

Bill No. CS/HB 1927, 2nd Eng.

Amendment No. Barcode 025544

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Latvala moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

16 and insert:

17 Section 1. Subsections (7), (14), (15), (16), and (37)
18 of section 440.02, Florida Statutes, are amended to read:

19 440.02 Definitions.--When used in this chapter, unless
20 the context clearly requires otherwise, the following terms
21 shall have the following meanings:

22 (7) "Construction industry" means any business that
23 carries out for-profit activities involving ~~the carrying out~~
24 ~~of~~ any building, clearing, filling, excavation, or substantial
25 improvement in the size or use of any structure or the
26 appearance of any land. ~~When appropriate to the context,~~
27 ~~"construction" refers to the act of construction or the result~~
28 ~~of construction.~~ However, the term "construction" does shall
29 not mean a homeowner's ~~landowner's~~ act of construction or the
30 result of a construction upon his or her own premises,
31 provided such premises are not intended to be sold or resold

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1 or leased by the owner within 1 year after the commencement of
2 the construction. The division may by rule establish those
3 standard industrial classification codes and their definitions
4 which meet the criteria of the definition of the term
5 "construction industry" as set forth in this section.

6 (14)(a) "Employee" means any person who receives
7 remuneration from an employer for the performance of any work
8 or service or for the provision of any goods or supplies,
9 whether by engaged in any employment under any appointment or
10 contract for of hire or apprenticeship, express or implied,
11 oral or written, whether lawfully or unlawfully employed, and
12 includes, but is not limited to, aliens and minors.

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

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

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

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

28
29 Services are presumed to have been rendered to the corporation
30 if the officer is compensated by other than dividends upon
31 shares of stock of the corporation which the officer owns.

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1 (c) "Employee" includes all persons who are being paid
 2 by a general contractor for work performed by or as a
 3 subcontractor or employee of a subcontractor are employees of
 4 the general contractor, except any person who: ~~a sole~~
 5 ~~proprietor or a partner who devotes full time to the~~
 6 ~~proprietorship or partnership and, except as provided in this~~
 7 ~~paragraph, elects to be included in the definition of employee~~
 8 ~~by filing notice thereof as provided in s. 440.05. Partners or~~
 9 ~~sole proprietors actively engaged in the construction industry~~
 10 ~~are considered employees unless they elect to be excluded from~~
 11 ~~the definition of employee by filing written notice of the~~
 12 ~~election with the division as provided in s. 440.05. However,~~
 13 ~~no more than three partners in a partnership that is actively~~
 14 ~~engaged in the construction industry may elect to be excluded.~~
 15 ~~A sole proprietor or partner who is actively engaged in the~~
 16 ~~construction industry and who elects to be exempt from this~~
 17 ~~chapter by filing a written notice of the election with the~~
 18 ~~division as provided in s. 440.05 is not an employee. For~~
 19 ~~purposes of this chapter, an independent contractor is an~~
 20 ~~employee unless he or she meets all of the conditions set~~
 21 ~~forth in subparagraph (d)1.~~

22 ~~(d) "Employee" does not include:~~
 23 ~~1. An independent contractor, if:~~
 24 ~~a. The independent contractor~~
 25 ~~1. Maintains a separate business with his or her own~~
 26 ~~work facility, truck, equipment, materials, or similar~~
 27 ~~accommodations;~~
 28 ~~2.b. Has a social security number; or The independent~~
 29 ~~contractor holds or has applied for a federal employer~~
 30 ~~identification number, if required to do so by any federal,~~
 31 ~~state, or local statute, rule, or regulation unless the~~

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1 ~~independent contractor is a sole proprietor who is not~~
2 ~~required to obtain a federal employer identification number~~
3 ~~under state or federal requirements;~~

4 ~~3.c. The independent contractor performs or agrees to~~
5 ~~perform specific services or work for specific amounts of~~
6 ~~money and Controls the means of performing the services or~~
7 ~~work that he or she was hired to perform or supply;~~

8 ~~4.d. The independent contractor Incurs the principal~~
9 ~~expenses related to the service or work that he or she~~
10 ~~performs or agrees to perform;~~

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

15 ~~6.f. The independent contractor Receives compensation~~
16 ~~for work or services performed for a commission or on a~~
17 ~~per-job or competitive-bid basis and not on any other basis,~~
18 ~~such as salary or wages;~~

19 ~~7.g. The independent contractor May realize a profit~~
20 ~~or suffer a loss in connection with performing work or~~
21 ~~services; and~~

22 ~~8.h. The independent contractor Has continuing or~~
23 ~~recurring business liabilities or obligations.† and~~

24 ~~i. The success or failure of the independent~~
25 ~~contractor's business depends on the relationship of business~~
26 ~~receipts to expenditures.~~

27
28 ~~However, the determination as to whether an individual~~
29 ~~included in the Standard Industrial Classification Manual of~~
30 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~
31 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~

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1 ~~2448, or 2449, or a newspaper delivery person, is an~~
2 ~~independent contractor is governed not by the criteria in this~~
3 ~~paragraph but by common-law principles, giving due~~
4 ~~consideration to the business activity of the individual.~~

5 (d) The term "employee" does not include:

6 1.2. A real estate salesperson or agent, if that
7 person agrees, in writing, to perform for remuneration solely
8 by way of commission.

9 2.3. Bands, orchestras, and musical and theatrical
10 performers, including disk jockeys, performing in licensed
11 premises as defined in chapter 562, if a written contract
12 evidencing an independent contractor relationship is entered
13 into before the commencement of such entertainment.

14 3.4. An owner-operator of a motor vehicle who
15 transports property under a written contract with a motor
16 carrier which evidences a relationship by which the
17 owner-operator assumes the responsibility of an employer for
18 the performance of the contract, if the owner-operator is
19 required to furnish the necessary motor vehicle equipment and
20 all costs incidental to the performance of the contract,
21 including, but not limited to, fuel, taxes, licenses, repairs,
22 and hired help; and the owner-operator is paid a commission
23 for transportation service and is not paid by the hour or on
24 some other time-measured basis.

25 4.5. A person whose employment is both casual and not
26 in the course of the trade, business, profession, or
27 occupation of the employer.

28 5.6. A volunteer, except a volunteer worker for the
29 state or a county, municipality, or other governmental entity.
30 A person who does not receive monetary remuneration for
31 services is presumed to be a volunteer unless there is

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1 substantial evidence that a valuable consideration was
2 intended by both employer and employee. For purposes of this
3 chapter, the term "volunteer" includes, but is not limited to:
4 a. Persons who serve in private nonprofit agencies and
5 who receive no compensation other than expenses in an amount
6 less than or equivalent to the standard mileage and per diem
7 expenses provided to salaried employees in the same agency or,
8 if such agency does not have salaried employees who receive
9 mileage and per diem, then such volunteers who receive no
10 compensation other than expenses in an amount less than or
11 equivalent to the customary mileage and per diem paid to
12 salaried workers in the community as determined by the
13 division; and
14 b. Volunteers participating in federal programs
15 established under Pub. L. No. 93-113.
16 6. Domestic servants in private houses.
17 7. Agricultural laborers on a farm in the employ of a
18 bona fide farmer or association of farmers who employ 5 or
19 fewer regular employees and who employ fewer than 12 other
20 employees at one time for seasonal agricultural labor that is
21 completed in less than 30 days, if such seasonal employment
22 does not exceed 45 days in the same calendar year. The term
23 "farm" includes stock, dairy, poultry, fruit, fur-bearing
24 animals, fish, and truck farms, ranches, nurseries, and
25 orchards. The term "agricultural labor" includes field
26 foremen, timekeepers, checkers, and other farm labor
27 supervisory personnel.
28 8. Professional athletes, such as professional boxers,
29 wrestlers, baseball, football, basketball, hockey, polo,
30 tennis, jai alai, and similar players, and motor sports teams
31 competing in a motor racing event as defined in s. 549.08.

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1 9. Persons performing labor under a sentence of a
2 court to perform community services as provided in s. 316.193.

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

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

12 ~~10.9.~~ An exercise rider who does not work for a single
13 horse farm or breeder, and who is compensated for riding on a
14 case-by-case basis, provided a written contract is entered
15 into prior to the commencement of such activity which
16 evidences that an employee/employer relationship does not
17 exist.

18 ~~11.10.~~ A taxicab, limousine, or other passenger
19 vehicle-for-hire driver who operates said vehicles pursuant to
20 a written agreement with a company which provides any
21 dispatch, marketing, insurance, communications, or other
22 services under which the driver and any fees or charges paid
23 by the driver to the company for such services are not
24 conditioned upon, or expressed as a proportion of, fare
25 revenues.

26 (15)(a) "Employer" means the state and all political
27 subdivisions thereof, all public and quasi-public corporations
28 therein, every person carrying on any employment, and the
29 legal representative of a deceased person or the receiver or
30 trustees of any person. If the employer is a corporation,
31 parties in actual control of the corporation, including, but

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1 not limited to, the president, officers who exercise broad
 2 corporate powers, directors, and all shareholders who directly
 3 or indirectly own a controlling interest in the corporation,
 4 are considered the employer for the purposes of ss. 440.105
 5 and 440.106.

6 (b) However, a landowner shall not be considered the
 7 employer of any person hired by the landowner to carry out
 8 construction upon his or her own premises, if those premises
 9 are not intended for immediate sale or resale within 1 year.

10 (16)(a) "Employment," means, not including subsection
 11 (4), the payment of any remuneration for work or services
 12 rendered or promised, or the provision of goods or services
 13 and, subject to the other provisions of this chapter, means
 14 any service performed by an employee for the person employing
 15 him or her; and-

16 ~~(b) "Employment" includes:~~

17 (a)1. Employment by the state and all political
 18 subdivisions thereof and all public and quasi-public
 19 corporations therein, including officers elected at the polls.

20 (b)2. All private employments in which four or more
 21 employees are employed by the same employer or, with respect
 22 to the construction industry, all private employment in which
 23 one or more employees are employed by the same employer.

24 (c)3. Volunteer firefighters responding to or
 25 assisting with fire or medical emergencies whether or not the
 26 firefighters are on duty.

27 ~~(c) "Employment" does not include service performed by~~
 28 ~~or as:~~

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

30 ~~2. Agricultural labor performed on a farm in the~~
 31 ~~employ of a bona fide farmer, or association of farmers, who~~

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~~1 employs 5 or fewer regular employees and who employs fewer
2 than 12 other employees at one time for seasonal agricultural
3 labor that is completed in less than 30 days, provided such
4 seasonal employment does not exceed 45 days in the same
5 calendar year. The term "farm" includes stock, dairy, poultry,
6 fruit, fur-bearing animals, fish, and truck farms, ranches,
7 nurseries, and orchards. The term "agricultural labor"
8 includes field foremen, timekeepers, checkers, and other farm
9 labor supervisory personnel.~~

~~10 3. Professional athletes, such as professional boxers,
11 wrestlers, baseball, football, basketball, hockey, polo,
12 tennis, jai alai, and similar players, and motorsports teams
13 competing in a motor racing event as defined in s. 549.08.~~

~~14 4. Labor under a sentence of a court to perform
15 community services as provided in s. 316.193.~~

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

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

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

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

1. Severe sensory or motor disturbances;
2. Severe communication disturbances;
3. Severe complex integrated disturbances of cerebral
function;
4. Severe episodic neurological disorders; or
5. Other severe brain and closed-head injury
conditions at least as severe in nature as any condition
provided in subparagraphs 1.-4.;

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1 (d) Second-degree or third-degree burns of 25 percent
 2 or more of the total body surface or third-degree burns of 5
 3 percent or more to the face and hands; or

4 (e) Total or industrial blindness; ~~or~~

5 ~~(f) Any other injury that would otherwise qualify~~
 6 ~~under this chapter of a nature and severity that would qualify~~
 7 ~~an employee to receive disability income benefits under Title~~
 8 ~~II or supplemental security income benefits under Title XVI of~~
 9 ~~the federal Social Security Act as the Social Security Act~~
 10 ~~existed on July 1, 1992, without regard to any time~~
 11 ~~limitations provided under that act.~~

12 Section 2. Section 440.05, Florida Statutes, is
 13 amended to read:

14 (Substantial rewording of section. See
 15 s. 440.05, F.S., for present text.)

16 440.05 Election of exemption; revocation of
 17 election.--

18 (1) The following classes of persons, as defined by s.
 19 440.02, who are not primarily engaged in the construction
 20 industry, as that term is defined in s. 440.02, are exempt
 21 from this chapter unless they elect otherwise in accordance
 22 with subsection (2):

23 (a) Sole proprietors;

24 (b) Partners as defined in this section; and

25 (c) Corporate officers as defined in this section.

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

31 (3) Every enterprise conducting business in this state

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1 shall maintain business records as specified by the division
2 by rule, which rules must include the provision that any
3 corporation with exempt officers and any partnership with
4 exempt partners must maintain written statements of those
5 exempted persons affirmatively acknowledging each such
6 individual's exempt status.

7 (4) Any sole proprietor or partner claiming an
8 exemption under this section shall maintain a copy of his or
9 her federal income tax records for each of the immediately
10 previous 3 years in which he or she claims an exemption. Such
11 federal income tax records must include a complete copy of the
12 following for each year in which an exemption is claimed:

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

15 (b) For partners, a copy of the partner's Federal
16 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
17 Form 1040 and its accompanying Schedule E. The sole proprietor
18 or partner in question shall produce, upon request by the
19 division, a copy of those documents together with a statement
20 by the sole proprietor that the tax records provided are true
21 and accurate copies of what the sole proprietor or partner has
22 filed with the federal Internal Revenue Service. The statement
23 must be signed under oath by the sole proprietor or partner in
24 question and must be notarized. The division shall issue a
25 stop-work order under s. 440.107(5) to any sole proprietor or
26 partner who fails or refuses to produce a copy of the tax
27 records and affidavit required under this paragraph to the
28 division within 3 business days after that request and who has
29 failed to otherwise secure insurance for the provision of
30 workers' compensation benefits for himself or herself if
31 required under this chapter to do so.

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

21 (6) A sole proprietor, partner, or corporate officer
22 of a business entity that has not been in operation long
23 enough to have filed with the Internal Revenue Service, or to
24 have been required by the Internal Revenue Service to file,
25 its first annual federal income tax return is not eligible for
26 exemption from this chapter.

27 (7) Exemptions pertain only to the person claiming
28 exemption and only for the entity that is the subject of the
29 federal income tax reports filed by the person claiming the
30 exemption. A separate exemption is required for every
31 proprietorship, partnership, or corporation from which an

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1 individual receives any remuneration for labor, services, or
2 products provided.

3 (8) Sole proprietors, partners, and corporate
4 officers, as those terms are defined in s. 440.02, of sole
5 proprietorships, partnerships, and corporations that are
6 primarily engaged in the construction industry as that term is
7 defined in s. 440.02 are not eligible for exemption from this
8 chapter.

9 Section 3. Section 440.06, Florida Statutes, is
10 amended to read:

11 440.06 Failure to secure compensation; effect.--Every
12 employer who fails to secure the payment of compensation as
13 provided in s. 440.10 by failing to meet the requirements of
14 ~~under this chapter as provided in s. 440.38~~ may not, in any
15 suit brought against him or her by an employee subject to this
16 chapter to recover damages for injury or death, defend such a
17 suit on the grounds that the injury was caused by the
18 negligence of a fellow servant, that the employee assumed the
19 risk of his or her employment, or that the injury was due to
20 the comparative negligence of the employee.

21 Section 4. Subsection (1) of section 440.09, Florida
22 Statutes, is amended to read:

23 440.09 Coverage.--

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

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1 manifestation of an injury compensable under this section
2 shall be demonstrated by clear and convincing evidence.

3 (a) This chapter does not require any compensation or
4 benefits for any subsequent injury the employee suffers as a
5 result of an original injury arising out of and in the course
6 of employment unless the original injury is the major
7 contributing cause of the subsequent injury.

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

15 (c) Death resulting from an operation by a surgeon
16 furnished by the employer for the cure of hernia as required
17 in s. 440.15(6) shall for the purpose of this chapter be
18 considered to be a death resulting from the accident causing
19 the hernia.

20 (d) If an accident happens while the employee is
21 employed elsewhere than in this state, which would entitle the
22 employee or his or her dependents to compensation if it had
23 happened in this state, the employee or his or her dependents
24 are entitled to compensation if the contract of employment was
25 made in this state, or the employment was principally
26 localized in this state. However, if an employee receives
27 compensation or damages under the laws of any other state, the
28 total compensation for the injury may not be greater than is
29 provided in this chapter.

30 Section 5. Section 440.10, Florida Statutes, is
31 amended to read:

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1 440.10 Liability for compensation.--

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

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

20 (c) A contractor shall ~~may~~ require a subcontractor to
21 provide evidence of workers' compensation insurance ~~or a copy~~
22 ~~of his or her certificate of election. A subcontractor~~
23 ~~electing to be exempt as a sole proprietor, partner, or~~
24 ~~officer of a corporation shall provide a copy of his or her~~
25 ~~certificate of election to the contractor.~~

26 (d)~~1~~. If a contractor becomes liable for the payment
27 of compensation to the employees of a subcontractor who has
28 failed to secure such payment in violation of s. 440.38, the
29 contractor or other third-party payor shall be entitled to
30 recover from the subcontractor all benefits paid or payable
31 plus interest unless the contractor and subcontractor have

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1 agreed in writing that the contractor will provide coverage.

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

11 (e) A subcontractor is not liable for the payment of
12 compensation to the employees of another subcontractor on such
13 contract work and is not protected by the
14 exclusiveness-of-liability provisions of s. 440.11 from action
15 at law or in admiralty on account of injury of such employee
16 of another subcontractor.

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

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

26 1. the independent contractor provides the general
27 contractor with an affidavit stating that he or she meets all
28 the requirements of s. 440.02(14)(d). ~~And~~ and

29 2. ~~The independent contractor provides the general~~
30 ~~contractor with a valid certificate of workers' compensation~~
31 ~~insurance or a valid certificate of exemption issued by the~~

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1 ~~division.~~

2

3 ~~A sole proprietor, partner, or officer of a corporation who~~
4 ~~elects exemption from this chapter by filing a certificate of~~
5 ~~election under s. 440.05 may not recover benefits or~~
6 ~~compensation under this chapter. An independent contractor~~
7 ~~who provides the general contractor with both an affidavit~~
8 ~~stating that he or she meets the requirements of s.~~
9 ~~440.02(14)(d) and a certificate of exemption is not an~~
10 ~~employee under s. 440.02(14)(c) and may not recover benefits~~
11 ~~under this chapter. For purposes of determining the~~
12 ~~appropriate premium for workers' compensation coverage,~~
13 ~~carriers may not consider any person who meets the~~
14 ~~requirements of this paragraph to be an employee.~~

15 (2) Compensation shall be payable irrespective of
16 fault as a cause for the injury, except as provided in s.
17 440.09(3).

18 Section 6. Section 440.1025, Florida Statutes, is
19 created to read:

20 440.1025 Consideration of public employer workplace
21 safety program in rate-setting; program requirements;
22 rulemaking.--For a public employer to be eligible for receipt
23 of specific identifiable consideration under s. 627.0915 for a
24 workplace safety program in the setting of rates, the public
25 employer must have a workplace safety program. At a minimum,
26 the program must include a written safety policy and safety
27 rules, and make provision for safety inspections, preventative
28 maintenance, safety training, first-aid, accident
29 investigation, and necessary record keeping. For purposes of
30 this section, "public employer" means "any agency within
31 state, county, or municipal government employing individuals

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1 for salary, wages, or other remuneration." The Division may
 2 promulgate rules for insurers to utilize in determining public
 3 employer compliance with the requirements of this section.

4 Section 7. Subsection (5) of section 440.107, Florida
 5 Statutes, is amended to read:

6 440.107 Division powers to enforce employer compliance
 7 with coverage requirements.--

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

26 Section 8. Subsections (2), (5), (12), and (14) of
 27 section 440.13, Florida Statutes, are amended to read:

28 440.13 Medical services and supplies; penalty for
 29 violations; limitations.--

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

31 (a) Subject to the limitations specified elsewhere in

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

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

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

3 2. If the family member is employed and elects to
4 leave that employment to provide attendant or custodial care,
5 the per-hour value of that care equals the per-hour value of
6 the family member's former employment, not to exceed the
7 per-hour value of such care available in the community at
8 large.

9 3. If the family member remains employed while
10 providing attendant or custodial care, the per-hour value of
11 that care equals the per-hour value of the family member's
12 employment, not to exceed the per-hour value of such care
13 available in the community at large.

14 4. A family member or a combination of family members
15 providing nonprofessional attendant care under this paragraph
16 may not be compensated for more than a total of 12 hours per
17 day.

18 (c) If the employer fails to provide treatment or care
19 required by this section after request by the injured
20 employee, the employee may obtain such treatment at the
21 expense of the employer, if the treatment is compensable and
22 medically necessary. There must be a specific request for the
23 treatment, and the employer or carrier must be given a
24 reasonable time period within which to provide the treatment
25 or care. However, the employee is not entitled to recover any
26 amount personally expended for the treatment or service unless
27 he or she has requested the employer to furnish that treatment
28 or service and the employer has failed, refused, or neglected
29 to do so within a reasonable time or unless the nature of the
30 injury requires such treatment, nursing, and services and the
31 employer or his or her superintendent or foreman, having

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1 knowledge of the injury, has neglected to provide the
2 treatment or service.

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

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

22 (f) Upon the written request of the employee, the
23 carrier shall give the employee the opportunity for one change
24 of physician during the course of treatment for any one
25 accident. In the event such a physician ceases to practice in
26 Florida or relocates his or her office at a location that is
27 greater than a 50-mile radius from the employee's residence,
28 the employee is entitled to select another physician from
29 among not fewer than three carrier-authorized physicians who
30 are not professionally affiliated. The employee shall be
31 entitled to select another physician from among not fewer than

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1 three carrier-authorized physicians not professionally
2 affiliated.

3 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

4 (a) In any dispute concerning overutilization, medical
5 benefits, compensability, or disability under this chapter,
6 the carrier or the employee may select an independent medical
7 examiner. The examiner may be a health care provider treating
8 or providing other care to the employee. An independent
9 medical examiner may not render an opinion outside his or her
10 area of expertise, as demonstrated by licensure and applicable
11 practice parameters. Upon the written request of the employee,
12 the carrier shall pay the cost of one independent medical
13 examination per accident. The cost of any additional
14 independent medical examination must be borne by the party
15 requesting the additional independent medical examination. The
16 costs of independent medical examinations expressly relied
17 upon by the judge of compensation claims to award benefits in
18 the final compensation order are taxable costs under s.
19 440.34(3).

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

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

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

28 ~~3. The examiner is unavailable due to injury, death,~~
29 ~~or relocation outside a reasonably accessible geographic area;~~
30 ~~or~~

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

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

7 (c) The carrier may, at its election, contact the
8 claimant directly to schedule a reasonable time for an
9 independent medical examination. The carrier must confirm the
10 scheduling agreement in writing within 5 days and notify
11 claimant's counsel, if any, at least 7 days before the date
12 upon which the independent medical examination is scheduled to
13 occur. An attorney representing a claimant is not authorized
14 to schedule independent medical evaluations under this
15 subsection.

16 (d) If the employee fails to appear for the
17 independent medical examination without good cause and fails
18 to advise the physician at least 24 hours before the scheduled
19 date for the examination that he or she cannot appear, the
20 employee is barred from recovering compensation for any period
21 during which he or she has refused to submit to such
22 examination. Further, the employee shall reimburse the carrier
23 50 percent of the physician's cancellation or no-show fee
24 unless the carrier that schedules the examination fails to
25 timely provide to the employee a written confirmation of the
26 date of the examination pursuant to paragraph (c) which
27 includes an explanation of why he or she failed to appear. The
28 employee may appeal to a judge of compensation claims for
29 reimbursement when the carrier withholds payment in excess of
30 the authority granted by this section.

31 (e) No medical opinion other than the opinion of a

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1 medical advisor appointed by the judge of compensation claims
2 or division, an independent medical examiner, or an authorized
3 treating provider is admissible in proceedings before the
4 judges of compensation claims. The employee or the carrier may
5 each submit into evidence, and the judge of compensation
6 claims shall admit, the medical opinion of no more than one
7 independent medical examiner per specialty.

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

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

14 (a) A three-member panel is created, consisting of the
15 Insurance Commissioner, or the Insurance Commissioner's
16 designee, and two members to be appointed by the Governor,
17 subject to confirmation by the Senate, one member who, on
18 account of present or previous vocation, employment, or
19 affiliation, shall be classified as a representative of
20 employers, the other member who, on account of previous
21 vocation, employment, or affiliation, shall be classified as a
22 representative of employees. The panel shall determine
23 statewide schedules of maximum reimbursement allowances for
24 medically necessary treatment, care, and attendance provided
25 by physicians, hospitals, ambulatory surgical centers,
26 work-hardening programs, pain programs, and durable medical
27 equipment. The maximum reimbursement allowances for inpatient
28 hospital care shall be based on a schedule of per diem rates,
29 to be approved by the three-member panel no later than March
30 1, 1994, to be used in conjunction with a precertification
31 manual as determined by the division. All compensable charges

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1 for hospital outpatient care shall be reimbursed at 75 percent
2 of usual and customary charges. Until the three-member panel
3 approves a schedule of per diem rates for inpatient hospital
4 care and it becomes effective, all compensable charges for
5 hospital inpatient care must be reimbursed at 75 percent of
6 their usual and customary charges. Annually, the three-member
7 panel shall adopt schedules of maximum reimbursement
8 allowances for physicians, hospital inpatient care, hospital
9 outpatient care, ambulatory surgical centers, work-hardening
10 programs, and pain programs. However, the maximum percentage
11 of increase in the individual reimbursement allowance may not
12 exceed the percentage of increase in the Consumer Price Index
13 for the previous year, except when the three-member panel
14 adopts a nationally recognized reimbursement methodology. An
15 individual physician, hospital, ambulatory surgical center,
16 pain program, or work-hardening program shall be reimbursed
17 either the usual and customary charge for treatment, care, and
18 attendance, the agreed-upon contract price, or the maximum
19 reimbursement allowance in the appropriate schedule, whichever
20 is less.

21 (b) As to reimbursement for a prescription medication,
22 the reimbursement amount for a prescription shall be the
23 average wholesale price times 1.2 plus \$4.18 for the
24 dispensing fee, except where the carrier has contracted for a
25 lower amount. Fees for pharmaceuticals and pharmaceutical
26 services shall be reimbursable at the applicable fee schedule
27 amount. Where the employer or carrier has contracted for such
28 services and the employee elects to obtain them through a
29 provider not a party to the contract, the carrier shall
30 reimburse at the schedule, negotiated, or contract price,
31 whichever is lower.

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1 (c) Reimbursement for all fees and other charges for
2 such treatment, care, and attendance, including treatment,
3 care, and attendance provided by any hospital or other health
4 care provider, ambulatory surgical center, work-hardening
5 program, or pain program, must not exceed the amounts provided
6 by the uniform schedule of maximum reimbursement allowances as
7 determined by the panel or as otherwise provided in this
8 section. This subsection also applies to independent medical
9 examinations performed by health care providers under this
10 chapter. Until the three-member panel approves a uniform
11 schedule of maximum reimbursement allowances and it becomes
12 effective, all compensable charges for treatment, care, and
13 attendance provided by physicians, ambulatory surgical
14 centers, work-hardening programs, or pain programs shall be
15 reimbursed at the lowest maximum reimbursement allowance
16 across all 1992 schedules of maximum reimbursement allowances
17 for the services provided regardless of the place of service.
18 In determining the uniform schedule, the panel shall first
19 approve the data which it finds representative of prevailing
20 charges in the state for similar treatment, care, and
21 attendance of injured persons. Each health care provider,
22 health care facility, ambulatory surgical center,
23 work-hardening program, or pain program receiving workers'
24 compensation payments shall maintain records verifying their
25 usual charges. In establishing the uniform schedule of maximum
26 reimbursement allowances, the panel must consider:

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

30 2. The impact upon cost to employers for providing a
31 level of reimbursement for treatment, care, and attendance

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1 which will ensure the availability of treatment, care, and
2 attendance required by injured workers;

3 3. The financial impact of the reimbursement
4 allowances upon health care providers and health care
5 facilities, including trauma centers as defined in s.
6 395.4001, and its effect upon their ability to make available
7 to injured workers such medically necessary remedial
8 treatment, care, and attendance. The uniform schedule of
9 maximum reimbursement allowances must be reasonable, must
10 promote health care cost containment and efficiency with
11 respect to the workers' compensation health care delivery
12 system, and must be sufficient to ensure availability of such
13 medically necessary remedial treatment, care, and attendance
14 to injured workers; and

15 4. The most recent average maximum allowable rate of
16 increase for hospitals determined by the Health Care Board
17 under chapter 408.

18 (14) PAYMENT OF MEDICAL FEES.--

19 (a) Except for emergency care treatment, fees for
20 medical services are payable only to a health care provider
21 certified and authorized to render remedial treatment, care,
22 or attendance under this chapter. A health care provider may
23 not collect or receive a fee from an injured employee within
24 this state, except as otherwise provided by this chapter. Such
25 providers have recourse against the employer or carrier for
26 payment for services rendered in accordance with this chapter.

27 (b) Fees charged for remedial treatment, care, and
28 attendance may not exceed the applicable fee schedules adopted
29 under this chapter, except as provided under a contract
30 entered into between an employer or carrier and a certified
31 health care provider or health care facility for the payment

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1 of medical services for covered expenses.

2 (c) Notwithstanding any other provision of this
3 chapter, following overall maximum medical improvement from an
4 injury compensable under this chapter, the employee is
5 obligated to pay a copayment of \$10 per visit for medical
6 services. The copayment shall not apply to emergency care
7 provided to the employee.

8 Section 9. Paragraph (d) of subsection (1), paragraph
9 (b) of subsection (2), and subsection (15) of section 440.134,
10 Florida Statutes, are amended to read:

11 440.134 Workers' compensation managed care
12 arrangement.--

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

14 (d) "Grievance" means a direct written complaint filed
15 by an injured worker expressing dissatisfaction with the
16 insurer's workers' compensation managed care arrangement's
17 refusal to provide medical care ~~provided by an insurer's~~
18 ~~workers' compensation managed care arrangement health care~~
19 ~~providers, expressed in writing by an injured worker.~~

20 (2)

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

28 (15)(a) A workers' compensation managed care
29 arrangement must have and use procedures for hearing
30 complaints and resolving written grievances from injured
31 workers and health care providers. The procedures must be

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1 aimed at mutual agreement for settlement and may include
2 arbitration procedures. Procedures provided herein are in
3 addition to other procedures contained in this chapter.

4 (b) The grievance procedure must be described in
5 writing and provided to the affected workers and health care
6 providers.

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

17 (d) Grievances must be considered in a timely manner
18 and must be transmitted to appropriate decisionmakers who have
19 the authority to fully investigate the issue and take
20 corrective action. If the insurer or the insurer's workers'
21 compensation arrangement fails to notify the injured worker of
22 the outcome of the grievance in writing within 15 days from
23 the date of receiving the grievance, the grievance shall be
24 presumed to be resolved against the injured worker and the
25 grievance procedures shall be presumed exhausted for purposes
26 of s. 440.192(3).

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

29 (f) All concerned parties must be notified of the
30 results of a grievance.

31 (g) The insurer must report annually, no later than

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1 March 31, to the agency regarding its grievance procedure
2 activities for the prior calendar year. The report must be in
3 a format prescribed by the agency and must contain the number
4 of grievances filed in the past year and a summary of the
5 subject, nature, and resolution of such grievances.

6 Section 10. Paragraph (a) of subsection (1) of section
7 440.14, Florida Statutes, is amended to read:

8 440.14 Determination of pay.--

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

14 (a) If the injured employee has worked in the
15 employment in which she or he was working at the time of the
16 injury, whether for the same or another employer, during
17 substantially the whole of 13 weeks immediately preceding the
18 injury, her or his average weekly wage shall be one-thirteenth
19 of the total amount of wages earned in such employment during
20 the 13 weeks. As used in this paragraph, the term
21 "substantially the whole of 13 weeks" means an actual ~~shall be~~
22 ~~deemed to mean and refer to a constructive~~ period of 13 weeks
23 as a whole, which shall be defined as the 13 complete weeks
24 before the date of the accident, excluding the week the injury
25 occurs. ~~a consecutive period of 91 days, and~~ The term "during
26 substantially the whole of 13 weeks" shall be deemed to mean
27 during not less than 90 percent of the total customary
28 full-time hours of employment within such period considered as
29 a whole.

30 Section 11. Paragraphs (b) and (f) of subsection (1)
31 and paragraph (a) of subsection (3) of section 440.15, Florida

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1 Statutes, are amended to read:

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

5 (1) PERMANENT TOTAL DISABILITY.--

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

20 (f)1. If permanent total disability results from
21 injuries that occurred subsequent to June 30, 1955, and for
22 which the liability of the employer for compensation has not
23 been discharged under s. 440.20(11), the injured employee
24 shall receive additional weekly compensation benefits equal to
25 5 percent of her or his weekly compensation rate, as
26 established pursuant to the law in effect on the date of her
27 or his injury, multiplied by the number of calendar years
28 since the date of injury. The weekly compensation payable and
29 the additional benefits payable under this paragraph, when
30 combined, may not exceed the maximum weekly compensation rate
31 in effect at the time of payment as determined pursuant to s.

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1 440.12(2). Entitlement to these supplemental payments shall
2 cease at age 62 if the employee is eligible for social
3 security benefits under 42 U.S.C. s.~~ss~~-402 or s.~~and~~ 423,
4 whether or not the employee has applied for such benefits.
5 These supplemental benefits shall be paid by the division out
6 of the Workers' Compensation Administration Trust Fund when
7 the injury occurred subsequent to June 30, 1955, and before
8 July 1, 1984. These supplemental benefits shall be paid by the
9 employer when the injury occurred on or after July 1, 1984.
10 Supplemental benefits are not payable for any period prior to
11 October 1, 1974.

12 2.a. The division shall provide by rule for the
13 periodic reporting to the division of all earnings of any
14 nature and social security income by the injured employee
15 entitled to or claiming additional compensation under
16 subparagraph 1. Neither the division nor the employer or
17 carrier shall make any payment of those additional benefits
18 provided by subparagraph 1. for any period during which the
19 employee willfully fails or refuses to report upon request by
20 the division in the manner prescribed by such rules.

21 b. The division shall provide by rule for the periodic
22 reporting to the employer or carrier of all earnings of any
23 nature and social security income by the injured employee
24 entitled to or claiming benefits for permanent total
25 disability. The employer or carrier is not required to make
26 any payment of benefits for permanent total disability for any
27 period during which the employee willfully fails or refuses to
28 report upon request by the employer or carrier in the manner
29 prescribed by such rules or if any employee who is receiving
30 permanent total disability benefits refuses to apply for or
31 cooperate with the employer or carrier in applying for social

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1 security benefits.

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

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

8 (a) Impairment benefits.--

9 1. Once the employee has reached the date of maximum
10 medical improvement, impairment benefits are due and payable
11 within 20 days after the carrier has knowledge of the
12 impairment.

13 2. The three-member panel, in cooperation with the
14 division, shall establish and use a uniform permanent
15 impairment rating schedule. This schedule must be based on
16 medically or scientifically demonstrable findings as well as
17 the systems and criteria set forth in the American Medical
18 Association's Guides to the Evaluation of Permanent
19 Impairment; the Snellen Charts, published by American Medical
20 Association Committee for Eye Injuries; and the Minnesota
21 Department of Labor and Industry Disability Schedules. The
22 schedule should be based upon objective findings. The schedule
23 shall be more comprehensive than the AMA Guides to the
24 Evaluation of Permanent Impairment and shall expand the areas
25 already addressed and address additional areas not currently
26 contained in the guides. On August 1, 1979, and pending the
27 adoption, by rule, of a permanent schedule, Guides to the
28 Evaluation of Permanent Impairment, copyright 1977, 1971,
29 1988, by the American Medical Association, shall be the
30 temporary schedule and shall be used for the purposes hereof.
31 For injuries after July 1, 1990, pending the adoption by

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1 division rule of a uniform disability rating schedule, the
2 Minnesota Department of Labor and Industry Disability Schedule
3 shall be used unless that schedule does not address an injury.
4 In such case, the Guides to the Evaluation of Permanent
5 Impairment by the American Medical Association shall be used.
6 Determination of permanent impairment under this schedule must
7 be made by a physician licensed under chapter 458, a doctor of
8 osteopathic medicine licensed under chapters 458 and 459, a
9 chiropractic physician licensed under chapter 460, a podiatric
10 physician licensed under chapter 461, an optometrist licensed
11 under chapter 463, or a dentist licensed under chapter 466, as
12 appropriate considering the nature of the injury. No other
13 persons are authorized to render opinions regarding the
14 existence of or the extent of permanent impairment.

15 3. All impairment income benefits shall be based on an
16 impairment rating using the impairment schedule referred to in
17 subparagraph 2. Impairment income benefits are paid weekly at
18 a rate equal to the rate of 50 percent of the employee's
19 compensation rate ~~average weekly temporary total disability~~
20 ~~benefit~~, not to exceed the maximum weekly benefit under s.

21 440.12. An employee's entitlement to impairment income
22 benefits begins the day after the employee reaches maximum
23 medical improvement or the expiration of temporary benefits,
24 whichever occurs earlier, and continues until the earlier of:

25 a. The expiration of a period computed at the rate of
26 3 weeks for each percentage point of impairment; or

27 b. The death of the employee.

28 4. After the employee has been certified by a doctor
29 as having reached maximum medical improvement or 6 weeks
30 before the expiration of temporary benefits, whichever occurs
31 earlier, the certifying doctor shall evaluate the condition of

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1 the employee and assign an impairment rating, using the
2 impairment schedule referred to in subparagraph 2.
3 Compensation is not payable for the mental, psychological, or
4 emotional injury arising out of depression from being out of
5 work or from any preexisting mental, psychological, or
6 emotional condition. If the certification and evaluation are
7 performed by a doctor other than the employee's treating
8 doctor, the certification and evaluation must be submitted to
9 the treating doctor, and the treating doctor must indicate
10 agreement or disagreement with the certification and
11 evaluation. The certifying doctor shall issue a written report
12 to the division, the employee, and the carrier certifying that
13 maximum medical improvement has been reached, stating the
14 impairment rating, and providing any other information
15 required by the division. If the employee has not been
16 certified as having reached maximum medical improvement before
17 the expiration of 102 weeks after the date temporary total
18 disability benefits begin to accrue, the carrier shall notify
19 the treating doctor of the requirements of this section.

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

22 6. The division may by rule specify forms and
23 procedures governing the method of payment of wage loss and
24 impairment benefits for dates of accidents before January 1,
25 1994, and for dates of accidents on or after January 1, 1994.

26 Section 12. Subsection (2) of section 440.185, Florida
27 Statutes, is amended to read:

28 440.185 Notice of injury or death; reports; penalties
29 for violations.--

30 (2) Within 7 days after actual knowledge of injury or
31 death, the employer shall report such injury or death to its

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1 carrier, in a format prescribed by the division, and shall
2 provide a copy of such report to the employee or the
3 employee's estate. The report of injury shall contain the
4 following information:

- 5 (a) The name, address, and business of the employer;
6 (b) The name, social security number, street, mailing
7 address, telephone number, and occupation of the employee;
8 (c) The cause and nature of the injury or death;
9 (d) The year, month, day, and hour when, and the
10 particular locality where, the injury or death occurred; ~~and~~
11 (e) A record of the employee's earnings for the 13
12 weeks before the date of injury; and
13 (f)~~(e)~~ Such other information as the division may
14 require by rule.

15
16 The carrier shall, within 14 days after the employer's receipt
17 of the form reporting the injury, file the information
18 required by this subsection with the division in Tallahassee.
19 However, the division may by rule provide for a different
20 reporting system for those types of injuries which it
21 determines should be reported in a different manner and for
22 those cases which involve minor injuries requiring
23 professional medical attention in which the employee does not
24 lose more than 7 days of work as a result of the injury and is
25 able to return to the job immediately after treatment and
26 resume regular work.

27 Section 13. Section 440.191, Florida Statutes, is
28 amended to read:

29 440.191 Employee Assistance and Ombudsman Office.--

30 (1)(a) In order to effect the self-executing features
31 of the Workers' Compensation Law, this chapter shall be

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1 construed to permit injured employees and employers or the
2 employer's carrier to resolve disagreements without undue
3 expense, costly litigation, or delay in the provisions of
4 benefits. It is the duty of all who participate in the
5 workers' compensation system, including, but not limited to,
6 carriers, service providers, health care providers, managed
7 care arrangements, attorneys, employers, and employees, to
8 attempt to resolve disagreements in good faith and to
9 cooperate with the division's efforts to resolve disagreements
10 between the parties. The division may by rule prescribe
11 definitions ~~that are~~ necessary for the effective
12 administration of this section.

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

20 (c) The Employee Assistance and Ombudsman Office,
21 ~~Division of Workers' Compensation~~, shall be a resource
22 available to all employees who participate in the workers'
23 compensation system and shall take all steps necessary to
24 educate and disseminate information to employees and
25 employers. Upon receiving a notice of injury or death, the
26 Employee Assistance and Ombudsman Office is authorized to
27 initiate contact with the injured employee or employee's
28 representative to discuss rights and responsibilities of the
29 employee under this chapter and the services available through
30 the Employee Assistance and Ombudsman Office.

31 (2)(a) ~~An employee may not file a petition requesting~~

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1 ~~any benefit under this chapter unless the employee has~~
2 ~~exhausted the procedures for informal dispute resolution under~~
3 ~~this section.~~

4 (a)~~(b)~~ If at any time the employer or its carrier
5 fails to provide benefits to which the employee believes she
6 or he is entitled, the employee shall contact the office to
7 request assistance in resolving the dispute. The office may
8 review petitions for benefits filed under s. 440.192 shall
9 ~~investigate the dispute and may shall~~ attempt to facilitate an
10 agreement between the employee and the employer or carrier.
11 The employee, the employer, and the carrier shall cooperate
12 with the office and shall timely provide the office with any
13 documents or other information that it may require in
14 connection with its efforts under this section.

15 (b)~~(c)~~ The office may compel parties to attend
16 conferences in person or by telephone in an attempt to resolve
17 disputes quickly and in the most efficient manner possible.
18 Settlement agreements resulting from such conferences must be
19 submitted to the Office of the Judges of Compensation Claims
20 for approval.

21 (c)~~(d)~~ The Employee Assistance and Ombudsman Office
22 may assign an ombudsman to assist the employee in resolving
23 the dispute. ~~If the dispute is not resolved within 30 days~~
24 ~~after the employee contacts the office, The ombudsman may~~
25 ~~shall~~, at the employee's request, assist the employee in
26 drafting a petition for benefits and explain the procedures
27 for filing petitions. ~~The division may by rule determine the~~
28 ~~method used to calculate the 30-day period.~~The Employee
29 Assistance and Ombudsman Office may not represent employees
30 before the judges of compensation claims. An employer or
31 carrier may not pay any attorneys' fees on behalf of the

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1 employee for services rendered or costs incurred in connection
2 with this section, unless expressly authorized elsewhere in
3 this chapter.

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

6 440.192 Procedure for resolving benefit disputes.--

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

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

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

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1 (b) Name, address, and telephone number of the
2 employer.

3 (c) A detailed description of the injury and cause of
4 the injury, including the location of the occurrence and the
5 date of the accident.

6 (d) A detailed description of the employee's job, work
7 responsibilities, and work the employee was performing when
8 the injury occurred.

9 (e) The time period for which compensation was not
10 timely provided and the specific classification of the
11 compensation.

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

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

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

25 (i) The type or nature of treatment care or attendance
26 sought and the justification for such treatment. If the
27 employee is under the care of a physician for the injury
28 identified in paragraph (c), a copy of the physician's
29 request, authorization, or recommendation for treatment, care,
30 or attendant care must accompany the petition.

31 (j) Specific explanation of any other disputed issue

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1 that a judge of compensation claims will be called to rule
2 upon.

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

5 (3) A petition for benefits may contain a claim for
6 past benefits and continuing benefits in any benefit category,
7 but is limited to those in default and ripe, due, and owing on
8 the date the petition is filed. If the employer has elected to
9 satisfy its obligation to provide medical treatment, care, and
10 attendance through a managed care arrangement designated under
11 this chapter, the employee must exhaust all managed care
12 grievance procedures before filing a petition for benefits
13 under this section.

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

17 (5)(4) The petition must include a certification by
18 the claimant or, if the claimant is represented by counsel,
19 the claimant's attorney, stating that the claimant, or
20 attorney if the claimant is represented by counsel, has made a
21 good faith effort to resolve the dispute and that the claimant
22 or attorney was unable to resolve the dispute with the
23 carrier.

24 (6)(5) All motions to dismiss must state with
25 particularity the basis for the motion. The judge of
26 compensation claims shall enter an order upon such motions
27 without hearing, unless good cause for hearing is shown. When
28 any petition or portion of a petition is dismissed for lack of
29 specificity under this subsection, the claimant must be
30 allowed 20 days after the date of the order of dismissal in
31 which to file an amended petition. Any grounds for dismissal

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1 for lack of specificity under this section not asserted within
2 60 ~~30~~ days after receipt of the petition for benefits are
3 thereby waived.

4 ~~(7)(6)~~ If the claimant is not represented by counsel,
5 the Office of the Judges of Compensation Claims may request
6 the Employee Assistance and Ombudsman Office to assist the
7 claimant in filing a petition that meets the requirements of
8 this section.

9 ~~(8)(7)~~ Notwithstanding the provisions of s. 440.34, a
10 judge of compensation claims may not award attorney's fees
11 payable by the carrier for services expended or costs incurred
12 prior to the filing of a petition ~~that does not~~ meeting meet
13 the requirements of this section.

14 ~~(9)(8)~~ Within 30 ~~14~~ days after receipt of a petition
15 for benefits by certified mail, the carrier must either pay
16 the requested benefits without prejudice to its right to deny
17 within 120 days from receipt of the petition or file a
18 response to the petition ~~notice of denial~~ with the Office of
19 the Judges of Compensation Claims ~~division~~. The carrier must
20 list all benefits requested but not paid and explain its
21 justification for nonpayment in the response to the petition
22 ~~notice of denial~~. A carrier that does not deny compensability
23 in accordance with s. 440.20(4) is deemed to have accepted the
24 employee's injuries as compensable, unless it can establish
25 material facts relevant to the issue of compensability that
26 could not have been discovered through reasonable
27 investigation within the 120-day period. The carrier shall
28 provide copies of the response ~~notice~~ to the filing party,
29 employer, and claimant by certified mail.

30 Section 15. Subsections (4) and (11) of section
31 440.20, Florida Statutes, are amended to read:

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1 440.20 Time for payment of compensation; penalties for
2 late payment.--

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

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

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

30 (b) When a claimant is not represented by counsel,
31 upon joint petition of all interested parties, a lump-sum

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

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

31 (c) Notwithstanding s. 440.21(2), when a claimant is

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1 represented by counsel, the claimant may waive all rights to
2 all benefits under this chapter by entering into a settlement
3 agreement releasing the employer and the carrier from
4 liability for workers' compensation benefits in exchange for a
5 lump-sum payment to the claimant. The settlement agreement
6 requires approval by the judge of compensation claims only as
7 to the attorney's fees paid to the claimant's attorney by the
8 claimant. The judge of compensation claims shall not approve
9 settlement proposals, including any stipulations or agreements
10 between the parties or between a claimant and his or her
11 attorney related to the settlement proposal, which provide for
12 an attorney's fee in excess of the amount permitted in s.
13 440.34. The parties need not submit any information or
14 documentation in support of the settlement, except as needed
15 to justify the amount of the attorney's fees. Neither the
16 employer nor the carrier is responsible for any attorney's
17 fees relating to the settlement and release of claims under
18 this section. Payment of the lump-sum settlement amount must
19 be made within 14 days after the date the judge of
20 compensation claims mails the order approving the attorney's
21 fees. Any order entered by a judge of compensation claims
22 approving the attorney's fees as set out in the settlement
23 under this subsection is not considered to be an award and is
24 not subject to modification or review. The judge of
25 compensation claims shall report these settlements to the
26 chief judge in accordance with the requirements set forth in
27 s. 440.11(a) and (b). Settlements entered into under this
28 subsection are valid and apply to all dates of accident.

29 (d) With respect to any lump-sum settlement under this
30 subsection, a judge of compensation claims must consider
31 whether the settlement provides for appropriate recovery of

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1 any child-support arrearage. Neither the employer nor the
2 carrier has a duty to investigate or collect information
3 regarding child-support arrearages.

4 (e)(c) This section applies to all claims that the
5 parties have not previously settled, regardless of the date of
6 accident.

7 Section 16. Subsections (1), (2), (3), and (4) of
8 section 440.25, Florida Statutes, are amended to read:

9 440.25 Procedures for mediation and hearings.--

10 (1) Within 90 ~~21~~ days after a petition for benefits is
11 filed under s. 440.192, a mediation conference concerning such
12 petition shall be held. Within 40 ~~7~~ days after such petition
13 is filed, the judge of compensation claims shall notify the
14 interested parties by order that a mediation conference
15 concerning such petition will be held unless the parties have
16 notified the Office of the Judges of Compensation Claims that
17 a mediation has been held. Such order must ~~notice shall~~ give
18 the date by which, ~~time, and location of~~ the mediation
19 conference must be held. Such order ~~notice~~ may be served
20 personally upon the interested parties or may be sent to the
21 interested parties by mail. Continuances may be granted only
22 if the requesting party demonstrates to the judge of
23 compensation claims that the reason for requesting the
24 continuance arises from circumstances beyond the party's
25 control. Any order granting a continuance must set forth the
26 date of the rescheduled mediation conference. A mediation
27 conference may not be used solely for the purpose of mediating
28 attorney's fees.

29 (2) Any party who participates in a mediation
30 conference shall not be precluded from requesting a hearing
31 following the mediation conference should both parties not

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1 agree to be bound by the results of the mediation conference.
2 A mediation conference is required to be held unless this
3 requirement is waived by the Chief Judge. No later than 3 days
4 prior to the mediation conference, all parties must submit any
5 applicable motions, including, but not limited to, a motion to
6 waive the mediation conference, to the judge of compensation
7 claims.

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

31 (b)1. Unless the parties conduct a private mediation

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1 under subparagraph 2., mediation shall be conducted by a
2 mediator selected by the Deputy Chief Judge from among
3 mediators ~~The Chief Judge shall select a mediator. The~~
4 ~~mediator shall be~~ employed on a full-time basis by the Office
5 of the Judges of Compensation Claims. A mediator must be a
6 member of The Florida Bar for at least 5 years and must
7 complete a mediation training program approved by the Chief
8 Judge. Adjunct mediators may be employed by the Office of the
9 Judges of Compensation Claims on an as-needed basis and shall
10 be selected from a list prepared by the Chief Judge. An
11 adjunct mediator must be independent of all parties
12 participating in the mediation conference. An adjunct mediator
13 must be a member of The Florida Bar for at least 5 years and
14 must complete a mediation training program approved by the
15 Chief Judge. An adjunct mediator shall have access to the
16 office, equipment, and supplies of the judge of compensation
17 claims in each district.

18 2. In the event the parties agree or in the event no
19 mediators under subparagraph 1. are available to conduct the
20 required mediation within the period specified in this
21 section, the parties shall hold a mediation conference at the
22 carrier's expense within the 90-day period set for mediation.
23 The mediation conference shall be conducted by a mediator who
24 is a member in good standing of The Florida Bar with at least
25 5 years' of Florida practice and is certified under s. 44.106.
26 If the parties do not agree upon a mediator within 10 days
27 after the date of the order, the claimant shall notify the
28 judge in writing and the judge shall appoint a mediator under
29 this subparagraph within 7 days.In the event both parties
30 agree, the results of the mediation conference shall be
31 binding and neither party shall have a right to appeal the

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1 results. In the event either party refuses to agree to the
2 results of the mediation conference, the results of the
3 mediation conference as well as the testimony, witnesses, and
4 evidence presented at the conference shall not be admissible
5 at any subsequent proceeding on the claim. The mediator shall
6 not be called in to testify or give deposition to resolve any
7 claim for any hearing before the judge of compensation claims.
8 The employer may be represented by an attorney at the
9 mediation conference if the employee is also represented by an
10 attorney at the mediation conference.

11 (c) The parties shall make a good-faith effort to
12 complete the pretrial stipulations before the conclusion of
13 the mediation conference if the claims, except for attorney's
14 fees and costs, have not been settled and if any claims in any
15 filed petition remain unresolved. The judge of compensation
16 claims may sanction a party or both parties for failure to
17 complete the pretrial stipulations before the conclusion of
18 the mediation conference.

19 (4)(a) If the parties fail to submit written pretrial
20 stipulations at the mediation conference, on the 10th day
21 following commencement of mediation, the questions in dispute
22 have not been resolved, the judge of compensation claims shall
23 order a pretrial hearing to occur within 14 days after the
24 date of mediation ordered by the judge of compensation claims
25 hold a pretrial hearing. The judge of compensation claims
26 shall give the interested parties at least 7 days' advance
27 notice of the pretrial hearing by mail. At the pretrial
28 hearing, the judge of compensation claims shall, subject to
29 paragraph (b), set a date for the final hearing that allows
30 the parties at least 30 days to conduct discovery unless the
31 parties consent to an earlier hearing date.

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

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

21 (d) The final hearing shall be held within 210 days
22 after receipt of the petition for benefits in the county where
23 the injury occurred, if the injury occurred in this state,
24 unless otherwise agreed to between the parties and authorized
25 by the judge of compensation claims in the county where the
26 injury occurred. If the injury occurred outside ~~without~~ the
27 state and is one for which compensation is payable under this
28 chapter, then the final hearing ~~above referred to~~ may be held
29 in the county of the employer's residence or place of
30 business, or in any other county of the state that ~~which~~ will,
31 in the discretion of the Chief Judge, be the most convenient

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1 for a hearing. The final hearing shall be conducted by a judge
2 of compensation claims, who shall, within 30 ~~14~~ days after
3 final hearing or closure of the hearing record, unless
4 otherwise agreed by the parties, enter a final order on the
5 merits of the disputed issues ~~determine the dispute in a~~
6 ~~summary manner~~. The judge of compensation claims may enter an
7 abbreviated final order in cases when compensability is not
8 disputed. Either party may request separate findings of fact
9 and conclusions of law. At the final ~~such~~ hearing, the
10 claimant and employer may each present evidence in respect of
11 the claims presented by the petition for benefits ~~such claim~~
12 and may be represented by any attorney authorized in writing
13 for such purpose. When there is a conflict in the medical
14 evidence submitted at the hearing, the provisions of s. 440.13
15 shall apply. The report or testimony of the expert medical
16 advisor shall be made a part of the record of the proceeding
17 and shall be given the same consideration by the judge of
18 compensation claims as is accorded other medical evidence
19 submitted in the proceeding; and all costs incurred in
20 connection with such examination and testimony may be assessed
21 as costs in the proceeding, subject to the provisions of s.
22 440.13. No judge of compensation claims may make a finding of
23 a degree of permanent impairment that is greater than the
24 greatest permanent impairment rating given the claimant by any
25 examining or treating physician, except upon stipulation of
26 the parties.

27 (e) The order making an award or rejecting the claim,
28 referred to in this chapter as a "compensation order," shall
29 set forth the findings of ultimate facts and the mandate; and
30 the order need not include any other reason or justification
31 for such mandate. The compensation order shall be filed in the

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1 office of the division at Tallahassee. A copy of such
2 compensation order shall be sent by mail to the parties and
3 attorneys of record at the last known address of each, with
4 the date of mailing noted thereon.

5 (f) Each judge of compensation claims is required to
6 submit a special report to the Chief Judge in each contested
7 workers' compensation case in which the case is not determined
8 within 14 days of final hearing. Said form shall be provided
9 by the Chief Judge and shall contain the names of the judge of
10 compensation claims and of the attorneys involved and a brief
11 explanation by the judge of compensation claims as to the
12 reason for such a delay in issuing a final order. The Chief
13 Judge shall compile these special reports into an annual
14 public report to the Governor, the Secretary of Labor and
15 Employment Security, the Legislature, The Florida Bar, and the
16 appellate district judicial nominating commissions.

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

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

27 (h)(i) To expedite dispute resolution and to enhance
28 the self-executing features of the Workers' Compensation Law,
29 the Chief Judge shall make provision by rule or order for the
30 resolution of appropriate motions by judges of compensation
31 claims without oral hearing upon submission of brief written

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1 statements in support and opposition, and for expedited
2 discovery and docketing. Unless the judge of compensation
3 claims orders a hearing under paragraph (i), claims related to
4 the determination of pay under s. 440.14 shall be resolved
5 under this paragraph.

6 (i)(j) To further expedite dispute resolution and to
7 enhance the self-executing features of the system, those
8 petitions filed in accordance with s. 440.192 that involve a
9 claim for benefits of \$5,000 or less shall, in the absence of
10 compelling evidence to the contrary, be presumed to be
11 appropriate for expedited resolution under this paragraph; and
12 any other claim filed in accordance with s. 440.192, upon the
13 written agreement of both parties and application by either
14 party, may similarly be resolved under this paragraph. Claims
15 for medical-only benefits of \$5,000, or less, or medical
16 mileage reimbursement shall, in the absence of compelling
17 evidence to the contrary, be resolved through the expedited
18 dispute resolution process under this paragraph. For purposes
19 of expedited resolution pursuant to this paragraph, the Chief
20 Judge shall make provision by rule or order for expedited and
21 limited discovery and expedited docketing in such cases. At
22 least 15 days prior to hearing, the parties shall exchange and
23 file with the judge of compensation claims a pretrial outline
24 of all issues, defenses, and witnesses on a form promulgated
25 by the Chief Judge; provided, in no event shall such hearing
26 be held without 15 days' written notice to all parties. No
27 pretrial hearing shall be held. The judge of compensation
28 claims shall limit all argument and presentation of evidence
29 at the hearing to a maximum of 30 minutes, and such hearings
30 shall not exceed 30 minutes in length. Neither party shall be
31 required to be represented by counsel. The employer or carrier

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1 may be represented by an adjuster or other qualified
2 representative. The employer or carrier and any witness may
3 appear at such hearing by telephone. The rules of evidence
4 shall be liberally construed in favor of allowing introduction
5 of evidence.

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

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

16
17 Regardless of the date benefits were initially requested,
18 attorney's fees do not attach under this subsection until 30
19 days from the date the carrier or employer, if self-insured,
20 receives the petition.

21 Section 17. Subsection (4) of section 440.29, Florida
22 Statutes, is amended to read:

23 440.29 Procedure before the judge of compensation
24 claims.--

25 (4) All medical reports of authorized treating health
26 care providers or independent medical examiners whose medical
27 opinion is submitted under s. 440.13(5)(e) relating to the
28 claimant and subject accident shall be received into evidence
29 by the judge of compensation claims upon proper motion.
30 However, such records must be served on the opposing party at
31 least 30 days before the final hearing. This section does not

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1 limit any right of further discovery, including, but not
2 limited to, depositions.

3 Section 18. Subsections (1) and (3) of section 440.34,
4 Florida Statutes, are amended to read:

5 440.34 Attorney's fees; costs.--

6 (1) A fee, gratuity, or other consideration may not be
7 paid for services rendered for a claimant in connection with
8 any proceedings arising under this chapter, unless approved as
9 reasonable by the judge of compensation claims or court having
10 jurisdiction over such proceedings. Except as provided by this
11 subsection, any attorney's fee approved by a judge of
12 compensation claims for services rendered to a claimant must
13 equal to 25 ~~20~~ percent of the first \$5,000 of the amount of
14 the benefits secured, 20 ~~15~~ percent of the next \$5,000 of the
15 amount of the benefits secured, 15 ~~10~~ percent of the remaining
16 amount of the benefits secured to be provided during the first
17 10 years after the date the claim is filed, and 10 ~~5~~ percent
18 of the benefits secured after 10 years.

19 (a) However, the judge of compensation claims shall
20 consider the following factors in each case and may approve an
21 increase or decrease the attorney's fee of up to \$2,500, based
22 on a reasonable hourly rate, except in those cases set forth
23 in s. 440.34(3)(c), if, in her or his judgment, the judge of
24 compensation claims expressly finds that the attorney's fees
25 based on benefits secured fails to fairly compensate the
26 attorney and that the circumstances of the particular case
27 warrant such action. Such fees shall be allowed for any
28 petition for benefits that were ripe, due, and owing and
29 should have been raised in such petition under this paragraph.
30 Any fees are waived on any other benefits which were not
31 raised and which were ripe, due, and owing at the time the

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1 issues are resolved.

2 (b) The judge of compensation claims shall not approve
3 a compensation order, a joint stipulation for lump-sum
4 settlement, a stipulation or agreement between a claimant and
5 his or her attorney, or any other agreement related to
6 benefits under this chapter which provides for an attorney's
7 fee in excess of the amount permitted by this section.†

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

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

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

15 ~~(d) The time limitation imposed by the claimant or the~~
16 ~~circumstances.~~

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

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

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

28 (a) Against whom she or he successfully asserts a
29 petition claim for medical benefits only, if the claimant has
30 not filed or is not entitled to file at such time a claim for
31 disability, permanent impairment, wage-loss, or death

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1 benefits, arising out of the same accident; or

2 (b) In any case in which the employer or carrier files
 3 a response to petition denying benefits ~~notice of denial~~ with
 4 the office of the Judges of Compensation Claims ~~division~~ and
 5 the injured person has employed an attorney in the successful
 6 prosecution of the petition ~~claim~~; or

7 (c) In a proceeding in which a carrier or employer
 8 denies that an injury occurred for which compensation benefits
 9 are payable, and the claimant prevails on the issue of
 10 compensability; or

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

13

14 Regardless of the date benefits were initially requested,
 15 attorney's fees may not attach under this subsection until 30
 16 days from the date the carrier or employer, if self-insured,
 17 receives the petition and denies benefits.

18

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

25 Section 19. Section 440.345, Florida Statutes, is
 26 amended to read:

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

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1 Compensation Claims ~~division~~ shall annually summarize such
2 data in a report to the President of the Senate, the Speaker
3 of the House of Representatives, and the Governor ~~Workers'~~
4 ~~Compensation Oversight Board.~~

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

7 440.39 Compensation for injuries when third persons
8 are liable.--

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

12 Section 21. Section 627.0915, Florida Statutes, is
13 amended to read:

14 627.0915 Rate filings; workers' compensation,
15 drug-free workplace, and safe employers.--The Department of
16 Insurance shall approve rating plans for workers' compensation
17 insurance that give specific identifiable consideration in the
18 setting of rates to employers that either implement a
19 drug-free workplace program pursuant to rules adopted by the
20 Division of Workers' Compensation of the Department of Labor
21 and Employment Security or implement a safety program pursuant
22 to provisions of the rating plan approved by the Division of
23 ~~Safety pursuant to rules adopted by the Division of Safety of~~
24 ~~the Department of Labor and Employment Security~~ or implement
25 both a drug-free workplace program and a safety program. ~~The~~
26 ~~Division of Safety may by rule require that the client of a~~
27 ~~help supply services company comply with the essential~~
28 ~~requirements of a workplace safety program as a condition for~~
29 ~~receiving a premium credit. The plans must take effect January~~
30 ~~1, 1994, must be actuarially sound, and must state the savings~~
31 ~~anticipated to result from such drug-testing and safety~~

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1 ~~programs.~~

2 Section 22. The amendments to sections 440.02 and
3 440.15, Florida Statutes, in this act shall not be construed
4 to affect any determination of disability under section
5 112.18, section 112.181, or section 112.19, Florida Statutes.

6 Section 23. Subsection (4) is added to section
7 627.412, Florida Statutes, to read:

8 627.412 Standard provisions, in general.--

9 (4) Notwithstanding any other law, a public entity or
10 agency may purchase a consolidated insurance program for the
11 purpose of providing coverage for workers' compensation,
12 employer's liability, general liability, builder's risk, or
13 pollution liability to the public entity or agency or to a
14 contractor or subcontractor for a public construction project.

15 Section 24. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 invalidity does not affect other provisions or applications of
18 the act which can be given effect without the invalid
19 provision or application, and to this end the provisions of
20 this act are declared severable.

21 Section 25. Subsection (3) of section 440.45, Florida
22 Statutes, is repealed.

23 Section 26. Effective October 1, 2001, section
24 440.4416, Florida Statutes, is repealed.

25 Section 27. Except as otherwise expressly provided in
26 this act, this act shall take effect January 1, 2002.

27

28

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

30 And the title is amended as follows:

31 Delete everything before the enacting clause

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1 admissibility of certain medical opinions;
2 revising the limitation on medical fees;
3 amending s. 440.134, F.S.; revising the
4 definitions applied to workers' compensation
5 managed care arrangements; eliminating
6 provisions mandating the use of such
7 arrangements; revising the procedures governing
8 grievances related to such arrangements;
9 amending s. 440.14, F.S.; revising the
10 computation of the average weekly wage of an
11 employee for the purposes of determining
12 benefits; amending s. 440.15, F.S.; revising
13 the criteria for permanent total disability;
14 revising the compensation rate for impairment
15 income benefits; amending s. 440.185, F.S.;
16 specifying the information that must be
17 included in a report of injury; amending s.
18 440.191, F.S.; requiring the Employee
19 Assistance and Ombudsman Office to initiate
20 contact with an injured employee to discuss
21 rights and responsibilities; revising other
22 duties of the office; amending s. 440.192,
23 F.S.; revising the procedures for resolving
24 benefit disputes and filing petitions for
25 benefits; specifying the information that must
26 be included in a petition for benefits;
27 amending s. 440.20, F.S.; specifying time for
28 payment of compensation; prescribing the
29 criteria for determining when a lump-sum
30 settlement may be entered; specifying the
31 effect of a lump-sum settlement; amending s.

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1 440.25, F.S.; revising the procedures governing
2 mediation and the hearing of claims; amending
3 s. 440.29, F.S.; requiring opinions of
4 independent medical examiners to be received
5 into evidence under certain conditions;
6 amending s. 440.34, F.S.; revising the limit on
7 the amount of attorney's fees that may be
8 approved by a judge of compensation claims and
9 eliminating factors that the judge must
10 consider; applying such limits to any agreement
11 related to benefits under chapter 440, F.S.;
12 amending s. 440.345, F.S.; requiring the
13 reporting of attorney's fees to the Office of
14 the Judges of Compensation Claims and requiring
15 the Office of the Judges of Compensation Claims
16 to report such data to the Legislature and
17 Governor; amending s. 440.39, F.S.; providing
18 that the section does not impose a duty on the
19 employer to preserve evidence; amending s.
20 627.0915, F.S.; providing for a safety program
21 discount; amending s. 627.412, F.S.; providing
22 that a public entity or agency may purchase a
23 consolidated insurance program for public
24 construction projects; repealing s. 440.4416,
25 F.S., which creates the Workers' Compensation
26 Oversight Board; repealing s. 440.45(3), F.S.;
27 eliminating the requirement that the Chief
28 Judge select judges to rotate as docketing
29 judges; providing for severability; providing
30 effective dates.
31