

Bill No. CS for SB 2224

Amendment No. 7 Barcode 203920

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Governmental Oversight and Productivity recommended the following amendment:

Senate Amendment (with title amendment)

On page 98, line 12, through
page 129, line 27, delete those lines

and insert:

(3) In any case where the employer is a self-insurer and fails to comply with any compensation order of a judge of compensation claims or court within 10 days after such order becomes final, the department ~~division~~ may suspend or revoke any authorization previously given to the employer to become a self-insurer, and the Florida Self-Insurer's Guaranty Association ~~division~~ may sell such of the securities deposited by such self-insurer with the Florida Self-Insurer's Guaranty Association ~~division~~ as may be necessary to satisfy such order.

Section 29. Subsection (1) of section 440.211, Florida Statutes, is amended to read:

440.211 Authorization of collective bargaining

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1 agreement.--

2 (1) Subject to the limitation stated in subsection
3 (2), a provision that is mutually agreed upon in any
4 collective bargaining agreement filed with the department
5 ~~division~~ between an individually self-insured employer or
6 other employer upon consent of the employer's carrier and a
7 recognized or certified exclusive bargaining representative
8 establishing any of the following shall be valid and binding:

9 (a) An alternative dispute resolution system to
10 supplement, modify, or replace the provisions of this chapter
11 which may include, but is not limited to, conciliation,
12 mediation, and arbitration. Arbitration held pursuant to this
13 section shall be binding on the parties.

14 (b) The use of an agreed-upon list of certified health
15 care providers of medical treatment which may be the exclusive
16 source of all medical treatment under this chapter.

17 (c) The use of a limited list of physicians to conduct
18 independent medical examinations which the parties may agree
19 shall be the exclusive source of independent medical examiners
20 pursuant to this chapter.

21 (d) A light-duty, modified-job, or return-to-work
22 program.

23 (e) A vocational rehabilitation or retraining program.

24 Section 30. Subsections (4), (5), and (7) of section
25 440.25, Florida Statutes, are amended to read:

26 440.25 Procedures for mediation and hearings.--

27 (4)(a) If, on the 10th day following commencement of
28 mediation, the questions in dispute have not been resolved,
29 the judge of compensation claims shall hold a pretrial
30 hearing. The judge of compensation claims shall give the
31 interested parties at least 7 days' advance notice of the

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

6 (b) The final hearing must be held and concluded
7 within 45 days after the pretrial hearing. Continuances may be
8 granted only if the requesting party demonstrates to the judge
9 of compensation claims that the reason for requesting the
10 continuance arises from circumstances beyond the party's
11 control.

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

15 (d) The hearing shall be held in the county where the
16 injury occurred, if the injury occurred in this state, unless
17 otherwise agreed to between the parties and authorized by the
18 judge of compensation claims in the county where the injury
19 occurred. If the injury occurred without the state and is one
20 for which compensation is payable under this chapter, then the
21 hearing above referred to may be held in the county of the
22 employer's residence or place of business, or in any other
23 county of the state which will, in the discretion of the Chief
24 Judge, be the most convenient for a hearing. The hearing shall
25 be conducted by a judge of compensation claims, who shall,
26 within 14 days after final hearing, unless otherwise agreed by
27 the parties, determine the dispute in a summary manner. At
28 such hearing, the claimant and employer may each present
29 evidence in respect of such claim and may be represented by
30 any attorney authorized in writing for such purpose. When
31 there is a conflict in the medical evidence submitted at the

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

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

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

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1 ~~Labor and Employment Security~~, the Legislature, The Florida
2 Bar, and the appellate district judicial nominating
3 commissions.

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

6 (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 (i) To expedite dispute resolution and to enhance the
15 self-executing features of the Workers' Compensation Law, the
16 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.

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

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1 expedited and limited discovery and expedited docketing in
2 such cases. At least 15 days prior to hearing, the parties
3 shall exchange and file with the judge of compensation claims
4 a pretrial outline of all issues, defenses, and witnesses on a
5 form promulgated by the Chief Judge; provided, in no event
6 shall such hearing be held without 15 days' written notice to
7 all parties. No pretrial hearing shall be held. The judge of
8 compensation claims shall limit all argument and presentation
9 of evidence at the hearing to a maximum of 30 minutes, and
10 such hearings shall not exceed 30 minutes in length. Neither
11 party shall be required to be represented by counsel. The
12 employer or carrier may be represented by an adjuster or other
13 qualified representative. The employer or carrier and any
14 witness may appear at such hearing by telephone. The rules of
15 evidence shall be liberally construed in favor of allowing
16 introduction of evidence.

17 (5)(a) Procedures with respect to appeals from orders
18 of judges of compensation claims shall be governed by rules
19 adopted by the Supreme Court. Such an order shall become final
20 30 days after mailing of copies of such order to the parties,
21 unless appealed pursuant to such rules.

22 (b) An appellant may be relieved of any necessary
23 filing fee by filing a verified petition of indigency for
24 approval as provided in s. 57.081(1) and may be relieved in
25 whole or in part from the costs for preparation of the record
26 on appeal if, within 15 days after the date notice of the
27 estimated costs for the preparation is served, the appellant
28 files with the judge of compensation claims a copy of the
29 designation of the record on appeal, and a verified petition
30 to be relieved of costs. A verified petition filed prior to
31 the date of service of the notice of the estimated costs shall

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1 be deemed not timely filed. The verified petition relating to
2 record costs shall contain a sworn statement that the
3 appellant is insolvent and a complete, detailed, and sworn
4 financial affidavit showing all the appellant's assets,
5 liabilities, and income. Failure to state in the affidavit all
6 assets and income, including marital assets and income, shall
7 be grounds for denying the petition with prejudice. The
8 department division shall promulgate rules as may be required
9 pursuant to this subsection, including forms for use in all
10 petitions brought under this subsection. The appellant's
11 attorney, or the appellant if she or he is not represented by
12 an attorney, shall include as a part of the verified petition
13 relating to record costs an affidavit or affirmation that, in
14 her or his opinion, the notice of appeal was filed in good
15 faith and that there is a probable basis for the District
16 Court of Appeal, First District, to find reversible error, and
17 shall state with particularity the specific legal and factual
18 grounds for the opinion. Failure to so affirm shall be grounds
19 for denying the petition. A copy of the verified petition
20 relating to record costs shall be served upon all interested
21 parties, including the department division ~~and the Office of~~
22 ~~the General Counsel, Department of Labor and Employment~~
23 ~~Security~~, in Tallahassee. The judge of compensation claims
24 shall promptly conduct a hearing on the verified petition
25 relating to record costs, giving at least 15 days' notice to
26 the appellant, the department division, and all other
27 interested parties, all of whom shall be parties to the
28 proceedings. The judge of compensation claims may enter an
29 order without such hearing if no objection is filed by an
30 interested party within 20 days from the service date of the
31 verified petition relating to record costs. Such proceedings

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1 shall be conducted in accordance with the provisions of this
2 section and with the workers' compensation rules of procedure,
3 to the extent applicable. In the event an insolvency petition
4 is granted, the judge of compensation claims shall direct the
5 department ~~division~~ to pay record costs and filing fees from
6 the Workers' Compensation Administrative Trust Fund pending
7 final disposition of the costs of appeal. The department
8 ~~division~~ may transcribe or arrange for the transcription of
9 the record in any proceeding for which it is ordered to pay
10 the cost of the record. In the event the insolvency petition
11 is denied, the judge of compensation claims may enter an order
12 requiring the petitioner to reimburse the department ~~division~~
13 for costs incurred in opposing the petition, including
14 investigation and travel expenses.

15 (c) As a condition of filing a notice of appeal to the
16 District Court of Appeal, First District, an employer who has
17 not secured the payment of compensation under this chapter in
18 compliance with s. 440.38 shall file with the notice of appeal
19 a good and sufficient bond, as provided in s. 59.13,
20 conditioned to pay the amount of the demand and any interest
21 and costs payable under the terms of the order if the appeal
22 is dismissed, or if the District Court of Appeal, First
23 District, affirms the award in any amount. Upon the failure of
24 such employer to file such bond with the judge of compensation
25 claims or the District Court of Appeal, First District, along
26 with the notice of appeal, the District Court of Appeal, First
27 District, shall dismiss the notice of appeal.

28 (7) An injured employee claiming or entitled to
29 compensation shall submit to such physical examination by a
30 certified expert medical advisor approved by the agency
31 ~~division~~ or the judge of compensation claims as the agency

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1 ~~division~~ or the judge of compensation claims may require. The
2 place or places shall be reasonably convenient for the
3 employee. Such physician or physicians as the employee,
4 employer, or carrier may select and pay for may participate in
5 an examination if the employee, employer, or carrier so
6 requests. Proceedings shall be suspended and no compensation
7 shall be payable for any period during which the employee may
8 refuse to submit to examination. Any interested party shall
9 have the right in any case of death to require an autopsy, the
10 cost thereof to be borne by the party requesting it; and the
11 judge of compensation claims shall have authority to order and
12 require an autopsy and may, in her or his discretion, withhold
13 her or his findings and award until an autopsy is held.

14 Section 31. Section 440.271, Florida Statutes, is
15 amended to read:

16 440.271 Appeal of order of judge of compensation
17 claims.--Review of any order of a judge of compensation claims
18 entered pursuant to this chapter shall be by appeal to the
19 District Court of Appeal, First District. Appeals shall be
20 filed in accordance with rules of procedure prescribed by the
21 Supreme Court for review of such orders. The department
22 ~~division~~ shall be given notice of any proceedings pertaining
23 to s. 440.25, regarding indigency, or s. 440.49, regarding the
24 Special Disability Trust Fund, and shall have the right to
25 intervene in any proceedings.

26 Section 32. Section 440.345, Florida Statutes, is
27 amended to read:

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

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1 summarize such data in a report to the Workers' Compensation
2 Oversight Board.

3 Section 33. Section 440.35, Florida Statutes, is
4 amended to read:

5 440.35 Record of injury or death.--Every employer
6 shall keep a record in respect of any injury to an employee.
7 Such record shall contain such information of disability or
8 death in respect of such injury as the department division may
9 by regulation require, and shall be available to inspection by
10 the department division or by any state authority at such time
11 and under such conditions as the department division may by
12 regulation prescribe.

13 Section 34. Subsections (1), (2), and (3) of section
14 440.38, Florida Statutes, are amended to read:

15 440.38 Security for compensation; insurance carriers
16 and self-insurers.--

17 (1) Every employer shall secure the payment of
18 compensation under this chapter:

19 (a) By insuring and keeping insured the payment of
20 such compensation with any stock company or mutual company or
21 association or exchange, authorized to do business in the
22 state;

23 (b) By furnishing satisfactory proof to the Florida
24 Self-Insurers Guaranty Association, Incorporated, created in
25 s. 440.385, that it has the financial strength necessary to
26 assure timely payment of all current and future claims
27 ~~division of its financial ability to pay such compensation~~
28 individually and on behalf of its subsidiary and affiliated
29 companies with employees in this state and receiving an
30 authorization from the Department of Insurance,~~division~~ to
31 pay such compensation directly. The association shall review

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1 the financial strength of applicants for membership, current
 2 members, and former members and make recommendations to the
 3 department regarding their qualifications to self-insure in
 4 accordance with this act and ss. 440.385 and 440.386. The
 5 department shall consult with the association on any
 6 recommendation before taking action.~~the following provisions:~~

7 1. The association ~~division~~ may recommend that the
 8 Department of Insurance, ~~as a condition to such authorization,~~
 9 require an such employer to deposit with in a depository
 10 designated by the association a qualifying deposit. The
 11 association shall recommend the type and amount of the
 12 qualifying security deposit and shall ~~division either an~~
 13 indemnity bond or securities, at the option of the employer,
 14 of a kind and in an amount determined by the division and
 15 subject to such conditions as the division may prescribe
 16 conditions for the qualifying security deposit, ~~which shall~~
 17 include authorization for to the association to call the
 18 qualifying security deposit ~~division~~ in the case of default to
 19 sell any such securities sufficient to pay compensation awards
 20 and related expenses of the association ~~or to bring suit upon~~
 21 such bonds, to procure prompt payment of compensation under
 22 this chapter. In addition, the division shall require, ~~As a~~
 23 condition to authorization to self-insure, the employer shall
 24 provide proof that the employer has provided for competent
 25 personnel with whom to deliver benefits and to provide a safe
 26 working environment. Further, ~~The~~ employer ~~division~~ shall
 27 also provide evidence of ~~require such employer to carry~~
 28 reinsurance at levels that will ensure the financial strength
 29 and actuarial soundness of such employer in accordance with
 30 rules adopted promulgated by the Department of Insurance
 31 division. The Department of Insurance ~~division~~ may by rule

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1 require that, in the event of an individual self-insurer's
2 insolvency, such qualifying security deposits indemnity bonds,
3 securities, and reinsurance policies are shall be payable to
4 the association Florida Self-Insurers Guaranty Association,
5 incorporated, created pursuant to s. 440.385. Any employer
6 securing compensation in accordance with the provisions of
7 this paragraph shall be known as a self-insurer and shall be
8 classed as a carrier of her or his own insurance. All such
9 employers shall, if requested, provide the association an
10 actuarial report signed by a member of the American Academy of
11 Actuaries providing an opinion of the appropriate present
12 value of the reserves for current and future compensation
13 claims. If any member or former member of the association
14 refuses to timely provide such a report, the association may
15 obtain an order from a circuit court requiring the member to
16 produce such a report and ordering such other relief as the
17 court determines appropriate. The association shall be
18 entitled to recover all reasonable costs and attorney's fees
19 in such proceedings.

20 2. If the employer fails to maintain the foregoing
21 requirements, the association division shall recommend to the
22 Department of Insurance that it revoke the employer's
23 authority to self-insure, unless the employer provides to the
24 association division the certified opinion of an independent
25 actuary who is a member of the American Academy Society of
26 Actuaries as to the actuarial present value of the employer's
27 determined and estimated future compensation payments based on
28 cash reserves, using a 4-percent discount rate, and a
29 qualifying security deposit equal to 1.5 times the value so
30 certified. The employer shall thereafter annually provide such
31 a certified opinion until such time as the employer meets the

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1 requirements of subparagraph 1. The qualifying security
2 deposit shall be adjusted at the time of each such annual
3 report. Upon the failure of the employer to timely provide
4 such opinion or to timely provide a security deposit in an
5 amount equal to 1.5 times the value certified in the latest
6 opinion, the association shall provide such information to the
7 department along with a recommendation, and the Department of
8 Insurance division shall then revoke an such employer's
9 authorization to self-insure., and such Failure to comply with
10 this provision shall be deemed to constitute an immediate
11 serious danger to the public health, safety, or welfare
12 sufficient to justify the summary suspension of the employer's
13 authorization to self-insure pursuant to s. 120.68.

14 3. Upon the suspension or revocation of the employer's
15 authorization to self-insure, the employer shall provide to
16 the ~~division and to the Florida Self-Insurers Guaranty~~
17 ~~association, Incorporated, created pursuant to s. 440.385 the~~
18 certified opinion of an independent actuary who is a member of
19 the American Academy Society of Actuaries of the actuarial
20 present value of the determined and estimated future
21 compensation payments of the employer for claims incurred
22 while the member exercised the privilege of self-insurance,
23 using a discount rate of 4 percent. The employer shall provide
24 such an opinion at 6-month intervals thereafter until such
25 time as the latest opinion shows no remaining value of claims.
26 With each such opinion, the employer shall deposit with the
27 association division a qualifying security deposit in an
28 amount equal to the value certified by the actuary. The
29 association has a cause of action against an employer, and
30 against any successor of the employer, who fails to timely
31 provide such opinion or who fails to timely maintain the

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1 required security deposit with the association division. The
2 association shall recover a judgment in the amount of the
3 actuarial present value of the determined and estimated future
4 compensation payments of the employer for claims incurred
5 while the employer exercised the privilege of self-insurance,
6 together with attorney's fees. For purposes of this section,
7 the successor of an employer means any person, business
8 entity, or group of persons or business entities, which holds
9 or acquires legal or beneficial title to the majority of the
10 assets or the majority of the shares of the employer.

11 4. A qualifying security deposit shall consist, at the
12 option of the employer, of:

13 a. Surety bonds, in a form and containing such terms
14 as prescribed by the association division, issued by a
15 corporation surety authorized to transact surety business by
16 the Department of Insurance, and whose policyholders' and
17 financial ratings, as reported in A.M. Best's Insurance
18 Reports, Property-Liability, are not less than "A" and "V",
19 respectively.

20 ~~b. Certificates of deposit with financial~~
21 ~~institutions, the deposits of which are insured through the~~
22 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
23 ~~and Loan Insurance Corporation.~~

24 ~~b.c.~~ Irrevocable letters of credit in favor of the
25 association division issued by financial institutions located
26 within this state, the deposits of which are insured through
27 the Federal Deposit Insurance Corporation described in
28 sub-subparagraph b.

29 ~~d. Direct obligations of the United States Treasury~~
30 ~~backed by the full faith and credit of the United States.~~

31 ~~e. Securities issued by this state and backed by the~~

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1 ~~full faith and credit of this state.~~

2 5. The qualifying security deposit shall be held by
3 the association division, ~~or by a depository authorized by the~~
4 ~~division~~, exclusively for the benefit of workers' compensation
5 claimants. The security shall not be subject to assignment,
6 execution, attachment, or any legal process whatsoever, except
7 as necessary to guarantee the payment of compensation under
8 this chapter. No surety bond may be terminated, and no letter
9 of credit ~~other qualifying security~~ may be allowed to expire
10 ~~lapse~~, without 90 days' prior written notice to the
11 association division and the deposit by the self-insuring
12 employer of some other qualifying security deposit of equal
13 value within 10 business days after such notice. Failure to
14 provide such written notice or failure to timely provide
15 qualifying replacement security after such notice shall
16 constitute grounds for the association division to call or sue
17 upon the surety bond, or to ~~act with respect to other pledged~~
18 ~~security in any manner necessary to preserve its value for the~~
19 ~~purposes intended by this section, including the exercise its~~
20 ~~of rights under a letter of credit.~~ Current self-insured
21 employers must comply with this section on or before December
22 31, 2001, or upon maturity of existing security deposits,
23 whichever occurs later ~~the sale of any security at then~~
24 ~~prevailing market rates, or the withdrawal of any funds~~
25 ~~represented by any certificate of deposit forming part of the~~
26 ~~qualifying security deposit.~~ The Department of Insurance
27 ~~division~~ may specify by rule the amount of the qualifying
28 security deposit required prior to authorizing an employer to
29 self-insure and the amount of net worth required for an
30 employer to qualify for authorization to self-insure;

31 (c) By entering into a contract with a public utility

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1 under an approved utility-provided self-insurance program as
2 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
3 1983. The Department of Insurance ~~division~~ shall adopt rules
4 to implement this paragraph;

5 (d) By entering into an interlocal agreement with
6 other local governmental entities to create a local government
7 pool pursuant to s. 624.4622;

8 (e) In accordance with s. 440.135, an employer, other
9 than a local government unit, may elect coverage under the
10 Workers' Compensation Law and retain the benefit of the
11 exclusiveness of liability provided in s. 440.11 by obtaining
12 a 24-hour health insurance policy from an authorized property
13 and casualty insurance carrier or an authorized life and
14 health insurance carrier, or by participating in a fully or
15 partially self-insured 24-hour health plan that is established
16 or maintained by or for two or more employers, so long as the
17 law of this state is not preempted by the Employee Retirement
18 Income Security Act of 1974, Pub. L. No. 93-406, or any
19 amendment to that law, which policy or plan must provide, for
20 at least occupational injuries and illnesses, medical benefits
21 that are comparable to those required by this chapter. A local
22 government unit, as a single employer, in accordance with s.
23 440.135, may participate in the 24-hour health insurance
24 coverage plan referenced in this paragraph. Disputes and
25 remedies arising under policies issued under this section are
26 governed by the terms and conditions of the policies and under
27 the applicable provisions of the Florida Insurance Code and
28 rules adopted under the insurance code and other applicable
29 laws of this state. The 24-hour health insurance policy may
30 provide for health care by a health maintenance organization
31 or a preferred provider organization. The premium for such

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1 24-hour health insurance policy shall be paid entirely by the
 2 employer. The 24-hour health insurance policy may use
 3 deductibles and coinsurance provisions that require the
 4 employee to pay a portion of the actual medical care received
 5 by the employee. If an employer obtains a 24-hour health
 6 insurance policy or self-insured plan to secure payment of
 7 compensation as to medical benefits, the employer must also
 8 obtain an insurance policy or policies that provide indemnity
 9 benefits as follows:

10 1. If indemnity benefits are provided only for
 11 occupational-related disability, such benefits must be
 12 comparable to those required by this chapter.

13 2. If indemnity benefits are provided for both
 14 occupational-related and nonoccupational-related disability,
 15 such benefits must be comparable to those required by this
 16 chapter, except that they must be based on 60 percent of the
 17 average weekly wages.

18 3. The employer shall provide for each of its
 19 employees life insurance with a death benefit of \$100,000.

20 4. Policies providing coverage under this subsection
 21 must use prescribed and acceptable underwriting standards,
 22 forms, and policies approved by the Department of Insurance.
 23 If any insurance policy that provides coverage under this
 24 section is canceled, terminated, or nonrenewed for any reason,
 25 the cancellation, termination, or nonrenewal is ineffective
 26 until the self-insured employer or insurance carrier or
 27 carriers notify the ~~division and the~~ Department of Insurance
 28 of the cancellation, termination, or nonrenewal, and until the
 29 Department of Insurance ~~division~~ has actually received the
 30 notification. The Department of Insurance ~~division~~ must be
 31 notified of replacement coverage under a workers' compensation

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1 and employer's liability insurance policy or plan by the
2 employer prior to the effective date of the cancellation,
3 termination, or nonrenewal; or

4 (f) By entering into a contract with an individual
5 self-insurer under an approved individual
6 self-insurer-provided self-insurance program as set forth in
7 s. 624.46225. The Department of Insurance ~~division~~ may adopt
8 rules to implement this subsection.

9 (2)(a) The Department of Insurance ~~division~~ shall
10 adopt rules by which businesses may become qualified to
11 provide underwriting claims-adjusting, loss control, and
12 safety engineering services to self-insurers.

13 (b) The Department of Insurance ~~division~~ shall adopt
14 rules requiring self-insurers to file any reports necessary to
15 fulfill the requirements of this chapter. Any self-insurer
16 who fails to file any report as prescribed by the rules
17 adopted by the department ~~division~~ shall be subject to a civil
18 penalty ~~not to exceed \$100 for each such failure.~~

19 ~~(3)(a) The license of any stock company or mutual~~
20 ~~company or association or exchange authorized to do insurance~~
21 ~~business in the state shall for good cause, upon~~
22 ~~recommendation of the division, be suspended or revoked by the~~
23 ~~Department of Insurance. No suspension or revocation shall~~
24 ~~affect the liability of any carrier already incurred.~~

25 ~~(a)(b)~~ The Department of Insurance ~~division~~ shall
26 suspend or revoke any authorization to a self-insurer for
27 failure to comply with this act or for good cause, as defined
28 by rule of the department ~~division~~. No suspension or
29 revocation shall affect the liability of any self-insurer
30 already incurred.

31 ~~(b)(c)~~ Violation of s. 440.381 by a self-insurance

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1 fund shall result in the imposition of a fine not to exceed
2 \$1,000 per audit if the self-insurance fund fails to act on
3 said audits by correcting errors in employee classification or
4 accepted applications for coverage where it knew employee
5 classifications were incorrect. Such fines shall be levied by
6 the Department of Insurance ~~division~~ and deposited into the
7 Workers' Compensation Administration Trust Fund.

8 Section 35. Subsections (3) and (7) of section
9 440.381, Florida Statutes, are amended to read:

10 440.381 Application for coverage; reporting payroll;
11 payroll audit procedures; penalties.--

12 (3) ~~The department of Insurance and the Department of~~
13 ~~Labor and Employment Security~~ shall establish by rule minimum
14 requirements for audits of payroll and classifications in
15 order to ensure that the appropriate premium is charged for
16 workers' compensation coverage. The rules shall ensure that
17 audits performed by both carriers and employers are adequate
18 to provide that all sources of payments to employees,
19 subcontractors, and independent contractors have been reviewed
20 and that the accuracy of classification of employees has been
21 verified. The rules shall provide that employers in all
22 classes other than the construction class be audited not less
23 frequently than biennially and may provide for more frequent
24 audits of employers in specified classifications based on
25 factors such as amount of premium, type of business, loss
26 ratios, or other relevant factors. In no event shall employers
27 in the construction class, generating more than the amount of
28 premium required to be experience rated, be audited less than
29 annually. The annual audits required for construction classes
30 shall consist of physical onsite audits. Payroll verification
31 audit rules must include, but need not be limited to, the use

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1 of state and federal reports of employee income, payroll and
2 other accounting records, certificates of insurance maintained
3 by subcontractors, and duties of employees.

4 (7) If an employee suffering a compensable injury was
5 not reported as earning wages on the last quarterly earnings
6 report filed with the Division of Unemployment Compensation
7 before the accident, the employer shall indemnify the carrier
8 for all workers' compensation benefits paid to or on behalf of
9 the employee unless the employer establishes that the employee
10 was hired after the filing of the quarterly report, in which
11 case the employer and employee shall attest to the fact that
12 the employee was employed by the employer at the time of the
13 injury. ~~It shall be the responsibility of the Division of~~
14 ~~Workers' Compensation to collect all necessary data so as to~~
15 ~~enable it to notify the carrier of the name of an injured~~
16 ~~worker who was not reported as earning wages on the last~~
17 ~~quarterly earnings report. The division is hereby authorized~~
18 ~~to release such records to the carrier which will enable the~~
19 ~~carrier to seek reimbursement as provided under this~~
20 ~~subsection.~~ Failure of the employer to indemnify the insurer
21 within 21 days after demand by the insurer shall constitute
22 grounds for the insurer to immediately cancel coverage. Any
23 action for indemnification brought by the carrier shall be
24 cognizable in the circuit court having jurisdiction where the
25 employer or carrier resides or transacts business. The
26 insurer shall be entitled to a reasonable attorney's fee if it
27 recovers any portion of the benefits paid in such action.

28 Section 36. Section 440.385, Florida Statutes, is
29 amended to read:

30 440.385 Florida Self-Insurers Guaranty Association,
31 Incorporated.--

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1 (1) CREATION OF ASSOCIATION.--

2 (a) There is created a nonprofit corporation to be
3 known as the "Florida Self-Insurers Guaranty Association,
4 Incorporated," hereinafter referred to as "the association."
5 Upon incorporation of the association, all individual
6 self-insurers as defined in ss. 440.02(23)(a) and
7 440.38(1)(b), other than individual self-insurers which are
8 public utilities or governmental entities, shall be members of
9 the association as a condition of their authority to
10 individually self-insure in this state. The association
11 ~~corporation~~ shall perform its functions under a plan of
12 operation as established and approved under subsection (5) and
13 shall exercise its powers and duties through a board of
14 directors as established under subsection (2). The association
15 ~~corporation~~ shall have those powers granted or permitted
16 associations corporations not for profit, as provided in
17 chapter 617. The activities of the association shall be
18 subject to review by the Department of Insurance. The
19 Department of Insurance shall have oversight responsibility as
20 set forth in this act. The association is specifically
21 authorized to enter into agreements with the State of Florida
22 to perform specified services.

23 (b) A member may voluntarily withdraw from the
24 association when the member voluntarily terminates the
25 self-insurance privilege and pays all assessments due to the
26 date of such termination. However, the withdrawing member
27 shall continue to be bound by the provisions of this section
28 relating to the period of his or her membership and any claims
29 charged pursuant thereto. The withdrawing member who is a
30 member on or after January 1, 1991, shall also be required to
31 provide to the association ~~division~~ upon withdrawal, and at

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1 12-month intervals thereafter, satisfactory proof, including,
2 if requested by the association, a report of known and
3 potential claims certified by a member of the American Academy
4 of Actuaries, that it continues to meet the standards of s.
5 440.38(1)(b)1. in relation to claims incurred while the
6 withdrawing member exercised the privilege of self-insurance.
7 Such reporting shall continue until the withdrawing member
8 demonstrates to ~~satisfies~~ the association ~~division~~ that there
9 is no remaining value to claims incurred while the withdrawing
10 member was self-insured. If a withdrawing member fails or
11 refuses to timely provide an actuarial report to the
12 association, the association may obtain an order from a
13 circuit court requiring the member to produce such a report
14 and ordering such other relief as the court determines
15 appropriate. The association shall be entitled to recover all
16 reasonable costs and attorney's fees expended in such
17 proceedings. If during this reporting period the withdrawing
18 member fails to meet the standards of s. 440.38(1)(b)1., the
19 withdrawing member who is a member on or after January 1,
20 1991, shall thereupon, and at 6-month intervals thereafter,
21 provide to the ~~division and the~~ association the certified
22 opinion of an independent actuary who is a member of the
23 American Academy ~~Society~~ of Actuaries of the actuarial present
24 value of the determined and estimated future compensation
25 payments of the member for claims incurred while the member
26 was a self-insurer, using a discount rate of 4 percent. With
27 each such opinion, the withdrawing member shall deposit with
28 the association ~~division~~ security in an amount equal to the
29 value certified by the actuary and of a type that is
30 acceptable for qualifying security deposits under s.
31 440.38(1)(b). The withdrawing member shall continue to

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1 provide such opinions and to provide such security until such
2 time as the latest opinion shows no remaining value of claims.
3 The association has a cause of action against a withdrawing
4 member, and against any successor of a withdrawing member, who
5 fails to timely provide the required opinion or who fails to
6 maintain the required deposit with the division. The
7 association shall be entitled to recover a judgment in the
8 amount of the actuarial present value of the determined and
9 estimated future compensation payments of the withdrawing
10 member for claims incurred during the time that the
11 withdrawing member exercised the privilege of self-insurance,
12 together with reasonable attorney's fees. The association is
13 also entitled to recover reasonable attorney's fees in any
14 action to compel production of any actuarial report required
15 by this statute. For purposes of this section, the successor
16 of a withdrawing member means any person, business entity, or
17 group of persons or business entities, which holds or acquires
18 legal or beneficial title to the majority of the assets or the
19 majority of the shares of the withdrawing member.

20 (2) BOARD OF DIRECTORS.--The board of directors of the
21 association shall consist of nine persons and shall be
22 organized as established in the plan of operation. All board
23 members shall be experienced in self-insurance in this state.
24 ~~With respect to initial appointments, the Secretary of Labor~~
25 ~~and Employment Security shall, by July 15, 1982, approve and~~
26 ~~appoint to the board persons who are experienced with~~
27 ~~self-insurance in this state and who are recommended by the~~
28 ~~individual self-insurers in this state required to become~~
29 ~~members of the association pursuant to the provisions of~~
30 ~~paragraph (1)(a). In the event the secretary finds that any~~
31 ~~person so recommended does not have the necessary~~

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1 ~~qualifications for service on the board and a majority of the~~
2 ~~board has been appointed, the secretary shall request the~~
3 ~~directors thus far approved and appointed to recommend another~~
4 ~~person for appointment to the board.~~ Each director shall serve
5 for a 4-year term and may be reappointed. Appointments after
6 March 21, 2001, ~~other than initial appointments~~ shall be made
7 by the Insurance Commissioner ~~Secretary of Labor and~~
8 ~~Employment Security~~ upon recommendation of members of the
9 association. Any vacancy on the board shall be filled for the
10 remaining period of the term in the same manner as
11 appointments other than initial appointments are made. Each
12 director shall be reimbursed for expenses incurred in carrying
13 out the duties of the board on behalf of the association.

14 (3) POWERS AND DUTIES.--

15 (a) Upon creation of the Insolvency Fund pursuant to
16 the provisions of subsection (4), the association is obligated
17 for payment of compensation under this chapter to insolvent
18 members' employees resulting from incidents and injuries
19 existing prior to the member becoming an insolvent member and
20 from incidents and injuries occurring within 30 days after the
21 member has become an insolvent member, provided the incidents
22 giving rise to claims for compensation under this chapter
23 occur during the year in which such insolvent member is a
24 member of the guaranty fund and was assessable pursuant to the
25 plan of operation, and provided the employee makes timely
26 claim for such payments according to procedures set forth by a
27 court of competent jurisdiction over the delinquency or
28 bankruptcy proceedings of the insolvent member. Such
29 obligation includes only that amount due the injured worker or
30 workers of the insolvent member under this chapter. In no
31 event is the association obligated to a claimant in an amount

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1 in excess of the obligation of the insolvent member. The
2 association shall be deemed the insolvent employer for
3 purposes of this chapter to the extent of its obligation on
4 the covered claims and, to such extent, shall have all rights,
5 duties, and obligations of the insolvent employer as if the
6 employer had not become insolvent. However, in no event shall
7 the association be liable for any penalties or interest.

8 (b) The association may:

9 1. Employ or retain such persons as are necessary to
10 handle claims and perform other duties of the association.

11 2. Borrow funds necessary to effect the purposes of
12 this section in accord with the plan of operation.

13 3. Sue or be sued.

14 4. Negotiate and become a party to such contracts as
15 are necessary to carry out the purposes of this section.

16 5. Purchase such reinsurance as is determined
17 necessary pursuant to the plan of operation.

18 6. Review all applicants for membership in the
19 association to determine whether the applicant is qualified
20 for membership under the law. The association shall recommend
21 to the Department of Insurance that the application be
22 accepted or rejected based on the criteria set forth in s.
23 440.38(1)(b). The department shall approve or disapprove the
24 application. Prior to a final determination by the Division of
25 Workers' Compensation as to whether or not to approve any
26 applicant for membership in the association, the association
27 may issue opinions to the division concerning any applicant,
28 which opinions shall be considered by the division prior to
29 any final determination.

30 7. Collect and review financial information from
31 employers and make recommendations to the Department of

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1 Insurance regarding the appropriate security deposit and
2 reinsurance amounts necessary for an employer to demonstrate
3 that it has the financial strength necessary to assure the
4 timely payment of all current and future claims. The
5 association may audit and examine an employer to verify the
6 financial strength of its current and former members. If the
7 association determines that a current or former self-insured
8 employer does not have the financial strength necessary to
9 assure the timely payment of all current and estimated future
10 claims, the association may recommend to the department that
11 the department:

12 a. Revoke the employer's self-insurance privilege.
13 b. Require the employer to provide a certified opinion
14 of an independent actuary who is a member of the American
15 Academy of Actuaries as to the actuarial present value of the
16 employer's estimated current and future compensation payments,
17 using a 4-percent discount rate.

18 c. Require an increase in the employer's security
19 deposit in an amount determined by the association to be
20 necessary to assure payment of compensation claims. The
21 department shall act on such recommendations. The association
22 has a cause of action against an employer, and against any
23 successor of an employer, who fails to provide an additional
24 security deposit required by the department. The association
25 shall recover a judgment in the amount of the requested
26 additional security deposit together with reasonable
27 attorney's fees. For the purposes of this section, the
28 successor of an employer is any person, business entity, or
29 group of persons or business entities that holds or acquires
30 legal or beneficial title to the majority of the assets or the
31 majority of the shares of the employer.

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1 ~~8.7.~~ Charge fees to any member of the association to
2 cover the actual costs of examining the financial and safety
3 conditions of that member.

4 ~~9.8.~~ Charge an applicant for membership in the
5 association a fee sufficient to cover the actual costs of
6 examining the financial condition of the applicant.

7 10. Implement any and all procedures necessary to
8 ensure compliance with regulatory actions taken by the
9 department.

10 (c)1. To the extent necessary to secure funds for the
11 payment of covered claims and also to pay the reasonable costs
12 to administer them, the association, subject to approval by
13 the Department of Insurance Labor and Employment Security,
14 upon certification of the board of directors, shall levy
15 assessments based on the annual written normal premium each
16 employer would have paid had the employer not been
17 self-insured. Every assessment shall be made as a uniform
18 percentage of the figure applicable to all individual
19 self-insurers, provided that the assessment levied against any
20 self-insurer in any one year shall not exceed 1 percent of the
21 annual written normal premium during the calendar year
22 preceding the date of the assessment. Assessments shall be
23 remitted to and administered by the board of directors in the
24 manner specified by the approved plan. Each employer so
25 assessed shall have at least 30 days' written notice as to the
26 date the assessment is due and payable. The association shall
27 levy assessments against any newly admitted member of the
28 association so that the basis of contribution of any newly
29 admitted member is the same as previously admitted members,
30 provision for which shall be contained in the plan of
31 operation.

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1 2. If, in any one year, funds available from such
2 assessments, together with funds previously raised, are not
3 sufficient to make all the payments or reimbursements then
4 owing, the funds available shall be prorated, and the unpaid
5 portion shall be paid as soon thereafter as sufficient
6 additional funds become available.

7 3. Funds may be allocated or paid from the Workers'
8 Compensation Administration Trust Fund to contract with the
9 association to perform services required by law. However, no
10 state funds of any kind shall be allocated or paid to the
11 association or any of its accounts for payment of covered
12 claims or related expenses except those state funds accruing
13 to the association by and through the assignment of rights of
14 an insolvent employer. The department shall not levy any
15 assessment on the Florida Self-Insurance Guaranty Association.

16 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
17 operation ~~or the adoption of rules by the Department of Labor~~
18 ~~and Employment Security pursuant to subsection (5)~~, there
19 shall be created an Insolvency Fund to be managed by the
20 association.

21 (a) The Insolvency Fund is created for purposes of
22 meeting the obligations of insolvent members incurred while
23 members of the association and after the exhaustion of any
24 security deposit bond, as required under this chapter.
25 However, if such security deposit bond, surety, or reinsurance
26 policy is payable to the Florida Self-Insurers Guaranty
27 Association, the association shall commence to provide
28 benefits out of the Insolvency Fund and be reimbursed from the
29 security deposit bond, surety, or reinsurance policy. The
30 method of operation of the Insolvency Fund shall be defined in
31 the plan of operation as provided in subsection (5).

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1 (b) The department shall have the authority to audit
2 the financial soundness of the Insolvency Fund annually.

3 (c) The department may offer certain amendments to the
4 plan of operation to the board of directors of the association
5 for purposes of assuring the ongoing financial soundness of
6 the Insolvency Fund and its ability to meet the obligations of
7 this section.

8 ~~(d) The department actuary may make certain~~
9 ~~recommendations to improve the orderly payment of claims.~~

10 (5) PLAN OF OPERATION.--The association shall operate
11 pursuant to a plan of operation approved by the board of
12 directors. The plan of operation in effect on March 1, 2001,
13 and approved by the Department of Labor and Employment
14 Security shall remain in effect. However, any amendments to
15 the plan shall not become effective until approved by the
16 Department of Insurance.~~By September 15, 1982, the board of~~
17 ~~directors shall submit to the Department of Labor and~~
18 ~~Employment Security a proposed plan of operation for the~~
19 ~~administration of the association and the Insolvency Fund.~~

20 (a) The purpose of the plan of operation shall be to
21 provide the association and the board of directors with the
22 authority and responsibility to establish the necessary
23 programs and to take the necessary actions to protect against
24 the insolvency of a member of the association. In addition,
25 the plan shall provide that the members of the association
26 shall be responsible for maintaining an adequate Insolvency
27 Fund to meet the obligations of insolvent members provided for
28 under this act and shall authorize the board of directors to
29 contract and employ those persons with the necessary expertise
30 to carry out this stated purpose. By January 1, 2002, the
31 board of directors shall submit to the Department of Insurance

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1 a proposed plan of operation for the administration of the
2 association. The Department of Insurance shall approve the
3 plan by order, consistent with this act. The Department of
4 Insurance shall approve any amendments to the plan, by order
5 consistent with this act, and determined appropriate to carry
6 out the duties and responsibilities of the association.

7 ~~(b) The plan of operation, and any amendments thereto,~~
8 ~~shall take effect upon approval in writing by the department.~~
9 ~~If the board of directors fails to submit a plan by September~~
10 ~~15, 1982, or fails to make required amendments to the plan~~
11 ~~within 30 days thereafter, the department shall promulgate~~
12 ~~such rules as are necessary to effectuate the provisions of~~
13 ~~this subsection. Such rules shall continue in force until~~
14 ~~modified by the department or superseded by a plan submitted~~
15 ~~by the board of directors and approved by the department.~~

16 (b)(c) All member employers shall comply with the plan
17 of operation.

18 (c)(d) The plan of operation shall:

19 1. Establish the procedures whereby all the powers and
20 duties of the association under subsection (3) will be
21 performed.

22 2. Establish procedures for handling assets of the
23 association.

24 3. Establish the amount and method of reimbursing
25 members of the board of directors under subsection (2).

26 4. Establish procedures by which claims may be filed
27 with the association and establish acceptable forms of proof
28 of covered claims. Notice of claims to the receiver or
29 liquidator of the insolvent employer shall be deemed notice to
30 the association or its agent, and a list of such claims shall
31 be submitted periodically to the association or similar

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1 organization in another state by the receiver or liquidator.

2 5. Establish regular places and times for meetings of
3 the board of directors.

4 6. Establish procedures for records to be kept of all
5 financial transactions of the association and its agents and
6 the board of directors.

7 7. Provide that any member employer aggrieved by any
8 final action or decision of the association may appeal to the
9 department within 30 days after the action or decision.

10 8. Establish the procedures whereby recommendations of
11 candidates for the board of directors shall be submitted to
12 the department.

13 9. Contain additional provisions necessary or proper
14 for the execution of the powers and duties of the association.

15 (d)~~(e)~~ The plan of operation may provide that any or
16 all of the powers and duties of the association, except those
17 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to
18 a corporation, association, or other organization which
19 performs or will perform functions similar to those of this
20 association or its equivalent in two or more states. Such a
21 corporation, association, or organization shall be reimbursed
22 as a servicing facility would be reimbursed and shall be paid
23 for its performance of any other functions of the association.
24 A delegation of powers or duties under this subsection shall
25 take effect only with the approval of both the board of
26 directors and the department and may be made only to a
27 corporation, association, or organization which extends
28 protection which is not substantially less favorable and
29 effective than the protection provided by this section.

30 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
31 ~~AND EMPLOYMENT SECURITY~~.--

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1 (a) The department shall+

2 ~~1. review recommendations of the association~~

3 ~~concerning whether current or former self-insured employers or~~

4 ~~members of the association have the financial strength~~

5 ~~necessary to ensure the timely payment of all current and~~

6 ~~estimated future claims. If the association determines an~~

7 ~~employer does not have the financial strength necessary to~~

8 ~~ensure the timely payment of all current and future claims and~~

9 ~~recommends action pursuant to paragraph (3)(b), the Department~~

10 ~~of Insurance may take such action as necessary to order the~~

11 ~~employer to comply with the recommendation.~~~~Notify the~~

12 ~~association of the existence of an insolvent employer not~~

13 ~~later than 3 days after it receives notice of the~~

14 ~~determination of insolvency.~~

15 (b) The department may:

16 1. Contract with the association for services, which

17 may include, but not be limited to, the following:

18 a. Process applications for self-insurance.

19 b. Collect and review financial statements and loss

20 reserve information from individual self-insurers.

21 c. Collect and maintain files for original security

22 deposit documents and reinsurance policies from individual

23 self-insurers and, if necessary, perfect security interests in

24 security deposits.

25 d. Process compliance documentation for individual

26 self-insurers and provide same to the Department of Insurance.

27 e. Collect all data necessary to calculate annual

28 premium for all individual self-insurers, including individual

29 self-insurers that are public utilities or governmental

30 entities, and provide such calculated annual premium to the

31 Department of Insurance for assessment purposes.

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1 f. Inspect and audit annually, if necessary, the
2 payroll and other records of each individual self-insurer,
3 including individual self-insurers that are public utilities
4 or governmental entities, in order to determine the wages paid
5 by each individual self-insurer, the premium such individual
6 self-insurer would have to pay if insured, and all payments of
7 compensation made by such individual self-insurer during each
8 prior period with the results of such audit provided to the
9 Department of Insurance. For the purposes of this section,
10 the payroll records of each individual self-insurer shall be
11 open to inspection and audit by the association, the
12 department, or their authorized representative, during regular
13 business hours.

14 g. Provide legal representation to implement the
15 administration and audit of individual self-insurers and make
16 recommendations regarding prosecution of any administrative or
17 legal proceedings necessitated by the department's regulation
18 of the individual self-insurers.

19 2. Contract with an attorney or attorneys recommended
20 by the association for representation of the department in any
21 administrative or legal proceedings necessitated by the
22 recommended regulation of the individual self-insurers. ~~Upon~~
23 ~~request of the board of directors, provide the association~~
24 ~~with a statement of the annual normal premiums of each member~~
25 ~~employer.~~

26 ~~(b) The department may:~~

27 ~~3.1. Direct the association to require from each~~
28 individual self-insurer, at such time and in accordance with
29 such regulations as the department prescribes, reports in
30 respect to wages paid, the amount of premiums such individual
31 self-insurer would have to pay if insured, and all payments of

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1 compensation made by such individual self-insurer during each
2 prior period and determine the amounts paid by each individual
3 self-insurer and the amounts paid by all individual
4 self-insurers during such period. For the purposes of this
5 section, the payroll records of each individual self-insurer
6 shall be open to annual inspection and audit by the
7 association, the department, or their authorized
8 representative, during regular business hours, and if any
9 audit of such records of an individual self-insurer discloses
10 a deficiency in the amount reported to the association or in
11 the amounts paid to the Department of Insurance by an
12 individual self-insurer for its assessment for the Workers'
13 Compensation Administration Trust Fund, the Department of
14 Insurance or the association may assess the cost of such audit
15 against the individual self-insurer.

16 4. Require that the association notify the member
17 employers and any other interested parties of the
18 determination of insolvency and of their rights under this
19 section. Such notification shall be by mail at the last known
20 address thereof when available; but, if sufficient information
21 for notification by mail is not available, notice by
22 publication in a newspaper of general circulation shall be
23 sufficient.

24 5.2. Suspend or revoke the authority of any member
25 employer failing to pay an assessment when due or failing to
26 comply with the plan of operation to self-insure in this
27 state. As an alternative, the department may levy a fine on
28 any member employer failing to pay an assessment when due.
29 Such fine shall not exceed 5 percent of the unpaid assessment
30 per month, except that no fine shall be less than \$100 per
31 month.

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1 ~~3. Revoke the designation of any servicing facility if~~
2 ~~the department finds that claims are being handled~~
3 ~~unsatisfactorily.~~

4 (7) EFFECT OF PAID CLAIMS.--

5 (a) Any person who recovers from the association under
6 this section shall be deemed to have assigned his or her
7 rights to the association to the extent of such recovery.
8 Every claimant seeking the protection of this section shall
9 cooperate with the association to the same extent as such
10 person would have been required to cooperate with the
11 insolvent member. The association shall have no cause of
12 action against the employee of the insolvent member for any
13 sums the association has paid out, except such causes of
14 action as the insolvent member would have had if such sums had
15 been paid by the insolvent member. In the case of an
16 insolvent member operating on a plan with assessment
17 liability, payments of claims by the association shall not
18 operate to reduce the liability of the insolvent member to the
19 receiver, liquidator, or statutory successor for unpaid
20 assessments.

21 (b) The receiver, liquidator, or statutory successor
22 of an insolvent member shall be bound by settlements of
23 covered claims by the association or a similar organization in
24 another state. The court having jurisdiction shall grant such
25 claims priority against the assets of the insolvent member
26 equal to that to which the claimant would have been entitled
27 in the absence of this section. The expense of the association
28 or similar organization in handling claims shall be accorded
29 the same priority as the expenses of the liquidator.

30 (c) The association shall file periodically with the
31 receiver or liquidator of the insolvent member statements of

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1 the covered claims paid by the association and estimates of
2 anticipated claims on the association, which shall preserve
3 the rights of the association against the assets of the
4 insolvent member.

5 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid
6 in the detection and prevention of employer insolvencies+

7 ~~(a)~~ upon determination by majority vote that any
8 member employer may be insolvent or in a financial condition
9 hazardous to the employees thereof or to the public, it shall
10 be the duty of the board of directors to notify the Department
11 of Insurance ~~Labor and Employment Security~~ of any information
12 indicating such condition.

13 ~~(b) The board of directors may, upon majority vote,~~
14 ~~request that the department determine the condition of any~~
15 ~~member employer which the board in good faith believes may no~~
16 ~~longer be qualified to be a member of the association. Within~~
17 ~~30 days of the receipt of such request or, for good cause~~
18 ~~shown, within a reasonable time thereafter, the department~~
19 ~~shall make such determination and shall forthwith advise the~~
20 ~~board of its findings. Each request for a determination shall~~
21 ~~be kept on file by the department, but the request shall not~~
22 ~~be open to public inspection prior to the release of the~~
23 ~~determination to the public.~~

24 ~~(c) It shall also be the duty of the department to~~
25 ~~report to the board of directors when it has reasonable cause~~
26 ~~to believe that a member employer may be in such a financial~~
27 ~~condition as to be no longer qualified to be a member of the~~
28 ~~association.~~

29 ~~(d) The board of directors may, upon majority vote,~~
30 ~~make reports and recommendations to the department upon any~~
31 ~~matter which is germane to the solvency, liquidation,~~

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1 ~~rehabilitation, or conservation of any member employer. Such~~
2 ~~reports and recommendations shall not be considered public~~
3 ~~documents.~~

4 ~~(e) The board of directors may, upon majority vote,~~
5 ~~make recommendations to the department for the detection and~~
6 ~~prevention of employer insolvencies.~~

7 ~~(f) The board of directors shall, at the conclusion of~~
8 ~~any member's insolvency in which the association was obligated~~
9 ~~to pay covered claims, prepare a report on the history and~~
10 ~~cause of such insolvency, based on the information available~~
11 ~~to the association, and shall submit such report to the~~
12 ~~department.~~

13 (9) EXAMINATION OF THE ASSOCIATION.--The association
14 shall be subject to examination and regulation by the
15 Department of Insurance ~~Labor and Employment Security~~. No
16 later than March 30 of each year, the board of directors shall
17 submit an audited ~~a~~ financial statement ~~report~~ for the
18 preceding calendar year in a form approved by the department.

19 (10) IMMUNITY.--There shall be no liability on the
20 part of, and no cause of action of any nature shall arise
21 against, any member employer, the association or its agents or
22 employees, the board of directors, or the Department of
23 Insurance ~~Labor and Employment Security~~ or its representatives
24 for any action taken by them in the performance of their
25 powers and duties under this section.

26 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
27 JUDGMENTS.--All proceedings in which an insolvent employer is
28 a party, or is obligated to defend a party, in any court or
29 before any quasi-judicial body or administrative board in this
30 state shall be stayed for up to 6 months, or for such
31 additional period from the date the employer becomes an

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1 insolvent member, as is deemed necessary by a court of
2 competent jurisdiction to permit proper defense by the
3 association of all pending causes of action as to any covered
4 claims arising from a judgment under any decision, verdict, or
5 finding based on the default of the insolvent member. The
6 association, either on its own behalf or on behalf of the
7 insolvent member, may apply to have such judgment, order,
8 decision, verdict, or finding set aside by the same court or
9 administrator that made such judgment, order, decision,
10 verdict, or finding and shall be permitted to defend against
11 such claim on the merits. If requested by the association,
12 the stay of proceedings may be shortened or waived.

13 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
14 any other provision of this chapter, a covered claim, as
15 defined herein, with respect to which settlement is not
16 effected and pursuant to which suit is not instituted against
17 the insured of an insolvent member or the association within 1
18 year after the deadline for filing claims with the receiver of
19 the insolvent member, or any extension of the deadline, shall
20 thenceforth be barred as a claim against the association.

21 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
22 by a member by refund, dividend, or otherwise from the
23 association shall be payable within 30 days of receipt to the
24 Department of Insurance for deposit with the Treasurer to the
25 credit of the General Revenue Fund. All provisions of chapter
26 220 relating to penalties and interest on delinquent corporate
27 income tax payments apply to payments due under this
28 subsection.

29 Section 37. Subsections (2), (3), and (4) of section
30 440.386, Florida Statutes, are amended to read:

31 440.386 Individual self-insurers' insolvency;

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1 conservation; liquidation.--

2 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
3 Department of Insurance or the Florida Self-Insurers Guaranty
4 Association, Incorporated, may commence a delinquency ~~any such~~
5 proceeding by application to the court for an order directing
6 the individual self-insurer to show cause why the department
7 or association should not have the relief prayed for. ~~The~~
8 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may
9 ~~petition the department to commence such proceedings, and upon~~
10 ~~receipt of such petition, the department shall commence such~~
11 ~~proceeding.~~ On the return of such order to show cause, and
12 after a full hearing, the court shall either deny the
13 application or grant the application, together with such other
14 relief as the nature of the case and the interests of the
15 claimants, creditors, stockholders, members, subscribers, or
16 public may require. The Department of Insurance and the
17 association shall give ~~Florida Self-Insurers Guaranty~~
18 ~~Association, Incorporated,~~ shall be given reasonable written
19 notice to each other ~~by the department~~ of all hearings which
20 pertain to an adjudication of insolvency of a member
21 individual self-insurer.

22 (3) GROUNDS FOR LIQUIDATION.--The Department of
23 Insurance or the association may apply to the court for an
24 order appointing a receiver and directing the receiver to
25 liquidate the business of a domestic individual self-insurer
26 if such individual self-insurer is insolvent. ~~Florida~~
27 ~~Self-Insurers Guaranty Association, Incorporated,~~ may petition
28 ~~the department to apply to the court for such order.~~ Upon
29 ~~receipt of such petition, the department shall apply to the~~
30 ~~court for such order.~~

31 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL

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1 SELF-INSURERS.--

2 (a) The Department of Insurance or the association may
3 apply to the court for an order appointing a receiver or
4 ancillary receiver, and directing the receiver to conserve the
5 assets within this state, of a foreign individual self-insurer
6 if such individual self-insurer is insolvent. ~~Florida~~
7 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
8 ~~the department to apply for such order, and, upon receipt of~~
9 ~~such petition, the department shall apply to the court for~~
10 ~~such order.~~

11 (b) An order to conserve the assets of an individual
12 self-insurer shall require the receiver forthwith to take
13 possession of the property of the receiver within the state
14 and to conserve it, subject to the further direction of the
15 court.

16
17 (Redesignate subsequent sections.)

18
19

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

21 And the title is amended as follows:

22 On page 2, line 4, following the semicolon

23

24 insert:

25 amending s. 440.38, F.S.; transferring
26 operation of provisions requiring the securing
27 of payment of compensation by employers from
28 the Division of Workers' Compensation of the
29 Department of Labor and Employment Security to
30 the Florida Self-Insurer's Guaranty
31 Association, Incorporated, and the Department

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1 of Insurance; revising and clarifying
2 requirements and procedures; providing powers
3 and duties of the association and the
4 departments; providing for allocation or
5 payment of state funds to the association for
6 certain purposes; providing rulemaking
7 authority; amending s. 440.385, F.S.; revising
8 and clarifying provisions relating to the
9 association's creation, board of directors,
10 powers and duties, insolvency fund, and plan of
11 operation; providing additional powers of the
12 association; transferring the powers and duties
13 of the Department of Labor and Employment
14 Security relating to the association to the
15 Department of Insurance and revising those
16 powers and duties; providing additional powers
17 and duties of the Department of Insurance;
18 providing for oversight of the association by
19 the department; deleting certain provisions
20 relating to detection and prevention of
21 employer insolvencies; amending s. 440.386,
22 F.S.; providing parity for the association with
23 the Department of Insurance relating to
24 proceedings for delinquency, liquidation, and
25 conservation of assets; amending s. 440.24,
26 F.S.; providing for the sale of securities on
27 deposit to satisfy a compensation order;

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