

By the Committee on Banking and Insurance; and Senator Clary

311-1786-01

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.; removing 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 legislative intent; providing  
8 effective dates.

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

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

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

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

19 (3) The Office of the Judges of Compensation Claims is  
20 transferred by a type two transfer, as defined in section  
21 20.06(2), Florida Statutes, from the Department of Labor and  
22 Employment Security to the Division of Administrative Hearings  
23 of the Department of Management Services.

24 (4) Four positions within the Division of Workers'  
25 Compensation of the Department of Labor and Employment  
26 Security responsible for coding or entering data contained  
27 within final orders issued by the judges of compensation  
28 claims are transferred by a type two transfer, as defined in  
29 section 20.06(2), Florida Statutes, to the Office of the  
30 Judges of Compensation Claims within the Division of

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1 Administrative Hearings of the Department of Management  
2 Services.  
3 (5) Ten positions within the Division of Workers'  
4 Compensation of the Department of Labor and Employment  
5 Security responsible for receiving and preparing docketing  
6 orders for the petitions for benefits and for receiving and  
7 entering data related to the petitions for benefits are  
8 transferred by a type two transfer, as defined in section  
9 20.06(2), Florida Statutes, to the Office of the Judges of  
10 Compensation Claims within the Division of Administrative  
11 Hearings of the Department of Management Services.  
12 (6) Four positions within the Division of Workers'  
13 Compensation of the Department of Labor and Employment  
14 Security responsible for financial management, accounting, and  
15 budgeting for the Office of the Judges of Compensation Claims  
16 are transferred by a type two transfer, as defined in section  
17 20.06(2), Florida Statutes, to the Office of the Judges of  
18 Compensation Claims within the Division of Administrative  
19 Hearings of the Department of Management Services.  
20 (7) Twenty-nine full-time equivalent positions from  
21 the Division of Workers' Compensation of the Department of  
22 Labor and Employment Security and the records, property, and  
23 unexpended balances of appropriations, allocations, and other  
24 funds related to oversight of medical services in workers'  
25 compensation provider relations, dispute and complaint  
26 resolution, program evaluation, and data management are  
27 transferred by a type two transfer, as defined in section  
28 20.06(2), Florida Statutes, from the Department of Labor and  
29 Employment Security to the Agency for Health Care  
30 Administration. However, the claims review functions and  
31

1 three-member panel shall not be so transferred and shall be  
2 retained by the Department of Insurance.

3 (8) All statutory powers, duties, functions, rules,  
4 records, personnel, property, and unexpended balances of  
5 appropriations, allocations, and other funds of the Division  
6 of Workers' Compensation, Office of Medical Services and  
7 Rehabilitation, related to reemployment, training and  
8 education, obligations to rehire, and preferred worker  
9 requirements, consisting of 98 full-time equivalent positions,  
10 are 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 Department of Education.

13 (9) Except as provided in this section, the records,  
14 property, and unexpended balances of appropriations,  
15 allocations, and other funds and resources of the Office of  
16 the Secretary and the Office of Administrative Services of the  
17 Department of Labor and Employment Security which support the  
18 activities and functions of the Division of Workers'  
19 Compensation are transferred by a type two transfer as defined  
20 in section 20.06(2), Florida Statutes, to the Department of  
21 Insurance. The Department of Insurance, in consultation with  
22 the Department of Labor and Employment Security, shall  
23 determine the number of positions needed for administrative  
24 support of the programs within the Division of Workers'  
25 Compensation as transferred to the Department of Insurance.  
26 The number of administrative support positions that the  
27 Department of Insurance determines is needed may not exceed  
28 the number of administrative support positions that was  
29 authorized for the Department of Labor and Employment Security  
30 for this purpose prior to the transfer. Upon transfer of the  
31 Division of Workers' Compensation, the number of required

1 administrative support positions as determined by the  
2 Department of Insurance shall be authorized within the  
3 Department of Insurance.

4 (10) All the personnel, records, property, and  
5 unexpended balances of appropriations, allocations, and other  
6 funds and resources of the Office of the Secretary and the  
7 Office of Administrative Services of the Department of Labor  
8 and Employment Security which support the activities and  
9 functions transferred under subsections (7) and (8) to the  
10 Agency for Health Care Administration are transferred by a  
11 type two transfer as defined in section 20.06(2), Florida  
12 Statutes, to the Agency for Health Care Administration.

13 (11) The records, property, and unexpended balances of  
14 appropriations, allocations, and other funds and resources of  
15 the Office of the Secretary and the Office of Administrative  
16 Services of the Department of Labor and Employment Security  
17 which support the activities and functions transferred under  
18 subsection (8) to the Department of Education are transferred  
19 by a type two transfer as defined in section 20.06(2), Florida  
20 Statutes, to the Department of Education.

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

23 20.13 Department of Insurance.--There is created a  
24 Department of Insurance.

25 (2) The following divisions of the Department of  
26 Insurance are established:

27 (k) Division of Workers' Compensation.

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

30 20.171 Department of Labor and Employment  
31 Security.--There is created a Department of Labor and

1 Employment Security. The department shall operate its programs  
2 in a decentralized fashion.

3 (4)(a) The Assistant Secretary for Programs and  
4 Operations must possess a broad knowledge of the  
5 administrative, financial, and technical aspects of the  
6 divisions within the department.

7 (b) The assistant secretary is responsible for  
8 developing, monitoring, and enforcing policy and managing  
9 major technical programs and supervising the Bureau of Appeals  
10 of the Division of Unemployment Compensation. The  
11 responsibilities and duties of the position include, but are  
12 not limited to, the following functional areas:

13 ~~1. Workers' compensation management and policy~~  
14 ~~implementation.~~

15 1.2. Unemployment compensation management and policy  
16 implementation.

17 2.3. Blind services management and policy  
18 implementation.

19 3.4. Oversight of the five field offices and any local  
20 offices.

21 (5) The following divisions are established and shall  
22 be headed by division directors who shall be supervised by and  
23 shall be responsible to the Assistant Secretary for Programs  
24 and Operations:

25 (a) Division of Unemployment Compensation.

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

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

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

29 Section 4. Section 440.015, Florida Statutes, is  
30 amended to read:

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1           440.015 Legislative intent.--It is the intent of the  
2 Legislature that the Workers' Compensation Law be interpreted  
3 so as to assure the quick and efficient delivery of disability  
4 and medical benefits to an injured worker and to facilitate  
5 the worker's return to gainful reemployment at a reasonable  
6 cost to the employer. It is the specific intent of the  
7 Legislature that workers' compensation cases shall be decided  
8 on their merits. The workers' compensation system in Florida  
9 is based on a mutual renunciation of common-law rights and  
10 defenses by employers and employees alike. In addition, it is  
11 the intent of the Legislature that the facts in a workers'  
12 compensation case are not to be interpreted liberally in favor  
13 of either the rights of the injured worker or the rights of  
14 the employer. Additionally, the Legislature hereby declares  
15 that disputes concerning the facts in workers' compensation  
16 cases are not to be given a broad liberal construction in  
17 favor of the employee on the one hand or of the employer on  
18 the other hand, and the laws pertaining to workers'  
19 compensation are to be construed in accordance with the basic  
20 principles of statutory construction and not liberally in  
21 favor of either employee or employer. It is the intent of the  
22 Legislature to ensure the prompt delivery of benefits to the  
23 injured worker. Therefore, an efficient and self-executing  
24 system must be created which is not an economic or  
25 administrative burden. The Division of Workers' Compensation  
26 of the Department of Insurance, the Department of Education,  
27 and the Agency for Health Care Administration shall administer  
28 the Workers' Compensation Law in a manner that ~~which~~  
29 facilitates the self-execution of the system and the process  
30 of ensuring a prompt and cost-effective delivery of payments.  
31



1           Section 5. Subsections (11), (13), and (14) of section  
2 440.02, Florida Statutes, are amended, and subsection (40) is  
3 added to that section, to read:

4           440.02 Definitions.--When used in this chapter, unless  
5 the context clearly requires otherwise, the following terms  
6 shall have the following meanings:

7           (11) "Department" means the Department of Insurance  
8 ~~Labor and Employment Security~~.

9           (13) "Division" means the Division of Workers'  
10 Compensation of the Department of Insurance ~~Labor and~~  
11 ~~Employment Security~~.

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

17           (b) "Employee" includes any person who is an officer  
18 of a corporation and who performs services for remuneration  
19 for such corporation within this state, whether or not such  
20 services are continuous.

21           1. Any officer of a corporation may elect to be exempt  
22 from this chapter by filing written notice of the election  
23 with the department ~~division~~ as provided in s. 440.05.

24           2. As to officers of a corporation who are actively  
25 engaged in the construction industry, no more than three  
26 officers may elect to be exempt from this chapter by filing  
27 written notice of the election with the department ~~division~~ as  
28 provided in s. 440.05.

29           3. An officer of a corporation who elects to be exempt  
30 from this chapter by filing a written notice of the election  
31

1 with the department ~~division~~ as provided in s. 440.05 is not  
2 an employee.

3

4 Services are presumed to have been rendered to the corporation  
5 if the officer is compensated by other than dividends upon  
6 shares of stock of the corporation which the officer owns.

7 (c) "Employee" includes a sole proprietor or a partner  
8 who devotes full time to the proprietorship or partnership  
9 and, except as provided in this paragraph, elects to be  
10 included in the definition of employee by filing notice  
11 thereof as provided in s. 440.05. Partners or sole proprietors  
12 actively engaged in the construction industry are considered  
13 employees unless they elect to be excluded from the definition  
14 of employee by filing written notice of the election with the  
15 department ~~division~~ as provided in s. 440.05. However, no more  
16 than three partners in a partnership that is actively engaged  
17 in the construction industry may elect to be excluded. A sole  
18 proprietor or partner who is actively engaged in the  
19 construction industry and who elects to be exempt from this  
20 chapter by filing a written notice of the election with the  
21 department ~~division~~ as provided in s. 440.05 is not an  
22 employee. For purposes of this chapter, an independent  
23 contractor is an employee unless he or she meets all of the  
24 conditions set forth in subparagraph (d)1.

25 (d) "Employee" does not include:

26 1. An independent contractor, if:

27 a. The independent contractor maintains a separate  
28 business with his or her own work facility, truck, equipment,  
29 materials, or similar accommodations;

30 b. The independent contractor holds or has applied for  
31 a federal employer identification number, unless the

1 independent contractor is a sole proprietor who is not  
2 required to obtain a federal employer identification number  
3 under state or federal requirements;

4 c. The independent contractor performs or agrees to  
5 perform specific services or work for specific amounts of  
6 money and controls the means of performing the services or  
7 work;

8 d. The independent contractor incurs the principal  
9 expenses related to the service or work that he or she  
10 performs or agrees to perform;

11 e. The independent contractor is responsible for the  
12 satisfactory completion of work or services that he or she  
13 performs or agrees to perform and is or could be held liable  
14 for a failure to complete the work or services;

15 f. The independent contractor receives compensation  
16 for work or services performed for a commission or on a  
17 per-job or competitive-bid basis and not on any other basis;

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

20 h. The independent contractor has continuing or  
21 recurring business liabilities or obligations; and

22 i. The success or failure of the independent  
23 contractor's business depends on the relationship of business  
24 receipts to expenditures.

25  
26 However, the determination as to whether an individual  
27 included in the Standard Industrial Classification Manual of  
28 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
29 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
30 2448, or 2449, or a newspaper delivery person, is an  
31 independent contractor is governed not by the criteria in this

1 paragraph but by common-law principles, giving due  
2 consideration to the business activity of the individual.

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

6           3. Bands, orchestras, and musical and theatrical  
7 performers, including disk jockeys, performing in licensed  
8 premises as defined in chapter 562, if a written contract  
9 evidencing an independent contractor relationship is entered  
10 into before the commencement of such entertainment.

11           4. An owner-operator of a motor vehicle who transports  
12 property under a written contract with a motor carrier which  
13 evidences a relationship by which the owner-operator assumes  
14 the responsibility of an employer for the performance of the  
15 contract, if the owner-operator is required to furnish the  
16 necessary motor vehicle equipment and all costs incidental to  
17 the performance of the contract, including, but not limited  
18 to, fuel, taxes, licenses, repairs, and hired help; and the  
19 owner-operator is paid a commission for transportation service  
20 and is not paid by the hour or on some other time-measured  
21 basis.

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

25           6. A volunteer, except a volunteer worker for the  
26 state or a county, municipality, or other governmental entity.  
27 A person who does not receive monetary remuneration for  
28 services is presumed to be a volunteer unless there is  
29 substantial evidence that a valuable consideration was  
30 intended by both employer and employee. For purposes of this  
31 chapter, the term "volunteer" includes, but is not limited to:

1           a. Persons who serve in private nonprofit agencies and  
2 who receive no compensation other than expenses in an amount  
3 less than or equivalent to the standard mileage and per diem  
4 expenses provided to salaried employees in the same agency or,  
5 if such agency does not have salaried employees who receive  
6 mileage and per diem, then such volunteers who receive no  
7 compensation other than expenses in an amount less than or  
8 equivalent to the customary mileage and per diem paid to  
9 salaried workers in the community as determined by the  
10 department ~~division~~; and

11           b. Volunteers participating in federal programs  
12 established under Pub. L. No. 93-113.

13           7. Any officer of a corporation who elects to be  
14 exempt from this chapter.

15           8. A sole proprietor or officer of a corporation who  
16 actively engages in the construction industry, and a partner  
17 in a partnership that is actively engaged in the construction  
18 industry, who elects to be exempt from the provisions of this  
19 chapter. Such sole proprietor, officer, or partner is not an  
20 employee for any reason until the notice of revocation of  
21 election filed pursuant to s. 440.05 is effective.

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

28           10. A taxicab, limousine, or other passenger  
29 vehicle-for-hire driver who operates said vehicles pursuant to  
30 a written agreement with a company which provides any  
31 dispatch, marketing, insurance, communications, or other

1 services under which the driver and any fees or charges paid  
2 by the driver to the company for such services are not  
3 conditioned upon, or expressed as a proportion of, fare  
4 revenues.

5 (40) "Agency" means the Agency for Health Care  
6 Administration.

7 Section 6. Section 440.021, Florida Statutes, is  
8 amended to read:

9 440.021 Exemption of workers' compensation from  
10 chapter 120.--Workers' compensation adjudications by judges of  
11 compensation claims are exempt from chapter 120, and no judge  
12 of compensation claims shall be considered an agency or a part  
13 thereof. Communications of the result of investigations by the  
14 department ~~division~~ pursuant to s. 440.185(4) are exempt from  
15 chapter 120. In all instances in which the department ~~division~~  
16 institutes action to collect a penalty or interest which may  
17 be due pursuant to this chapter, the penalty or interest shall  
18 be assessed without hearing, and the party against which such  
19 penalty or interest is assessed shall be given written notice  
20 of such assessment and shall have the right to protest within  
21 20 days of such notice. Upon receipt of a timely notice of  
22 protest and after such investigation as may be necessary, the  
23 department ~~division~~ shall, if it agrees with such protest,  
24 notify the protesting party that the assessment has been  
25 revoked. If the department ~~division~~ does not agree with the  
26 protest, it shall refer the matter to the judge of  
27 compensation claims for determination pursuant to s.  
28 440.25(2)-(5). Such action of the department ~~division~~ is  
29 exempt from the provisions of chapter 120.

30 Section 7. Section 440.05, Florida Statutes, is  
31 amended to read:

1           440.05 Election of exemption; revocation of election;  
2 notice; certification.--

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

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

13           (3) Each sole proprietor, partner, or officer of a  
14 corporation who is actively engaged in the construction  
15 industry and who elects an exemption from this chapter or who,  
16 after electing such exemption, revokes that exemption, must  
17 mail a written notice to such effect to the department  
18 ~~division~~ on a form prescribed by the department ~~division~~  
19 notice of election to be exempt from the provisions of this  
20 chapter must be notarized and under oath. The notice of  
21 election to be exempt which is submitted to the department  
22 ~~division~~ by the sole proprietor, partner, or officer of a  
23 corporation must list the name, federal tax identification  
24 number, social security number, all certified or registered  
25 licenses issued pursuant to chapter 489 held by the person  
26 seeking the exemption, a copy of relevant documentation as to  
27 employment status filed with the Internal Revenue Service as  
28 specified by the department ~~division~~, a copy of the relevant  
29 occupational license in the primary jurisdiction of the  
30 business, and, for corporate officers and partners, the  
31 registration number of the corporation or partnership filed

1 with the Division of Corporations of the Department of State.  
2 The notice of election to be exempt must identify each sole  
3 proprietorship, partnership, or corporation that employs the  
4 person electing the exemption and must list the social  
5 security number or federal tax identification number of each  
6 such employer and the additional documentation required by  
7 this section. In addition, the notice of election to be exempt  
8 must provide that the sole proprietor, partner, or officer  
9 electing an exemption is not entitled to benefits under this  
10 chapter, must provide that the election does not exceed  
11 exemption limits for officers and partnerships provided in s.  
12 440.02, and must certify that any employees of the sole  
13 proprietor, partner, or officer electing an exemption are  
14 covered by workers' compensation insurance. Upon receipt of  
15 the notice of the election to be exempt, receipt of all  
16 application fees, and a determination by the department  
17 ~~division~~ that the notice meets the requirements of this  
18 subsection, the department ~~division~~ shall issue a  
19 certification of the election to the sole proprietor, partner,  
20 or officer, unless the department ~~division~~ determines that the  
21 information contained in the notice is invalid. The department  
22 ~~division~~ shall revoke a certificate of election to be exempt  
23 from coverage upon a determination by the department ~~division~~  
24 that the person does not meet the requirements for exemption  
25 or that the information contained in the notice of election to  
26 be exempt is invalid. The certificate of election must list  
27 the names of the sole proprietorship, partnership, or  
28 corporation listed in the request for exemption. A new  
29 certificate of election must be obtained each time the person  
30 is employed by a new sole proprietorship, partnership, or  
31 corporation that is not listed on the certificate of election.



1 A copy of the certificate of election must be sent to each  
2 workers' compensation carrier identified in the request for  
3 exemption. Upon filing a notice of revocation of election, a  
4 sole proprietor, partner, or officer who is a subcontractor  
5 must notify her or his contractor. Upon revocation of a  
6 certificate of election of exemption by the department  
7 ~~division~~, the department ~~division~~ shall notify the workers'  
8 compensation carriers identified in the request for exemption.

9 (4) The notice of election to be exempt from the  
10 provisions of this chapter must contain a notice that clearly  
11 states in substance the following: "Any person who, knowingly  
12 and with intent to injure, defraud, or deceive the department  
13 ~~division~~ or any employer or employee, insurance company, or  
14 purposes program, files a notice of election to be exempt  
15 containing any false or misleading information is guilty of a  
16 felony of the third degree." Each person filing a notice of  
17 election to be exempt shall personally sign the notice and  
18 attest that he or she has reviewed, understands, and  
19 acknowledges the foregoing notice.

20 (5) A notice given under subsection (1), subsection  
21 (2), or subsection (3) shall become effective when issued by  
22 the department ~~division~~ or 30 days after an application for an  
23 exemption is received by the department ~~division~~, whichever  
24 occurs first. However, if an accident or occupational disease  
25 occurs less than 30 days after the effective date of the  
26 insurance policy under which the payment of compensation is  
27 secured or the date the employer qualified as a self-insurer,  
28 such notice is effective as of 12:01 a.m. of the day following  
29 the date it is mailed to the department ~~division~~ in  
30 Tallahassee.

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

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

27           (8)(a) The department ~~division~~ must assess a fee of  
28 \$50 with each request for a construction industry certificate  
29 of election to be exempt or renewal of election to be exempt  
30 under this section.

31

1           (b) The funds collected by the department ~~division~~  
2 shall be used to administer this section, to audit the  
3 businesses that pay the fee for compliance with any  
4 requirements of this chapter, and to enforce compliance with  
5 the provisions of this chapter.

6           (9) The department ~~division~~ may by rule prescribe  
7 forms and procedures for filing an election of exemption,  
8 revocation of election to be exempt, and notice of election of  
9 coverage for all employers and require specified forms to be  
10 submitted by all employers in filing for the election of  
11 exemption. The department ~~division~~ may by rule prescribe forms  
12 and procedures for issuing a certificate of the election of  
13 exemption.

14           Section 8. Paragraph (d) of subsection (7) of section  
15 440.09, Florida Statutes, is amended to read:

16           440.09 Coverage.--

17           (7)

18           (d) The department ~~division~~ shall provide by rule for  
19 the authorization and regulation of drug-testing policies,  
20 procedures, and methods. Testing of injured employees shall  
21 not commence until such rules are adopted.

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

24           440.10 Liability for compensation.--

25           (1)

26           (f) If an employer willfully fails to secure  
27 compensation as required by this chapter, the department  
28 ~~division~~ may assess against the employer a penalty not to  
29 exceed \$5,000 for each employee of that employer who is  
30 classified by the employer as an independent contractor but  
31 who is found by the department ~~division~~ to not meet the

1 criteria for an independent contractor that are set forth in  
2 s. 440.02.

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

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

8 2. The independent contractor provides the general  
9 contractor with a valid certificate of workers' compensation  
10 insurance or a valid certificate of exemption issued by the  
11 department division.

12

13 A sole proprietor, partner, or officer of a corporation who  
14 elects exemption from this chapter by filing a certificate of  
15 election under s. 440.05 may not recover benefits or  
16 compensation under this chapter. An independent contractor  
17 who provides the general contractor with both an affidavit  
18 stating that he or she meets the requirements of s.  
19 440.02(14)(d) and a certificate of exemption is not an  
20 employee under s. 440.02(14)(c) and may not recover benefits  
21 under this chapter. For purposes of determining the  
22 appropriate premium for workers' compensation coverage,  
23 carriers may not consider any person who meets the  
24 requirements of this paragraph to be an employee.

25 Section 10. Subsection (2), paragraph (a) of  
26 subsection (3), and paragraph (g) of subsection (7) of section  
27 440.102, Florida Statutes, are amended to read:

28 440.102 Drug-free workplace program requirements.--The  
29 following provisions apply to a drug-free workplace program  
30 implemented pursuant to law or to rules adopted by the Agency  
31 for Health Care Administration:

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

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

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

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

25           a. The types of drug testing an employee or job  
26 applicant may be required to submit to, including  
27 reasonable-suspicion drug testing or drug testing conducted on  
28 any other basis.

29           b. The actions the employer may take against an  
30 employee or job applicant on the basis of a positive confirmed  
31 drug test result.

- 1           2. A statement advising the employee or job applicant  
2 of the existence of this section.
- 3           3. A general statement concerning confidentiality.
- 4           4. Procedures for employees and job applicants to  
5 confidentially report to a medical review officer the use of  
6 prescription or nonprescription medications to a medical  
7 review officer both before and after being tested.
- 8           5. A list of the most common medications, by brand  
9 name or common name, as applicable, as well as by chemical  
10 name, which may alter or affect a drug test. A list of such  
11 medications as developed by the Agency for Health Care  
12 Administration shall be available to employers through the  
13 Division of Workers' Compensation ~~of the Department of Labor~~  
14 ~~and Employment Security~~.
- 15           6. The consequences of refusing to submit to a drug  
16 test.
- 17           7. A representative sampling of names, addresses, and  
18 telephone numbers of employee assistance programs and local  
19 drug rehabilitation programs.
- 20           8. A statement that an employee or job applicant who  
21 receives a positive confirmed test result may contest or  
22 explain the result to the medical review officer within 5  
23 working days after receiving written notification of the test  
24 result; that if an employee's or job applicant's explanation  
25 or challenge is unsatisfactory to the medical review officer,  
26 the medical review officer shall report a positive test result  
27 back to the employer; and that a person may contest the drug  
28 test result pursuant to law or to rules adopted by the Agency  
29 for Health Care Administration.
- 30           9. A statement informing the employee or job applicant  
31 of his or her responsibility to notify the laboratory of any

1 administrative or civil action brought pursuant to this  
2 section.

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

6 11. A statement regarding any applicable collective  
7 bargaining agreement or contract and the right to appeal to  
8 the Public Employees Relations Commission or applicable court.

9 12. A statement notifying employees and job applicants  
10 of their right to consult with a medical review officer for  
11 technical information regarding prescription or  
12 nonprescription medication.

13 (7) EMPLOYER PROTECTION.--

14 (g) This section does not prohibit an employer from  
15 conducting medical screening or other tests required,  
16 permitted, or not disallowed by any statute, rule, or  
17 regulation for the purpose of monitoring exposure of employees  
18 to toxic or other unhealthy substances in the workplace or in  
19 the performance of job responsibilities. Such screening or  
20 testing is limited to the specific substances expressly  
21 identified in the applicable statute, rule, or regulation,  
22 unless prior written consent of the employee is obtained for  
23 other tests. Such screening or testing need not be in  
24 compliance with the rules adopted by the Agency for Health  
25 Care Administration under this chapter or under s. 112.0455. A  
26 public employer may, through the use of an unbiased selection  
27 procedure, conduct random drug tests of employees occupying  
28 safety-sensitive or special-risk positions if the testing is  
29 performed in accordance with drug-testing rules adopted by the  
30 Agency for Health Care Administration and the Department of  
31 Insurance ~~Labor and Employment Security~~. If applicable, random

1 drug testing must be specified in a collective bargaining  
2 agreement as negotiated by the appropriate certified  
3 bargaining agent before such testing is implemented.

4 Section 11. Section 440.103, Florida Statutes, is  
5 amended to read:

6 440.103 Building permits; identification of minimum  
7 premium policy.--Except as otherwise provided in this chapter,  
8 every employer shall, as a condition to receiving a building  
9 permit, show proof that it has secured compensation for its  
10 employees under this chapter as provided in ss. 440.10 and  
11 440.38. Such proof of compensation must be evidenced by a  
12 certificate of coverage issued by the carrier, a valid  
13 exemption certificate approved by the division or the  
14 department, or a copy of the employer's authority to  
15 self-insure and shall be presented each time the employer  
16 applies for a building permit. As provided in s. 627.413(5),  
17 each certificate of coverage must show, on its face, whether  
18 or not coverage is secured under the minimum premium  
19 provisions of rules adopted by rating organizations licensed  
20 by the Department of Insurance. The words "minimum premium  
21 policy" or equivalent language shall be typed, printed,  
22 stamped, or legibly handwritten.

23 Section 12. Paragraph (a) of subsection (2) of section  
24 440.105, Florida Statutes, is amended to read:

25 440.105 Prohibited activities; reports; penalties;  
26 limitations.--

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

30 (a) It shall be unlawful for any employer to  
31 knowingly:



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

4           2. Discharge or refuse to hire an employee or job  
5 applicant because the employee or applicant has filed a claim  
6 for benefits under this chapter.

7           3. Discharge, discipline, or take any other adverse  
8 personnel action against any employee for disclosing  
9 information to the department ~~division~~ or any law enforcement  
10 agency relating to any violation or suspected violation of any  
11 of the provisions of this chapter or rules promulgated  
12 hereunder.

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

15           Section 13. Subsections (3) and (4) of section  
16 440.106, Florida Statutes, are amended to read:

17           440.106 Civil remedies; administrative penalties.--

18           (3) Whenever any group or individual self-insurer,  
19 carrier, rating bureau, or agent or other representative of  
20 any carrier or rating bureau is determined to have violated s.  
21 440.105, the department ~~of insurance~~ may revoke or suspend the  
22 authority or certification of any group or individual  
23 self-insurer, carrier, agent, or broker.

24           (4) The department ~~division~~ shall report any  
25 contractor determined in violation of requirements of this  
26 chapter to the appropriate state licensing board for  
27 disciplinary action.

28           Section 14. Section 440.107, Florida Statutes, is  
29 amended to read:

30           440.107 Department ~~Division~~ powers to enforce employer  
31 compliance with coverage requirements.--

1           (1) The Legislature finds that the failure of an  
2 employer to comply with the workers' compensation coverage  
3 requirements under this chapter poses an immediate danger to  
4 public health, safety, and welfare. The Legislature authorizes  
5 the department ~~division~~ to secure employer compliance with the  
6 workers' compensation coverage requirements and authorizes the  
7 department ~~division~~ to conduct investigations for the purpose  
8 of ensuring employer compliance.

9           (2) The department ~~division~~ and its authorized  
10 representatives may enter and inspect any place of business at  
11 any reasonable time for the limited purpose of investigating  
12 compliance with workers' compensation coverage requirements  
13 under this chapter. Each employer shall keep true and accurate  
14 business records that contain such information as the  
15 department ~~division~~ prescribes by rule. The business records  
16 must contain information necessary for the department ~~division~~  
17 to determine compliance with workers' compensation coverage  
18 requirements and must be maintained within this state by the  
19 business, in such a manner as to be accessible within a  
20 reasonable time upon request by the department ~~division~~. The  
21 business records must be open to inspection and be available  
22 for copying by the department ~~division~~ at any reasonable time  
23 and place and as often as necessary. The department ~~division~~  
24 may require from any employer any sworn or unsworn reports,  
25 pertaining to persons employed by that employer, deemed  
26 necessary for the effective administration of the workers'  
27 compensation coverage requirements.

28           (3) In discharging its duties, the department ~~division~~  
29 may administer oaths and affirmations, certify to official  
30 acts, issue subpoenas to compel the attendance of witnesses  
31 and the production of books, papers, correspondence,

1 memoranda, and other records deemed necessary by the  
2 department ~~division~~ as evidence in order to ensure proper  
3 compliance with the coverage provisions of this chapter.

4 (4) If a person has refused to obey a subpoena to  
5 appear before the department ~~division~~ or its authorized  
6 representative and produce evidence requested by the  
7 department ~~division~~ or to give testimony about the matter that  
8 is under investigation, a court has jurisdiction to issue an  
9 order requiring compliance with the subpoena if the court has  
10 jurisdiction in the geographical area where the inquiry is  
11 being carried on or in the area where the person who has  
12 refused the subpoena is found, resides, or transacts business.  
13 Failure to obey such a court order may be punished by the  
14 court as contempt.

15 (5) Whenever the department ~~division~~ determines that  
16 an employer who is required to secure the payment to his or  
17 her employees of the compensation provided for by this chapter  
18 has failed to do so, such failure shall be deemed an immediate  
19 serious danger to public health, safety, or welfare sufficient  
20 to justify service by the department ~~division~~ of a stop-work  
21 order on the employer, requiring the cessation of all business  
22 operations at the place of employment or job site. The order  
23 shall take effect upon the date of service upon the employer,  
24 unless the employer provides evidence satisfactory to the  
25 department ~~division~~ of having secured any necessary insurance  
26 or self-insurance and pays a civil penalty to the department  
27 ~~division~~, to be deposited by the department ~~division~~ into the  
28 Workers' Compensation Administration Trust Fund, in the amount  
29 of \$100 per day for each day the employer was not in  
30 compliance with this chapter.

31

1           (6) The department ~~division~~ may file a complaint in  
2 the circuit court in and for Leon County to enjoin any  
3 employer, who has failed to secure compensation as required by  
4 this chapter, from employing individuals and from conducting  
5 business until the employer presents evidence satisfactory to  
6 the department ~~division~~ of having secured payment for  
7 compensation 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           (7) In addition to any penalty, stop-work order, or  
13 injunction, the department ~~division~~ may assess against any  
14 employer, who has failed to secure the payment of compensation  
15 as required by this chapter, a penalty in the amount of:

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

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

21  
22 Any penalty assessed under this subsection is due within 30  
23 days after the date on which the employer is notified, except  
24 that, if the department ~~division~~ has posted a stop-work order  
25 or obtained injunctive relief against the employer, payment is  
26 due, in addition to those conditions set forth in this  
27 section, as a condition to relief from a stop-work order or an  
28 injunction. Interest shall accrue on amounts not paid when due  
29 at the rate of 1 percent per month.

30           (8) The department ~~division~~ may bring an action in  
31 circuit court to recover penalties assessed under this

1 section, including any interest owed to the department  
2 ~~division~~ pursuant to this section. In any action brought by  
3 the department ~~division~~ pursuant to this section in which it  
4 prevails, the circuit court shall award costs, including the  
5 reasonable costs of investigation and a reasonable attorney's  
6 fee.

7 (9) Any judgment obtained by the department ~~division~~  
8 and any penalty due pursuant to the service of a stop-work  
9 order or otherwise due under this section shall, until  
10 collected, constitute a lien upon the entire interest of the  
11 employer, legal or equitable, in any property, real or  
12 personal, tangible or intangible; however, such lien is  
13 subordinate to claims for unpaid wages and any prior recorded  
14 liens, and a lien created by this section is not valid against  
15 any person who, subsequent to such lien and in good faith and  
16 for value, purchases real or personal property from such  
17 employer or becomes the mortgagee on real or personal property  
18 of such employer, or against a subsequent attaching creditor,  
19 unless, with respect to real estate of the employer, a notice  
20 of the lien is recorded in the public records of the county  
21 where the real estate is located, and with respect to personal  
22 property of the employer, the notice is recorded with the  
23 Secretary of State.

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

30 (11) Actions by the department ~~division~~ under this  
31 section must be contested as provided in chapter 120. All

1 civil penalties assessed by the department ~~division~~ must be  
2 paid into the Workers' Compensation Administration Trust Fund.  
3 The department ~~division~~ shall return any sums previously paid,  
4 upon conclusion of an action, if the department ~~division~~ fails  
5 to prevail and if so directed by an order of court or an  
6 administrative hearing officer. The requirements of this  
7 subsection may be met by posting a bond in an amount equal to  
8 twice the penalty and in a form approved by the department  
9 ~~division~~.

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

12 440.108 Investigatory records relating to workers'  
13 compensation employer compliance; confidentiality.--

14 (1) All investigatory records of the department  
15 ~~Division of Workers' Compensation~~ made or received pursuant to  
16 s. 440.107 and any records necessary to complete an  
17 investigation are confidential and exempt from the provisions  
18 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
19 until the investigation is completed or ceases to be active.  
20 For purposes of this section, an investigation is considered  
21 "active" while such investigation is being conducted by the  
22 department ~~division~~ with a reasonable, good-faith ~~good faith~~  
23 belief that it may lead to the filing of administrative,  
24 civil, or criminal proceedings. An investigation does not  
25 cease to be active if the agency is proceeding with reasonable  
26 dispatch and there is a good faith belief that action may be  
27 initiated by the agency or other administrative or law  
28 enforcement agency. After an investigation is completed or  
29 ceases to be active, records relating to the investigation  
30 remain confidential and exempt from the provisions of s.

31

1 119.07(1) and s. 24(a), Art. I of the State Constitution if  
2 disclosure would:

- 3 (a) Jeopardize the integrity of another active  
4 investigation;
- 5 (b) Reveal a trade secret, as defined in s. 688.002;
- 6 (c) Reveal business or personal financial information;
- 7 (d) Reveal the identity of a confidential source;
- 8 (e) Defame or cause unwarranted damage to the good  
9 name or reputation of an individual or jeopardize the safety  
10 of an individual; or

11 (f) Reveal investigative techniques or procedures.

12 Section 16. Section 440.125, Florida Statutes, is  
13 amended to read:

14 440.125 Medical records and reports; identifying  
15 information in employee medical bills; confidentiality.--

16 (1) Any medical records and medical reports of an  
17 injured employee and any information identifying an injured  
18 employee in medical bills which are provided to the  
19 department, agency, or Department of Education ~~Division of~~  
20 ~~Workers' Compensation of the Department of Labor and~~  
21 ~~Employment Security~~ pursuant to s. 440.13 are confidential and  
22 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
23 I of the State Constitution, except as otherwise provided by  
24 this chapter.

25 (2) The Legislature finds that it is a public  
26 necessity that an injured employee's medical records and  
27 medical reports and information identifying the employee in  
28 medical bills held by the department, agency, or Department of  
29 Education ~~Division of Workers' Compensation~~ pursuant to s.  
30 440.13 be confidential and exempt from the public records law.  
31 Public access to such information is an invasion of the

1 injured employee's right to privacy in that personal,  
2 sensitive information would be revealed, and public knowledge  
3 of such information could lead to discrimination against the  
4 employee by coworkers and others. Additionally, there is  
5 little utility in providing public access to such information  
6 in that the effectiveness and efficiency of the workers'  
7 compensation program can be otherwise adequately monitored and  
8 evaluated.

9       (3) The department may share any confidential and  
10 exempt information received pursuant to s. 440.13 with the  
11 Agency for Health Care Administration in furtherance of the  
12 agency's official duties under ss. 440.13 and 440.134. The  
13 agency shall maintain the confidential and exempt status of  
14 the information.

15       Section 17. Section 440.13, Florida Statutes, is  
16 amended to read:

17       440.13 Medical services and supplies; penalty for  
18 violations; limitations.--

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

20       (a) "Alternate medical care" means a change in  
21 treatment or health care provider.

22       (b) "Attendant care" means care rendered by trained  
23 professional attendants which is beyond the scope of household  
24 duties. Family members may provide nonprofessional attendant  
25 care, but may not be compensated under this chapter for care  
26 that falls within the scope of household duties and other  
27 services normally and gratuitously provided by family members.  
28 "Family member" means a spouse, father, mother, brother,  
29 sister, child, grandchild, father-in-law, mother-in-law, aunt,  
30 or uncle.

31



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

4 (d) "Catastrophic injury" means an injury as defined  
5 in s. 440.02.

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

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

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

21 (h) "Health care facility" means any hospital licensed  
22 under chapter 395 and any health care institution licensed  
23 under chapter 400.

24 (i) "Health care provider" means a physician or any  
25 recognized practitioner who provides skilled services pursuant  
26 to a prescription or under the supervision or direction of a  
27 physician and who has been certified by the agency ~~division~~ as  
28 a health care provider. The term "health care provider"  
29 includes a health care facility.

30 (j) "Independent medical examiner" means a physician  
31 selected by either an employee or a carrier to render one or

1 more independent medical examinations in connection with a  
2 dispute arising under this chapter.

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

10 (l) "Instance of overutilization" means a specific  
11 inappropriate service or level of service provided to an  
12 injured employee.

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

28 (n) "Medicine" means a drug prescribed by an  
29 authorized health care provider and includes only generic  
30 drugs or single-source patented drugs for which there is no  
31 generic equivalent, unless the authorized health care provider

1 writes or states that the brand-name drug as defined in s.  
2 465.025 is medically necessary, or is a drug appearing on the  
3 schedule of drugs created pursuant to s. 465.025(6), or is  
4 available at a cost lower than its generic equivalent.

5 (o) "Palliative care" means noncurative medical  
6 services that mitigate the conditions, effects, or pain of an  
7 injury.

8 (p) "Pattern or practice of overutilization" means  
9 repetition of instances of overutilization within a specific  
10 medical case or multiple cases by a single health care  
11 provider.

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

18 (r) "Physician" or "doctor" means a physician licensed  
19 under chapter 458, an osteopathic physician licensed under  
20 chapter 459, a chiropractic physician licensed under chapter  
21 460, a podiatric physician licensed under chapter 461, an  
22 optometrist licensed under chapter 463, or a dentist licensed  
23 under chapter 466, each of whom must be certified by the  
24 agency ~~division~~ as a health care provider.

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

28 (t) "Utilization control" means a systematic process  
29 of implementing measures that assure overall management and  
30 cost containment of services delivered.

31

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

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

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

1 ~~Speaker of the House of Representatives regarding the efficacy~~  
2 ~~and cost-effectiveness of such program, no later than October~~  
3 ~~1, 1994.~~ Medically necessary treatment, care, and attendance  
4 does not include chiropractic services in excess of 18  
5 treatments or rendered 8 weeks beyond the date of the initial  
6 chiropractic treatment, whichever comes first, unless the  
7 carrier authorizes additional treatment or the employee is  
8 catastrophically injured.

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

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

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

26 (c) If the employer fails to provide treatment or care  
27 required by this section after request by the injured  
28 employee, the employee may obtain such treatment at the  
29 expense of the employer, if the treatment is compensable and  
30 medically necessary. There must be a specific request for the  
31 treatment, and the employer or carrier must be given a

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

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

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

30 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

31

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

25           (b) A health care provider who renders emergency care  
26 must notify the carrier by the close of the third business day  
27 after it has rendered such care. If the emergency care results  
28 in admission of the employee to a health care facility, the  
29 health care provider must notify the carrier by telephone  
30 within 24 hours after initial treatment. Emergency care is not  
31 compensable under this chapter unless the injury requiring

1 emergency care arose as a result of a work-related accident.  
2 Pursuant to chapter 395, all licensed physicians and health  
3 care providers in this state shall be required to make their  
4 services available for emergency treatment of any employee  
5 eligible for workers' compensation benefits. To refuse to make  
6 such treatment available is cause for revocation of a license.

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

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

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

27 (f) By accepting payment under this chapter for  
28 treatment rendered to an injured employee, a health care  
29 provider consents to the jurisdiction of the agency division  
30 as set forth in subsection (11) and to the submission of all  
31 records and other information concerning such treatment to the



1 agency ~~division~~ in connection with a reimbursement dispute,  
2 audit, or review as provided by this section. The health care  
3 provider must further agree to comply with any decision of the  
4 agency ~~division~~ rendered under this section.

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

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

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

31

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

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

16           (a) Any health care provider providing necessary  
17 remedial treatment, care, or attendance to any injured worker  
18 shall submit treatment reports to the carrier in a format  
19 prescribed by the department in consultation with the agency  
20 ~~division~~. A claim for medical or surgical treatment is not  
21 valid or enforceable against such employer or employee,  
22 unless, by the close of the third business day following the  
23 first treatment, the physician providing the treatment  
24 furnishes to the employer or carrier a preliminary notice of  
25 the injury and treatment on forms prescribed by the department  
26 in consultation with the agency ~~division~~ and, within 15 days  
27 thereafter, furnishes to the employer or carrier a complete  
28 report, and subsequent thereto furnishes progress reports, if  
29 requested by the employer or insurance carrier, at intervals  
30 of not less than 3 weeks apart or at less frequent intervals  
31 if requested on forms prescribed by the department ~~division~~.

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

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

1 the medical condition of the injured employee, after a  
2 reasonable request is made for such information pursuant to  
3 this subsection, shall be subject by the agency ~~division~~ to  
4 one or more of the penalties set forth in paragraph (8)(b).

5 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

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

25 4. The parties agree to an alternate examiner.

26  
27 Any party may request, or a judge of compensation claims may  
28 require, designation of an agency ~~a division~~ medical advisor  
29 as an independent medical examiner. The opinion of the  
30 advisors acting as examiners shall not be afforded the  
31 presumption set forth in paragraph (9)(c).

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

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

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

30 (f) Attorney's fees incurred by an injured employee in  
31 connection with delay of or opposition to an independent

1 medical examination, including, but not limited to, motions  
2 for protective orders, are not recoverable under this chapter.

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

17 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

29 (b) The carrier must submit to the agency division  
30 within 10 days after receipt of the petition all documentation  
31 substantiating the carrier's disallowance or adjustment.

1 Failure of the carrier to submit the requested documentation  
2 to the agency ~~division~~ within 10 days constitutes a waiver of  
3 all objections to the petition.

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

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

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

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

26 1. Repayment of the appropriate amount to the health  
27 care provider.

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

31

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

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

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

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

- 15           1. An order of the agency ~~division~~ barring the  
16 provider from payment under this chapter;
- 17           2. Deauthorization of care under review;
- 18           3. Denial of payment for care rendered in the future;
- 19           4. Decertification of a health care provider certified  
20 as an expert medical advisor under subsection (9) or of a  
21 rehabilitation provider certified under s. 440.49;
- 22           5. An administrative fine assessed by the agency  
23 ~~division~~ in an amount not to exceed \$5,000 per instance of  
24 overutilization or violation; and
- 25           6. Notification of and review by the appropriate  
26 licensing authority pursuant to s. 440.106(3).

27           (9) EXPERT MEDICAL ADVISORS.--

28           (a) The agency ~~division~~ shall certify expert medical  
29 advisors in each specialty to assist the agency ~~division~~ and  
30 the judges of compensation claims within the advisor's area of  
31 expertise as provided in this section. The agency ~~division~~



1 shall, in a manner prescribed by rule, in certifying,  
2 recertifying, or decertifying an expert medical advisor,  
3 consider the qualifications, training, impartiality, and  
4 commitment of the health care provider to the provision of  
5 quality medical care at a reasonable cost. As a prerequisite  
6 for certification or recertification, the agency division  
7 shall require, at a minimum, that an expert medical advisor  
8 have specialized workers' compensation training or experience  
9 under the workers' compensation system of this state and board  
10 certification or board eligibility.

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

25 (c) If there is disagreement in the opinions of the  
26 health care providers, if two health care providers disagree  
27 on medical evidence supporting the employee's complaints or  
28 the need for additional medical treatment, or if two health  
29 care providers disagree that the employee is able to return to  
30 work, the agency division may, and the judge of compensation  
31 claims shall, upon his or her own motion or within 15 days

1 after receipt of a written request by either the injured  
2 employee, the employer, or the carrier, order the injured  
3 employee to be evaluated by an expert medical advisor. The  
4 opinion of the expert medical advisor is presumed to be  
5 correct unless there is clear and convincing evidence to the  
6 contrary as determined by the judge of compensation claims.  
7 The expert medical advisor appointed to conduct the evaluation  
8 shall have free and complete access to the medical records of  
9 the employee. An employee who fails to report to and cooperate  
10 with such evaluation forfeits entitlement to compensation  
11 during the period of failure to report or cooperate.

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

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

25 (f) If the agency ~~division~~ or a judge of compensation  
26 claims determines that the services of a certified expert  
27 medical advisor are required to resolve a dispute under this  
28 section, the carrier must compensate the advisor for his or  
29 her time in accordance with a schedule adopted by the agency  
30 ~~division~~. The agency ~~division~~ may assess a penalty not to  
31

1 exceed \$500 against any carrier that fails to timely  
2 compensate an advisor in accordance with this section.

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

11 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION  
12 DIVISION; JURISDICTION.--

13 (a) The Agency for Health Care Administration Division  
14 ~~of Workers' Compensation of the Department of Labor and~~  
15 ~~Employment Security~~ may investigate health care providers to  
16 determine whether providers are complying with this chapter  
17 and with rules adopted by the agency division, whether the  
18 providers are engaging in overutilization, and whether  
19 providers are engaging in improper billing practices. If the  
20 agency division finds that a health care provider has  
21 improperly billed, overutilized, or failed to comply with  
22 agency division rules or the requirements of this chapter it  
23 must notify the provider of its findings and may determine  
24 that the health care provider may not receive payment from the  
25 carrier or may impose penalties as set forth in subsection (8)  
26 or other sections of this chapter. If the health care provider  
27 has received payment from a carrier for services that were  
28 improperly billed or for overutilization, it must return those  
29 payments to the carrier. The agency division may assess a  
30 penalty not to exceed \$500 for each overpayment that is not  
31

1 refunded within 30 days after notification of overpayment by  
2 the agency division or carrier.

3 (b) The department division shall monitor and audit  
4 carriers, as provided in s. 624.3161, to determine if medical  
5 bills are paid in accordance with this section and department  
6 division rules. Any ~~employer, if self-insured, or carrier~~  
7 ~~found by the division not to be within 90 percent compliance~~  
8 ~~as to the payment of medical bills after July 1, 1994, must be~~  
9 ~~assessed a fine not to exceed 1 percent of the prior year's~~  
10 ~~assessment levied against such entity under s. 440.51 for~~  
11 ~~every quarter in which the entity fails to attain 90-percent~~  
12 ~~compliance.~~ The department division shall fine or otherwise  
13 discipline an employer or carrier, pursuant to this chapter,  
14 the insurance code, or rules adopted by the department  
15 division, for each late payment of compensation that is below  
16 the minimum 90-percent performance standard. Any carrier that  
17 ~~is found to be not in compliance in subsequent consecutive~~  
18 ~~quarters must implement a medical-bill review program approved~~  
19 ~~by the division, and the carrier is subject to disciplinary~~  
20 ~~action by the Department of Insurance.~~

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

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

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

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

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

1 reimbursement allowances for physicians, hospital inpatient  
2 care, hospital outpatient care, ambulatory surgical centers,  
3 work-hardening programs, and pain programs. However, the  
4 maximum percentage of increase in the individual reimbursement  
5 allowance may not exceed the percentage of increase in the  
6 Consumer Price Index for the previous year. An individual  
7 physician, hospital, ambulatory surgical center, pain program,  
8 or work-hardening program shall be reimbursed either the usual  
9 and customary charge for treatment, care, and attendance, the  
10 agreed-upon contract price, the per diem rate for hospital  
11 inpatient stay, or the maximum reimbursement allowance in the  
12 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 by rule division. If the employee  
24 has not been certified as having reached maximum medical  
25 improvement before the expiration of 102 weeks after the date  
26 temporary total disability benefits begin to accrue, the  
27 carrier shall notify the treating doctor of the requirements  
28 of this 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 division may require periodic reports from the~~  
26 ~~employee and the carrier, and it may, at the carrier's~~  
27 ~~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 division review the status~~

1 ~~of the employee and determine whether the carrier has~~  
2 ~~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 4.5. 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 5.6. 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 6.7. Supplemental benefits are calculated quarterly  
27 and 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 ~~7.8.~~ Supplemental benefits are payable at the rate of  
7 80 percent of the difference between 80 percent of the  
8 employee's average weekly wage determined pursuant to s.  
9 440.14 and the weekly wages the employee has earned during the  
10 reporting period, not to exceed the maximum weekly income  
11 benefit under s. 440.12.

12 ~~8.9.~~ 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 and 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 and provisions of the insurance code, the department  
26 division shall monitor the performance of carriers by  
27 conducting market conduct examinations, as provided in s.  
28 624.3161, and conducting investigations, as provided in s.  
29 624.317. The department division shall impose penalties on  
30 establish by rule minimum performance standards for carriers  
31 to ensure that a minimum of 90 percent of all compensation

1 ~~benefits are timely paid. The division shall fine a carrier as~~  
2 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~  
3 ~~of compensation pursuant to s. 624.4211 that is below the~~  
4 ~~minimum 90 percent performance standard.~~ This paragraph does  
5 not affect the imposition of any penalties or interest due to  
6 the claimant. If a carrier contracts with a servicing agent to  
7 fulfill its administrative responsibilities under this  
8 chapter, the payment practices of the servicing agent are  
9 deemed the payment practices of the carrier for the purpose of  
10 assessing penalties against the carrier.

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

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

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



1 future payments of compensation expenses and any other  
2 benefits provided under this chapter, shall be allowed at any  
3 time in any case in which the employer or carrier has filed a  
4 written notice of denial within 120 days after the date of the  
5 injury, and the judge of compensation claims at a hearing to  
6 consider the settlement proposal finds a justiciable  
7 controversy as to legal or medical compensability of the  
8 claimed injury or the alleged accident. The employer or  
9 carrier may not pay any attorney's fees on behalf of the  
10 claimant for any settlement under this section unless  
11 expressly authorized elsewhere in this chapter. Upon the joint  
12 petition of all interested parties and after giving due  
13 consideration to the interests of all interested parties, the  
14 judge of compensation claims may enter a compensation order  
15 approving and authorizing the discharge of the liability of  
16 the employer for compensation and remedial treatment, care,  
17 and attendance, as well as rehabilitation expenses, by the  
18 payment of a lump sum. Such a compensation order so entered  
19 upon joint petition of all interested parties is not subject  
20 to modification or review under s. 440.28. If the settlement  
21 proposal together with supporting evidence is not approved by  
22 the judge of compensation claims, it shall be considered void.  
23 Upon approval of a lump-sum settlement under this subsection,  
24 the judge of compensation claims shall send a report to the  
25 Chief Judge of the amount of the settlement and a statement of  
26 the nature of the controversy. The Chief Judge shall keep a  
27 record of all such reports filed by each judge of compensation  
28 claims and shall submit to the Legislature a summary of all  
29 such reports filed under this subsection annually by September  
30 15.  
31

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

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

1 by the employer or carrier. Such applications shall be  
2 considered and determined in accordance with s. 440.25.

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

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

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

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

23 1. An advance payment of compensation not in excess of  
24 \$2,000 may be approved informally by letter, without hearing,  
25 by any judge of compensation claims or the Chief Judge.

26 2. An advance payment of compensation not in excess of  
27 \$2,000 may be ordered by any judge of compensation claims  
28 after giving the interested parties an opportunity for a  
29 hearing thereon pursuant to not less than 10 days' notice by  
30 mail, unless such notice is waived, and after giving due  
31 consideration to the interests of the person entitled thereto.

1 When the parties have stipulated to an advance payment of  
2 compensation not in excess of \$2,000, such advance may be  
3 approved by an order of a judge of compensation claims, with  
4 or without hearing, or informally by letter by any such judge  
5 of compensation claims, or by the department ~~division~~  
6 ~~director~~, if such advance is found to be for the best  
7 interests of the person entitled thereto.

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

21           (d) When an application for an advance payment in  
22 excess of \$2,000 is opposed by the employer or carrier, it  
23 shall be heard by a judge of compensation claims after giving  
24 the interested parties not less than 10 days' notice of such  
25 hearing by mail, unless such notice is waived. In her or his  
26 discretion, the judge of compensation claims may have an  
27 investigation of the matter made by the Department of  
28 Education ~~Rehabilitation Section of the division~~, in which  
29 event the report and recommendation of that section will be  
30 deemed a part of the record of the proceedings. If the judge  
31 of compensation claims finds that such advance payment is for

1 the best interests of the person entitled to compensation,  
2 will not materially prejudice the rights of the employer and  
3 carrier, and is reasonable under the circumstances of the  
4 case, she or he may order the same paid. However, in no event  
5 may any such advance payment under this paragraph be granted  
6 in excess of \$7,500 or 26 weeks of benefits in any 48-month  
7 period, whichever is greater, from the date of the last  
8 advance payment.

9 (15)(a) The department ~~division~~ shall examine on an  
10 ongoing basis claims files in accordance with ss. 624.3161 and  
11 624.310(5) in order to identify questionable claims-handling  
12 techniques, questionable patterns or practices of claims, or a  
13 pattern of repeated unreasonably controverted claims by  
14 employers, carriers, and self-insurers, ~~health care providers,~~  
15 ~~health care facilities, training and education providers, or~~  
16 ~~any others~~ providing services to employees pursuant to this  
17 chapter ~~and may certify its findings to the Department of~~  
18 ~~Insurance. If the department finds~~ such questionable  
19 techniques, patterns, or repeated unreasonably controverted  
20 claims as constitute a general business practice of a carrier,  
21 ~~in the judgment of the division shall be certified in its~~  
22 ~~findings by the division to the Department of Insurance or~~  
23 ~~such other appropriate licensing agency. Such certification by~~  
24 ~~the division is exempt from the provisions of chapter 120.~~  
25 ~~Upon receipt of any such certification,~~ the department of  
26 ~~Insurance~~ shall take appropriate action so as to bring such  
27 general business practices to a halt pursuant to s.  
28 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.  
29 The department ~~division~~ may initiate investigations of  
30 questionable techniques, patterns, practices, or repeated  
31 unreasonably controverted claims. The department ~~division~~ may

1 by rule establish penalties for violations and forms and  
2 procedures for corrective action plans and for auditing  
3 carriers.

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

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

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

14 (c) If any person refuses to comply with any such  
15 subpoena or to testify as to any matter concerning which she  
16 or he may be lawfully interrogated, the Circuit Court of Leon  
17 County or of the county wherein such examination,  
18 investigation, or hearing is being conducted, or of the county  
19 wherein such person resides, may, on the application of the  
20 department, issue an order requiring such person to comply  
21 with the subpoena and to testify.

22 (d) Subpoenas shall be served, and proof of such  
23 service made, in the same manner as if issued by a circuit  
24 court. Witness fees, costs, and reasonable travel expenses, if  
25 claimed, shall be allowed the same as for testimony in a  
26 circuit court.

27 (e) ~~The division shall publish annually a report which~~  
28 ~~indicates the promptness of first payment of compensation~~  
29 ~~records of each carrier or self-insurer so as to focus~~  
30 ~~attention on those carriers or self-insurers with poor payment~~  
31 ~~records for the preceding year. A copy of such report shall be~~

1 ~~certified to~~ The department ~~of Insurance which~~ shall take  
2 appropriate steps so as to cause such poor carrier payment  
3 practices to halt pursuant to s. 440.38(3)(a). In addition,  
4 the department ~~division~~ shall take appropriate action so as to  
5 halt such poor payment practices of self-insurers. "Poor  
6 payment practice" means a practice of late payment sufficient  
7 to constitute a general business practice.

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

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

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

23 Section 27. Subsections (1) and (2) of section  
24 440.207, Florida Statutes, are amended to read:

25 440.207 Workers' compensation system guide.--

26 (1) The department ~~Division of Workers' Compensation~~  
27 ~~of the Department of Labor and Employment Security~~ shall  
28 educate all persons providing or receiving benefits pursuant  
29 to this chapter as to their rights and responsibilities under  
30 this chapter.

31



1           (2) The department ~~division~~ shall publish an  
2 understandable guide to the workers' compensation system which  
3 shall contain an explanation of benefits provided; services  
4 provided by the Employee Assistance and Ombudsman Office;  
5 procedures regarding mediation, the hearing process, and civil  
6 and criminal penalties; relevant rules of the department  
7 ~~division~~; and such other information as the department  
8 ~~division~~ believes will inform employees, employers, carriers,  
9 and those providing services pursuant to this chapter of their  
10 rights and responsibilities under this chapter and the rules  
11 of the department ~~division~~. For the purposes of this  
12 subsection, a guide is understandable if the text of the guide  
13 is written at a level of readability not exceeding the eighth  
14 grade level, as determined by a recognized readability test.

15           Section 28. Subsections (1), (2), and (3) of section  
16 440.24, Florida Statutes, are amended to read:

17           440.24 Enforcement of compensation orders;  
18 penalties.--

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

1 or such other process or final order as may be necessary to  
2 enforce the terms of such order of the judge of compensation  
3 claims.

4 (2) In any case where the employer is insured and the  
5 carrier fails to comply with any compensation order of a judge  
6 of compensation claims or court within 10 days after such  
7 order becomes final, ~~the division shall notify the department~~  
8 ~~of Insurance of such failure, and the Department of Insurance~~  
9 shall thereupon suspend the license of such carrier to do an  
10 insurance business in this state, until such carrier has  
11 complied with such order.

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

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

22 440.211 Authorization of collective bargaining  
23 agreement.--

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

31

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

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

9           (c) The use of a limited list of physicians to conduct  
10 independent medical examinations which the parties may agree  
11 shall be the exclusive source of independent medical examiners  
12 pursuant to this chapter.

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

15           (e) A vocational rehabilitation or retraining program.  
16 Section 30. Subsections (4), (5), and (7) of section  
17 440.25, Florida Statutes, are amended to read:

18           440.25 Procedures for mediation and hearings.--

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

29           (b) The final hearing must be held and concluded  
30 within 45 days after the pretrial hearing. Continuances may be  
31 granted only if the requesting party demonstrates to the judge

1 of compensation claims that the reason for requesting the  
2 continuance arises from circumstances beyond the party's  
3 control.

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

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

1 claims may make a finding of a degree of permanent impairment  
2 that is greater than the greatest permanent impairment rating  
3 given the claimant by any examining or treating physician,  
4 except upon stipulation of the parties.

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

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

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

29 (h) Notwithstanding any other provision of this  
30 section, the judge of compensation claims may require the  
31 appearance of the parties and counsel before her or him

1 without written notice for an emergency conference where there  
2 is a bona fide emergency involving the health, safety, or  
3 welfare of an employee. An emergency conference under this  
4 section may result in the entry of an order or the rendering  
5 of an adjudication by the judge of compensation claims.

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

13 (j) To further expedite dispute resolution and to  
14 enhance the self-executing features of the system, those  
15 petitions filed in accordance with s. 440.192 that involve a  
16 claim for benefits of \$5,000 or less shall, in the absence of  
17 compelling evidence to the contrary, be presumed to be  
18 appropriate for expedited resolution under this paragraph; and  
19 any other claim filed in accordance with s. 440.192, upon the  
20 written agreement of both parties and application by either  
21 party, may similarly be resolved under this paragraph. For  
22 purposes of expedited resolution pursuant to this paragraph,  
23 the Chief Judge shall make provision by rule or order for  
24 expedited and limited discovery and expedited docketing in  
25 such cases. At least 15 days prior to hearing, the parties  
26 shall exchange and file with the judge of compensation claims  
27 a pretrial outline of all issues, defenses, and witnesses on a  
28 form promulgated by the Chief Judge; provided, in no event  
29 shall such hearing be held without 15 days' written notice to  
30 all parties. No pretrial hearing shall be held. The judge of  
31 compensation claims shall limit all argument and presentation

1 of evidence at the hearing to a maximum of 30 minutes, and  
2 such hearings shall not exceed 30 minutes in length. Neither  
3 party shall be required to be represented by counsel. The  
4 employer or carrier may be represented by an adjuster or other  
5 qualified representative. The employer or carrier and any  
6 witness may appear at such hearing by telephone. The rules of  
7 evidence shall be liberally construed in favor of allowing  
8 introduction of evidence.

9 (5)(a) Procedures with respect to appeals from orders  
10 of judges of compensation claims shall be governed by rules  
11 adopted by the Supreme Court. Such an order shall become final  
12 30 days after mailing of copies of such order to the parties,  
13 unless appealed pursuant to such rules.

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

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



1 the record in any proceeding for which it is ordered to pay  
2 the cost of the record. In the event the insolvency petition  
3 is denied, the judge of compensation claims may enter an order  
4 requiring the petitioner to reimburse the department ~~division~~  
5 for costs incurred in opposing the petition, including  
6 investigation and travel expenses.

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

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

1 have the right in any case of death to require an autopsy, the  
2 cost thereof to be borne by the party requesting it; and the  
3 judge of compensation claims shall have authority to order and  
4 require an autopsy and may, in her or his discretion, withhold  
5 her or his findings and award until an autopsy is held.

6 Section 31. Section 440.271, Florida Statutes, is  
7 amended to read:

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

18 Section 32. Section 440.345, Florida Statutes, is  
19 amended to read:

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

26 Section 33. Section 440.35, Florida Statutes, is  
27 amended to read:

28 440.35 Record of injury or death.--Every employer  
29 shall keep a record in respect of any injury to an employee.  
30 Such record shall contain such information of disability or  
31 death in respect of such injury as the department ~~division~~ may

1 by regulation require, and shall be available to inspection by  
2 the department ~~division~~ or by any state authority at such time  
3 and under such conditions as the department ~~division~~ may by  
4 regulation prescribe.

5 Section 34. Subsections (1), (2), and (3) of section  
6 440.38, Florida Statutes, are amended to read:

7 440.38 Security for compensation; insurance carriers  
8 and self-insurers.--

9 (1) Every employer shall secure the payment of  
10 compensation under this chapter:

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

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

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

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

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

1 | timely provide such opinion or to timely provide a security  
2 | deposit in an amount equal to 1.5 times the value certified in  
3 | the latest opinion, the department ~~division~~ shall then revoke  
4 | such employer's authorization to self-insure, and such failure  
5 | shall be deemed to constitute an immediate serious danger to  
6 | the public health, safety, or welfare sufficient to justify  
7 | the summary suspension of the employer's authorization to  
8 | self-insure pursuant to s. 120.68.

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

1 with attorney's fees. For purposes of this section, the  
2 successor of an employer means any person, business entity, or  
3 group of persons or business entities, which holds or acquires  
4 legal or beneficial title to the majority of the assets or the  
5 majority of the shares of the employer.

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

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

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

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

22 d. Direct obligations of the United States Treasury  
23 backed by the full faith and credit of the United States.

24 e. Securities issued by this state and backed by the  
25 full faith and credit of this state.

26 5. The qualifying security deposit shall be held by  
27 the department ~~division~~, or by a depository authorized by the  
28 department ~~division~~, exclusively for the benefit of workers'  
29 compensation claimants. The security shall not be subject to  
30 assignment, execution, attachment, or any legal process  
31 whatsoever, except as necessary to guarantee the payment of

1 compensation under this chapter. No surety bond may be  
2 terminated, and no other qualifying security may be allowed to  
3 lapse, without 90 days' prior notice to the department  
4 ~~division~~ and deposit by the self-insuring employer of other  
5 qualifying security of equal value within 10 business days  
6 after such notice. Failure to provide such notice or failure  
7 to timely provide qualifying replacement security after such  
8 notice shall constitute grounds for the department ~~division~~ to  
9 call or sue upon the surety bond, or to act with respect to  
10 other pledged security in any manner necessary to preserve its  
11 value for the purposes intended by this section, including the  
12 exercise of rights under a letter of credit, the sale of any  
13 security at then prevailing market rates, or the withdrawal of  
14 any funds represented by any certificate of deposit forming  
15 part of the qualifying security deposit. The department  
16 ~~division~~ may specify by rule the amount of the qualifying  
17 security deposit required prior to authorizing an employer to  
18 self-insure and the amount of net worth required for an  
19 employer to qualify for authorization to self-insure;

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

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

28 (e) In accordance with s. 440.135, an employer, other  
29 than a local government unit, may elect coverage under the  
30 Workers' Compensation Law and retain the benefit of the  
31 exclusiveness of liability provided in s. 440.11 by obtaining

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

30  
31



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

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

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

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

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

31

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

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

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

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

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

30           Section 35. Subsections (3) and (7) of section  
31 440.381, Florida Statutes, are amended to read:

1           440.381 Application for coverage; reporting payroll;  
2 payroll audit procedures; penalties.--

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

26           (7) If an employee suffering a compensable injury was  
27 not reported as earning wages on the last quarterly earnings  
28 report filed with the Division of Unemployment Compensation  
29 before the accident, the employer shall indemnify the carrier  
30 for all workers' compensation benefits paid to or on behalf of  
31 the employee unless the employer establishes that the employee

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

19 Section 36. Section 440.385, Florida Statutes, is  
20 amended to read:

21 440.385 Florida Self-Insurers Guaranty Association,  
22 Incorporated.--

23 (1) CREATION OF ASSOCIATION.--

24 (a) There is created a nonprofit corporation to be  
25 known as the "Florida Self-Insurers Guaranty Association,  
26 Incorporated," hereinafter referred to as "the association."  
27 Upon incorporation of the association, all individual  
28 self-insurers as defined in ss. 440.02(23)(a) and  
29 440.38(1)(b), other than individual self-insurers which are  
30 public utilities or governmental entities, shall be members of  
31 the association as a condition of their authority to

1 individually self-insure in this state. The association shall  
2 perform its functions under a plan of operation as established  
3 and approved under subsection (5) and shall exercise its  
4 powers and duties through a board of directors as established  
5 under subsection (2). The corporation shall have those powers  
6 granted or permitted corporations not for profit, as provided  
7 in chapter 617.

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

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

24 (2) BOARD OF DIRECTORS.--The board of directors of the  
25 association shall consist of nine persons and shall be  
26 organized as established in the plan of operation. With  
27 respect to ~~initial~~ appointments, the Treasurer ~~Secretary of~~  
28 ~~Labor and Employment Security~~ shall, ~~by July 15, 1982,~~ approve  
29 and appoint to the board persons who are experienced with  
30 self-insurance in this state and who are recommended by the  
31 individual self-insurers in this state required to become

1 members of the association pursuant to the provisions of  
2 paragraph (1)(a). In the event the Treasurer ~~secretary~~ finds  
3 that any person so recommended does not have the necessary  
4 qualifications for service on the board and a majority of the  
5 board has been appointed, the Treasurer ~~secretary~~ shall  
6 request the directors thus far approved and appointed to  
7 recommend another person for appointment to the board. Each  
8 director shall serve for a 4-year term and may be reappointed.  
9 Appointments other than initial appointments shall be made by  
10 the Treasurer ~~Secretary of Labor and Employment Security~~ upon  
11 recommendation of members of the association. Any vacancy on  
12 the board shall be filled for the remaining period of the term  
13 in the same manner as appointments other than initial  
14 appointments are made. Each director shall be reimbursed for  
15 expenses incurred in carrying out the duties of the board on  
16 behalf of the association.

17 (3) POWERS AND DUTIES.--

18 (a) Upon creation of the Insolvency Fund pursuant to  
19 the provisions of subsection (4), the association is obligated  
20 for payment of compensation under this chapter to insolvent  
21 members' employees resulting from incidents and injuries  
22 existing prior to the member becoming an insolvent member and  
23 from incidents and injuries occurring within 30 days after the  
24 member has become an insolvent member, provided the incidents  
25 giving rise to claims for compensation under this chapter  
26 occur during the year in which such insolvent member is a  
27 member of the guaranty fund and was assessable pursuant to the  
28 plan of operation, and provided the employee makes timely  
29 claim for such payments according to procedures set forth by a  
30 court of competent jurisdiction over the delinquency or  
31 bankruptcy proceedings of the insolvent member. Such

1 obligation includes only that amount due the injured worker or  
2 workers of the insolvent member under this chapter. In no  
3 event is the association obligated to a claimant in an amount  
4 in excess of the obligation of the insolvent member. The  
5 association shall be deemed the insolvent employer for  
6 purposes of this chapter to the extent of its obligation on  
7 the covered claims and, to such extent, shall have all rights,  
8 duties, and obligations of the insolvent employer as if the  
9 employer had not become insolvent. However, in no event shall  
10 the association be liable for any penalties or interest.

11 (b) The association may:

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

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

16 3. Sue or be sued.

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

19 5. Purchase such reinsurance as is determined  
20 necessary pursuant to the plan of operation.

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

28 7. Charge fees to any member of the association to  
29 cover the actual costs of examining the financial and safety  
30 conditions of that member.

31



1           8. Charge an applicant for membership in the  
2 association a fee sufficient to cover the actual costs of  
3 examining the financial condition of the applicant.

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

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

30           3. No state funds of any kind shall be allocated or  
31 paid to the association or any of its accounts except those

1 state funds accruing to the association by and through the  
2 assignment of rights of an insolvent employer.

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

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

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

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

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

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

31

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

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

21           (c) All member employers shall comply with the plan of  
22 operation.

23           (d) The plan of operation shall:

24           1. Establish the procedures whereby all the powers and  
25 duties of the association under subsection (3) will be  
26 performed.

27           2. Establish procedures for handling assets of the  
28 association.

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

31

1           4. Establish procedures by which claims may be filed  
2 with the association and establish acceptable forms of proof  
3 of covered claims. Notice of claims to the receiver or  
4 liquidator of the insolvent employer shall be deemed notice to  
5 the association or its agent, and a list of such claims shall  
6 be submitted periodically to the association or similar  
7 organization in another state by the receiver or liquidator.

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

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

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

16          8. Establish the procedures whereby recommendations of  
17 candidates for the board of directors shall be submitted to  
18 the department.

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

21           (e) The plan of operation may provide that any or all  
22 of the powers and duties of the association, except those  
23 specified under subparagraphs (d)1. and 2., be delegated to a  
24 corporation, association, or other organization which performs  
25 or will perform functions similar to those of this association  
26 or its equivalent in two or more states. Such a corporation,  
27 association, or organization shall be reimbursed as a  
28 servicing facility would be reimbursed and shall be paid for  
29 its performance of any other functions of the association. A  
30 delegation of powers or duties under this subsection shall  
31 take effect only with the approval of both the board of

1 directors and the department and may be made only to a  
2 corporation, association, or organization which extends  
3 protection which is not substantially less favorable and  
4 effective than the protection provided by this section.

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

7 (a) The department shall:

8 1. Notify the association of the existence of an  
9 insolvent employer not later than 3 days after it receives  
10 notice of the determination of insolvency.

11 2. Upon request of the board of directors, provide the  
12 association with a statement of the annual normal premiums of  
13 each member employer.

14 (b) The department may:

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

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

31

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

4           (7) EFFECT OF PAID CLAIMS.--

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

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

29           (c) The association shall file periodically with the  
30 receiver or liquidator of the insolvent member statements of  
31 the covered claims paid by the association and estimates of

1 anticipated claims on the association, which shall preserve  
2 the rights of the association against the assets of the  
3 insolvent member.

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

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

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

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

28 (d) The board of directors may, upon majority vote,  
29 make reports and recommendations to the department upon any  
30 matter which is germane to the solvency, liquidation,  
31 rehabilitation, or conservation of any member employer. Such

1 reports and recommendations shall not be considered public  
2 documents.

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

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

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

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

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



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

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

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

28 Section 37. Section 440.40, Florida Statutes, is  
29 amended to read:

30 440.40 Compensation notice.--Every employer who has  
31 secured compensation under the provisions of this chapter

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

12 Section 38. Section 440.41, Florida Statutes, is  
13 amended to read:

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

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

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

31

1           (3) Any requirement by the judges of compensation  
2 claims, the department ~~division~~, or any court under any  
3 compensation order, finding, or decision shall be binding upon  
4 the carrier in the same manner and to the same extent as upon  
5 the employer.

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

8           440.42 Insurance policies; liability.--

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

28           Section 40. Section 440.44, Florida Statutes, is  
29 amended to read:

30           440.44 Workers' compensation; staff organization.--

31

1           (1) INTERPRETATION OF LAW.--As a guide to the  
2 interpretation of this chapter, the Legislature takes due  
3 notice of federal social and labor acts and hereby creates an  
4 agency to administer such acts passed for the benefit of  
5 employees and employers in Florida industry, and desires to  
6 meet the requirements of such federal acts wherever not  
7 inconsistent with the Constitution and laws of Florida.

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

14           (3) EXPENDITURES.--The department, the agency, the  
15 Department of Education,~~division~~ and the Chief Judge shall  
16 make such expenditures, including expenditures for personal  
17 services and rent at the seat of government and elsewhere, for  
18 law books; for telephone services and WATS lines; for books of  
19 reference, periodicals, equipment, and supplies; and for  
20 printing and binding as may be necessary in the administration  
21 of this chapter. All expenditures in the administration of  
22 this chapter shall be allowed and paid as provided in s.  
23 440.50 upon the presentation of itemized vouchers therefor  
24 approved by the department, the agency, the Department of  
25 Education,~~division~~ or the Chief Judge.

26           (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL  
27 ADMINISTRATION.--Subject to the other provisions of this  
28 chapter, the department, the agency, and the Department of  
29 Education are ~~division is~~ authorized to appoint, and prescribe  
30 the duties and powers of, bureau chiefs, attorneys,  
31 accountants, medical advisers, technical assistants,

1 inspectors, claims examiners, and such other employees as may  
2 be necessary in the performance of its duties under this  
3 chapter.

4 (5) OFFICE.--The department, the agency, the  
5 Department of Education,~~division~~ and the Chief Judge shall  
6 maintain and keep open during reasonable business hours an  
7 office, which shall be provided in the Capitol or some other  
8 suitable building in the City of Tallahassee, for the  
9 transaction of business under this chapter, at which office  
10 the official records and papers shall be kept. The office  
11 shall be furnished and equipped. The department, the agency  
12 ~~division~~, any judge of compensation claims, or the Chief Judge  
13 may hold sessions and conduct hearings at any place within the  
14 state.

15 (6) SEAL.--The division and,~~the~~ Office of the Judges  
16 of Compensation Claims ~~judges of compensation claims, and the~~  
17 ~~Chief Judge~~ shall have seals ~~a seal~~ upon which shall be  
18 inscribed the words "State of Florida Department of Insurance  
19 ...Seal" and the "Division of Administrative Hearings...  
20 Seal." ~~respectively. of Labor and Employment Security--Seal."~~

21 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department  
22 ~~division~~ is expressly authorized to provide by regulation for  
23 and to destroy obsolete records of the department ~~division and~~  
24 ~~commission.~~

25 (8) PROCEDURE.--In the exercise of their ~~its~~ duties  
26 and functions requiring administrative hearings, the  
27 department and the agency ~~division~~ shall proceed in accordance  
28 with the Administrative Procedure Act. The authority of the  
29 department and the agency ~~division~~ to issue orders resulting  
30 from administrative hearings as provided for in this chapter  
31

1 shall not infringe upon the jurisdiction of the judges of  
2 compensation claims.

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

6 440.49 Limitation of liability for subsequent injury  
7 through Special Disability Trust Fund.--

8 (1) LEGISLATIVE INTENT.--Whereas it is often difficult  
9 for workers with disabilities to achieve employment or to  
10 become reemployed following an injury, and it is the desire of  
11 the Legislature to facilitate the return of these workers to  
12 the workplace, it is the purpose of this section to encourage  
13 the employment, reemployment, and accommodation of the  
14 physically disabled by reducing an employer's insurance  
15 premium for reemploying an injured worker, to decrease  
16 litigation between carriers on apportionment issues, and to  
17 protect employers from excess liability for compensation and  
18 medical expense when an injury to a physically disabled worker  
19 merges with, aggravates, or accelerates her or his preexisting  
20 permanent physical impairment to cause either a greater  
21 disability or permanent impairment, or an increase in  
22 expenditures for temporary compensation or medical benefits  
23 than would have resulted from the injury alone. The department  
24 ~~division~~ or the administrator shall inform all employers of  
25 the existence and function of the fund and shall interpret  
26 eligibility requirements liberally. However, this subsection  
27 shall not be construed to create or provide any benefits for  
28 injured employees or their dependents not otherwise provided  
29 by this chapter. The entitlement of an injured employee or her  
30 or his dependents to compensation under this chapter shall be  
31 determined without regard to this subsection, the provisions

1 of which shall be considered only in determining whether an  
2 employer or carrier who has paid compensation under this  
3 chapter is entitled to reimbursement from the Special  
4 Disability Trust Fund.

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

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

8 (b) "Preferred worker" means a worker who, because of  
9 a permanent impairment resulting from a compensable injury or  
10 occupational disease, is unable to return to the worker's  
11 regular employment.

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

13 1. If the permanent physical impairment had not  
14 existed, the subsequent accident or occupational disease would  
15 not have occurred;

16 2. The permanent disability or permanent impairment  
17 resulting from the subsequent accident or occupational disease  
18 is materially and substantially greater than that which would  
19 have resulted had the permanent physical impairment not  
20 existed, and the employer has been required to pay, and has  
21 paid, permanent total disability or permanent impairment  
22 benefits for that materially and substantially greater  
23 disability;

24 3. The preexisting permanent physical impairment is  
25 aggravated or accelerated as a result of the subsequent injury  
26 or occupational disease, or the preexisting impairment has  
27 contributed, medically and circumstantially, to the need for  
28 temporary compensation, medical, or attendant care and the  
29 employer has been required to pay, and has paid, temporary  
30 compensation, medical, or attendant care benefits for the  
31 aggravated preexisting permanent impairment; or

1           4. Death would not have been accelerated if the  
2 permanent physical impairment had not existed.

3           (d) "Excess permanent compensation" means that  
4 compensation for permanent impairment, or permanent total  
5 disability or death benefits, for which the employer or  
6 carrier is otherwise entitled to reimbursement from the  
7 Special Disability Trust Fund.

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

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

13           (g) "Commission" means the Special Disability Trust  
14 Fund Privatization Commission, as created under subsection  
15 (13).

16  
17 In addition to the definitions contained in this subsection,  
18 the department ~~division~~ may by rule prescribe definitions that  
19 are necessary for the effective administration of this  
20 section.

21           (7) REIMBURSEMENT OF EMPLOYER.--

22           (a) The right to reimbursement as provided in this  
23 section is barred unless written notice of claim of the right  
24 to such reimbursement is filed by the employer or carrier  
25 entitled to such reimbursement with the department ~~division~~ or  
26 administrator at Tallahassee within 2 years after the date the  
27 employee last reached maximum medical improvement, or within 2  
28 years after the date of the first payment of compensation for  
29 permanent total disability, wage loss, or death, whichever is  
30 later. The notice of claim must contain such information as  
31 the department ~~division~~ by rule requires or as established by



1 the administrator; and the employer or carrier claiming  
2 reimbursement shall furnish such evidence in support of the  
3 claim as the department ~~division~~ or administrator reasonably  
4 may require.

5 (b) For notice of claims on the Special Disability  
6 Trust Fund filed on or after July 1, 1978, the Special  
7 Disability Trust Fund shall, within 120 days after receipt of  
8 notice that a carrier has paid, been required to pay, or  
9 accepted liability for excess compensation, serve notice of  
10 the acceptance of the claim for reimbursement.

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

26 (d) Each notice of claim filed or refiled on or after  
27 July 1, 1997, must be accompanied by a notification fee as  
28 provided in paragraph (9)(d). A proof of claim must be filed  
29 within 1 year after the date the notice of claim is filed or  
30 refiled, accompanied by a proof-of-claim fee as provided in  
31 paragraph (9)(d), or the claim shall be barred. The

1 notification fee shall be waived if both the notice of claim  
2 and proof of claim are submitted together as a single filing.  
3 The Special Disability Trust Fund shall, within 180 days after  
4 receipt of the proof of claim, serve notice of the acceptance  
5 of the claim for reimbursement. This paragraph shall apply to  
6 all claims notwithstanding the provisions of subsection (12).  
7 (e) For dates of accident on or after January 1, 1994,  
8 the Special Disability Trust Fund shall, within 120 days of  
9 receipt of notice that a carrier has been required to pay, and  
10 has paid over \$10,000 in benefits, serve notice of the  
11 acceptance of the claim for reimbursement. Failure of the  
12 Special Disability Trust Fund to serve notice of acceptance  
13 shall give rise to the right to request a hearing on the claim  
14 for reimbursement. If the Special Disability Trust Fund  
15 through its representative denies or controverts the claim,  
16 the right to such reimbursement shall be barred unless an  
17 application for a hearing thereon is filed with the department  
18 ~~division~~ or administrator at Tallahassee within 60 days after  
19 notice to the employer or carrier of such denial or  
20 controversion. When such application for a hearing is timely  
21 filed, the claim shall be heard and determined in accordance  
22 with the procedure prescribed in s. 440.25, to the extent that  
23 such procedure is applicable, and in accordance with the  
24 workers' compensation rules of procedure. In such proceeding  
25 on a claim for reimbursement, the Special Disability Trust  
26 Fund shall be made the party respondent, and no findings of  
27 fact made with respect to the claim of the injured employee or  
28 the dependents for compensation, including any finding made or  
29 order entered pursuant to s. 440.20(11), shall be res  
30 judicata. The Special Disability Trust Fund may not be joined  
31 or made a party to any controversy or dispute between an

1 employee and the dependents and the employer or between two or  
2 more employers or carriers without the written consent of the  
3 fund.

4 (f) When it has been determined that an employer or  
5 carrier is entitled to reimbursement in any amount, the  
6 employer or carrier shall be reimbursed annually from the  
7 Special Disability Trust Fund for the compensation and medical  
8 benefits paid by the employer or carrier for which the  
9 employer or carrier is entitled to reimbursement, upon filing  
10 request therefor and submitting evidence of such payment in  
11 accordance with rules prescribed by the department ~~division~~,  
12 which rules may include parameters for annual audits. The  
13 Special Disability Trust Fund shall pay the approved  
14 reimbursement requests on a first-in, first-out basis  
15 reflecting the order in which the reimbursement requests were  
16 received.

17 (g) The department ~~division~~ may by rule require  
18 specific forms and procedures for the administration and  
19 processing of claims made through the Special Disability Trust  
20 Fund.

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

1 program. The department ~~division~~ may by rule prescribe the  
2 schedule for submission of forms for participation in the  
3 program.

4 (9) SPECIAL DISABILITY TRUST FUND.--

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

25 (b)1. The Special Disability Trust Fund shall be  
26 maintained by annual assessments upon the insurance companies  
27 writing compensation insurance in the state, the commercial  
28 self-insurers under ss. 624.462 and 624.4621, the assessable  
29 mutuals under s. 628.601, and the self-insurers under this  
30 chapter, which assessments shall become due and be paid  
31 quarterly at the same time and in addition to the assessments

1 provided in s. 440.51. The department ~~division~~ shall estimate  
2 annually in advance the amount necessary for the  
3 administration of this subsection and the maintenance of this  
4 fund and shall make such assessment in the manner hereinafter  
5 provided.

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

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

13             b. Two times the disbursements of the most recent  
14 calendar year.

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

31

1 department advises of the appropriate assessment that should  
2 have been paid.

3           3. The net premiums written by the companies for  
4 workers' compensation in this state and the net premium  
5 written applicable to the self-insurers in this state are the  
6 basis for computing the amount to be assessed as a percentage  
7 of net premiums. Such payments shall be made by each carrier  
8 and self-insurer to the department ~~division~~ for the Special  
9 Disability Trust Fund in accordance with such regulations as  
10 the department ~~division~~ prescribes.

11           4. The Treasurer is authorized to receive and credit  
12 to such Special Disability Trust Fund any sum or sums that may  
13 at any time be contributed to the state by the United States  
14 under any Act of Congress, or otherwise, to which the state  
15 may be or become entitled by reason of any payments made out  
16 of such fund.

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

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

29           (e) The Department of Insurance ~~Labor and Employment~~  
30 ~~Security~~ or administrator shall report annually on the status  
31 of the Special Disability Trust Fund. The report shall update

1 the estimated undiscounted and discounted fund liability, as  
2 determined by an independent actuary, change in the total  
3 number of notices of claim on file with the fund in addition  
4 to the number of newly filed notices of claim, change in the  
5 number of proofs of claim processed by the fund, the fee  
6 revenues refunded and revenues applied to pay down the  
7 liability of the fund, the average time required to reimburse  
8 accepted claims, and the average administrative costs per  
9 claim. The department or administrator shall submit its  
10 report to the Governor, the President of the Senate, and the  
11 Speaker of the House of Representatives by December 1 of each  
12 year.

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

1 terms as specified by it, but be reimbursed for travel  
2 expenses as provided in s. 112.061. All expenditures made in  
3 connection with conservation of the fund, including the salary  
4 of the attorney designated to represent it and necessary  
5 travel expenses, shall be allowed and paid from the Special  
6 Disability Trust Fund as provided in this section upon the  
7 presentation of itemized vouchers therefor approved by the  
8 department division.

9 (11) EFFECTIVE DATES.--This section does not apply to  
10 any case in which the accident causing the subsequent injury  
11 or death or the disablement or death from a subsequent  
12 occupational disease occurred prior to July 1, 1955, or on or  
13 after January 1, 1998. In no event shall the Special  
14 Disability Trust Fund be liable for, or reimburse employers or  
15 carriers for, any case in which the accident causing the  
16 subsequent injury or death or the disablement or death from a  
17 subsequent occupational disease occurred on or after January  
18 1, 1998. The Special Disability Trust Fund shall continue to  
19 reimburse employers or carriers for subsequent injuries  
20 occurring prior to January 1, 1998, and the department  
21 ~~division~~ shall continue to assess for and the department  
22 ~~division~~ or administrator shall fund reimbursements as  
23 provided in subsection (9) for this purpose.

24 Section 42. Section 440.491, Florida Statutes, is  
25 amended to read:

26 440.491 Reemployment of injured workers;  
27 rehabilitation.--

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

29 (a) "Carrier" means group self-insurance funds or  
30 individual self-insureds authorized under this chapter and  
31



1 commercial funds or insurance entities authorized to write  
2 workers' compensation insurance under chapter 624.

3 (b) "Medical care coordination" includes, but is not  
4 limited to, coordinating physical rehabilitation services such  
5 as medical, psychiatric, or therapeutic treatment for the  
6 injured employee, providing health training to the employee  
7 and family, and monitoring the employee's recovery. The  
8 purposes of medical care coordination are to minimize the  
9 disability and recovery period without jeopardizing medical  
10 stability, to assure that proper medical treatment and other  
11 restorative services are timely provided in a logical  
12 sequence, and to contain medical costs.

13 (c) "Qualified rehabilitation provider" means a  
14 rehabilitation nurse, rehabilitation counselor, vocational  
15 evaluator, rehabilitation facility, or agency approved by the  
16 Department of Education ~~division~~ as qualified to provide  
17 reemployment assessments, medical care coordination,  
18 reemployment services, or vocational evaluations under this  
19 chapter.

20 (d) "Reemployment assessment" means a written  
21 assessment performed by a qualified rehabilitation provider  
22 which provides a comprehensive review of the medical  
23 diagnosis, treatment, and prognosis; includes conferences with  
24 the employer, physician, and claimant; and recommends a  
25 cost-effective physical and vocational rehabilitation plan to  
26 assist the employee in returning to suitable gainful  
27 employment.

28 (e) "Reemployment services" means services that  
29 include, but are not limited to, vocational counseling,  
30 job-seeking skills training, ergonomic job analysis,  
31 transferable skills analysis, selective job placement, labor

1 market surveys, and arranging other services such as education  
2 or training, vocational and on-the-job, which may be needed by  
3 the employee to secure suitable gainful employment.

4 (f) "Reemployment status review" means a review to  
5 determine whether an injured employee is at risk of not  
6 returning to work.

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

14 (h) "Vocational evaluation" means a review of the  
15 employee's physical and intellectual capabilities, his or her  
16 aptitudes and achievements, and his or her work-related  
17 behaviors to identify the most cost-effective means toward the  
18 employee's return to suitable gainful employment.

19 (2) INTENT.--It is the intent of this section to  
20 implement a systematic review by carriers of the factors that  
21 are predictive of longer-term disability and to encourage the  
22 provision of medical care coordination and reemployment  
23 services that are necessary to assist the employee in  
24 returning to work as soon as is medically feasible.

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

26 (a) When an employee who has suffered an injury  
27 compensable under this chapter is unemployed 60 days after the  
28 date of injury and is receiving benefits for temporary total  
29 disability, temporary partial disability, or wage loss, and  
30 has not yet been provided medical care coordination and  
31 reemployment services voluntarily by the carrier, the carrier

1 must determine whether the employee is likely to return to  
2 work and must report its determination to the Department of  
3 Education ~~division~~. The carrier must thereafter determine the  
4 reemployment status of the employee at 90-day intervals as  
5 long as the employee remains unemployed, is not receiving  
6 medical care coordination or reemployment services, and is  
7 receiving the benefits specified in this subsection.

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

12 (4) REEMPLOYMENT ASSESSMENTS.--

13 (a) The carrier may require the employee to receive a  
14 reemployment assessment as it considers appropriate. However,  
15 the carrier is encouraged to obtain a reemployment assessment  
16 if:

17 1. The carrier determines that the employee is at risk  
18 of remaining unemployed.

19 2. The case involves catastrophic or serious injury.

20 (b) The carrier shall authorize only a qualified  
21 rehabilitation provider to provide the reemployment  
22 assessment. The rehabilitation provider shall conduct its  
23 assessment and issue a report to the carrier, the employee,  
24 and the Department of Education ~~division~~ within 30 days after  
25 the time such assessment is complete.

26 (c) If the rehabilitation provider recommends that the  
27 employee receive medical care coordination or reemployment  
28 services, the carrier shall advise the employee of the  
29 recommendation and determine whether the employee wishes to  
30 receive such services. The employee shall have 15 days after  
31 the date of receipt of the recommendation in which to agree to

1 accept such services. If the employee elects to receive  
2 services, the carrier may refer the employee to a  
3 rehabilitation provider for such coordination or services  
4 within 15 days of receipt of the assessment report or notice  
5 of the employee's election, whichever is later.

6 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT  
7 SERVICES.--

8 (a) Once the carrier has assigned a case to a  
9 qualified rehabilitation provider for medical care  
10 coordination or reemployment services, the provider shall  
11 develop a reemployment plan and submit the plan to the carrier  
12 and the employee for approval.

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

26 (c) A carrier may voluntarily provide medical care  
27 coordination or reemployment services to the employee at  
28 intervals more frequent than those required in this section.  
29 For the purpose of monitoring reemployment, the carrier or the  
30 rehabilitation provider shall report to the Department of  
31 Education ~~division~~, in the manner prescribed by the Department

1 of Education ~~division~~, the date of reemployment and wages of  
2 the employee. The carrier shall report its voluntary service  
3 activity to the Department of Education ~~division~~ as required  
4 by rule. Voluntary services offered by the carrier for any of  
5 the following injuries must be considered benefits for  
6 purposes of ratemaking: traumatic brain injury; spinal cord  
7 injury; amputation, including loss of an eye or eyes; burns of  
8 5 percent or greater of the total body surface.

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

15 (6) TRAINING AND EDUCATION.--

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

1 vocational services when necessary to satisfy the  
2 recommendation of a vocational evaluator. The Department of  
3 Education ~~division~~ shall establish training and education  
4 standards pertaining to employee eligibility, course curricula  
5 and duration, and associated costs.

6 (b) When it appears that an employee who has attained  
7 maximum medical improvement requires training and education to  
8 obtain suitable gainful employment, the employer shall pay the  
9 employee additional temporary total compensation while the  
10 employee receives such training and education for a period not  
11 to exceed 26 weeks, which period may be extended for an  
12 additional 26 weeks or less, if such extended period is  
13 determined to be necessary and proper by a judge of  
14 compensation claims. However, a carrier or employer is not  
15 precluded from voluntarily paying additional temporary total  
16 disability compensation beyond that period. If an employee  
17 requires temporary residence at or near a facility or an  
18 institution providing training and education which is located  
19 more than 50 miles away from the employee's customary  
20 residence, the reasonable cost of board, lodging, or travel  
21 must be borne by the Department of Insurance ~~division~~ from the  
22 Workers' Compensation Administration Trust Fund established by  
23 s. 440.50. An employee who refuses to accept training and  
24 education that is recommended by the vocational evaluator and  
25 considered necessary by the Department of Education ~~division~~  
26 is subject to a 50-percent reduction in weekly compensation  
27 benefits, including wage-loss benefits, as determined under s.  
28 440.15(3)(b).

29 (7) PROVIDER QUALIFICATIONS.--

30 (a) The Department of Education ~~division~~ shall  
31 investigate and maintain a directory of each qualified public

1 and private rehabilitation provider, facility, and agency, and  
2 shall establish by rule the minimum qualifications,  
3 credentials, and requirements that each rehabilitation service  
4 provider, facility, and agency must satisfy to be eligible for  
5 listing in the directory. These minimum qualifications and  
6 credentials must be based on those generally accepted within  
7 the service specialty for which the provider, facility, or  
8 agency is approved.

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

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

25 (d) A qualified rehabilitation service provider,  
26 facility, or agency may not be authorized by an employer, a  
27 carrier, or the Department of Education ~~division~~ to provide  
28 any services, including expert testimony, under this section  
29 in this state unless the provider, facility, or agency is  
30 listed or has been approved for listing in the directory. This  
31

1 restriction does not apply to services provided outside this  
2 state under this section.

3 (e) The Department of Education ~~division~~, after  
4 consultation with representatives of employees, employers,  
5 carriers, rehabilitation providers, and qualified training and  
6 education providers, shall adopt rules governing professional  
7 practices and standards.

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

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

16 Section 43. Section 440.50, Florida Statutes, is  
17 amended to read:

18 440.50 Workers' Compensation Administration Trust  
19 Fund.--

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

31



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

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

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

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

23           Section 44. Section 440.51, Florida Statutes, is  
24 amended to read:

25           440.51 Expenses of administration.--

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

29           (a) The department ~~division~~ shall, by July 1 of each  
30 year, notify carriers and self-insurers of the assessment  
31 rate, which shall be based on the anticipated expenses of the

1 administration of this chapter for the next calendar year.  
2 Such assessment rate shall take effect January 1 of the next  
3 calendar year and shall be included in workers' compensation  
4 rate filings approved by the Department of Insurance which  
5 become effective on or after January 1 of the next calendar  
6 year. Assessments shall become due and be paid quarterly.

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

28 (2) The department ~~division~~ shall provide by  
29 regulation for the collection of the amounts assessed against  
30 each carrier. Such amounts shall be paid within 30 days from  
31 the date that notice is served upon such carrier. If such

1 amounts are not paid within such period, there may be assessed  
2 for each 30 days the amount so assessed remains unpaid, a  
3 civil penalty equal to 10 percent of the amount so unpaid,  
4 which shall be collected at the same time and a part of the  
5 amount assessed. For those carriers who excluded ceded  
6 reinsurance premiums from their assessments prior to January  
7 1, 2000, the department ~~division~~ shall not recover any past  
8 underpayments of assessments related to ceded reinsurance  
9 premiums prior to January 1, 2001, against such carriers.

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

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

21 (5) Any amount so assessed against and paid by an  
22 insurance carrier, self-insurer authorized pursuant to s.  
23 624.4621, or commercial self-insurance fund authorized under  
24 ss. 624.460-624.488 shall be allowed as a deduction against  
25 the amount of any other tax levied by the state upon the  
26 premiums, assessments, or deposits for workers' compensation  
27 insurance on contracts or policies of said insurance carrier,  
28 self-insurer, or commercial self-insurance fund. Any insurance  
29 carrier claiming such a deduction against the amount of any  
30 such tax shall not be required to pay any additional  
31 retaliatory tax levied pursuant to s. 624.5091 as a result of

1 claiming such deduction. Because deductions under this  
2 subsection are available to insurance carriers, s. 624.5091  
3 does not limit such deductions in any manner.

4       (6)(a) The department ~~division~~ may require from each  
5 carrier, at such time and in accordance with such regulations  
6 as the department ~~division~~ may prescribe, reports in respect  
7 to all gross earned premiums and of all payments of  
8 compensation made by such carrier during each prior period,  
9 and may determine the amounts paid by each carrier and the  
10 amounts paid by all carriers during such period.

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

29       (7) The department ~~division~~ shall keep accumulated  
30 cost records of all injuries occurring within the state coming  
31 within the purview of this chapter on a policy and

1 calendar-year basis. For the purpose of this chapter, a  
2 "calendar year" is defined as the year in which the injury is  
3 reported to the department ~~division~~; "policy year" is defined  
4 as that calendar year in which the policy becomes effective,  
5 and the losses under such policy shall be chargeable against  
6 the policy year so defined.

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

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

- 18 (a) Cause of the injury;
- 19 (b) Nature of the injury; and
- 20 (c) Type of disability.

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

29 (11) The department ~~division~~ shall furnish to any  
30 employer or carrier, upon request, its individual experience.  
31 ~~The division shall furnish to the Department of Insurance,~~

1 ~~upon request, the Florida experience as developed under~~  
2 ~~accident year or calendar year.~~

3 (12) In addition to any other penalties provided by  
4 this law, the failure to submit any report or other  
5 information required by this law shall be just cause to  
6 suspend the right of a self-insurer to operate as such, or,  
7 ~~upon certification by the division to the Department of~~  
8 ~~Insurance that a carrier has failed or refused to furnish such~~  
9 ~~reports,~~ shall be just cause for the Department of Insurance  
10 to suspend or revoke the license of such carrier.

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

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

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

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

27 Section 45. Section 440.52, Florida Statutes, is  
28 amended to read:

29 440.52 Registration of insurance carriers; notice of  
30 cancellation or expiration of policy; suspension or revocation  
31 of authority.--

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

6           (1)~~(2)~~ A carrier or self-insurance fund that receives  
7 notice pursuant to s. 440.05 shall notify the contractor of  
8 the cancellation or expiration of the insurance.

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

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

29           Section 46. Section 440.525, Florida Statutes, is  
30 amended to read:

31

1           440.525 Examination of carriers.--~~Beginning July 1,~~  
2 ~~1994,~~The Division of Workers' Compensation of the department  
3 of Labor and Employment Security may examine each carrier as  
4 often as is warranted to ensure that carriers are fulfilling  
5 their obligations under the law, ~~and shall examine each~~  
6 ~~carrier not less frequently than once every 3 years. The~~  
7 ~~examination must cover the preceding 3 fiscal years of the~~  
8 ~~carrier's operations and must commence within 12 months after~~  
9 ~~the end of the most recent fiscal year being covered by the~~  
10 ~~examination.~~The examination may cover any period of the  
11 carrier's operations since the last previous examination.

12           Section 47. Section 440.572, Florida Statutes, is  
13 amended to read:

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

27           Section 48. Section 440.59, Florida Statutes, is  
28 amended to read:

29           440.59 Reporting requirements.--

30           (1) The department ~~of Labor and Employment Security~~  
31 shall annually prepare a report of the administration of this



1 chapter for the preceding calendar year, including a detailed  
2 statement of the receipts of and expenditures from the fund  
3 established in s. 440.50 and a statement of the causes of the  
4 accidents leading to the injuries for which the awards were  
5 made, together with such recommendations as the department  
6 considers advisable. On or before September 15 of each year,  
7 the department shall submit a copy of the report to the  
8 Governor, the President of the Senate, the Speaker of the  
9 House of Representatives, the Democratic and Republican  
10 Leaders of the Senate and the House of Representatives, and  
11 the chairs of the legislative committees having jurisdiction  
12 over workers' compensation.

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

29 (3) The department division shall annually prepare a  
30 closed claim report for all claims for which the employee lost  
31 more than 7 days from work and shall submit a copy of the

1 report to the Governor, the President of the Senate, the  
2 Speaker of the House of Representatives, the Democratic and  
3 Republican Leaders of the Senate and the House of  
4 Representatives, and the chairs of the legislative committees  
5 having jurisdiction over workers' compensation on or before  
6 September 15 of each year. The closed claim report shall  
7 include information, data, and statistics deemed relevant by  
8 the department, ~~but not be limited to, an analysis of all~~  
9 ~~claims closed during the preceding year as to the date of~~  
10 ~~accident, age of the injured employee, occupation of the~~  
11 ~~injured employee, type of injury, body part affected, type and~~  
12 ~~duration of indemnity benefits paid, permanent impairment~~  
13 ~~rating, medical benefits identified by type of health care~~  
14 ~~provider, and type and cost of any rehabilitation benefits~~  
15 ~~provided.~~

16 (4) The department ~~division~~ shall prepare an annual  
17 report for all claims for which the employee lost more than 7  
18 days from work and shall submit a copy of the report to the  
19 Governor, the President of the Senate, the Speaker of the  
20 House of Representatives, the Democratic and Republican  
21 Leaders of the Senate and the House of Representatives, and  
22 the chairs of the legislative committees having jurisdiction  
23 over workers' compensation, on or before September 15 of each  
24 year. The annual report shall include information, data, and  
25 statistics deemed relevant by the department ~~a status report~~  
26 ~~on all cases involving work-related injuries in the previous~~  
27 ~~10 years. The annual report shall include, but not be limited~~  
28 ~~to, the number of open and closed cases, the number of cases~~  
29 ~~receiving various types of benefits, the cash and medical~~  
30 ~~benefits paid between the date of injury and the evaluation~~  
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1 ~~date, the number of litigated cases, and the amount of~~  
2 ~~attorney's fees paid in each case.~~

3 (5) The Chief Judge must prepare an annual report  
4 summarizing the disposition of mediation conferences and must  
5 submit the report to the Governor, the President of the  
6 Senate, the Speaker of the House of Representatives, the  
7 Democratic and Republican Leaders of the Senate and the House  
8 of Representatives, and the chairs of the legislative  
9 committees having jurisdiction over workers' compensation, on  
10 or before September 15 of each year.

11 Section 49. Section 440.591, Florida Statutes, is  
12 amended to read:

13 440.591 Administrative procedure; rulemaking  
14 authority.--The department, the agency, and the Department of  
15 Education have ~~division has~~ authority to adopt rules pursuant  
16 to ss. 120.536(1) and 120.54 to implement the provisions of  
17 this chapter conferring duties upon it.

18 Section 50. Section 440.593, Florida Statutes, is  
19 amended to read:

20 440.593 Electronic reporting.--The department ~~division~~  
21 may establish by rule an electronic reporting system whereby  
22 an employer or carrier is required to submit information  
23 electronically rather than by filing otherwise required forms  
24 or reports. The department ~~division~~ may by rule establish  
25 different deadlines for reporting information to the  
26 department ~~division~~ via the electronic reporting system than  
27 are otherwise required.

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

30 468.529 Licensee's insurance; employment tax; benefit  
31 plans.--

1           (3) A licensed employee leasing company shall within  
2 30 days of initiation or termination notify its workers'  
3 compensation insurance carrier, the Department of Insurance  
4 ~~Division of Workers' Compensation~~, and the Division of  
5 Unemployment Compensation of the Department of Revenue ~~Labor~~  
6 ~~and Employment Security~~ of both the initiation or the  
7 termination of the company's relationship with any client  
8 company.

9           Section 52. Paragraph (m) of subsection (1) of section  
10 626.88, Florida Statutes, is amended to read:

11           626.88 Definitions of "administrator" and "insurer".--

12           (1) For the purposes of this part, an "administrator"  
13 is any person who directly or indirectly solicits or effects  
14 coverage of, collects charges or premiums from, or adjusts or  
15 settles claims on residents of this state in connection with  
16 authorized commercial self-insurance funds or with insured or  
17 self-insured programs which provide life or health insurance  
18 coverage or coverage of any other expenses described in s.  
19 624.33(1), other than any of the following persons:

20           (m) A person approved by the Department of Insurance  
21 ~~Division of Workers' Compensation of the Department of Labor~~  
22 ~~and Employment Security~~ who administers only self-insured  
23 workers' compensation plans.

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

26           626.989 Investigation by department or Division of  
27 Insurance Fraud; compliance; immunity; confidential  
28 information; reports to division; division investigator's  
29 power of arrest.--

30           (9) In recognition of the complementary roles of  
31 investigating instances of workers' compensation fraud and

1 enforcing compliance with the workers' compensation coverage  
2 requirements under chapter 440, the Division of Insurance  
3 Fraud of the Department of Insurance is ~~and the Division of~~  
4 ~~Workers' Compensation of the Department of Labor and~~  
5 ~~Employment Security~~ are directed to prepare and submit a joint  
6 performance report to the President of the Senate and the  
7 Speaker of the House of Representatives by November 1 of each  
8 year for each of the next 2 years, and then every 3 years  
9 thereafter, describing the results obtained in achieving  
10 compliance with the workers' compensation coverage  
11 requirements and reducing the incidence of workers'  
12 compensation fraud.

13 Section 54. Section 627.0915, Florida Statutes, is  
14 amended to read:

15 627.0915 Rate filings; workers' compensation,  
16 drug-free workplace, and safe employers.--The Department of  
17 Insurance shall approve rating plans for workers' compensation  
18 insurance that give specific identifiable consideration in the  
19 setting of rates to employers that either implement a  
20 drug-free workplace program pursuant to rules adopted by the  
21 department ~~Division of Workers' Compensation of the Department~~  
22 ~~of Labor and Employment Security or implement a safety program~~  
23 ~~approved by the Division of Safety pursuant to rules adopted~~  
24 ~~by the Division of Safety of the Department of Labor and~~  
25 ~~Employment Security or implement both a drug-free workplace~~  
26 ~~program and a safety program. The Division of Safety may by~~  
27 ~~rule require that the client of a help supply services company~~  
28 ~~comply with the essential requirements of a workplace safety~~  
29 ~~program as a condition for receiving a premium credit.~~The  
30 plans must ~~take effect January 1, 1994,~~ must be actuarially  
31

1 sound, and must state the savings anticipated to result from  
2 such drug-testing program ~~and safety programs~~.

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

5 627.914 Reports of information by workers'  
6 compensation insurers required.--

7 (5) Self-insurers authorized to transact workers'  
8 compensation insurance as provided in s. 440.02 shall report  
9 only Florida data as prescribed in paragraphs (a)-(e) of  
10 subsection (4) to the department ~~Division of Workers'~~  
11 ~~Compensation of the Department of Labor and Employment~~  
12 ~~Security~~.

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

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

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

22 Section 56. This act does not affect the validity of  
23 any judicial or administrative proceeding involving the  
24 Department of Labor and Employment Security which is pending  
25 as of the effective date of any transfer under this act. The  
26 successor department, agency, or entity responsible for the  
27 program, activity, or function relative to the proceeding  
28 shall be substituted, as of the effective date of the  
29 applicable transfer under this act, for the Department of  
30 Labor and Employment Security as a party in interest in any  
31 such proceedings.

1           Section 57. If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 invalidity does not affect other provisions or applications of  
4 the act which can be given effect without the invalid  
5 provision or application, and to this end the provisions of  
6 this act are severable.

7           Section 58. Subsections (1) and (5) of section  
8 624.3161, Florida Statutes, are amended to read:

9           624.3161 Market conduct examinations.--

10           (1) As often as it deems necessary, the department  
11 shall examine each licensed rating organization, each advisory  
12 organization, each group, association, or other organization  
13 of insurers which engages in joint underwriting or joint  
14 reinsurance, and each authorized insurer transacting in this  
15 state any class of insurance to which the provisions of  
16 chapter 627 are applicable. The examination shall be for the  
17 purpose of ascertaining compliance by the person examined with  
18 the applicable provisions of chapters 440, 624, 626, 627, and  
19 635.

20           (5) Such examinations shall also be subject to the  
21 applicable provisions of ss. 624.318, 624.319, 624.321, and  
22 624.322 and chapter 440.

23           Section 59. (1) To the extent that any conflict  
24 exists between the provisions of this act and the provisions  
25 of SB 1140, or similar legislation which authorizes the  
26 Florida Self-Insurers Guaranty Association, Incorporated, to  
27 perform certain functions, the provisions of SB 1140 or the  
28 similar legislation shall control.

29           (2) To the extent that any conflict exists between  
30 this act and the provisions of SB 1926, or similar  
31 legislation, which transfers the Office of Judges of

1 Compensation Claims to the Division of Administration  
2 Hearings, the provisions of SB 1926 or the similar legislation  
3 shall control.

4           Section 60. This act shall take effect October 1,  
5 2001. However, the provisions of this act shall take effect  
6 July 1, 2001, if a memorandum of understanding regarding the  
7 responsibilities of the Division of Workers' Compensation has  
8 been executed between the Executive Office of the Governor and  
9 the Department of Insurance on or before May 1, 2001.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 2224

4 Revises the number of positions transferred from the General  
5 Counsel's Office at the Department of Labor and Employment  
6 Security from four senior attorneys to three senior attorneys  
7 and one administrative assistant.

8 Revises the language that transfers the Judges of Compensation  
9 Claims to the Division of Administrative Hearings to conform  
10 to CS/SB 1926.

11 Changes the number of positions transferred from the Division  
12 of Workers' Compensation to the Department of Education from  
13 95 to 98 positions.

14 The Department of Insurance is authorized to share  
15 confidential medical records with the agency for Health Care  
16 Administration to assist the agency in fulfilling its  
17 responsibilities under ss. 440.13 and 440.134, F.S., and the  
18 agency would be required to maintain the confidentiality of  
19 such information.

20 Requires the Department of Insurance to develop reporting  
21 requirements relating to medical treatment in consultation  
22 with the Agency for Health Care Administration.

23 Authorizes the Department of Insurance to monitor and audit  
24 workers' compensation carriers in accordance with the  
25 provisions of s. 3624.161, F.S., which relate to market  
26 conduct examinations of insurers.

27 Authorizes the reimbursement for hospital treatment at the per  
28 diem rate for hospital inpatient stay.

29 Authorizes the Department of Insurance to specify by rule the  
30 reporting requirements for certain medical information  
31 relating to maximum medical improvement.

Eliminates the requirements that the Department review and  
determine, at the carrier's or employer's request, whether the  
carrier has performed its duty with respect to whether any  
extended unemployment of an employee is a direct result of an  
employee's impairment.

Eliminates an annual report by the Department of Insurance  
regarding the promptness of first payment of compensation of  
each carrier or self-insurer.

Eliminates the requirement that the Department of Insurance  
notify a carrier of the name of any injured worker who is not  
reported as earning wages on the last quarterly earnings  
report.

Authorizes the Department of Insurance to suspend or revoke  
the authorization of a workers' compensation carrier to write  
workers' compensation insurance under the provisions of the  
Insurance Code, for repeatedly failing to comply with the  
provisions of chapter 440.

1 Includes the Department of Education, together with the  
2 Department of Insurance and the Agency for Health Care  
3 Administration as governmental entities authorized to adopt  
4 rules to implement the provisions of chapter 440, F.S.  
5 Provides that to the extent there is any conflict between  
6 provisions of this bill and the provisions of SB 1140, which  
7 authorizes the Florida Self-Insurers Guaranty Association to  
8 perform certain duties, the provisions of SB 1140 or similar  
9 legislation would control.  
10 Provides that to the extent there is any conflict between  
11 provisions of this bill and the provisions of SB 1926, which  
12 transfers the Office of the Judges of Compensation Claims to  
13 the Division of Administrative Hearings, the provisions of SB  
14 1926 or similar legislation would control.  
15 Provides that the provisions of this act would take effect  
16 July 1, 2001, rather than October 1, 2001, if a memorandum of  
17 understanding regarding the responsibilities of the Division  
18 Workers' Compensation has been executed between the Executive  
19 Office of the Governor and the Department of Insurance on or  
20 before May 1, 2001.  
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