

By the Council for Competitive Commerce and 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. 440.06, F.S.; requiring employers  
5           to secure compensation; amending s. 440.09,  
6           F.S.; limiting compensation for certain  
7           impairments; requiring certain entities  
8           actively engaged in the construction industry  
9           to secure payment of compensation under chapter  
10          440, F.S., after a certain date; amending s.  
11          440.10, F.S.; specifying liability for  
12          compensation; amending s. 440.11, F.S;  
13          providing for exclusiveness of liability;  
14          amending s. 440.13, F.S.; providing an  
15          additional criterion for determining certain  
16          value of nonprofessional attendant care  
17          provided by a family member; requiring carriers  
18          to allow employees to change physicians under  
19          certain circumstances; specifying payments for  
20          independent medical examinations; deleting  
21          selection of independent medical examiner  
22          criteria; specifying the number of medical  
23          opinions admissible into evidence; providing an  
24          exception to certain recourse for payment for  
25          services rendered; amending s. 440.134, F.S.;  
26          revising a definition; revising certain  
27          grievance procedures for workers' compensation  
28          managed care arrangements; amending s. 440.14,  
29          F.S.; providing for determination of pay;  
30          amending s. 440.15, F.S.; revising criteria for  
31          payment of compensation for permanent total

1           disability; revising criteria for payment of  
2           permanent impairment and wage-loss benefits;  
3           amending s. 440.151, F.S.; providing for  
4           compensation for occupational diseases;  
5           amending s. 440.185, F.S.; requiring additional  
6           information in a report of injury; amending s.  
7           440.191, F.S.; including managed care  
8           arrangements under provisions relating to the  
9           Employee Assistance and Ombudsman Office;  
10          revising procedures for petitions for benefits  
11          under the office; amending s. 440.192, F.S.;  
12          revising procedures for resolving benefit  
13          disputes; transferring duties and  
14          responsibilities of the Division of Workers'  
15          Compensation to the Office of the Judges of  
16          Compensation Claims; amending s. 440.20, F.S.;  
17          specifying time for payment of compensation;  
18          prohibiting approval of settlement proposals  
19          providing for attorney's fees in excess of  
20          certain amounts; amending s. 440.25, F.S.;  
21          limiting continuances under procedures for  
22          mediation and hearings; providing for  
23          selections of mediators by the Chief Judge;  
24          providing for holding mediation conferences  
25          instead of mediation hearings under certain  
26          circumstances; providing for completion of  
27          pretrial stipulations; authorizing a judge of  
28          compensation claims to sanction certain parties  
29          under certain circumstances; requiring a judge  
30          of compensation claims to order a pretrial  
31          hearing for certain purposes under certain

1           circumstances; revising final hearing time  
2           limitations and procedures; deleting a  
3           requirement that judges of compensation claims  
4           adopt and enforce certain uniform local rules;  
5           specifying resolution of determination of pay  
6           claims; requiring resolution of certain claims  
7           through an expedited dispute resolution  
8           process; providing for dismissal of certain  
9           petitions for lack of prosecution under certain  
10          circumstances; amending s. 440.29, F.S.;  
11          providing for receipt into evidence of medical  
12          reports from independent medical examiners;  
13          amending s. 440.34, F.S.; providing for limited  
14          additional attorney's fees in medical-only  
15          cases; prohibiting approval of attorney's fees  
16          in excess of certain amounts; deleting criteria  
17          for determining certain attorney's fees;  
18          amending s. 440.345, F.S.; requiring a summary  
19          report of attorney's fees to the Governor and  
20          the Legislature; amending s. 440.39, F.S.;  
21          specifying duties of carriers with respect to  
22          certain evidence; amending s. 440.4416, F.S.;  
23          revising membership, member criteria, terms,  
24          and meetings requirements of the Workers'  
25          Compensation Oversight Board; deleting an  
26          obsolete provision; providing additional  
27          reporting requirements for the board; amending  
28          s. 627.0915, F.S.; deleting obsolete  
29          provisions; repealing s. 440.45(3), F.S.,  
30          relating to rotating docketing judges of  
31

1           compensation claims; providing severability;  
2           providing an effective date.

3

4 Be It Enacted by the Legislature of the State of Florida:

5

6           Section 1. Subsection (1), paragraph (b) of subsection  
7 (14), and subsection (37) of section 440.02, Florida Statutes,  
8 are amended to read:

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

12           (1) "Accident" means only an unexpected or unusual  
13 event or result that happens suddenly. A mental or nervous  
14 injury due to stress, fright, or excitement only, or  
15 disability or death due to the accidental acceleration or  
16 aggravation of a venereal disease or of a disease due to the  
17 habitual use of alcohol or controlled substances or narcotic  
18 drugs, or a disease that manifests itself in the fear of or  
19 dislike for an individual because of the individual's race,  
20 color, religion, sex, national origin, age, or handicap is not  
21 an injury by accident arising out of the employment. If a  
22 preexisting disease or anomaly is accelerated or aggravated by  
23 an accident arising out of and in the course of employment,  
24 only acceleration of death or acceleration or aggravation of  
25 the preexisting condition reasonably attributable to the  
26 accident is compensable, with respect to death or permanent  
27 impairment. An injury or exposure caused by exposure to a  
28 toxic substance is not an injury by accident arising out of  
29 the employment unless there is clear and convincing evidence  
30 establishing that exposure to the specific substance involved,

31

1 at the levels to which the employee was exposed, can cause the  
2 injury or disease sustained by the employee.

3 (14)

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

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

11 2. As to officers of a corporation who are actively  
12 engaged in the construction industry, no more than three  
13 officers may elect to be exempt from this chapter by filing  
14 written notice of the election with the division as provided  
15 in s. 440.05, however;

16 a. Such election is valid only with respect to an  
17 officer who is the president, vice president, secretary, or  
18 treasurer of the corporation.

19 b. Such election is valid only with respect to an  
20 officer who owns not less than 10 percent of the stock of the  
21 corporation.

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

25  
26 Services are presumed to have been rendered to the corporation  
27 if the officer is compensated by other than dividends upon  
28 shares of stock of the corporation which the officer owns.

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

31

- 1           (a) Spinal cord injury involving severe paralysis of  
2 an arm, a leg, or the trunk;
- 3           (b) Amputation of an arm, a hand, a foot, or a leg  
4 involving the effective loss of use of that appendage;
- 5           (c) Severe brain or closed-head injury as evidenced  
6 by:
- 7           1. Severe sensory or motor disturbances;
- 8           2. Severe communication disturbances;
- 9           3. Severe complex integrated disturbances of cerebral  
10 function;
- 11           4. Severe episodic neurological disorders; or
- 12           5. Other severe brain and closed-head injury  
13 conditions at least as severe in nature as any condition  
14 provided in subparagraphs 1.-4.;
- 15           (d) Second-degree or third-degree burns of 25 percent  
16 or more of the total body surface or third-degree burns of 5  
17 percent or more to the face and hands; or
- 18           (e) Total or industrial blindness; ~~or~~
- 19           ~~(f) Any other injury that would otherwise qualify~~  
20 ~~under this chapter of a nature and severity that would qualify~~  
21 ~~an employee to receive disability income benefits under Title~~  
22 ~~II or supplemental security income benefits under Title XVI of~~  
23 ~~the federal Social Security Act as the Social Security Act~~  
24 ~~existed on July 1, 1992, without regard to any time~~  
25 ~~limitations provided under that act.~~
- 26           Section 2. Section 440.06, Florida Statutes, is  
27 amended to read:
- 28           440.06 Failure to secure compensation; effect.--Every  
29 employer who fails to secure the payment of compensation, as  
30 provided in s. 440.10, by failing to meet the requirements of  
31 ~~under this chapter as provided in s. 440.38 may not, in any~~

1 suit brought against him or her by an employee subject to this  
2 chapter to recover damages for injury or death, defend such a  
3 suit on the grounds that the injury was caused by the  
4 negligence of a fellow servant, that the employee assumed the  
5 risk of his or her employment, or that the injury was due to  
6 the comparative negligence of the employee.

7 Section 3. Subsection (1) of section 440.09, Florida  
8 Statutes, is amended, and subsection (9) is added to said  
9 section, to read:

10 440.09 Coverage.--

11 (1) The employer shall pay compensation or furnish  
12 benefits required by this chapter if the employee suffers an  
13 accidental compensable injury or death arising out of work  
14 performed in the course and the scope of employment. The  
15 injury, its occupational cause, and any resulting  
16 manifestations or disability shall be established to a  
17 reasonable degree of medical certainty and by objective  
18 medical findings. Mental or nervous injuries occurring as a  
19 manifestation of an injury compensable under this section  
20 shall be demonstrated by clear and convincing evidence. In  
21 cases involving occupational disease or repetitive exposure,  
22 both causation and sufficient exposure to support causation  
23 shall be proven by clear and convincing evidence.  
24 Compensation may not be paid as a result of any impairment  
25 rating for psychiatric impairments.

26 (a) This chapter does not require any compensation or  
27 benefits for any subsequent injury the employee suffers as a  
28 result of an original injury arising out of and in the course  
29 of employment unless the original injury is the major  
30 contributing cause of the subsequent injury.

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1 (b) If an injury arising out of and in the course of  
2 employment combines with a preexisting disease or condition to  
3 cause or prolong disability or need for treatment, the  
4 employer must pay compensation or benefits required by this  
5 chapter only to the extent that the injury arising out of and  
6 in the course of employment is and remains the major  
7 contributing cause of the disability or need for treatment.

8 (c) Death resulting from an operation by a surgeon  
9 furnished by the employer for the cure of hernia as required  
10 in s. 440.15(6) shall for the purpose of this chapter be  
11 considered to be a death resulting from the accident causing  
12 the hernia.

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

23 (9) Notwithstanding any other provision of this  
24 chapter, effective January 1, 2004, all partners or sole  
25 proprietors actively engaged in the construction industry  
26 shall secure the payment of compensation under this chapter.

27 Section 4. Paragraph (a) of subsection (1) of section  
28 440.10, Florida Statutes, is amended to read:

29 440.10 Liability for compensation.--

30 (1)(a) Every employer coming within the provisions of  
31 this chapter, including any brought within the chapter by



1 waiver of exclusion or of exemption, shall be liable for, and  
2 shall secure, in accordance with s. 440.38, the payment to his  
3 or her employees, or any physician, surgeon, or pharmacist  
4 providing services under the provisions of s. 440.13, of the  
5 compensation payable under ss. 440.13, 440.15, and 440.16. Any  
6 contractor or subcontractor who engages in any public or  
7 private construction in the state shall secure and maintain  
8 compensation for his or her employees under this chapter as  
9 provided in s. 440.38.

10 Section 5. Subsection (1) of section 440.11, Florida  
11 Statutes, is amended to read:

12 440.11 Exclusiveness of liability.--

13 (1) Except if an employer acts with the intent to  
14 cause injury or death, the liability of an employer prescribed  
15 in s. 440.10 shall be exclusive and in place of all other  
16 liability, including any vicarious liability, of such employer  
17 to any third-party tortfeasor and to the employee, the legal  
18 representative thereof, husband or wife, parents, dependents,  
19 next of kin, and anyone otherwise entitled to recover damages  
20 from such employer at law or in admiralty on account of such  
21 injury or death, except that if an employer fails to secure  
22 payment of compensation in accordance with s. 440.38 ~~as~~  
23 ~~required by this chapter~~, an injured employee, or the legal  
24 representative thereof in case death results from the injury,  
25 may elect to claim compensation under this chapter or to  
26 maintain an action at law or in admiralty for damages on  
27 account of such injury or death. In such action the defendant  
28 may not plead as a defense that the injury was caused by  
29 negligence of a fellow employee, that the employee assumed the  
30 risk of the employment, or that the injury was due to the  
31 comparative negligence of the employee. The same immunities

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

1 self-insured, shall have an offset against any workers'  
2 compensation benefits to which the employee would be entitled  
3 under this chapter. Nothing in this subsection shall create  
4 or result in vicarious liability on the part of the employer.

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

10 440.13 Medical services and supplies; penalty for  
11 violations; limitations.--

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

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

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

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

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

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

5           (f) Upon the written request of the employee, the  
6 carrier shall give the employee the opportunity for one change  
7 of physician during the course of treatment for any one  
8 accident. The employee shall be entitled to select another  
9 physician from among not fewer than three carrier-authorized  
10 physicians who are not professionally affiliated.

11           (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

6           3. ~~The examiner is unavailable due to injury, death,~~  
7 ~~or relocation outside a reasonably accessible geographic area;~~  
8 ~~or~~

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

10  
11 Any party may request, or a judge of compensation claims may  
12 require, designation of a division medical advisor as an  
13 independent medical examiner. The opinion of the advisors  
14 acting as examiners shall not be afforded the presumption set  
15 forth in paragraph (9)(c).

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 and the carrier  
21 may 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.

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

20           (14) PAYMENT OF MEDICAL FEES.--  
21           (b) Fees charged for remedial treatment, care, and  
22 attendance may not exceed the applicable fee schedules adopted  
23 under this chapter, except as provided pursuant to a contract  
24 entered into between an employer or carrier and a certified  
25 health care provider or health care facility for the payment  
26 of medical services for covered expenses.

27           Section 7. Paragraph (d) of subsection (1), subsection  
28 (2), and paragraphs (c) and (d) of subsection (15) of section  
29 440.134, Florida Statutes, are amended to read:

30           440.134 Workers' compensation managed care  
31 arrangement.--

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

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

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

15 ~~(b)(a)~~ The agency shall authorize an insurer to offer  
16 or utilize a workers' compensation managed care arrangement  
17 after the insurer files a completed application along with the  
18 payment of a \$1,000 application fee, and upon the agency's  
19 being satisfied that the applicant has the ability to provide  
20 quality of care consistent with the prevailing professional  
21 standards of care and the insurer and its workers'  
22 compensation managed care arrangement otherwise meets the  
23 requirements of this section. No insurer may offer or utilize  
24 a managed care arrangement without such authorization. The  
25 authorization, unless sooner suspended or revoked, shall  
26 automatically expire 2 years after the date of issuance unless  
27 renewed by the insurer. The authorization shall be renewed  
28 upon application for renewal and payment of a renewal fee of  
29 \$1,000, provided that the insurer is in compliance with the  
30 requirements of this section and any rules adopted hereunder.  
31 An application for renewal of the authorization shall be made

1 90 days prior to expiration of the authorization, on forms  
2 provided by the agency. The renewal application shall not  
3 require the resubmission of any documents previously filed  
4 with the agency if such documents have remained valid and  
5 unchanged since their original filing.

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

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

27 Section 8. Paragraph (a) of subsection (1) of section  
28 440.14, Florida Statutes, is amended to read:

29 440.14 Determination of pay.--

30 (1) Except as otherwise provided in this chapter, the  
31 average weekly wages of the injured employee at the time of



1 the injury shall be taken as the basis upon which to compute  
2 compensation and shall be determined, subject to the  
3 limitations of s. 440.12(2), as follows:

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

20 Section 9. Paragraphs (b) and (f) of subsection (1)  
21 and paragraph (a) of subsection (3) of section 440.15, Florida  
22 Statutes, are amended to read:

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

26 (1) PERMANENT TOTAL DISABILITY.--

27 (b) Any compensable injury eligible for permanent  
28 total benefits must be of a nature and severity that prevents  
29 the employee from being able to perform his or her previous  
30 work or any work available in substantial numbers within the  
31 national economy. If the employee is engaged in or is

1 physically capable of being engaged in any gainful employment,  
2 he or she is not entitled to permanent total disability. The  
3 burden is on the employee to establish that he or she is  
4 unable, due to physical limitations, to perform even part-time  
5 sedentary work if such work is available within a 100-mile  
6 radius of the employee's residence. In addition,~~only a~~  
7 catastrophic injury as defined in s. 440.02 shall, in the  
8 absence of conclusive proof of a substantial earning capacity,  
9 constitute permanent total disability. Only claimants with  
10 catastrophic injuries are eligible for permanent total  
11 benefits. ~~In no other case may permanent total disability be~~  
12 ~~awarded.~~

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

1 July 1, 1984. These supplemental benefits shall be paid by the  
2 employer when the injury occurred on or after July 1, 1984.  
3 Supplemental benefits are not payable for any period prior to  
4 October 1, 1974.

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

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

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

31           (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

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

1 osteopathic medicine licensed under chapters 458 and 459, a  
2 chiropractic physician licensed under chapter 460, a podiatric  
3 physician licensed under chapter 461, an optometrist licensed  
4 under chapter 463, or a dentist licensed under chapter 466, as  
5 appropriate considering the nature of the injury. No other  
6 persons are authorized to render opinions regarding the  
7 existence of or the extent of permanent impairment.

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

18           a. The expiration of a period computed at the rate of  
19 3 weeks for each percentage point of impairment; or  
20           b. The death of the employee.

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

27 Compensation is not payable for the mental, psychological, or  
28 emotional injury arising out of depression from being out of  
29 work or from preexisting mental, psychological, or emotional  
30 conditions. If the certification and evaluation are performed  
31 by a doctor other than the employee's treating doctor, the

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

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

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

19           Section 10. Paragraph (e) of subsection (1) and  
20 subsection (2) of section 440.151, Florida Statutes, are  
21 amended to read:

22           440.151 Occupational diseases.--

23           (1)

24           (e) No compensation shall be payable for disability or  
25 death resulting from tuberculosis arising out of and in the  
26 course of employment by the Department of Health at a state  
27 tuberculosis hospital, or aggravated by such employment, when  
28 the employee had suffered from said disease at any time prior  
29 to the commencement of such employment. Both causation and  
30 sufficient exposure to support causation shall be proven by  
31 clear and convincing evidence.

1           (2) Whenever used in this section the term  
2 "occupational disease" shall be construed to mean only a  
3 disease which is due to causes and conditions which are  
4 characteristic of and peculiar to a particular trade,  
5 occupation, process, or employment, and to exclude all  
6 ordinary diseases of life to which the general public is  
7 exposed, unless the incidence of the disease is substantially  
8 higher in the particular trade, occupation, process, or  
9 employment than for the general public. "Occupational  
10 disease" does not mean a disease for which there are no  
11 epidemiological studies showing that exposure to the specific  
12 substance involved, at the levels to which the employee was  
13 exposed, can cause the precise disease sustained by the  
14 employee.

15           Section 11. 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

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

3           ~~(f)(e)~~ Such other information as the division may  
4 require.

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

17           Section 12. Section 440.191, Florida Statutes, is  
18 amended to read:

19           440.191 Employee Assistance and Ombudsman Office.--

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



1 definitions ~~that are~~ necessary for the effective  
2 administration of this section.

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

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

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

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

1 The employee, the employer, and the carrier shall cooperate  
2 with the office and shall timely provide the office with any  
3 documents or other information that it may require in  
4 connection with its efforts under this section.

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

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

25 Section 13. Subsections (1), (2), (5), (7), and (8) of  
26 section 440.192, Florida Statutes, are amended to read:

27 440.192 Procedure for resolving benefit disputes.--

28 (1) Subject to s. 440.191, any employee who has not  
29 received a benefit to which the employee believes she or he is  
30 entitled under this chapter shall serve by certified mail upon  
31 the employer, the employer's carrier, and the Office of the

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

1 with the carrier and a copy of the request for mileage filed  
2 with the carrier.

3 (h) Specific listing of all medical charges alleged  
4 unpaid, including the name and address of the medical  
5 provider, the amounts due, and the specific dates of  
6 treatment.

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

13 (j) Specific explanation of any other disputed issue  
14 that a judge of compensation claims will be called to rule  
15 upon.

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

18  
19 The dismissal of any petition or portion of the petition under  
20 this section is without prejudice and does not require a  
21 hearing.

22 (5) All motions to dismiss must state with  
23 particularity the basis for the motion. The judge of  
24 compensation claims shall enter an order upon such motions  
25 without hearing, unless good cause for hearing is shown. When  
26 any petition or portion of a petition is dismissed for lack of  
27 specificity under this subsection, the claimant must be  
28 allowed 20 days after the date of the order of dismissal in  
29 which to file an amended petition. Any grounds for dismissal  
30 for lack of specificity under this section not asserted within  
31

1 ~~45~~ 30 days after receipt of the petition for benefits are  
2 thereby waived.

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

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

24 Section 14. Subsections (4) and (11) of section  
25 440.20, Florida Statutes, are amended to read:

26 440.20 Time for payment of compensation; penalties for  
27 late payment.--

28 (4) If the carrier is uncertain of its obligation to  
29 provide benefits or compensation, it may initiate payment  
30 without prejudice and without admitting liability. The carrier  
31 shall immediately and in good faith commence investigation of

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

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

1 compensability of the claimed injury or the alleged accident.  
2 The employer or carrier may not pay any attorney's fees on  
3 behalf of the claimant for any settlement under this section  
4 unless expressly authorized elsewhere in this chapter. Upon  
5 the joint petition of all interested parties and after giving  
6 due consideration to the interests of all interested parties,  
7 the judge of compensation claims may enter a compensation  
8 order approving and authorizing the discharge of the liability  
9 of the employer for compensation and remedial treatment, care,  
10 and attendance, as well as rehabilitation expenses, by the  
11 payment of a lump sum. The judge of compensation claims shall  
12 not approve settlement proposals, including any stipulations  
13 or agreements between the parties or between a claimant and  
14 his or her attorney related to a settlement, which provide for  
15 an attorney's fee in excess of the amount permitted in s.  
16 440.34. Such a compensation order so entered upon joint  
17 petition of all interested parties is not subject to  
18 modification or review under s. 440.28. If the settlement  
19 proposal together with supporting evidence is not approved by  
20 the judge of compensation claims, it shall be considered void.  
21 Upon approval of a lump-sum settlement under this subsection,  
22 the judge of compensation claims shall send a report to the  
23 Chief Judge of the amount of the settlement and a statement of  
24 the nature of the controversy. The Chief Judge shall keep a  
25 record of all such reports filed by each judge of compensation  
26 claims and shall submit to the Legislature a summary of all  
27 such reports filed under this subsection annually by September  
28 15.

29 (b) When a claimant is not represented by counsel,  
30 upon joint petition of all interested parties, ~~a~~ lump-sum  
31 payment in exchange for the employer's or carrier's release

1 from liability for future medical expenses, as well as future  
2 payments of compensation and rehabilitation expenses, and any  
3 other benefits provided under this chapter, may be allowed at  
4 any time in any case after the injured employee has attained  
5 maximum medical improvement. An employer or carrier may not  
6 pay any attorney's fees on behalf of the claimant for any  
7 settlement, unless expressly authorized elsewhere in this  
8 chapter. The judge of compensation claims shall not approve  
9 settlement proposals, including any stipulations or agreements  
10 between the parties or between a claimant and his or her  
11 attorney related to the settlement proposal, which provide for  
12 an attorney's fee in excess of the amount permitted in s.  
13 440.34.A compensation order so entered upon joint petition of  
14 all interested parties shall not be subject to modification or  
15 review under s. 440.28. However, a judge of compensation  
16 claims is not required to approve any award for lump-sum  
17 payment when it is determined by the judge of compensation  
18 claims that the payment being made is in excess of the value  
19 of benefits the claimant would be entitled to under this  
20 chapter. The judge of compensation claims shall make or cause  
21 to be made such investigations as she or he considers  
22 necessary, in each case in which the parties have stipulated  
23 that a proposed final settlement of liability of the employer  
24 for compensation shall not be subject to modification or  
25 review under s. 440.28, to determine whether such final  
26 disposition will definitely aid the rehabilitation of the  
27 injured worker or otherwise is clearly for the best interests  
28 of the person entitled to compensation and, in her or his  
29 discretion, may have an investigation made by the  
30 Rehabilitation Section of the Division of Workers'  
31 Compensation. The joint petition and the report of any



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

1 unaccrued future payments so paid may be recovered or recouped  
2 by the employer or carrier. Such applications shall be  
3 considered and determined in accordance with s. 440.25.

4 (c) Notwithstanding s. 440.21(2), when a claimant is  
5 represented by counsel, the claimant may waive all rights to  
6 all benefits under this chapter by entering into a settlement  
7 agreement releasing the employer and the carrier from  
8 liability for workers' compensation benefits in exchange for a  
9 lump-sum payment to the claimant. The settlement agreement  
10 requires approval by the judge of compensation claims only as  
11 to the attorney's fees paid to the claimant's attorney by the  
12 claimant. The parties need not submit any information or  
13 documentation in support of the settlement, except as needed  
14 to justify the amount of the attorney's fees. Neither the  
15 employer nor the carrier is responsible for any attorney's  
16 fees relating to the settlement and release of claims under  
17 this section. Payment of the lump-sum settlement amount must  
18 be made within 14 days after the date the judge of  
19 compensation claims mails the order approving the attorney's  
20 fees. Any order entered by a judge of compensation claims  
21 approving the attorney's fees as set out in the settlement  
22 under this subsection is not considered to be an award and is  
23 not subject to modification or review. The judge of  
24 compensation claims shall report these settlements to the  
25 chief judge in accordance with the requirements set forth in  
26 paragraphs (a) and (b). Settlements entered into under this  
27 subsection are valid and apply to all dates of accident.

28 (d) With respect to any lump-sum settlement under this  
29 subsection, a judge of compensation claims must consider  
30 whether the settlement provides for appropriate recovery of  
31 any child support arrearage. Neither the employer nor the

1 carrier has a duty to investigate or collect information  
2 regarding child support arrearages.

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

6 Section 15. Subsections (1), (3), and (4) of section  
7 440.25, Florida Statutes, are amended to read:

8 440.25 Procedures for mediation and hearings.--

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

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

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

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. This subparagraph is repealed January  
7 1, 2003.  
8         2.a. With respect to any mediation occurring on or  
9 after January 1, 2003; or  
10         b. If the parties agree or if no mediators under  
11 subparagraph 1. are available to conduct the required  
12 mediation within the period specified in this section,  
13  
14 the parties shall hold a mediation conference at the carrier's  
15 expense within the 90-day period set for mediation. The  
16 mediation conference shall be conducted by a mediator  
17 certified under s. 44.106. If the parties do not agree upon a  
18 mediator within 10 days after the date of the order, the  
19 claimant shall notify the judge in writing and the judge shall  
20 appoint a mediator under this subparagraph within 7 days.In  
21 the event both parties agree, the results of the mediation  
22 conference shall be binding and neither party shall have a  
23 right to appeal the results. In the event either party refuses  
24 to agree to the results of the mediation conference, the  
25 results of the mediation conference as well as the testimony,  
26 witnesses, and evidence presented at the conference shall not  
27 be admissible at any subsequent proceeding on the claim. The  
28 mediator shall not be called in to testify or give deposition  
29 to resolve any claim for any hearing before the judge of  
30 compensation claims. The employer may be represented by an  
31

1 attorney at the mediation conference if the employee is also  
2 represented by an attorney at the mediation conference.

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

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

25 (b) The final hearing must be held and concluded  
26 within 90 ~~45~~ days after the mediation conference is held  
27 ~~pretrial hearing~~. Continuances may be granted only if the  
28 requesting party demonstrates to the judge of compensation  
29 claims that the reason for requesting the continuance arises  
30 from circumstances beyond the party's control. Any order  
31 granting a continuance must set forth the date and time of the

1 rescheduled hearing. If a judge of compensation claims grants  
2 two or more continuances to a requesting party, the judge of  
3 compensation claims shall report such continuances to the  
4 Deputy Chief Judge.

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

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

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

23 (f) Each judge of compensation claims is required to  
24 submit a special report to the Chief Judge in each contested  
25 workers' compensation case in which the case is not determined  
26 within 14 days of final hearing. Said form shall be provided  
27 by the Chief Judge and shall contain the names of the judge of  
28 compensation claims and of the attorneys involved and a brief  
29 explanation by the judge of compensation claims as to the  
30 reason for such a delay in issuing a final order. The Chief  
31 Judge shall compile these special reports into an annual



1 public report to the Governor, the Secretary of Labor and  
2 Employment Security, the Legislature, The Florida Bar, and the  
3 appellate district judicial nominating commissions.

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

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

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

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

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

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

31

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

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

9           Section 16. Subsection (4) of section 440.29, Florida  
10 Statutes, is amended to read:

11           440.29 Procedure before the judge of compensation  
12 claims.--

13           (4) All medical reports of authorized treating health  
14 care providers or independent medical examiners, whose medical  
15 opinion is submitted under s. 440.13(5)(e), relating to the  
16 claimant and subject accident shall be received into evidence  
17 by the judge of compensation claims upon proper motion.

18 However, such records must be served on the opposing party at  
19 least 30 days before the final hearing. This section does not  
20 limit any right of further discovery, including, but not  
21 limited to, depositions.

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

24           440.34 Attorney's fees; costs.--

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

1 equal to 20 percent of the first \$5,000 of the amount of the  
2 benefits secured, 15 percent of the next \$5,000 of the amount  
3 of the benefits secured, 10 percent of the remaining amount of  
4 the benefits secured to be provided during the first 10 years  
5 after the date the claim is filed, and 5 percent of the  
6 benefits secured after 10 years. However, in medical-only  
7 petitions, the judge of compensation claims ~~shall consider the~~  
8 ~~following factors in each case and~~ may approve an additional  
9 increase or decrease the attorney's fee, not to exceed \$1,000  
10 per accident based on a reasonable hourly rate, if the judge  
11 of compensation claims expressly finds that the attorney's  
12 fee, based on benefits secured, fails to fairly compensate the  
13 attorney and, in her or his judgment, the circumstances of the  
14 particular case warrant such action. The judge of  
15 compensation claims shall not approve a compensation order, a  
16 joint stipulation for lump-sum settlement, a stipulation or  
17 agreement between a claimant and his or her attorney, or any  
18 other agreement related to benefits under this chapter that  
19 provides for an attorney's fee in excess of the amount  
20 permitted by this section.†

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

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

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

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

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

1           ~~(f) The contingency or certainty of a fee.~~  
2           (3) If the claimant should prevail in any proceedings  
3 before a judge of compensation claims or court, there shall be  
4 taxed against the employer the reasonable costs of such  
5 proceedings, not to include the attorney's fees of the  
6 claimant. A claimant shall be responsible for the payment of  
7 her or his own attorney's fees, except that a claimant shall  
8 be entitled to recover a reasonable attorney's fee from a  
9 carrier or employer:  
10           (a) Against whom she or he successfully asserts a  
11 petition claim for medical benefits only, if the claimant has  
12 not filed or is not entitled to file at such time a claim for  
13 disability, permanent impairment, wage-loss, or death  
14 benefits, arising out of the same accident; or  
15           (b) In any case in which the employer or carrier files  
16 a response to petition ~~notice of denial~~ with the Office of the  
17 Judges of Compensation Claims division and the injured person  
18 has employed an attorney in the successful prosecution of the  
19 claim; or  
20           (c) In a proceeding in which a carrier or employer  
21 denies that an injury occurred for which compensation benefits  
22 are payable, and the claimant prevails on the issue of  
23 compensability; or  
24           (d) In cases where the claimant successfully prevails  
25 in proceedings filed under s. 440.24 or s. 440.28.  
26  
27 Regardless of the date benefits were initially requested,  
28 attorney's fees shall not attach under this subsection until  
29 30 days from the date the carrier or employer, if  
30 self-insured, receives the petition.~~In applying the factors~~  
31 ~~set forth in subsection (1) to cases arising under paragraphs~~

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

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

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

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

16 440.39 Compensation for injuries when third persons  
17 are liable.--

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

21 Section 20. Subsections (1) and (2) of section  
22 440.4416, Florida Statutes, are amended to read:

23 440.4416 Workers' Compensation Oversight Board.--

24 (1) There is created within the Department of Labor  
25 and Employment Security the Workers' Compensation Oversight  
26 Board. The board shall be composed of the following members,  
27 each of whom has knowledge of, or experience with, the  
28 workers' compensation system:

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

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

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

7           3. One representative of workers' compensation  
8 claimant's attorneys.

9           4. One representative of workers' compensation defense  
10 attorneys.

11          5. One representative who is either an employer or a  
12 nonsalaried and nonmanagement employee.

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

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

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

24           2.3. A representative of employees who is a  
25 nonsalaried and nonmanagement employee of an employer  
26 employing at least 25 persons.

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

30           1. ~~A representative of employers who employs fewer~~  
31 ~~than 10 employees in Florida and who is a licensed general~~

1 ~~contractor actively engaged in the construction industry in~~  
2 ~~this state for which workers' compensation coverage is~~  
3 ~~provided pursuant to this chapter.~~

4 1.2. A representative of employers who employs at  
5 least 25 ~~10~~ employees in Florida for which workers'  
6 compensation coverage is provided pursuant to this chapter.

7 2.3. A representative of employees who is a  
8 nonsalaried and nonmanagement employee of an employer  
9 employing fewer than 25 persons.

10 ~~(d) Additionally, the Insurance Commissioner and the~~  
11 ~~secretary of the Department of Labor and Employment Security~~  
12 ~~shall be nonvoting ex officio members.~~

13 ~~(d)(e)~~ The terms of all current board members shall  
14 expire December 31, 2001. New original appointments to the  
15 board shall be made on or before January 1, 2002 ~~1994~~.  
16 Vacancies in the membership of the board shall be filled in  
17 the same manner as the original appointments. ~~Except as to ex~~  
18 ~~officio members of the board,~~ Three appointees of the  
19 Governor, one appointee ~~two appointees~~ of the President of the  
20 Senate, and one appointee ~~two appointees~~ of the Speaker of the  
21 House of Representatives shall serve for terms of 2 years, and  
22 the remaining appointees shall serve for terms of 4 years.  
23 Thereafter, all members shall serve for terms of 4 years;  
24 except that a vacancy shall be filled by appointment for the  
25 remainder of the term. ~~The board shall have an organizational~~  
26 ~~meeting on or before March 1, 1994, the time and place of such~~  
27 ~~meeting to be determined by the Governor.~~

28 ~~(e)(f)~~ (e) Each member is accountable to the Governor for  
29 proper performance of his or her duties as a member of the  
30 board. The Governor may remove from office any member for  
31 malfeasance, misfeasance, neglect of duty, drunkenness,



1 incompetence, permanent inability to perform official duties,  
2 or for pleading guilty or nolo contendere to, or having been  
3 adjudicated guilty of, a first degree misdemeanor or a felony.

4 (f)~~(g)~~ A vacancy shall occur upon failure of a member  
5 to attend four consecutive meetings of the board or 50 percent  
6 of the meetings of the board during a 12-month period, unless  
7 the board by majority votes to excuse the absence of such  
8 member.

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

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

13 1. Conduct public hearings.

14 ~~2. Report to the Legislature by January 1, 1995, as to~~  
15 ~~the feasibility of a return-to-work program that includes~~  
16 ~~incentives for employers who encourage such a program and~~  
17 ~~disincentives for employers who hinder such a program.~~

18 ~~2.3.~~ Prescribe qualifications for board employees.

19 ~~3.4.~~ Appear on its own behalf before other boards,  
20 commissions, or agencies of the state or Federal Government.

21 ~~4.5.~~ Make and execute contracts to the extent that  
22 such contracts are consistent with duties and powers set forth  
23 in this section and elsewhere in the law of this state.

24 (b) The board shall adopt bylaws, formulate workers'  
25 compensation legislation or amendments, review, advise, and  
26 appear before the Legislature in connection with legislation  
27 that impacts the workers' compensation system, advise the  
28 division on policy, administrative and legislative issues, and  
29 appear before other state or federal agencies in connection  
30 with matters impacting the workers' compensation system.

31

1           (c) The Governor board shall select a chair from among  
2 the employer or employee members of the board. The member  
3 designated as chair ~~who~~ shall serve as chair for a term period  
4 of 2 years or ~~and~~ until a successor is elected and qualified,  
5 unless removed from the board by the Governor. The chair shall  
6 be the chief administrative officer of the board and shall  
7 have the authority to plan, direct, coordinate, and execute  
8 the powers and duties of the board.

9           (d) The board shall hold at least one regularly  
10 scheduled meeting each quarter and other ~~such~~ meetings during  
11 the year as it deems necessary, except that the chair, a  
12 quorum of the board, or the division may call meetings. The  
13 board shall hold at least two meetings a year outside Leon  
14 County.The board shall maintain transcripts of each meeting.  
15 Such transcripts shall be available to any interested person  
16 in accordance with chapter 119.

17           (e) The board shall approve the bylaws or amendments  
18 thereto by unanimous vote. All other board actions or  
19 recommendations shall be approved by ~~not less than~~ a majority  
20 vote of the members present ~~employee representatives and~~  
21 ~~majority vote of employer representatives~~, unless the bylaws  
22 otherwise provide.

23           (f) The board shall submit all formal reports and  
24 publications made by the board to the division at least 30  
25 days prior to the release or publication of the information.  
26 The board shall include in all formal reports and publications  
27 any response from the division.

28           Section 21. Section 627.0915, Florida Statutes, is  
29 amended to read:

30           627.0915 Rate filings; workers' compensation,  
31 drug-free workplace, and safe employers.--The Department of

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

18 Section 22. Subsection (3) of section 440.45, Florida  
19 Statutes, is repealed.

20 Section 23. If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 invalidity does not affect other provisions or applications of  
23 the act which can be given effect without the invalid  
24 provision or application, and to this end the provisions of  
25 this act are declared severable.

26 Section 24. This act shall take effect January 1,  
27 2002.

28  
29  
30  
31