

By Senator Clary

7-1277-01

1 A bill to be entitled
2 An act relating to workers' compensation;
3 transferring the Division of Workers'
4 Compensation from the Department of Labor and
5 Employment Security to the Department of
6 Insurance; providing exceptions; transferring
7 various functions, powers, duties, personnel,
8 and assets relating to workers' compensation to
9 the Department of Education, the Agency for
10 Health Care Administration, and the Department
11 of Insurance; amending s. 20.13, F.S.; creating
12 the Division of Workers' Compensation in the
13 Department of Insurance; amending s. 20.171,
14 F.S.; deleting the Division of Workers'
15 Compensation from the Department of Labor and
16 Employment Security; amending s. 440.015, F.S.;
17 designating state agencies to administer the
18 workers' compensation law; amending s. 440.02,
19 F.S.; providing definitions; amending ss.
20 440.021, 440.05, 440.09, 440.10, 440.102,
21 440.103, 440.105, 440.106, 440.107, 440.108,
22 440.125, 440.13, 440.134, 440.14, 440.15,
23 440.17, 440.185, 440.191, 440.192, 440.1925,
24 440.20, 440.207, 440.211, 440.24, 440.25,
25 440.271, 440.345, 440.35, 440.38, 440.381,
26 440.385, 440.40, 440.41, 440.42, 440.44,
27 440.49, 440.491, 440.50, 440.51, 440.52,
28 440.525, 440.572, 440.59, 440.591, 440.593,
29 468.529, 626.88, 626.989, 627.0915, 627.914,
30 F.S., to conform to the transfers made by this
31 act; providing for the continuation of

1 contracts and agreements; providing for
2 substitution of a successor agency as a party
3 in judicial and administrative proceedings;
4 providing severability; amending s. 624.3161,
5 F.S.; providing for market conduct examinations
6 with respect to workers' compensation;
7 providing an effective date.

8

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

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11 Section 1. (1) The Division of Workers' Compensation
12 of the Department of Labor and Employment Security is
13 transferred by a type two transfer, as defined in section
14 20.06(2), Florida Statutes, to the Department of Insurance,
15 except as otherwise provided in this section. The transfers to
16 the Department of Insurance shall include all resources, data,
17 records, property, and unexpended balances of appropriations,
18 allocations, or other funds. No personnel are transferred to
19 the Department of Insurance. The Department of Insurance shall
20 determine the number of positions needed to administer the
21 provisions of chapter 440, Florida Statutes. The number of
22 positions the department determines are needed may not exceed
23 the number of authorized positions and salary and benefits
24 that were authorized for the Division of Workers' Compensation
25 within the Department of Labor and Employment Security prior
26 to the transfer. Upon transfer of the Division of Workers'
27 Compensation, the number of required positions as determined
28 by department shall be authorized within the agency. The
29 Department of Insurance is further authorized to reassign,
30 reorganize, or otherwise transfer positions to appropriate
31 administrative subdivisions within the department and to

1 establish such regional offices as are necessary to properly
2 enforce and administer its responsibilities under the Florida
3 Insurance Code and chapter 440, Florida Statutes. The
4 department may also enter contracts with public or private
5 entities to administer its duties and responsibilities
6 associated with the transfer of the Division of Workers'
7 Compensation. All existing contracts related to those
8 functions that are transferred to the Department of Insurance
9 are subject to cancellation or renewal upon review by the
10 Department of Insurance.

11 (2) Four senior attorney positions, and the related
12 property and unexpended balances of appropriations,
13 allocations, and other funds are transferred from the Office
14 of General Counsel of the Department of Labor and Employment
15 Security to the Department of Insurance by a type two
16 transfer, as defined in section 20.06(2), Florida Statutes.

17 (3) The Office of the Judges of Compensation Claims is
18 transferred by a type two transfer, as defined in section
19 20.06(2), Florida Statutes, from the Department of Labor and
20 Employment Security to the Division of Administrative Hearings
21 of the Department of Management Services. The Office of the
22 Judges of Compensation Claims shall remain intact, including
23 all currently appointed judges of compensation claims and all
24 full-time equivalent positions, associated salaries and
25 benefits, and expense funding, including all records,
26 property, personnel, and unexpended balances of
27 appropriations, allocations, and other funds. The Office of
28 the Judges of Compensation Claims is within the Division of
29 Administrative Hearings for budgetary purposes only and shall
30 operate independent of the director of the division. The Chief

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1 Judge may continue or establish regional offices necessary to
2 implement the responsibilities as provided by law.

3 (4) Twenty-nine full-time equivalent positions from
4 the Division of Workers' Compensation of the Department of
5 Labor and Employment Security and the records, property, and
6 unexpended balances of appropriations, allocations, and other
7 funds related to oversight of medical services in workers'
8 compensation provider relations, dispute and complaint
9 resolution, program evaluation, and data management are
10 transferred by a type two transfer, as defined in section
11 20.06(2), Florida Statutes, from the Department of Labor and
12 Employment Security to the Agency for Health Care
13 Administration. However, the claims review functions and
14 three-member panel shall not be so transferred and shall be
15 retained by the Department of Insurance.

16 (5) All statutory powers, duties, functions, rules,
17 records, personnel, property, and unexpended balances of
18 appropriations, allocations, and other funds of the Division
19 of Workers' Compensation, Office of Medical Services and
20 Rehabilitation, related to reemployment, training and
21 education, obligations to rehire, and preferred worker
22 requirements, consisting of 95 full-time equivalent positions,
23 except two that are transferred to the Agency for Health Care
24 Administration, are transferred by a type two transfer, as
25 defined in section 20.06(2), Florida Statutes, from the
26 Department of Labor and Employment Security to the Department
27 of Education.

28 (6) Effective October 1, 2001, and except as provided
29 in this section, the records, property, and unexpended
30 balances of appropriations, allocations, and other funds and
31 resources of the Office of the Secretary and the Office of

1 Administrative Services of the Department of Labor and
2 Employment Security which support the activities and functions
3 of the Division of Workers' Compensation are transferred by a
4 type two transfer as defined in section 20.06(2), Florida
5 Statutes, to the Department of Insurance. The Department of
6 Insurance, in consultation with the Department of Labor and
7 Employment Security, shall determine the number of positions
8 needed for administrative support of the programs within the
9 Division of Workers' Compensation as transferred to the
10 Department of Insurance. The number of administrative support
11 positions that the Department of Insurance determines are
12 needed may not exceed the number of administrative support
13 positions that were authorized for the Department of Labor and
14 Employment Security for this purpose prior to the transfer.
15 Upon transfer of the Division of Workers' Compensation, the
16 number of required administrative support positions as
17 determined by the Department of Insurance shall be authorized
18 within the Department of Insurance.

19 (7) All the personnel, records, property, and
20 unexpended balances of appropriations, allocations, and other
21 funds and resources of the Office of the Secretary and the
22 Office of Administrative Services of the Department of Labor
23 and Employment Security which support the activities and
24 functions transferred under subsections (4) and (5) to the
25 Agency for Health Care Administration are transferred by a
26 type two transfer as defined in section 20.06(2), Florida
27 Statutes, to the Agency for Health Care Administration.

28 (8) Effective October 1, 2001, the records, property,
29 and unexpended balances of appropriations, allocations, and
30 other funds and resources of the Office of the Secretary and
31 the Office of Administrative Services of the Department of

1 Labor and Employment Security which support the activities and
2 functions transferred under subsection (5) to the Department
3 of Education are transferred by a type two transfer as defined
4 in section 20.06(2), Florida Statutes, to the Department of
5 Education.

6 Section 2. Paragraph (k) is added to subsection (2) of
7 section 20.13, Florida Statutes, to read:

8 20.13 Department of Insurance.--There is created a
9 Department of Insurance.

10 (2) The following divisions of the Department of
11 Insurance are established:

12 (k) Division of Workers' Compensation.

13 Section 3. Subsections (4) and (5) of section 20.171,
14 Florida Statutes, are amended to read:

15 20.171 Department of Labor and Employment
16 Security.--There is created a Department of Labor and
17 Employment Security. The department shall operate its programs
18 in a decentralized fashion.

19 (4)(a) The Assistant Secretary for Programs and
20 Operations must possess a broad knowledge of the
21 administrative, financial, and technical aspects of the
22 divisions within the department.

23 (b) The assistant secretary is responsible for
24 developing, monitoring, and enforcing policy and managing
25 major technical programs and supervising the Bureau of Appeals
26 of the Division of Unemployment Compensation. The
27 responsibilities and duties of the position include, but are
28 not limited to, the following functional areas:

29 1. ~~Workers' compensation management and policy~~
30 ~~implementation.~~

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1 1.2. Unemployment compensation management and policy
2 implementation.

3 2.3. Blind services management and policy
4 implementation.

5 3.4. Oversight of the five field offices and any local
6 offices.

7 (5) The following divisions are established and shall
8 be headed by division directors who shall be supervised by and
9 shall be responsible to the Assistant Secretary for Programs
10 and Operations:

11 (a) Division of Unemployment Compensation.

12 ~~(b) Division of Workers' Compensation.~~

13 (b)(c) Division of Blind Services.

14 (c)(d) Division of Vocational Rehabilitation.

15 Section 4. Section 440.015, Florida Statutes, is
16 amended to read:

17 440.015 Legislative intent.--It is the intent of the
18 Legislature that the Workers' Compensation Law be interpreted
19 so as to assure the quick and efficient delivery of disability
20 and medical benefits to an injured worker and to facilitate
21 the worker's return to gainful reemployment at a reasonable
22 cost to the employer. It is the specific intent of the
23 Legislature that workers' compensation cases shall be decided
24 on their merits. The workers' compensation system in Florida
25 is based on a mutual renunciation of common-law rights and
26 defenses by employers and employees alike. In addition, it is
27 the intent of the Legislature that the facts in a workers'
28 compensation case are not to be interpreted liberally in favor
29 of either the rights of the injured worker or the rights of
30 the employer. Additionally, the Legislature hereby declares
31 that disputes concerning the facts in workers' compensation

1 cases are not to be given a broad liberal construction in
2 favor of the employee on the one hand or of the employer on
3 the other hand, and the laws pertaining to workers'
4 compensation are to be construed in accordance with the basic
5 principles of statutory construction and not liberally in
6 favor of either employee or employer. It is the intent of the
7 Legislature to ensure the prompt delivery of benefits to the
8 injured worker. Therefore, an efficient and self-executing
9 system must be created which is not an economic or
10 administrative burden. The Division of Workers' Compensation
11 of the Department of Insurance, the Department of Education,
12 and the Agency for Health Care Administration shall administer
13 the Workers' Compensation Law in a manner that ~~which~~
14 facilitates the self-execution of the system and the process
15 of ensuring a prompt and cost-effective delivery of payments.

16 Section 5. Subsections (11), (13), and (14) of section
17 440.02, Florida Statutes, are amended, and subsection (40) is
18 added to that section, to read:

19 440.02 Definitions.--When used in this chapter, unless
20 the context clearly requires otherwise, the following terms
21 shall have the following meanings:

22 (11) "Department" means the Department of Insurance
23 ~~Labor and Employment Security~~.

24 (13) "Division" means the Division of Workers'
25 Compensation of the Department of Insurance ~~Labor and~~
26 ~~Employment Security~~.

27 (14)(a) "Employee" means any person engaged in any
28 employment under any appointment or contract of hire or
29 apprenticeship, express or implied, oral or written, whether
30 lawfully or unlawfully employed, and includes, but is not
31 limited to, aliens and minors.

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 department ~~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 department ~~division~~ as
12 provided in s. 440.05.

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

17
18 Services are presumed to have been rendered to the corporation
19 if the officer is compensated by other than dividends upon
20 shares of stock of the corporation which the officer owns.

21 (c) "Employee" includes a sole proprietor or a partner
22 who devotes full time to the proprietorship or partnership
23 and, except as provided in this paragraph, elects to be
24 included in the definition of employee by filing notice
25 thereof as provided in s. 440.05. Partners or sole proprietors
26 actively engaged in the construction industry are considered
27 employees unless they elect to be excluded from the definition
28 of employee by filing written notice of the election with the
29 department ~~division~~ as provided in s. 440.05. However, no more
30 than three partners in a partnership that is actively engaged
31 in the construction industry may elect to be excluded. A sole

1 proprietor or partner who is actively engaged in the
2 construction industry and who elects to be exempt from this
3 chapter by filing a written notice of the election with the
4 department ~~division~~ as provided in s. 440.05 is not an
5 employee. For purposes of this chapter, an independent
6 contractor is an employee unless he or she meets all of the
7 conditions set forth in subparagraph (d)1.
8 (d) "Employee" does not include:
9 1. An independent contractor, if:
10 a. The independent contractor maintains a separate
11 business with his or her own work facility, truck, equipment,
12 materials, or similar accommodations;
13 b. The independent contractor holds or has applied for
14 a federal employer identification number, unless the
15 independent contractor is a sole proprietor who is not
16 required to obtain a federal employer identification number
17 under state or federal requirements;
18 c. The independent contractor performs or agrees to
19 perform specific services or work for specific amounts of
20 money and controls the means of performing the services or
21 work;
22 d. The independent contractor incurs the principal
23 expenses related to the service or work that he or she
24 performs or agrees to perform;
25 e. The independent contractor is responsible for the
26 satisfactory completion of work or services that he or she
27 performs or agrees to perform and is or could be held liable
28 for a failure to complete the work or services;
29 f. The independent contractor receives compensation
30 for work or services performed for a commission or on a
31 per-job or competitive-bid basis and not on any other basis;

1 g. The independent contractor may realize a profit or
2 suffer a loss in connection with performing work or services;

3 h. The independent contractor has continuing or
4 recurring business liabilities or obligations; and

5 i. The success or failure of the independent
6 contractor's business depends on the relationship of business
7 receipts to expenditures.

8
9 However, the determination as to whether an individual
10 included in the Standard Industrial Classification Manual of
11 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
12 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
13 2448, or 2449, or a newspaper delivery person, is an
14 independent contractor is governed not by the criteria in this
15 paragraph but by common-law principles, giving due
16 consideration to the business activity of the individual.

17 2. A real estate salesperson or agent, if that person
18 agrees, in writing, to perform for remuneration solely by way
19 of commission.

20 3. Bands, orchestras, and musical and theatrical
21 performers, including disk jockeys, performing in licensed
22 premises as defined in chapter 562, if a written contract
23 evidencing an independent contractor relationship is entered
24 into before the commencement of such entertainment.

25 4. An owner-operator of a motor vehicle who transports
26 property under a written contract with a motor carrier which
27 evidences a relationship by which the owner-operator assumes
28 the responsibility of an employer for the performance of the
29 contract, if the owner-operator is required to furnish the
30 necessary motor vehicle equipment and all costs incidental to
31 the performance of the contract, including, but not limited

1 to, fuel, taxes, licenses, repairs, and hired help; and the
2 owner-operator is paid a commission for transportation service
3 and is not paid by the hour or on some other time-measured
4 basis.

5 5. A person whose employment is both casual and not in
6 the course of the trade, business, profession, or occupation
7 of the employer.

8 6. A volunteer, except a volunteer worker for the
9 state or a county, municipality, or other governmental entity.
10 A person who does not receive monetary remuneration for
11 services is presumed to be a volunteer unless there is
12 substantial evidence that a valuable consideration was
13 intended by both employer and employee. For purposes of this
14 chapter, the term "volunteer" includes, but is not limited to:

15 a. Persons who serve in private nonprofit agencies and
16 who receive no compensation other than expenses in an amount
17 less than or equivalent to the standard mileage and per diem
18 expenses provided to salaried employees in the same agency or,
19 if such agency does not have salaried employees who receive
20 mileage and per diem, then such volunteers who receive no
21 compensation other than expenses in an amount less than or
22 equivalent to the customary mileage and per diem paid to
23 salaried workers in the community as determined by the
24 department ~~division~~; and

25 b. Volunteers participating in federal programs
26 established under Pub. L. No. 93-113.

27 7. Any officer of a corporation who elects to be
28 exempt from this chapter.

29 8. A sole proprietor or officer of a corporation who
30 actively engages in the construction industry, and a partner
31 in a partnership that is actively engaged in the construction

1 industry, who elects to be exempt from the provisions of this
2 chapter. Such sole proprietor, officer, or partner is not an
3 employee for any reason until the notice of revocation of
4 election filed pursuant to s. 440.05 is effective.

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

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

19 (40) "Agency" means the Agency for Health Care
20 Administration.

21 Section 6. Section 440.021, Florida Statutes, is
22 amended to read:

23 440.021 Exemption of workers' compensation from
24 chapter 120.--Workers' compensation adjudications by judges of
25 compensation claims are exempt from chapter 120, and no judge
26 of compensation claims shall be considered an agency or a part
27 thereof. Communications of the result of investigations by the
28 department ~~division~~ pursuant to s. 440.185(4) are exempt from
29 chapter 120. In all instances in which the department ~~division~~
30 institutes action to collect a penalty or interest which may
31 be due pursuant to this chapter, the penalty or interest shall

1 be assessed without hearing, and the party against which such
2 penalty or interest is assessed shall be given written notice
3 of such assessment and shall have the right to protest within
4 20 days of such notice. Upon receipt of a timely notice of
5 protest and after such investigation as may be necessary, the
6 department ~~division~~ shall, if it agrees with such protest,
7 notify the protesting party that the assessment has been
8 revoked. If the department ~~division~~ does not agree with the
9 protest, it shall refer the matter to the judge of
10 compensation claims for determination pursuant to s.
11 440.25(2)-(5). Such action of the department ~~division~~ is
12 exempt from the provisions of chapter 120.

13 Section 7. Section 440.05, Florida Statutes, is
14 amended to read:

15 440.05 Election of exemption; revocation of election;
16 notice; certification.--

17 (1) Each corporate officer who elects not to accept
18 the provisions of this chapter or who, after electing such
19 exemption, revokes that exemption shall mail to the department
20 ~~division~~ in Tallahassee notice to such effect in accordance
21 with a form to be prescribed by the department ~~division~~.

22 (2) Each sole proprietor or partner who elects to be
23 included in the definition of "employee" or who, after such
24 election, revokes that election must mail to the department
25 ~~division~~ in Tallahassee notice to such effect, in accordance
26 with a form to be prescribed by the department ~~division~~.

27 (3) Each sole proprietor, partner, or officer of a
28 corporation who is actively engaged in the construction
29 industry and who elects an exemption from this chapter or who,
30 after electing such exemption, revokes that exemption, must
31 mail a written notice to such effect to the department

1 ~~division~~ on a form prescribed by the department ~~division~~
2 notice of election to be exempt from the provisions of this
3 chapter must be notarized and under oath. The notice of
4 election to be exempt which is submitted to the department
5 ~~division~~ by the sole proprietor, partner, or officer of a
6 corporation must list the name, federal tax identification
7 number, social security number, all certified or registered
8 licenses issued pursuant to chapter 489 held by the person
9 seeking the exemption, a copy of relevant documentation as to
10 employment status filed with the Internal Revenue Service as
11 specified by the department ~~division~~, a copy of the relevant
12 occupational license in the primary jurisdiction of the
13 business, and, for corporate officers and partners, the
14 registration number of the corporation or partnership filed
15 with the Division of Corporations of the Department of State.
16 The notice of election to be exempt must identify each sole
17 proprietorship, partnership, or corporation that employs the
18 person electing the exemption and must list the social
19 security number or federal tax identification number of each
20 such employer and the additional documentation required by
21 this section. In addition, the notice of election to be exempt
22 must provide that the sole proprietor, partner, or officer
23 electing an exemption is not entitled to benefits under this
24 chapter, must provide that the election does not exceed
25 exemption limits for officers and partnerships provided in s.
26 440.02, and must certify that any employees of the sole
27 proprietor, partner, or officer electing an exemption are
28 covered by workers' compensation insurance. Upon receipt of
29 the notice of the election to be exempt, receipt of all
30 application fees, and a determination by the department
31 ~~division~~ that the notice meets the requirements of this

1 subsection, the department ~~division~~ shall issue a
2 certification of the election to the sole proprietor, partner,
3 or officer, unless the department ~~division~~ determines that the
4 information contained in the notice is invalid. The department
5 ~~division~~ shall revoke a certificate of election to be exempt
6 from coverage upon a determination by the department ~~division~~
7 that the person does not meet the requirements for exemption
8 or that the information contained in the notice of election to
9 be exempt is invalid. The certificate of election must list
10 the names of the sole proprietorship, partnership, or
11 corporation listed in the request for exemption. A new
12 certificate of election must be obtained each time the person
13 is employed by a new sole proprietorship, partnership, or
14 corporation that is not listed on the certificate of election.
15 A copy of the certificate of election must be sent to each
16 workers' compensation carrier identified in the request for
17 exemption. Upon filing a notice of revocation of election, a
18 sole proprietor, partner, or officer who is a subcontractor
19 must notify her or his contractor. Upon revocation of a
20 certificate of election of exemption by the department
21 ~~division~~, the department ~~division~~ shall notify the workers'
22 compensation carriers identified in the request for exemption.

23 (4) The notice of election to be exempt from the
24 provisions of this chapter must contain a notice that clearly
25 states in substance the following: "Any person who, knowingly
26 and with intent to injure, defraud, or deceive the department
27 ~~division~~ or any employer or employee, insurance company, or
28 purposes program, files a notice of election to be exempt
29 containing any false or misleading information is guilty of a
30 felony of the third degree." Each person filing a notice of
31 election to be exempt shall personally sign the notice and

1 attest that he or she has reviewed, understands, and
2 acknowledges the foregoing notice.

3 (5) A notice given under subsection (1), subsection
4 (2), or subsection (3) shall become effective when issued by
5 the department ~~division~~ or 30 days after an application for an
6 exemption is received by the department ~~division~~, whichever
7 occurs first. However, if an accident or occupational disease
8 occurs less than 30 days after the effective date of the
9 insurance policy under which the payment of compensation is
10 secured or the date the employer qualified as a self-insurer,
11 such notice is effective as of 12:01 a.m. of the day following
12 the date it is mailed to the department ~~division~~ in
13 Tallahassee.

14 (6) A construction industry certificate of election to
15 be exempt which is issued in accordance with this section
16 shall be valid for 2 years after the effective date stated
17 thereon. Both the effective date and the expiration date must
18 be listed on the face of the certificate by the department
19 ~~division~~. The construction industry certificate must expire at
20 midnight, 2 years from its issue date, as noted on the face of
21 the exemption certificate. Any person who has received from
22 the department ~~division~~ a construction industry certificate of
23 election to be exempt which is in effect on December 31, 1998,
24 shall file a new notice of election to be exempt by the last
25 day in his or her birth month following December 1, 1998. A
26 construction industry certificate of election to be exempt may
27 be revoked before its expiration by the sole proprietor,
28 partner, or officer for whom it was issued or by the
29 department ~~division~~ for the reasons stated in this section.
30 At least 60 days prior to the expiration date of a
31 construction industry certificate of exemption issued after

1 December 1, 1998, the department ~~division~~ shall send notice of
2 the expiration date and an application for renewal to the
3 certificateholder at the address on the certificate.

4 (7) Any contractor responsible for compensation under
5 s. 440.10 may register in writing with the workers'
6 compensation carrier for any subcontractor and shall
7 thereafter be entitled to receive written notice from the
8 carrier of any cancellation or nonrenewal of the policy.

9 (8)(a) The department ~~division~~ must assess a fee of
10 \$50 with each request for a construction industry certificate
11 of election to be exempt or renewal of election to be exempt
12 under this section.

13 (b) The funds collected by the department ~~division~~
14 shall be used to administer this section, to audit the
15 businesses that pay the fee for compliance with any
16 requirements of this chapter, and to enforce compliance with
17 the provisions of this chapter.

18 (9) The department ~~division~~ may by rule prescribe
19 forms and procedures for filing an election of exemption,
20 revocation of election to be exempt, and notice of election of
21 coverage for all employers and require specified forms to be
22 submitted by all employers in filing for the election of
23 exemption. The department ~~division~~ may by rule prescribe forms
24 and procedures for issuing a certificate of the election of
25 exemption.

26 Section 8. Paragraph (d) of subsection (7) of section
27 440.09, Florida Statutes, is amended to read:

28 440.09 Coverage.--

29 (7)

30 (d) The department ~~division~~ shall provide by rule for
31 the authorization and regulation of drug-testing policies,

1 procedures, and methods. Testing of injured employees shall
2 not commence until such rules are adopted.

3 Section 9. Paragraphs (f) and (g) of subsection (1) of
4 section 440.10, Florida Statutes, are amended to read:

5 440.10 Liability for compensation.--

6 (1)

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

15 (g) For purposes of this section, a person is
16 conclusively presumed to be an independent contractor if:

17 1. The independent contractor provides the general
18 contractor with an affidavit stating that he or she meets all
19 the requirements of s. 440.02(14)(d); and

20 2. The independent contractor provides the general
21 contractor with a valid certificate of workers' compensation
22 insurance or a valid certificate of exemption issued by the
23 department ~~division~~.

24
25 A sole proprietor, partner, or officer of a corporation who
26 elects exemption from this chapter by filing a certificate of
27 election under s. 440.05 may not recover benefits or
28 compensation under this chapter. An independent contractor
29 who provides the general contractor with both an affidavit
30 stating that he or she meets the requirements of s.
31 440.02(14)(d) and a certificate of exemption is not an

1 employee under s. 440.02(14)(c) and may not recover benefits
2 under this chapter. For purposes of determining the
3 appropriate premium for workers' compensation coverage,
4 carriers may not consider any person who meets the
5 requirements of this paragraph to be an employee.

6 Section 10. Subsection (2), paragraph (a) of
7 subsection (3), and paragraph (g) of subsection (7) of section
8 440.102, Florida Statutes, are amended to read:

9 440.102 Drug-free workplace program requirements.--The
10 following provisions apply to a drug-free workplace program
11 implemented pursuant to law or to rules adopted by the Agency
12 for Health Care Administration:

13 (2) DRUG TESTING.--An employer may test an employee or
14 job applicant for any drug described in paragraph (1)(c). In
15 order to qualify as having established a drug-free workplace
16 program which affords an employer the ability to qualify for
17 the discounts provided under s. 627.0915 and deny medical and
18 indemnity benefits, under this chapter all drug testing
19 conducted by employers shall be in conformity with the
20 standards and procedures established in this section and all
21 applicable rules adopted pursuant to this section. However, an
22 employer does not have a legal duty under this section to
23 request an employee or job applicant to undergo drug testing.
24 If an employer fails to maintain a drug-free workplace program
25 in accordance with the standards and procedures established in
26 this section and in applicable rules, the employer shall not
27 be eligible for discounts under s. 627.0915. All employers
28 qualifying for and receiving discounts provided under s.
29 627.0915 must be reported annually by the insurer to the
30 department division.

31 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--

1 (a) One time only, prior to testing, an employer shall
2 give all employees and job applicants for employment a written
3 policy statement which contains:

4 1. A general statement of the employer's policy on
5 employee drug use, which must identify:

6 a. The types of drug testing an employee or job
7 applicant may be required to submit to, including
8 reasonable-suspicion drug testing or drug testing conducted on
9 any other basis.

10 b. The actions the employer may take against an
11 employee or job applicant on the basis of a positive confirmed
12 drug test result.

13 2. A statement advising the employee or job applicant
14 of the existence of this section.

15 3. A general statement concerning confidentiality.

16 4. Procedures for employees and job applicants to
17 confidentially report to a medical review officer the use of
18 prescription or nonprescription medications to a medical
19 review officer both before and after being tested.

20 5. A list of the most common medications, by brand
21 name or common name, as applicable, as well as by chemical
22 name, which may alter or affect a drug test. A list of such
23 medications as developed by the Agency for Health Care
24 Administration shall be available to employers through the
25 Division of Workers' Compensation ~~of the Department of Labor~~
26 ~~and Employment Security~~.

27 6. The consequences of refusing to submit to a drug
28 test.

29 7. A representative sampling of names, addresses, and
30 telephone numbers of employee assistance programs and local
31 drug rehabilitation programs.

1 8. A statement that an employee or job applicant who
2 receives a positive confirmed test result may contest or
3 explain the result to the medical review officer within 5
4 working days after receiving written notification of the test
5 result; that if an employee's or job applicant's explanation
6 or challenge is unsatisfactory to the medical review officer,
7 the medical review officer shall report a positive test result
8 back to the employer; and that a person may contest the drug
9 test result pursuant to law or to rules adopted by the Agency
10 for Health Care Administration.

11 9. A statement informing the employee or job applicant
12 of his or her responsibility to notify the laboratory of any
13 administrative or civil action brought pursuant to this
14 section.

15 10. A list of all drugs for which the employer will
16 test, described by brand name or common name, as applicable,
17 as well as by chemical name.

18 11. A statement regarding any applicable collective
19 bargaining agreement or contract and the right to appeal to
20 the Public Employees Relations Commission or applicable court.

21 12. A statement notifying employees and job applicants
22 of their right to consult with a medical review officer for
23 technical information regarding prescription or
24 nonprescription medication.

25 (7) EMPLOYER PROTECTION.--

26 (g) This section does not prohibit an employer from
27 conducting medical screening or other tests required,
28 permitted, or not disallowed by any statute, rule, or
29 regulation for the purpose of monitoring exposure of employees
30 to toxic or other unhealthy substances in the workplace or in
31 the performance of job responsibilities. Such screening or

1 testing is limited to the specific substances expressly
2 identified in the applicable statute, rule, or regulation,
3 unless prior written consent of the employee is obtained for
4 other tests. Such screening or testing need not be in
5 compliance with the rules adopted by the Agency for Health
6 Care Administration under this chapter or under s. 112.0455. A
7 public employer may, through the use of an unbiased selection
8 procedure, conduct random drug tests of employees occupying
9 safety-sensitive or special-risk positions if the testing is
10 performed in accordance with drug-testing rules adopted by the
11 Agency for Health Care Administration and the Department of
12 Insurance ~~Labor and Employment Security~~. If applicable, random
13 drug testing must be specified in a collective bargaining
14 agreement as negotiated by the appropriate certified
15 bargaining agent before such testing is implemented.

16 Section 11. Section 440.103, Florida Statutes, is
17 amended to read:

18 440.103 Building permits; identification of minimum
19 premium policy.--Except as otherwise provided in this chapter,
20 every employer shall, as a condition to receiving a building
21 permit, show proof that it has secured compensation for its
22 employees under this chapter as provided in ss. 440.10 and
23 440.38. Such proof of compensation must be evidenced by a
24 certificate of coverage issued by the carrier, a valid
25 exemption certificate approved by the division or the
26 department, or a copy of the employer's authority to
27 self-insure and shall be presented each time the employer
28 applies for a building permit. As provided in s. 627.413(5),
29 each certificate of coverage must show, on its face, whether
30 or not coverage is secured under the minimum premium
31 provisions of rules adopted by rating organizations licensed

1 by the Department of Insurance. The words "minimum premium
2 policy" or equivalent language shall be typed, printed,
3 stamped, or legibly handwritten.

4 Section 12. Paragraph (a) of subsection (2) of section
5 440.105, Florida Statutes, is amended to read:

6 440.105 Prohibited activities; reports; penalties;
7 limitations.--

8 (2) Whoever violates any provision of this subsection
9 commits a misdemeanor of the second degree, punishable as
10 provided in s. 775.082 or s. 775.083.

11 (a) It shall be unlawful for any employer to
12 knowingly:

13 1. Coerce or attempt to coerce, as a precondition to
14 employment or otherwise, an employee to obtain a certificate
15 of election of exemption pursuant to s. 440.05.

16 2. Discharge or refuse to hire an employee or job
17 applicant because the employee or applicant has filed a claim
18 for benefits under this chapter.

19 3. Discharge, discipline, or take any other adverse
20 personnel action against any employee for disclosing
21 information to the department ~~division~~ or any law enforcement
22 agency relating to any violation or suspected violation of any
23 of the provisions of this chapter or rules promulgated
24 hereunder.

25 4. Violate a stop-work order issued by the department
26 ~~division~~ pursuant to s. 440.107.

27 Section 13. Subsections (3) and (4) of section
28 440.106, Florida Statutes, are amended to read:

29 440.106 Civil remedies; administrative penalties.--

30 (3) Whenever any group or individual self-insurer,
31 carrier, rating bureau, or agent or other representative of

1 any carrier or rating bureau is determined to have violated s.
2 440.105, the department ~~of Insurance~~ may revoke or suspend the
3 authority or certification of any group or individual
4 self-insurer, carrier, agent, or broker.

5 (4) The department ~~division~~ shall report any
6 contractor determined in violation of requirements of this
7 chapter to the appropriate state licensing board for
8 disciplinary action.

9 Section 14. Section 440.107, Florida Statutes, is
10 amended to read:

11 440.107 Department ~~Division~~ powers to enforce employer
12 compliance with coverage requirements.--

13 (1) The Legislature finds that the failure of an
14 employer to comply with the workers' compensation coverage
15 requirements under this chapter poses an immediate danger to
16 public health, safety, and welfare. The Legislature authorizes
17 the department ~~division~~ to secure employer compliance with the
18 workers' compensation coverage requirements and authorizes the
19 department ~~division~~ to conduct investigations for the purpose
20 of ensuring employer compliance.

21 (2) The department ~~division~~ and its authorized
22 representatives may enter and inspect any place of business at
23 any reasonable time for the limited purpose of investigating
24 compliance with workers' compensation coverage requirements
25 under this chapter. Each employer shall keep true and accurate
26 business records that contain such information as the
27 department ~~division~~ prescribes by rule. The business records
28 must contain information necessary for the department ~~division~~
29 to determine compliance with workers' compensation coverage
30 requirements and must be maintained within this state by the
31 business, in such a manner as to be accessible within a

1 reasonable time upon request by the department ~~division~~. The
2 business records must be open to inspection and be available
3 for copying by the department ~~division~~ at any reasonable time
4 and place and as often as necessary. The department ~~division~~
5 may require from any employer any sworn or unsworn reports,
6 pertaining to persons employed by that employer, deemed
7 necessary for the effective administration of the workers'
8 compensation coverage requirements.

9 (3) In discharging its duties, the department ~~division~~
10 may administer oaths and affirmations, certify to official
11 acts, issue subpoenas to compel the attendance of witnesses
12 and the production of books, papers, correspondence,
13 memoranda, and other records deemed necessary by the
14 department ~~division~~ as evidence in order to ensure proper
15 compliance with the coverage provisions of this chapter.

16 (4) If a person has refused to obey a subpoena to
17 appear before the department ~~division~~ or its authorized
18 representative and produce evidence requested by the
19 department ~~division~~ or to give testimony about the matter that
20 is under investigation, a court has jurisdiction to issue an
21 order requiring compliance with the subpoena if the court has
22 jurisdiction in the geographical area where the inquiry is
23 being carried on or in the area where the person who has
24 refused the subpoena is found, resides, or transacts business.
25 Failure to obey such a court order may be punished by the
26 court as contempt.

27 (5) Whenever the department ~~division~~ determines that
28 an employer who is required to secure the payment to his or
29 her employees of the compensation provided for by this chapter
30 has failed to do so, such failure shall be deemed an immediate
31 serious danger to public health, safety, or welfare sufficient

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

12 (6) The department ~~division~~ may file a complaint in
13 the circuit court in and for Leon County to enjoin any
14 employer, who has failed to secure compensation as required by
15 this chapter, from employing individuals and from conducting
16 business until the employer presents evidence satisfactory to
17 the department ~~division~~ of having secured payment for
18 compensation and pays a civil penalty to the department
19 ~~division~~, to be deposited by the department ~~division~~ into the
20 Workers' Compensation Administration Trust Fund, in the amount
21 of \$100 per day for each day the employer was not in
22 compliance with this chapter.

23 (7) In addition to any penalty, stop-work order, or
24 injunction, the department ~~division~~ may assess against any
25 employer, who has failed to secure the payment of compensation
26 as required by this chapter, a penalty in the amount of:

27 (a) Twice the amount the employer would have paid
28 during periods it illegally failed to secure payment of
29 compensation in the preceding 3-year period based on the
30 employer's payroll during the preceding 3-year period; or

31 (b) One thousand dollars, whichever is greater.

1
2 Any penalty assessed under this subsection is due within 30
3 days after the date on which the employer is notified, except
4 that, if the department ~~division~~ has posted a stop-work order
5 or obtained injunctive relief against the employer, payment is
6 due, in addition to those conditions set forth in this
7 section, as a condition to relief from a stop-work order or an
8 injunction. Interest shall accrue on amounts not paid when due
9 at the rate of 1 percent per month.

10 (8) The department ~~division~~ may bring an action in
11 circuit court to recover penalties assessed under this
12 section, including any interest owed to the department
13 ~~division~~ pursuant to this section. In any action brought by
14 the department ~~division~~ pursuant to this section in which it
15 prevails, the circuit court shall award costs, including the
16 reasonable costs of investigation and a reasonable attorney's
17 fee.

18 (9) Any judgment obtained by the department ~~division~~
19 and any penalty due pursuant to the service of a stop-work
20 order or otherwise due under this section shall, until
21 collected, constitute a lien upon the entire interest of the
22 employer, legal or equitable, in any property, real or
23 personal, tangible or intangible; however, such lien is
24 subordinate to claims for unpaid wages and any prior recorded
25 liens, and a lien created by this section is not valid against
26 any person who, subsequent to such lien and in good faith and
27 for value, purchases real or personal property from such
28 employer or becomes the mortgagee on real or personal property
29 of such employer, or against a subsequent attaching creditor,
30 unless, with respect to real estate of the employer, a notice
31 of the lien is recorded in the public records of the county

1 where the real estate is located, and with respect to personal
2 property of the employer, the notice is recorded with the
3 Secretary of State.

4 (10) Any law enforcement agency in the state may, at
5 the request of the department ~~division~~, render any assistance
6 necessary to carry out the provisions of this section,
7 including, but not limited to, preventing any employee or
8 other person from remaining at a place of employment or job
9 site after a stop-work order or injunction has taken effect.

10 (11) Actions by the department ~~division~~ under this
11 section must be contested as provided in chapter 120. All
12 civil penalties assessed by the department ~~division~~ must be
13 paid into the Workers' Compensation Administration Trust Fund.
14 The department ~~division~~ shall return any sums previously paid,
15 upon conclusion of an action, if the department ~~division~~ fails
16 to prevail and if so directed by an order of court or an
17 administrative hearing officer. The requirements of this
18 subsection may be met by posting a bond in an amount equal to
19 twice the penalty and in a form approved by the department
20 ~~division~~.

21 Section 15. Subsection (1) of section 440.108, Florida
22 Statutes, is amended to read:

23 440.108 Investigatory records relating to workers'
24 compensation employer compliance; confidentiality.--

25 (1) All investigatory records of the department
26 ~~Division of Workers' Compensation~~ made or received pursuant to
27 s. 440.107 and any records necessary to complete an
28 investigation are confidential and exempt from the provisions
29 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
30 until the investigation is completed or ceases to be active.
31 For purposes of this section, an investigation is considered

1 "active" while such investigation is being conducted by the
2 department ~~division~~ with a reasonable, good-faith ~~good faith~~
3 belief that it may lead to the filing of administrative,
4 civil, or criminal proceedings. An investigation does not
5 cease to be active if the agency is proceeding with reasonable
6 dispatch and there is a good faith belief that action may be
7 initiated by the agency or other administrative or law
8 enforcement agency. After an investigation is completed or
9 ceases to be active, records relating to the investigation
10 remain confidential and exempt from the provisions of s.
11 119.07(1) and s. 24(a), Art. I of the State Constitution if
12 disclosure would:

- 13 (a) Jeopardize the integrity of another active
14 investigation;
15 (b) Reveal a trade secret, as defined in s. 688.002;
16 (c) Reveal business or personal financial information;
17 (d) Reveal the identity of a confidential source;
18 (e) Defame or cause unwarranted damage to the good
19 name or reputation of an individual or jeopardize the safety
20 of an individual; or
21 (f) Reveal investigative techniques or procedures.

22 Section 16. Section 440.125, Florida Statutes, is
23 amended to read:

24 440.125 Medical records and reports; identifying
25 information in employee medical bills; confidentiality.--

- 26 (1) Any medical records and medical reports of an
27 injured employee and any information identifying an injured
28 employee in medical bills which are provided to the
29 department, agency, or Department of Education ~~Division of~~
30 ~~Workers' Compensation of the Department of Labor and~~
31 ~~Employment Security~~ pursuant to s. 440.13 are confidential and

1 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
2 I of the State Constitution, except as otherwise provided by
3 this chapter.

4 (2) The Legislature finds that it is a public
5 necessity that an injured employee's medical records and
6 medical reports and information identifying the employee in
7 medical bills held by the department, agency, or Department of
8 Education Division of Workers' Compensation pursuant to s.
9 440.13 be confidential and exempt from the public records law.
10 Public access to such information is an invasion of the
11 injured employee's right to privacy in that personal,
12 sensitive information would be revealed, and public knowledge
13 of such information could lead to discrimination against the
14 employee by coworkers and others. Additionally, there is
15 little utility in providing public access to such information
16 in that the effectiveness and efficiency of the workers'
17 compensation program can be otherwise adequately monitored and
18 evaluated.

19 Section 17. Section 440.13, Florida Statutes, is
20 amended to read:

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

23 (1) DEFINITIONS.--As used in this section, the term:

24 (a) "Alternate medical care" means a change in
25 treatment or health care provider.

26 (b) "Attendant care" means care rendered by trained
27 professional attendants which is beyond the scope of household
28 duties. Family members may provide nonprofessional attendant
29 care, but may not be compensated under this chapter for care
30 that falls within the scope of household duties and other
31 services normally and gratuitously provided by family members.

1 "Family member" means a spouse, father, mother, brother,
2 sister, child, grandchild, father-in-law, mother-in-law, aunt,
3 or uncle.

4 (c) "Carrier" means, for purposes of this section,
5 insurance carrier, self-insurance fund or individually
6 self-insured employer, or assessable mutual insurer.

7 (d) "Catastrophic injury" means an injury as defined
8 in s. 440.02.

9 (e) "Certified health care provider" means a health
10 care provider who has been certified by the agency ~~division~~ or
11 who has entered an agreement with a licensed managed care
12 organization to provide treatment to injured workers under
13 this section. Certification of such health care provider must
14 include documentation that the health care provider has read
15 and is familiar with the portions of the statute, impairment
16 guides, and rules which govern the provision of remedial
17 treatment, care, and attendance.

18 (f) "Compensable" means a determination by a carrier
19 or judge of compensation claims that a condition suffered by
20 an employee results from an injury arising out of and in the
21 course of employment.

22 (g) "Emergency services and care" means emergency
23 services and care as defined in s. 395.002.

24 (h) "Health care facility" means any hospital licensed
25 under chapter 395 and any health care institution licensed
26 under chapter 400.

27 (i) "Health care provider" means a physician or any
28 recognized practitioner who provides skilled services pursuant
29 to a prescription or under the supervision or direction of a
30 physician and who has been certified by the agency ~~division~~ as
31

1 a health care provider. The term "health care provider"
2 includes a health care facility.

3 (j) "Independent medical examiner" means a physician
4 selected by either an employee or a carrier to render one or
5 more independent medical examinations in connection with a
6 dispute arising under this chapter.

7 (k) "Independent medical examination" means an
8 objective evaluation of the injured employee's medical
9 condition, including, but not limited to, impairment or work
10 status, performed by a physician or an expert medical advisor
11 at the request of a party, a judge of compensation claims, or
12 the agency division to assist in the resolution of a dispute
13 arising under this chapter.

14 (l) "Instance of overutilization" means a specific
15 inappropriate service or level of service provided to an
16 injured employee.

17 (m) "Medically necessary" means any medical service or
18 medical supply which is used to identify or treat an illness
19 or injury, is appropriate to the patient's diagnosis and
20 status of recovery, and is consistent with the location of
21 service, the level of care provided, and applicable practice
22 parameters. The service should be widely accepted among
23 practicing health care providers, based on scientific
24 criteria, and determined to be reasonably safe. The service
25 must not be of an experimental, investigative, or research
26 nature, except in those instances in which prior approval of
27 the Agency for Health Care Administration has been obtained.
28 The Agency for Health Care Administration shall adopt rules
29 providing for such approval on a case-by-case basis when the
30 service or supply is shown to have significant benefits to the
31 recovery and well-being of the patient.

1 (n) "Medicine" means a drug prescribed by an
2 authorized health care provider and includes only generic
3 drugs or single-source patented drugs for which there is no
4 generic equivalent, unless the authorized health care provider
5 writes or states that the brand-name drug as defined in s.
6 465.025 is medically necessary, or is a drug appearing on the
7 schedule of drugs created pursuant to s. 465.025(6), or is
8 available at a cost lower than its generic equivalent.

9 (o) "Palliative care" means noncurative medical
10 services that mitigate the conditions, effects, or pain of an
11 injury.

12 (p) "Pattern or practice of overutilization" means
13 repetition of instances of overutilization within a specific
14 medical case or multiple cases by a single health care
15 provider.

16 (q) "Peer review" means an evaluation by two or more
17 physicians licensed under the same authority and with the same
18 or similar specialty as the physician under review, of the
19 appropriateness, quality, and cost of health care and health
20 services provided to a patient, based on medically accepted
21 standards.

22 (r) "Physician" or "doctor" means a physician licensed
23 under chapter 458, an osteopathic physician licensed under
24 chapter 459, a chiropractic physician licensed under chapter
25 460, a podiatric physician licensed under chapter 461, an
26 optometrist licensed under chapter 463, or a dentist licensed
27 under chapter 466, each of whom must be certified by the
28 agency ~~division~~ as a health care provider.

29 (s) "Reimbursement dispute" means any disagreement
30 between a health care provider or health care facility and
31 carrier concerning payment for medical treatment.

1 (t) "Utilization control" means a systematic process
2 of implementing measures that assure overall management and
3 cost containment of services delivered.

4 (u) "Utilization review" means the evaluation of the
5 appropriateness of both the level and the quality of health
6 care and health services provided to a patient, including, but
7 not limited to, evaluation of the appropriateness of
8 treatment, hospitalization, or office visits based on
9 medically accepted standards. Such evaluation must be
10 accomplished by means of a system that identifies the
11 utilization of medical services based on medically accepted
12 standards as established by medical consultants with
13 qualifications similar to those providing the care under
14 review, and that refers patterns and practices of
15 overutilization to the agency division.

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

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

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

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

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

20 2. If the family member is employed and elects to
21 leave that employment to provide attendant or custodial care,
22 the per-hour value of that care equals the per-hour value of
23 the family member's former employment, not to exceed the
24 per-hour value of such care available in the community at
25 large. A family member or a combination of family members
26 providing nonprofessional attendant care under this paragraph
27 may not be compensated for more than a total of 12 hours per
28 day.

29 (c) If the employer fails to provide treatment or care
30 required by this section after request by the injured
31 employee, the employee may obtain such treatment at the

1 expense of the employer, if the treatment is compensable and
2 medically necessary. There must be a specific request for the
3 treatment, and the employer or carrier must be given a
4 reasonable time period within which to provide the treatment
5 or care. However, the employee is not entitled to recover any
6 amount personally expended for the treatment or service unless
7 he or she has requested the employer to furnish that treatment
8 or service and the employer has failed, refused, or neglected
9 to do so within a reasonable time or unless the nature of the
10 injury requires such treatment, nursing, and services and the
11 employer or his or her superintendent or foreman, having
12 knowledge of the injury, has neglected to provide the
13 treatment or service.

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

18 (e) Except in emergency situations and for treatment
19 rendered by a managed care arrangement, after any initial
20 examination and diagnosis by a physician providing remedial
21 treatment, care, and attendance, and before a proposed course
22 of medical treatment begins, each insurer shall review, in
23 accordance with the requirements of this chapter, the proposed
24 course of treatment, to determine whether such treatment would
25 be recognized as reasonably prudent. The review must be in
26 accordance with all applicable workers' compensation practice
27 parameters. The insurer must accept any such proposed course
28 of treatment unless the insurer notifies the physician of its
29 specific objections to the proposed course of treatment by the
30 close of the tenth business day after notification by the

31

1 physician, or a supervised designee of the physician, of the
2 proposed course of treatment.

3 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

4 (a) As a condition to eligibility for payment under
5 this chapter, a health care provider who renders services must
6 be a certified health care provider and must receive
7 authorization from the carrier before providing treatment.
8 This paragraph does not apply to emergency care. The agency
9 division shall adopt rules to implement the certification of
10 health care providers. As a one-time prerequisite to obtaining
11 certification, the agency division shall require each
12 physician to demonstrate proof of completion of a minimum
13 5-hour course that covers the subject areas of cost
14 containment, utilization control, ergonomics, and the practice
15 parameters adopted by the agency division governing the
16 physician's field of practice. The agency division shall
17 coordinate with ~~the Agency for Health Care Administration,~~the
18 Florida Medical Association, the Florida Osteopathic Medical
19 Association, the Florida Chiropractic Association, the Florida
20 Podiatric Medical Association, the Florida Optometric
21 Association, the Florida Dental Association, and other health
22 professional organizations and their respective boards as
23 deemed necessary by the Agency for Health Care Administration
24 in complying with this subsection. ~~No later than October 1,~~
25 ~~1994, the division shall adopt rules regarding the criteria~~
26 ~~and procedures for approval of courses and the filing of proof~~
27 ~~of completion by the physicians.~~

28 (b) A health care provider who renders emergency care
29 must notify the carrier by the close of the third business day
30 after it has rendered such care. If the emergency care results
31 in admission of the employee to a health care facility, the

1 health care provider must notify the carrier by telephone
2 within 24 hours after initial treatment. Emergency care is not
3 compensable under this chapter unless the injury requiring
4 emergency care arose as a result of a work-related accident.
5 Pursuant to chapter 395, all licensed physicians and health
6 care providers in this state shall be required to make their
7 services available for emergency treatment of any employee
8 eligible for workers' compensation benefits. To refuse to make
9 such treatment available is cause for revocation of a license.

10 (c) A health care provider may not refer the employee
11 to another health care provider, diagnostic facility, therapy
12 center, or other facility without prior authorization from the
13 carrier, except when emergency care is rendered. Any referral
14 must be to a health care provider that has been certified by
15 the agency division, unless the referral is for emergency
16 treatment.

17 (d) A carrier must respond, by telephone or in
18 writing, to a request for authorization by the close of the
19 third business day after receipt of the request. A carrier who
20 fails to respond to a written request for authorization for
21 referral for medical treatment by the close of the third
22 business day after receipt of the request consents to the
23 medical necessity for such treatment. All such requests must
24 be made to the carrier. Notice to the carrier does not include
25 notice to the employer.

26 (e) Carriers shall adopt procedures for receiving,
27 reviewing, documenting, and responding to requests for
28 authorization. Such procedures shall be for a health care
29 provider certified under this section.

30 (f) By accepting payment under this chapter for
31 treatment rendered to an injured employee, a health care

1 provider consents to the jurisdiction of the agency ~~division~~
2 as set forth in subsection (11) and to the submission of all
3 records and other information concerning such treatment to the
4 agency ~~division~~ in connection with a reimbursement dispute,
5 audit, or review as provided by this section. The health care
6 provider must further agree to comply with any decision of the
7 agency ~~division~~ rendered under this section.

8 (g) The employee is not liable for payment for medical
9 treatment or services provided pursuant to this section except
10 as otherwise provided in this section.

11 (h) The provisions of s. 456.053 are applicable to
12 referrals among health care providers, as defined in
13 subsection (1), treating injured workers.

14 (i) Notwithstanding paragraph (d), a claim for
15 specialist consultations, surgical operations,
16 physiotherapeutic or occupational therapy procedures, X-ray
17 examinations, or special diagnostic laboratory tests that cost
18 more than \$1,000 and other specialty services that the agency
19 ~~division~~ identifies by rule is not valid and reimbursable
20 unless the services have been expressly authorized by the
21 carrier, or unless the carrier has failed to respond within 10
22 days to a written request for authorization, or unless
23 emergency care is required. The insurer shall not refuse to
24 authorize such consultation or procedure unless the health
25 care provider or facility is not authorized or certified or
26 unless an expert medical advisor has determined that the
27 consultation or procedure is not medically necessary or
28 otherwise compensable under this chapter. Authorization of a
29 treatment plan does not constitute express authorization for
30 purposes of this section, except to the extent the carrier
31 provides otherwise in its authorization procedures. This

1 paragraph does not limit the carrier's obligation to identify
2 and disallow overutilization or billing errors.

3 (j) Notwithstanding anything in this chapter to the
4 contrary, a sick or injured employee shall be entitled, at all
5 times, to free, full, and absolute choice in the selection of
6 the pharmacy or pharmacist dispensing and filling
7 prescriptions for medicines required under this chapter. It is
8 expressly forbidden for the agency ~~division~~, an employer, or a
9 carrier, or any agent or representative of the agency
10 ~~division~~, an employer, or a carrier to select the pharmacy or
11 pharmacist which the sick or injured employee must use;
12 condition coverage or payment on the basis of the pharmacy or
13 pharmacist utilized; or to otherwise interfere in the
14 selection by the sick or injured employee of a pharmacy or
15 pharmacist.

16 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
17 DEPARTMENT ~~DIVISION~~.--

18 (a) Any health care provider providing necessary
19 remedial treatment, care, or attendance to any injured worker
20 shall submit treatment reports to the carrier in a format
21 prescribed by the department ~~division~~. A claim for medical or
22 surgical treatment is not valid or enforceable against such
23 employer or employee, unless, by the close of the third
24 business day following the first treatment, the physician
25 providing the treatment furnishes to the employer or carrier a
26 preliminary notice of the injury and treatment on forms
27 prescribed by the department ~~division~~ and, within 15 days
28 thereafter, furnishes to the employer or carrier a complete
29 report, and subsequent thereto furnishes progress reports, if
30 requested by the employer or insurance carrier, at intervals

31

1 of not less than 3 weeks apart or at less frequent intervals
2 if requested on forms prescribed by the department ~~division~~.

3 (b) Each medical report or bill obtained or received
4 by the employer, the carrier, or the injured employee, or the
5 attorney for the employer, carrier, or injured employee, with
6 respect to the remedial treatment or care of the injured
7 employee, including any report of an examination, diagnosis,
8 or disability evaluation, must be filed with the department
9 ~~Division of Workers' Compensation~~ pursuant to rules adopted by
10 the department ~~division~~. The health care provider shall also
11 furnish to the injured employee or to his or her attorney, on
12 demand, a copy of his or her office chart, records, and
13 reports, and may charge the injured employee an amount
14 authorized by the department ~~division~~ for the copies. Each
15 such health care provider shall provide to the department
16 ~~division~~ any additional information about the remedial
17 treatment, care, and attendance that the department ~~division~~
18 reasonably requests.

19 (c) It is the policy for the administration of the
20 workers' compensation system that there be reasonable access
21 to medical information by all parties to facilitate the
22 self-executing features of the law. Notwithstanding the
23 limitations in s. 456.057 and subject to the limitations in s.
24 381.004, upon the request of the employer, the carrier, or the
25 attorney for either of them, the medical records of an injured
26 employee must be furnished to those persons and the medical
27 condition of the injured employee must be discussed with those
28 persons, if the records and the discussions are restricted to
29 conditions relating to the workplace injury. Any such
30 discussions may be held before or after the filing of a claim
31 without the knowledge, consent, or presence of any other party

1 or his or her agent or representative. A health care provider
2 who willfully refuses to provide medical records or to discuss
3 the medical condition of the injured employee, after a
4 reasonable request is made for such information pursuant to
5 this subsection, shall be subject by the agency ~~division~~ to
6 one or more of the penalties set forth in paragraph (8)(b).

7 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

8 (a) In any dispute concerning overutilization, medical
9 benefits, compensability, or disability under this chapter,
10 the carrier or the employee may select an independent medical
11 examiner. The examiner may be a health care provider treating
12 or providing other care to the employee. An independent
13 medical examiner may not render an opinion outside his or her
14 area of expertise, as demonstrated by licensure and applicable
15 practice parameters.

16 (b) Each party is bound by his or her selection of an
17 independent medical examiner and is entitled to an alternate
18 examiner only if:

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

22 2. The examiner ceases to practice in the specialty
23 relevant to the employee's condition;

24 3. The examiner is unavailable due to injury, death,
25 or relocation outside a reasonably accessible geographic area;
26 or

27 4. The parties agree to an alternate examiner.

28
29 Any party may request, or a judge of compensation claims may
30 require, designation of an agency ~~a division~~ medical advisor
31 as an independent medical examiner. The opinion of the

1 advisors acting as examiners shall not be afforded the
2 presumption set forth in paragraph (9)(c).

3 (c) The carrier may, at its election, contact the
4 claimant directly to schedule a reasonable time for an
5 independent medical examination. The carrier must confirm the
6 scheduling agreement in writing within 5 days and notify
7 claimant's counsel, if any, at least 7 days before the date
8 upon which the independent medical examination is scheduled to
9 occur. An attorney representing a claimant is not authorized
10 to schedule independent medical evaluations under this
11 subsection.

12 (d) If the employee fails to appear for the
13 independent medical examination without good cause and fails
14 to advise the physician at least 24 hours before the scheduled
15 date for the examination that he or she cannot appear, the
16 employee is barred from recovering compensation for any period
17 during which he or she has refused to submit to such
18 examination. Further, the employee shall reimburse the carrier
19 50 percent of the physician's cancellation or no-show fee
20 unless the carrier that schedules the examination fails to
21 timely provide to the employee a written confirmation of the
22 date of the examination pursuant to paragraph (c) which
23 includes an explanation of why he or she failed to appear. The
24 employee may appeal to a judge of compensation claims for
25 reimbursement when the carrier withholds payment in excess of
26 the authority granted by this section.

27 (e) No medical opinion other than the opinion of a
28 medical advisor appointed by the judge of compensation claims
29 or agency division, an independent medical examiner, or an
30 authorized treating provider is admissible in proceedings
31 before the judges of compensation claims.

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

5 (6) UTILIZATION REVIEW.--Carriers shall review all
6 bills, invoices, and other claims for payment submitted by
7 health care providers in order to identify overutilization and
8 billing errors, and may hire peer review consultants or
9 conduct independent medical evaluations. Such consultants,
10 including peer review organizations, are immune from liability
11 in the execution of their functions under this subsection to
12 the extent provided in s. 766.101. If a carrier finds that
13 overutilization of medical services or a billing error has
14 occurred, it must disallow or adjust payment for such services
15 or error without order of a judge of compensation claims or
16 the agency division, if the carrier, in making its
17 determination, has complied with this section and rules
18 adopted by the agency division.

19 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

20 (a) Any health care provider, carrier, or employer who
21 elects to contest the disallowance or adjustment of payment by
22 a carrier under subsection (6) must, within 30 days after
23 receipt of notice of disallowance or adjustment of payment,
24 petition the agency division to resolve the dispute. The
25 petitioner must serve a copy of the petition on the carrier
26 and on all affected parties by certified mail. The petition
27 must be accompanied by all documents and records that support
28 the allegations contained in the petition. Failure of a
29 petitioner to submit such documentation to the agency division
30 results in dismissal of the petition.

31

1 (b) The carrier must submit to the agency division
2 within 10 days after receipt of the petition all documentation
3 substantiating the carrier's disallowance or adjustment.
4 Failure of the carrier to submit the requested documentation
5 to the agency division within 10 days constitutes a waiver of
6 all objections to the petition.

7 (c) Within 60 days after receipt of all documentation,
8 the agency division must provide to the petitioner, the
9 carrier, and the affected parties a written determination of
10 whether the carrier properly adjusted or disallowed payment.
11 The agency division must be guided by standards and policies
12 set forth in this chapter, including all applicable
13 reimbursement schedules, in rendering its determination.

14 (d) If the agency division finds an improper
15 disallowance or improper adjustment of payment by an insurer,
16 the insurer shall reimburse the health care provider,
17 facility, insurer, or employer within 30 days, subject to the
18 penalties provided in this subsection.

19 (e) The agency division shall adopt rules to carry out
20 this subsection. The rules may include provisions for
21 consolidating petitions filed by a petitioner and expanding
22 the timetable for rendering a determination upon a
23 consolidated petition.

24 (f) Any carrier that engages in a pattern or practice
25 of arbitrarily or unreasonably disallowing or reducing
26 payments to health care providers may be subject to one or
27 more of the following penalties imposed by the agency
28 division:

29 1. Repayment of the appropriate amount to the health
30 care provider.

31

1 2. An administrative fine assessed by the agency
2 ~~division~~ in an amount not to exceed \$5,000 per instance of
3 improperly disallowing or reducing payments.

4 3. Award of the health care provider's costs,
5 including a reasonable attorney's fee, for prosecuting the
6 petition.

7 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

8 (a) Carriers must report to the agency ~~division~~ all
9 instances of overutilization including, but not limited to,
10 all instances in which the carrier disallows or adjusts
11 payment. The agency ~~division~~ shall determine whether a pattern
12 or practice of overutilization exists.

13 (b) If the agency ~~division~~ determines that a health
14 care provider has engaged in a pattern or practice of
15 overutilization or a violation of this chapter or rules
16 adopted by the agency ~~division~~, it may impose one or more of
17 the following penalties:

18 1. An order of the agency ~~division~~ barring the
19 provider from payment under this chapter;

20 2. Deauthorization of care under review;

21 3. Denial of payment for care rendered in the future;

22 4. Decertification of a health care provider certified
23 as an expert medical advisor under subsection (9) or of a
24 rehabilitation provider certified under s. 440.49;

25 5. An administrative fine assessed by the agency
26 ~~division~~ in an amount not to exceed \$5,000 per instance of
27 overutilization or violation; and

28 6. Notification of and review by the appropriate
29 licensing authority pursuant to s. 440.106(3).

30 (9) EXPERT MEDICAL ADVISORS.--

31

1 (a) The agency ~~division~~ shall certify expert medical
2 advisors in each specialty to assist the agency ~~division~~ and
3 the judges of compensation claims within the advisor's area of
4 expertise as provided in this section. The agency ~~division~~
5 shall, in a manner prescribed by rule, in certifying,
6 recertifying, or decertifying an expert medical advisor,
7 consider the qualifications, training, impartiality, and
8 commitment of the health care provider to the provision of
9 quality medical care at a reasonable cost. As a prerequisite
10 for certification or recertification, the agency ~~division~~
11 shall require, at a minimum, that an expert medical advisor
12 have specialized workers' compensation training or experience
13 under the workers' compensation system of this state and board
14 certification or board eligibility.

15 (b) The agency ~~division~~ shall contract with or employ
16 expert medical advisors to provide peer review or medical
17 consultation to the agency ~~division~~ or to a judge of
18 compensation claims in connection with resolving disputes
19 relating to reimbursement, differing opinions of health care
20 providers, and health care and physician services rendered
21 under this chapter. Expert medical advisors contracting with
22 the agency ~~division~~ shall, as a term of such contract, agree
23 to provide consultation or services in accordance with the
24 timetables set forth in this chapter and to abide by rules
25 adopted by the agency ~~division~~, including, but not limited to,
26 rules pertaining to procedures for review of the services
27 rendered by health care providers and preparation of reports
28 and recommendations for submission to the agency ~~division~~.

29 (c) If there is disagreement in the opinions of the
30 health care providers, if two health care providers disagree
31 on medical evidence supporting the employee's complaints or

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

16 (d) The expert medical advisor must complete his or
17 her evaluation and issue his or her report to the agency
18 ~~division~~ or to the judge of compensation claims within 45 days
19 after receipt of all medical records. The expert medical
20 advisor must furnish a copy of the report to the carrier and
21 to the employee.

22 (e) An expert medical advisor is not liable under any
23 theory of recovery for evaluations performed under this
24 section without a showing of fraud or malice. The protections
25 of s. 766.101 apply to any officer, employee, or agent of the
26 agency ~~division~~ and to any officer, employee, or agent of any
27 entity with which the agency ~~division~~ has contracted under
28 this subsection.

29 (f) If the agency ~~division~~ or a judge of compensation
30 claims determines that the services of a certified expert
31 medical advisor are required to resolve a dispute under this

1 section, the carrier must compensate the advisor for his or
2 her time in accordance with a schedule adopted by the agency
3 ~~division~~. The agency division may assess a penalty not to
4 exceed \$500 against any carrier that fails to timely
5 compensate an advisor in accordance with this section.

6 (10) WITNESS FEES.--Any health care provider who gives
7 a deposition shall be allowed a witness fee. The amount
8 charged by the witness may not exceed \$200 per hour. An expert
9 witness who has never provided direct professional services to
10 a party but has merely reviewed medical records and provided
11 an expert opinion or has provided only direct professional
12 services that were unrelated to the workers' compensation case
13 may not be allowed a witness fee in excess of \$200 per day.

14 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
15 ~~DIVISION~~; JURISDICTION.--

16 (a) The Agency for Health Care Administration ~~Division~~
17 ~~of Workers' Compensation of the Department of Labor and~~
18 ~~Employment Security~~ may investigate health care providers to
19 determine whether providers are complying with this chapter
20 and with rules adopted by the agency division, whether the
21 providers are engaging in overutilization, and whether
22 providers are engaging in improper billing practices. If the
23 agency division finds that a health care provider has
24 improperly billed, overutilized, or failed to comply with
25 agency division rules or the requirements of this chapter it
26 must notify the provider of its findings and may determine
27 that the health care provider may not receive payment from the
28 carrier or may impose penalties as set forth in subsection (8)
29 or other sections of this chapter. If the health care provider
30 has received payment from a carrier for services that were
31 improperly billed or for overutilization, it must return those

1 payments to the carrier. The agency ~~division~~ may assess a
2 penalty not to exceed \$500 for each overpayment that is not
3 refunded within 30 days after notification of overpayment by
4 the agency ~~division~~ or carrier.

5 (b) The agency ~~division~~ shall monitor and audit
6 carriers to determine if medical bills are paid in accordance
7 with this section and agency ~~division~~ rules. Any employer, if
8 self-insured, or carrier found by the department ~~division~~ not
9 to be within 90 percent compliance as to the payment of
10 medical bills after July 1, 1994, must be assessed a fine not
11 to exceed 1 percent of the prior year's assessment levied
12 against such entity under s. 440.51 for every quarter in which
13 the entity fails to attain 90-percent compliance. The
14 department ~~division~~ shall fine an employer or carrier,
15 pursuant to rules adopted by the department ~~division~~, for each
16 late payment of compensation that is below the minimum
17 90-percent performance standard. Any carrier that is found to
18 be not in compliance in subsequent consecutive quarters must
19 implement a medical-bill review program approved by the
20 department ~~division~~, and the carrier is subject to
21 disciplinary action by the Department of Insurance.

22 (c) The agency ~~division~~ has exclusive jurisdiction to
23 decide any matters concerning reimbursement, to resolve any
24 overutilization dispute under subsection (7), and to decide
25 any question concerning overutilization under subsection (8),
26 which question or dispute arises after January 1, 1994.

27 (d) The following agency ~~division~~ actions do not
28 constitute agency action subject to review under ss. 120.569
29 and 120.57 and do not constitute actions subject to s. 120.56:
30 referral by the entity responsible for utilization review; a
31 decision by the agency ~~division~~ to refer a matter to a peer

1 review committee; establishment by a health care provider or
2 entity of procedures by which a peer review committee reviews
3 the rendering of health care services; and the review
4 proceedings, report, and recommendation of the peer review
5 committee.

6 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
7 REIMBURSEMENT ALLOWANCES.--

8 (a) A three-member panel is created, consisting of the
9 Insurance Commissioner, or the Insurance Commissioner's
10 designee, and two members to be appointed by the Governor,
11 subject to confirmation by the Senate, one member who, on
12 account of present or previous vocation, employment, or
13 affiliation, shall be classified as a representative of
14 employers, the other member who, on account of previous
15 vocation, employment, or affiliation, shall be classified as a
16 representative of employees. The panel shall determine
17 statewide schedules of maximum reimbursement allowances for
18 medically necessary treatment, care, and attendance provided
19 by physicians, hospitals, ambulatory surgical centers,
20 work-hardening programs, pain programs, and durable medical
21 equipment. The maximum reimbursement allowances for inpatient
22 hospital care shall be based on a schedule of per diem rates,
23 to be approved by the three-member panel no later than March
24 1, 1994, to be used in conjunction with a precertification
25 manual as determined by the agency ~~division~~. All compensable
26 charges for hospital outpatient care shall be reimbursed at 75
27 percent of usual and customary charges. Until the three-member
28 panel approves a schedule of per diem rates for inpatient
29 hospital care and it becomes effective, all compensable
30 charges for hospital inpatient care must be reimbursed at 75
31 percent of their usual and customary charges. Annually, the

1 three-member panel shall adopt schedules of maximum
2 reimbursement allowances for physicians, hospital inpatient
3 care, hospital outpatient care, ambulatory surgical centers,
4 work-hardening programs, and pain programs. However, the
5 maximum percentage of increase in the individual reimbursement
6 allowance may not exceed the percentage of increase in the
7 Consumer Price Index for the previous year. An individual
8 physician, hospital, ambulatory surgical center, pain program,
9 or work-hardening program shall be reimbursed either the usual
10 and customary charge for treatment, care, and attendance, the
11 agreed-upon contract price, or the maximum reimbursement
12 allowance in the appropriate schedule, whichever is less.

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

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

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

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

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

26 3. The financial impact of the reimbursement
27 allowances upon health care providers and health care
28 facilities, including trauma centers as defined in s.
29 395.4001, and its effect upon their ability to make available
30 to injured workers such medically necessary remedial
31 treatment, care, and attendance. The uniform schedule of

1 maximum reimbursement allowances must be reasonable, must
2 promote health care cost containment and efficiency with
3 respect to the workers' compensation health care delivery
4 system, and must be sufficient to ensure availability of such
5 medically necessary remedial treatment, care, and attendance
6 to injured workers; and

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

10 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
11 AUTHORIZED TO RENDER MEDICAL CARE.--The agency ~~division~~ shall
12 remove from the list of physicians or facilities authorized to
13 provide remedial treatment, care, and attendance under this
14 chapter the name of any physician or facility found after
15 reasonable investigation to have:

16 (a) Engaged in professional or other misconduct or
17 incompetency in connection with medical services rendered
18 under this chapter;

19 (b) Exceeded the limits of his or her or its
20 professional competence in rendering medical care under this
21 chapter, or to have made materially false statements regarding
22 his or her or its qualifications in his or her application;

23 (c) Failed to transmit copies of medical reports to
24 the employer or carrier, or failed to submit full and truthful
25 medical reports of all his or her or its findings to the
26 employer or carrier as required under this chapter;

27 (d) Solicited, or employed another to solicit for
28 himself or herself or itself or for another, professional
29 treatment, examination, or care of an injured employee in
30 connection with any claim under this chapter;

31

1 (e) Refused to appear before, or to answer upon
2 request of, the agency ~~division~~ or any duly authorized officer
3 of the state, any legal question, or to produce any relevant
4 book or paper concerning his or her conduct under any
5 authorization granted to him or her under this chapter;

6 (f) Self-referred in violation of this chapter or
7 other laws of this state; or

8 (g) Engaged in a pattern of practice of
9 overutilization or a violation of this chapter or rules
10 adopted by the agency ~~division~~.

11 (14) PAYMENT OF MEDICAL FEES.--

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

20 (b) Fees charged for remedial treatment, care, and
21 attendance may not exceed the applicable fee schedules adopted
22 under this chapter.

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

29 (15) PRACTICE PARAMETERS.--

30 (a) The Agency for Health Care Administration, in
31 conjunction with the department ~~division~~ and appropriate

1 health professional associations and health-related
2 organizations shall develop and may adopt by rule
3 scientifically sound practice parameters for medical
4 procedures relevant to workers' compensation claimants.
5 Practice parameters developed under this section must focus on
6 identifying effective remedial treatments and promoting the
7 appropriate utilization of health care resources. Priority
8 must be given to those procedures that involve the greatest
9 utilization of resources either because they are the most
10 costly or because they are the most frequently performed.
11 Practice parameters for treatment of the 10 top procedures
12 associated with workers' compensation injuries including the
13 remedial treatment of lower-back injuries must be developed by
14 December 31, 1994.

15 (b) The guidelines may be initially based on
16 guidelines prepared by nationally recognized health care
17 institutions and professional organizations but should be
18 tailored to meet the workers' compensation goal of returning
19 employees to full employment as quickly as medically possible,
20 taking into consideration outcomes data collected from managed
21 care providers and any other inpatient and outpatient
22 facilities serving workers' compensation claimants.

23 (c) Procedures must be instituted which provide for
24 the periodic review and revision of practice parameters based
25 on the latest outcomes data, research findings, technological
26 advancements, and clinical experiences, at least once every 3
27 years.

28 (d) Practice parameters developed under this section
29 must be used by carriers and the agency ~~division~~ in evaluating
30 the appropriateness and overutilization of medical services
31 provided to injured employees.

1 Section 18. Subsection (23) of section 440.134,
2 Florida Statutes, is amended to read:

3 440.134 Workers' compensation managed care
4 arrangement.--

5 (23) The agency shall immediately notify the
6 Department of Insurance ~~and the Department of Labor and~~
7 ~~Employment Security~~ whenever it issues an administrative
8 complaint or an order or otherwise initiates legal proceedings
9 resulting in, or which may result in, suspension or revocation
10 of an insurer's authorization.

11 Section 19. Subsection (3) of section 440.14, Florida
12 Statutes, is amended to read:

13 440.14 Determination of pay.--

14 (3) The department ~~division~~ shall establish by rule a
15 form which shall contain a simplified checklist of those items
16 which may be included as "wage" for determining the average
17 weekly wage.

18 Section 20. Section 440.15, Florida Statutes, is
19 amended to read:

20 440.15 Compensation for disability.--Compensation for
21 disability shall be paid to the employee, subject to the
22 limits provided in s. 440.12(2), as follows:

23 (1) PERMANENT TOTAL DISABILITY.--

24 (a) In case of total disability adjudged to be
25 permanent, 66 2/3 percent of the average weekly wages shall
26 be paid to the employee during the continuance of such total
27 disability.

28 (b) Only a catastrophic injury as defined in s. 440.02
29 shall, in the absence of conclusive proof of a substantial
30 earning capacity, constitute permanent total disability. Only
31 claimants with catastrophic injuries are eligible for

1 permanent total benefits. In no other case may permanent total
2 disability be awarded.

3 (c) In cases of permanent total disability resulting
4 from injuries that occurred prior to July 1, 1955, such
5 payments shall not be made in excess of 700 weeks.

6 (d) If an employee who is being paid compensation for
7 permanent total disability becomes rehabilitated to the extent
8 that she or he establishes an earning capacity, the employee
9 shall be paid, instead of the compensation provided in
10 paragraph (a), benefits pursuant to subsection (3). The
11 department division shall adopt rules to enable a permanently
12 and totally disabled employee who may have reestablished an
13 earning capacity to undertake a trial period of reemployment
14 without prejudicing her or his return to permanent total
15 status in the case that such employee is unable to sustain an
16 earning capacity.

17 (e)1. The employer's or carrier's right to conduct
18 vocational evaluations or testing pursuant to s. 440.491
19 continues even after the employee has been accepted or
20 adjudicated as entitled to compensation under this chapter.
21 This right includes, but is not limited to, instances in which
22 such evaluations or tests are recommended by a treating
23 physician or independent medical-examination physician,
24 instances warranted by a change in the employee's medical
25 condition, or instances in which the employee appears to be
26 making appropriate progress in recuperation. This right may
27 not be exercised more than once every calendar year.

28 2. The carrier must confirm the scheduling of the
29 vocational evaluation or testing in writing, and must notify
30 employee's counsel, if any, at least 7 days before the date on
31 which vocational evaluation or testing is scheduled to occur.

1 3. Pursuant to an order of the judge of compensation
2 claims, the employer or carrier may withhold payment of
3 benefits for permanent total disability or supplements for any
4 period during which the employee willfully fails or refuses to
5 appear without good cause for the scheduled vocational
6 evaluation or testing.

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

30 2.a. The department ~~division~~ shall provide by rule for
31 the periodic reporting to the department ~~division~~ of all

1 earnings of any nature and social security income by the
2 injured employee entitled to or claiming additional
3 compensation under subparagraph 1. Neither the department
4 ~~division~~ nor the employer or carrier shall make any payment of
5 those additional benefits provided by subparagraph 1. for any
6 period during which the employee willfully fails or refuses to
7 report upon request by the department ~~division~~ in the manner
8 prescribed by such rules.

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

21 3. When an injured employee receives a full or partial
22 lump-sum advance of the employee's permanent total disability
23 compensation benefits, the employee's benefits under this
24 paragraph shall be computed on the employee's weekly
25 compensation rate as reduced by the lump-sum advance.

26 (2) TEMPORARY TOTAL DISABILITY.--

27 (a) In case of disability total in character but
28 temporary in quality, 66 2/3 percent of the average weekly
29 wages shall be paid to the employee during the continuance
30 thereof, not to exceed 104 weeks except as provided in this
31 subsection, s. 440.12(1), and s. 440.14(3). Once the employee

1 reaches the maximum number of weeks allowed, or the employee
2 reaches the date of maximum medical improvement, whichever
3 occurs earlier, temporary disability benefits shall cease and
4 the injured worker's permanent impairment shall be determined.

5 (b) Notwithstanding the provisions of paragraph (a),
6 an employee who has sustained the loss of an arm, leg, hand,
7 or foot, has been rendered a paraplegic, paraparetic,
8 quadriplegic, or quadriparetic, or has lost the sight of both
9 eyes shall be paid temporary total disability of 80 percent of
10 her or his average weekly wage. The increased temporary total
11 disability compensation provided for in this paragraph must
12 not extend beyond 6 months from the date of the accident. The
13 compensation provided by this paragraph is not subject to the
14 limits provided in s. 440.12(2), but instead is subject to a
15 maximum weekly compensation rate of \$700. If, at the
16 conclusion of this period of increased temporary total
17 disability compensation, the employee is still temporarily
18 totally disabled, the employee shall continue to receive
19 temporary total disability compensation as set forth in
20 paragraphs (a) and (c). The period of time the employee has
21 received this increased compensation will be counted as part
22 of, and not in addition to, the maximum periods of time for
23 which the employee is entitled to compensation under paragraph
24 (a) but not paragraph (c).

25 (c) Temporary total disability benefits paid pursuant
26 to this subsection shall include such period as may be
27 reasonably necessary for training in the use of artificial
28 members and appliances, and shall include such period as the
29 employee may be receiving training and education under a
30 program pursuant to s. 440.49(1). Notwithstanding s.
31 440.02(9), the date of maximum medical improvement for

1 purposes of paragraph (3)(b) shall be no earlier than the last
2 day for which such temporary disability benefits are paid.

3 (d) The department ~~division~~ shall, by rule, provide
4 for the periodic reporting to the department ~~division~~,
5 employer, or carrier of all earned income, including income
6 from social security, by the injured employee who is entitled
7 to or claiming benefits for temporary total disability. The
8 employer or carrier is not required to make any payment of
9 benefits for temporary total disability for any period during
10 which the employee willfully fails or refuses to report upon
11 request by the employer or carrier in the manner prescribed by
12 the rules. The rule must require the claimant to personally
13 sign the claim form and attest that she or he has reviewed,
14 understands, and acknowledges the foregoing.

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

16 (a) Impairment benefits.--

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

21 2. The three-member panel, in cooperation with the
22 department ~~division~~, shall establish and use a uniform
23 permanent impairment rating schedule. This schedule must be
24 based on medically or scientifically demonstrable findings as
25 well as the systems and criteria set forth in the American
26 Medical Association's Guides to the Evaluation of Permanent
27 Impairment; the Snellen Charts, published by American Medical
28 Association Committee for Eye Injuries; and the Minnesota
29 Department of Labor and Industry Disability Schedules. The
30 schedule should be based upon objective findings. The schedule
31 shall be more comprehensive than the AMA Guides to the

1 Evaluation of Permanent Impairment and shall expand the areas
2 already addressed and address additional areas not currently
3 contained in the guides. On August 1, 1979, and pending the
4 adoption, by rule, of a permanent schedule, Guides to the
5 Evaluation of Permanent Impairment, copyright 1977, 1971,
6 1988, by the American Medical Association, shall be the
7 temporary schedule and shall be used for the purposes hereof.
8 For injuries after July 1, 1990, pending the adoption by
9 department ~~division~~ rule of a uniform disability rating
10 schedule, the Minnesota Department of Labor and Industry
11 Disability Schedule shall be used unless that schedule does
12 not address an injury. In such case, the Guides to the
13 Evaluation of Permanent Impairment by the American Medical
14 Association shall be used. Determination of permanent
15 impairment under this schedule must be made by a physician
16 licensed under chapter 458, a doctor of osteopathic medicine
17 licensed under chapters 458 and 459, a chiropractic physician
18 licensed under chapter 460, a podiatric physician licensed
19 under chapter 461, an optometrist licensed under chapter 463,
20 or a dentist licensed under chapter 466, as appropriate
21 considering the nature of the injury. No other persons are
22 authorized to render opinions regarding the existence of or
23 the extent of permanent impairment.

24 3. All impairment income benefits shall be based on an
25 impairment rating using the impairment schedule referred to in
26 subparagraph 2. Impairment income benefits are paid weekly at
27 the rate of 50 percent of the employee's average weekly
28 temporary total disability benefit not to exceed the maximum
29 weekly benefit under s. 440.12. An employee's entitlement to
30 impairment income benefits begins the day after the employee
31 reaches maximum medical improvement or the expiration of

1 temporary benefits, whichever occurs earlier, and continues
2 until the earlier of:

3 a. The expiration of a period computed at the rate of
4 3 weeks for each percentage point of impairment; or
5 b. The death of the employee.

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

29 5. The carrier shall pay the employee impairment
30 income benefits for a period based on the impairment rating.
31

1 6. The department ~~division~~ may by rule specify forms
2 and procedures governing the method of payment of wage loss
3 and impairment benefits for dates of accidents before January
4 1, 1994, and for dates of accidents on or after January 1,
5 1994.

6 (b) Supplemental benefits.--

7 1. All supplemental benefits must be paid in
8 accordance with this subsection. An employee is entitled to
9 supplemental benefits as provided in this paragraph as of the
10 expiration of the impairment period, if:

11 a. The employee has an impairment rating from the
12 compensable injury of 20 percent or more as determined
13 pursuant to this chapter;

14 b. The employee has not returned to work or has
15 returned to work earning less than 80 percent of the
16 employee's average weekly wage as a direct result of the
17 employee's impairment; and

18 c. The employee has in good faith attempted to obtain
19 employment commensurate with the employee's ability to work.

20 2. If an employee is not entitled to supplemental
21 benefits at the time of payment of the final weekly impairment
22 income benefit because the employee is earning at least 80
23 percent of the employee's average weekly wage, the employee
24 may become entitled to supplemental benefits at any time
25 within 1 year after the impairment income benefit period ends
26 if:

27 a. The employee earns wages that are less than 80
28 percent of the employee's average weekly wage for a period of
29 at least 90 days;

30 b. The employee meets the other requirements of
31 subparagraph 1.; and

1 c. The employee's decrease in earnings is a direct
2 result of the employee's impairment from the compensable
3 injury.

4 3. If an employee earns wages that are at least 80
5 percent of the employee's average weekly wage for a period of
6 at least 90 days during which the employee is receiving
7 supplemental benefits, the employee ceases to be entitled to
8 supplemental benefits for the filing period. Supplemental
9 benefits that have been terminated shall be reinstated when
10 the employee satisfies the conditions enumerated in
11 subparagraph 2. and files the statement required under
12 subparagraph 5. Notwithstanding any other provision, if an
13 employee is not entitled to supplemental benefits for 12
14 consecutive months, the employee ceases to be entitled to any
15 additional income benefits for the compensable injury. If the
16 employee is discharged within 12 months after losing
17 entitlement under this subsection, benefits may be reinstated
18 if the employee was discharged at that time with the intent to
19 deprive the employee of supplemental benefits.

20 4. During the period that impairment income benefits
21 or supplemental income benefits are being paid, the carrier
22 has the affirmative duty to determine at least annually
23 whether any extended unemployment or underemployment is a
24 direct result of the employee's impairment. To accomplish this
25 purpose, the department ~~division~~ may require periodic reports
26 from the employee and the carrier, and it may, at the
27 carrier's expense, require any physical or other examinations,
28 vocational assessments, or other tests or diagnoses necessary
29 to verify that the carrier is performing its duty. Not more
30 than once in each 12 calendar months, the employee and the
31 carrier may each request that the department ~~division~~ review

1 the status of the employee and determine whether the carrier
2 has performed its duty with respect to whether the employee's
3 unemployment or underemployment is a direct result of
4 impairment from the compensable injury.

5 5. After the initial determination of supplemental
6 benefits, the employee must file a statement with the carrier
7 stating that the employee has earned less than 80 percent of
8 the employee's average weekly wage as a direct result of the
9 employee's impairment, stating the amount of wages the
10 employee earned in the filing period, and stating that the
11 employee has in good faith sought employment commensurate with
12 the employee's ability to work. The statement must be filed
13 quarterly on a form and in the manner prescribed by the
14 department division. The department division may modify the
15 filing period as appropriate to an individual case. Failure to
16 file a statement relieves the carrier of liability for
17 supplemental benefits for the period during which a statement
18 is not filed.

19 6. The carrier shall begin payment of supplemental
20 benefits not later than the seventh day after the expiration
21 date of the impairment income benefit period and shall
22 continue to timely pay those benefits. The carrier may request
23 a mediation conference for the purpose of contesting the
24 employee's entitlement to or the amount of supplemental income
25 benefits.

26 7. Supplemental benefits are calculated quarterly and
27 paid monthly. For purposes of calculating supplemental
28 benefits, 80 percent of the employee's average weekly wage and
29 the average wages the employee has earned per week are
30 compared quarterly. For purposes of this paragraph, if the
31 employee is offered a bona fide position of employment that

1 the employee is capable of performing, given the physical
2 condition of the employee and the geographic accessibility of
3 the position, the employee's weekly wages are considered
4 equivalent to the weekly wages for the position offered to the
5 employee.

6 8. Supplemental benefits are payable at the rate of 80
7 percent of the difference between 80 percent of the employee's
8 average weekly wage determined pursuant to s. 440.14 and the
9 weekly wages the employee has earned during the reporting
10 period, not to exceed the maximum weekly income benefit under
11 s. 440.12.

12 9. The department ~~division~~ may by rule define terms
13 that are necessary for the administration of this section and
14 forms and procedures governing the method of payment of
15 supplemental benefits for dates of accidents before January 1,
16 1994, and for dates of accidents on or after January 1, 1994.

17 (c) Duration of temporary impairment and supplemental
18 income benefits.--The employee's eligibility for temporary
19 benefits, impairment income benefits, and supplemental
20 benefits terminates on the expiration of 401 weeks after the
21 date of injury.

22 (4) TEMPORARY PARTIAL DISABILITY.--

23 (a) In case of temporary partial disability,
24 compensation shall be equal to 80 percent of the difference
25 between 80 percent of the employee's average weekly wage and
26 the salary, wages, and other remuneration the employee is able
27 to earn, as compared weekly; however, the weekly benefits may
28 not exceed an amount equal to 66 2/3 percent of the
29 employee's average weekly wage at the time of injury. In order
30 to simplify the comparison of the preinjury average weekly
31 wage with the salary, wages, and other remuneration the

1 employee is able to earn, the department ~~division~~ may by rule
2 provide for the modification of the weekly comparison so as to
3 coincide as closely as possible with the injured worker's pay
4 periods. The amount determined to be the salary, wages, and
5 other remuneration the employee is able to earn shall in no
6 case be less than the sum actually being earned by the
7 employee, including earnings from sheltered employment.

8 (b) Such benefits shall be paid during the continuance
9 of such disability, not to exceed a period of 104 weeks, as
10 provided by this subsection and subsection (2). Once the
11 injured employee reaches the maximum number of weeks,
12 temporary disability benefits cease and the injured worker's
13 permanent impairment must be determined. The department
14 ~~division~~ may by rule specify forms and procedures governing
15 the method of payment of temporary disability benefits for
16 dates of accidents before January 1, 1994, and for dates of
17 accidents on or after January 1, 1994.

18 (5) SUBSEQUENT INJURY.--

19 (a) The fact that an employee has suffered previous
20 disability, impairment, anomaly, or disease, or received
21 compensation therefor, shall not preclude her or him from
22 benefits for a subsequent aggravation or acceleration of the
23 preexisting condition nor preclude benefits for death
24 resulting therefrom, except that no benefits shall be payable
25 if the employee, at the time of entering into the employment
26 of the employer by whom the benefits would otherwise be
27 payable, falsely represents herself or himself in writing as
28 not having previously been disabled or compensated because of
29 such previous disability, impairment, anomaly, or disease and
30 the employer detrimentally relies on the misrepresentation.

31

1 Compensation for temporary disability, medical benefits, and
2 wage-loss benefits shall not be subject to apportionment.

3 (b) If a compensable permanent impairment, or any
4 portion thereof, is a result of aggravation or acceleration of
5 a preexisting condition, or is the result of merger with a
6 preexisting impairment, an employee eligible to receive
7 impairment benefits under paragraph (3)(a) shall receive such
8 benefits for the total impairment found to result, excluding
9 the degree of impairment existing at the time of the subject
10 accident or injury or which would have existed by the time of
11 the impairment rating without the intervention of the
12 compensable accident or injury. The degree of permanent
13 impairment attributable to the accident or injury shall be
14 compensated in accordance with paragraph (3)(a). As used in
15 this paragraph, "merger" means the combining of a preexisting
16 permanent impairment with a subsequent compensable permanent
17 impairment which, when the effects of both are considered
18 together, result in a permanent impairment rating which is
19 greater than the sum of the two permanent impairment ratings
20 when each impairment is considered individually.

21 (6) OBLIGATION TO REHIRE.--If the employer has not in
22 good faith made available to the employee, within a 100-mile
23 radius of the employee's residence, work appropriate to the
24 employee's physical limitations within 30 days after the
25 carrier notifies the employer of maximum medical improvement
26 and the employee's physical limitations, the employer shall
27 pay to the department ~~division~~ for deposit into the Workers'
28 Compensation Administration Trust Fund a fine of \$250 for
29 every \$5,000 of the employer's workers' compensation premium
30 or payroll, not to exceed \$2,000 per violation, as the
31 department ~~division~~ requires by rule. The employer is not

1 subject to this subsection if the employee is receiving
2 permanent total disability benefits or if the employer has 50
3 or fewer employees.

4 (7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
5 employee refuses employment suitable to the capacity thereof,
6 offered to or procured therefor, such employee shall not be
7 entitled to any compensation at any time during the
8 continuance of such refusal unless at any time in the opinion
9 of the judge of compensation claims such refusal is
10 justifiable.

11 (8) EMPLOYEE LEAVES EMPLOYMENT.--If an injured
12 employee, when receiving compensation for temporary partial
13 disability, leaves the employment of the employer by whom she
14 or he was employed at the time of the accident for which such
15 compensation is being paid, the employee shall, upon securing
16 employment elsewhere, give to such former employer an
17 affidavit in writing containing the name of her or his new
18 employer, the place of employment, and the amount of wages
19 being received at such new employment; and, until she or he
20 gives such affidavit, the compensation for temporary partial
21 disability will cease. The employer by whom such employee was
22 employed at the time of the accident for which such
23 compensation is being paid may also at any time demand of such
24 employee an additional affidavit in writing containing the
25 name of her or his employer, the place of her or his
26 employment, and the amount of wages she or he is receiving;
27 and if the employee, upon such demand, fails or refuses to
28 make and furnish such affidavit, her or his right to
29 compensation for temporary partial disability shall cease
30 until such affidavit is made and furnished.

31

1 (9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case
2 an employee becomes an inmate of a public institution, then no
3 compensation shall be payable unless she or he has dependent
4 upon her or him for support a person or persons defined as
5 dependents elsewhere in this chapter, whose dependency shall
6 be determined as if the employee were deceased and to whom
7 compensation would be paid in case of death; and such
8 compensation as is due such employee shall be paid such
9 dependents during the time she or he remains such inmate.

10 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
11 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
12 ACT.--

13 (a) Weekly compensation benefits payable under this
14 chapter for disability resulting from injuries to an employee
15 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
16 be reduced to an amount whereby the sum of such compensation
17 benefits payable under this chapter and such total benefits
18 otherwise payable for such period to the employee and her or
19 his dependents, had such employee not been entitled to
20 benefits under this chapter, under 42 U.S.C. ss. 402 and 423,
21 does not exceed 80 percent of the employee's average weekly
22 wage. However, this provision shall not operate to reduce an
23 injured worker's benefits under this chapter to a greater
24 extent than such benefits would have otherwise been reduced
25 under 42 U.S.C. s. 424(a). This reduction of compensation
26 benefits is not applicable to any compensation benefits
27 payable for any week subsequent to the week in which the
28 injured worker reaches the age of 62 years.

29 (b) If the provisions of 42 U.S.C. s. 424(a) are
30 amended to provide for a reduction or increase of the
31 percentage of average current earnings that the sum of

1 compensation benefits payable under this chapter and the
2 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
3 the amount of the reduction of benefits provided in this
4 subsection shall be reduced or increased accordingly. The
5 department ~~division~~ may by rule specify forms and procedures
6 governing the method for calculating and administering the
7 offset of benefits payable under this chapter and benefits
8 payable under 42 U.S.C. ss. 402 and 423. The department
9 ~~division~~ shall have first priority in taking any available
10 social security offsets on dates of accidents occurring before
11 July 1, 1984.

12 (c) No disability compensation benefits payable for
13 any week, including those benefits provided by paragraph
14 (1)(f), shall be reduced pursuant to this subsection until the
15 Social Security Administration determines the amount otherwise
16 payable to the employee under 42 U.S.C. ss. 402 and 423 and
17 the employee has begun receiving such social security benefit
18 payments. The employee shall, upon demand by the department
19 ~~division~~, the employer, or the carrier, authorize the Social
20 Security Administration to release disability information
21 relating to her or him and authorize the Division of
22 Unemployment Compensation to release unemployment compensation
23 information relating to her or him, in accordance with rules
24 to be promulgated by the department ~~division~~ prescribing the
25 procedure and manner for requesting the authorization and for
26 compliance by the employee. Neither the department ~~division~~
27 nor the employer or carrier shall make any payment of benefits
28 for total disability or those additional benefits provided by
29 paragraph (1)(f) for any period during which the employee
30 willfully fails or refuses to authorize the release of
31 information in the manner and within the time prescribed by

1 such rules. The authority for release of disability
2 information granted by an employee under this paragraph shall
3 be effective for a period not to exceed 12 months, such
4 authority to be renewable as the department ~~division~~ may
5 prescribe by rule.

6 (d) If compensation benefits are reduced pursuant to
7 this subsection, the minimum compensation provisions of s.
8 440.12(2) do not apply.

9 (11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
10 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
11 COMPENSATION.--

12 (a) No compensation benefits shall be payable for
13 temporary total disability or permanent total disability under
14 this chapter for any week in which the injured employee has
15 received, or is receiving, unemployment compensation benefits.

16 (b) If an employee is entitled to temporary partial
17 benefits pursuant to subsection (4) and unemployment
18 compensation benefits, such unemployment compensation benefits
19 shall be primary and the temporary partial benefits shall be
20 supplemental only, the sum of the two benefits not to exceed
21 the amount of temporary partial benefits which would otherwise
22 be payable.

23 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
24 OFFICERS.--Any law enforcement officer as defined in s.
25 943.10(1), (2), or (3) who, while acting within the course of
26 employment as provided by s. 440.091, is maliciously or
27 intentionally injured and who thereby sustains a job-connected
28 disability compensable under this chapter shall be carried in
29 full-pay status rather than being required to use sick,
30 annual, or other leave. Full-pay status shall be granted only
31 after submission to the employing agency's head of a medical

1 report which gives a current diagnosis of the employee's
2 recovery and ability to return to work. In no case shall the
3 employee's salary and workers' compensation benefits exceed
4 the amount of the employee's regular salary requirements.

5 (13) REPAYMENT.--If an employee has received a sum as
6 an indemnity benefit under any classification or category of
7 benefit under this chapter to which she or he is not entitled,
8 the employee is liable to repay that sum to the employer or
9 the carrier or to have that sum deducted from future benefits,
10 regardless of the classification of benefits, payable to the
11 employee under this chapter; however, a partial payment of the
12 total repayment may not exceed 20 percent of the amount of the
13 biweekly payment.

14 Section 21. Section 440.17, Florida Statutes, is
15 amended to read:

16 440.17 Guardian for minor or incompetent.--Prior to
17 the filing of a claim, the department ~~division~~, and after the
18 filing of a claim, a judge of compensation claims, may require
19 the appointment by a court of competent jurisdiction, for any
20 person who is mentally incompetent or a minor, of a guardian
21 or other representative to receive compensation payable to
22 such person under this chapter and to exercise the powers
23 granted to or to perform the duties required of such person
24 under this chapter; however, the judge of compensation claims,
25 in the judge of compensation claims' discretion, may designate
26 in the compensation award a person to whom payment of
27 compensation may be paid for a minor or incompetent, in which
28 event payment to such designated person shall discharge all
29 liability for such compensation.

30 Section 22. Section 440.185, Florida Statutes, is
31 amended to read:

1 440.185 Notice of injury or death; reports; penalties
2 for violations.--

3 (1) An employee who suffers an injury arising out of
4 and in the course of employment shall advise his or her
5 employer of the injury within 30 days after the date of or
6 initial manifestation of the injury. Failure to so advise the
7 employer shall bar a petition under this chapter unless:

8 (a) The employer or the employer's agent had actual
9 knowledge of the injury;

10 (b) The cause of the injury could not be identified
11 without a medical opinion and the employee advised the
12 employer within 30 days after obtaining a medical opinion
13 indicating that the injury arose out of and in the course of
14 employment;

15 (c) The employer did not put its employees on notice
16 of the requirements of this section by posting notice pursuant
17 to s. 440.055; or

18 (d) Exceptional circumstances, outside the scope of
19 paragraph (a) or paragraph (b) justify such failure.

20

21 In the event of death arising out of and in the course of
22 employment, the requirements of this subsection shall be
23 satisfied by the employee's agent or estate. Documents
24 prepared by counsel in connection with litigation, including
25 but not limited to notices of appearance, petitions, motions,
26 or complaints, shall not constitute notice for purposes of
27 this section.

28 (2) Within 7 days after actual knowledge of injury or
29 death, the employer shall report such injury or death to its
30 carrier, in a format prescribed by the department division,
31 and shall provide a copy of such report to the employee or the

1 employee's estate. The report of injury shall contain the
2 following information:

- 3 (a) The name, address, and business of the employer;
4 (b) The name, social security number, street, mailing
5 address, telephone number, and occupation of the employee;
6 (c) The cause and nature of the injury or death;
7 (d) The year, month, day, and hour when, and the
8 particular locality where, the injury or death occurred; and
9 (e) Such other information as the department ~~division~~
10 may require.

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

23 (3) In addition to the requirements of subsection (2),
24 the employer shall notify the department ~~division~~ within 24
25 hours by telephone or telegraph of any injury resulting in
26 death. However, this special notice shall not be required
27 when death results subsequent to the submission to the
28 department ~~division~~ of a previous report of the injury
29 pursuant to subsection (2).

30 (4) Within 3 days after the employer or the employee
31 informs the carrier of an injury the carrier shall mail to the

1 injured worker an informational brochure approved by the
2 department ~~division~~ which sets forth in clear and
3 understandable language an explanation of the rights,
4 benefits, procedures for obtaining benefits and assistance,
5 criminal penalties, and obligations of injured workers and
6 their employers under the Florida Workers' Compensation Law.
7 Annually, the carrier or its third-party administrator shall
8 mail to the employer an informational brochure approved by the
9 department ~~division~~ which sets forth in clear and
10 understandable language an explanation of the rights,
11 benefits, procedures for obtaining benefits and assistance,
12 criminal penalties, and obligations of injured workers and
13 their employers under the Florida Workers' Compensation Law.
14 All such informational brochures shall contain a notice that
15 clearly states in substance the following: "Any person who,
16 knowingly and with intent to injure, defraud, or deceive any
17 employer or employee, insurance company, or self-insured
18 program, files a statement of claim containing any false or
19 misleading information commits a felony of the third degree."

20 (5) Additional reports with respect to such injury and
21 of the condition of such employee, including copies of medical
22 reports, funeral expenses, and wage statements, shall be filed
23 by the employer or carrier to the department ~~division~~ at such
24 times and in such manner as the department ~~division~~ may
25 prescribe by rule. In carrying out its responsibilities under
26 this chapter, the department or agency ~~division~~ may by rule
27 provide for the obtaining of any medical records relating to
28 medical treatment provided pursuant to this chapter,
29 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

30 (6) In the absence of a stipulation by the parties,
31 reports provided for in subsection (2), subsection (4), or

1 subsection (5) shall not be evidence of any fact stated in
2 such report in any proceeding relating thereto, except for
3 medical reports which, if otherwise qualified, may be admitted
4 at the discretion of the judge of compensation claims.

5 (7) Every carrier shall file with the department
6 ~~division~~ within 21 days after the issuance of a policy or
7 contract of insurance such policy information as the
8 department ~~division~~ may require, including notice of whether
9 the policy is a minimum premium policy. Notice of cancellation
10 or expiration of a policy as set out in s. 440.42(3) shall be
11 mailed to the department ~~division~~ in accordance with rules
12 adopted ~~promulgated~~ by the department ~~division~~ under chapter
13 120.

14 (8) When a claimant, employer, or carrier has the
15 right, or is required, to mail a report or notice with
16 required copies within the times prescribed in subsection (2),
17 subsection (4), or subsection (5), such mailing will be
18 completed and in compliance with this section if it is
19 postmarked and mailed prepaid to the appropriate recipient
20 prior to the expiration of the time periods prescribed in this
21 section.

22 (9) Any employer or carrier who fails or refuses to
23 timely send any form, report, or notice required by this
24 section shall be subject to a civil penalty not to exceed \$500
25 for each such failure or refusal. However, any employer who
26 fails to notify the carrier of the injury on the prescribed
27 form or by letter within the 7 days required in subsection (2)
28 shall be liable for the civil penalty, which shall be paid by
29 the employer and not the carrier. Failure by the employer to
30 meet its obligations under subsection (2) shall not relieve
31

1 the carrier from liability for the civil penalty if it fails
2 to comply with subsections (4) and (5).

3 (10) The department ~~division~~ may by rule prescribe
4 forms and procedures governing the submission of the change in
5 claims administration report and the risk class code and
6 standard industry code report for all lost time and denied
7 lost-time cases. The department ~~division~~ may by rule define
8 terms that are necessary for the effective administration of
9 this section.

10 (11) Any information in a report of injury or illness
11 filed pursuant to this section that would identify an ill or
12 injured employee is confidential and exempt from the
13 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
14 Constitution. This subsection is subject to the Open
15 Government Sunset Review Act of 1995 in accordance with s.
16 119.15, and shall stand repealed on October 2, 2003, unless
17 reviewed and saved from repeal through reenactment by the
18 Legislature.

19 Section 23. Subsection (1) of section 440.191, Florida
20 Statutes, is amended to read:

21 440.191 Employee Assistance and Ombudsman Office.--

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

1 ~~division's~~ efforts to resolve disagreements between the
2 parties. The department division may by rule prescribe
3 definitions that are necessary for the effective
4 administration of this section.

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

12 (c) The Employee Assistance and Ombudsman Office,
13 ~~Division of Workers' Compensation,~~ shall be a resource
14 available to all employees who participate in the workers'
15 compensation system and shall take all steps necessary to
16 educate and disseminate information to employees and
17 employers.

18 Section 24. Subsections (1) and (8) of section
19 440.192, Florida Statutes, are amended to read:

20 440.192 Procedure for resolving benefit disputes.--

21 (1) Subject to s. 440.191, any employee who has not
22 received a benefit to which the employee believes she or he is
23 entitled under this chapter shall serve by certified mail upon
24 the employer, the employer's carrier, and the department
25 ~~division~~ in Tallahassee a petition for benefits that meets the
26 requirements of this section. The department division shall
27 refer the petition to the Office of the Judges of Compensation
28 Claims.

29 (8) Within 14 days after receipt of a petition for
30 benefits by certified mail, the carrier must either pay the
31 requested benefits without prejudice to its right to deny

1 within 120 days from receipt of the petition or file a notice
2 of denial with the department ~~division~~. The carrier must list
3 all benefits requested but not paid and explain its
4 justification for nonpayment in the notice of denial. A
5 carrier that does not deny compensability in accordance with
6 s. 440.20(4) is deemed to have accepted the employee's
7 injuries as compensable, unless it can establish material
8 facts relevant to the issue of compensability that could not
9 have been discovered through reasonable investigation within
10 the 120-day period. The carrier shall provide copies of the
11 notice to the filing party, employer, and claimant by
12 certified mail.

13 Section 25. Subsections (1), (3), and (4) of section
14 440.1925, Florida Statutes, are amended to read:

15 440.1925 Procedure for resolving maximum medical
16 improvement or permanent impairment disputes.--

17 (1) Notwithstanding the limitations on carrier
18 independent medical examinations in s. 440.13, an employee or
19 carrier who wishes to obtain an opinion other than the opinion
20 of the treating physician or an agency ~~a division~~ advisor on
21 the issue of permanent impairment may obtain one independent
22 medical examination, except that the employee or carrier who
23 selects the treating physician is not entitled to obtain an
24 alternate opinion on the issue of permanent impairment, unless
25 the parties otherwise agree. This section and s. 440.13(2) do
26 not permit an employee or a carrier to obtain an additional
27 medical opinion on the issue of permanent impairment by
28 requesting an alternate treating physician pursuant to s.
29 440.13.

30 (3) Disputes shall be resolved under this section
31 when:

1 (a) A carrier that is entitled to obtain a
2 determination of an employee's date of maximum medical
3 improvement or permanent impairment has done so;

4 (b) The independent medical examiner's opinion on the
5 date of the employee's maximum medical improvement and degree
6 or permanent impairment differs from the opinion of the
7 employee's treating physician on either of those issues, or
8 from the opinion of the expert medical advisor appointed by
9 the agency ~~division~~ on the degree of permanent impairment; or

10 (c) The carrier denies any portion of an employee's
11 claim petition for benefits due to disputed maximum medical
12 improvement or permanent impairment issues.

13 (4) Only opinions of the employee's treating
14 physician, an agency ~~a division~~ medical advisor, or an
15 independent medical examiner are admissible in proceedings
16 before a judge of compensation claims to resolve maximum
17 medical improvement or impairment disputes.

18 Section 26. Subsections (3), (6), (8), (9), (10),
19 (11), (12), (15), (16), and (17) of section 440.20, Florida
20 Statutes, are amended to read:

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

23 (3) Upon making payment, or upon suspension or
24 cessation of payment for any reason, the carrier shall
25 immediately notify the department ~~division~~ that it has
26 commenced, suspended, or ceased payment of compensation. The
27 department ~~division~~ may require such notification in any
28 format it deems necessary to obtain accurate and timely
29 reporting.

30 (6) If any installment of compensation for death or
31 dependency benefits, disability, permanent impairment, or wage

1 loss payable without an award is not paid within 7 days after
2 it becomes due, as provided in subsection (2), subsection (3),
3 or subsection (4), there shall be added to such unpaid
4 installment a punitive penalty of an amount equal to 20
5 percent of the unpaid installment or \$5, which shall be paid
6 at the same time as, but in addition to, such installment of
7 compensation, unless notice is filed under subsection (4) or
8 unless such nonpayment results from conditions over which the
9 employer or carrier had no control. When any installment of
10 compensation payable without an award has not been paid within
11 7 days after it became due and the claimant concludes the
12 prosecution of the claim before a judge of compensation claims
13 without having specifically claimed additional compensation in
14 the nature of a penalty under this section, the claimant will
15 be deemed to have acknowledged that, owing to conditions over
16 which the employer or carrier had no control, such installment
17 could not be paid within the period prescribed for payment and
18 to have waived the right to claim such penalty. However,
19 during the course of a hearing, the judge of compensation
20 claims shall on her or his own motion raise the question of
21 whether such penalty should be awarded or excused. The
22 department ~~division~~ may assess without a hearing the punitive
23 penalty against either the employer or the insurance carrier,
24 depending upon who was at fault in causing the delay. The
25 insurance policy cannot provide that this sum will be paid by
26 the carrier if the department ~~division~~ or the judge of
27 compensation claims determines that the punitive penalty
28 should be made by the employer rather than the carrier. Any
29 additional installment of compensation paid by the carrier
30 pursuant to this section shall be paid directly to the
31 employee.

1 (8) In addition to any other penalties provided by
2 this chapter for late payment, if any installment of
3 compensation is not paid when it becomes due, the employer,
4 carrier, or servicing agent shall pay interest thereon at the
5 rate of 12 percent per year from the date the installment
6 becomes due until it is paid, whether such installment is
7 payable without an order or under the terms of an order. The
8 interest payment shall be the greater of the amount of
9 interest due or \$5.

10 (a) Within 30 days after final payment of compensation
11 has been made, the employer, carrier, or servicing agent shall
12 send to the department ~~division~~ a notice, in accordance with a
13 form prescribed by the department ~~division~~, stating that such
14 final payment has been made and stating the total amount of
15 compensation paid, the name of the employee and of any other
16 person to whom compensation has been paid, the date of the
17 injury or death, and the date to which compensation has been
18 paid.

19 (b) If the employer, carrier, or servicing agent fails
20 to so notify the department ~~division~~ within such time, the
21 department ~~division~~ shall assess against such employer,
22 carrier, or servicing agent a civil penalty in an amount not
23 over \$100.

24 (c) In order to ensure carrier compliance under this
25 chapter, the department ~~division~~ shall monitor the performance
26 of carriers. The department ~~division~~ shall establish by rule
27 minimum performance standards for carriers to ensure that a
28 minimum of 90 percent of all compensation benefits are timely
29 paid. The department ~~division~~ shall fine a carrier as provided
30 in s. 440.13(11)(b) up to \$50 for each late payment of
31 compensation that is below the minimum 90 percent performance

1 standard. This paragraph does not affect the imposition of any
2 penalties or interest due to the claimant. If a carrier
3 contracts with a servicing agent to fulfill its administrative
4 responsibilities under this chapter, the payment practices of
5 the servicing agent are deemed the payment practices of the
6 carrier for the purpose of assessing penalties against the
7 carrier.

8 (9) The department ~~division~~ may upon its own
9 initiative at any time in a case in which payments are being
10 made without an award investigate same and shall, in any case
11 in which the right to compensation is controverted, or in
12 which payments of compensation have been stopped or suspended,
13 upon receipt of notice from any person entitled to
14 compensation or from the employer that the right to
15 compensation is controverted or that payments of compensation
16 have been stopped or suspended, make such investigations,
17 cause such medical examination to be made, or hold such
18 hearings, and take such further action as it considers will
19 properly protect the rights of all parties.

20 (10) Whenever the department ~~division~~ deems it
21 advisable, it may require any employer to make a deposit with
22 the Treasurer to secure the prompt and convenient payments of
23 such compensation; and payments therefrom upon any awards
24 shall be made upon order of the department ~~division~~ or judge
25 of compensation claims.

26 (11)(a) Upon joint petition of all interested parties,
27 a lump-sum payment in exchange for the employer's or carrier's
28 release from liability for future medical expenses, as well as
29 future payments of compensation expenses and any other
30 benefits provided under this chapter, shall be allowed at any
31 time in any case in which the employer or carrier has filed a

1 written notice of denial within 120 days after the date of the
2 injury, and the judge of compensation claims at a hearing to
3 consider the settlement proposal finds a justiciable
4 controversy as to legal or medical compensability of the
5 claimed injury or the alleged accident. The employer or
6 carrier may not pay any attorney's fees on behalf of the
7 claimant for any settlement under this section unless
8 expressly authorized elsewhere in this chapter. Upon the joint
9 petition of all interested parties and after giving due
10 consideration to the interests of all interested parties, the
11 judge of compensation claims may enter a compensation order
12 approving and authorizing the discharge of the liability of
13 the employer for compensation and remedial treatment, care,
14 and attendance, as well as rehabilitation expenses, by the
15 payment of a lump sum. Such a compensation order so entered
16 upon joint petition of all interested parties is not subject
17 to modification or review under s. 440.28. If the settlement
18 proposal together with supporting evidence is not approved by
19 the judge of compensation claims, it shall be considered void.
20 Upon approval of a lump-sum settlement under this subsection,
21 the judge of compensation claims shall send a report to the
22 Chief Judge of the amount of the settlement and a statement of
23 the nature of the controversy. The Chief Judge shall keep a
24 record of all such reports filed by each judge of compensation
25 claims and shall submit to the Legislature a summary of all
26 such reports filed under this subsection annually by September
27 15.

28 (b) Upon joint petition of all interested parties, a
29 lump-sum payment in exchange for the employer's or carrier's
30 release from liability for future medical expenses, as well as
31 future payments of compensation and rehabilitation expenses,

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

1 appear and testify. When the claimant is represented by
2 counsel or when the claimant and carrier or employer are
3 represented by counsel, final approval of the lump-sum
4 settlement agreement, as provided for in a joint petition and
5 stipulation, shall be approved by entry of an order within 7
6 days after the filing of such joint petition and stipulation
7 without a hearing, unless the judge of compensation claims
8 determines, in her or his discretion, that additional
9 testimony is needed before such settlement can be approved or
10 disapproved and so notifies the parties. The probability of
11 the death of the injured employee or other person entitled to
12 compensation before the expiration of the period during which
13 such person is entitled to compensation shall, in the absence
14 of special circumstances making such course improper, be
15 determined in accordance with the most recent United States
16 Life Tables published by the National Office of Vital
17 Statistics of the United States Department of Health and Human
18 Services. The probability of the happening of any other
19 contingency affecting the amount or duration of the
20 compensation, except the possibility of the remarriage of a
21 surviving spouse, shall be disregarded. As a condition of
22 approving a lump-sum payment to a surviving spouse, the judge
23 of compensation claims, in the judge of compensation claims'
24 discretion, may require security which will ensure that, in
25 the event of the remarriage of such surviving spouse, any
26 unaccrued future payments so paid may be recovered or recouped
27 by the employer or carrier. Such applications shall be
28 considered and determined in accordance with s. 440.25.

29 (c) This section applies to all claims that the
30 parties have not previously settled, regardless of the date of
31 accident.

1 (12)(a) Liability of an employer for future payments
2 of compensation may not be discharged by advance payment
3 unless prior approval of a judge of compensation claims or the
4 department division has been obtained as hereinafter provided.
5 The approval shall not constitute an adjudication of the
6 claimant's percentage of disability.

7 (b) When the claimant has reached maximum recovery and
8 returned to her or his former or equivalent employment with no
9 substantial reduction in wages, such approval of a reasonable
10 advance payment of a part of the compensation payable to the
11 claimant may be given informally by letter by a judge of
12 compensation claims or, by the department division director,
13 ~~or by the administrator of claims of the division.~~

14 (c) In the event the claimant has not returned to the
15 same or equivalent employment with no substantial reduction in
16 wages or has suffered a substantial loss of earning capacity
17 or a physical impairment, actual or apparent:

18 1. An advance payment of compensation not in excess of
19 \$2,000 may be approved informally by letter, without hearing,
20 by any judge of compensation claims or the Chief Judge.

21 2. An advance payment of compensation not in excess of
22 \$2,000 may be ordered by any judge of compensation claims
23 after giving the interested parties an opportunity for a
24 hearing thereon pursuant to not less than 10 days' notice by
25 mail, unless such notice is waived, and after giving due
26 consideration to the interests of the person entitled thereto.
27 When the parties have stipulated to an advance payment of
28 compensation not in excess of \$2,000, such advance may be
29 approved by an order of a judge of compensation claims, with
30 or without hearing, or informally by letter by any such judge
31 of compensation claims, or by the department division

1 ~~director~~, if such advance is found to be for the best
2 interests of the person entitled thereto.

3 3. When the parties have stipulated to an advance
4 payment in excess of \$2,000, subject to the approval of the
5 department ~~division~~, such payment may be approved by a judge
6 of compensation claims by order if the judge finds that such
7 advance payment is for the best interests of the person
8 entitled thereto and is reasonable under the circumstances of
9 the particular case. The judge of compensation claims shall
10 make or cause to be made such investigations as she or he
11 considers necessary concerning the stipulation and, in her or
12 his discretion, may have an investigation of the matter made
13 by the Department of Education ~~Rehabilitation Section of the~~
14 ~~division~~. The stipulation and the report of any investigation
15 shall be deemed a part of the record of the proceedings.

16 (d) When an application for an advance payment in
17 excess of \$2,000 is opposed by the employer or carrier, it
18 shall be heard by a judge of compensation claims after giving
19 the interested parties not less than 10 days' notice of such
20 hearing by mail, unless such notice is waived. In her or his
21 discretion, the judge of compensation claims may have an
22 investigation of the matter made by the Department of
23 Education ~~Rehabilitation Section of the division~~, in which
24 event the report and recommendation of that section will be
25 deemed a part of the record of the proceedings. If the judge
26 of compensation claims finds that such advance payment is for
27 the best interests of the person entitled to compensation,
28 will not materially prejudice the rights of the employer and
29 carrier, and is reasonable under the circumstances of the
30 case, she or he may order the same paid. However, in no event
31 may any such advance payment under this paragraph be granted

1 in excess of \$7,500 or 26 weeks of benefits in any 48-month
2 period, whichever is greater, from the date of the last
3 advance payment.

4 (15)(a) The department ~~division~~ shall examine on an
5 ongoing basis claims files in order to identify questionable
6 claims-handling techniques, questionable patterns or practices
7 of claims, or a pattern of repeated unreasonably controverted
8 claims by employers, carriers, and self-insurers, ~~health care~~
9 ~~providers, health care facilities, training and education~~
10 ~~providers, or any others~~ providing services to employees
11 pursuant to this chapter ~~and may certify its findings to the~~
12 ~~Department of Insurance. Such questionable techniques,~~
13 ~~patterns, or repeated unreasonably controverted claims as~~
14 ~~constitute a general business practice of a carrier in the~~
15 ~~judgment of the division shall be certified in its findings by~~
16 ~~the division to the Department of Insurance or such other~~
17 ~~appropriate licensing agency. Such certification by the~~
18 ~~division is exempt from the provisions of chapter 120. Upon~~
19 ~~receipt of any such certification, The Department of Insurance~~
20 shall take appropriate action so as to bring such general
21 business practices to a halt pursuant to s. 440.38(3)(a). The
22 department ~~division~~ may initiate investigations of
23 questionable techniques, patterns, practices, or repeated
24 unreasonably controverted claims. The department ~~division~~ may
25 by rule establish forms and procedures for corrective action
26 plans and for auditing carriers.

27 (b) As to any examination, investigation, or hearing
28 being conducted under this chapter, the Treasurer or his or
29 her designee ~~Secretary of Labor and Employment Security or the~~
30 ~~secretary's designee:~~

31

1 1. May administer oaths, examine and cross-examine
2 witnesses, receive oral and documentary evidence; and

3 2. Shall have the power to subpoena witnesses, compel
4 their attendance and testimony, and require by subpoena the
5 production of books, papers, records, files, correspondence,
6 documents, or other evidence which is relevant to the inquiry.

7 (c) If any person refuses to comply with any such
8 subpoena or to testify as to any matter concerning which she
9 or he may be lawfully interrogated, the Circuit Court of Leon
10 County or of the county wherein such examination,
11 investigation, or hearing is being conducted, or of the county
12 wherein such person resides, may, on the application of the
13 department, issue an order requiring such person to comply
14 with the subpoena and to testify.

15 (d) Subpoenas shall be served, and proof of such
16 service made, in the same manner as if issued by a circuit
17 court. Witness fees, costs, and reasonable travel expenses, if
18 claimed, shall be allowed the same as for testimony in a
19 circuit court.

20 (e) The department ~~division~~ shall publish annually a
21 report which indicates the promptness of first payment of
22 compensation records of each carrier or self-insurer so as to
23 focus attention on those carriers or self-insurers with poor
24 payment records for the preceding year. ~~A copy of such report~~
25 ~~shall be certified to~~ The Department of Insurance ~~which~~ shall
26 take appropriate steps so as to cause such poor carrier
27 payment practices to halt pursuant to s. 440.38(3)(a). In
28 addition, the department ~~division~~ shall take appropriate
29 action so as to halt such poor payment practices of
30 self-insurers. "Poor payment practice" means a practice of
31

1 late payment sufficient to constitute a general business
2 practice.

3 (f) The department ~~division~~ shall promulgate rules
4 providing guidelines to carriers, self-insurers, and employers
5 to indicate behavior that may be construed as questionable
6 claims-handling techniques, questionable patterns of claims,
7 repeated unreasonably controverted claims, or poor payment
8 practices.

9 (16) No penalty assessed under this section may be
10 recouped by any carrier or self-insurer in the rate base, the
11 premium, or any rate filing. ~~In the case of carriers, The~~
12 ~~Department of Insurance shall enforce this subsection; and in~~
13 ~~the case of self-insurers, the division shall enforce this~~
14 ~~subsection.~~

15 (17) The department ~~division~~ may by rule establish
16 audit procedures and set standards for the Automated Carrier
17 Performance System.

18 Section 27. Subsections (1) and (2) of section
19 440.207, Florida Statutes, are amended to read:

20 440.207 Workers' compensation system guide.--

21 (1) The department ~~Division of Workers' Compensation~~
22 ~~of the Department of Labor and Employment Security~~ shall
23 educate all persons providing or receiving benefits pursuant
24 to this chapter as to their rights and responsibilities under
25 this chapter.

26 (2) The department ~~division~~ shall publish an
27 understandable guide to the workers' compensation system which
28 shall contain an explanation of benefits provided; services
29 provided by the Employee Assistance and Ombudsman Office;
30 procedures regarding mediation, the hearing process, and civil
31 and criminal penalties; relevant rules of the department

1 ~~division~~; and such other information as the department
2 ~~division~~ believes will inform employees, employers, carriers,
3 and those providing services pursuant to this chapter of their
4 rights and responsibilities under this chapter and the rules
5 of the department ~~division~~. For the purposes of this
6 subsection, a guide is understandable if the text of the guide
7 is written at a level of readability not exceeding the eighth
8 grade level, as determined by a recognized readability test.

9 Section 28. Subsections (1), (2), and (3) of section
10 440.24, Florida Statutes, are amended to read:

11 440.24 Enforcement of compensation orders;
12 penalties.--

13 (1) In case of default by the employer or carrier in
14 the payment of compensation due under any compensation order
15 of a judge of compensation claims or other failure by the
16 employer or carrier to comply with such order within 10 days
17 after the order becomes final, any circuit court of this state
18 within the jurisdiction of which the employer or carrier
19 resides or transacts business shall, upon application by the
20 department ~~division~~ or any beneficiary under such order, have
21 jurisdiction to issue a rule nisi directing such employer or
22 carrier to show cause why a writ of execution, or such other
23 process as may be necessary to enforce the terms of such
24 order, shall not be issued, and, unless such cause is shown,
25 the court shall have jurisdiction to issue a writ of execution
26 or such other process or final order as may be necessary to
27 enforce the terms of such order of the judge of compensation
28 claims.

29 (2) In any case where the employer is insured and the
30 carrier fails to comply with any compensation order of a judge
31 of compensation claims or court within 10 days after such

1 order becomes final, ~~the division shall notify~~ the department
2 ~~of Insurance of such failure, and the Department of Insurance~~
3 shall thereupon suspend the license of such carrier to do an
4 insurance business in this state, until such carrier has
5 complied with such order.

6 (3) In any case where the employer is a self-insurer
7 and fails to comply with any compensation order of a judge of
8 compensation claims or court within 10 days after such order
9 becomes final, the department ~~division~~ may suspend or revoke
10 any authorization previously given to the employer to become a
11 self-insurer, and the department ~~division~~ may sell such of the
12 securities deposited by such self-insurer with the department
13 ~~division~~ as may be necessary to satisfy such order.

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

16 440.211 Authorization of collective bargaining
17 agreement.--

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

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

30
31

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

4 (c) The use of a limited list of physicians to conduct
5 independent medical examinations which the parties may agree
6 shall be the exclusive source of independent medical examiners
7 pursuant to this chapter.

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

10 (e) A vocational rehabilitation or retraining program.

11 Section 30. Subsections (4), (5), and (7) of section
12 440.25, Florida Statutes, are amended to read:

13 440.25 Procedures for mediation and hearings.--

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

24 (b) The final hearing must be held and concluded
25 within 45 days after the pretrial hearing. Continuances may be
26 granted only if the requesting party demonstrates to the judge
27 of compensation claims that the reason for requesting the
28 continuance arises from circumstances beyond the party's
29 control.

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

4 (d) The hearing shall be held in the county where the
5 injury occurred, if the injury occurred in this state, unless
6 otherwise agreed to between the parties and authorized by the
7 judge of compensation claims in the county where the injury
8 occurred. If the injury occurred without the state and is one
9 for which compensation is payable under this chapter, then the
10 hearing above referred to may be held in the county of the
11 employer's residence or place of business, or in any other
12 county of the state which will, in the discretion of the Chief
13 Judge, be the most convenient for a hearing. The hearing shall
14 be conducted by a judge of compensation claims, who shall,
15 within 14 days after final hearing, unless otherwise agreed by
16 the parties, determine the dispute in a summary manner. At
17 such hearing, the claimant and employer may each present
18 evidence in respect of such claim and may be represented by
19 any attorney authorized in writing for such purpose. When
20 there is a conflict in the medical evidence submitted at the
21 hearing, the provisions of s. 440.13 shall apply. The report
22 or testimony of the expert medical advisor shall be made a
23 part of the record of the proceeding and shall be given the
24 same consideration by the judge of compensation claims as is
25 accorded other medical evidence submitted in the proceeding;
26 and all costs incurred in connection with such examination and
27 testimony may be assessed as costs in the proceeding, subject
28 to the provisions of s. 440.13. No judge of compensation
29 claims may make a finding of a degree of permanent impairment
30 that is greater than the greatest permanent impairment rating
31

1 given the claimant by any examining or treating physician,
2 except upon stipulation of the parties.

3 (e) The order making an award or rejecting the claim,
4 referred to in this chapter as a "compensation order," shall
5 set forth the findings of ultimate facts and the mandate; and
6 the order need not include any other reason or justification
7 for such mandate. The compensation order shall be filed in the
8 office of the department ~~division~~ at Tallahassee. A copy of
9 such compensation order shall be sent by mail to the parties
10 and attorneys of record at the last known address of each,
11 with the date of mailing noted thereon.

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

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

27 (h) Notwithstanding any other provision of this
28 section, the judge of compensation claims may require the
29 appearance of the parties and counsel before her or him
30 without written notice for an emergency conference where there
31 is a bona fide emergency involving the health, safety, or

1 welfare of an employee. An emergency conference under this
2 section may result in the entry of an order or the rendering
3 of an adjudication by the judge of compensation claims.

4 (i) To expedite dispute resolution and to enhance the
5 self-executing features of the Workers' Compensation Law, the
6 Chief Judge shall make provision by rule or order for the
7 resolution of appropriate motions by judges of compensation
8 claims without oral hearing upon submission of brief written
9 statements in support and opposition, and for expedited
10 discovery and docketing.

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

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

7 (5)(a) Procedures with respect to appeals from orders
8 of judges of compensation claims shall be governed by rules
9 adopted by the Supreme Court. Such an order shall become final
10 30 days after mailing of copies of such order to the parties,
11 unless appealed pursuant to such rules.

12 (b) An appellant may be relieved of any necessary
13 filing fee by filing a verified petition of indigency for
14 approval as provided in s. 57.081(1) and may be relieved in
15 whole or in part from the costs for preparation of the record
16 on appeal if, within 15 days after the date notice of the
17 estimated costs for the preparation is served, the appellant
18 files with the judge of compensation claims a copy of the
19 designation of the record on appeal, and a verified petition
20 to be relieved of costs. A verified petition filed prior to
21 the date of service of the notice of the estimated costs shall
22 be deemed not timely filed. The verified petition relating to
23 record costs shall contain a sworn statement that the
24 appellant is insolvent and a complete, detailed, and sworn
25 financial affidavit showing all the appellant's assets,
26 liabilities, and income. Failure to state in the affidavit all
27 assets and income, including marital assets and income, shall
28 be grounds for denying the petition with prejudice. The
29 department ~~division~~ shall promulgate rules as may be required
30 pursuant to this subsection, including forms for use in all
31 petitions brought under this subsection. The appellant's

1 attorney, or the appellant if she or he is not represented by
2 an attorney, shall include as a part of the verified petition
3 relating to record costs an affidavit or affirmation that, in
4 her or his opinion, the notice of appeal was filed in good
5 faith and that there is a probable basis for the District
6 Court of Appeal, First District, to find reversible error, and
7 shall state with particularity the specific legal and factual
8 grounds for the opinion. Failure to so affirm shall be grounds
9 for denying the petition. A copy of the verified petition
10 relating to record costs shall be served upon all interested
11 parties, including the department ~~division~~ and the ~~Office of~~
12 ~~the General Counsel, Department of Labor and Employment~~
13 ~~Security~~, in Tallahassee. The judge of compensation claims
14 shall promptly conduct a hearing on the verified petition
15 relating to record costs, giving at least 15 days' notice to
16 the appellant, the department ~~division~~, and all other
17 interested parties, all of whom shall be parties to the
18 proceedings. The judge of compensation claims may enter an
19 order without such hearing if no objection is filed by an
20 interested party within 20 days from the service date of the
21 verified petition relating to record costs. Such proceedings
22 shall be conducted in accordance with the provisions of this
23 section and with the workers' compensation rules of procedure,
24 to the extent applicable. In the event an insolvency petition
25 is granted, the judge of compensation claims shall direct the
26 department ~~division~~ to pay record costs and filing fees from
27 the Workers' Compensation Administrative Trust Fund pending
28 final disposition of the costs of appeal. The department
29 ~~division~~ may transcribe or arrange for the transcription of
30 the record in any proceeding for which it is ordered to pay
31 the cost of the record. In the event the insolvency petition

1 is denied, the judge of compensation claims may enter an order
2 requiring the petitioner to reimburse the department ~~division~~
3 for costs incurred in opposing the petition, including
4 investigation and travel expenses.

5 (c) As a condition of filing a notice of appeal to the
6 District Court of Appeal, First District, an employer who has
7 not secured the payment of compensation under this chapter in
8 compliance with s. 440.38 shall file with the notice of appeal
9 a good and sufficient bond, as provided in s. 59.13,
10 conditioned to pay the amount of the demand and any interest
11 and costs payable under the terms of the order if the appeal
12 is dismissed, or if the District Court of Appeal, First
13 District, affirms the award in any amount. Upon the failure of
14 such employer to file such bond with the judge of compensation
15 claims or the District Court of Appeal, First District, along
16 with the notice of appeal, the District Court of Appeal, First
17 District, shall dismiss the notice of appeal.

18 (7) An injured employee claiming or entitled to
19 compensation shall submit to such physical examination by a
20 certified expert medical advisor approved by the agency
21 ~~division~~ or the judge of compensation claims as the agency
22 ~~division~~ or the judge of compensation claims may require. The
23 place or places shall be reasonably convenient for the
24 employee. Such physician or physicians as the employee,
25 employer, or carrier may select and pay for may participate in
26 an examination if the employee, employer, or carrier so
27 requests. Proceedings shall be suspended and no compensation
28 shall be payable for any period during which the employee may
29 refuse to submit to examination. Any interested party shall
30 have the right in any case of death to require an autopsy, the
31 cost thereof to be borne by the party requesting it; and the

1 judge of compensation claims shall have authority to order and
2 require an autopsy and may, in her or his discretion, withhold
3 her or his findings and award until an autopsy is held.

4 Section 31. Section 440.271, Florida Statutes, is
5 amended to read:

6 440.271 Appeal of order of judge of compensation
7 claims.--Review of any order of a judge of compensation claims
8 entered pursuant to this chapter shall be by appeal to the
9 District Court of Appeal, First District. Appeals shall be
10 filed in accordance with rules of procedure prescribed by the
11 Supreme Court for review of such orders. The department
12 ~~division~~ shall be given notice of any proceedings pertaining
13 to s. 440.25, regarding indigency, or s. 440.49, regarding the
14 Special Disability Trust Fund, and shall have the right to
15 intervene in any proceedings.

16 Section 32. Section 440.345, Florida Statutes, is
17 amended to read:

18 440.345 Reporting of attorney's fees.--All fees paid
19 to attorneys for services rendered under this chapter shall be
20 reported to the department ~~division~~ as the department ~~division~~
21 requires by rule. The department ~~division~~ shall annually
22 summarize such data in a report to the Workers' Compensation
23 Oversight Board.

24 Section 33. Section 440.35, Florida Statutes, is
25 amended to read:

26 440.35 Record of injury or death.--Every employer
27 shall keep a record in respect of any injury to an employee.
28 Such record shall contain such information of disability or
29 death in respect of such injury as the department ~~division~~ may
30 by regulation require, and shall be available to inspection by
31 the department ~~division~~ or by any state authority at such time

1 and under such conditions as the department ~~division~~ may by
2 regulation prescribe.

3 Section 34. Subsections (1), (2), and (3) of section
4 440.38, Florida Statutes, are amended to read:

5 440.38 Security for compensation; insurance carriers
6 and self-insurers.--

7 (1) Every employer shall secure the payment of
8 compensation under this chapter:

9 (a) By insuring and keeping insured the payment of
10 such compensation with any stock company or mutual company or
11 association or exchange, authorized to do business in the
12 state;

13 (b) By furnishing satisfactory proof to the department
14 ~~division~~ of its financial ability to pay such compensation
15 individually and on behalf of its subsidiary and affiliated
16 companies with employees in this state and receiving an
17 authorization from the department ~~division~~ to pay such
18 compensation directly in accordance with the following
19 provisions:

20 1. The department ~~division~~ may, as a condition to such
21 authorization, require such employer to deposit in a
22 depository designated by the department ~~division~~ either an
23 indemnity bond or securities, at the option of the employer,
24 of a kind and in an amount determined by the department
25 ~~division~~ and subject to such conditions as the department
26 ~~division~~ may prescribe, which shall include authorization to
27 the department ~~division~~ in the case of default to sell any
28 such securities sufficient to pay compensation awards or to
29 bring suit upon such bonds, to procure prompt payment of
30 compensation under this chapter. In addition, the department
31 ~~division~~ shall require, as a condition to authorization to

1 self-insure, proof that the employer has provided for
2 competent personnel with whom to deliver benefits and to
3 provide a safe working environment. Further, the department
4 ~~division~~ shall require such employer to carry reinsurance at
5 levels that will ensure the actuarial soundness of such
6 employer in accordance with rules promulgated by the
7 department ~~division~~. The department ~~division~~ may by rule
8 require that, in the event of an individual self-insurer's
9 insolvency, such indemnity bonds, securities, and reinsurance
10 policies shall be payable to the Florida Self-Insurers
11 Guaranty Association, Incorporated, created pursuant to s.
12 440.385. Any employer securing compensation in accordance
13 with the provisions of this paragraph shall be known as a
14 self-insurer and shall be classed as a carrier of her or his
15 own insurance.

16 2. If the employer fails to maintain the foregoing
17 requirements, the department ~~division~~ shall revoke the
18 employer's authority to self-insure, unless the employer
19 provides to the department ~~division~~ the certified opinion of
20 an independent actuary who is a member of the American Society
21 of Actuaries as to the actuarial present value of the
22 employer's determined and estimated future compensation
23 payments based on cash reserves, using a 4-percent discount
24 rate, and a qualifying security deposit equal to 1.5 times the
25 value so certified. The employer shall thereafter annually
26 provide such a certified opinion until such time as the
27 employer meets the requirements of subparagraph 1. The
28 qualifying security deposit shall be adjusted at the time of
29 each such annual report. Upon the failure of the employer to
30 timely provide such opinion or to timely provide a security
31 deposit in an amount equal to 1.5 times the value certified in

1 the latest opinion, the department ~~division~~ shall then revoke
2 such employer's authorization to self-insure, and such failure
3 shall be deemed to constitute an immediate serious danger to
4 the public health, safety, or welfare sufficient to justify
5 the summary suspension of the employer's authorization to
6 self-insure pursuant to s. 120.68.

7 3. Upon the suspension or revocation of the employer's
8 authorization to self-insure, the employer shall provide to
9 the department ~~division~~ and to the Florida Self-Insurers
10 Guaranty Association, Incorporated, created pursuant to s.
11 440.385 the certified opinion of an independent actuary who is
12 a member of the American Society of Actuaries of the actuarial
13 present value of the determined and estimated future
14 compensation payments of the employer for claims incurred
15 while the member exercised the privilege of self-insurance,
16 using a discount rate of 4 percent. The employer shall provide
17 such an opinion at 6-month intervals thereafter until such
18 time as the latest opinion shows no remaining value of claims.
19 With each such opinion, the employer shall deposit with the
20 department ~~division~~ a qualifying security deposit in an amount
21 equal to the value certified by the actuary. The association
22 has a cause of action against an employer, and against any
23 successor of the employer, who fails to timely provide such
24 opinion or who fails to timely maintain the required security
25 deposit with the department ~~division~~. The association shall
26 recover a judgment in the amount of the actuarial present
27 value of the determined and estimated future compensation
28 payments of the employer for claims incurred while the
29 employer exercised the privilege of self-insurance, together
30 with attorney's fees. For purposes of this section, the
31 successor of an employer means any person, business entity, or

1 group of persons or business entities, which holds or acquires
2 legal or beneficial title to the majority of the assets or the
3 majority of the shares of the employer.

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

6 a. Surety bonds, in a form and containing such terms
7 as prescribed by the department ~~division~~, issued by a
8 corporation surety authorized to transact surety business by
9 the Department of Insurance, and whose policyholders' and
10 financial ratings, as reported in A.M. Best's Insurance
11 Reports, Property-Liability, are not less than "A" and "V",
12 respectively.

13 b. Certificates of deposit with financial
14 institutions, the deposits of which are insured through the
15 Federal Deposit Insurance Corporation or the Federal Savings
16 and Loan Insurance Corporation.

17 c. Irrevocable letters of credit in favor of the
18 department ~~division~~ issued by financial institutions described
19 in sub-subparagraph b.

20 d. Direct obligations of the United States Treasury
21 backed by the full faith and credit of the United States.

22 e. Securities issued by this state and backed by the
23 full faith and credit of this state.

24 5. The qualifying security deposit shall be held by
25 the department ~~division~~, or by a depository authorized by the
26 department ~~division~~, exclusively for the benefit of workers'
27 compensation claimants. The security shall not be subject to
28 assignment, execution, attachment, or any legal process
29 whatsoever, except as necessary to guarantee the payment of
30 compensation under this chapter. No surety bond may be
31 terminated, and no other qualifying security may be allowed to

1 lapse, without 90 days' prior notice to the department
2 ~~division~~ and deposit by the self-insuring employer of other
3 qualifying security of equal value within 10 business days
4 after such notice. Failure to provide such notice or failure
5 to timely provide qualifying replacement security after such
6 notice shall constitute grounds for the department ~~division~~ to
7 call or sue upon the surety bond, or to act with respect to
8 other pledged security in any manner necessary to preserve its
9 value for the purposes intended by this section, including the
10 exercise of rights under a letter of credit, the sale of any
11 security at then prevailing market rates, or the withdrawal of
12 any funds represented by any certificate of deposit forming
13 part of the qualifying security deposit. The department
14 ~~division~~ may specify by rule the amount of the qualifying
15 security deposit required prior to authorizing an employer to
16 self-insure and the amount of net worth required for an
17 employer to qualify for authorization to self-insure;

18 (c) By entering into a contract with a public utility
19 under an approved utility-provided self-insurance program as
20 set forth in s. 440.571 in effect as of July 1, 1983. The
21 department ~~division~~ shall adopt rules to implement this
22 paragraph;

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

26 (e) In accordance with s. 440.135, an employer, other
27 than a local government unit, may elect coverage under the
28 Workers' Compensation Law and retain the benefit of the
29 exclusiveness of liability provided in s. 440.11 by obtaining
30 a 24-hour health insurance policy from an authorized property
31 and casualty insurance carrier or an authorized life and

1 health insurance carrier, or by participating in a fully or
2 partially self-insured 24-hour health plan that is established
3 or maintained by or for two or more employers, so long as the
4 law of this state is not preempted by the Employee Retirement
5 Income Security Act of 1974, Pub. L. No. 93-406, or any
6 amendment to that law, which policy or plan must provide, for
7 at least occupational injuries and illnesses, medical benefits
8 that are comparable to those required by this chapter. A local
9 government unit, as a single employer, in accordance with s.
10 440.135, may participate in the 24-hour health insurance
11 coverage plan referenced in this paragraph. Disputes and
12 remedies arising under policies issued under this section are
13 governed by the terms and conditions of the policies and under
14 the applicable provisions of the Florida Insurance Code and
15 rules adopted under the insurance code and other applicable
16 laws of this state. The 24-hour health insurance policy may
17 provide for health care by a health maintenance organization
18 or a preferred provider organization. The premium for such
19 24-hour health insurance policy shall be paid entirely by the
20 employer. The 24-hour health insurance policy may use
21 deductibles and coinsurance provisions that require the
22 employee to pay a portion of the actual medical care received
23 by the employee. If an employer obtains a 24-hour health
24 insurance policy or self-insured plan to secure payment of
25 compensation as to medical benefits, the employer must also
26 obtain an insurance policy or policies that provide indemnity
27 benefits as follows:

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

31

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

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

8 4. Policies providing coverage under this subsection
9 must use prescribed and acceptable underwriting standards,
10 forms, and policies approved by the Department of Insurance.
11 If any insurance policy that provides coverage under this
12 section is canceled, terminated, or nonrenewed for any reason,
13 the cancellation, termination, or nonrenewal is ineffective
14 until the self-insured employer or insurance carrier or
15 carriers notify ~~the division~~ and the Department of Insurance
16 of the cancellation, termination, or nonrenewal, and until the
17 department ~~division~~ has actually received the notification.
18 The department ~~division~~ must be notified of replacement
19 coverage under a workers' compensation and employer's
20 liability insurance policy or plan by the employer prior to
21 the effective date of the cancellation, termination, or
22 nonrenewal; or

23 (f) By entering into a contract with an individual
24 self-insurer under an approved individual
25 self-insurer-provided self-insurance program as set forth in
26 s. 624.46225. The department ~~division~~ may adopt rules to
27 implement this subsection.

28 (2)(a) The department ~~division~~ shall adopt rules by
29 which businesses may become qualified to provide underwriting
30 claims-adjusting, loss control, and safety engineering
31 services to self-insurers.

1 (b) The department ~~division~~ shall adopt rules
2 requiring self-insurers to file any reports necessary to
3 fulfill the requirements of this chapter. Any self-insurer who
4 fails to file any report as prescribed by the rules adopted by
5 the department ~~division~~ shall be subject to a civil penalty
6 not to exceed \$100 for each such failure.

7 (3)(a) The license of any stock company or mutual
8 company or association or exchange authorized to do insurance
9 business in the state shall for good cause, ~~upon~~
10 ~~recommendation of the division~~, be suspended or revoked by the
11 Department of Insurance. No suspension or revocation shall
12 affect the liability of any carrier already incurred.

13 (b) The department ~~division~~ shall suspend or revoke
14 any authorization to a self-insurer for good cause, as defined
15 by rule of the department ~~division~~. No suspension or
16 revocation shall affect the liability of any self-insurer
17 already incurred.

18 (c) Violation of s. 440.381 by a self-insurance fund
19 shall result in the imposition of a fine not to exceed \$1,000
20 per audit if the self-insurance fund fails to act on said
21 audits by correcting errors in employee classification or
22 accepted applications for coverage where it knew employee
23 classifications were incorrect. Such fines shall be levied by
24 the department ~~division~~ and deposited into the Workers'
25 Compensation Administration Trust Fund.

26 Section 35. Subsections (3) and (7) of section
27 440.381, Florida Statutes, are amended to read:

28 440.381 Application for coverage; reporting payroll;
29 payroll audit procedures; penalties.--

30 (3) The department ~~of Insurance and the Department of~~
31 ~~Labor and Employment Security~~ shall establish by rule minimum

1 requirements for audits of payroll and classifications in
2 order to ensure that the appropriate premium is charged for
3 workers' compensation coverage. The rules shall ensure that
4 audits performed by both carriers and employers are adequate
5 to provide that all sources of payments to employees,
6 subcontractors, and independent contractors have been reviewed
7 and that the accuracy of classification of employees has been
8 verified. The rules shall provide that employers in all
9 classes other than the construction class be audited not less
10 frequently than biennially and may provide for more frequent
11 audits of employers in specified classifications based on
12 factors such as amount of premium, type of business, loss
13 ratios, or other relevant factors. In no event shall employers
14 in the construction class, generating more than the amount of
15 premium required to be experience rated, be audited less than
16 annually. The annual audits required for construction classes
17 shall consist of physical onsite audits. Payroll verification
18 audit rules must include, but need not be limited to, the use
19 of state and federal reports of employee income, payroll and
20 other accounting records, certificates of insurance maintained
21 by subcontractors, and duties of employees.

22 (7) If an employee suffering a compensable injury was
23 not reported as earning wages on the last quarterly earnings
24 report filed with the Division of Unemployment Compensation
25 before the accident, the employer shall indemnify the carrier
26 for all workers' compensation benefits paid to or on behalf of
27 the employee unless the employer establishes that the employee
28 was hired after the filing of the quarterly report, in which
29 case the employer and employee shall attest to the fact that
30 the employee was employed by the employer at the time of the
31 injury. It shall be the responsibility of the department

1 ~~Division of Workers' Compensation~~ to collect all necessary
2 data so as to enable it to notify the carrier of the name of
3 an injured worker who was not reported as earning wages on the
4 last quarterly earnings report. The department ~~division~~ is
5 ~~hereby~~ authorized to release such records to the carrier which
6 will enable the carrier to seek reimbursement as provided
7 under this subsection. Failure of the employer to indemnify
8 the insurer within 21 days after demand by the insurer shall
9 constitute grounds for the insurer to immediately cancel
10 coverage. Any action for indemnification brought by the
11 carrier shall be cognizable in the circuit court having
12 jurisdiction where the employer or carrier resides or
13 transacts business. The insurer shall be entitled to a
14 reasonable attorney's fee if it recovers any portion of the
15 benefits paid in such action.

16 Section 36. Section 440.385, Florida Statutes, is
17 amended to read:

18 440.385 Florida Self-Insurers Guaranty Association,
19 Incorporated.--

20 (1) CREATION OF ASSOCIATION.--

21 (a) There is created a nonprofit corporation to be
22 known as the "Florida Self-Insurers Guaranty Association,
23 Incorporated," hereinafter referred to as "the association."
24 Upon incorporation of the association, all individual
25 self-insurers as defined in ss. 440.02(23)(a) and
26 440.38(1)(b), other than individual self-insurers which are
27 public utilities or governmental entities, shall be members of
28 the association as a condition of their authority to
29 individually self-insure in this state. The association shall
30 perform its functions under a plan of operation as established
31 and approved under subsection (5) and shall exercise its

1 powers and duties through a board of directors as established
2 under subsection (2). The corporation shall have those powers
3 granted or permitted corporations not for profit, as provided
4 in chapter 617.

5 (b) A member may voluntarily withdraw from the
6 association when the member voluntarily terminates the
7 self-insurance privilege and pays all assessments due to the
8 date of such termination. However, the withdrawing member
9 shall continue to be bound by the provisions of this section
10 relating to the period of his or her membership and any claims
11 charged pursuant thereto. The withdrawing member who is a
12 member on or after January 1, 1991, shall also be required to
13 provide to the department ~~division~~ upon withdrawal, and at
14 12-month intervals thereafter, satisfactory proof that it
15 continues to meet the standards of s. 440.38(1)(b)1. in
16 relation to claims incurred while the withdrawing member
17 exercised the privilege of self-insurance. Such reporting
18 shall continue until the withdrawing member satisfies the
19 department ~~division~~ that there is no remaining value to claims
20 incurred while the withdrawing member was self-insured. If
21 during this reporting period the withdrawing member fails to
22 meet the standards of s. 440.38(1)(b)1., the withdrawing
23 member who is a member on or after January 1, 1991, shall
24 thereupon, and at 6-month intervals thereafter, provide to the
25 department ~~division~~ and the association the certified opinion
26 of an independent actuary who is a member of the American
27 Society of Actuaries of the actuarial present value of the
28 determined and estimated future compensation payments of the
29 member for claims incurred while the member was a
30 self-insurer, using a discount rate of 4 percent. With each
31 such opinion, the withdrawing member shall deposit with the

1 department ~~division~~ security in an amount equal to the value
2 certified by the actuary and of a type that is acceptable for
3 qualifying security deposits under s. 440.38(1)(b). The
4 withdrawing member shall continue to provide such opinions and
5 to provide such security until such time as the latest opinion
6 shows no remaining value of claims. The association has a
7 cause of action against a withdrawing member, and against any
8 successor of a withdrawing member, who fails to timely provide
9 the required opinion or who fails to maintain the required
10 deposit with the department ~~division~~. The association shall be
11 entitled to recover a judgment in the amount of the actuarial
12 present value of the determined and estimated future
13 compensation payments of the withdrawing member for claims
14 incurred during the time that the withdrawing member exercised
15 the privilege of self-insurance, together with reasonable
16 attorney's fees. For purposes of this section, the successor
17 of a withdrawing member means any person, business entity, or
18 group of persons or business entities, which holds or acquires
19 legal or beneficial title to the majority of the assets or the
20 majority of the shares of the withdrawing member.

21 (2) BOARD OF DIRECTORS.--The board of directors of the
22 association shall consist of nine persons and shall be
23 organized as established in the plan of operation. With
24 respect to ~~initial~~ appointments, the Treasurer ~~Secretary of~~
25 ~~Labor and Employment Security~~ shall, ~~by July 15, 1982,~~ approve
26 and 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 Treasurer ~~secretary~~ finds
31 that any person so recommended does not have the necessary

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

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. Prior to a final determination by the department
20 ~~Division of Workers' Compensation~~ as to whether or not to
21 approve any applicant for membership in the association, the
22 association may issue opinions to the department ~~division~~
23 concerning any applicant, which opinions shall be considered
24 by the department ~~division~~ prior to any final determination.

25 7. Charge fees to any member of the association to
26 cover the actual costs of examining the financial and safety
27 conditions of that member.

28 8. Charge an applicant for membership in the
29 association a fee sufficient to cover the actual costs of
30 examining the financial condition of the applicant.

31

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

21 2. If, in any one year, funds available from such
22 assessments, together with funds previously raised, are not
23 sufficient to make all the payments or reimbursements then
24 owing, the funds available shall be prorated, and the unpaid
25 portion shall be paid as soon thereafter as sufficient
26 additional funds become available.

27 3. No state funds of any kind shall be allocated or
28 paid to the association or any of its accounts except those
29 state funds accruing to the association by and through the
30 assignment of rights of an insolvent employer.

31

1 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
2 operation or the adoption of rules by the department ~~of Labor~~
3 ~~and Employment Security~~ pursuant to subsection (5), there
4 shall be created an Insolvency Fund to be managed by the
5 association.

6 (a) The Insolvency Fund is created for purposes of
7 meeting the obligations of insolvent members incurred while
8 members of the association and after the exhaustion of any
9 bond, as required under this chapter. However, if such bond,
10 surety, or reinsurance policy is payable to the Florida
11 Self-Insurers Guaranty Association, the association shall
12 commence to provide benefits out of the Insolvency Fund and be
13 reimbursed from the bond, surety, or reinsurance policy. The
14 method of operation of the Insolvency Fund shall be defined in
15 the plan of operation as provided in subsection (5).

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

18 (c) The department may offer certain amendments to the
19 plan of operation to the board of directors of the association
20 for purposes of assuring the ongoing financial soundness of
21 the Insolvency Fund and its ability to meet the obligations of
22 this section.

23 (d) The department actuary may make certain
24 recommendations to improve the orderly payment of claims.

25 (5) PLAN OF OPERATION.--~~By September 15, 1982, the~~
26 ~~board of directors shall submit to the Department of Labor and~~
27 ~~Employment Security a proposed plan of operation for the~~
28 ~~administration of the association and the Insolvency Fund.~~

29 (a) The purpose of the plan of operation shall be to
30 provide the association and the board of directors with the
31 authority and responsibility to establish the necessary

1 programs and to take the necessary actions to protect against
2 the insolvency of a member of the association. In addition,
3 the plan shall provide that the members of the association
4 shall be responsible for maintaining an adequate Insolvency
5 Fund to meet the obligations of insolvent members provided for
6 under this act and shall authorize the board of directors to
7 contract and employ those persons with the necessary expertise
8 to carry out this stated purpose.

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

18 (c) All member employers shall comply with the plan of
19 operation.

20 (d) The plan of operation shall:

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

24 2. Establish procedures for handling assets of the
25 association.

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

28 4. Establish procedures by which claims may be filed
29 with the association and establish acceptable forms of proof
30 of covered claims. Notice of claims to the receiver or
31 liquidator of the insolvent employer shall be deemed notice to

1 the association or its agent, and a list of such claims shall
2 be submitted periodically to the association or similar
3 organization in another state by the receiver or liquidator.

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

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

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

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

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

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

1 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
2 ~~AND EMPLOYMENT SECURITY~~.--

3 (a) The department shall:

4 1. Notify the association of the existence of an
5 insolvent employer not later than 3 days after it receives
6 notice of the determination of insolvency.

7 2. Upon request of the board of directors, provide the
8 association with a statement of the annual normal premiums of
9 each member employer.

10 (b) The department may:

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

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

27 3. Revoke the designation of any servicing facility if
28 the department finds that claims are being handled
29 unsatisfactorily.

30 (7) EFFECT OF PAID CLAIMS.--

31

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

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

25 (c) The association shall file periodically with the
26 receiver or liquidator of the insolvent member statements of
27 the covered claims paid by the association and estimates of
28 anticipated claims on the association, which shall preserve
29 the rights of the association against the assets of the
30 insolvent member.

31

1 (8) PREVENTION OF INSOLVENCIES.--To aid in the
2 detection and prevention of employer insolvencies:

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

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

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

25 (d) The board of directors may, upon majority vote,
26 make reports and recommendations to the department upon any
27 matter which is germane to the solvency, liquidation,
28 rehabilitation, or conservation of any member employer. Such
29 reports and recommendations shall not be considered public
30 documents.

31

1 (e) The board of directors may, upon majority vote,
2 make recommendations to the department for the detection and
3 prevention of employer insolvencies.

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

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

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

23 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
24 JUDGMENTS.--All proceedings in which an insolvent employer is
25 a party, or is obligated to defend a party, in any court or
26 before any quasi-judicial body or administrative board in this
27 state shall be stayed for up to 6 months, or for such
28 additional period from the date the employer becomes an
29 insolvent member, as is deemed necessary by a court of
30 competent jurisdiction to permit proper defense by the
31 association of all pending causes of action as to any covered

1 claims arising from a judgment under any decision, verdict, or
2 finding based on the default of the insolvent member. The
3 association, either on its own behalf or on behalf of the
4 insolvent member, may apply to have such judgment, order,
5 decision, verdict, or finding set aside by the same court or
6 administrator that made such judgment, order, decision,
7 verdict, or finding and shall be permitted to defend against
8 such claim on the merits. If requested by the association,
9 the stay of proceedings may be shortened or waived.

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

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

26 Section 37. Section 440.40, Florida Statutes, is
27 amended to read:

28 440.40 Compensation notice.--Every employer who has
29 secured compensation under the provisions of this chapter
30 shall keep posted in a conspicuous place or places in and
31 about her or his place or places of business typewritten or

1 printed notices, in accordance with a form prescribed by the
2 department ~~division~~, stating that such employer has secured
3 the payment of compensation in accordance with the provisions
4 of this chapter. Such notices shall contain the name and
5 address of the carrier, if any, with whom the employer has
6 secured payment of compensation and the date of the expiration
7 of the policy. The department ~~division~~ may by rule prescribe
8 the form of the notices and require carriers to provide the
9 notices to policyholders.

10 Section 38. Section 440.41, Florida Statutes, is
11 amended to read:

12 440.41 Substitution of carrier for employer.--In any
13 case where the employer is not a self-insurer, in order that
14 the liability for compensation imposed by this chapter may be
15 most effectively discharged by the employer, and in order that
16 the administration of this chapter in respect of such
17 liability may be facilitated, the department ~~division~~ shall by
18 regulation provide for the discharge, by the carrier for such
19 employer, of such obligations and duties of the employer in
20 respect of such liability, imposed by this chapter upon the
21 employer, as it considers proper in order to effectuate the
22 provisions of this chapter. For such purposes:

23 (1) Notice to or knowledge of an employer of the
24 occurrence of the injury shall be notice to or knowledge of
25 the carrier.

26 (2) Jurisdiction of the employer by the judges of
27 compensation claims, the department ~~division~~, or any court
28 under this chapter shall be jurisdiction of the carrier.

29 (3) Any requirement by the judges of compensation
30 claims, the department ~~division~~, or any court under any
31 compensation order, finding, or decision shall be binding upon

1 the carrier in the same manner and to the same extent as upon
2 the employer.

3 Section 39. Subsection (3) of section 440.42, Florida
4 Statutes, is amended to read:

5 440.42 Insurance policies; liability.--

6 (3) No contract or policy of insurance issued by a
7 carrier under this chapter shall expire or be canceled until
8 at least 30 days have elapsed after a notice of cancellation
9 has been sent to the department ~~division~~ and to the employer
10 in accordance with the provisions of s. 440.185(7). However,
11 when duplicate or dual coverage exists by reason of two
12 different carriers having issued policies of insurance to the
13 same employer securing the same liability, it shall be
14 presumed that only that policy with the later effective date
15 shall be in force and that the earlier policy terminated upon
16 the effective date of the latter. In the event that both
17 policies carry the same effective date, one of the policies
18 may be canceled instanter upon filing a notice of cancellation
19 with the department ~~division~~ and serving a copy thereof upon
20 the employer in such manner as the department ~~division~~
21 prescribes by rule. The department ~~division~~ may by rule
22 prescribe the content of the notice of retroactive
23 cancellation and specify the time, place, and manner in which
24 the notice of cancellation is to be served.

25 Section 40. Section 440.44, Florida Statutes, is
26 amended to read:

27 440.44 Workers' compensation; staff organization.--

28 (1) INTERPRETATION OF LAW.--As a guide to the
29 interpretation of this chapter, the Legislature takes due
30 notice of federal social and labor acts and hereby creates an
31 agency to administer such acts passed for the benefit of

1 employees and employers in Florida industry, and desires to
2 meet the requirements of such federal acts wherever not
3 inconsistent with the Constitution and laws of Florida.

4 (2) INTENT.--It is the intent of the Legislature that
5 the department and the agency ~~division~~ assume an active and
6 forceful role in their ~~its~~ administration of this act, so as
7 to ensure that the system operates efficiently and with
8 maximum benefit to both employers and employees.

9 (3) EXPENDITURES.--The department, the agency,
10 ~~division~~ and the Chief Judge shall make such expenditures,
11 including expenditures for personal services and rent at the
12 seat of government and elsewhere, for law books; for telephone
13 services and WATS lines; for books of reference, periodicals,
14 equipment, and supplies; and for printing and binding as may
15 be necessary in the administration of this chapter. All
16 expenditures in the administration of this chapter shall be
17 allowed and paid as provided in s. 440.50 upon the
18 presentation of itemized vouchers therefor approved by the
19 department, the agency,~~division~~ or the Chief Judge.

20 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL
21 ADMINISTRATION.--Subject to the other provisions of this
22 chapter, the department and agency are ~~division is~~ authorized
23 to appoint, and prescribe the duties and powers of, bureau
24 chiefs, attorneys, accountants, medical advisers, technical
25 assistants, inspectors, claims examiners, and such other
26 employees as may be necessary in the performance of its duties
27 under this chapter.

28 (5) OFFICE.--The department, the agency,~~division~~ and
29 the Chief Judge shall maintain and keep open during reasonable
30 business hours an office, which shall be provided in the
31 Capitol or some other suitable building in the City of

1 Tallahassee, for the transaction of business under this
2 chapter, at which office the official records and papers shall
3 be kept. The office shall be furnished and equipped. The
4 department, the agency division, any judge of compensation
5 claims, or the Chief Judge may hold sessions and conduct
6 hearings at any place within the state.

7 (6) SEAL.--The division and, the Office of the Judges
8 of Compensation Claims ~~judges of compensation claims, and the~~
9 ~~Chief Judge~~ shall have seals ~~a seal~~ upon which shall be
10 inscribed the words "State of Florida Department of Insurance
11 ...Seal" and the "Division of Administrative Hearings...
12 Seal." ~~respectively. of Labor and Employment Security--Seal."~~

13 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
14 ~~division~~ is expressly authorized to provide by regulation for
15 and to destroy obsolete records of the department division ~~and~~
16 ~~commission~~.

17 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
18 and functions requiring administrative hearings, the
19 department and the agency division shall proceed in accordance
20 with the Administrative Procedure Act. The authority of the
21 department and the agency division to issue orders resulting
22 from administrative hearings as provided for in this chapter
23 shall not infringe upon the jurisdiction of the judges of
24 compensation claims.

25 Section 41. Subsections (1), (2), (7), (8), (9), (10),
26 and (11) of section 440.49, Florida Statutes, are amended to
27 read:

28 440.49 Limitation of liability for subsequent injury
29 through Special Disability Trust Fund.--

30 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
31 for workers with disabilities to achieve employment or to

1 become reemployed following an injury, and it is the desire of
2 the Legislature to facilitate the return of these workers to
3 the workplace, it is the purpose of this section to encourage
4 the employment, reemployment, and accommodation of the
5 physically disabled by reducing an employer's insurance
6 premium for reemploying an injured worker, to decrease
7 litigation between carriers on apportionment issues, and to
8 protect employers from excess liability for compensation and
9 medical expense when an injury to a physically disabled worker
10 merges with, aggravates, or accelerates her or his preexisting
11 permanent physical impairment to cause either a greater
12 disability or permanent impairment, or an increase in
13 expenditures for temporary compensation or medical benefits
14 than would have resulted from the injury alone. The department
15 ~~division~~ or the administrator shall inform all employers of
16 the existence and function of the fund and shall interpret
17 eligibility requirements liberally. However, this subsection
18 shall not be construed to create or provide any benefits for
19 injured employees or their dependents not otherwise provided
20 by this chapter. The entitlement of an injured employee or her
21 or his dependents to compensation under this chapter shall be
22 determined without regard to this subsection, the provisions
23 of which shall be considered only in determining whether an
24 employer or carrier who has paid compensation under this
25 chapter is entitled to reimbursement from the Special
26 Disability Trust Fund.

27 (2) DEFINITIONS.--As used in this section, the term:

28 (a) "Permanent physical impairment" means and is
29 limited to the conditions listed in paragraph (6)(a).

30 (b) "Preferred worker" means a worker who, because of
31 a permanent impairment resulting from a compensable injury or

1 occupational disease, is unable to return to the worker's
2 regular employment.

3 (c) "Merger" describes or means that:

4 1. If the permanent physical impairment had not
5 existed, the subsequent accident or occupational disease would
6 not have occurred;

7 2. The permanent disability or permanent impairment
8 resulting from the subsequent accident or occupational disease
9 is materially and substantially greater than that which would
10 have resulted had the permanent physical impairment not
11 existed, and the employer has been required to pay, and has
12 paid, permanent total disability or permanent impairment
13 benefits for that materially and substantially greater
14 disability;

15 3. The preexisting permanent physical impairment is
16 aggravated or accelerated as a result of the subsequent injury
17 or occupational disease, or the preexisting impairment has
18 contributed, medically and circumstantially, to the need for
19 temporary compensation, medical, or attendant care and the
20 employer has been required to pay, and has paid, temporary
21 compensation, medical, or attendant care benefits for the
22 aggravated preexisting permanent impairment; or

23 4. Death would not have been accelerated if the
24 permanent physical impairment had not existed.

25 (d) "Excess permanent compensation" means that
26 compensation for permanent impairment, or permanent total
27 disability or death benefits, for which the employer or
28 carrier is otherwise entitled to reimbursement from the
29 Special Disability Trust Fund.

30
31

1 (e) "Administrator" means the entity selected by the
2 commission to review, allow, deny, compromise, controvert, and
3 litigate claims of the Special Disability Trust Fund.

4 (f) "Corporation" means the Special Disability Trust
5 Fund Financing Corporation, as created under subsection (14).

6 (g) "Commission" means the Special Disability Trust
7 Fund Privatization Commission, as created under subsection
8 (13).

9
10 In addition to the definitions contained in this subsection,
11 the department ~~division~~ may by rule prescribe definitions that
12 are necessary for the effective administration of this
13 section.

14 (7) REIMBURSEMENT OF EMPLOYER.--

15 (a) The right to reimbursement as provided in this
16 section is barred unless written notice of claim of the right
17 to such reimbursement is filed by the employer or carrier
18 entitled to such reimbursement with the department ~~division~~ or
19 administrator at Tallahassee within 2 years after the date the
20 employee last reached maximum medical improvement, or within 2
21 years after the date of the first payment of compensation for
22 permanent total disability, wage loss, or death, whichever is
23 later. The notice of claim must contain such information as
24 the department ~~division~~ by rule requires or as established by
25 the administrator; and the employer or carrier claiming
26 reimbursement shall furnish such evidence in support of the
27 claim as the department ~~division~~ or administrator reasonably
28 may require.

29 (b) For notice of claims on the Special Disability
30 Trust Fund filed on or after July 1, 1978, the Special
31 Disability Trust Fund shall, within 120 days after receipt of

1 notice that a carrier has paid, been required to pay, or
2 accepted liability for excess compensation, serve notice of
3 the acceptance of the claim for reimbursement.

4 (c) A proof of claim must be filed on each notice of
5 claim on file as of June 30, 1997, within 1 year after July 1,
6 1997, or the right to reimbursement of the claim shall be
7 barred. A notice of claim on file on or before June 30, 1997,
8 may be withdrawn and refiled if, at the time refiled, the
9 notice of claim remains within the limitation period specified
10 in paragraph (a). Such refileing shall not toll, extend, or
11 otherwise alter in any way the limitation period applicable to
12 the withdrawn and subsequently refiled notice of claim. Each
13 proof of claim filed shall be accompanied by a proof-of-claim
14 fee as provided in paragraph (9)(d). The Special Disability
15 Trust Fund shall, within 120 days after receipt of the proof
16 of claim, serve notice of the acceptance of the claim for
17 reimbursement. This paragraph shall apply to all claims
18 notwithstanding the provisions of subsection (12).

19 (d) Each notice of claim filed or refiled on or after
20 July 1, 1997, must be accompanied by a notification fee as
21 provided in paragraph (9)(d). A proof of claim must be filed
22 within 1 year after the date the notice of claim is filed or
23 refiled, accompanied by a proof-of-claim fee as provided in
24 paragraph (9)(d), or the claim shall be barred. The
25 notification fee shall be waived if both the notice of claim
26 and proof of claim are submitted together as a single filing.
27 The Special Disability Trust Fund shall, within 180 days after
28 receipt of the proof of claim, serve notice of the acceptance
29 of the claim for reimbursement. This paragraph shall apply to
30 all claims notwithstanding the provisions of subsection (12).

31

1 (e) For dates of accident on or after January 1, 1994,
2 the Special Disability Trust Fund shall, within 120 days of
3 receipt of notice that a carrier has been required to pay, and
4 has paid over \$10,000 in benefits, serve notice of the
5 acceptance of the claim for reimbursement. Failure of the
6 Special Disability Trust Fund to serve notice of acceptance
7 shall give rise to the right to request a hearing on the claim
8 for reimbursement. If the Special Disability Trust Fund
9 through its representative denies or controverts the claim,
10 the right to such reimbursement shall be barred unless an
11 application for a hearing thereon is filed with the department
12 ~~division~~ or administrator at Tallahassee within 60 days after
13 notice to the employer or carrier of such denial or
14 controversion. When such application for a hearing is timely
15 filed, the claim shall be heard and determined in accordance
16 with the procedure prescribed in s. 440.25, to the extent that
17 such procedure is applicable, and in accordance with the
18 workers' compensation rules of procedure. In such proceeding
19 on a claim for reimbursement, the Special Disability Trust
20 Fund shall be made the party respondent, and no findings of
21 fact made with respect to the claim of the injured employee or
22 the dependents for compensation, including any finding made or
23 order entered pursuant to s. 440.20(11), shall be res
24 judicata. The Special Disability Trust Fund may not be joined
25 or made a party to any controversy or dispute between an
26 employee and the dependents and the employer or between two or
27 more employers or carriers without the written consent of the
28 fund.

29 (f) When it has been determined that an employer or
30 carrier is entitled to reimbursement in any amount, the
31 employer or carrier shall be reimbursed annually from the

1 Special Disability Trust Fund for the compensation and medical
2 benefits paid by the employer or carrier for which the
3 employer or carrier is entitled to reimbursement, upon filing
4 request therefor and submitting evidence of such payment in
5 accordance with rules prescribed by the department ~~division~~,
6 which rules may include parameters for annual audits. The
7 Special Disability Trust Fund shall pay the approved
8 reimbursement requests on a first-in, first-out basis
9 reflecting the order in which the reimbursement requests were
10 received.

11 (g) The department ~~division~~ may by rule require
12 specific forms and procedures for the administration and
13 processing of claims made through the Special Disability Trust
14 Fund.

15 (8) PREFERRED WORKER PROGRAM.--The department ~~division~~
16 or administrator shall issue identity cards to preferred
17 workers upon request by qualified employees and shall
18 reimburse an employer, from the Special Disability Trust Fund,
19 for the cost of workers' compensation premium related to the
20 preferred workers payroll for up to 3 years of continuous
21 employment upon satisfactory evidence of placement and
22 issuance of payroll and classification records and upon the
23 employee's certification of employment. The department
24 ~~division~~ may by rule prescribe definitions, forms, and
25 procedures for the administration of the preferred worker
26 program. The department ~~division~~ may by rule prescribe the
27 schedule for submission of forms for participation in the
28 program.

29 (9) SPECIAL DISABILITY TRUST FUND.--

30 (a) There is established in the State Treasury a
31 special fund to be known as the "Special Disability Trust

1 Fund," which shall be available only for the purposes stated
2 in this section; and the assets thereof may not at any time be
3 appropriated or diverted to any other use or purpose. The
4 Treasurer shall be the custodian of such fund, and all moneys
5 and securities in such fund shall be held in trust by such
6 Treasurer and shall not be the money or property of the state.
7 The Treasurer is authorized to disburse moneys from such fund
8 only when approved by the department ~~division~~ or corporation
9 and upon the order of the Comptroller. The Treasurer shall
10 deposit any moneys paid into such fund into such depository
11 banks as the department ~~division~~ or corporation may designate
12 and is authorized to invest any portion of the fund which, in
13 the opinion of the division, is not needed for current
14 requirements, in the same manner and subject to all the
15 provisions of the law with respect to the deposits of state
16 funds by such Treasurer. All interest earned by such portion
17 of the fund as may be invested by the Treasurer shall be
18 collected by her or him and placed to the credit of such fund.

19 (b)1. The Special Disability Trust Fund shall be
20 maintained by annual assessments upon the insurance companies
21 writing compensation insurance in the state, the commercial
22 self-insurers under ss. 624.462 and 624.4621, the assessable
23 mutuals under s. 628.601, and the self-insurers under this
24 chapter, which assessments shall become due and be paid
25 quarterly at the same time and in addition to the assessments
26 provided in s. 440.51. The department ~~division~~ shall estimate
27 annually in advance the amount necessary for the
28 administration of this subsection and the maintenance of this
29 fund and shall make such assessment in the manner hereinafter
30 provided.

31

1 2. The annual assessment shall be calculated to
2 produce during the ensuing fiscal year an amount which, when
3 combined with that part of the balance in the fund on June 30
4 of the current fiscal year which is in excess of \$100,000, is
5 equal to the average of:

6 a. The sum of disbursements from the fund during the
7 immediate past 3 calendar years, and

8 b. Two times the disbursements of the most recent
9 calendar year.

10
11 Such amount shall be prorated among the insurance companies
12 writing compensation insurance in the state and the
13 self-insurers. Provided however, for those carriers that have
14 excluded ceded reinsurance premiums from their assessments on
15 or before January 1, 2000, no assessments on ceded reinsurance
16 premiums shall be paid by those carriers until such time as
17 the Division of Workers' Compensation of the Department of
18 Labor and Employment Security or the department advises each
19 of those carriers of the impact that the inclusion of ceded
20 reinsurance premiums has on their assessment. The department
21 ~~division~~ may not recover any past underpayments of assessments
22 levied against any carrier that on or before January 1, 2000,
23 excluded ceded reinsurance premiums from their assessment
24 prior to the point that the Division of Workers' Compensation
25 of the Department of Labor and Employment Security or the
26 department advises of the appropriate assessment that should
27 have been paid.

28 3. The net premiums written by the companies for
29 workers' compensation in this state and the net premium
30 written applicable to the self-insurers in this state are the
31 basis for computing the amount to be assessed as a percentage

1 of net premiums. Such payments shall be made by each carrier
2 and self-insurer to the department ~~division~~ for the Special
3 Disability Trust Fund in accordance with such regulations as
4 the department ~~division~~ prescribes.

5 4. The Treasurer is authorized to receive and credit
6 to such Special Disability Trust Fund any sum or sums that may
7 at any time be contributed to the state by the United States
8 under any Act of Congress, or otherwise, to which the state
9 may be or become entitled by reason of any payments made out
10 of such fund.

11 (c) Notwithstanding the Special Disability Trust Fund
12 assessment rate calculated pursuant to this section, the rate
13 assessed shall not exceed 4.52 percent.

14 (d) The Special Disability Trust Fund shall be
15 supplemented by a \$250 notification fee on each notice of
16 claim filed or refiled after July 1, 1997, and a \$500 fee on
17 each proof of claim filed in accordance with subsection (7).
18 Revenues from the fee shall be deposited into the Special
19 Disability Trust Fund and are exempt from the deduction
20 required by s. 215.20. The fees provided in this paragraph
21 shall not be imposed upon any insurer which is in receivership
22 with the Department of Insurance.

23 (e) The Department of Insurance ~~Labor and Employment~~
24 ~~Security~~ or administrator shall report annually on the status
25 of the Special Disability Trust Fund. The report shall update
26 the estimated undiscounted and discounted fund liability, as
27 determined by an independent actuary, change in the total
28 number of notices of claim on file with the fund in addition
29 to the number of newly filed notices of claim, change in the
30 number of proofs of claim processed by the fund, the fee
31 revenues refunded and revenues applied to pay down the

1 liability of the fund, the average time required to reimburse
2 accepted claims, and the average administrative costs per
3 claim. The department or administrator shall submit its
4 report to the Governor, the President of the Senate, and the
5 Speaker of the House of Representatives by December 1 of each
6 year.

7 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
8 CLAIMS; ADVISORY COMMITTEE; EXPENSES.--The department ~~division~~
9 or administrator shall administer the Special Disability Trust
10 Fund with authority to allow, deny, compromise, controvert,
11 and litigate claims made against it and to designate an
12 attorney to represent it in proceedings involving claims
13 against the fund, including negotiation and consummation of
14 settlements, hearings before judges of compensation claims,
15 and judicial review. The department ~~division~~ or administrator
16 or the attorney designated by it shall be given notice of all
17 hearings and proceedings involving the rights or obligations
18 of such fund and shall have authority to make expenditures for
19 such medical examinations, expert witness fees, depositions,
20 transcripts of testimony, and the like as may be necessary to
21 the proper defense of any claim. The department ~~division~~ shall
22 appoint an advisory committee composed of representatives of
23 management, compensation insurance carriers, and self-insurers
24 to aid it in formulating policies with respect to conservation
25 of the fund, who shall serve without compensation for such
26 terms as specified by it, but be reimbursed for travel
27 expenses as provided in s. 112.061. All expenditures made in
28 connection with conservation of the fund, including the salary
29 of the attorney designated to represent it and necessary
30 travel expenses, shall be allowed and paid from the Special
31 Disability Trust Fund as provided in this section upon the

1 presentation of itemized vouchers therefor approved by the
2 department division.

3 (11) EFFECTIVE DATES.--This section does not apply to
4 any case in which the accident causing the subsequent injury
5 or death or the disablement or death from a subsequent
6 occupational disease occurred prior to July 1, 1955, or on or
7 after January 1, 1998. In no event shall the Special
8 Disability Trust Fund be liable for, or reimburse employers or
9 carriers for, any case in which the accident causing the
10 subsequent injury or death or the disablement or death from a
11 subsequent occupational disease occurred on or after January
12 1, 1998. The Special Disability Trust Fund shall continue to
13 reimburse employers or carriers for subsequent injuries
14 occurring prior to January 1, 1998, and the department
15 ~~division~~ shall continue to assess for and the department
16 ~~division~~ or administrator shall fund reimbursements as
17 provided in subsection (9) for this purpose.

18 Section 42. Section 440.491, Florida Statutes, is
19 amended to read:

20 440.491 Reemployment of injured workers;
21 rehabilitation.--

22 (1) DEFINITIONS.--As used in this section, the term:

23 (a) "Carrier" means group self-insurance funds or
24 individual self-insureds authorized under this chapter and
25 commercial funds or insurance entities authorized to write
26 workers' compensation insurance under chapter 624.

27 (b) "Medical care coordination" includes, but is not
28 limited to, coordinating physical rehabilitation services such
29 as medical, psychiatric, or therapeutic treatment for the
30 injured employee, providing health training to the employee
31 and family, and monitoring the employee's recovery. The

1 purposes of medical care coordination are to minimize the
2 disability and recovery period without jeopardizing medical
3 stability, to assure that proper medical treatment and other
4 restorative services are timely provided in a logical
5 sequence, and to contain medical costs.

6 (c) "Qualified rehabilitation provider" means a
7 rehabilitation nurse, rehabilitation counselor, vocational
8 evaluator, rehabilitation facility, or agency approved by the
9 Department of Education ~~division~~ as qualified to provide
10 reemployment assessments, medical care coordination,
11 reemployment services, or vocational evaluations under this
12 chapter.

13 (d) "Reemployment assessment" means a written
14 assessment performed by a qualified rehabilitation provider
15 which provides a comprehensive review of the medical
16 diagnosis, treatment, and prognosis; includes conferences with
17 the employer, physician, and claimant; and recommends a
18 cost-effective physical and vocational rehabilitation plan to
19 assist the employee in returning to suitable gainful
20 employment.

21 (e) "Reemployment services" means services that
22 include, but are not limited to, vocational counseling,
23 job-seeking skills training, ergonomic job analysis,
24 transferable skills analysis, selective job placement, labor
25 market surveys, and arranging other services such as education
26 or training, vocational and on-the-job, which may be needed by
27 the employee to secure suitable gainful employment.

28 (f) "Reemployment status review" means a review to
29 determine whether an injured employee is at risk of not
30 returning to work.

31

1 (g) "Suitable gainful employment" means employment or
2 self-employment that is reasonably attainable in light of the
3 employee's age, education, work history, transferable skills,
4 previous occupation, and injury, and which offers an
5 opportunity to restore the individual as soon as practicable
6 and as nearly as possible to his or her average weekly
7 earnings at the time of injury.

8 (h) "Vocational evaluation" means a review of the
9 employee's physical and intellectual capabilities, his or her
10 aptitudes and achievements, and his or her work-related
11 behaviors to identify the most cost-effective means toward the
12 employee's return to suitable gainful employment.

13 (2) INTENT.--It is the intent of this section to
14 implement a systematic review by carriers of the factors that
15 are predictive of longer-term disability and to encourage the
16 provision of medical care coordination and reemployment
17 services that are necessary to assist the employee in
18 returning to work as soon as is medically feasible.

19 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.--

20 (a) When an employee who has suffered an injury
21 compensable under this chapter is unemployed 60 days after the
22 date of injury and is receiving benefits for temporary total
23 disability, temporary partial disability, or wage loss, and
24 has not yet been provided medical care coordination and
25 reemployment services voluntarily by the carrier, the carrier
26 must determine whether the employee is likely to return to
27 work and must report its determination to the Department of
28 Education ~~division~~. The carrier must thereafter determine the
29 reemployment status of the employee at 90-day intervals as
30 long as the employee remains unemployed, is not receiving
31

1 medical care coordination or reemployment services, and is
2 receiving the benefits specified in this subsection.

3 (b) If medical care coordination or reemployment
4 services are voluntarily undertaken within 60 days of the date
5 of injury, such services may continue to be provided as agreed
6 by the employee and the carrier.

7 (4) REEMPLOYMENT ASSESSMENTS.--

8 (a) The carrier may require the employee to receive a
9 reemployment assessment as it considers appropriate. However,
10 the carrier is encouraged to obtain a reemployment assessment
11 if:

12 1. The carrier determines that the employee is at risk
13 of remaining unemployed.

14 2. The case involves catastrophic or serious injury.

15 (b) The carrier shall authorize only a qualified
16 rehabilitation provider to provide the reemployment
17 assessment. The rehabilitation provider shall conduct its
18 assessment and issue a report to the carrier, the employee,
19 and the Department of Education ~~division~~ within 30 days after
20 the time such assessment is complete.

21 (c) If the rehabilitation provider recommends that the
22 employee receive medical care coordination or reemployment
23 services, the carrier shall advise the employee of the
24 recommendation and determine whether the employee wishes to
25 receive such services. The employee shall have 15 days after
26 the date of receipt of the recommendation in which to agree to
27 accept such services. If the employee elects to receive
28 services, the carrier may refer the employee to a
29 rehabilitation provider for such coordination or services
30 within 15 days of receipt of the assessment report or notice
31 of the employee's election, whichever is later.

1 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
2 SERVICES.--

3 (a) Once the carrier has assigned a case to a
4 qualified rehabilitation provider for medical care
5 coordination or reemployment services, the provider shall
6 develop a reemployment plan and submit the plan to the carrier
7 and the employee for approval.

8 (b) If the rehabilitation provider concludes that
9 training and education are necessary to return the employee to
10 suitable gainful employment, or if the employee has not
11 returned to suitable gainful employment within 180 days after
12 referral for reemployment services or receives \$2,500 in
13 reemployment services, whichever comes first, the carrier must
14 discontinue reemployment services and refer the employee to
15 the Department of Education ~~division~~ for a vocational
16 evaluation. Notwithstanding any provision of chapter 289 or
17 chapter 627, the cost of a reemployment assessment and the
18 first \$2,500 in reemployment services to an injured employee
19 must not be treated as loss adjustment expense for workers'
20 compensation ratemaking purposes.

21 (c) A carrier may voluntarily provide medical care
22 coordination or reemployment services to the employee at
23 intervals more frequent than those required in this section.
24 For the purpose of monitoring reemployment, the carrier or the
25 rehabilitation provider shall report to the Department of
26 Education ~~division~~, in the manner prescribed by the Department
27 of Education ~~division~~, the date of reemployment and wages of
28 the employee. The carrier shall report its voluntary service
29 activity to the Department of Education ~~division~~ as required
30 by rule. Voluntary services offered by the carrier for any of
31 the following injuries must be considered benefits for

1 purposes of ratemaking: traumatic brain injury; spinal cord
2 injury; amputation, including loss of an eye or eyes; burns of
3 5 percent or greater of the total body surface.

4 (d) If medical care coordination or reemployment
5 services have not been undertaken as prescribed in paragraph
6 (3)(b), a qualified rehabilitation service provider, facility,
7 or agency that performs a reemployment assessment shall not
8 provide medical care coordination or reemployment services for
9 the employees it assesses.

10 (6) TRAINING AND EDUCATION.--

11 (a) Upon referral of an injured employee by the
12 carrier, or upon the request of an injured employee, the
13 Department of Education ~~division~~ shall conduct a training and
14 education screening to determine whether it should refer the
15 employee for a vocational evaluation and, if appropriate,
16 approve training and education or other vocational services
17 for the employee. The Department of Education ~~division~~ may
18 not approve formal training and education programs unless it
19 determines, after consideration of the reemployment
20 assessment, pertinent reemployment status reviews or reports,
21 and such other relevant factors as it prescribes by rule, that
22 the reemployment plan is likely to result in return to
23 suitable gainful employment. The Department of Education
24 ~~division~~ is authorized to expend moneys from the Workers'
25 Compensation Administration Trust Fund, established by s.
26 440.50, to secure appropriate training and education or other
27 vocational services when necessary to satisfy the
28 recommendation of a vocational evaluator. The Department of
29 Education ~~division~~ shall establish training and education
30 standards pertaining to employee eligibility, course curricula
31 and duration, and associated costs.

1 (b) When it appears that an employee who has attained
2 maximum medical improvement requires training and education to
3 obtain suitable gainful employment, the employer shall pay the
4 employee additional temporary total compensation while the
5 employee receives such training and education for a period not
6 to exceed 26 weeks, which period may be extended for an
7 additional 26 weeks or less, if such extended period is
8 determined to be necessary and proper by a judge of
9 compensation claims. However, a carrier or employer is not
10 precluded from voluntarily paying additional temporary total
11 disability compensation beyond that period. If an employee
12 requires temporary residence at or near a facility or an
13 institution providing training and education which is located
14 more than 50 miles away from the employee's customary
15 residence, the reasonable cost of board, lodging, or travel
16 must be borne by the Department of Insurance ~~division~~ from the
17 Workers' Compensation Administration Trust Fund established by
18 s. 440.50. An employee who refuses to accept training and
19 education that is recommended by the vocational evaluator and
20 considered necessary by the Department of Education ~~division~~
21 is subject to a 50-percent reduction in weekly compensation
22 benefits, including wage-loss benefits, as determined under s.
23 440.15(3)(b).

24 (7) PROVIDER QUALIFICATIONS.--

25 (a) The Department of Education ~~division~~ shall
26 investigate and maintain a directory of each qualified public
27 and private rehabilitation provider, facility, and agency, and
28 shall establish by rule the minimum qualifications,
29 credentials, and requirements that each rehabilitation service
30 provider, facility, and agency must satisfy to be eligible for
31 listing in the directory. These minimum qualifications and

1 credentials must be based on those generally accepted within
2 the service specialty for which the provider, facility, or
3 agency is approved.

4 (b) The Department of Education ~~division~~ shall impose
5 a biennial application fee of \$25 for each listing in the
6 directory, and all such fees must be deposited in the Workers'
7 Compensation Administration Trust Fund.

8 (c) The Department of Education ~~division~~ shall monitor
9 and evaluate each rehabilitation service provider, facility,
10 and agency qualified under this subsection to ensure its
11 compliance with the minimum qualifications and credentials
12 established by the Department of Education ~~division~~. The
13 failure of a qualified rehabilitation service provider,
14 facility, or agency to provide the Department of Education
15 ~~division~~ with information requested or access necessary for
16 the Department of Education ~~division~~ to satisfy its
17 responsibilities under this subsection is grounds for
18 disqualifying the provider, facility, or agency from further
19 referrals.

20 (d) A qualified rehabilitation service provider,
21 facility, or agency may not be authorized by an employer, a
22 carrier, or the Department of Education ~~division~~ to provide
23 any services, including expert testimony, under this section
24 in this state unless the provider, facility, or agency is
25 listed or has been approved for listing in the directory. This
26 restriction does not apply to services provided outside this
27 state under this section.

28 (e) The Department of Education ~~division~~, after
29 consultation with representatives of employees, employers,
30 carriers, rehabilitation providers, and qualified training and
31

1 education providers, shall adopt rules governing professional
2 practices and standards.

3 (8) CARRIER PRACTICES.--The department ~~division~~ shall
4 monitor the selection of providers and the provision of
5 services by carriers under this section for consistency with
6 legislative intent set forth in subsection (2).

7 (9) PERMANENT DISABILITY.--The judge of compensation
8 claims may not adjudicate an injured employee as permanently
9 and totally disabled until or unless the carrier is given the
10 opportunity to provide a reemployment assessment.

11 Section 43. Section 440.50, Florida Statutes, is
12 amended to read:

13 440.50 Workers' Compensation Administration Trust
14 Fund.--

15 (1)(a) There is established in the State Treasury a
16 special fund to be known as the "Workers' Compensation
17 Administration Trust Fund" for the purpose of providing for
18 the payment of all expenses in respect to the administration
19 of this chapter, including the vocational rehabilitation of
20 injured employees as provided in s. 440.49 and the payments
21 due under s. 440.15(1)(f), the funding of the fixed
22 administrative expenses of the plan, and the funding of the
23 Bureau of Workers' Compensation Fraud within the Department of
24 Insurance. Such fund shall be administered by the department
25 ~~division~~.

26 (b) The department ~~division~~ is authorized to transfer
27 as a loan an amount not in excess of \$250,000 from such
28 special fund to the Special Disability Trust Fund established
29 by s. 440.49(9), which amount shall be repaid to said special
30 fund in annual payments equal to not less than 10 percent of
31 moneys received for such Special Disability Trust Fund.

1 (2) The Treasurer is authorized to disburse moneys
2 from such fund only when approved by the department ~~division~~
3 and upon the order of the Comptroller.

4 (3) The Treasurer shall deposit any moneys paid into
5 such fund into such depository banks as the department
6 ~~division~~ may designate and is authorized to invest any portion
7 of the fund which, in the opinion of the department ~~division~~,
8 is not needed for current requirements, in the same manner and
9 subject to all the provisions of the law with respect to the
10 deposit of state funds by such Treasurer. All interest earned
11 by such portion of the fund as may be invested by the
12 Treasurer shall be collected by him or her and placed to the
13 credit of such fund.

14 (4) All civil penalties provided in this chapter, if
15 not voluntarily paid, may be collected by civil suit brought
16 by the department ~~division~~ and shall be paid into such fund.

17 Section 44. Section 440.51, Florida Statutes, is
18 amended to read:

19 440.51 Expenses of administration.--

20 (1) The department ~~division~~ shall estimate annually in
21 advance the amounts necessary for the administration of this
22 chapter, in the following manner.

23 (a) The department ~~division~~ shall, by July 1 of each
24 year, notify carriers and self-insurers of the assessment
25 rate, which shall be based on the anticipated expenses of the
26 administration of this chapter for the next calendar year.
27 Such assessment rate shall take effect January 1 of the next
28 calendar year and shall be included in workers' compensation
29 rate filings approved by the Department of Insurance which
30 become effective on or after January 1 of the next calendar
31 year. Assessments shall become due and be paid quarterly.

1 (b) The total expenses of administration shall be
2 prorated among the carriers writing compensation insurance in
3 the state and self-insurers. The net premiums collected by
4 carriers and the amount of premiums calculated by the
5 department ~~division~~ for self-insured employers are the basis
6 for computing the amount to be assessed. When reporting
7 deductible policy premium for purposes of computing
8 assessments levied after July 1, 2001, full policy premium
9 value must be reported prior to application of deductible
10 discounts or credits. This amount may be assessed as a
11 specific amount or as a percentage of net premiums payable as
12 the department ~~division~~ may direct, provided such amount so
13 assessed shall not exceed 2.75 percent, beginning January 1,
14 2001, except during the interim period from July 1, 2000,
15 through December 31, 2000, such assessments shall not exceed 4
16 percent of such net premiums. The carriers may elect to make
17 the payments required under s. 440.15(1)(f) rather than having
18 these payments made by the department ~~division~~. In that
19 event, such payments will be credited to the carriers, and the
20 amount due by the carrier under this section will be reduced
21 accordingly.

22 (2) The department ~~division~~ shall provide by
23 regulation for the collection of the amounts assessed against
24 each carrier. Such amounts shall be paid within 30 days from
25 the date that notice is served upon such carrier. If such
26 amounts are not paid within such period, there may be assessed
27 for each 30 days the amount so assessed remains unpaid, a
28 civil penalty equal to 10 percent of the amount so unpaid,
29 which shall be collected at the same time and a part of the
30 amount assessed. For those carriers who excluded ceded
31 reinsurance premiums from their assessments prior to January

1 1, 2000, the department ~~division~~ shall not recover any past
2 underpayments of assessments related to ceded reinsurance
3 premiums prior to January 1, 2001, against such carriers.

4 (3) If any carrier fails to pay the amounts assessed
5 against him or her under the provisions of this section within
6 60 days from the time such notice is served upon him or her,
7 the Department of Insurance ~~upon being advised by the division~~
8 may suspend or revoke the authorization to insure compensation
9 in accordance with the procedure in s. 440.38(3)(a). The
10 department ~~division~~ may permit a carrier to remit any
11 underpayment of assessments for assessments levied after
12 January 1, 2001.

13 (4) All amounts collected under the provisions of this
14 section shall be paid into the fund established in s. 440.50.

15 (5) Any amount so assessed against and paid by an
16 insurance carrier, self-insurer authorized pursuant to s.
17 624.4621, or commercial self-insurance fund authorized under
18 ss. 624.460-624.488 shall be allowed as a deduction against
19 the amount of any other tax levied by the state upon the
20 premiums, assessments, or deposits for workers' compensation
21 insurance on contracts or policies of said insurance carrier,
22 self-insurer, or commercial self-insurance fund. Any insurance
23 carrier claiming such a deduction against the amount of any
24 such tax shall not be required to pay any additional
25 retaliatory tax levied pursuant to s. 624.5091 as a result of
26 claiming such deduction. Because deductions under this
27 subsection are available to insurance carriers, s. 624.5091
28 does not limit such deductions in any manner.

29 (6)(a) The department ~~division~~ may require from each
30 carrier, at such time and in accordance with such regulations
31 as the department ~~division~~ may prescribe, reports in respect

1 to all gross earned premiums and of all payments of
2 compensation made by such carrier during each prior period,
3 and may determine the amounts paid by each carrier and the
4 amounts paid by all carriers during such period.

5 (b) The Department of Insurance may require from each
6 self-insurer, at such time and in accordance with such
7 regulations as the Department of Insurance prescribes, reports
8 in respect to wages paid, the amount of premiums such
9 self-insurer would have to pay if insured, and all payments of
10 compensation made by such self-insurer during each prior
11 period, and may determine the amounts paid by each
12 self-insurer and the amounts paid by all self-insurers during
13 such period. For the purposes of this section, the payroll
14 records of each self-insurer shall be open to annual
15 inspection and audit by the Department of Insurance or its
16 authorized representative, during regular business hours; and
17 if any audit of such records of a self-insurer discloses a
18 deficiency in the amounts reported to the Department of
19 Insurance or in the amounts paid to the Department of
20 Insurance by a self-insurer pursuant to this section, the
21 Department of Insurance may assess the cost of such audit
22 against the self-insurer.

23 (7) The department ~~division~~ shall keep accumulated
24 cost records of all injuries occurring within the state coming
25 within the purview of this chapter on a policy and
26 calendar-year basis. For the purpose of this chapter, a
27 "calendar year" is defined as the year in which the injury is
28 reported to the department ~~division~~; "policy year" is defined
29 as that calendar year in which the policy becomes effective,
30 and the losses under such policy shall be chargeable against
31 the policy year so defined.

1 (8) The department ~~division~~ shall assign an account
2 number to each employer under this chapter and an account
3 number to each insurance carrier authorized to write workers'
4 compensation insurance in the state; and it shall be the duty
5 of the department ~~division~~ under the account number so
6 assigned to keep the cost experience of each carrier and the
7 cost experience of each employer under the account number so
8 assigned by calendar and policy year, as above defined.

9 (9) In addition to the above, it shall be the duty of
10 the department ~~division~~ to keep the accident experience, as
11 classified by the department ~~division~~, by industry as follows:

- 12 (a) Cause of the injury;
13 (b) Nature of the injury; and
14 (c) Type of disability.

15 (10) In every case where the duration of disability
16 exceeds 30 days, the carrier shall establish a sufficient
17 reserve to pay all benefits to which the injured employee, or
18 in case of death, his or her dependents, may be entitled to
19 under the law. In establishing the reserve, consideration
20 shall be given to the nature of the injury, the probable
21 period of disability, and the estimated cost of medical
22 benefits.

23 (11) The department ~~division~~ shall furnish to any
24 employer or carrier, upon request, its individual experience.
25 ~~The division shall furnish to the Department of Insurance,~~
26 ~~upon request, the Florida experience as developed under~~
27 ~~accident year or calendar year.~~

28 (12) In addition to any other penalties provided by
29 this law, the failure to submit any report or other
30 information required by this law shall be just cause to
31 suspend the right of a self-insurer to operate as such, or,

1 ~~upon certification by the division to the Department of~~
2 ~~insurance that a carrier has failed or refused to furnish such~~
3 ~~reports,~~ shall be just cause for the Department of Insurance
4 to suspend or revoke the license of such carrier.

5 (13) As used in s. 440.50 and this section, the term:

6 (a) "Plan" means the workers' compensation joint
7 underwriting plan provided for in s. 627.311(4).

8 (b) "Fixed administrative expenses" means the expenses
9 of the plan, not to exceed \$750,000, which are directly
10 related to the plan's administration but which do not vary in
11 direct relationship to the amount of premium written by the
12 plan and which do not include loss adjustment premiums.

13 (14) Before July 1 in each year, the plan shall notify
14 the department ~~division~~ of the amount of the plan's gross
15 written premiums for the preceding calendar year. Whenever the
16 plan's gross written premiums reported to the department
17 ~~division~~ are less than \$30 million, the department ~~division~~
18 shall transfer to the plan, subject to appropriation by the
19 Legislature, an amount not to exceed the plan's fixed
20 administrative expenses for the preceding calendar year.

21 Section 45. Section 440.52, Florida Statutes, is
22 amended to read:

23 440.52 Registration of insurance carriers; notice of
24 cancellation or expiration of policy; suspension or revocation
25 of authority.--

26 ~~(1) Each insurance carrier who desires to write such~~
27 ~~compensation insurance in compliance with this chapter shall~~
28 ~~be required, before writing such insurance, to register with~~
29 ~~the division and pay a registration fee of \$100. This shall be~~
30 ~~deposited by the division in the fund created by s. 440.50.~~

31

1 (1)~~(2)~~ A carrier or self-insurance fund that receives
2 notice pursuant to s. 440.05 shall notify the contractor of
3 the cancellation or expiration of the insurance.

4 (2)~~(3)~~ If the department ~~division~~ finds, after due
5 notice and a hearing at which the insurance carrier is
6 entitled to be heard in person or by counsel and present
7 evidence, that the insurance carrier has repeatedly failed to
8 comply with its obligations under this chapter, the department
9 ~~division~~ may ~~request the Department of Insurance to~~ suspend or
10 revoke the authorization of such insurance carrier to write
11 workers' compensation insurance under this chapter. Such
12 suspension or revocation shall not affect the liability of any
13 such insurance carrier under policies in force prior to the
14 suspension or revocation.

15 (3)~~(4)~~ In addition to the penalties prescribed in
16 subsection (3), violation of s. 440.381 by an insurance
17 carrier shall result in the imposition of a fine not to exceed
18 \$1,000 per audit, if the insurance carrier fails to act on
19 said audits by correcting errors in employee classification or
20 accepted applications for coverage where it knew employee
21 classifications were incorrect. Such fines shall be levied by
22 the Department of Insurance and deposited into the Insurance
23 Commissioner's Regulatory Trust Fund.

24 Section 46. Section 440.525, Florida Statutes, is
25 amended to read:

26 440.525 Examination of carriers.--~~Beginning July 1,~~
27 ~~1994, The Division of Workers' Compensation of the department~~
28 ~~of Labor and Employment Security~~ may examine each carrier as
29 often as is warranted to ensure that carriers are fulfilling
30 their obligations under the law, ~~and shall examine each~~
31 ~~carrier not less frequently than once every 3 years. The~~

1 ~~examination must cover the preceding 3 fiscal years of the~~
2 ~~carrier's operations and must commence within 12 months after~~
3 ~~the end of the most recent fiscal year being covered by the~~
4 ~~examination.~~The examination may cover any period of the
5 carrier's operations since the last previous examination.

6 Section 47. Section 440.572, Florida Statutes, is
7 amended to read:

8 440.572 Authorization for individual self-insurer to
9 provide coverage.--An individual self-insurer having a net
10 worth of not less than \$250 million as authorized by s.
11 440.38(1)(f) may assume by contract the liabilities under this
12 chapter of contractors and subcontractors, or each of them,
13 employed by or on behalf of such individual self-insurer when
14 performing work on or adjacent to property owned or used by
15 the individual self-insurer by the department ~~division~~. The
16 net worth of the individual self-insurer shall include the
17 assets of the self-insurer's parent company and its
18 subsidiaries, sister companies, affiliated companies, and
19 other related entities, located within the geographic
20 boundaries of the state.

21 Section 48. Section 440.59, Florida Statutes, is
22 amended to read:

23 440.59 Reporting requirements.--
24 (1) The department ~~of Labor and Employment Security~~
25 shall annually prepare a report of the administration of this
26 chapter for the preceding calendar year, including a detailed
27 statement of the receipts of and expenditures from the fund
28 established in s. 440.50 and a statement of the causes of the
29 accidents leading to the injuries for which the awards were
30 made, together with such recommendations as the department
31 considers advisable. On or before September 15 of each year,

1 the department shall submit a copy of the report to the
2 Governor, the President of the Senate, the Speaker of the
3 House of Representatives, the Democratic and Republican
4 Leaders of the Senate and the House of Representatives, and
5 the chairs of the legislative committees having jurisdiction
6 over workers' compensation.

7 (2) ~~The Division of Workers' Compensation of the~~
8 ~~department of Labor and Employment Security shall~~ periodically
9 ~~complete on a quarterly basis an analysis of the~~ previous
10 ~~quarter's~~ injuries which resulted in workers' compensation
11 claims as deemed necessary by the department. The analysis
12 shall include the information, data, and statistics deemed
13 relevant by the department ~~be broken down by risk~~
14 ~~classification, shall show for each such risk classification~~
15 ~~the frequency and severity for the various types of injury,~~
16 ~~and shall include an analysis of the causes of such injuries.~~
17 The department ~~division~~ shall make available ~~distribute~~ to
18 each employer and self-insurer in the state covered by the
19 Workers' Compensation Law the data relevant to its workforce.
20 The report shall also be distributed to the insurers
21 authorized to write workers' compensation insurance in the
22 state.

23 (3) The department ~~division~~ shall annually prepare a
24 closed claim report for all claims for which the employee lost
25 more than 7 days from work and shall submit a copy of the
26 report to the Governor, the President of the Senate, the
27 Speaker of the House of Representatives, the Democratic and
28 Republican Leaders of the Senate and the House of
29 Representatives, and the chairs of the legislative committees
30 having jurisdiction over workers' compensation on or before
31 September 15 of each year. The closed claim report shall

1 include information, data, and statistics deemed relevant by
2 the department, but not be limited to, an analysis of all
3 ~~claims closed during the preceding year as to the date of~~
4 ~~accident, age of the injured employee, occupation of the~~
5 ~~injured employee, type of injury, body part affected, type and~~
6 ~~duration of indemnity benefits paid, permanent impairment~~
7 ~~rating, medical benefits identified by type of health care~~
8 ~~provider, and type and cost of any rehabilitation benefits~~
9 ~~provided.~~

10 (4) The department ~~division~~ shall prepare an annual
11 report for all claims for which the employee lost more than 7
12 days from work and shall submit a copy of the report to the
13 Governor, the President of the Senate, the Speaker of the
14 House of Representatives, the Democratic and Republican
15 Leaders of the Senate and the House of Representatives, and
16 the chairs of the legislative committees having jurisdiction
17 over workers' compensation, on or before September 15 of each
18 year. The annual report shall include information, data, and
19 statistics deemed relevant by the department ~~a status report~~
20 ~~on all cases involving work-related injuries in the previous~~
21 ~~10 years. The annual report shall include, but not be limited~~
22 ~~to, the number of open and closed cases, the number of cases~~
23 ~~receiving various types of benefits, the cash and medical~~
24 ~~benefits paid between the date of injury and the evaluation~~
25 ~~date, the number of litigated cases, and the amount of~~
26 ~~attorney's fees paid in each case.~~

27 (5) The Chief Judge must prepare an annual report
28 summarizing the disposition of mediation conferences and must
29 submit the report to the Governor, the President of the
30 Senate, the Speaker of the House of Representatives, the
31 Democratic and Republican Leaders of the Senate and the House

1 of Representatives, and the chairs of the legislative
2 committees having jurisdiction over workers' compensation, on
3 or before September 15 of each year.

4 Section 49. Section 440.591, Florida Statutes, is
5 amended to read:

6 440.591 Administrative procedure; rulemaking
7 authority.--The department and the agency have ~~division has~~
8 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
9 to implement the provisions of this chapter conferring duties
10 upon it.

11 Section 50. Section 440.593, Florida Statutes, is
12 amended to read:

13 440.593 Electronic reporting.--The department ~~division~~
14 may establish by rule an electronic reporting system whereby
15 an employer or carrier is required to submit information
16 electronically rather than by filing otherwise required forms
17 or reports. The department ~~division~~ may by rule establish
18 different deadlines for reporting information to the
19 department ~~division~~ via the electronic reporting system than
20 are otherwise required.

21 Section 51. Subsection (3) of section 468.529, Florida
22 Statutes, is amended to read:

23 468.529 Licensee's insurance; employment tax; benefit
24 plans.--

25 (3) A licensed employee leasing company shall within
26 30 days of initiation or termination notify its workers'
27 compensation insurance carrier, the Department of Insurance
28 ~~Division of Workers' Compensation~~, and the Division of
29 Unemployment Compensation of the Department of Labor and
30 Employment Security of both the initiation or the termination
31 of the company's relationship with any client company.

1 Section 52. Paragraph (m) of subsection (1) of section
2 626.88, Florida Statutes, is amended to read:

3 626.88 Definitions of "administrator" and "insurer".--

4 (1) For the purposes of this part, an "administrator"
5 is any person who directly or indirectly solicits or effects
6 coverage of, collects charges or premiums from, or adjusts or
7 settles claims on residents of this state in connection with
8 authorized commercial self-insurance funds or with insured or
9 self-insured programs which provide life or health insurance
10 coverage or coverage of any other expenses described in s.

11 624.33(1), other than any of the following persons:

12 (m) A person approved by the Department of Insurance
13 ~~Division of Workers' Compensation of the Department of Labor~~
14 ~~and Employment Security~~ who administers only self-insured
15 workers' compensation plans.

16 Section 53. Subsection (9) of section 626.989, Florida
17 Statutes, is amended to read:

18 626.989 Investigation by department or Division of
19 Insurance Fraud; compliance; immunity; confidential
20 information; reports to division; division investigator's
21 power of arrest.--

22 (9) In recognition of the complementary roles of
23 investigating instances of workers' compensation fraud and
24 enforcing compliance with the workers' compensation coverage
25 requirements under chapter 440, the Division of Insurance
26 Fraud of the Department of Insurance is ~~and the Division of~~
27 ~~Workers' Compensation of the Department of Labor and~~
28 ~~Employment Security~~ are directed to prepare and submit a joint
29 performance report to the President of the Senate and the
30 Speaker of the House of Representatives by November 1 of each
31 year for each of the next 2 years, and then every 3 years

1 thereafter, describing the results obtained in achieving
2 compliance with the workers' compensation coverage
3 requirements and reducing the incidence of workers'
4 compensation fraud.

5 Section 54. Section 627.0915, Florida Statutes, is
6 amended to read:

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

25 Section 55. Subsection (5) of section 627.914, Florida
26 Statutes, is amended to read:

27 627.914 Reports of information by workers'
28 compensation insurers required.--

29 (5) Self-insurers authorized to transact workers'
30 compensation insurance as provided in s. 440.02 shall report
31 only Florida data as prescribed in paragraphs (a)-(e) of

1 subsection (4) to the department ~~Division of Workers'~~
2 ~~Compensation of the Department of Labor and Employment~~
3 ~~Security.~~

4 (a) The department ~~Division of Workers' Compensation~~
5 shall publish the dates and forms necessary to enable
6 self-insurers to comply with this section.

7 ~~(b) The Division of Workers' Compensation shall report~~
8 ~~the information collected under this section to the Department~~
9 ~~of Insurance in a manner prescribed by the department.~~

10 ~~(b)(c)~~ A statistical or rating organization may be
11 used by self-insurers for the purposes of reporting the data
12 required by this section and calculating experience ratings.

13 Section 56. This act does not affect the validity of
14 any judicial or administrative proceeding involving the
15 Department of Labor and Employment Security which is pending
16 as of the effective date of any transfer under this act. The
17 successor department, agency, or entity responsible for the
18 program, activity, or function relative to the proceeding
19 shall be substituted, as of the effective date of the
20 applicable transfer under this act, for the Department of
21 Labor and Employment Security as a party in interest in any
22 such proceedings.

23 Section 57. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 invalidity does not affect other provisions or applications of
26 the act which can be given effect without the invalid
27 provision or application, and to this end the provisions of
28 this act are severable.

29 Section 58. Subsections (1) and (5) of section
30 624.3161, Florida Statutes, are amended to read:

31 624.3161 Market conduct examinations.--

1 (1) As often as it deems necessary, the department
2 shall examine each licensed rating organization, each advisory
3 organization, each group, association, or other organization
4 of insurers which engages in joint underwriting or joint
5 reinsurance, and each authorized insurer transacting in this
6 state any class of insurance to which the provisions of
7 chapter 627 are applicable. The examination shall be for the
8 purpose of ascertaining compliance by the person examined with
9 the applicable provisions of chapters 440,624, 626, 627, and
10 635.

11 (5) Such examinations shall also be subject to the
12 applicable provisions of ss. 624.318, 624.319, 624.321, and
13 624.322 and chapter 440.

14 Section 59. This act shall take effect October 1,
15 2001.

16
17 *****

18 SENATE SUMMARY

19 Transfers the Division of Workers' Compensation from the
20 Department of Labor and Employment Security to the
21 Department of Insurance and transfers various powers,
22 duties, functions, personnel, and assets relating to
23 workers' compensation to the Department of Insurance, the
24 Department of Education, and the Agency for Health Care
25 Administration.
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