the employer or the employer, if self-insured,
6 shall have an offset against any workers' compensation
7 benefits to which the employee would be entitled under this
8 chapter.

9 Section 7. Subsections (2), (5), (12), and (14) of
10 section 440.13, Florida Statutes, are amended to read:

11 440.13 Medical services and supplies; penalty for
12 violations; limitations.--

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

14 (a) Subject to the limitations specified elsewhere in
15 this chapter, the employer shall furnish to the employee such
16 medically necessary remedial treatment, care, and attendance
17 for such period as the nature of the injury or the process of
18 recovery may require, including medicines, medical supplies,
19 durable medical equipment, orthoses, prostheses, and other
20 medically necessary apparatus. Remedial treatment, care, and
21 attendance, including work-hardening programs or
22 pain-management programs accredited by the Commission on
23 Accreditation of Rehabilitation Facilities or Joint Commission
24 on the Accreditation of Health Organizations or
25 pain-management programs affiliated with medical schools,
26 shall be considered as covered treatment only when such care
27 is given based on a referral by a physician as defined in this
28 chapter. Each facility shall maintain outcome data, including
29 work status at discharges, total program charges, total number
30 of visits, and length of stay. The department shall utilize
31 such data and report to the President of the Senate and the

1 Speaker of the House of Representatives regarding the efficacy
2 and cost-effectiveness of such program, no later than October
3 1, 1994. Medically necessary treatment, care, and attendance
4 does not include chiropractic services in excess of 18
5 treatments or rendered 8 weeks beyond the date of the initial
6 chiropractic treatment, whichever comes first, unless the
7 carrier authorizes additional treatment or the employee is
8 catastrophically injured.

9 (b) The employer shall provide appropriate
10 professional or nonprofessional attendant care performed only
11 at the direction and control of a physician when such care is
12 medically necessary. The value of nonprofessional attendant
13 care provided by a family member must be determined as
14 follows:

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

17 2. If the family member is employed and elects to
18 leave that employment to provide attendant or custodial care,
19 the per-hour value of that care equals the per-hour value of
20 the family member's former employment, not to exceed the
21 per-hour value of such care available in the community at
22 large.

23 3. If the family member remains employed while
24 providing attendant or custodial care, the per-hour value of
25 that care equals the per-hour value of the family member's
26 employment, not to exceed the per-hour value of such care
27 available in the community at large.

28 4. A family member or a combination of family members
29 providing nonprofessional attendant care under this paragraph
30 may not be compensated for more than a total of 12 hours per
31 day.

Amendment No. 1 (for drafter's use only)

1 (c) If the employer fails to provide treatment or care
2 required by this section after request by the injured
3 employee, the employee may obtain such treatment at the
4 expense of the employer, if the treatment is compensable and
5 medically necessary. There must be a specific request for the
6 treatment, and the employer or carrier must be given a
7 reasonable time period within which to provide the treatment
8 or care. However, the employee is not entitled to recover any
9 amount personally expended for the treatment or service unless
10 he or she has requested the employer to furnish that treatment
11 or service and the employer has failed, refused, or neglected
12 to do so within a reasonable time or unless the nature of the
13 injury requires such treatment, nursing, and services and the
14 employer or his or her superintendent or foreman, having
15 knowledge of the injury, has neglected to provide the
16 treatment or service.

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

21 (e) Except in emergency situations and for treatment
22 rendered by a managed care arrangement, after any initial
23 examination and diagnosis by a physician providing remedial
24 treatment, care, and attendance, and before a proposed course
25 of medical treatment begins, each insurer shall review, in
26 accordance with the requirements of this chapter, the proposed
27 course of treatment, to determine whether such treatment would
28 be recognized as reasonably prudent. The review must be in
29 accordance with all applicable workers' compensation practice
30 parameters. The insurer must accept any such proposed course
31 of treatment unless the insurer notifies the physician of its

Amendment No. 1 (for drafter's use only)

1 specific objections to the proposed course of treatment by the
2 close of the tenth business day after notification by the
3 physician, or a supervised designee of the physician, of the
4 proposed course of treatment.

5 (f) Upon the written request of the employee, the
6 carrier shall give the employee the opportunity for one change
7 of physician during the course of treatment for any one
8 accident. The employee shall be entitled to select another
9 physician from among not fewer than three carrier-authorized
10 physicians not professionally affiliated. In the event the
11 selected physician ceases to practice in Florida or relocates
12 his or her office at a location that is greater than a 50-mile
13 radius from the employee's residence, the employee is entitled
14 to select another physician from among not fewer than three
15 carrier-authorized physicians who are not professionally
16 affiliated.

17 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

18 (a) In any dispute concerning overutilization, medical
19 benefits, compensability, or disability under this chapter,
20 the carrier or the employee may select an independent medical
21 examiner. The examiner may be a health care provider treating
22 or providing other care to the employee. An independent
23 medical examiner may not render an opinion outside his or her
24 area of expertise, as demonstrated by licensure and applicable
25 practice parameters. Upon the written request of the employee,
26 the carrier shall pay the cost of one independent medical
27 examination per accident. The cost of any additional
28 independent medical examination must be borne by the party
29 requesting the additional independent medical examination. The
30 costs of independent medical examinations expressly relied
31 upon by the judge of compensation claims to award benefits in

1 the final compensation order are taxable costs under s.
2 440.34(3).

3 ~~(b) Each party is bound by his or her selection of an~~
4 ~~independent medical examiner and is entitled to an alternate~~
5 ~~examiner only if:~~

6 ~~1. The examiner is not qualified to render an opinion~~
7 ~~upon an aspect of the employee's illness or injury which is~~
8 ~~material to the claim or petition for benefits;~~

9 ~~2. The examiner ceases to practice in the specialty~~
10 ~~relevant to the employee's condition;~~

11 ~~3. The examiner is unavailable due to injury, death,~~
12 ~~or relocation outside a reasonably accessible geographic area;~~
13 ~~or~~

14 ~~4. The parties agree to an alternate examiner.~~

15 Any party may request, or a judge of compensation
16 claims may require, designation of a division medical advisor
17 as an independent medical examiner. The opinion of the
18 advisors acting as examiners shall not be afforded the
19 presumption set forth in paragraph (9)(c).

20 (c) The carrier may, at its election, contact the
21 claimant directly to schedule a reasonable time for an
22 independent medical examination. The carrier must confirm the
23 scheduling agreement in writing within 5 days and notify
24 claimant's counsel, if any, at least 7 days before the date
25 upon which the independent medical examination is scheduled to
26 occur. ~~An attorney representing a claimant is not authorized~~
27 ~~to schedule independent medical evaluations under this~~
28 ~~subsection.~~

29 (d) If the employee fails to appear for the
30 independent medical examination without good cause and fails
31 to advise the physician at least 24 hours before the scheduled

Amendment No. 1 (for drafter's use only)

1 date for the examination that he or she cannot appear, the
2 employee is barred from recovering compensation for any period
3 during which he or she has refused to submit to such
4 examination. Further, the employee shall reimburse the carrier
5 50 percent of the physician's cancellation or no-show fee
6 unless the carrier that schedules the examination fails to
7 timely provide to the employee a written confirmation of the
8 date of the examination pursuant to paragraph (c) which
9 includes an explanation of why he or she failed to appear. The
10 employee may appeal to a judge of compensation claims for
11 reimbursement when the carrier withholds payment in excess of
12 the authority granted by this section.

13 (e) No medical opinion other than the opinion of a
14 medical advisor appointed by the judge of compensation claims
15 or division, an independent medical examiner, or an authorized
16 treating provider is admissible in proceedings before the
17 judges of compensation claims. The employee or the carrier may
18 each submit into evidence, and the judge of compensation
19 claims shall admit, the medical opinion of no more than one
20 independent medical examiner per specialty. In cases
21 involving occupational disease or repetitive trauma, no
22 medical opinions are admissible unless based on reliable
23 scientific principles sufficiently established to have gained
24 general acceptance in the pertinent area of specialty.

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

29 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
30 REIMBURSEMENT ALLOWANCES.--

31 (a) A three-member panel is created, consisting of the

Amendment No. 1 (for drafter's use only)

1 Insurance Commissioner, or the Insurance Commissioner's
2 designee, and two members to be appointed by the Governor,
3 subject to confirmation by the Senate, one member who, on
4 account of present or previous vocation, employment, or
5 affiliation, shall be classified as a representative of
6 employers, the other member who, on account of previous
7 vocation, employment, or affiliation, shall be classified as a
8 representative of employees. The panel shall determine
9 statewide schedules of maximum reimbursement allowances for
10 medically necessary treatment, care, and attendance provided
11 by physicians, hospitals, ambulatory surgical centers,
12 work-hardening programs, pain programs, and durable medical
13 equipment. The maximum reimbursement allowances for inpatient
14 hospital care shall be based on a schedule of per diem rates,
15 to be approved by the three-member panel no later than March
16 1, 1994, to be used in conjunction with a precertification
17 manual as determined by the division. All compensable charges
18 for hospital outpatient care shall be reimbursed at 75 percent
19 of usual and customary charges. Until the three-member panel
20 approves a schedule of per diem rates for inpatient hospital
21 care and it becomes effective, all compensable charges for
22 hospital inpatient care must be reimbursed at 75 percent of
23 their usual and customary charges. Annually, the three-member
24 panel shall adopt schedules of maximum reimbursement
25 allowances for physicians, hospital inpatient care, hospital
26 outpatient care, ambulatory surgical centers, work-hardening
27 programs, and pain programs. However, the maximum percentage
28 of increase in the individual reimbursement allowance may not
29 exceed the percentage of increase in the Consumer Price Index
30 for the previous year. An individual physician, hospital,
31 ambulatory surgical center, pain program, or work-hardening

1 program shall be reimbursed either the usual and customary
2 charge for treatment, care, and attendance, the agreed-upon
3 contract price, or the maximum reimbursement allowance in the
4 appropriate schedule, whichever is less.

5 (b) As to reimbursement for a prescription medication,
6 the reimbursement amount for a prescription shall be the
7 average wholesale price times 1.2 plus \$4.18 for the
8 dispensing fee, except where the carrier has contracted for a
9 lower amount. Fees for pharmaceuticals and pharmaceutical
10 services shall be reimbursable at the applicable fee schedule
11 amount. Where the employer or carrier has contracted for such
12 services and the employee elects to obtain them through a
13 provider not a party to the contract, the carrier shall
14 reimburse at the schedule, negotiated, or contract price,
15 whichever is lower.

16 (c) Reimbursement for all fees and other charges for
17 such treatment, care, and attendance, including treatment,
18 care, and attendance provided by any hospital or other health
19 care provider, ambulatory surgical center, work-hardening
20 program, or pain program, must not exceed the amounts provided
21 by the uniform schedule of maximum reimbursement allowances as
22 determined by the panel or as otherwise provided in this
23 section. This subsection also applies to independent medical
24 examinations performed by health care providers under this
25 chapter. Until the three-member panel approves a uniform
26 schedule of maximum reimbursement allowances and it becomes
27 effective, all compensable charges for treatment, care, and
28 attendance provided by physicians, ambulatory surgical
29 centers, work-hardening programs, or pain programs shall be
30 reimbursed at the lowest maximum reimbursement allowance
31 across all 1992 schedules of maximum reimbursement allowances

1 for the services provided regardless of the place of service.
2 In determining the uniform schedule, the panel shall first
3 approve the data which it finds representative of prevailing
4 charges in the state for similar treatment, care, and
5 attendance of injured persons. Each health care provider,
6 health care facility, ambulatory surgical center,
7 work-hardening program, or pain program receiving workers'
8 compensation payments shall maintain records verifying their
9 usual charges. In establishing the uniform schedule of maximum
10 reimbursement allowances, the panel must consider:

11 1. The levels of reimbursement for similar treatment,
12 care, and attendance made by other health care programs or
13 third-party providers;

14 2. The impact upon cost to employers for providing a
15 level of reimbursement for treatment, care, and attendance
16 which will ensure the availability of treatment, care, and
17 attendance required by injured workers;

18 3. The financial impact of the reimbursement
19 allowances upon health care providers and health care
20 facilities, including trauma centers as defined in s.
21 395.4001, and its effect upon their ability to make available
22 to injured workers such medically necessary remedial
23 treatment, care, and attendance. The uniform schedule of
24 maximum reimbursement allowances must be reasonable, must
25 promote health care cost containment and efficiency with
26 respect to the workers' compensation health care delivery
27 system, and must be sufficient to ensure availability of such
28 medically necessary remedial treatment, care, and attendance
29 to injured workers; and

30 4. The most recent average maximum allowable rate of
31 increase for hospitals determined by the Health Care Board

1 under chapter 408.

2 (14) PAYMENT OF MEDICAL FEES.--

3 (a) Except for emergency care treatment, fees for
4 medical services are payable only to a health care provider
5 certified and authorized to render remedial treatment, care,
6 or attendance under this chapter. A health care provider may
7 not collect or receive a fee from an injured employee within
8 this state, except as otherwise provided by this chapter. Such
9 providers have recourse against the employer or carrier for
10 payment for services rendered in accordance with this chapter.

11 (b) Fees charged for remedial treatment, care, and
12 attendance may not exceed the applicable fee schedules adopted
13 under this chapter, except a contract entered into between an
14 employer or carrier and a certified health care provider or
15 health care facility for the payment of medical services for
16 covered expenses may provide for fees of up to 125 percent of
17 the applicable fee schedules adopted under this section.

18 (c) Notwithstanding any other provision of this
19 chapter, following overall maximum medical improvement from an
20 injury compensable under this chapter, the employee is
21 obligated to pay a copayment of \$10 per visit for medical
22 services. The copayment shall not apply to emergency care
23 provided to the employee.

24 Section 8. Paragraph (d) of subsection (1), paragraph
25 (b) of subsection (2), and subsection (15) of section 440.134,
26 Florida Statutes, are amended to read:

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

29 (1) As used in this section, the term:

30 (d) "Grievance" means a direct written complaint filed
31 by an injured worker expressing dissatisfaction with the

Amendment No. 1 (for drafter's use only)

1 insurer's workers' compensation managed care arrangement's
2 refusal to provide medical care ~~provided by an insurer's~~
3 ~~workers' compensation managed care arrangement health care~~
4 ~~providers, expressed in writing by an injured worker.~~

5 (2) ~~(a)(b)~~ Effective January 1, 1997, The employer may
6 ~~shall~~, subject to the terms and limitations specified
7 elsewhere in this section and chapter, furnish to the employee
8 solely through managed care arrangements such medically
9 necessary remedial treatment, care, and attendance for such
10 period as the nature of the injury or the process of recovery
11 requires.

12 (b) ~~(a)~~ The agency shall authorize an insurer to offer
13 or utilize a workers' compensation managed care arrangement
14 after the insurer files a completed application along with the
15 payment of a \$1,000 application fee, and upon the agency's
16 being satisfied that the applicant has the ability to provide
17 quality of care consistent with the prevailing professional
18 standards of care and the insurer and its workers'
19 compensation managed care arrangement otherwise meets the
20 requirements of this section. No insurer may offer or utilize
21 a managed care arrangement without such authorization. The
22 authorization, unless sooner suspended or revoked, shall
23 automatically expire 2 years after the date of issuance unless
24 renewed by the insurer. The authorization shall be renewed
25 upon application for renewal and payment of a renewal fee of
26 \$1,000, provided that the insurer is in compliance with the
27 requirements of this section and any rules adopted hereunder.
28 An application for renewal of the authorization shall be made
29 90 days prior to expiration of the authorization, on forms
30 provided by the agency. The renewal application shall not
31 require the resubmission of any documents previously filed

1 with the agency if such documents have remained valid and
2 unchanged since their original filing.

3 (15)(a) A workers' compensation managed care
4 arrangement must have and use procedures for hearing
5 complaints and resolving written grievances from injured
6 workers and health care providers. The procedures must be
7 aimed at mutual agreement for settlement and may include
8 arbitration procedures. Procedures provided herein are in
9 addition to other procedures contained in this chapter.

10 (b) The grievance procedure must be described in
11 writing and provided to the affected workers and health care
12 providers.

13 (c) At the time the workers' compensation managed care
14 arrangement is implemented, the insurer must provide detailed
15 information to workers and health care providers describing
16 how a grievance may be registered with the insurer. Within 15
17 days after the date of the request for medical care is
18 received by the insurer or by the insurer's managed care
19 arrangement, whichever date is earlier, the insurer shall
20 grant or deny the request. If the insurer denies the request,
21 the insurer shall notify the injured worker in writing of his
22 or her right to file a grievance.

23 (d) Grievances must be considered in a timely manner
24 and must be transmitted to appropriate decisionmakers who have
25 the authority to fully investigate the issue and take
26 corrective action. If the insurer or the insurer's workers'
27 compensation arrangement fails to notify the injured worker of
28 the outcome of the grievance in writing within 15 days from
29 the date of receiving the grievance, the grievance shall be
30 presumed to be resolved against the injured worker and the
31 grievance procedures shall be presumed exhausted for purposes

1 of s. 440.192(3).

2 (e) If a grievance is found to be valid, corrective
3 action must be taken promptly.

4 (f) All concerned parties must be notified of the
5 results of a grievance.

6 (g) The insurer must report annually, no later than
7 March 31, to the agency regarding its grievance procedure
8 activities for the prior calendar year. The report must be in
9 a format prescribed by the agency and must contain the number
10 of grievances filed in the past year and a summary of the
11 subject, nature, and resolution of such grievances.

12 Section 9. Paragraph (a) of subsection (1) of section
13 440.14, Florida Statutes, is amended to read:

14 440.14 Determination of pay.--

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

20 (a) If the injured employee has worked in the
21 employment in which she or he was working at the time of the
22 injury, whether for the same or another employer, during
23 substantially the whole of 13 weeks immediately preceding the
24 injury, her or his average weekly wage shall be one-thirteenth
25 of the total amount of wages earned in such employment during
26 the 13 weeks. As used in this paragraph, the term
27 "substantially the whole of 13 weeks" means an actual ~~shall be~~
28 ~~deemed to mean and refer to a constructive~~ period of 13 weeks
29 as a whole, which shall be defined as the 13 complete weeks
30 before the date of the accident, excluding the week the injury
31 occurs. ~~a consecutive period of 91 days, and~~ The term "during

1 substantially the whole of 13 weeks" shall be deemed to mean
2 during not less than 90 percent of the total customary
3 full-time hours of employment within such period considered as
4 a whole.

5 Section 10. Paragraphs (b) and (f) of subsection (1)
6 and paragraph (a) of subsection (3) of section 440.15, Florida
7 Statutes, are amended to read:

8 440.15 Compensation for disability.--Compensation for
9 disability shall be paid to the employee, subject to the
10 limits provided in s. 440.12(2), as follows:

11 (1) PERMANENT TOTAL DISABILITY.--

12 (b) Any compensable injury eligible for permanent
13 total benefits must be of a nature and severity that prevents
14 the employee from being able to perform his or her previous
15 work. If the employee is engaged in or is capable of being
16 engaged in any gainful employment, he or she is not entitled
17 to permanent total disability. The burden is on the employee
18 to establish that he or she is unable to perform work if such
19 work is available within a 50-mile radius of the employee's
20 residence or such greater distance as the judge determines to
21 be reasonable under the circumstances. In addition, ~~Only~~ a
22 catastrophic injury as defined in s. 440.02 shall, in the
23 absence of conclusive proof of a substantial earning capacity,
24 constitute permanent total disability. ~~Only claimants with~~
25 ~~catastrophic injuries are eligible for permanent total~~
26 ~~benefits.~~In no other case may permanent total disability be
27 awarded.

28 (f)1. If permanent total disability results from
29 injuries that occurred subsequent to June 30, 1955, and for
30 which the liability of the employer for compensation has not
31 been discharged under s. 440.20(11), the injured employee

1 shall receive additional weekly compensation benefits equal to
2 5 percent of her or his weekly compensation rate, as
3 established pursuant to the law in effect on the date of her
4 or his injury, multiplied by the number of calendar years
5 since the date of injury. The weekly compensation payable and
6 the additional benefits payable under this paragraph, when
7 combined, may not exceed the maximum weekly compensation rate
8 in effect at the time of payment as determined pursuant to s.
9 440.12(2). Entitlement to these supplemental payments shall
10 cease at age 62 if the employee is eligible for social
11 security benefits under 42 U.S.C. ss. 402 and 423, whether or
12 not the employee has applied for such benefits. These
13 supplemental benefits shall be paid by the division out of the
14 Workers' Compensation Administration Trust Fund when the
15 injury occurred subsequent to June 30, 1955, and before July
16 1, 1984. These supplemental benefits shall be paid by the
17 employer when the injury occurred on or after July 1, 1984.
18 Supplemental benefits are not payable for any period prior to
19 October 1, 1974.

20 2.a. The division shall provide by rule for the
21 periodic reporting to the division of all earnings of any
22 nature and social security income by the injured employee
23 entitled to or claiming additional compensation under
24 subparagraph 1. Neither the division nor the employer or
25 carrier shall make any payment of those additional benefits
26 provided by subparagraph 1. for any period during which the
27 employee willfully fails or refuses to report upon request by
28 the division in the manner prescribed by such rules.

29 b. The division shall provide by rule for the periodic
30 reporting to the employer or carrier of all earnings of any
31 nature and social security income by the injured employee

1 entitled to or claiming benefits for permanent total
2 disability. The employer or carrier is not required to make
3 any payment of benefits for permanent total disability for any
4 period during which the employee willfully fails or refuses to
5 report upon request by the employer or carrier in the manner
6 prescribed by such rules or if any employee who is receiving
7 permanent total disability benefits refuses to apply for or
8 cooperate with the employer or carrier in applying for social
9 security benefits.

10 3. When an injured employee receives a full or partial
11 lump-sum advance of the employee's permanent total disability
12 compensation benefits, the employee's benefits under this
13 paragraph shall be computed on the employee's weekly
14 compensation rate as reduced by the lump-sum advance.

15 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

16 (a) Impairment benefits.--

17 1. Once the employee has reached the date of maximum
18 medical improvement, impairment benefits are due and payable
19 within 20 days after the carrier has knowledge of the
20 impairment.

21 2. The three-member panel, in cooperation with the
22 division, shall establish and use a uniform permanent
23 impairment rating schedule. This schedule must be based on
24 medically or scientifically demonstrable findings as well as
25 the systems and criteria set forth in the American Medical
26 Association's Guides to the Evaluation of Permanent
27 Impairment; the Snellen Charts, published by American Medical
28 Association Committee for Eye Injuries; and the Minnesota
29 Department of Labor and Industry Disability Schedules. The
30 schedule should be based upon objective findings. The schedule
31 shall be more comprehensive than the AMA Guides to the

Amendment No. 1 (for drafter's use only)

1 Evaluation of Permanent Impairment and shall expand the areas
2 already addressed and address additional areas not currently
3 contained in the guides. On August 1, 1979, and pending the
4 adoption, by rule, of a permanent schedule, Guides to the
5 Evaluation of Permanent Impairment, copyright 1977, 1971,
6 1988, by the American Medical Association, shall be the
7 temporary schedule and shall be used for the purposes hereof.
8 For injuries after July 1, 1990, pending the adoption by
9 division rule of a uniform disability rating schedule, the
10 Minnesota Department of Labor and Industry Disability Schedule
11 shall be used unless that schedule does not address an injury.
12 In such case, the Guides to the Evaluation of Permanent
13 Impairment by the American Medical Association shall be used.
14 Determination of permanent impairment under this schedule must
15 be made by a physician licensed under chapter 458, a doctor of
16 osteopathic medicine licensed under chapters 458 and 459, a
17 chiropractic physician licensed under chapter 460, a podiatric
18 physician licensed under chapter 461, an optometrist licensed
19 under chapter 463, or a dentist licensed under chapter 466, as
20 appropriate considering the nature of the injury. No other
21 persons are authorized to render opinions regarding the
22 existence of or the extent of permanent impairment.

23 3. All impairment income benefits shall be based on an
24 impairment rating using the impairment schedule referred to in
25 subparagraph 2. Impairment income benefits are paid weekly at
26 a rate equal to 100 percent of the rate of 50 percent of the
27 employee's compensation rate ~~average weekly temporary total~~
28 ~~disability benefit,~~ not to exceed the maximum weekly benefit
29 under s. 440.12. An employee's entitlement to impairment
30 income benefits begins the day after the employee reaches
31 maximum medical improvement or the expiration of temporary

1 benefits, whichever occurs earlier, and continues until the
2 earlier of:

3 a. The expiration of a period computed at the rate of
4 3 weeks for each percentage point of impairment; or

5 b. The death of the employee.

6 4. After the employee has been certified by a doctor
7 as having reached maximum medical improvement or 6 weeks
8 before the expiration of temporary benefits, whichever occurs
9 earlier, the certifying doctor shall evaluate the condition of
10 the employee and assign an impairment rating, using the
11 impairment schedule referred to in subparagraph 2.

12 Compensation is not payable for the mental, psychological, or
13 emotional injury arising out of depression from being out of
14 work or from any preexisting mental, psychological, or
15 emotional condition. If the certification and evaluation are
16 performed by a doctor other than the employee's treating
17 doctor, the certification and evaluation must be submitted to
18 the treating doctor, and the treating doctor must indicate
19 agreement or disagreement with the certification and
20 evaluation. The certifying doctor shall issue a written report
21 to the division, the employee, and the carrier certifying that
22 maximum medical improvement has been reached, stating the
23 impairment rating, and providing any other information
24 required by the division. If the employee has not been
25 certified as having reached maximum medical improvement before
26 the expiration of 102 weeks after the date temporary total
27 disability benefits begin to accrue, the carrier shall notify
28 the treating doctor of the requirements of this section.

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

31 6. The division may by rule specify forms and

1 procedures governing the method of payment of wage loss and
2 impairment benefits for dates of accidents before January 1,
3 1994, and for dates of accidents on or after January 1, 1994.

4 Section 11. Subsection (2) of section 440.185, Florida
5 Statutes, is amended to read:

6 440.185 Notice of injury or death; reports; penalties
7 for violations.--

8 (2) Within 7 days after actual knowledge of injury or
9 death, the employer shall report such injury or death to its
10 carrier, in a format prescribed by the division, and shall
11 provide a copy of such report to the employee or the
12 employee's estate. The report of injury shall contain the
13 following information:

14 (a) The name, address, and business of the employer;

15 (b) The name, social security number, street, mailing
16 address, telephone number, and occupation of the employee;

17 (c) The cause and nature of the injury or death;

18 (d) The year, month, day, and hour when, and the
19 particular locality where, the injury or death occurred; ~~and~~

20 (e) A record of the employee's earnings for the 13
21 weeks before the date of injury; and

22 (f) ~~(e)~~ Such other information as the division may
23 require by rule.

24
25 The carrier shall, within 14 days after the employer's receipt
26 of the form reporting the injury, file the information
27 required by this subsection with the division in Tallahassee.
28 However, the division may by rule provide for a different
29 reporting system for those types of injuries which it
30 determines should be reported in a different manner and for
31 those cases which involve minor injuries requiring

1 professional medical attention in which the employee does not
2 lose more than 7 days of work as a result of the injury and is
3 able to return to the job immediately after treatment and
4 resume regular work.

5 Section 12. Section 440.191, Florida Statutes, is
6 amended to read:

7 440.191 Employee Assistance and Ombudsman Office.--

8 (1)(a) In order to effect the self-executing features
9 of the Workers' Compensation Law, this chapter shall be
10 construed to permit injured employees and employers or the
11 employer's carrier to resolve disagreements without undue
12 expense, costly litigation, or delay in the provisions of
13 benefits. It is the duty of all who participate in the
14 workers' compensation system, including, but not limited to,
15 carriers, service providers, health care providers, managed
16 care arrangements, attorneys, employers, and employees, to
17 attempt to resolve disagreements in good faith and to
18 cooperate with the division's efforts to resolve disagreements
19 between the parties. The division may by rule prescribe
20 definitions ~~that are~~ necessary for the effective
21 administration of this section.

22 (b) An Employee Assistance and Ombudsman Office is
23 created within the Division of Workers' Compensation to inform
24 and assist injured workers, employers, carriers, ~~and~~ health
25 care providers, and managed care arrangements in fulfilling
26 their responsibilities under this chapter. The division may by
27 rule specify forms and procedures for administering ~~requests~~
28 ~~for assistance provided by~~ this section.

29 (c) The Employee Assistance and Ombudsman Office,
30 ~~Division of Workers' Compensation~~, shall be a resource
31 available to all employees who participate in the workers'

Amendment No. 1 (for drafter's use only)

1 compensation system and shall take all steps necessary to
2 educate and disseminate information to employees and
3 employers. Upon receiving a notice of injury or death, the
4 Employee Assistance and Ombudsman Office is authorized to
5 initiate contact with the injured employee or employee's
6 representative to discuss rights and responsibilities of the
7 employee under this chapter and the services available through
8 the Employee Assistance and Ombudsman Office.

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

13 ~~(a)(b)~~ If at any time the employer or its carrier
14 fails to provide benefits to which the employee believes she
15 or he is entitled, the employee shall contact the office to
16 request assistance in resolving the dispute. The office may
17 review petitions for benefits filed under s. 440.192 shall
18 ~~investigate the dispute~~ and may shall attempt to facilitate an
19 agreement between the employee and the employer or carrier.
20 The employee, the employer, and the carrier shall cooperate
21 with the office and shall timely provide the office with any
22 documents or other information that it may require in
23 connection with its efforts under this section.

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

30 ~~(c)(d)~~ The Employee Assistance and Ombudsman Office
31 may assign an ombudsman to assist the employee in resolving

Amendment No. 1 (for drafter's use only)

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

13 Section 13. Section 440.192, Florida Statutes, is
14 amended to read:

15 440.192 Procedure for resolving benefit disputes.--

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

1 ~~division shall refer the petition to the Office of the Judges~~
2 ~~of Compensation Claims.~~

3 (2) Upon receipt the Office of the Judges of
4 Compensation Claims shall review each petition and shall
5 dismiss each petition, or any portion of the petition,~~upon~~
6 ~~its own motion or~~ upon the motion of any party, that does not
7 on its face specifically identify or itemize the following:

8 (a) Name, address, telephone number, and social
9 security number of the employee.

10 (b) Name, address, and telephone number of the
11 employer.

12 (c) A detailed description of the injury and cause of
13 the injury, including the location of the occurrence and the
14 date of the accident.

15 (d) A detailed description of the employee's job, work
16 responsibilities, and work the employee was performing when
17 the injury occurred.

18 (e) The time period for which compensation was not
19 timely provided and the specific classification of the
20 compensation.

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

24 (g) The specific ~~All~~ travel costs to which the
25 employee believes she or he is entitled, including dates of
26 travel and purpose of travel, means of transportation, and
27 mileage, including the date the request for mileage was filed
28 with the carrier, and a copy of the request for mileage filed
29 with the carrier.

30 (h) Specific listing of all medical charges alleged
31 unpaid, including the name and address of the medical

1 provider, the amounts due, and the specific dates of
2 treatment.

3 (i) The type or nature of treatment care or attendance
4 sought and the justification for such treatment. If the
5 employee is under the care of a physician for the injury
6 identified in paragraph (c), a copy of the physician's
7 request, authorization, or recommendation for treatment, care,
8 or attendant care must accompany the petition.

9 (j) Specific explanation of any other disputed issue
10 that a judge of compensation claims will be called to rule
11 upon.

12 (k) Any other information and documentation the Deputy
13 Chief Judge may require by rule.

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

23 (4) The dismissal of any petition or portion of the
24 petition under this section is without prejudice and does not
25 require a hearing.

26 (5)(4) The petition must include a certification by
27 the claimant or, if the claimant is represented by counsel,
28 the claimant's attorney, stating that the claimant, or
29 attorney if the claimant is represented by counsel, has made a
30 good faith effort to resolve the dispute and that the claimant
31 or attorney was unable to resolve the dispute with the

1 carrier.

2 ~~(6)(5)~~ All motions to dismiss must state with
3 particularity the basis for the motion. The judge of
4 compensation claims shall enter an order upon such motions
5 without hearing, unless good cause for hearing is shown. When
6 any petition or portion of a petition is dismissed for lack of
7 specificity under this subsection, the claimant must be
8 allowed 20 days after the date of the order of dismissal in
9 which to file an amended petition. Any grounds for dismissal
10 for lack of specificity under this section not asserted within
11 60 ~~30~~ days after receipt of the petition for benefits are
12 thereby waived.

13 ~~(7)(6)~~ If the claimant is not represented by counsel,
14 the Office of the Judges of Compensation Claims may request
15 the Employee Assistance and Ombudsman Office to assist the
16 claimant in filing a petition that meets the requirements of
17 this section.

18 ~~(8)(7)~~ Notwithstanding the provisions of s. 440.34, a
19 judge of compensation claims may not award attorney's fees
20 payable by the carrier for services expended or costs incurred
21 prior to the filing of a petition ~~that does not~~ meeting meet
22 the requirements of this section.

23 ~~(9)(8)~~ Within 30 ~~14~~ days after receipt of a petition
24 for benefits by certified mail, the carrier must either pay
25 the requested benefits without prejudice to its right to deny
26 within 120 days from receipt of the petition or file a
27 response to the petition ~~notice of denial~~ with the Office of
28 the Judges of Compensation Claims ~~division~~. The carrier must
29 list all benefits requested but not paid and explain its
30 justification for nonpayment in the response to the petition
31 ~~notice of denial~~. A carrier that does not deny compensability

Amendment No. 1 (for drafter's use only)

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

8 Section 14. Subsections (4) and (11) of section
9 440.20, Florida Statutes, are amended to read:

10 440.20 Time for payment of compensation; penalties for
11 late payment.--

12 (4) If the carrier is uncertain of its obligation to
13 provide benefits or compensation, it may initiate payment
14 without prejudice and without admitting liability. The carrier
15 shall immediately and in good faith commence investigation of
16 the employee's entitlement to benefits under this chapter and
17 shall admit or deny compensability within 120 days after the
18 initial provision of compensation or benefits as required by
19 subsection (2) or s. 440.192(8). Upon commencement of payment
20 as required by subsection (2) or s. 440.192(8), the carrier
21 shall provide written notice to the employee that it has
22 elected to pay all or part of the claim pending further
23 investigation, and that it will advise the employee of claim
24 acceptance or denial within 120 days. A carrier that fails to
25 deny compensability within 120 days after the initial
26 provision of benefits or payment of compensation, as required
27 by subsection (2) or s. 440.192(8), waives the right to deny
28 compensability, unless the carrier can establish material
29 facts relevant to the issue of compensability that it could
30 not have discovered through reasonable investigation within
31 the 120-day period. The initial provision of compensation or

Amendment No. 1 (for drafter's use only)

1 benefits, for purposes of this subsection, shall mean the
2 first installment of compensation or benefits to be paid by
3 the carrier under subsection (2) or pursuant to a petition of
4 benefits under s. 440.192(8).

5 (11)(a) When a claimant is not represented by counsel,
6 upon joint petition of all interested parties, a lump-sum
7 payment in exchange for the employer's or carrier's release
8 from liability for future medical expenses, as well as future
9 payments of compensation expenses and any other benefits
10 provided under this chapter, shall be allowed at any time in
11 any case in which the employer or carrier has filed a written
12 notice of denial within 120 days after the employer receives
13 notice date of the injury, and the judge of compensation
14 claims at a hearing to consider the settlement proposal finds
15 a justiciable controversy as to legal or medical
16 compensability of the claimed injury or the alleged accident.
17 The employer or carrier may not pay any attorney's fees on
18 behalf of the claimant for any settlement under this section
19 unless expressly authorized elsewhere in this chapter. Upon
20 the joint petition of all interested parties and after giving
21 due consideration to the interests of all interested parties,
22 the judge of compensation claims may enter a compensation
23 order approving and authorizing the discharge of the liability
24 of the employer for compensation and remedial treatment, care,
25 and attendance, as well as rehabilitation expenses, by the
26 payment of a lump sum. Such a compensation order so entered
27 upon joint petition of all interested parties is not subject
28 to modification or review under s. 440.28. If the settlement
29 proposal together with supporting evidence is not approved by
30 the judge of compensation claims, it shall be considered void.
31 Upon approval of a lump-sum settlement under this subsection,

Amendment No. 1 (for drafter's use only)

1 the judge of compensation claims shall send a report to the
2 Chief Judge of the amount of the settlement and a statement of
3 the nature of the controversy. The Chief Judge shall keep a
4 record of all such reports filed by each judge of compensation
5 claims and shall submit to the Legislature a summary of all
6 such reports filed under this subsection annually by September
7 15.

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

Amendment No. 1 (for drafter's use only)

1 injured worker or otherwise is clearly for the best interests
2 of the person entitled to compensation and, in her or his
3 discretion, may have an investigation made by the
4 Rehabilitation Section of the Division of Workers'
5 Compensation. The joint petition and the report of any
6 investigation so made will be deemed a part of the proceeding.
7 An employer shall have the right to appear at any hearing
8 pursuant to this subsection which relates to the discharge of
9 such employer's liability and to present testimony at such
10 hearing. The carrier shall provide reasonable notice to the
11 employer of the time and date of any such hearing and inform
12 the employer of her or his rights to appear and testify. ~~When~~
13 ~~the claimant is represented by counsel or when the claimant~~
14 ~~and carrier or employer are represented by counsel, final~~
15 ~~approval of the lump-sum settlement agreement, as provided for~~
16 ~~in a joint petition and stipulation, shall be approved by~~
17 ~~entry of an order within 7 days after the filing of such joint~~
18 ~~petition and stipulation without a hearing, unless the judge~~
19 ~~of compensation claims determines, in her or his discretion,~~
20 ~~that additional testimony is needed before such settlement can~~
21 ~~be approved or disapproved and so notifies the parties.~~The
22 probability of the death of the injured employee or other
23 person entitled to compensation before the expiration of the
24 period during which such person is entitled to compensation
25 shall, in the absence of special circumstances making such
26 course improper, be determined in accordance with the most
27 recent United States Life Tables published by the National
28 Office of Vital Statistics of the United States Department of
29 Health and Human Services. The probability of the happening of
30 any other contingency affecting the amount or duration of the
31 compensation, except the possibility of the remarriage of a

1 surviving spouse, shall be disregarded. As a condition of
2 approving a lump-sum payment to a surviving spouse, the judge
3 of compensation claims, in the judge of compensation claims'
4 discretion, may require security which will ensure that, in
5 the event of the remarriage of such surviving spouse, any
6 unaccrued future payments so paid may be recovered or recouped
7 by the employer or carrier. Such applications shall be
8 considered and determined in accordance with s. 440.25.

9 (c) Notwithstanding s. 440.21(2), when a claimant is
10 represented by counsel, the claimant may waive all rights to
11 all benefits under this chapter by entering into a settlement
12 agreement releasing the employer and the carrier from
13 liability for workers' compensation benefits in exchange for a
14 lump-sum payment to the claimant. The settlement agreement
15 requires approval by the judge of compensation claims only as
16 to the attorney's fees paid to the claimant's attorney by the
17 claimant. The judge of compensation claims shall not approve
18 settlement proposals, including any stipulations or agreements
19 between the parties or between a claimant and his or her
20 attorney related to the settlement proposal, which provide for
21 an attorney's fee in excess of the amount permitted in s.
22 440.34. The parties need not submit any information or
23 documentation in support of the settlement, except as needed
24 to justify the amount of the attorney's fees. Neither the
25 employer nor the carrier is responsible for any attorney's
26 fees relating to the settlement and release of claims under
27 this section. Payment of the lump-sum settlement amount must
28 be made within 14 days after the date the judge of
29 compensation claims mails the order approving the attorney's
30 fees. Any order entered by a judge of compensation claims
31 approving the attorney's fees as set out in the settlement

1 under this subsection is not considered to be an award and is
2 not subject to modification or review. The judge of
3 compensation claims shall report these settlements to the
4 chief judge in accordance with the requirements set forth in
5 s. 440.11(a) and (b). Settlements entered into under this
6 subsection are valid and apply to all dates of accident.

7 (d) With respect to any lump-sum settlement under this
8 subsection, a judge of compensation claims must consider at
9 the time of the settlement, whether the settlement allocation
10 provides for the appropriate recovery of child support
11 arrearages. Neither the employer nor the carrier has a duty to
12 investigate or collect information regarding child-support
13 arrearages.

14 (e)~~(c)~~ This section applies to all claims that the
15 parties have not previously settled, regardless of the date of
16 accident.

17 Section 15. Subsections (1), (2), (3), and (4) of
18 section 440.25, Florida Statutes, are amended to read:

19 440.25 Procedures for mediation and hearings.--

20 (1) Within 90 ~~21~~ days after a petition for benefits is
21 filed under s. 440.192, a mediation conference concerning such
22 petition shall be held. Within 40 ~~7~~ days after such petition
23 is filed, the judge of compensation claims shall notify the
24 interested parties by order that a mediation conference
25 concerning such petition will be held unless the parties have
26 notified the Office of the Judges of Compensation Claims that
27 a mediation has been held. Such order must ~~notice shall~~ give
28 the date by which, time, and location of the mediation
29 conference must be held. Such order ~~notice~~ may be served
30 personally upon the interested parties or may be sent to the
31 interested parties by mail. Continuances may be granted only

1 if the requesting party demonstrates to the judge of
2 compensation claims that the reason for requesting the
3 continuance arises from circumstances beyond the party's
4 control. Any order granting a continuance must set forth the
5 date of the rescheduled mediation conference. A mediation
6 conference may not be used solely for the purpose of mediating
7 attorney's fees.

8 (2) Any party who participates in a mediation
9 conference shall not be precluded from requesting a hearing
10 following the mediation conference should both parties not
11 agree to be bound by the results of the mediation conference.
12 A mediation conference is required to be held unless this
13 requirement is waived by the Chief Judge. No later than 3 days
14 prior to the mediation conference, all parties must submit any
15 applicable motions, including, but not limited to, a motion to
16 waive the mediation conference, to the judge of compensation
17 claims.

18 (3)(a) Such mediation conference shall be conducted
19 informally and shall ~~does~~ not require the use of formal rules
20 of evidence or procedure. Any information from the files,
21 reports, case summaries, mediator's notes, or other
22 communications or materials, oral or written, relating to a
23 mediation conference under this section obtained by any person
24 performing mediation duties is privileged and confidential and
25 may not be disclosed without the written consent of all
26 parties to the conference. Any research or evaluation effort
27 directed at assessing the mediation program activities or
28 performance must protect the confidentiality of such
29 information. Each party to a mediation conference has a
30 privilege during and after the conference to refuse to
31 disclose and to prevent another from disclosing communications

Amendment No. 1 (for drafter's use only)

1 made during the conference whether or not the contested issues
2 are successfully resolved. This subsection and paragraphs
3 (4)(a) and (b) shall not be construed to prevent or inhibit
4 the discovery or admissibility of any information that is
5 otherwise subject to discovery or that is admissible under
6 applicable law or rule of procedure, except that any conduct
7 or statements made during a mediation conference or in
8 negotiations concerning the conference are inadmissible in any
9 proceeding under this chapter.

10 (b)1. Unless the parties conduct a private mediation
11 under subparagraph 2., mediation shall be conducted by a
12 mediator selected by the Deputy Chief Judge from among
13 mediators ~~The Chief Judge shall select a mediator. The~~
14 ~~mediator shall be~~ employed on a full-time basis by the Office
15 of the Judges of Compensation Claims. A mediator must be a
16 member of The Florida Bar for at least 5 years and must
17 complete a mediation training program approved by the Chief
18 Judge. Adjunct mediators may be employed by the Office of the
19 Judges of Compensation Claims on an as-needed basis and shall
20 be selected from a list prepared by the Chief Judge. An
21 adjunct mediator must be independent of all parties
22 participating in the mediation conference. An adjunct mediator
23 must be a member of The Florida Bar for at least 5 years and
24 must complete a mediation training program approved by the
25 Chief Judge. An adjunct mediator shall have access to the
26 office, equipment, and supplies of the judge of compensation
27 claims in each district.

28 2. In the event the parties agree or in the event no
29 mediators under subparagraph 1. are available to conduct the
30 required mediation within the period specified in this
31 section, the parties shall hold a mediation conference at the

1 carrier's expense within the 90-day period set for mediation.
2 The mediation conference shall be conducted by a mediator who
3 is a member in good standing of The Florida Bar with at least
4 5 years' of Florida practice and is certified under s. 44.106.
5 If the parties do not agree upon a mediator within 10 days
6 after the date of the order, the claimant shall notify the
7 judge in writing and the judge shall appoint a mediator under
8 this subparagraph within 7 days.In the event both parties
9 agree, the results of the mediation conference shall be
10 binding and neither party shall have a right to appeal the
11 results. In the event either party refuses to agree to the
12 results of the mediation conference, the results of the
13 mediation conference as well as the testimony, witnesses, and
14 evidence presented at the conference shall not be admissible
15 at any subsequent proceeding on the claim. The mediator shall
16 not be called in to testify or give deposition to resolve any
17 claim for any hearing before the judge of compensation claims.
18 The employer may be represented by an attorney at the
19 mediation conference if the employee is also represented by an
20 attorney at the mediation conference.

21 (c) The parties shall make a good-faith effort to
22 complete the pretrial stipulations before the conclusion of
23 the mediation conference if the claims, except for attorney's
24 fees and costs, have not been settled and if any claims in any
25 filed petition remain unresolved. The judge of compensation
26 claims may sanction a party or both parties for failure to
27 complete the pretrial stipulations before the conclusion of
28 the mediation conference.

29 (4)(a) If the parties fail to submit written pretrial
30 stipulations at the mediation conference, ~~on the 10th day~~
31 ~~following commencement of mediation, the questions in dispute~~

Amendment No. 1 (for drafter's use only)

1 ~~have not been resolved,~~ the judge of compensation claims shall
2 order a pretrial hearing to occur within 14 days after the
3 date of mediation ordered by the judge of compensation claims
4 ~~hold a pretrial hearing.~~ The judge of compensation claims
5 shall give the interested parties at least 7 days' advance
6 notice of the pretrial hearing by mail. At the pretrial
7 hearing, the judge of compensation claims shall, subject to
8 paragraph (b), set a date for the final hearing that allows
9 the parties at least 30 days to conduct discovery unless the
10 parties consent to an earlier hearing date.

11 (b) The final hearing must be held and concluded
12 within 90 45 days after the mediation conference is held
13 ~~pretrial hearing.~~ Continuances may be granted only if the
14 requesting party demonstrates to the judge of compensation
15 claims that the reason for requesting the continuance arises
16 from circumstances beyond the party's control. The written
17 consent of the claimant must be obtained before any request is
18 granted for an additional continuance after the initial
19 continuance is granted. Any order granting a continuance must
20 set forth the date and time of the rescheduled hearing.
21 Continuances may be granted only if the requesting party
22 demonstrates to the judge of compensation claims that the
23 reason for requesting the continuances arises from
24 circumstances beyond the party's control. If a judge of
25 compensation claims grants two or more continuances to a
26 requesting party, the judge of compensation claims shall
27 report such continuances to the Deputy Chief Judge.

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

31 (d) The final hearing shall be held within 210 days

Amendment No. 1 (for drafter's use only)

1 after receipt of the petition for benefits in the county where
2 the injury occurred, if the injury occurred in this state,
3 unless otherwise agreed to between the parties and authorized
4 by the judge of compensation claims in the county where the
5 injury occurred. If the injury occurred outside ~~without~~ the
6 state and is one for which compensation is payable under this
7 chapter, then the final hearing ~~above referred to~~ may be held
8 in the county of the employer's residence or place of
9 business, or in any other county of the state that ~~which~~ will,
10 in the discretion of the Chief Judge, be the most convenient
11 for a hearing. The final hearing shall be conducted by a judge
12 of compensation claims, who shall, within 30 ~~14~~ days after
13 final hearing or closure of the hearing record, unless
14 otherwise agreed by the parties, enter a final order on the
15 merits of the disputed issues ~~determine the dispute in a~~
16 ~~summary manner~~. The judge of compensation claims may enter an
17 abbreviated final order in cases when compensability is not
18 disputed. Either party may request separate findings of fact
19 and conclusions of law.At the final ~~such~~ hearing, the
20 claimant and employer may each present evidence in respect of
21 the claims presented by the petition for benefits ~~such claim~~
22 and may be represented by any attorney authorized in writing
23 for such purpose. When there is a conflict in the medical
24 evidence submitted at the hearing, the provisions of s. 440.13
25 shall apply. The report or testimony of the expert medical
26 advisor shall be made a part of the record of the proceeding
27 and shall be given the same consideration by the judge of
28 compensation claims as is accorded other medical evidence
29 submitted in the proceeding; and all costs incurred in
30 connection with such examination and testimony may be assessed
31 as costs in the proceeding, subject to the provisions of s.

Amendment No. 1 (for drafter's use only)

1 440.13. No judge of compensation claims may make a finding of
2 a degree of permanent impairment that is greater than the
3 greatest permanent impairment rating given the claimant by any
4 examining or treating physician, except upon stipulation of
5 the parties.

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

15 (f) Each judge of compensation claims is required to
16 submit a special report to the Chief Judge in each contested
17 workers' compensation case in which the case is not determined
18 within 30 ~~14~~ days of final hearing. Said form shall be
19 provided by the Chief Judge and shall contain the names of the
20 judge of compensation claims and of the attorneys involved and
21 a brief explanation by the judge of compensation claims as to
22 the reason for such a delay in issuing a final order. The
23 Chief Judge shall compile these special reports into an annual
24 public report to the Governor, the Secretary of Labor and
25 Employment Security, the Legislature, The Florida Bar, and the
26 appellate district judicial nominating commissions.

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

29 (g)~~(h)~~ Notwithstanding any other provision of this
30 section, the judge of compensation claims may require the
31 appearance of the parties and counsel before her or him

Amendment No. 1 (for drafter's use only)

1 without written notice for an emergency conference where there
2 is a bona fide emergency involving the health, safety, or
3 welfare of an employee. An emergency conference under this
4 section may result in the entry of an order or the rendering
5 of an adjudication by the judge of compensation claims.

6 ~~(h)(i)~~ To expedite dispute resolution and to enhance
7 the self-executing features of the Workers' Compensation Law,
8 the Chief Judge shall make provision by rule or order for the
9 resolution of appropriate motions by judges of compensation
10 claims without oral hearing upon submission of brief written
11 statements in support and opposition, and for expedited
12 discovery and docketing. Unless the judge of compensation
13 claims orders a hearing under paragraph (i), claims related to
14 the determination of pay under s. 440.14 shall be resolved
15 under this paragraph.

16 ~~(i)(j)~~ To further expedite dispute resolution and to
17 enhance the self-executing features of the system, those
18 petitions filed in accordance with s. 440.192 that involve a
19 claim for benefits of \$5,000 or less shall, in the absence of
20 compelling evidence to the contrary, be presumed to be
21 appropriate for expedited resolution under this paragraph; and
22 any other claim filed in accordance with s. 440.192, upon the
23 written agreement of both parties and application by either
24 party, may similarly be resolved under this paragraph. Claims
25 for medical-only benefits of \$5,000, or less, or medical
26 mileage reimbursement shall, in the absence of compelling
27 evidence to the contrary, be resolved through the expedited
28 dispute resolution process under this paragraph. For purposes
29 of expedited resolution pursuant to this paragraph, the Chief
30 Judge shall make provision by rule or order for expedited and
31 limited discovery and expedited docketing in such cases. At

Amendment No. 1 (for drafter's use only)

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

16 (j) A judge of compensation claims, either upon the
17 motion of a party or its own motion, may dismiss a petition
18 for lack of prosecution if no petitions, responses, motions,
19 orders, requests for hearings, or notices of deposition have
20 been filed for a period of 12 months, unless good cause is
21 shown. Dismissals for lack of prosecution are without
22 prejudice and do not require a hearing.

23 (k) A judge of compensation claims may not award
24 interest on unpaid medical bills, nor may the amount of such
25 bills be used to calculate the amount of interest awarded.

26
27 Regardless of the date benefits were initially requested,
28 attorney's fees do not attach under this subsection until 30
29 days from the date the carrier or employer, if self-insured,
30 receives the petition.

31 Section 16. Subsection (4) of section 440.29, Florida

Amendment No. 1 (for drafter's use only)

1 Statutes, is amended to read:

2 440.29 Procedure before the judge of compensation
3 claims.--

4 (4) All medical reports of authorized treating health
5 care providers or independent medical examiners whose medical
6 opinion is submitted under s. 440.13(5)(e) relating to the
7 claimant and subject accident shall be received into evidence
8 by the judge of compensation claims upon proper motion.
9 However, such records must be served on the opposing party at
10 least 30 days before the final hearing. This section does not
11 limit any right of further discovery, including, but not
12 limited to, depositions.

13 Section 17. Subsections (1) and (3) of section 440.34,
14 Florida Statutes, are amended to read:

15 440.34 Attorney's fees; costs.--

16 (1) A fee, gratuity, or other consideration may not be
17 paid for services rendered for a claimant in connection with
18 any proceedings arising under this chapter, unless approved as
19 reasonable by the judge of compensation claims or court having
20 jurisdiction over such proceedings. Except as provided by this
21 subsection, any attorney's fee approved by a judge of
22 compensation claims for services rendered to a claimant must
23 equal to 25 ~~20~~ percent of the first \$5,000 of the amount of
24 the benefits secured, 20 ~~15~~ percent of the next \$5,000 of the
25 amount of the benefits secured, 15 ~~10~~ percent of the remaining
26 amount of the benefits secured to be provided during the first
27 10 years after the date the claim is filed, and 10 ~~5~~ percent
28 of the benefits secured after 10 years. ~~However, In~~
29 medical-only petitions, the judge of compensation claims shall
30 consider the following factors in each case and may approve an
31 additional increase or decrease the attorney's fee, not to

1 exceed \$1,750 per accident based on a reasonable hourly rate,
2 if the judge of compensation claims expressly finds that the
3 attorney's fee, based on benefits secured, fails to fairly
4 compensate the attorney and, in her or his judgment, the
5 circumstances of the particular case warrant such action. In
6 proceedings under subsection (3)(c) of this section, the judge
7 of compensation claims may approve an additional attorney's
8 fee not to exceed \$5,000, based on a reasonable hourly rate,
9 if the judge of compensation claims expressly finds that the
10 attorney's fee, based on benefits secured, fails to fairly
11 compensate the attorney and the circumstances of the
12 particular case warrant such action.

13
14 The judge of compensation claims shall not approve a
15 compensation order, a joint stipulation for lump-sum
16 settlement, a stipulation or agreement between a claimant and
17 his or her attorney, or any other agreement related to
18 benefits under this chapter that provides for an attorney's
19 fee in excess of the amount permitted by this section.+

20 ~~(a) The time and labor required, the novelty and~~
21 ~~difficulty of the questions involved, and the skill requisite~~
22 ~~to perform the legal service properly.~~

23 ~~(b) The fee customarily charged in the locality for~~
24 ~~similar legal services.~~

25 ~~(c) The amount involved in the controversy and the~~
26 ~~benefits resulting to the claimant.~~

27 ~~(d) The time limitation imposed by the claimant or the~~
28 ~~circumstances.~~

29 ~~(e) The experience, reputation, and ability of the~~
30 ~~lawyer or lawyers performing services.~~

31 ~~(f) The contingency or certainty of a fee.~~

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

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

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

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

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

25
26 Regardless of the date benefits were initially requested,
27 attorney's fees shall not attach under this subsection until
28 30 days from the date the carrier or employer, if
29 self-insured, receives the petition.~~In applying the factors~~
30 ~~set forth in subsection (1) to cases arising under paragraphs~~
31 ~~(a), (b), (c), and (d), the judge of compensation claims must~~

Amendment No. 1 (for drafter's use only)

1 ~~only consider only such benefits and the time reasonably spent~~
2 ~~in obtaining them as were secured for the claimant within the~~
3 ~~scope of paragraphs (a), (b), (c), and (d).~~

4 Section 18. Section 440.345, Florida Statutes, is
5 amended to read:

6 440.345 Reporting of attorney's fees.--All fees paid
7 to attorneys for services rendered under this chapter shall be
8 reported to the Office of the Judges of Compensation Claims
9 ~~division~~ as the Office of the Judges of Compensation Claims
10 ~~division~~ requires by rule. The Office of the Judges of
11 Compensation Claims division shall annually summarize such
12 data in a report to the President of the Senate, the Speaker
13 of the House of Representatives, and the Governor ~~Workers'~~
14 ~~Compensation Oversight Board.~~

15 Section 19. Subsection (8) is added to section 440.39,
16 Florida Statutes, to read:

17 440.39 Compensation for injuries when third persons
18 are liable.--

19 (8) This section does not impose on the carrier a duty
20 to preserve evidence pertaining to the industrial accident or
21 to injuries arising therefrom.

22 Section 20. Section 627.0915, Florida Statutes, is
23 amended to read:

24 627.0915 Rate filings; workers' compensation,
25 drug-free workplace, and safe employers.--The Department of
26 Insurance shall approve rating plans for workers' compensation
27 insurance that give specific identifiable consideration in the
28 setting of rates to employers that either implement a
29 drug-free workplace program pursuant to rules adopted by the
30 Division of Workers' Compensation of the Department of Labor
31 and Employment Security or implement a safety program pursuant

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

12 Section 21. The amendments to sections 440.02 and
13 440.15, Florida Statutes, in this act shall not be construed
14 to affect any determination of disability under section
15 112.18, section 112.181, or section 112.19, Florida Statutes.

16 Section 22. If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 invalidity does not affect other provisions or applications of
19 the act which can be given effect without the invalid
20 provision or application, and to this end the provisions of
21 this act are declared severable.

22 Section 23. Amendments to s. 440.20(11)(d) contained
23 in this act shall supersede any other legislation amending s.
24 440.20(11)(d), regardless of whether or not any conflict
25 exists between the amendments contained in this act or similar
26 legislation and any other legislation.

27 Section 24. Subsection (3) of section 440.45, Florida
28 Statutes, is repealed.

29 Section 25. Effective October 1, 2001, section
30 440.4416, Florida Statutes, is repealed.

31 Section 26. Except as otherwise expressly provided in

Amendment No. 1 (for drafter's use only)

1 this act, this act shall take effect January 1, 2002.

2

3

4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 On page ,

7 remove from the title of the bill: The entire title

8

9 and insert in lieu thereof:

10

A bill to be entitled

11

An act relating to workers' compensation;

12

amending s. 440.02, F.S.; revising definitions

13

of terms used in chapter 440, F.S.; amending s.

14

440.05, F.S.; revising exemptions from the

15

requirement for employers to obtain workers'

16

compensation coverage; specifying who may be

17

exempt and the conditions for an exemption;

18

specifying the effect of an exemption;

19

requiring businesses, sole proprietors, and

20

partners to maintain certain records; amending

21

s. 440.09, F.S.; requiring compensation for

22

accidental compensable injuries; requiring

23

partnerships, corporations, or sole proprietors

24

in the construction industry to maintain

25

workers' compensation insurance; creating s.

26

440.1025, F.S.; providing for consideration of

27

a public employer workplace safety program in

28

rate-setting; amending s. 440.107, F.S.;

29

authorizing the Division of Workers'

30

Compensation to issue stop-work orders in

31

certain circumstances; amending s. 440.11,

Amendment No. 1 (for drafter's use only)

1 F.S.; revising employer liability; amending s.
2 440.13, F.S.; specifying the value of
3 nonprofessional attendant care provided by a
4 family member that is reimbursable; requiring
5 the carrier to give the employee the
6 opportunity to change physicians under certain
7 circumstances and limitations; revising the
8 effect of an independent medical examination;
9 limiting the admissibility of certain medical
10 opinions; revising the limitation on medical
11 fees; amending s. 440.134, F.S.; revising the
12 definitions applied to workers' compensation
13 managed care arrangements; eliminating
14 provisions mandating the use of such
15 arrangements; revising the procedures governing
16 grievances related to such arrangements;
17 amending s. 440.14, F.S.; revising the
18 computation of the average weekly wage of an
19 employee for the purposes of determining
20 benefits; amending s. 440.15, F.S.; revising
21 the criteria for permanent total disability;
22 revising the compensation rate for impairment
23 income benefits; amending s. 440.185, F.S.;
24 specifying the information that must be
25 included in a report of injury; amending s.
26 440.191, F.S.; requiring the Employee
27 Assistance and Ombudsman Office to initiate
28 contact with an injured employee to discuss
29 rights and responsibilities; revising other
30 duties of the office; amending s. 440.192,
31 F.S.; revising the procedures for resolving

Amendment No. 1 (for drafter's use only)

1 benefit disputes and filing petitions for
2 benefits; specifying the information that must
3 be included in a petition for benefits;
4 amending s. 440.20, F.S.; specifying time for
5 payment of compensation; prescribing the
6 criteria for determining when a lump-sum
7 settlement may be entered; specifying the
8 effect of a lump-sum settlement; amending s.
9 440.25, F.S.; revising the procedures governing
10 mediation and the hearing of claims; amending
11 s. 440.29, F.S.; requiring opinions of
12 independent medical examiners to be received
13 into evidence under certain conditions;
14 amending s. 440.34, F.S.; revising the limit on
15 the amount of attorney's fees that may be
16 approved by a judge of compensation claims and
17 eliminating factors that the judge must
18 consider; applying such limits to any agreement
19 related to benefits under chapter 440, F.S.;
20 amending s. 440.345, F.S.; requiring the
21 reporting of attorney's fees to the Office of
22 the Judges of Compensation Claims and requiring
23 the Office of the Judges of Compensation Claims
24 to report such data to the Legislature and
25 Governor; amending s. 440.39, F.S.; providing
26 that the section does not impose a duty on the
27 employer to preserve evidence; amending s.
28 627.0915, F.S.; providing for a safety program
29 discount; providing that determinations under
30 ss. 112.18, 112.181, and 112.19, F.S., are not
31 affected; providing for applicability of the

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act; providing for portions of this act to
supersede other provisions; repealing s.
440.4416, F.S., which creates the Workers'
Compensation Oversight Board; repealing s.
440.45(3), F.S.; eliminating the requirement
that the Chief Judge select judges to rotate as
docketing judges; providing for severability;
providing effective dates.