

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; creating s. 440.1025, F.S.;
13 providing for consideration of a public
14 employer workplace safety program in
15 rate-setting; amending s. 440.11, F.S;
16 providing for exclusiveness of liability;
17 amending s. 440.13, F.S.; providing an
18 additional criterion for determining certain
19 value of nonprofessional attendant care
20 provided by a family member; requiring carriers
21 to allow employees to change physicians under
22 certain circumstances; specifying payments for
23 independent medical examinations; deleting
24 selection of independent medical examiner
25 criteria; specifying the number of medical
26 opinions admissible into evidence; providing an
27 exception to certain recourse for payment for
28 services rendered; amending s. 440.134, F.S.;
29 revising a definition; revising certain
30 grievance procedures for workers' compensation
31 managed care arrangements; amending s. 440.14,

1 F.S.; providing for determination of pay;
2 amending s. 440.15, F.S.; revising criteria for
3 payment of compensation for permanent total
4 disability; revising criteria for payment of
5 permanent impairment and wage-loss benefits;
6 amending s. 440.151, F.S.; providing for
7 compensation for occupational diseases;
8 amending s. 440.185, F.S.; requiring additional
9 information in a report of injury; amending s.
10 440.191, F.S.; including managed care
11 arrangements under provisions relating to the
12 Employee Assistance and Ombudsman Office;
13 revising procedures for petitions for benefits
14 under the office; amending s. 440.192, F.S.;
15 revising procedures for resolving benefit
16 disputes; transferring duties and
17 responsibilities of the Division of Workers'
18 Compensation to the Office of the Judges of
19 Compensation Claims; amending s. 440.20, F.S.;
20 specifying time for payment of compensation;
21 prohibiting approval of settlement proposals
22 providing for attorney's fees in excess of
23 certain amounts; amending s. 440.25, F.S.;
24 limiting continuances under procedures for
25 mediation and hearings; providing for
26 selections of mediators by the Chief Judge;
27 providing for holding mediation conferences
28 instead of mediation hearings under certain
29 circumstances; providing for completion of
30 pretrial stipulations; authorizing a judge of
31 compensation claims to sanction certain parties

1 under certain circumstances; requiring a judge
2 of compensation claims to order a pretrial
3 hearing for certain purposes under certain
4 circumstances; revising final hearing time
5 limitations and procedures; deleting a
6 requirement that judges of compensation claims
7 adopt and enforce certain uniform local rules;
8 specifying resolution of determination of pay
9 claims; requiring resolution of certain claims
10 through an expedited dispute resolution
11 process; providing for dismissal of certain
12 petitions for lack of prosecution under certain
13 circumstances; amending s. 440.29, F.S.;
14 providing for receipt into evidence of medical
15 reports from independent medical examiners;
16 amending s. 440.34, F.S.; providing for limited
17 additional attorney's fees in medical-only
18 cases; prohibiting approval of attorney's fees
19 in excess of certain amounts; deleting criteria
20 for determining certain attorney's fees;
21 amending s. 440.345, F.S.; requiring a summary
22 report of attorney's fees to the Governor and
23 the Legislature; amending s. 440.39, F.S.;
24 specifying duties of carriers with respect to
25 certain evidence; amending s. 627.0915, F.S.;
26 deleting obsolete provisions; providing that
27 determinations under ss. 112.18, 112.181,
28 112.19, F.S., are not affected; repealing s.
29 440.45(3), F.S., relating to rotating docketing
30 judges of compensation claims; providing
31 severability; providing an effective date.

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

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

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

(1) "Accident" means only an unexpected or unusual event or result that happens suddenly. A mental or nervous injury due to stress, fright, or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual's race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment. If a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident is compensable, with respect to death or permanent impairment. An injury or exposure caused by exposure to a toxic substance is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.

(14)

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

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

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

13 a. Such election is valid only with respect to an
14 officer who is the president, vice president, secretary, or
15 treasurer of the corporation.

16 b. Such election is valid only with respect to an
17 officer who owns not less than 10 percent of the stock of the
18 corporation.

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

22
23 Services are presumed to have been rendered to the corporation
24 if the officer is compensated by other than dividends upon
25 shares of stock of the corporation which the officer owns.

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

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

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

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

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

11 (d) Second-degree or third-degree burns of 25 percent
12 or more of the total body surface or third-degree burns of 5
13 percent or more to the face and hands; or

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

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

22 Section 2. Section 440.06, Florida Statutes, is
23 amended to read:

24 440.06 Failure to secure compensation; effect.--Every
25 employer who fails to secure the payment of compensation, as
26 provided in s. 440.10, by failing to meet the requirements of
27 ~~under this chapter as provided in s. 440.38~~ may not, in any
28 suit brought against him or her by an employee subject to this
29 chapter to recover damages for injury or death, defend such a
30 suit on the grounds that the injury was caused by the
31 negligence of a fellow servant, that the employee assumed the

1 risk of his or her employment, or that the injury was due to
2 the comparative negligence of the employee.

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

6 440.09 Coverage.--

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

20 (a) This chapter does not require any compensation or
21 benefits for any subsequent injury the employee suffers as a
22 result of an original injury arising out of and in the course
23 of employment unless the original injury is the major
24 contributing cause of the subsequent injury.

25 (b) If an injury arising out of and in the course of
26 employment combines with a preexisting disease or condition to
27 cause or prolong disability or need for treatment, the
28 employer must pay compensation or benefits required by this
29 chapter only to the extent that the injury arising out of and
30 in the course of employment is and remains the major
31 contributing cause of the disability or need for treatment.

1 (c) Death resulting from an operation by a surgeon
2 furnished by the employer for the cure of hernia as required
3 in s. 440.15(6) shall for the purpose of this chapter be
4 considered to be a death resulting from the accident causing
5 the hernia.

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

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

20 Section 4. Paragraph (a) of subsection (1) of section
21 440.10, Florida Statutes, is amended to read:

22 440.10 Liability for compensation.--

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

1 compensation for his or her employees under this chapter as
2 provided in s. 440.38.

3 Section 5. Section 440.1025, Florida Statutes, is
4 created to read:

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

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

22 440.11 Exclusiveness of liability.--

23 (1) Except if an employer acts with the intent to
24 cause injury or death,the liability of an employer prescribed
25 in s. 440.10 shall be exclusive and in place of all other
26 liability, including any vicarious liability,of such employer
27 to any third-party tortfeasor and to the employee, the legal
28 representative thereof, husband or wife, parents, dependents,
29 next of kin, and anyone otherwise entitled to recover damages
30 from such employer at law or in admiralty on account of such
31 injury or death, except that if an employer fails to secure

1 payment of compensation in accordance with s. 440.38 as
2 ~~required by this chapter~~, an injured employee, or the legal
3 representative thereof in case death results from the injury,
4 may elect to claim compensation under this chapter or to
5 maintain an action at law or in admiralty for damages on
6 account of such injury or death. In such action the defendant
7 may not plead as a defense that the injury was caused by
8 negligence of a fellow employee, that the employee assumed the
9 risk of the employment, or that the injury was due to the
10 comparative negligence of the employee. The same immunities
11 from liability enjoyed by an employer shall extend as well to
12 each employee of the employer when such employee is acting in
13 furtherance of the employer's business and the injured
14 employee is entitled to receive benefits under this chapter.
15 Such fellow-employee immunities shall not be applicable to an
16 employee who acts, with respect to a fellow employee, with
17 willful and wanton disregard or unprovoked physical aggression
18 or with gross negligence when such acts result in injury or
19 death or such acts proximately cause such injury or death, ~~nor~~
20 ~~shall such immunities be applicable to employees of the same~~
21 ~~employer when each is operating in the furtherance of the~~
22 ~~employer's business but they are assigned primarily to~~
23 ~~unrelated works within private or public employment~~. The same
24 immunity provisions enjoyed by an employer shall also apply to
25 any ~~sole proprietor, partner, corporate officer or director,~~
26 supervisor, or other person who in the course and scope of his
27 or her duties acts in a managerial or policymaking capacity
28 and the conduct which caused the alleged injury arose within
29 the course and scope of said managerial or policymaking duties
30 and was not a violation of a law, whether or not a violation
31 was charged, for which the maximum penalty which may be

1 imposed does not exceed 60 days' imprisonment as set forth in
 2 s. 775.082. The immunity from liability provided in this
 3 subsection extends to county governments with respect to
 4 employees of county constitutional officers whose offices are
 5 funded by the board of county commissioners. Intent, as used
 6 in this subsection, does not include actions of an employer
 7 that are substantially certain to result in injury or death.
 8 If an employee recovers damages from an employer either by
 9 judgment or settlement under this subsection, the workers'
 10 compensation carrier for the employer or the employer, if
 11 self-insured, shall have an offset against any workers'
 12 compensation benefits to which the employee would be entitled
 13 under this chapter. Nothing in this subsection shall create
 14 or result in vicarious liability on the part of the employer.

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

20 440.13 Medical services and supplies; penalty for
 21 violations; limitations.--

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

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

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

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

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

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

16 (f) Upon the written request of the employee, the
17 carrier shall give the employee the opportunity for one change
18 of physician during the course of treatment for any one
19 accident. The employee shall be entitled to select another
20 physician from among not fewer than three carrier-authorized
21 physicians who are not professionally affiliated.

22 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

1 examination per accident. The cost of any additional
2 independent medical examination shall be borne by the party
3 requesting the additional independent medical examination.
4 Only the costs of independent medical examinations expressly
5 relied upon by the judge of compensation claims to award
6 benefits in the final compensation order shall be taxable
7 costs under s. 440.34(3).

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

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

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

16 ~~3. The examiner is unavailable due to injury, death,~~
17 ~~or relocation outside a reasonably accessible geographic area;~~
18 ~~or~~

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

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

26 (e) No medical opinion other than the opinion of a
27 medical advisor appointed by the judge of compensation claims
28 or division, an independent medical examiner, or an authorized
29 treating provider is admissible in proceedings before the
30 judges of compensation claims. The employee and the carrier
31 may each submit into evidence, and the judge of compensation

1 claims shall admit, the medical opinion of no more than one
2 independent medical examiner per specialty. In cases involving
3 occupational disease or repetitive trauma, no medical opinions
4 are admissible unless based on reliable scientific principles
5 sufficiently established to have gained general acceptance in
6 the pertinent area of specialty.

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

11 (9) EXPERT MEDICAL ADVISORS.--

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

30 (14) PAYMENT OF MEDICAL FEES.--

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1 (b) Fees charged for remedial treatment, care, and
2 attendance may not exceed the applicable fee schedules adopted
3 under this chapter, except as provided pursuant to a contract
4 entered into between an employer or carrier and a certified
5 health care provider or health care facility for the payment
6 of medical services for covered expenses.

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

10 440.134 Workers' compensation managed care
11 arrangement.--

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

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

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

26 (b)(a) The agency shall authorize an insurer to offer
27 or utilize a workers' compensation managed care arrangement
28 after the insurer files a completed application along with the
29 payment of a \$1,000 application fee, and upon the agency's
30 being satisfied that the applicant has the ability to provide
31 quality of care consistent with the prevailing professional

1 standards of care and the insurer and its workers'
2 compensation managed care arrangement otherwise meets the
3 requirements of this section. No insurer may offer or utilize
4 a managed care arrangement without such authorization. The
5 authorization, unless sooner suspended or revoked, shall
6 automatically expire 2 years after the date of issuance unless
7 renewed by the insurer. The authorization shall be renewed
8 upon application for renewal and payment of a renewal fee of
9 \$1,000, provided that the insurer is in compliance with the
10 requirements of this section and any rules adopted hereunder.
11 An application for renewal of the authorization shall be made
12 90 days prior to expiration of the authorization, on forms
13 provided by the agency. The renewal application shall not
14 require the resubmission of any documents previously filed
15 with the agency if such documents have remained valid and
16 unchanged since their original filing.

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

28 (d) Grievances must be considered in a timely manner
29 and must be transmitted to appropriate decisionmakers who have
30 the authority to fully investigate the issue and take
31 corrective action. If the insurer or the insurer's workers'

1 compensation managed care arrangement fails to notify the
2 injured worker of the outcome of the grievance in writing
3 within 15 days after the date of receiving the grievance, the
4 grievance shall be presumed to be resolved against the injured
5 worker and the grievance procedures shall be presumed to be
6 exhausted for purposes of s. 440.192(3).

7 Section 9. Paragraph (a) of subsection (1) of section
8 440.14, Florida Statutes, is amended to read:

9 440.14 Determination of pay.--

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

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

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

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

7 (1) PERMANENT TOTAL DISABILITY.--

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

25 (f)1. If permanent total disability results from
26 injuries that occurred subsequent to June 30, 1955, and for
27 which the liability of the employer for compensation has not
28 been discharged under s. 440.20(11), the injured employee
29 shall receive additional weekly compensation benefits equal to
30 5 percent of her or his weekly compensation rate, as
31 established pursuant to the law in effect on the date of her

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

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

26 b. The division shall provide by rule for the periodic
27 reporting to the employer or carrier of all earnings of any
28 nature and social security income by the injured employee
29 entitled to or claiming benefits for permanent total
30 disability. The employer or carrier is not required to make
31 any payment of benefits for permanent total disability for any

1 period during which the employee willfully fails or refuses to
2 report upon request by the employer or carrier in the manner
3 prescribed by such rules or if any employee who is receiving
4 permanent total disability benefits refuses to apply for or
5 cooperate with the employer or carrier in applying for social
6 security benefits.

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

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

13 (a) Impairment benefits.--

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

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

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

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

30 a. The expiration of a period computed at the rate of
31 3 weeks for each percentage point of impairment; or

1 b. The death of the employee.

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

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

27 6. The division may by rule specify forms and
28 procedures governing the method of payment of wage loss and
29 impairment benefits for dates of accidents before January 1,
30 1994, and for dates of accidents on or after January 1, 1994.

31

1 Section 11. Paragraph (e) of subsection (1) and
2 subsection (2) of section 440.151, Florida Statutes, are
3 amended to read:

4 440.151 Occupational diseases.--

5 (1)

6 (e) No compensation shall be payable for disability or
7 death resulting from tuberculosis arising out of and in the
8 course of employment by the Department of Health at a state
9 tuberculosis hospital, or aggravated by such employment, when
10 the employee had suffered from said disease at any time prior
11 to the commencement of such employment. Both causation and
12 sufficient exposure to support causation shall be proven by
13 clear and convincing evidence.

14 (2) Whenever used in this section the term
15 "occupational disease" shall be construed to mean only a
16 disease which is due to causes and conditions which are
17 characteristic of and peculiar to a particular trade,
18 occupation, process, or employment, and to exclude all
19 ordinary diseases of life to which the general public is
20 exposed, unless the incidence of the disease is substantially
21 higher in the particular trade, occupation, process, or
22 employment than for the general public. "Occupational
23 disease" does not mean a disease for which there are no
24 epidemiological studies showing that exposure to the specific
25 substance involved, at the levels to which the employee was
26 exposed, can cause the precise disease sustained by the
27 employee.

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

30 440.185 Notice of injury or death; reports; penalties
31 for violations.--

1 (2) Within 7 days after actual knowledge of injury or
2 death, the employer shall report such injury or death to its
3 carrier, in a format prescribed by the division, and shall
4 provide a copy of such report to the employee or the
5 employee's estate. The report of injury shall contain the
6 following information:

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

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

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

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

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

15 (f)~~(e)~~ Such other information as the division may
16 require.

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

29 Section 13. Section 440.191, Florida Statutes, is
30 amended to read:

31 440.191 Employee Assistance and Ombudsman Office.--

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

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

22 (c) The Employee Assistance and Ombudsman Office,
23 ~~Division of Workers' Compensation~~, shall be a resource
24 available to all employees who participate in the workers'
25 compensation system and shall take all steps necessary to
26 educate and disseminate information to employees and
27 employers. Upon receiving a notice of injury or death, the
28 Employee Assistance and Ombudsman Office is authorized to
29 initiate contact with the injured employee or employee's
30 representative to discuss rights and responsibilities of the
31

1 employee under this chapter and the services available through
2 the Employee Assistance and Ombudsman Office.

3 ~~(2)(a) An employee may not file a petition requesting~~
4 ~~any benefit under this chapter unless the employee has~~
5 ~~exhausted the procedures for informal dispute resolution under~~
6 ~~this section.~~

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

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

24 (c)~~(d)~~ The Employee Assistance and Ombudsman Office
25 may assign an ombudsman to assist the employee in resolving
26 the dispute. ~~If the dispute is not resolved within 30 days~~
27 ~~after the employee contacts the office, The ombudsman may~~
28 ~~shall~~, at the employee's request, assist the employee in
29 drafting a petition for benefits and explain the procedures
30 for filing petitions. ~~The division may by rule determine the~~
31 ~~method used to calculate the 30-day period.~~The Employee

1 Assistance and Ombudsman Office may not represent employees
2 before the judges of compensation claims. An employer or
3 carrier may not pay any attorneys' fees on behalf of the
4 employee for services rendered or costs incurred in connection
5 with this section, unless expressly authorized elsewhere in
6 this chapter.

7 Section 14. Subsections (1), (2), (5), (7), and (8) of
8 section 440.192, Florida Statutes, are amended to read:

9 440.192 Procedure for resolving benefit disputes.--

10 (1) Subject to s. 440.191, any employee who has not
11 received a benefit to which the employee believes she or he is
12 entitled under this chapter shall serve by certified mail upon
13 the employer, the employer's carrier, and the Office of the
14 Judges of Compensation Claims ~~division~~ in Tallahassee a
15 petition for benefits meeting ~~that meets~~ the requirements of
16 this section. The Chief Judge ~~division~~ shall refer the
17 petition to the ~~office of the~~ judges of compensation claims.

18 (2) Upon receipt of a petition, the Office of the
19 Judges of Compensation Claims shall review each petition and
20 shall dismiss each petition or any portion of the petition,
21 ~~upon its own motion or~~ upon the motion of any party, that does
22 not on its face specifically identify or itemize the
23 following:

24 (a) Name, address, telephone number, and social
25 security number of the employee.

26 (b) Name, address, and telephone number of the
27 employer.

28 (c) A detailed description of the injury and cause of
29 the injury, including the location of the occurrence and the
30 date or dates of accident.

31

1 (d) A detailed description of the employee's job, work
2 responsibilities, and work the employee was performing when
3 the injury occurred.

4 (e) The time period for which compensation was not
5 timely provided and the specific classification of the
6 compensation.

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

10 (g) The specific ~~All~~ travel costs to which the
11 employee believes she or he is entitled, including dates of
12 travel and purpose of travel, means of transportation, and
13 mileage, including the date the request for mileage was filed
14 with the carrier and a copy of the request for mileage filed
15 with the carrier.

16 (h) Specific listing of all medical charges alleged
17 unpaid, including the name and address of the medical
18 provider, the amounts due, and the specific dates of
19 treatment.

20 (i) The type or nature of treatment care or attendance
21 sought and the justification for such treatment. If the
22 employee is under the care of a physician for the injury
23 identified under paragraph (c), a copy of the physician's
24 request, authorization, or recommendation for treatment, care,
25 or attendance must accompany the petition.

26 (j) Specific explanation of any other disputed issue
27 that a judge of compensation claims will be called to rule
28 upon.

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

31

1 The dismissal of any petition or portion of the petition under
2 this section is without prejudice and does not require a
3 hearing.

4 (5) All motions to dismiss must state with
5 particularity the basis for the motion. The judge of
6 compensation claims shall enter an order upon such motions
7 without hearing, unless good cause for hearing is shown. When
8 any petition or portion of a petition is dismissed for lack of
9 specificity under this subsection, the claimant must be
10 allowed 20 days after the date of the order of dismissal in
11 which to file an amended petition. Any grounds for dismissal
12 for lack of specificity under this section not asserted within
13 45 ~~30~~ days after receipt of the petition for benefits are
14 thereby waived.

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

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

1 could not have been discovered through reasonable
2 investigation within the 120-day period. The carrier shall
3 provide copies of the response ~~notice~~ to the filing party,
4 employer, and claimant by certified mail.

5 Section 15. Subsections (4) and (11) of section
6 440.20, Florida Statutes, are amended to read:

7 440.20 Time for payment of compensation; penalties for
8 late payment.--

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

1 the carrier under subsection (2) or pursuant to a petition of
2 benefits under s. 440.192(8).

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

1 proposal together with supporting evidence is not approved by
2 the judge of compensation claims, it shall be considered void.
3 Upon approval of a lump-sum settlement under this subsection,
4 the judge of compensation claims shall send a report to the
5 Chief Judge of the amount of the settlement and a statement of
6 the nature of the controversy. The Chief Judge shall keep a
7 record of all such reports filed by each judge of compensation
8 claims and shall submit to the Legislature a summary of all
9 such reports filed under this subsection annually by September
10 15.

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

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

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

17 (c) Notwithstanding s. 440.21(2), when a claimant is
18 represented by counsel, the claimant may waive all rights to
19 all benefits under this chapter by entering into a settlement
20 agreement releasing the employer and the carrier from
21 liability for workers' compensation benefits in exchange for a
22 lump-sum payment to the claimant. The settlement agreement
23 requires approval by the judge of compensation claims only as
24 to the attorney's fees paid to the claimant's attorney by the
25 claimant. The parties need not submit any information or
26 documentation in support of the settlement, except as needed
27 to justify the amount of the attorney's fees. Neither the
28 employer nor the carrier is responsible for any attorney's
29 fees relating to the settlement and release of claims under
30 this section. Payment of the lump-sum settlement amount must
31 be made within 14 days after the date the judge of

1 compensation claims mails the order approving the attorney's
 2 fees. Any order entered by a judge of compensation claims
 3 approving the attorney's fees as set out in the settlement
 4 under this subsection is not considered to be an award and is
 5 not subject to modification or review. The judge of
 6 compensation claims shall report these settlements to the
 7 chief judge in accordance with the requirements set forth in
 8 paragraphs (a) and (b). Settlements entered into under this
 9 subsection are valid and apply to all dates of accident.

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

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

19 Section 16. Subsections (1), (3), and (4) of section
 20 440.25, Florida Statutes, are amended to read:

21 440.25 Procedures for mediation and hearings.--

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

1 personally upon the interested parties or may be sent to the
2 interested parties by mail. Continuances may be granted only
3 if the requesting party demonstrates to the judge of
4 compensation claims that the reason for requesting the
5 continuance arises from circumstances beyond the party's
6 control. Any order granting a continuance must set forth the
7 date of the rescheduled mediation conference. A mediation
8 conference may not be used solely for the purpose of mediating
9 attorney's fees.

10 (3)(a) Such mediation conference shall be conducted
11 informally and shall ~~does~~ not require the use of formal rules
12 of evidence or procedure. Any information from the files,
13 reports, case summaries, mediator's notes, or other
14 communications or materials, oral or written, relating to a
15 mediation conference under this section obtained by any person
16 performing mediation duties is privileged and confidential and
17 may not be disclosed without the written consent of all
18 parties to the conference. Any research or evaluation effort
19 directed at assessing the mediation program activities or
20 performance must protect the confidentiality of such
21 information. Each party to a mediation conference has a
22 privilege during and after the conference to refuse to
23 disclose and to prevent another from disclosing communications
24 made during the conference whether or not the contested issues
25 are successfully resolved. This subsection and paragraphs
26 (4)(a) and (b) shall not be construed to prevent or inhibit
27 the discovery or admissibility of any information ~~that is~~
28 otherwise subject to discovery or ~~that is~~ admissible under
29 applicable law or rule of procedure, except that any conduct
30 or statements made during a mediation conference or in
31

1 negotiations concerning the conference are inadmissible in any
2 proceeding under this chapter.

3 (b)1. Unless the parties conduct a private mediation
4 under subparagraph 2., mediation shall be conducted by a
5 mediator selected by the Deputy Chief Judge from among
6 mediators ~~The Chief Judge shall select a mediator. The~~
7 ~~mediator shall be~~ employed on a full-time basis by the Office
8 of the Judges of Compensation Claims. A mediator must be a
9 member of The Florida Bar for at least 5 years and must
10 complete a mediation training program approved by the Chief
11 Judge. Adjunct mediators may be employed by the Office of the
12 Judges of Compensation Claims on an as-needed basis and shall
13 be selected from a list prepared by the Chief Judge. An
14 adjunct mediator must be independent of all parties
15 participating in the mediation conference. An adjunct mediator
16 must be a member of The Florida Bar for at least 5 years and
17 must complete a mediation training program approved by the
18 Chief Judge. An adjunct mediator shall have access to the
19 office, equipment, and supplies of the judge of compensation
20 claims in each district. This subparagraph is repealed January
21 1, 2003.

22 2.a. With respect to any mediation occurring on or
23 after January 1, 2003; or

24 b. If the parties agree or if no mediators under
25 subparagraph 1. are available to conduct the required
26 mediation within the period specified in this section,
27
28 the parties shall hold a mediation conference at the carrier's
29 expense within the 90-day period set for mediation. The
30 mediation conference shall be conducted by a mediator
31 certified under s. 44.106. If the parties do not agree upon a

1 mediator within 10 days after the date of the order, the
2 claimant shall notify the judge in writing and the judge shall
3 appoint a mediator under this subparagraph within 7 days.In
4 the event both parties agree, the results of the mediation
5 conference shall be binding and neither party shall have a
6 right to appeal the results. In the event either party refuses
7 to agree to the results of the mediation conference, the
8 results of the mediation conference as well as the testimony,
9 witnesses, and evidence presented at the conference shall not
10 be admissible at any subsequent proceeding on the claim. The
11 mediator shall not be called in to testify or give deposition
12 to resolve any claim for any hearing before the judge of
13 compensation claims. The employer may be represented by an
14 attorney at the mediation conference if the employee is also
15 represented by an attorney at the mediation conference.

16 (c) The parties shall complete the pretrial
17 stipulations before the conclusion of the mediation conference
18 if the claims, except for attorney's fees and costs, have not
19 been settled and if any claims in any filed petition remain
20 unresolved. The judge of compensation claims may sanction a
21 party or both parties for failure to complete the pretrial
22 stipulations before the conclusion of the mediation
23 conference.

24 (4)(a) If the parties fail to agree upon written
25 submission of pretrial stipulations at the mediation
26 conference, on the 10th day following commencement of
27 mediation, the questions in dispute have not been resolved,
28 the judge of compensation claims shall order a pretrial
29 hearing to occur within 14 days after the date of mediation
30 ordered by the judge of compensation claims ~~hold a pretrial~~
31 ~~hearing.~~ The judge of compensation claims shall give the

1 interested parties at least 7 days' advance notice of the
2 pretrial hearing by mail. At the pretrial hearing, the judge
3 of compensation claims shall, subject to paragraph (b), set a
4 date for the final hearing that allows the parties at least 30
5 days to conduct discovery unless the parties consent to an
6 earlier hearing date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 440.34 Attorney's fees; costs.--

6 (1) A fee, gratuity, or other consideration may not be
7 paid for services rendered for a claimant in connection with
8 any proceedings arising under this chapter, unless approved as
9 reasonable by the judge of compensation claims or court having
10 jurisdiction over such proceedings. Except as provided by this
11 subsection, any attorney's fee approved by a judge of
12 compensation claims for services rendered to a claimant must
13 equal to 20 percent of the first \$5,000 of the amount of the
14 benefits secured, 15 percent of the next \$5,000 of the amount
15 of the benefits secured, 10 percent of the remaining amount of
16 the benefits secured to be provided during the first 10 years
17 after the date the claim is filed, and 5 percent of the
18 benefits secured after 10 years. However, in medical-only
19 petitions, the judge of compensation claims shall consider the
20 following factors in each case and may approve an additional
21 increase or decrease the attorney's fee, not to exceed \$1,000
22 per accident based on a reasonable hourly rate, if the judge
23 of compensation claims expressly finds that the attorney's
24 fee, based on benefits secured, fails to fairly compensate the
25 attorney and, in her or his judgment, the circumstances of the
26 particular case warrant such action. The judge of
27 compensation claims shall not approve a compensation order, a
28 joint stipulation for lump-sum settlement, a stipulation or
29 agreement between a claimant and his or her attorney, or any
30 other agreement related to benefits under this chapter that

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1 provides for an attorney's fee in excess of the amount
2 permitted by this section.+

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

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

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

10 ~~(d) The time limitation imposed by the claimant or the~~
11 ~~circumstances.~~

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

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

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

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

28 (b) In any case in which the employer or carrier files
29 a response to petition notice of denial with the Office of the
30 Judges of Compensation Claims division and the injured person

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1 has employed an attorney in the successful prosecution of the
2 claim; or

3 (c) In a proceeding in which a carrier or employer
4 denies that an injury occurred for which compensation benefits
5 are payable, and the claimant prevails on the issue of
6 compensability; or

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

9
10 Regardless of the date benefits were initially requested,
11 attorney's fees shall not attach under this subsection until
12 30 days from the date the carrier or employer, if
13 self-insured, receives the petition.~~In applying the factors~~
14 ~~set forth in subsection (1) to cases arising under paragraphs~~
15 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
16 ~~only consider only such benefits and the time reasonably spent~~
17 ~~in obtaining them as were secured for the claimant within the~~
18 ~~scope of paragraphs (a), (b), (c), and (d).~~

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

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

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

30 440.39 Compensation for injuries when third persons
31 are liable.--

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

4 Section 21. Effective October 1, 2001, subsections (1)
5 and (2) of section 440.4416, Florida Statutes, are amended to
6 read:

7 Section 440.4416, Florida Statutes, is hereby repealed.

8 Section 22. Section 627.0915, Florida Statutes, is
9 amended to read:

10 627.0915 Rate filings; workers' compensation,
11 drug-free workplace, and safe employers.--The Department of
12 Insurance shall approve rating plans for workers' compensation
13 insurance that give specific identifiable consideration in the
14 setting of rates to employers that either implement a
15 drug-free workplace program pursuant to rules adopted by the
16 Division of Workers' Compensation of the Department of Labor
17 and Employment Security or implement a safety program pursuant
18 to provisions of the rating plan approved by the Division of
19 ~~Safety pursuant to rules adopted by the Division of Safety of~~
20 ~~the Department of Labor and Employment Security~~ or implement
21 both a drug-free workplace program and a safety program. ~~The~~
22 ~~Division of Safety may by rule require that the client of a~~
23 ~~help supply services company comply with the essential~~
24 ~~requirements of a workplace safety program as a condition for~~
25 ~~receiving a premium credit. The plans must take effect January~~
26 ~~1, 1994, must be actuarially sound, and must state the savings~~
27 ~~anticipated to result from such drug-testing and safety~~
28 ~~programs.~~

29 Section 23. The amendments to ss. 440.02 and 440.15 in
30 this act shall not be construed to affect any determination of
31

1 disability under s. 112.18, 112.181, or s. 112.19, Florida
2 Statutes.

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

5 Section 25. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of
8 the act which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 this act are declared severable.

11 Section 26. Except as otherwise provided herein, this
12 act shall take effect January 1, 2002.

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