

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

Amendment No. Barcode 984530

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Latvala moved the following amendment:

Senate Amendment (with title amendment)
Delete everything after the enacting clause

and insert:

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

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

(7) "Construction industry" means any business that carries out for-profit activities involving ~~the carrying out of~~ any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. ~~When appropriate to the context, "construction" refers to the act of construction or the result of construction.~~ However, the term "construction" does shall not mean a homeowner's ~~landowner's~~ act of construction or the result of a construction upon his or her own premises, 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 for remuneration
15 for such corporation within this state, whether or not such
16 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. Effective January 1, 2002,as to officers of a
21 corporation who are actively engaged in the construction
22 industry, no more than ~~two~~ three officers of such corporation
23 or of any group of affiliated corporations may elect to be
24 exempt from this chapter by filing written notice of the
25 election with the division as provided in s. 440.05, however;

26 a. Such election is valid only with respect to an
27 officer who is the president, vice president, secretary, or
28 treasurer of the corporation.

29 b. Such election is valid only with respect to an
30 officer who owns not less than 10 percent of the stock of the
31 corporation.

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

4
5 Services are presumed to have been rendered to the corporation
6 if the officer is compensated by other than dividends upon
7 shares of stock of the corporation which the officer owns.

8 The term "affiliated" means and includes one or more
9 corporations or entities, any one of which is a corporation
10 actively engaged in the construction industry, under the same
11 or substantially the same control of a group of business
12 entities which are connected or associated so that one entity
13 controls or has the power to control each of the other
14 business entities. The term "affiliated" includes the
15 officers, directors, executives, shareholders active in
16 management, employees, and agents of the affiliated
17 corporation. The ownership by one business entity of a
18 controlling interest in another business entity or a pooling
19 of equipment or income among business entities shall be prima
20 facie evidence that one business entity is affiliated with
21 another.

22 (c) "Employee" includes all persons who are being paid
23 by a general contractor for work performed by or as a
24 subcontractor or employee of a subcontractor are employees of
25 the general contractor, except any person who:~~a sole~~
26 ~~proprietor or a partner who devotes full time to the~~
27 ~~proprietorship or partnership and, except as provided in this~~
28 ~~paragraph, elects to be included in the definition of employee~~
29 ~~by filing notice thereof as provided in s. 440.05. Partners or~~
30 ~~sole proprietors actively engaged in the construction industry~~
31 ~~are considered employees unless they elect to be excluded from~~

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1 ~~the definition of employee by filing written notice of the~~
2 ~~election with the division as provided in s. 440.05. However,~~
3 ~~no more than three partners in a partnership that is actively~~
4 ~~engaged in the construction industry may elect to be excluded.~~
5 ~~A sole proprietor or partner who is actively engaged in the~~
6 ~~construction industry and who elects to be exempt from this~~
7 ~~chapter by filing a written notice of the election with the~~
8 ~~division as provided in s. 440.05 is not an employee. For~~
9 ~~purposes of this chapter, an independent contractor is an~~
10 ~~employee unless he or she meets all of the conditions set~~
11 ~~forth in subparagraph (d)1.~~

12 ~~(d) "Employee" does not include:~~

13 ~~1. An independent contractor, if:~~

14 ~~a. The independent contractor~~

15 ~~1. Maintains a separate business with his or her own~~
16 ~~work facility, truck, equipment, materials, or similar~~
17 ~~accommodations;~~

18 ~~2.b. Has a social security number; or The independent~~
19 ~~contractor holds or has applied for a federal employer~~
20 ~~identification number, if required to do so by any federal,~~
21 ~~state, or local statute, rule, or regulation unless the~~
22 ~~independent contractor is a sole proprietor who is not~~
23 ~~required to obtain a federal employer identification number~~
24 ~~under state or federal requirements;~~

25 ~~3.c. The independent contractor performs or agrees to~~
26 ~~perform specific services or work for specific amounts of~~
27 ~~money and Controls the means of performing the services or~~
28 ~~work that he or she was hired to perform or supply;~~

29 ~~4.d. The independent contractor Incurs the principal~~
30 ~~expenses related to the service or work that he or she~~
31 ~~performs or agrees to perform;~~

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

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

9 ~~7.g. The independent contractor~~ May realize a profit
10 or suffer a loss in connection with performing work or
11 services; and

12 ~~8.h. The independent contractor~~ Has continuing or
13 recurring business liabilities or obligations. ~~7~~ and

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

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

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

27 ~~1.2.~~ A real estate salesperson or agent, if that
28 person agrees, in writing, to perform for remuneration solely
29 by way of commission.

30 ~~2.3.~~ Bands, orchestras, and musical and theatrical
31 performers, including disk jockeys, performing in licensed

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1 premises as defined in chapter 562, if a written contract
2 evidencing an independent contractor relationship is entered
3 into before the commencement of such entertainment.

4 ~~3.4.~~ An owner-operator of a motor vehicle who
5 transports property under a written contract with a motor
6 carrier which evidences a relationship by which the
7 owner-operator assumes the responsibility of an employer for
8 the performance of the contract, if the owner-operator is
9 required to furnish the necessary motor vehicle equipment and
10 all costs incidental to the performance of the contract,
11 including, but not limited to, fuel, taxes, licenses, repairs,
12 and hired help; and the owner-operator is paid a commission
13 for transportation service and is not paid by the hour or on
14 some other time-measured basis.

15 ~~4.5.~~ A person whose employment is both casual and not
16 in the course of the trade, business, profession, or
17 occupation of the employer.

18 ~~5.6.~~ A volunteer, except a volunteer worker for the
19 state or a county, municipality, or other governmental entity.
20 A person who does not receive monetary remuneration for
21 services is presumed to be a volunteer unless there is
22 substantial evidence that a valuable consideration was
23 intended by both employer and employee. For purposes of this
24 chapter, the term "volunteer" includes, but is not limited to:

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

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1 equivalent to the customary mileage and per diem paid to
2 salaried workers in the community as determined by the
3 division; and
4 b. Volunteers participating in federal programs
5 established under Pub. L. No. 93-113.
6 6. Domestic servants in private houses.
7 7. Agricultural laborers on a farm in the employ of a
8 bona fide farmer or association of farmers who employ 5 or
9 fewer regular employees and who employ fewer than 12 other
10 employees at one time for seasonal agricultural labor that is
11 completed in less than 30 days, if such seasonal employment
12 does not exceed 45 days in the same calendar year. The term
13 "farm" includes stock, dairy, poultry, fruit, fur-bearing
14 animals, fish, and truck farms, ranches, nurseries, and
15 orchards. The term "agricultural labor" includes field
16 foremen, timekeepers, checkers, and other farm labor
17 supervisory personnel.
18 8. Professional athletes, such as professional boxers,
19 wrestlers, baseball, football, basketball, hockey, polo,
20 tennis, jai alai, and similar players, and motor sports teams
21 competing in a motor racing event as defined in s. 549.08.
22 9. Persons performing labor under a sentence of a
23 court to perform community services as provided in s. 316.193.
24 ~~7. Any officer of a corporation who elects to be~~
25 ~~exempt from this chapter.~~
26 ~~8. A sole proprietor or officer of a corporation who~~
27 ~~actively engages in the construction industry, and a partner~~
28 ~~in a partnership that is actively engaged in the construction~~
29 ~~industry, who elects to be exempt from the provisions of this~~
30 ~~chapter. Such sole proprietor, officer, or partner is not an~~
31 ~~employee for any reason until the notice of revocation of~~

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1 ~~election filed pursuant to s. 440.05 is effective.~~

2 ~~10.9.~~ An exercise rider who does not work for a single
3 horse farm or breeder, and who is compensated for riding on a
4 case-by-case basis, provided a written contract is entered
5 into prior to the commencement of such activity which
6 evidences that an employee/employer relationship does not
7 exist.

8 ~~11.10.~~ A taxicab, limousine, or other passenger
9 vehicle-for-hire driver who operates said vehicles pursuant to
10 a written agreement with a company which provides any
11 dispatch, marketing, insurance, communications, or other
12 services under which the driver and any fees or charges paid
13 by the driver to the company for such services are not
14 conditioned upon, or expressed as a proportion of, fare
15 revenues.

16 (15)(a) "Employer" means the state and all political
17 subdivisions thereof, all public and quasi-public corporations
18 therein, every person carrying on any employment, and the
19 legal representative of a deceased person or the receiver or
20 trustees of any person. If the employer is a corporation,
21 parties in actual control of the corporation, including, but
22 not limited to, the president, officers who exercise broad
23 corporate powers, directors, and all shareholders who directly
24 or indirectly own a controlling interest in the corporation,
25 are considered the employer for the purposes of ss. 440.105
26 and 440.106.

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

31 (16)(a) "Employment," means, not including subsection

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1 (4), the payment of any remuneration for work or services
2 rendered or promised, or the provision of goods or services
3 and, subject to the other provisions of this chapter, means
4 any service performed by an employee for the person employing
5 him or her; and-

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

7 ~~(a)1. Employment by the state and all political~~
8 ~~subdivisions thereof and all public and quasi-public~~
9 ~~corporations therein, including officers elected at the polls.~~

10 ~~(b)2. All private employments in which four or more~~
11 ~~employees are employed by the same employer or, with respect~~
12 ~~to the construction industry, all private employment in which~~
13 ~~one or more employees are employed by the same employer.~~

14 ~~(c)3. Volunteer firefighters responding to or~~
15 ~~assisting with fire or medical emergencies whether or not the~~
16 ~~firefighters are on duty.~~

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

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

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

31 ~~3. Professional athletes, such as professional boxers,~~

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1 ~~wrestlers, baseball, football, basketball, hockey, polo,~~
2 ~~tennis, jai alai, and similar players, and motorsports teams~~
3 ~~competing in a motor racing event as defined in s. 549.08.~~

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

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

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

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

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

14 1. Severe sensory or motor disturbances;

15 2. Severe communication disturbances;

16 3. Severe complex integrated disturbances of cerebral
17 function;

18 4. Severe episodic neurological disorders; or

19 5. Other severe brain and closed-head injury

20 conditions at least as severe in nature as any condition
21 provided in subparagraphs 1.-4.;

22 (d) Second-degree or third-degree burns of 25 percent
23 or more of the total body surface or third-degree burns of 5
24 percent or more to the face and hands; or

25 (e) Total or industrial blindness; or

26 ~~(f) Any other injury that would otherwise qualify~~
27 ~~under this chapter of a nature and severity that would qualify~~
28 ~~an employee to receive disability income benefits under Title~~
29 ~~II or supplemental security income benefits under Title XVI of~~
30 ~~the federal Social Security Act as the Social Security Act~~
31 ~~existed on July 1, 1992, without regard to any time~~

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1 ~~limitations provided under that act.~~

2 Section 2. Subsections (10), (11), (12), (13), (14),
3 and (15) are added to section 440.14, Florida Statutes, to
4 read:

5 440.05 Election of exemption; revocation of election;
6 notice; certification.--

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

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

19 (12) Any sole proprietor or partner claiming an
20 exemption under this section shall maintain a copy of his or
21 her federal income tax records for each of the immediately
22 previous 3 years in which he or she claims an exemption. Such
23 federal income tax records must include a complete copy of the
24 following for each year in which an exemption is claimed:

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

27 (b) For partners, a copy of the partner's Federal
28 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
29 Form 1040 and its accompanying Schedule E. The sole proprietor
30 or partner in question shall produce, upon request by the
31 division, a copy of those documents together with a statement

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1 by the sole proprietor that the tax records provided are true
2 and accurate copies of what the sole proprietor or partner has
3 filed with the federal Internal Revenue Service. The statement
4 must be signed under oath by the sole proprietor or partner in
5 question and must be notarized. The division shall issue a
6 stop-work order under s. 440.107(5) to any sole proprietor or
7 partner who fails or refuses to produce a copy of the tax
8 records and affidavit required under this paragraph to the
9 division within 3 business days after that request and who has
10 failed to otherwise secure insurance for the provision of
11 workers' compensation benefits for himself or herself if
12 required under this chapter to do so.

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

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1 this chapter to do so.

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

8 (15) Exemptions pertain only to the person claiming
 9 exemption and only for the entity that is the subject of the
 10 federal income tax reports filed by the person claiming the
 11 exemption. A separate exemption is required for every
 12 proprietorship, partnership, or corporation from which an
 13 individual receives any remuneration for labor, services, or
 14 products provided.

15 Section 3. Section 440.06, Florida Statutes, is
 16 amended to read:

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

27 Section 4. Subsection (1) of section 440.09, Florida
 28 Statutes, is amended, and subsection (9) is added to that
 29 section, to read:

30 440.09 Coverage.--

31 (1) The employer shall pay compensation or furnish

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1 benefits required by this chapter if the employee suffers an
2 accidental compensable injury or death arising out of work
3 performed in the course and the scope of employment. The
4 injury, its occupational cause, and any resulting
5 manifestations or disability shall be established to a
6 reasonable degree of medical certainty and by objective
7 medical findings. Mental or nervous injuries occurring as a
8 manifestation of an injury compensable under this section
9 shall be demonstrated by clear and convincing evidence. In
10 cases involving occupational disease or repetitive exposure,
11 both causation and sufficient exposure to support causation
12 shall be proven by the preponderance of evidence.

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

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

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

30 (d) If an accident happens while the employee is
31 employed elsewhere than in this state, which would entitle the

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1 employee or his or her dependents to compensation if it had
2 happened in this state, the employee or his or her dependents
3 are entitled to compensation if the contract of employment was
4 made in this state, or the employment was principally
5 localized in this state. However, if an employee receives
6 compensation or damages under the laws of any other state, the
7 total compensation for the injury may not be greater than is
8 provided in this chapter.

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

15 Section 5. Section 440.10, Florida Statutes, is
16 amended to read:

17 440.10 Liability for compensation.--

18 (1)(a) Every employer coming within the provisions of
19 this chapter, including any brought within the chapter by
20 ~~waiver of exclusion or of exemption~~, shall be liable for, and
21 shall secure, the payment to his or her employees, or any
22 physician, surgeon, or pharmacist providing services under the
23 provisions of s. 440.13, of the compensation payable under ss.
24 440.13, 440.15, and 440.16. Any contractor or subcontractor
25 who engages in any public or private construction in the state
26 shall secure and maintain compensation for his or her
27 employees under this chapter as provided in s. 440.38.

28 (b) In case a contractor sublets any part or parts of
29 his or her contract work to a subcontractor or subcontractors,
30 all of the employees of such contractor and subcontractor or
31 subcontractors engaged on such contract work shall be deemed

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1 to be employed in one and the same business or establishment;
2 and the contractor shall be liable for, and shall secure, the
3 payment of compensation to all such employees, except to
4 employees of a subcontractor who has secured such payment.

5 (c) A contractor shall ~~may~~ require a subcontractor to
6 provide evidence of workers' compensation insurance ~~or a copy~~
7 ~~of his or her certificate of election. A subcontractor~~
8 ~~electing to be exempt as a sole proprietor, partner, or~~
9 ~~officer of a corporation shall provide a copy of his or her~~
10 ~~certificate of election to the contractor.~~

11 (d) ~~1.~~ If a contractor becomes liable for the payment
12 of compensation to the employees of a subcontractor who has
13 failed to secure such payment in violation of s. 440.38, the
14 contractor or other third-party payor shall be entitled to
15 recover from the subcontractor all benefits paid or payable
16 plus interest unless the contractor and subcontractor have
17 agreed in writing that the contractor will provide coverage.

18 ~~2. If a contractor or third-party payor becomes liable~~
19 ~~for the payment of compensation to the employee of a~~
20 ~~subcontractor who is actively engaged in the construction~~
21 ~~industry and has elected to be exempt from the provisions of~~
22 ~~this chapter, but whose election is invalid, the contractor or~~
23 ~~third-party payor may recover from the claimant, partnership,~~
24 ~~or corporation all benefits paid or payable plus interest,~~
25 ~~unless the contractor and the subcontractor have agreed in~~
26 ~~writing that the contractor will provide coverage.~~

27 (e) A subcontractor is not liable for the payment of
28 compensation to the employees of another subcontractor on such
29 contract work and is not protected by the
30 exclusiveness-of-liability provisions of s. 440.11 from action
31 at law or in admiralty on account of injury of such employee

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1 of another subcontractor.

2 (f) If an employer willfully fails to secure
3 compensation as required by this chapter, the division may
4 assess against the employer a penalty not to exceed \$5,000 for
5 each employee of that employer who is classified by the
6 employer as an independent contractor but who is found by the
7 division to not meet the criteria for an independent
8 contractor that are set forth in s. 440.02.

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

11 ~~1.~~ the independent contractor provides the general
12 contractor with an affidavit stating that he or she meets all
13 the requirements of s. 440.02(14)(d). ~~An~~ and

14 ~~2.~~ ~~The independent contractor provides the general~~
15 ~~contractor with a valid certificate of workers' compensation~~
16 ~~insurance or a valid certificate of exemption issued by the~~
17 ~~division.~~

18
19 ~~A sole proprietor, partner, or officer of a corporation who~~
20 ~~elects exemption from this chapter by filing a certificate of~~
21 ~~election under s. 440.05 may not recover benefits or~~
22 ~~compensation under this chapter. An independent contractor~~
23 ~~who provides the general contractor with both an affidavit~~
24 ~~stating that he or she meets the requirements of s.~~
25 ~~440.02(14)(d) and a certificate of exemption is not an~~
26 ~~employee under s. 440.02(14)(c) and may not recover benefits~~
27 ~~under this chapter. For purposes of determining the~~
28 ~~appropriate premium for workers' compensation coverage,~~
29 ~~carriers may not consider any person who meets the~~
30 ~~requirements of this paragraph to be an employee.~~

31 (2) Compensation shall be payable irrespective of

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1 fault as a cause for the injury, except as provided in s.
2 440.09(3).

3 Section 6. Section 440.1025, Florida Statutes, is
4 created to read:

5 440.1025 Consideration of public employer workplace
6 safety program in rate-setting; program requirements;
7 rulemaking.--For a public employer to be eligible for receipt
8 of specific identifiable consideration under s. 627.0915 for a
9 workplace safety program in the setting of rates, the public
10 employer must have a workplace safety program. At a minimum,
11 the program must include a written safety policy and safety
12 rules, and make provision for safety inspections, preventative
13 maintenance, safety training, first-aid, accident
14 investigation, and necessary record keeping. For purposes of
15 this section, "public employer" means "any agency within
16 state, county, or municipal government employing individuals
17 for salary, wages, or other remuneration." The Division may
18 promulgate rules for insurers to utilize in determining public
19 employer compliance with the requirements of this section.

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

22 440.107 Division powers to enforce employer compliance
23 with coverage requirements.--

24 (5) Whenever the division determines that an employer
25 who is required to secure the payment to his or her employees
26 of the compensation provided for by this chapter has failed to
27 do so or the division determines that an employer has
28 misrepresented to a carrier the size or classification of the
29 employer's payroll, such failure or misrepresentation shall be
30 deemed an immediate serious danger to public health, safety,
31 or welfare sufficient to justify service by the division of a

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1 stop-work order on the employer, requiring the cessation of
2 all business operations within the state at the place of
3 employment or job site. The order shall take effect upon the
4 date of service upon the employer, unless the employer
5 provides evidence satisfactory to the division of having
6 secured any necessary insurance or self-insurance and pays a
7 civil penalty to the division, to be deposited by the division
8 into the Workers' Compensation Administration Trust Fund, in
9 the amount of \$100 per day for each day the employer was not
10 in compliance with this chapter.

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

13 440.13 Medical services and supplies; penalty for
14 violations; limitations.--

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

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

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

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

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

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

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

30 4. A family member or a combination of family members
31 providing nonprofessional attendant care under this paragraph

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1 may not be compensated for more than a total of 12 hours per
2 day.

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

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

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

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1 parameters. The insurer must accept any such proposed course
2 of treatment unless the insurer notifies the physician of its
3 specific objections to the proposed course of treatment by the
4 close of the tenth business day after notification by the
5 physician, or a supervised designee of the physician, of the
6 proposed course of treatment.

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

19 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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1 costs of independent medical examinations expressly relied
2 upon by the judge of compensation claims to award benefits in
3 the final compensation order are taxable costs under s.
4 440.34(3).

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

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

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

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

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

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

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

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1 (d) If the employee fails to appear for the
2 independent medical examination without good cause and fails
3 to advise the physician at least 24 hours before the scheduled
4 date for the examination that he or she cannot appear, the
5 employee is barred from recovering compensation for any period
6 during which he or she has refused to submit to such
7 examination. Further, the employee shall reimburse the carrier
8 50 percent of the physician's cancellation or no-show fee
9 unless the carrier that schedules the examination fails to
10 timely provide to the employee a written confirmation of the
11 date of the examination pursuant to paragraph (c) which
12 includes an explanation of why he or she failed to appear. The
13 employee may appeal to a judge of compensation claims for
14 reimbursement when the carrier withholds payment in excess of
15 the authority granted by this section.

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

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

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

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

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1 exceed the percentage of increase in the Consumer Price Index
2 for the previous year, except when the three-member panel
3 adopts a nationally recognized reimbursement methodology. An
4 individual physician, hospital, ambulatory surgical center,
5 pain program, or work-hardening program shall be reimbursed
6 either the usual and customary charge for treatment, care, and
7 attendance, the agreed-upon contract price, or the maximum
8 reimbursement allowance in the appropriate schedule, whichever
9 is less.

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

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

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1 effective, all compensable charges for treatment, care, and
2 attendance provided by physicians, ambulatory surgical
3 centers, work-hardening programs, or pain programs shall be
4 reimbursed at the lowest maximum reimbursement allowance
5 across all 1992 schedules of maximum reimbursement allowances
6 for the services provided regardless of the place of service.
7 In determining the uniform schedule, the panel shall first
8 approve the data which it finds representative of prevailing
9 charges in the state for similar treatment, care, and
10 attendance of injured persons. Each health care provider,
11 health care facility, ambulatory surgical center,
12 work-hardening program, or pain program receiving workers'
13 compensation payments shall maintain records verifying their
14 usual charges. In establishing the uniform schedule of maximum
15 reimbursement allowances, the panel must consider:

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

19 2. The impact upon cost to employers for providing a
20 level of reimbursement for treatment, care, and attendance
21 which will ensure the availability of treatment, care, and
22 attendance required by injured workers;

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

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1 system, and must be sufficient to ensure availability of such
2 medically necessary remedial treatment, care, and attendance
3 to injured workers; and

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

7 (14) PAYMENT OF MEDICAL FEES.--

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

16 (b) Fees charged for remedial treatment, care, and
17 attendance may not exceed the applicable fee schedules adopted
18 under this chapter, except as provided under a contract
19 entered into between an employer or carrier and a certified
20 health care provider or health care facility for the payment
21 of medical services for covered expenses.

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

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

31 440.134 Workers' compensation managed care

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1 arrangement.--

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

3 (d) "Grievance" means a direct written complaint filed
4 by an injured worker expressing dissatisfaction with the
5 insurer's workers' compensation managed care arrangement's
6 refusal to provide medical care ~~provided by an insurer's~~
7 ~~workers' compensation managed care arrangement health care~~
8 ~~providers, expressed in writing by an injured worker.~~

9 (2)

10 (b) ~~Effective January 1, 1997,~~The employer shall,
11 subject to the limitations specified elsewhere in this
12 chapter, furnish to the employee ~~solely~~ through managed care
13 arrangements or without a managed care arrangement such
14 medically necessary remedial treatment, care, and attendance
15 for such period as the nature of the injury or the process of
16 recovery requires.

17 (15)(a) A workers' compensation managed care
18 arrangement must have and use procedures for hearing
19 complaints and resolving written grievances from injured
20 workers and health care providers. The procedures must be
21 aimed at mutual agreement for settlement and may include
22 arbitration procedures. Procedures provided herein are in
23 addition to other procedures contained in this chapter.

24 (b) The grievance procedure must be described in
25 writing and provided to the affected workers and health care
26 providers.

27 (c) At the time the workers' compensation managed care
28 arrangement is implemented, the insurer must provide detailed
29 information to workers and health care providers describing
30 how a grievance may be registered with the insurer. Within 15
31 days after the date of the request for medical care is

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1 received by the insurer or by the insurer's managed care
2 arrangement, whichever date is earlier, the insurer shall
3 grant or deny the request. If the insurer denies the request,
4 the insurer shall notify the injured worker in writing of his
5 or her right to file a grievance.

6 (d) Grievances must be considered in a timely manner
7 and must be transmitted to appropriate decisionmakers who have
8 the authority to fully investigate the issue and take
9 corrective action. If the insurer or the insurer's workers'
10 compensation arrangement fails to notify the injured worker of
11 the outcome of the grievance in writing within 15 days from
12 the date of receiving the grievance, the grievance shall be
13 presumed to be resolved against the injured worker and the
14 grievance procedures shall be presumed exhausted for purposes
15 of s. 440.192(3).

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

18 (f) All concerned parties must be notified of the
19 results of a grievance.

20 (g) The insurer must report annually, no later than
21 March 31, to the agency regarding its grievance procedure
22 activities for the prior calendar year. The report must be in
23 a format prescribed by the agency and must contain the number
24 of grievances filed in the past year and a summary of the
25 subject, nature, and resolution of such grievances.

26 Section 10. Paragraph (a) of subsection (1) of section
27 440.14, Florida Statutes, is amended to read:

28 440.14 Determination of pay.--

29 (1) Except as otherwise provided in this chapter, the
30 average weekly wages of the injured employee at the time of
31 the injury shall be taken as the basis upon which to compute

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1 compensation and shall be determined, subject to the
2 limitations of s. 440.12(2), as follows:
3 (a) If the injured employee has worked in the
4 employment in which she or he was working at the time of the
5 injury, whether for the same or another employer, during
6 substantially the whole of 13 weeks immediately preceding the
7 injury, her or his average weekly wage shall be one-thirteenth
8 of the total amount of wages earned in such employment during
9 the 13 weeks. As used in this paragraph, the term
10 "substantially the whole of 13 weeks" means an actual ~~shall be~~
11 ~~deemed to mean and refer to a constructive~~ period of 13 weeks
12 as a whole, which shall be defined as the 13 complete weeks
13 before the date of the accident, excluding the week the injury
14 occurs. ~~a consecutive period of 91 days, and~~ The term "during
15 substantially the whole of 13 weeks" shall be deemed to mean
16 during not less than 90 percent of the total customary
17 full-time hours of employment within such period considered as
18 a whole.

19 Section 11. Paragraphs (b) and (f) of subsection (1)
20 and paragraph (a) of subsection (3) of section 440.15, Florida
21 Statutes, are amended to read:

22 440.15 Compensation for disability.--Compensation for
23 disability shall be paid to the employee, subject to the
24 limits provided in s. 440.12(2), as follows:

25 (1) PERMANENT TOTAL DISABILITY.--

26 (b) Any compensable injury eligible for permanent
27 total benefits must be of a nature and severity that prevents
28 the employee from being able to perform his or her previous
29 work. If the employee is engaged in or is capable of being
30 engaged in any substantial, gainful employment, he or she is
31 not entitled to permanent total disability. The burden is on

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1 the employee to establish that he or she is unable to perform
2 work if such work is available within a 50-mile radius of the
3 employee's residence. In addition,~~Only~~ a catastrophic injury
4 as defined in s. 440.02 shall, in the absence of conclusive
5 proof of a substantial earning capacity, constitute permanent
6 total disability. ~~Only claimants with catastrophic injuries~~
7 ~~are eligible for permanent total benefits.~~In no other case
8 may permanent total disability be awarded.

9 (f)1. If permanent total disability results from
10 injuries that occurred subsequent to June 30, 1955, and for
11 which the liability of the employer for compensation has not
12 been discharged under s. 440.20(11), the injured employee
13 shall receive additional weekly compensation benefits equal to
14 5 percent of her or his weekly compensation rate, as
15 established pursuant to the law in effect on the date of her
16 or his injury, multiplied by the number of calendar years
17 since the date of injury. The weekly compensation payable and
18 the additional benefits payable under this paragraph, when
19 combined, may not exceed the maximum weekly compensation rate
20 in effect at the time of payment as determined pursuant to s.
21 440.12(2). Entitlement to these supplemental payments shall
22 cease at age 62 if the employee is eligible for social
23 security benefits under 42 U.S.C. ss. 402 and 423, whether or
24 not the employee has applied for such benefits. These
25 supplemental benefits shall be paid by the division out of the
26 Workers' Compensation Administration Trust Fund when the
27 injury occurred subsequent to June 30, 1955, and before July
28 1, 1984. These supplemental benefits shall be paid by the
29 employer when the injury occurred on or after July 1, 1984.
30 Supplemental benefits are not payable for any period prior to
31 October 1, 1974.

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1 impairment.

2 2. The three-member panel, in cooperation with the
3 division, shall establish and use a uniform permanent
4 impairment rating schedule. This schedule must be based on
5 medically or scientifically demonstrable findings as well as
6 the systems and criteria set forth in the American Medical
7 Association's Guides to the Evaluation of Permanent
8 Impairment; the Snellen Charts, published by American Medical
9 Association Committee for Eye Injuries; and the Minnesota
10 Department of Labor and Industry Disability Schedules. The
11 schedule should be based upon objective findings. The schedule
12 shall be more comprehensive than the AMA Guides to the
13 Evaluation of Permanent Impairment and shall expand the areas
14 already addressed and address additional areas not currently
15 contained in the guides. On August 1, 1979, and pending the
16 adoption, by rule, of a permanent schedule, Guides to the
17 Evaluation of Permanent Impairment, copyright 1977, 1971,
18 1988, by the American Medical Association, shall be the
19 temporary schedule and shall be used for the purposes hereof.
20 For injuries after July 1, 1990, pending the adoption by
21 division rule of a uniform disability rating schedule, the
22 Minnesota Department of Labor and Industry Disability Schedule
23 shall be used unless that schedule does not address an injury.
24 In such case, the Guides to the Evaluation of Permanent
25 Impairment by the American Medical Association shall be used.
26 Determination of permanent impairment under this schedule must
27 be made by a physician licensed under chapter 458, a doctor of
28 osteopathic medicine licensed under chapters 458 and 459, a
29 chiropractic physician licensed under chapter 460, a podiatric
30 physician licensed under chapter 461, an optometrist licensed
31 under chapter 463, or a dentist licensed under chapter 466, as

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1 appropriate considering the nature of the injury. No other
2 persons are authorized to render opinions regarding the
3 existence of or the extent of permanent impairment.

4 3. All impairment income benefits shall be based on an
5 impairment rating using the impairment schedule referred to in
6 subparagraph 2. Impairment income benefits are paid weekly at
7 a rate equal to ~~the rate of 50 percent of the employee's~~
8 compensation rate ~~average weekly temporary total disability~~
9 benefit, not to exceed the maximum weekly benefit under s.
10 440.12. An employee's entitlement to impairment income
11 benefits begins the day after the employee reaches maximum
12 medical improvement or the expiration of temporary benefits,
13 whichever occurs earlier, and continues until the earlier of:

14 a. The expiration of a period computed at the rate of
15 3 weeks for each percentage point of impairment; or

16 b. The death of the employee.

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

23 Compensation is not payable for the mental, psychological, or
24 emotional injury arising out of depression from being out of
25 work or from any preexisting mental, psychological, or
26 emotional condition. If the certification and evaluation are
27 performed by a doctor other than the employee's treating
28 doctor, the certification and evaluation must be submitted to
29 the treating doctor, and the treating doctor must indicate
30 agreement or disagreement with the certification and
31 evaluation. The certifying doctor shall issue a written report

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1 to the division, the employee, and the carrier certifying that
2 maximum medical improvement has been reached, stating the
3 impairment rating, and providing any other information
4 required by the division. If the employee has not been
5 certified as having reached maximum medical improvement before
6 the expiration of 102 weeks after the date temporary total
7 disability benefits begin to accrue, the carrier shall notify
8 the treating doctor of the requirements of this section.

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

11 6. The division may by rule specify forms and
12 procedures governing the method of payment of wage loss and
13 impairment benefits for dates of accidents before January 1,
14 1994, and for dates of accidents on or after January 1, 1994.

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

17 440.185 Notice of injury or death; reports; penalties
18 for violations.--

19 (2) Within 7 days after actual knowledge of injury or
20 death, the employer shall report such injury or death to its
21 carrier, in a format prescribed by the division, and shall
22 provide a copy of such report to the employee or the
23 employee's estate. The report of injury shall contain the
24 following information:

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

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

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

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

31 (e) A record of the employee's earnings for the 13

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1 weeks before the date of injury; and

2 (f)(e) Such other information as the division may
3 require by rule.

4
5 The carrier shall, within 14 days after the employer's receipt
6 of the form reporting the injury, file the information
7 required by this subsection with the division in Tallahassee.
8 However, the division may by rule provide for a different
9 reporting system for those types of injuries which it
10 determines should be reported in a different manner and for
11 those cases which involve minor injuries requiring
12 professional medical attention in which the employee does not
13 lose more than 7 days of work as a result of the injury and is
14 able to return to the job immediately after treatment and
15 resume regular work.

16 Section 13. Section 440.191, Florida Statutes, is
17 amended to read:

18 440.191 Employee Assistance and Ombudsman Office.--

19 (1)(a) In order to effect the self-executing features
20 of the Workers' Compensation Law, this chapter shall be
21 construed to permit injured employees and employers or the
22 employer's carrier to resolve disagreements without undue
23 expense, costly litigation, or delay in the provisions of
24 benefits. It is the duty of all who participate in the
25 workers' compensation system, including, but not limited to,
26 carriers, service providers, health care providers, managed
27 care arrangements, attorneys, employers, and employees, to
28 attempt to resolve disagreements in good faith and to
29 cooperate with the division's efforts to resolve disagreements
30 between the parties. The division may by rule prescribe
31 definitions ~~that are~~ necessary for the effective

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1 administration of this section.

2 (b) An Employee Assistance and Ombudsman Office is
3 created within the Division of Workers' Compensation to inform
4 and assist injured workers, employers, carriers, ~~and~~ health
5 care providers, and managed care arrangements in fulfilling
6 their responsibilities under this chapter. The division may by
7 rule specify forms and procedures for administering ~~requests~~
8 ~~for assistance provided by~~ this section.

9 (c) The Employee Assistance and Ombudsman Office,
10 ~~Division of Workers' Compensation,~~ shall be a resource
11 available to all employees who participate in the workers'
12 compensation system and shall take all steps necessary to
13 educate and disseminate information to employees and
14 employers. Upon receiving a notice of injury or death, the
15 Employee Assistance and Ombudsman Office is authorized to
16 initiate contact with the injured employee or employee's
17 representative to discuss rights and responsibilities of the
18 employee under this chapter and the services available through
19 the Employee Assistance and Ombudsman Office.

20 ~~(2)(a) An employee may not file a petition requesting~~
21 ~~any benefit under this chapter unless the employee has~~
22 ~~exhausted the procedures for informal dispute resolution under~~
23 ~~this section.~~

24 ~~(a)(b)~~ If at any time the employer or its carrier
25 fails to provide benefits to which the employee believes she
26 or he is entitled, the employee shall contact the office to
27 request assistance in resolving the dispute. The office may
28 review petitions for benefits filed under s. 440.192 shall
29 ~~investigate the dispute~~ and may shall attempt to facilitate an
30 agreement between the employee and the employer or carrier.
31 The employee, the employer, and the carrier shall cooperate

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1 with the office and shall timely provide the office with any
2 documents or other information that it may require in
3 connection with its efforts under this section.

4 (b)~~(e)~~ The office may compel parties to attend
5 conferences in person or by telephone in an attempt to resolve
6 disputes quickly and in the most efficient manner possible.
7 Settlement agreements resulting from such conferences must be
8 submitted to the Office of the Judges of Compensation Claims
9 for approval.

10 (c)~~(d)~~ The Employee Assistance and Ombudsman Office
11 may assign an ombudsman to assist the employee in resolving
12 the dispute. ~~If the dispute is not resolved within 30 days~~
13 ~~after the employee contacts the office,~~The ombudsman may
14 ~~shall~~, at the employee's request, assist the employee in
15 drafting a petition for benefits and explain the procedures
16 for filing petitions. ~~The division may by rule determine the~~
17 ~~method used to calculate the 30-day period.~~The Employee
18 Assistance and Ombudsman Office may not represent employees
19 before the judges of compensation claims. An employer or
20 carrier may not pay any attorneys' fees on behalf of the
21 employee for services rendered or costs incurred in connection
22 with this section, unless expressly authorized elsewhere in
23 this chapter.

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

26 440.192 Procedure for resolving benefit disputes.--

27 (1) Subject to s. 440.191, any employee who has not
28 received a benefit to which the employee believes she or he is
29 entitled under this chapter shall file by certified mail, or
30 by electronic means approved by the Deputy Chief Judge, with
31 the Office of the Judges of Compensation Claims within the

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1 Division of Administrative Hearings a petition for benefits
2 which meets the requirements of this section. The division
3 shall inform employees of the location of the Office of the
4 Judges of Compensation Claims for purposes of filing a
5 petition for benefits. The employee shall also serve copies
6 of the petition for benefits by certified mail, or by
7 electronic means approved by the Deputy Chief Judge, upon the
8 employer and, the employer's carrier, and the division in
9 ~~Tallahassee a petition for benefits that meets the~~
10 ~~requirements of this section. The Deputy Chief Judge shall~~
11 ~~refer the petitions to the judges of compensation claims. The~~
12 ~~division shall refer the petition to the Office of the Judges~~
13 ~~of Compensation Claims.~~

14 (2) Upon receipt the Office of the Judges of
15 Compensation Claims shall review each petition and shall
16 dismiss each petition, or any portion of the petition, upon
17 ~~its own motion or~~ upon the motion of any party, that does not
18 on its face specifically identify or itemize the following:

19 (a) Name, address, telephone number, and social
20 security number of the employee.

21 (b) Name, address, and telephone number of the
22 employer.

23 (c) A detailed description of the injury and cause of
24 the injury, including the location of the occurrence and the
25 date of the accident.

26 (d) A detailed description of the employee's job, work
27 responsibilities, and work the employee was performing when
28 the injury occurred.

29 (e) The time period for which compensation was not
30 timely provided and the specific classification of the
31 compensation.

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

4 (g) The specific ~~All~~ travel costs to which the
5 employee believes she or he is entitled, including dates of
6 travel and purpose of travel, means of transportation, and
7 mileage, including the date the request for mileage was filed
8 with the carrier, and a copy of the request for mileage filed
9 with the carrier.

10 (h) Specific listing of all medical charges alleged
11 unpaid, including the name and address of the medical
12 provider, the amounts due, and the specific dates of
13 treatment.

14 (i) The type or nature of treatment care or attendance
15 sought and the justification for such treatment. If the
16 employee is under the care of a physician for the injury
17 identified in paragraph (c), a copy of the physician's
18 request, authorization, or recommendation for treatment, care,
19 or attendant care must accompany the petition.

20 (j) Specific explanation of any other disputed issue
21 that a judge of compensation claims will be called to rule
22 upon.

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

25 (3) A petition for benefits may contain a claim for
26 past benefits and continuing benefits in any benefit category,
27 but is limited to those in default and ripe, due, and owing on
28 the date the petition is filed. If the employer has elected to
29 satisfy its obligation to provide medical treatment, care, and
30 attendance through a managed care arrangement designated under
31 this chapter, the employee must exhaust all managed care

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1 grievance procedures before filing a petition for benefits
2 under this section.

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

6 (5)(4) The petition must include a certification by
7 the claimant or, if the claimant is represented by counsel,
8 the claimant's attorney, stating that the claimant, or
9 attorney if the claimant is represented by counsel, has made a
10 good faith effort to resolve the dispute and that the claimant
11 or attorney was unable to resolve the dispute with the
12 carrier.

13 (6)(5) All motions to dismiss must state with
14 particularity the basis for the motion. The judge of
15 compensation claims shall enter an order upon such motions
16 without hearing, unless good cause for hearing is shown. When
17 any petition or portion of a petition is dismissed for lack of
18 specificity under this subsection, the claimant must be
19 allowed 20 days after the date of the order of dismissal in
20 which to file an amended petition. Any grounds for dismissal
21 for lack of specificity under this section not asserted within
22 60 ~~30~~ days after receipt of the petition for benefits are
23 thereby waived.

24 (7)(6) If the claimant is not represented by counsel,
25 the Office of the Judges of Compensation Claims may request
26 the Employee Assistance and Ombudsman Office to assist the
27 claimant in filing a petition that meets the requirements of
28 this section.

29 (8)(7) Notwithstanding the provisions of s. 440.34, a
30 judge of compensation claims may not award attorney's fees
31 payable by the carrier for services expended or costs incurred

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1 prior to the filing of a petition ~~that does not~~ meeting meet
2 the requirements of this section.

3 ~~(9)(8)~~ Within 30 ~~14~~ days after receipt of a petition
4 for benefits by certified mail, the carrier must either pay
5 the requested benefits without prejudice to its right to deny
6 within 120 days from receipt of the petition or file a
7 response to the petition ~~notice of denial~~ with the Office of
8 the Judges of Compensation Claims ~~division~~. The carrier must
9 list all benefits requested but not paid and explain its
10 justification for nonpayment in the response to the petition
11 ~~notice of denial~~. A carrier that does not deny compensability
12 in accordance with s. 440.20(4) is deemed to have accepted the
13 employee's injuries as compensable, unless it can establish
14 material facts relevant to the issue of compensability that
15 could not have been discovered through reasonable
16 investigation within the 120-day period. The carrier shall
17 provide copies of the response ~~notice~~ to the filing party,
18 employer, and claimant by certified mail.

19 Section 15. Subsections (4) and (11) of section
20 440.20, Florida Statutes, are amended to read:

21 440.20 Time for payment of compensation; penalties for
22 late payment.--

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

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

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

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

19 (b) When a claimant is not represented by counsel,
20 upon joint petition of all interested parties, a lump-sum
21 payment in exchange for the employer's or carrier's release
22 from liability for future medical expenses, as well as future
23 payments of compensation and rehabilitation expenses, and any
24 other benefits provided under this chapter, may be allowed at
25 any time in any case after the injured employee has attained
26 maximum medical improvement. An employer or carrier may not
27 pay any attorney's fees on behalf of the claimant for any
28 settlement, unless expressly authorized elsewhere in this
29 chapter. A compensation order so entered upon joint petition
30 of all interested parties shall not be subject to modification
31 or review under s. 440.28. However, a judge of compensation

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1 claims is not required to approve any award for lump-sum
2 payment when it is determined by the judge of compensation
3 claims that the payment being made is in excess of the value
4 of benefits the claimant would be entitled to under this
5 chapter. The judge of compensation claims shall make or cause
6 to be made such investigations as she or he considers
7 necessary, in each case in which the parties have stipulated
8 that a proposed final settlement of liability of the employer
9 for compensation shall not be subject to modification or
10 review under s. 440.28, to determine whether such final
11 disposition will definitely aid the rehabilitation of the
12 injured worker or otherwise is clearly for the best interests
13 of the person entitled to compensation and, in her or his
14 discretion, may have an investigation made by the
15 Rehabilitation Section of the Division of Workers'
16 Compensation. The joint petition and the report of any
17 investigation so made will be deemed a part of the proceeding.
18 An employer shall have the right to appear at any hearing
19 pursuant to this subsection which relates to the discharge of
20 such employer's liability and to present testimony at such
21 hearing. The carrier shall provide reasonable notice to the
22 employer of the time and date of any such hearing and inform
23 the employer of her or his rights to appear and testify. ~~When~~
24 ~~the claimant is represented by counsel or when the claimant~~
25 ~~and carrier or employer are represented by counsel, final~~
26 ~~approval of the lump-sum settlement agreement, as provided for~~
27 ~~in a joint petition and stipulation, shall be approved by~~
28 ~~entry of an order within 7 days after the filing of such joint~~
29 ~~petition and stipulation without a hearing, unless the judge~~
30 ~~of compensation claims determines, in her or his discretion,~~
31 ~~that additional testimony is needed before such settlement can~~

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1 ~~be approved or disapproved and so notifies the parties.~~The
2 probability of the death of the injured employee or other
3 person entitled to compensation before the expiration of the
4 period during which such person is entitled to compensation
5 shall, in the absence of special circumstances making such
6 course improper, be determined in accordance with the most
7 recent United States Life Tables published by the National
8 Office of Vital Statistics of the United States Department of
9 Health and Human Services. The probability of the happening of
10 any other contingency affecting the amount or duration of the
11 compensation, except the possibility of the remarriage of a
12 surviving spouse, shall be disregarded. As a condition of
13 approving a lump-sum payment to a surviving spouse, the judge
14 of compensation claims, in the judge of compensation claims'
15 discretion, may require security which will ensure that, in
16 the event of the remarriage of such surviving spouse, any
17 unaccrued future payments so paid may be recovered or recouped
18 by the employer or carrier. Such applications shall be
19 considered and determined in accordance with s. 440.25.

20 (c) Notwithstanding s. 440.21(2), when a claimant is
21 represented by counsel, the claimant may waive all rights to
22 all benefits under this chapter by entering into a settlement
23 agreement releasing the employer and the carrier from
24 liability for workers' compensation benefits in exchange for a
25 lump-sum payment to the claimant. The settlement agreement
26 requires approval by the judge of compensation claims only as
27 to the attorney's fees paid to the claimant's attorney by the
28 claimant. The judge of compensation claims shall not approve
29 settlement proposals, including any stipulations or agreements
30 between the parties or between a claimant and his or her
31 attorney related to the settlement proposal, which provide for

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1 an attorney's fee in excess of the amount permitted in s.
2 440.34. The parties need not submit any information or
3 documentation in support of the settlement, except as needed
4 to justify the amount of the attorney's fees. Neither the
5 employer nor the carrier is responsible for any attorney's
6 fees relating to the settlement and release of claims under
7 this section. Payment of the lump-sum settlement amount must
8 be made within 14 days after the date the judge of
9 compensation claims mails the order approving the attorney's
10 fees. Any order entered by a judge of compensation claims
11 approving the attorney's fees as set out in the settlement
12 under this subsection is not considered to be an award and is
13 not subject to modification or review. The judge of
14 compensation claims shall report these settlements to the
15 chief judge in accordance with the requirements set forth in
16 s. 440.11(a) and (b). Settlements entered into under this
17 subsection are valid and apply to all dates of accident.

18 (d) With respect to any lump-sum settlement under this
19 subsection, a judge of compensation claims must consider
20 whether the settlement provides for appropriate recovery of
21 any child-support arrearage. Neither the employer nor the
22 carrier has a duty to investigate or collect information
23 regarding child-support arrearages.

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

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

29 440.25 Procedures for mediation and hearings.--

30 (1) Within 90 ~~21~~ days after a petition for benefits is
31 filed under s. 440.192, a mediation conference concerning such

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

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

28 (3)(a) Such mediation conference shall be conducted
29 informally and shall ~~does~~ not require the use of formal rules
30 of evidence or procedure. Any information from the files,
31 reports, case summaries, mediator's notes, or other

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1 communications or materials, oral or written, relating to a
2 mediation conference under this section obtained by any person
3 performing mediation duties is privileged and confidential and
4 may not be disclosed without the written consent of all
5 parties to the conference. Any research or evaluation effort
6 directed at assessing the mediation program activities or
7 performance must protect the confidentiality of such
8 information. Each party to a mediation conference has a
9 privilege during and after the conference to refuse to
10 disclose and to prevent another from disclosing communications
11 made during the conference whether or not the contested issues
12 are successfully resolved. This subsection and paragraphs
13 (4)(a) and (b) shall not be construed to prevent or inhibit
14 the discovery or admissibility of any information that is
15 otherwise subject to discovery or that is admissible under
16 applicable law or rule of procedure, except that any conduct
17 or statements made during a mediation conference or in
18 negotiations concerning the conference are inadmissible in any
19 proceeding under this chapter.

20 (b)1. Unless the parties conduct a private mediation
21 under subparagraph 2., mediation shall be conducted by a
22 mediator selected by the Deputy Chief Judge from among
23 mediators ~~The Chief Judge shall select a mediator. The~~
24 ~~mediator shall be~~ employed on a full-time basis by the Office
25 of the Judges of Compensation Claims. A mediator must be a
26 member of The Florida Bar for at least 5 years and must
27 complete a mediation training program approved by the Chief
28 Judge. Adjunct mediators may be employed by the Office of the
29 Judges of Compensation Claims on an as-needed basis and shall
30 be selected from a list prepared by the Chief Judge. An
31 adjunct mediator must be independent of all parties

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1 participating in the mediation conference. An adjunct mediator
2 must be a member of The Florida Bar for at least 5 years and
3 must complete a mediation training program approved by the
4 Chief Judge. An adjunct mediator shall have access to the
5 office, equipment, and supplies of the judge of compensation
6 claims in each district.

7 2. In the event the parties agree or in the event no
8 mediators under subparagraph 1. are available to conduct the
9 required mediation within the period specified in this
10 section, the parties shall hold a mediation conference at the
11 carrier's expense within the 90-day period set for mediation.
12 The mediation conference shall be conducted by a mediator who
13 is a member in good standing of The Florida Bar with at least
14 5 years' of Florida practice and is certified under s. 44.106.
15 If the parties do not agree upon a mediator within 10 days
16 after the date of the order, the claimant shall notify the
17 judge in writing and the judge shall appoint a mediator under
18 this subparagraph within 7 days.In the event both parties
19 agree, the results of the mediation conference shall be
20 binding and neither party shall have a right to appeal the
21 results. In the event either party refuses to agree to the
22 results of the mediation conference, the results of the
23 mediation conference as well as the testimony, witnesses, and
24 evidence presented at the conference shall not be admissible
25 at any subsequent proceeding on the claim. The mediator shall
26 not be called in to testify or give deposition to resolve any
27 claim for any hearing before the judge of compensation claims.
28 The employer may be represented by an attorney at the
29 mediation conference if the employee is also represented by an
30 attorney at the mediation conference.

31 (c) The parties shall make a good-faith effort to

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1 complete the pretrial stipulations before the conclusion of
2 the mediation conference if the claims, except for attorney's
3 fees and costs, have not been settled and if any claims in any
4 filed petition remain unresolved. The judge of compensation
5 claims may sanction a party or both parties for failure to
6 complete the pretrial stipulations before the conclusion of
7 the mediation conference.

8 (4)(a) If the parties fail to submit written pretrial
9 stipulations at the mediation conference, on the 10th day
10 following commencement of mediation, the questions in dispute
11 have not been resolved, the judge of compensation claims shall
12 order a pretrial hearing to occur within 14 days after the
13 date of mediation ordered by the judge of compensation claims
14 hold a pretrial hearing. The judge of compensation claims
15 shall give the interested parties at least 7 days' advance
16 notice of the pretrial hearing by mail. At the pretrial
17 hearing, the judge of compensation claims shall, subject to
18 paragraph (b), set a date for the final hearing that allows
19 the parties at least 30 days to conduct discovery unless the
20 parties consent to an earlier hearing date.

21 (b) The final hearing must be held and concluded
22 within 90 45 days after the mediation conference is held
23 pretrial hearing. Continuances may be granted only if the
24 requesting party demonstrates to the judge of compensation
25 claims that the reason for requesting the continuance arises
26 from circumstances beyond the party's control. The written
27 consent of the claimant must be obtained before any request is
28 granted for an additional continuance after the initial
29 continuance is granted. Any order granting a continuance must
30 set forth the date and time of the rescheduled hearing.
31 Continuances may be granted only if the requesting party

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1 demonstrates to the judge of compensation claims that the
2 reason for requesting the continuances arises from
3 circumstances beyond the party's control. If a judge of
4 compensation claims grants two or more continuances to a
5 requesting party, the judge of compensation claims shall
6 report such continuances to the Deputy Chief Judge.

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

10 (d) The final hearing shall be held within 210 days
11 after receipt of the petition for benefits in the county where
12 the injury occurred, if the injury occurred in this state,
13 unless otherwise agreed to between the parties and authorized
14 by the judge of compensation claims in the county where the
15 injury occurred. If the injury occurred outside ~~without~~ the
16 state and is one for which compensation is payable under this
17 chapter, then the final hearing ~~above referred to~~ may be held
18 in the county of the employer's residence or place of
19 business, or in any other county of the state that ~~which~~ will,
20 in the discretion of the Chief Judge, be the most convenient
21 for a hearing. The final hearing shall be conducted by a judge
22 of compensation claims, who shall, within 30 ~~14~~ days after
23 final hearing or closure of the hearing record, unless
24 otherwise agreed by the parties, enter a final order on the
25 merits of the disputed issues ~~determine the dispute in a~~
26 ~~summary manner~~. The judge of compensation claims may enter an
27 abbreviated final order in cases when compensability is not
28 disputed. Either party may request separate findings of fact
29 and conclusions of law. At the final ~~such~~ hearing, the
30 claimant and employer may each present evidence in respect of
31 the claims presented by the petition for benefits ~~such claim~~

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

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

25 (f) Each judge of compensation claims is required to
26 submit a special report to the Chief Judge in each contested
27 workers' compensation case in which the case is not determined
28 within 14 days of final hearing. Said form shall be provided
29 by the Chief Judge and shall contain the names of the judge of
30 compensation claims and of the attorneys involved and a brief
31 explanation by the judge of compensation claims as to the

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1 reason for such a delay in issuing a final order. The Chief
2 Judge shall compile these special reports into an annual
3 public report to the Governor, the Secretary of Labor and
4 Employment Security, the Legislature, The Florida Bar, and the
5 appellate district judicial nominating commissions.

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

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

16 (h)(i) To expedite dispute resolution and to enhance
17 the self-executing features of the Workers' Compensation Law,
18 the Chief Judge shall make provision by rule or order for the
19 resolution of appropriate motions by judges of compensation
20 claims without oral hearing upon submission of brief written
21 statements in support and opposition, and for expedited
22 discovery and docketing. Unless the judge of compensation
23 claims orders a hearing under paragraph (i), claims related to
24 the determination of pay under s. 440.14 shall be resolved
25 under this paragraph.

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

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

26 (j) A judge of compensation claims, either upon the
27 motion of a party or its own motion, may dismiss a petition
28 for lack of prosecution if no petitions, responses, motions,
29 orders, requests for hearings, or notices of deposition have
30 been filed for a period of 12 months, unless good cause is
31 shown. Dismissals for lack of prosecution are without

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1 prejudice and do not require a hearing.

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

5
6 Regardless of the date benefits were initially requested,
7 attorney's fees do not attach under this subsection until 30
8 days from the date the carrier or employer, if self-insured,
9 receives the petition.

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

12 440.29 Procedure before the judge of compensation
13 claims.--

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

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

25 440.34 Attorney's fees; costs.--

26 (1) A fee, gratuity, or other consideration may not be
27 paid for services rendered for a claimant in connection with
28 any proceedings arising under this chapter, unless approved as
29 reasonable by the judge of compensation claims or court having
30 jurisdiction over such proceedings. Except as provided by this
31 subsection, any attorney's fee approved by a judge of

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1 compensation claims for services rendered to a claimant must
2 equal to 25 ~~20~~ percent of the first \$5,000 of the amount of
3 the benefits secured, 20 ~~15~~ percent of the next \$5,000 of the
4 amount of the benefits secured, 15 ~~10~~ percent of the remaining
5 amount of the benefits secured to be provided during the first
6 10 years after the date the claim is filed, and 10 ~~5~~ percent
7 of the benefits secured after 10 years.

8 (a) However, the judge of compensation claims shall
9 ~~consider the following factors in each case and may approve an~~
10 ~~increase or decrease the attorney's fee of up to \$2,500, based~~
11 ~~on a reasonable hourly rate, except in those cases set forth~~
12 ~~in s. 440.34(3)(c), if, in her or his judgment, the judge of~~
13 ~~compensation claims expressly finds that the attorney's fees~~
14 ~~based on benefits secured fails to fairly compensate the~~
15 ~~attorney and that the circumstances of the particular case~~
16 ~~warrant such action. Such fees shall be allowed for any~~
17 ~~petition for benefits that were ripe, due, and owing and~~
18 ~~should have been raised in such petition under this paragraph.~~
19 ~~Any fees are waived on any other benefits which were not~~
20 ~~raised and which were ripe, due, and owing at the time the~~
21 ~~issues are resolved.~~

22 (b) The judge of compensation claims shall not approve
23 a compensation order, a joint stipulation for lump-sum
24 settlement, a stipulation or agreement between a claimant and
25 his or her attorney, or any other agreement related to
26 benefits under this chapter which provides for an attorney's
27 fee in excess of the amount permitted by this section.+

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

31 ~~(b) The fee customarily charged in the locality for~~

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1 ~~similar legal services.~~

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

4 ~~(d) The time limitation imposed by the claimant or the~~
5 ~~circumstances.~~

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

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

9 (3) If the claimant should prevail in any proceedings
10 before a judge of compensation claims or court, there shall be
11 taxed against the employer the reasonable costs of such
12 proceedings, not to include the attorney's fees of the
13 claimant. A claimant shall be responsible for the payment of
14 her or his own attorney's fees, except that a claimant shall
15 be entitled to recover a reasonable attorney's fee from a
16 carrier or employer:

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

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

27 (c) In a proceeding in which a carrier or employer
28 denies that an injury occurred for which compensation benefits
29 are payable, and the claimant prevails on the issue of
30 compensability; or

31 (d) In cases where the claimant successfully prevails

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1 in proceedings filed under s. 440.24 or s. 440.28.

2

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

7

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

14 Section 19. Section 440.345, Florida Statutes, is
15 amended to read:

16 440.345 Reporting of attorney's fees.--All fees paid
17 to attorneys for services rendered under this chapter shall be
18 reported to the Office of the Judges of Compensation Claims
19 division as the Office of the Judges of Compensation Claims
20 division requires by rule. The Office of the Judges of
21 Compensation Claims division shall annually summarize such
22 data in a report to the President of the Senate, the Speaker
23 of the House of Representatives, and the Governor ~~Workers+~~
24 ~~Compensation Oversight Board.~~

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

27 440.39 Compensation for injuries when third persons
28 are liable.--

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

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1 Section 21. Section 627.0915, Florida Statutes, is
2 amended to read:

3 627.0915 Rate filings; workers' compensation,
4 drug-free workplace, and safe employers.--The Department of
5 Insurance shall approve rating plans for workers' compensation
6 insurance that give specific identifiable consideration in the
7 setting of rates to employers that either implement a
8 drug-free workplace program pursuant to rules adopted by the
9 Division of Workers' Compensation of the Department of Labor
10 and Employment Security or implement a safety program pursuant
11 to provisions of the rating plan approved by the Division of
12 Safety pursuant to rules adopted by the Division of Safety of
13 the Department of Labor and Employment Security or implement
14 both a drug-free workplace program and a safety program. ~~The~~
15 ~~Division of Safety may by rule require that the client of a~~
16 ~~help supply services company comply with the essential~~
17 ~~requirements of a workplace safety program as a condition for~~
18 ~~receiving a premium credit. The plans must take effect January~~
19 ~~1, 1994, must be actuarially sound, and must state the savings~~
20 ~~anticipated to result from such drug-testing and safety~~
21 ~~programs.~~

22 Section 22. The amendments to sections 440.02 and
23 440.15, Florida Statutes, in this act shall not be construed
24 to affect any determination of disability under section
25 112.18, section 112.181, or section 112.19, Florida Statutes.

26 Section 23. Subsection (4) is added to section
27 627.412, Florida Statutes, to read:

28 627.412 Standard provisions, in general.--

29 (4) Notwithstanding any other law, a public entity or
30 agency may purchase a consolidated insurance program for the
31 purpose of providing coverage for workers' compensation,

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1 employer's liability, general liability, builder's risk, or
2 pollution liability to the public entity or agency or to a
3 contractor or subcontractor for a public construction project.

4 Section 24. If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 invalidity does not affect other provisions or applications of
7 the act which can be given effect without the invalid
8 provision or application, and to this end the provisions of
9 this act are declared severable.

10 Section 25. Subsection (3) of section 440.45, Florida
11 Statutes, is repealed.

12 Section 26. Effective October 1, 2001, section
13 440.4416, Florida Statutes, is repealed.

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

16
17

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

19 And the title is amended as follows:

20 Delete everything before the enacting clause

21

22 and insert:

23 A bill to be entitled
24 An act relating to workers' compensation;
25 amending s. 440.02, F.S.; revising definitions
26 of terms used in chapter 440, F.S.; amending s.
27 440.05, F.S.; revising exemptions from the
28 requirement for employers to obtain workers'
29 compensation coverage; specifying who may be
30 exempt and the conditions for an exemption;
31 specifying the effect of an exemption;

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1 requiring businesses, sole proprietors, and
2 partners to maintain certain records; amending
3 s. 440.06, F.S.; requiring employers to secure
4 workers' compensation coverage; amending s.
5 440.06, F.S.; requiring employers to secure
6 workers' compensation coverage; amending s.
7 440.09, F.S.; requiring compensation for
8 accidental compensable injuries; requiring
9 partnerships, corporations, or sole proprietors
10 in the construction industry to maintain
11 workers' compensation insurance; amending s.
12 440.10, F.S.; revising references to persons
13 who are exempt from coverage to conform;
14 creating s. 440.1025, F.S.; providing for
15 consideration of a public employer workplace
16 safety program in rate-setting; amending s.
17 440.107, F.S.; authorizing the Division of
18 Workers' Compensation to issue stop-work orders
19 in certain circumstances; amending s. 440.13,
20 F.S.; specifying the value of nonprofessional
21 attendant care provided by a family member that
22 is reimbursable; requiring the carrier to give
23 the employee the opportunity to change
24 physicians under certain circumstances and
25 limitations; revising the effect of an
26 independent medical examination; limiting the
27 admissibility of certain medical opinions;
28 revising the limitation on medical fees;
29 amending s. 440.134, F.S.; revising the
30 definitions applied to workers' compensation
31 managed care arrangements; eliminating

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1 provisions mandating the use of such
2 arrangements; revising the procedures governing
3 grievances related to such arrangements;
4 amending s. 440.14, F.S.; revising the
5 computation of the average weekly wage of an
6 employee for the purposes of determining
7 benefits; amending s. 440.15, F.S.; revising
8 the criteria for permanent total disability;
9 revising the compensation rate for impairment
10 income benefits; amending s. 440.185, F.S.;
11 specifying the information that must be
12 included in a report of injury; amending s.
13 440.191, F.S.; requiring the Employee
14 Assistance and Ombudsman Office to initiate
15 contact with an injured employee to discuss
16 rights and responsibilities; revising other
17 duties of the office; amending s. 440.192,
18 F.S.; revising the procedures for resolving
19 benefit disputes and filing petitions for
20 benefits; specifying the information that must
21 be included in a petition for benefits;
22 amending s. 440.20, F.S.; specifying time for
23 payment of compensation; prescribing the
24 criteria for determining when a lump-sum
25 settlement may be entered; specifying the
26 effect of a lump-sum settlement; amending s.
27 440.25, F.S.; revising the procedures governing
28 mediation and the hearing of claims; amending
29 s. 440.29, F.S.; requiring opinions of
30 independent medical examiners to be received
31 into evidence under certain conditions;

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

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