

By the Committee on Insurance and Representatives Waters,  
Ross, Melvin, Fields, Clarke, Brown, Simmons, Negron,  
Kallinger, Sobel and Lee

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.02, F.S.; revising definitions;  
4           amending s. 440.09, F.S.; requiring certain  
5           entities actively engaged in the construction  
6           industry to secure payment of compensation  
7           under chapter 440, F.S., after a certain date;  
8           amending s. 440.13, F.S.; providing an  
9           additional criterion for determining certain  
10          value of nonprofessional attendant care  
11          provided by a family member; requiring carriers  
12          to allow employees to change physicians under  
13          certain circumstances; specifying payments for  
14          independent medical examinations; deleting  
15          selection of independent medical examiner  
16          criteria; specifying the number of medical  
17          opinions admissible into evidence; providing an  
18          exception to certain recourse for payment for  
19          services rendered; amending s. 440.134, F.S.;  
20          revising a definition; revising certain  
21          grievance procedures for workers' compensation  
22          managed care arrangements; amending s. 440.15,  
23          F.S.; revising criteria for payment of  
24          compensation for permanent total disability;  
25          revising criteria for payment of permanent  
26          impairment and wage-loss benefits; amending s.  
27          440.185, F.S.; requiring additional information  
28          in a report of injury; amending s. 440.191,  
29          F.S.; including managed care arrangements under  
30          provisions relating to the Employee Assistance  
31          and Ombudsman Office; revising procedures for

1 petitions for benefits under the office;  
2 amending s. 440.192, F.S.; revising procedures  
3 for resolving benefit disputes; transferring  
4 duties and responsibilities of the Division of  
5 Workers' Compensation to the Office of the  
6 Judges of Compensation Claims; amending s.  
7 440.20, F.S.; prohibiting approval of  
8 settlement proposals providing for attorney's  
9 fees in excess of certain amounts; amending s.  
10 440.25, F.S.; limiting continuances under  
11 procedures for mediation and hearings;  
12 providing for selections of mediators by the  
13 Chief Judge; providing for holding mediation  
14 conferences instead of mediation hearings under  
15 certain circumstances; providing for completion  
16 of pretrial stipulations; authorizing a judge  
17 of compensation claims to sanction certain  
18 parties under certain circumstances; requiring  
19 a judge of compensation claims to order a  
20 pretrial hearing for certain purposes under  
21 certain circumstances; revising final hearing  
22 time limitations and procedures; deleting a  
23 requirement that judges of compensation claims  
24 adopt and enforce certain uniform local rules;  
25 specifying resolution of determination of pay  
26 claims; requiring resolution of certain claims  
27 through an expedited dispute resolution  
28 process; providing for dismissal of certain  
29 petitions for lack of prosecution under certain  
30 circumstances; amending s. 440.29, F.S.;

31 providing for receipt into evidence of medical

1 reports from independent medical examiners;  
2 amending s. 440.34, F.S.; providing for limited  
3 additional attorney's fees in medical-only  
4 cases; prohibiting approval of attorney's fees  
5 in excess of certain amounts; deleting criteria  
6 for determining certain attorney's fees;  
7 amending s. 440.345, F.S.; requiring a summary  
8 report of attorney's fees to the Governor and  
9 Legislature; amending s. 440.4416, F.S.;  
10 revising membership, member criteria, terms,  
11 and meetings requirements of the Workers'  
12 Compensation Oversight Board; deleting an  
13 obsolete provision; providing additional  
14 reporting requirements for the board; amending  
15 s. 627.0915, F.S.; deleting obsolete  
16 provisions; requiring a study of construction  
17 industry exemptions; repealing s. 440.45(3),  
18 F.S., relating to rotating docketing judges of  
19 compensation claims; providing an effective  
20 date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
23

24 Section 1. Paragraph (b) of subsection (14) and  
25 subsection (37) of section 440.02, Florida Statutes, are  
26 amended to read:

27 440.02 Definitions.--When used in this chapter, unless  
28 the context clearly requires otherwise, the following terms  
29 shall have the following meanings:

30 (14)

31

1 (b) "Employee" includes any person who is an officer  
2 of a corporation and who performs services for remuneration  
3 for such corporation within this state, whether or not such  
4 services are continuous.

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

8 2. As to officers of a corporation who are actively  
9 engaged in the construction industry, no more than three  
10 officers of such corporation or of any group of affiliated  
11 corporations may elect to be exempt from this chapter by  
12 filing written notice of the election with the division as  
13 provided in s. 440.05.

14 3. An officer of a corporation who elects to be exempt  
15 from this chapter by filing a written notice of the election  
16 with the division as provided in s. 440.05 is not an employee.  
17

18 Services are presumed to have been rendered to the corporation  
19 if the officer is compensated by other than dividends upon  
20 shares of stock of the corporation which the officer owns. The  
21 term "affiliated" means and includes one or more corporations  
22 or entities, any one of which is a corporation actively  
23 engaged in the construction industry, under the same or  
24 substantially the same control of a group of business entities  
25 which are connected or associated so that one entity controls  
26 or has the power to control each of the other business  
27 entities. The term "affiliated" includes the officers,  
28 directors, executives, shareholders active in management,  
29 employees, and agents of the affiliated corporation. The  
30 ownership by one business entity of a controlling interest in  
31 another business entity or a pooling of equipment or income

1 among business entities shall be prima facie evidence that one  
2 business entity is affiliated with another.

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

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

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

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

11 1. Severe sensory or motor disturbances;

12 2. Severe communication disturbances;

13 3. Severe complex integrated disturbances of cerebral  
14 function;

15 4. Severe episodic neurological disorders; or

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

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

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

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

30 Section 2. Subsection (9) is added to section 440.09,  
31 Florida Statutes, to read:

1           440.09 Coverage.--  
2           (9) Notwithstanding other provisions of this chapter,  
3 effective January 1, 2004, all partners or sole proprietors  
4 actively engaged in the construction industry shall secure the  
5 payment of compensation under this chapter.

6           Section 3. Paragraph (b) of subsection (2), paragraphs  
7 (a), (b), (e), and (f) of subsection (5), paragraph (c) of  
8 subsection (9), and paragraph (b) of subsection (14) of  
9 section 440.13, Florida Statutes, are amended, and paragraph  
10 (f) is added to subsection (2) of said section, read:

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

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

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

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

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

28           3. If the family member remains employed while  
29 providing attendant or custodial care, the per-hour value of  
30 that care equals the per-hour value of the family member's  
31

1 employment, not to exceed the per-hour value of such care  
2 available in the community at large.

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

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. The employee shall be entitled to select another  
11 physician from among not fewer than three carrier-authorized  
12 physicians who are not professionally affiliated.

13 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

14 (a) In any dispute concerning overutilization, medical  
15 benefits, compensability, or disability under this chapter,  
16 the carrier or the employee may select an independent medical  
17 examiner. The examiner may be a health care provider treating  
18 or providing other care to the employee. An independent  
19 medical examiner may not render an opinion outside his or her  
20 area of expertise, as demonstrated by licensure and applicable  
21 practice parameters. Upon the written request of the employee,  
22 the carrier shall pay the cost of one independent medical  
23 examination per accident. The cost of any additional  
24 independent medical examination shall be borne by the party  
25 requesting the additional independent medical examination.  
26 Only the costs of independent medical examinations expressly  
27 relied upon by the judge of compensation claims to award  
28 benefits in the final compensation order shall be taxable  
29 costs under s. 440.34(3).

30  
31

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

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

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

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

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

13

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

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

31



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

5           (9) EXPERT MEDICAL ADVISORS.--

6           (c) If there is disagreement in the opinions of the  
7 health care providers, if two health care providers disagree  
8 on medical evidence supporting the employee's complaints or  
9 the need for additional medical treatment, or if two health  
10 care providers disagree that the employee is able to return to  
11 work, the division may, and the judge of compensation claims  
12 may shall, upon his or her own motion or within 15 days after  
13 receipt of a written request by either the injured employee,  
14 the employer, or the carrier, order the injured employee to be  
15 evaluated by an expert medical advisor. The opinion of the  
16 expert medical advisor is presumed to be correct unless there  
17 is clear and convincing evidence to the contrary as determined  
18 by the judge of compensation claims. The expert medical  
19 advisor appointed to conduct the evaluation shall have free  
20 and complete access to the medical records of the employee. An  
21 employee who fails to report to and cooperate with such  
22 evaluation forfeits entitlement to compensation during the  
23 period of failure to report or cooperate.

24           (14) PAYMENT OF MEDICAL FEES.--

25           (b) Fees charged for remedial treatment, care, and  
26 attendance may not exceed the applicable fee schedules adopted  
27 under this chapter, except as provided pursuant to a contract  
28 entered into between an employer or carrier and a certified  
29 health care provider or health care facility for the direct or  
30 indirect payment of medical services for covered expenses.

31

1           Section 4. Paragraph (d) of subsection (1), subsection  
2 (2), and paragraphs (c) and (d) of subsection (15) of section  
3 440.134, Florida Statutes, are amended to read:

4           440.134 Workers' compensation managed care  
5 arrangement.--

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

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

13           (2)

14           ~~(a)(b)~~ ~~Effective January 1, 1997,~~ The employer may  
15 ~~shall~~, subject to the terms and limitations specified  
16 elsewhere in this section and chapter, furnish to the employee  
17 solely through managed care arrangements such medically  
18 necessary remedial treatment, care, and attendance for such  
19 period as the nature of the injury or the process of recovery  
20 requires.

21           ~~(b)(a)~~ The agency shall authorize an insurer to offer  
22 or utilize a workers' compensation managed care arrangement  
23 after the insurer files a completed application along with the  
24 payment of a \$1,000 application fee, and upon the agency's  
25 being satisfied that the applicant has the ability to provide  
26 quality of care consistent with the prevailing professional  
27 standards of care and the insurer and its workers'  
28 compensation managed care arrangement otherwise meets the  
29 requirements of this section. No insurer may offer or utilize  
30 a managed care arrangement without such authorization. The  
31 authorization, unless sooner suspended or revoked, shall

1 automatically expire 2 years after the date of issuance unless  
2 renewed by the insurer. The authorization shall be renewed  
3 upon application for renewal and payment of a renewal fee of  
4 \$1,000, provided that the insurer is in compliance with the  
5 requirements of this section and any rules adopted hereunder.  
6 An application for renewal of the authorization shall be made  
7 90 days prior to expiration of the authorization, on forms  
8 provided by the agency. The renewal application shall not  
9 require the resubmission of any documents previously filed  
10 with the agency if such documents have remained valid and  
11 unchanged since their original filing.

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

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

1 worker and the grievance procedures shall be presumed to be  
2 exhausted for purposes of s. 440.192(3).

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

6 440.15 Compensation for disability.--Compensation for  
7 disability shall be paid to the employee, subject to the  
8 limits provided in s. 440.12(2), as follows:

9 (1) PERMANENT TOTAL DISABILITY.--

10 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02  
11 shall, in the absence of conclusive proof of a substantial  
12 earning capacity, constitute permanent total disability. In  
13 all other cases, permanent total disability shall be  
14 determined based upon the facts. Compensation shall be  
15 payable under this subsection if the employee has no  
16 substantial earning capacity. An employee has no substantial  
17 earning capacity if the employee is unable to work  
18 uninterruptedly, either on a full-time or part-time basis,  
19 including sedentary work, within a reasonable radius of the  
20 employee's residence. ~~Only claimants with catastrophic~~  
21 injuries are eligible for permanent total benefits.In no  
22 other case may permanent total disability be awarded.

23 (d) If an employee who is being paid compensation for  
24 permanent total disability becomes rehabilitated to the extent  
25 that she or he establishes a substantial ~~an~~ earning capacity,  
26 the employee shall be paid, instead of the compensation  
27 provided in paragraph (a), benefits pursuant to subsection  
28 (3). The division shall adopt rules to enable a permanently  
29 and totally disabled employee who may have reestablished a  
30 substantial ~~an~~ earning capacity to undertake a trial period of  
31 reemployment without prejudicing her or his return to

1 permanent total status in the case that such employee is  
2 unable to sustain a substantial ~~an~~ earning capacity.

3 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--  
4 (a) Impairment benefits.--

5 1. Once the employee has reached the date of maximum  
6 medical improvement, impairment benefits are due and payable  
7 within 20 days after the carrier has knowledge of the  
8 impairment.

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

1 Impairment by the American Medical Association shall be used.  
2 Determination of permanent impairment under this schedule must  
3 be made by a physician licensed under chapter 458, a doctor of  
4 osteopathic medicine licensed under chapters 458 and 459, a  
5 chiropractic physician licensed under chapter 460, a podiatric  
6 physician licensed under chapter 461, an optometrist licensed  
7 under chapter 463, or a dentist licensed under chapter 466, as  
8 appropriate considering the nature of the injury. No other  
9 persons are authorized to render opinions regarding the  
10 existence of or the extent of permanent impairment.

11 3. All impairment income benefits shall be based on an  
12 impairment rating using the impairment schedule referred to in  
13 subparagraph 2. Impairment income benefits are paid weekly at  
14 a the rate equal to of 50 percent of the employee's  
15 compensation rate average weekly temporary total disability  
16 ~~benefit~~ not to exceed the maximum weekly benefit under s.  
17 440.12. An employee's entitlement to impairment income  
18 benefits begins the day after the employee reaches maximum  
19 medical improvement or the expiration of temporary benefits,  
20 whichever occurs earlier, and continues until the earlier of:

21 a. The expiration of a period computed at the rate of  
22 3 weeks for each percentage point of impairment; or

23 b. The death of the employee.

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

30 Compensation is not payable for the mental, psychological, or  
31 emotional injury arising out of depression from being out of

1 work. If the certification and evaluation are performed by a  
2 doctor other than the employee's treating doctor, the  
3 certification and evaluation must be submitted to the treating  
4 doctor, and the treating doctor must indicate agreement or  
5 disagreement with the certification and evaluation. The  
6 certifying doctor shall issue a written report to the  
7 division, the employee, and the carrier certifying that  
8 maximum medical improvement has been reached, stating the  
9 impairment rating, and providing any other information  
10 required by the division. If the employee has not been  
11 certified as having reached maximum medical improvement before  
12 the expiration of 102 weeks after the date temporary total  
13 disability benefits begin to accrue, the carrier shall notify  
14 the treating doctor of the requirements of this section.

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

17 6. The division may by rule specify forms and  
18 procedures governing the method of payment of wage loss and  
19 impairment benefits for dates of accidents before January 1,  
20 1994, and for dates of accidents on or after January 1, 1994.

21 Section 6. Subsection (2) of section 440.185, Florida  
22 Statutes, is amended to read:

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

25 (2) Within 7 days after actual knowledge of injury or  
26 death, the employer shall report such injury or death to its  
27 carrier, in a format prescribed by the division, and shall  
28 provide a copy of such report to the employee or the  
29 employee's estate. The report of injury shall contain the  
30 following information:

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

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

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

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

6 (e) A record of the employee's earnings for the 13  
7 weeks prior to the date of injury; and

8 (f)~~(e)~~ Such other information as the division may  
9 require.

10

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

22 Section 7. Section 440.191, Florida Statutes, is  
23 amended to read:

24 440.191 Employee Assistance and Ombudsman Office.--

25 (1)(a) In order to effect the self-executing features  
26 of the Workers' Compensation Law, this chapter shall be  
27 construed to permit injured employees and employers or the  
28 employer's carrier to resolve disagreements without undue  
29 expense, costly litigation, or delay in the provisions of  
30 benefits. It is the duty of all who participate in the  
31 workers' compensation system, including, but not limited to,



1 carriers, service providers, health care providers, managed  
2 care arrangements, attorneys, employers, and employees, to  
3 attempt to resolve disagreements in good faith and to  
4 cooperate with the division's efforts to resolve disagreements  
5 between the parties. The division may by rule prescribe  
6 definitions ~~that are~~ necessary for the effective  
7 administration of this section.

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

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

26 (2)(a) ~~An employee may not file a petition requesting~~  
27 ~~any benefit under this chapter unless the employee has~~  
28 ~~exhausted the procedures for informal dispute resolution under~~  
29 ~~this section.~~

30 (a)(b) If at any time the employer or its carrier  
31 fails to provide benefits to which the employee believes she

1 or he is entitled, the employee shall contact the office to  
2 request assistance in resolving the dispute. The office may  
3 review petitions for benefits filed under s. 440.192 ~~shall~~  
4 ~~investigate the dispute~~ and may ~~shall~~ attempt to facilitate an  
5 agreement between the employee and the employer or carrier.  
6 The employee, the employer, and the carrier shall cooperate  
7 with the office and shall timely provide the office with any  
8 documents or other information that it may require in  
9 connection with its efforts under this section.

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

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

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

1           440.192 Procedure for resolving benefit disputes.--  
2           (1) Subject to s. 440.191, any employee who has not  
3 received a benefit to which the employee believes she or he is  
4 entitled under this chapter shall serve by certified mail upon  
5 the employer, the employer's carrier, and the Office of the  
6 Judges of Compensation Claims ~~division~~ in Tallahassee a  
7 petition for benefits meeting ~~that meets~~ the requirements of  
8 this section. The Chief Judge ~~division~~ shall refer the  
9 petition to the ~~Office of the~~ judges of compensation claims.  
10          (2) Upon receipt of a petition, the Office of the  
11 Judges of Compensation Claims shall review each petition and  
12 shall dismiss each petition or any portion of the petition,  
13 upon the judge's ~~its~~ own motion or upon the motion of any  
14 party, that does not on its face specifically identify or  
15 itemize the following:  
16           (a) Name, address, telephone number, and social  
17 security number of the employee.  
18           (b) Name, address, and telephone number of the  
19 employer.  
20           (c) A detailed description of the injury and cause of  
21 the injury, including the location of the occurrence and the  
22 date or dates of accident.  
23           (d) A detailed description of the employee's job, work  
24 responsibilities, and work the employee was performing when  
25 the injury occurred.  
26           (e) The time period for which compensation was not  
27 timely provided and the specific classification of the  
28 compensation.  
29           (f) Date of maximum medical improvement, character of  
30 disability, and specific statement of all benefits or  
31 compensation that the employee is seeking.

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

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

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

17           (j) Specific explanation of any other disputed issue  
18 that a judge of compensation claims will be called to rule  
19 upon.

20           (k) Any other information and documentation the Chief  
21 Judge may require by rule.

22  
23 The dismissal of any petition or portion of the petition under  
24 this section is without prejudice and does not require a  
25 hearing.

26           (5) All motions to dismiss must state with  
27 particularity the basis for the motion. The judge of  
28 compensation claims shall enter an order upon such motions  
29 without hearing, unless good cause for hearing is shown. When  
30 any petition or portion of a petition is dismissed for lack of  
31 specificity under this subsection, the claimant must be

1 allowed 20 days after the date of the order of dismissal in  
2 which to file an amended petition. Any grounds for dismissal  
3 for lack of specificity under this section not asserted within  
4 45 ~~30~~ days after receipt of the petition for benefits are  
5 thereby waived.

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

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

27 Section 9. Paragraphs (a) and (b) of subsection (11)  
28 of section 440.20, Florida Statutes, are amended to read:

29 440.20 Time for payment of compensation; penalties for  
30 late payment.--

31

1           (11)(a) Upon joint petition of all interested parties,  
2 a lump-sum payment in exchange for the employer's or carrier's  
3 release from liability for future medical expenses, as well as  
4 future payments of compensation expenses and any other  
5 benefits provided under this chapter, shall be allowed at any  
6 time in any case in which the employer or carrier has filed a  
7 written notice of denial or response to petition within 120  
8 days after the date of the injury, and the judge of  
9 compensation claims at a hearing to consider the settlement  
10 proposal finds a justiciable controversy as to legal or  
11 medical compensability of the claimed injury or the alleged  
12 accident. The employer or carrier may not pay any attorney's  
13 fees on behalf of the claimant for any settlement under this  
14 section unless expressly authorized elsewhere in this chapter.  
15 Upon the joint petition of all interested parties and after  
16 giving due consideration to the interests of all interested  
17 parties, including the possible future medical costs of the  
18 claimant, the judge of compensation claims may enter a  
19 compensation order approving and authorizing the discharge of  
20 the liability of the employer for compensation and remedial  
21 treatment, care, and attendance, as well as rehabilitation  
22 expenses, by the payment of a lump sum. The judge of  
23 compensation claims shall not approve settlement proposals,  
24 including any stipulations or agreements between the parties  
25 or a claimant and his or her attorney related to the  
26 settlement proposal, that provide for an attorney's fee in  
27 excess of the amount permitted in s. 440.34. Such a  
28 compensation order so entered upon joint petition of all  
29 interested parties is not subject to modification or review  
30 under s. 440.28. If the settlement proposal together with  
31 supporting evidence is not approved by the judge of

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

9 (b) Upon joint petition of all interested parties, a  
10 lump-sum payment in exchange for the employer's or carrier's  
11 release from liability for future medical expenses, as well as  
12 future payments of compensation and rehabilitation expenses,  
13 and any other benefits provided under this chapter, may be  
14 allowed at any time in any case after the injured employee has  
15 attained maximum medical improvement. An employer or carrier  
16 may not pay any attorney's fees on behalf of the claimant for  
17 any settlement, unless expressly authorized elsewhere in this  
18 chapter. The judge of compensation claims shall not approve  
19 settlement proposals, including any stipulations or agreements  
20 between the parties or a claimant and his or her attorney  
21 related to the settlement proposal, that provide for an  
22 attorney's fee in excess of the amount permitted in s. 440.34.  
23 A compensation order so entered upon joint petition of all  
24 interested parties shall not be subject to modification or  
25 review under s. 440.28. However, a judge of compensation  
26 claims is not required to approve any award for lump-sum  
27 payment when it is determined by the judge of compensation  
28 claims that the payment being made is in excess of the value  
29 of benefits the claimant would be entitled to under this  
30 chapter. The judge of compensation claims shall make or cause  
31 to be made such investigations as she or he considers

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



1 the most recent United States Life Tables published by the  
2 National Office of Vital Statistics of the United States  
3 Department of Health and Human Services. The probability of  
4 the happening of any other contingency affecting the amount or  
5 duration of the compensation, except the possibility of the  
6 remarriage of a surviving spouse, shall be disregarded. As a  
7 condition of approving a lump-sum payment to a surviving  
8 spouse, the judge of compensation claims, in the judge of  
9 compensation claims' discretion, may require security which  
10 will ensure that, in the event of the remarriage of such  
11 surviving spouse, any unaccrued future payments so paid may be  
12 recovered or recouped by the employer or carrier. Such  
13 applications shall be considered and determined in accordance  
14 with s. 440.25.

15 Section 10. Subsections (1), (3), and (4) of section  
16 440.25, Florida Statutes, are amended to read:

17 440.25 Procedures for mediation and hearings.--

18 (1) Within 60 ~~21~~ days after a petition for benefits is  
19 filed under s. 440.192, a mediation conference concerning such  
20 petition shall be held. Within 10 ~~7~~ days after such petition  
21 is assigned to a judge of compensation claims filed, the judge  
22 of compensation claims shall notify the interested parties by  
23 order that a mediation conference concerning such petition  
24 will be held. Such order ~~notice~~ shall give the date by which,  
25 ~~time, and location of the mediation conference must be held.~~  
26 Such order ~~notice~~ may be served personally upon the interested  
27 parties or may be sent to the interested parties by mail.  
28 Continuances may be granted only if the requesting party  
29 demonstrates to the judge of compensation claims that the  
30 reason for requesting the continuance arises from  
31 circumstances beyond the party's control. Any order granting

1 a continuance must set forth the date of the rescheduled  
2 mediation conference.

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

26 (b)1. Unless the parties conduct a private mediation  
27 under subparagraph 2., mediation shall be conducted by a  
28 mediator selected by the Chief Judge from among the mediators  
29 ~~The Chief Judge shall select a mediator. The mediator shall be~~  
30 employed on a full-time basis by the Office of the Judges of  
31 Compensation Claims. A mediator must be a member of The

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

13 2. In the event the parties agree or in the event no  
14 mediators under subparagraph 1. are available to conduct the  
15 required mediation within the period specified in this  
16 section, the parties shall hold a mediation conference at the  
17 carrier's expense within the 60-day period set for mediation.  
18 The mediation conference shall be conducted by a mediator  
19 certified under s. 44.106 and having sufficient experience in  
20 workers' compensation. If the parties do not agree upon a  
21 mediator within 10 days after the date of the order, the  
22 claimant shall notify the judge in writing and the judge shall  
23 appoint a mediator under this subparagraph within 7 days.

24  
25 In the event both parties agree, the results of the mediation  
26 conference shall be binding and neither party shall have a  
27 right to appeal the results. In the event either party refuses  
28 to agree to the results of the mediation conference, the  
29 results of the mediation conference as well as the testimony,  
30 witnesses, and evidence presented at the conference shall not  
31 be admissible at any subsequent proceeding on the claim. The

1 mediator shall not be called in to testify or give deposition  
2 to resolve any claim for any hearing before the judge of  
3 compensation claims. The employer may be represented by an  
4 attorney at the mediation conference if the employee is also  
5 represented by an attorney at the mediation conference.

6 (c) The parties shall complete the pretrial  
7 stipulations prior to the conclusion of the mediation  
8 conference if the claims, except for attorney's fees and  
9 costs, have not been settled and any claims in any filed  
10 petition remain unresolved. The judge of compensation claims  
11 may sanction a party or both parties for failure to complete  
12 the pretrial stipulations prior to the conclusion of the  
13 mediation conference.

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

28 (b) The final hearing must be held and concluded  
29 within 60 ~~45~~ days after the date the mediation conference is  
30 held ~~pretrial hearing~~. Continuances may be granted only if the  
31 requesting party demonstrates to the judge of compensation

1 claims that the reason for requesting the continuance arises  
2 from circumstances beyond the party's control. Any order  
3 granting a continuance shall set forth the date of the  
4 rescheduled final hearing.

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

8 (d) The final hearing shall be held in the county  
9 where the injury occurred, if the injury occurred in this  
10 state, unless otherwise agreed to between the parties and  
11 authorized by the judge of compensation claims in the county  
12 where the injury occurred. If the injury occurred without the  
13 state and is one for which compensation is payable under this  
14 chapter, then the final hearing ~~above referred to~~ may be held  
15 in the county of the employer's residence or place of  
16 business, or in any other county of the state which will, in  
17 the discretion of the Chief Judge, be the most convenient for  
18 a hearing. The final hearing shall be conducted by a judge of  
19 compensation claims, who shall, within 14 days after final  
20 hearing, unless otherwise agreed by the parties, determine the  
21 dispute in a summary manner. At the final ~~such~~ hearing, the  
22 claimant and employer may each present evidence in respect of  
23 the claims presented by the petition for benefits ~~such claim~~  
24 and may be represented by any attorney authorized in writing  
25 for such purpose. When there is a conflict in the medical  
26 evidence submitted at the hearing, the provisions of s. 440.13  
27 shall apply. The report or testimony of the expert medical  
28 advisor shall be made a part of the record of the proceeding  
29 and shall be given the same consideration by the judge of  
30 compensation claims as is accorded other medical evidence  
31 submitted in the proceeding; and all costs incurred in

1 connection with such examination and testimony may be assessed  
2 as costs in the proceeding, subject to the provisions of s.  
3 440.13. No judge of compensation claims may make a finding of  
4 a degree of permanent impairment that is greater than the  
5 greatest permanent impairment rating given the claimant by any  
6 examining or treating physician, except upon stipulation of  
7 the parties.

8 (e) The order making an award or rejecting the claim,  
9 referred to in this chapter as a "compensation order," shall  
10 be issued by the judge of compensation claims within 21 days  
11 after the final hearing and shall set forth the findings of  
12 ultimate facts and the mandate; and the order need not include  
13 any other reason or justification for such mandate. The  
14 compensation order shall be filed in the office of the  
15 division at Tallahassee. A copy of such compensation order  
16 shall be sent by mail to the parties and attorneys of record  
17 at the last known address of each, with the date of mailing  
18 noted thereon.

19 (f) Each judge of compensation claims is required to  
20 submit a special report to the Chief Judge in each contested  
21 workers' compensation case in which the case is not determined  
22 in a summary manner within 14 days after the ~~of~~ final hearing  
23 or within the timeframes specified in this section. ~~The said~~  
24 form shall be provided by the Chief Judge and shall contain  
25 the names of the judge of compensation claims and of the  
26 attorneys involved and a brief explanation by the judge of  
27 compensation claims as to the reason for the ~~such a~~ delay in  
28 issuing a final order or exceeding the timeframes specified in  
29 this section. The Chief Judge shall compile these special  
30 reports into an annual public report to the Governor, the  
31 Secretary of Labor and Employment Security, the Legislature,

1 The Florida Bar, and the statewide ~~appellate district judicial~~  
2 nominating commission ~~commissions~~.

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

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

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

23 (i)(j) To further expedite dispute resolution and to  
24 enhance the self-executing features of the system, those  
25 petitions filed in accordance with s. 440.192 that involve a  
26 claim for benefits of \$5,000 or less shall, in the absence of  
27 compelling evidence to the contrary, be presumed to be  
28 appropriate for expedited resolution under this paragraph; and  
29 any other claim filed in accordance with s. 440.192, upon the  
30 written agreement of both parties and application by either  
31 party, may similarly be resolved under this paragraph. Claims

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

23 (j) A judge of compensation claims, upon the motion of  
24 a party or the judge's own motion, may dismiss a petition for  
25 lack of prosecution if no petitions, responses, motions,  
26 orders, requests for hearings, or notices of deposition have  
27 been filed for a period of 12 months, unless good cause is  
28 shown. Dismissals for lack of prosecution are without  
29 prejudice and do not require a hearing.

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



1           440.29 Procedure before the judge of compensation  
2 claims.--

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

12           Section 12. Subsections (1) and (3) of section 440.34,  
13 Florida Statutes, are amended to read:

14           440.34 Attorney's fees; costs.--

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

1 compensation claims expressly finds that the attorney's fee,  
2 based on benefits secured, fails to fairly compensate the  
3 attorney and, in her or his judgment, the circumstances of the  
4 particular case warrant such action. The judge of  
5 compensation claims shall not approve a compensation order, a  
6 joint stipulation for lump-sum settlement, a stipulation or  
7 agreement between a claimant and his or her attorney, or any  
8 other agreement related to benefits under this chapter that  
9 provides for an attorney's fee in excess of the amount  
10 permitted by this section.†  
11 ~~(a) The time and labor required, the novelty and~~  
12 ~~difficulty of the questions involved, and the skill requisite~~  
13 ~~to perform the legal service properly.~~  
14 ~~(b) The fee customarily charged in the locality for~~  
15 ~~similar legal services.~~  
16 ~~(c) The amount involved in the controversy and the~~  
17 ~~benefits resulting to the claimant.~~  
18 ~~(d) The time limitation imposed by the claimant or the~~  
19 ~~circumstances.~~  
20 ~~(e) The experience, reputation, and ability of the~~  
21 ~~lawyer or lawyers performing services.~~  
22 ~~(f) The contingency or certainty of a fee.~~  
23 (3) If the claimant should prevail in any proceedings  
24 before a judge of compensation claims or court, there shall be  
25 taxed against the employer the reasonable costs of such  
26 proceedings, not to include the attorney's fees of the  
27 claimant. A claimant shall be responsible for the payment of  
28 her or his own attorney's fees, except that a claimant shall  
29 be entitled to recover a reasonable attorney's fee from a  
30 carrier or employer:  
31

- 1           (a) Against whom she or he successfully asserts a  
2 petition claim for medical benefits only, if the claimant has  
3 not filed or is not entitled to file at such time a claim for  
4 disability, permanent impairment, wage-loss, or death  
5 benefits, arising out of the same accident; or  
6           (b) In any case in which the employer or carrier files  
7 a response to petition ~~notice of denial~~ with the Office of the  
8 Judges of Compensation Claims division and the injured person  
9 has employed an attorney in the successful prosecution of the  
10 claim; or  
11           (c) In a proceeding in which a carrier or employer  
12 denies that an injury occurred for which compensation benefits  
13 are payable, and the claimant prevails on the issue of  
14 compensability; or  
15           (d) In cases where the claimant successfully prevails  
16 in proceedings filed under s. 440.24 or s. 440.28.

17  
18 Regardless of the date benefits were initially requested,  
19 attorney's fees shall not attach under this subsection until  
20 30 days from the date the carrier or employer, if  
21 self-insured, receives the petition.~~In applying the factors~~  
22 ~~set forth in subsection (1) to cases arising under paragraphs~~  
23 ~~(a), (b), (c), and (d), the judge of compensation claims must~~  
24 ~~only consider only such benefits and the time reasonably spent~~  
25 ~~in obtaining them as were secured for the claimant within the~~  
26 ~~scope of paragraphs (a), (b), (c), and (d).~~

27           Section 13. Section 440.345, Florida Statutes, is  
28 amended to read:

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

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

5 Section 14. Subsections (1) and (2) of section  
6 440.4416, Florida Statutes, are amended to read:

7 440.4416 Workers' Compensation Oversight Board.--

8 (1) There is created within the Department of Labor  
9 and Employment Security the Workers' Compensation Oversight  
10 Board. The board shall be composed of the following members,  
11 each of whom has knowledge of, or experience with, the  
12 workers' compensation system:

13 (a) Five ~~Six~~ members selected by the Governor, none of  
14 whom shall be a member of the Legislature at the time of  
15 appointment, consisting of the following:

16 1. One representative ~~Two representatives~~ of the  
17 workers' compensation insurance industry employers.

18 2. One representative ~~Four representatives~~ of workers'  
19 compensation health care providers ~~employees, one of whom must~~  
20 ~~be a representative of an employee's union whose members are~~  
21 ~~covered by workers' compensation pursuant to this chapter.~~

22 3. One representative of workers' compensation  
23 claimant's attorneys.

24 4. One representative of workers' compensation defense  
25 attorneys.

26 5. One representative who is either an employer or a  
27 nonsalaried and nonmanagement employee.

28 (b) Two ~~Three~~ members selected by the President of the  
29 Senate, none of whom shall be members of the Legislature at  
30 the time of appointment, consisting of:

31

1           ~~1. A representative of employers who employs at least~~  
2 ~~10 employees in Florida for which workers' compensation~~  
3 ~~coverage is provided pursuant to this chapter, and who is a~~  
4 ~~licensed general contractor actively engaged in the~~  
5 ~~construction industry in this state.~~

6           1.2. A representative of employers who employs fewer  
7 than 25 ~~10~~ employees in Florida for which workers'  
8 compensation coverage is provided pursuant to this chapter.

9           ~~2.3.~~ A representative of employees who is a  
10 nonsalaried and nonmanagement employee of an employer  
11 employing at least 25 persons.

12           (c) Two ~~Three~~ members selected by the Speaker of the  
13 House of Representatives, none of whom shall be members of the  
14 Legislature at the time of appointment, consisting of:

15           ~~1. A representative of employers who employs fewer~~  
16 ~~than 10 employees in Florida and who is a licensed general~~  
17 ~~contractor actively engaged in the construction industry in~~  
18 ~~this state for which workers' compensation coverage is~~  
19 ~~provided pursuant to this chapter.~~

20           1.2. A representative of employers who employs at  
21 least 25 ~~10~~ employees in Florida for which workers'  
22 compensation coverage is provided pursuant to this chapter.

23           ~~2.3.~~ A representative of employees who is a  
24 nonsalaried and nonmanagement employee of an employer  
25 employing fewer than 25 persons.

26           ~~(d) Additionally, the Insurance Commissioner and the~~  
27 ~~secretary of the Department of Labor and Employment Security~~  
28 ~~shall be nonvoting ex officio members.~~

29           ~~(d)(e)~~ The terms of all current board members shall  
30 expire December 31, 2001. New original appointments to the  
31 board shall be made on or before January 1, 2002 ~~1994~~.

1 Vacancies in the membership of the board shall be filled in  
2 the same manner as the original appointments. ~~Except as to ex~~  
3 ~~officio members of the board,~~ Three appointees of the  
4 Governor, one appointee ~~two appointees~~ of the President of the  
5 Senate, and one appointee ~~two appointees~~ of the Speaker of the  
6 House of Representatives shall serve for terms of 2 years, and  
7 the remaining appointees shall serve for terms of 4 years.  
8 Thereafter, all members shall serve for terms of 4 years;  
9 except that a vacancy shall be filled by appointment for the  
10 remainder of the term. ~~The board shall have an organizational~~  
11 ~~meeting on or before March 1, 1994, the time and place of such~~  
12 ~~meeting to be determined by the Governor.~~

13 (e)~~(f)~~ Each member is accountable to the Governor for  
14 proper performance of his or her duties as a member of the  
15 board. The Governor may remove from office any member for  
16 malfeasance, misfeasance, neglect of duty, drunkenness,  
17 incompetence, permanent inability to perform official duties,  
18 or for pleading guilty or nolo contendere to, or having been  
19 adjudicated guilty of, a first degree misdemeanor or a felony.

20 (f)~~(g)~~ A vacancy shall occur upon failure of a member  
21 to attend four consecutive meetings of the board or 50 percent  
22 of the meetings of the board during a 12-month period, unless  
23 the board by majority votes to excuse the absence of such  
24 member.

25 (2) POWERS AND DUTIES; ORGANIZATION.--

26 (a) The board shall have all the powers necessary and  
27 convenient to carry out and effectuate the purposes of this  
28 section, including, but not limited to, the power to:

29 1. Conduct public hearings.

30 ~~2. Report to the Legislature by January 1, 1995, as to~~  
31 ~~the feasibility of a return-to-work program that includes~~

1 ~~incentives for employers who encourage such a program and~~  
2 ~~disincentives for employers who hinder such a program.~~

3 ~~2.3.~~ Prescribe qualifications for board employees.

4 ~~3.4.~~ Appear on its own behalf before other boards,  
5 commissions, or agencies of the state or Federal Government.

6 ~~4.5.~~ Make and execute contracts to the extent that  
7 such contracts are consistent with duties and powers set forth  
8 in this section and elsewhere in the law of this state.

9 (b) The board shall adopt bylaws, formulate workers'  
10 compensation legislation or amendments, review, advise, and  
11 appear before the Legislature in connection with legislation  
12 that impacts the workers' compensation system, advise the  
13 division on policy, administrative and legislative issues, and  
14 appear before other state or federal agencies in connection  
15 with matters impacting the workers' compensation system.

16 (c) The Governor board shall select a chair from among  
17 the employer or employee members of the board. The member  
18 designated as chair ~~who~~ shall serve as chair for a term period  
19 of 2 years or and until a successor is elected and qualified,  
20 unless removed from the board by the Governor. The chair shall  
21 be the chief administrative officer of the board and shall  
22 have the authority to plan, direct, coordinate, and execute  
23 the powers and duties of the board.

24 (d) The board shall hold at least one regularly  
25 scheduled meeting each quarter and other ~~such~~ meetings during  
26 the year as it deems necessary, except that the chair, a  
27 quorum of the board, or the division may call meetings. The  
28 board shall hold at least two meetings a year outside Leon  
29 County. The board shall maintain transcripts of each meeting.  
30 Such transcripts shall be available to any interested person  
31 in accordance with chapter 119.

1           (e) The board shall approve the bylaws or amendments  
2 thereto by unanimous vote. All other board actions or  
3 recommendations shall be approved by ~~not less than~~ a majority  
4 vote of the members present ~~employee representatives and~~  
5 ~~majority vote of employer representatives~~, unless the bylaws  
6 otherwise provide.

7           (f) The board shall submit all formal reports and  
8 publications made by the board to the division at least 30  
9 days prior to the release or publication of the information.  
10 The board shall include in all formal reports and publications  
11 any response from the division.

12           Section 15. Section 627.0915, Florida Statutes, is  
13 amended to read:

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

31



1 ~~anticipated to result from such drug-testing and safety~~  
2 ~~programs.~~

3           Section 16. The joint underwriting plan authorized by  
4 s. 627.311(4), Florida Statutes, shall conduct a study of  
5 construction industry exemptions permitted under chapter 440,  
6 Florida Statutes. The study shall contain an examination of  
7 the ramifications of such exemptions on the construction  
8 industry and on the entire workers' compensation system in  
9 this state, including the potential impact of requiring all  
10 partners or sole proprietors actively engaged in the  
11 construction industry who elect to be excluded from the  
12 definition of "employee" in s. 440.02, Florida Statutes, to  
13 obtain a minimum premium or "if any" workers' compensation  
14 insurance policy. The study also shall examine the cost and  
15 availability of such insurance coverage, and shall make  
16 recommendations regarding insurance coverage for partners and  
17 sole proprietors who currently elect to be excluded from  
18 chapter 440, Florida Statutes. The joint underwriting plan  
19 shall complete this study and deliver copies of its written  
20 report to the President of the Senate and the Speaker of the  
21 House of Representatives no later than January 1, 2002.

22           Section 17. Subsection (3) of section 440.45, Florida  
23 Statutes, is repealed.

24           Section 18. This act shall take effect October 1,  
25 2001.

26  
27  
28  
29  
30  
31

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Revises various workers' compensation provisions relating to the duty of an employer to furnish medical treatment, workers' compensation managed care arrangements, compensation for disability, notice of injury or death, the Employee Assistance and Ombudsman Office, procedures for resolving benefit disputes, penalties for late payment of compensation, procedures for mediation and hearings, procedures before judges of compensation claims, attorney's fees and costs, reporting of attorney's fees, the Workers' Compensation Oversight Board, and rate filings. Requires a joint underwriting plan to conduct a study of construction industry exemptions permitted under chapter 440, Florida Statutes. See bill for details.