

By the Committees on Appropriations; Banking and Insurance;
and Senator Clary

309-1963-01

1 A bill to be entitled
2 An act relating to the Department of Labor and
3 Employment Security; transferring the Division
4 of Workers' Compensation from the Department of
5 Labor and Employment Security to the Department
6 of Insurance; providing exceptions;
7 transferring various functions, powers, duties,
8 personnel, and assets relating to workers'
9 compensation to the Department of Education,
10 the Agency for Health Care Administration, and
11 the Department of Insurance; providing for
12 certain employees of the division to be given
13 hiring priority by the Department of Insurance;
14 providing pay and employment guidelines for
15 such employees; transferring various functions,
16 powers, duties, personnel, and assets relating
17 to the Unemployment Appeals Commission to the
18 Agency for Workforce Innovation; transferring
19 various functions, powers, duties, personnel,
20 and assets relating to the Public Employee
21 Relations Commission to the Department of
22 Management Services; transferring the Office of
23 Information Services and related resources of
24 the Department of Labor and Employment Security
25 to the State Technology Office; providing for
26 substitution of a successor agency as a party
27 to judicial and administrative proceedings;
28 transferring the administration of child labor
29 laws to the Department of Business and
30 Professional Regulation; transferring certain
31 functions of the Office of the Secretary, the

1 Office of Administrative Services, and the
2 Office of General Counsel of the Department of
3 Labor and Employment Security relating to labor
4 organizations and migrant and farm labor
5 registration to the Department of Business and
6 Professional Regulation; transferring other
7 workplace regulation functions to the
8 Department of Business and Professional
9 Regulation; providing for the continuation of
10 contracts and agreements; making
11 appropriations; amending s. 20.13, F.S.;
12 creating the Division of Workers' Compensation
13 in the Department of Insurance; amending s.
14 440.015, F.S.; designating state agencies to
15 administer the workers' compensation law;
16 amending s. 440.02, F.S.; providing
17 definitions; amending ss. 110.205, 440.021,
18 440.05, 440.09, 440.10, 440.102, 440.103,
19 440.105, 440.106, 440.107, 440.108, 440.125,
20 440.13, 440.134, 440.14, 440.15, 440.17,
21 440.185, 440.191, 440.192, 440.1925, 440.20,
22 440.207, 440.211, 440.25, 440.271, 440.345,
23 440.35, 440.381, 440.40, 440.41, 440.42,
24 440.44, 440.49, 440.491, 440.50, 440.51,
25 440.52, 440.525, 440.572, 440.59, 440.591,
26 440.593, 443.012, 443.036, 447.02, 447.205,
27 447.305, 450.012, 450.191, 450.28, 468.529,
28 626.88, 626.989, 627.0915, 627.914, F.S., to
29 conform to the transfers made by this act;
30 amending s. 440.24, F.S.; providing for the
31 sale of securities on deposit to satisfy a

1 compensation order; amending s. 440.38, F.S.;
2 transferring operation of provisions requiring
3 the securing of payment of compensation by
4 employers from the Division of Workers'
5 Compensation of the Department of Labor and
6 Employment Security to the Florida
7 Self-Insurer's Guaranty Association,
8 Incorporated, and the Department of Insurance;
9 revising and clarifying requirements and
10 procedures; providing powers and duties of the
11 association and the departments; providing for
12 allocation or payment of state funds to the
13 association for certain purposes; providing
14 rulemaking authority; amending s. 440.385,
15 F.S.; revising and clarifying provisions
16 relating to the association's creation, board
17 of directors, powers and duties, insolvency
18 fund, and plan of operation; providing
19 additional powers of the association;
20 transferring the powers and duties of the
21 Department of Labor and Employment Security
22 relating to the association to the Department
23 of Insurance and revising such powers and
24 duties; providing additional powers and duties
25 of the Department of Insurance; providing for
26 oversight of the association by the department;
27 deleting certain provisions relating to
28 detection and prevention of employer
29 insolvencies; amending s. 440.386, F.S.;
30 providing parity for the association with the
31 Department of Insurance relating to proceedings

1 for delinquency, liquidation, and conservation
2 of assets; amending s. 440.4416, F.S.;
3 transferring the Workers' Compensation
4 Oversight Board from the Department of Labor
5 and Employment Security to the Department of
6 Insurance; revising the membership and
7 appointment of board members; amending s.
8 624.3161, F.S.; providing for market conduct
9 examinations with respect to workers'
10 compensation; repealing s. 20.171, F.S.;
11 abolishing the Department of Labor and
12 Employment Security; providing severability;
13 providing legislative intent; providing
14 effective dates.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. (1) The Division of Workers' Compensation
19 of the Department of Labor and Employment Security is
20 transferred by a type two transfer, as defined in section
21 20.06(2), Florida Statutes, to the Department of Insurance,
22 except as otherwise provided in this section. The transfers to
23 the Department of Insurance shall include all resources, data,
24 records, property, and unexpended balances of appropriations,
25 allocations, or other funds. No personnel are transferred to
26 the Department of Insurance. The employees of the Department
27 of Labor and Employment Security's Division of Workers'
28 Compensation, Office of the Secretary, Office of
29 Administrative Services, and Office of General Counsel
30 employed by the Department of Labor and Employment Security as
31 of March 1, 2001, may be given hiring priority by the

1 Department of Insurance, and at least 300 of these employees
2 shall be offered employment by the Department of Insurance,
3 effective October 1, 2001. To the extent feasible, the
4 positions established by the Department of Insurance will be
5 at pay grades comparable to those of the positions established
6 by the Department of Labor and Employment Security based on
7 the classification code and specifications of the positions
8 for work to be performed at the Department of Insurance.
9 Offers of employment to the 300 employees must be tendered no
10 later than August 15, 2001. The Department of Labor and
11 Employment Security shall offer, and if accepted provide,
12 job-placement assistance to those employees not offered
13 employment by the Department of Insurance. After October 1,
14 2001, such assistance, upon request, shall be provided to
15 these employees by the Agency for Workforce Innovation. The
16 Department of Insurance shall determine the number of
17 positions needed to administer the provisions of chapter 440,
18 Florida Statutes. The number of positions the department
19 determines is needed may not exceed the number of authorized
20 positions and salary and benefits that was authorized for the
21 Division of Workers' Compensation within the Department of
22 Labor and Employment Security prior to the transfer. Upon
23 transfer of the Division of Workers' Compensation, the number
24 of required positions as determined by the department shall be
25 authorized within the agency. The Department of Insurance is
26 further authorized to reassign, reorganize, or otherwise
27 transfer positions to appropriate administrative subdivisions
28 within the department and to establish such regional offices
29 as are necessary to properly enforce and administer its
30 responsibilities under the Florida Insurance Code and chapter
31 440, Florida Statutes. The department may also enter into

1 contracts with public or private entities to administer its
2 duties and responsibilities associated with the transfer of
3 the Division of Workers' Compensation. All existing contracts
4 related to those functions that are transferred to the
5 Department of Insurance are subject to cancellation or renewal
6 upon review by the Department of Insurance.

7 (2) Four attorney positions and one administrative
8 assistant III position, and the related property and
9 unexpended balances of appropriations, allocations, and other
10 funds, are transferred from the Office of General Counsel of
11 the Department of Labor and Employment Security to the
12 Department of Insurance by a type two transfer, as defined in
13 section 20.06(2), Florida Statutes.

14 (3) The Office of the Judges of Compensation Claims is
15 transferred by a type two transfer, as defined in section
16 20.06(2), Florida Statutes, from the Department of Labor and
17 Employment Security to the Division of Administrative Hearings
18 of the Department of Management Services.

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

28 (5) Ten positions within the Division of Workers'
29 Compensation of the Department of Labor and Employment
30 Security responsible for receiving and preparing docketing
31 orders for the petitions for benefits and for receiving and

1 entering data related to the petitions for benefits are
2 transferred by a type two transfer, as defined in section
3 20.06(2), Florida Statutes, to the Office of the Judges of
4 Compensation Claims within the Division of Administrative
5 Hearings of the Department of Management Services.

6 (6) Four positions within the Division of Workers'
7 Compensation of the Department of Labor and Employment
8 Security responsible for financial management, accounting, and
9 budgeting for the Office of the Judges of Compensation Claims
10 are transferred by a type two transfer, as defined in section
11 20.06(2), Florida Statutes, to the Office of the Judges of
12 Compensation Claims within the Division of Administrative
13 Hearings of the Department of Management Services.

14 (7) Effective July 1, 2001, twenty-nine full-time
15 equivalent positions from the Division of Workers'
16 Compensation of the Department of Labor and Employment
17 Security and the records, property, and unexpended balances of
18 appropriations, allocations, and other funds related to
19 oversight of medical services in workers' compensation
20 provider relations, dispute and complaint resolution, program
21 evaluation, and data management are transferred by a type two
22 transfer, as defined in section 20.06(2), Florida Statutes,
23 from the Department of Labor and Employment Security to the
24 Agency for Health Care Administration. However, the claims
25 review functions and three-member panel shall not be so
26 transferred and shall be retained by the Department of
27 Insurance.

28 (8) All statutory powers, duties, functions, rules,
29 records, personnel, property, and unexpended balances of
30 appropriations, allocations, and other funds of the Division
31 of Workers' Compensation, Office of Medical Services and

1 Rehabilitation, related to reemployment, training and
2 education, obligations to rehire, and preferred worker
3 requirements, consisting of 98 full-time equivalent positions,
4 are transferred by a type two transfer, as defined in section
5 20.06(2), Florida Statutes, from the Department of Labor and
6 Employment Security to the Department of Education.

7 (9) Except as provided in this section, the records,
8 property, and unexpended balances of appropriations,
9 allocations, and other funds and resources of the Office of
10 the Secretary and the Office of Administrative Services of the
11 Department of Labor and Employment Security which support the
12 activities and functions of the Division of Workers'
13 Compensation are transferred by a type two transfer as defined
14 in section 20.06(2), Florida Statutes, to the Department of
15 Insurance. The Department of Insurance, in consultation with
16 the Department of Labor and Employment Security, shall
17 determine the number of positions needed for administrative
18 support of the programs within the Division of Workers'
19 Compensation as transferred to the Department of Insurance.
20 The number of administrative support positions that the
21 Department of Insurance determines is needed may not exceed
22 the number of administrative support positions that was
23 authorized for the Department of Labor and Employment Security
24 for this purpose prior to the transfer. Upon transfer of the
25 Division of Workers' Compensation, the number of required
26 administrative support positions as determined by the
27 Department of Insurance shall be authorized within the
28 Department of Insurance. For the transition period of July 1,
29 2001 to October 1, 2001, the Department of Labor and
30 Employment Security shall provide the necessary administrative
31 support to the Division of Workers' Compensation and the

1 Office of the Judges of Compensation Claims. The Division of
2 Workers' Compensation is authorized to transfer up to \$300,000
3 from the Workers' Compensation Administrative Trust Fund to
4 the Administrative Trust Fund in the Department of Labor and
5 Employment Security for the purpose of providing
6 administrative support during the transition period.

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

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

24 (12) Effective July 1, 2001, all powers, duties,
25 functions, rules, records, personnel, property, and unexpended
26 balances of appropriations, allocations, and other funds of
27 the Unemployment Appeals Commission relating to the
28 commission's specified authority, powers, duties, and
29 responsibilities are transferred by a type two transfer, as
30 defined in section 20.06(2), Florida Statutes, to the Agency
31 for Workforce Innovation.

1 (13) Effective July 1, 2001, all powers, duties,
2 functions, rules, records, personnel, property, and unexpended
3 balances of appropriations, allocations, and other funds of
4 the Public Employees Relations Commission relating to the
5 commission's specified authority, powers, duties, and
6 responsibilities are transferred by a type two transfer, as
7 defined in section 20.06(2), Florida Statutes, to the
8 Department of Management Services.

9 (14) Effective July 1, 2001, the Office of Information
10 Systems is transferred by a type two transfer, as defined in
11 section 20.06(2), Florida Statutes, from the Department of
12 Labor and Employment Security to the State Technology Office.
13 Upon completion of this transfer, the State Technology Office
14 and the Department of Insurance shall enter into discussions
15 to determine whether it would be technologically feasible and
16 cost effective to separate the Workers' Compensation
17 Integrated System from its current mainframe platform and
18 transfer ownership of this system to the Department of
19 Insurance. If the Department of Insurance ultimately
20 determines that it is technologically feasible and cost
21 effective to transfer ownership of the Workers' Compensation
22 Integrated System from the State Technology Office to the
23 Department of Insurance, the State Technology Office and the
24 Department of Insurance shall jointly develop and implement a
25 plan to transfer this system to the Department of Insurance.

26 (15)(a) Effective July 1, 2001, the records, property,
27 and unexpended balances of appropriations, allocations, and
28 other funds and resources of the Office of the Secretary and
29 the Office of Administrative Services of the Department of
30 Labor and Employment Security which support the activities and
31 functions transferred under subsection (12) to the Agency for

1 Workforce Innovation are transferred as provided in section
2 20.06(2), Florida Statutes, to the Agency for Workforce
3 Innovation.

4 (b) Effective July 1, 2001, the 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 subsection (13) to the Department
10 of Management Services are transferred as provided in section
11 20.06(2), Florida Statutes, to the Department of Management
12 Services.

13 (c) Effective July 1, 2001, the records, property, and
14 unexpended balances of appropriations, allocations, and other
15 funds and resources of the Office of the Secretary and the
16 Office of Administrative Services of the Department of Labor
17 and Employment Security which support the activities and
18 functions transferred under subsection (14) to the State
19 Technology Office are transferred as provided in section
20 20.06(2), Florida Statutes, to the State Technology Office.

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

31

1 (17) Effective July 1, 2001, 11 full-time equivalent
2 positions from the Division of Workers' Compensation of the
3 Department of Labor and Employment Security, and the powers,
4 duties, functions, rules, records, personnel, property, and
5 unexpended balances of appropriations, allocations, and other
6 funds related to the administration of child labor laws under
7 chapter 450, Florida Statutes, are transferred by a type two
8 transfer, as defined in section 20.06(2), Florida Statutes,
9 from the Department of Labor and Employment Security to the
10 Department of Business and Professional Regulation.

11 (18) Effective July 1, 2001, 30 full-time equivalent
12 positions from the Compliance and Enforcement Program in the
13 Office of the Secretary and Administrative Services and one
14 senior attorney and one administrative secretary from the
15 Office of General Counsel in the Office of the Secretary and
16 Administrative Services, and the powers, duties, functions,
17 rules, records, personnel, property, and unexpended balances
18 of appropriations, allocations, and other funds of the Office
19 of the Secretary and Administrative Services of the Department
20 of Labor and Employment Security related to the regulation of
21 labor organizations under chapter 447, Florida Statutes, and
22 the administration of migrant labor and farm labor laws under
23 chapter 450, Florida Statutes, are transferred by a type two
24 transfer, as defined in section 20.06 (2), Florida Statutes,
25 from the Department of Labor and Employment Security to the
26 Department of Business and Professional Regulation.

27 (19) Effective July 1, 2001, any other powers, duties,
28 functions, rules, records, property, and unexpended balances
29 of appropriations, allocations, and other funds of the
30 Department of Labor and Employment Security not otherwise
31 transferred by this act, relating to workplace regulation and

1 enforcement, including, but not limited to, those under
2 chapter 448, Florida Statutes, are transferred by a type two
3 transfer, as defined in section 20.06(2), Florida Statutes,
4 from the Department of Labor and Employment Security to the
5 Department of Business and Professional Regulation.

6 (20) Effective July 1, 2001, the records, property,
7 and unexpended balances of appropriations, allocations, and
8 other funds and resources of the Office of the Secretary and
9 Administrative Services of the Department of Labor and
10 Employment Security which support the activities and functions
11 transferred under subsections (17), (18), and (19) to the
12 Department of Business and Professional Regulation are
13 transferred as provided in section 20.06(2), Florida Statutes,
14 to the Department of Business and Professional Regulation.

15 (21) Notwithstanding any other provision of law, any
16 binding contract or interagency agreement existing on or
17 before October 1, 2001, between the Department of Labor and
18 Employment Security, or an entity or agent of the department,
19 and any other agency, entity, or person shall continue as a
20 binding contract or agreement for the remainder of the term of
21 such contract or agreement with the successor department,
22 agency, or entity responsible for the program, activity, or
23 functions relative to the contract or agreement.

24 Section 2. The sum of \$515,128 is appropriated from
25 the Workers' Compensation Trust Fund and the sum of \$184,000
26 is appropriated from the Child Labor Trust Fund to the
27 Department of Business and Professional Regulation for the
28 purpose of administration of child labor laws under chapter
29 450, Florida Statutes. This appropriation shall not take
30 effect if a similar amount of funding is appropriated to the
31 Department of Business and Professional Regulation for this

1 purpose in the fiscal year 2001-2002 General Appropriations
2 Act.

3 Section 3. The sum of \$407,621 is appropriated from
4 the Department of Labor and Employment Security Administrative
5 Trust Fund, and the sum of \$320,000 is appropriated from the
6 Crew Chief Registration Trust Fund, and the sum of \$1,301,272
7 is appropriated from the General Revenue Fund, to the
8 Department of Business and Professional Regulation for the
9 purpose of administration of the regulation of labor
10 organizations under chapter 447, Florida Statutes, and the
11 administration of migrant labor and farm labor laws under
12 chapter 450, Florida Statutes. This appropriation shall not
13 take effect if a similar amount of funding is appropriated to
14 the Department of Business and Professional Regulation for
15 this purpose in the fiscal year 2001-2002 General
16 Appropriations Act.

17 Section 4. Paragraph (k) is added to subsection (2) of
18 section 20.13, Florida Statutes, to read:

19 20.13 Department of Insurance.--There is created a
20 Department of Insurance.

21 (2) The following divisions of the Department of
22 Insurance are established:

23 (k) Division of Workers' Compensation.

24 Section 5. Paragraph (1) of subsection (2) of section
25 110.205, Florida Statutes, is amended to read:

26 110.205 Career service; exemptions.--

27 (2) EXEMPT POSITIONS.--The exempt positions which are
28 not covered by this part include the following, provided that
29 no position, except for positions established for a limited
30 period of time pursuant to paragraph (h), shall be exempted if
31 the position reports to a position in the career service:

1 (1) All assistant division director, deputy division
2 director, and bureau chief positions in any department, and
3 those positions determined by the department to have
4 managerial responsibilities comparable to such positions,
5 which positions include, but are not limited to, positions in
6 the Department of Health, the Department of Children and
7 Family Services, and the Department of Corrections that are
8 assigned primary duties of serving as the superintendent or
9 assistant superintendent, or warden or assistant warden, of an
10 institution; positions in the Department of Corrections that
11 are assigned primary duties of serving as the circuit
12 administrator or deputy circuit administrator; positions in
13 the Department of Transportation that are assigned primary
14 duties of serving as regional toll managers and managers of
15 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
16 in the Department of Environmental Protection that are
17 assigned the duty of an Environmental Administrator or program
18 administrator; ~~those positions described in s. 20.171 as~~
19 ~~included in the Senior Management Service~~ and positions in
20 the Department of Health that are assigned the duties of
21 Environmental Administrator, Assistant County Health
22 Department Director, and County Health Department Financial
23 Administrator. Unless otherwise fixed by law, the department
24 shall set the salary and benefits of these positions in
25 accordance with the rules established for the Selected Exempt
26 Service.

27 Section 6. Section 440.015, Florida Statutes, is
28 amended to read:

29 440.015 Legislative intent.--It is the intent of the
30 Legislature that the Workers' Compensation Law be interpreted
31 so as to assure the quick and efficient delivery of disability

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

28 Section 7. Subsections (11), (13), and (14) of section
29 440.02, Florida Statutes, are amended, and subsection (40) is
30 added to that section, to read:

31

1 440.02 Definitions.--When used in this chapter, unless
2 the context clearly requires otherwise, the following terms
3 shall have the following meanings:

4 (11) "Department" means the Department of Insurance
5 ~~Labor and Employment Security~~.

6 (13) "Division" means the Division of Workers'
7 Compensation of the Department of Insurance ~~Labor and~~
8 ~~Employment Security~~.

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

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

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

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

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

30
31

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

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

22 (d) "Employee" does not include:

23 1. An independent contractor, if:

24 a. The independent contractor maintains a separate
25 business with his or her own work facility, truck, equipment,
26 materials, or similar accommodations;

27 b. The independent contractor holds or has applied for
28 a federal employer identification number, unless the
29 independent contractor is a sole proprietor who is not
30 required to obtain a federal employer identification number
31 under state or federal requirements;

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

5 d. The independent contractor incurs the principal
6 expenses related to the service or work that he or she
7 performs or agrees to perform;

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

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

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

17 h. The independent contractor has continuing or
18 recurring business liabilities or obligations; and

19 i. The success or failure of the independent
20 contractor's business depends on the relationship of business
21 receipts to expenditures.

22

23 However, the determination as to whether an individual
24 included in the Standard Industrial Classification Manual of
25 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
26 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
27 2448, or 2449, or a newspaper delivery person, is an
28 independent contractor is governed not by the criteria in this
29 paragraph but by common-law principles, giving due
30 consideration to the business activity of the individual.

31

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

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

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

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

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

30 a. Persons who serve in private nonprofit agencies and
31 who receive no compensation other than expenses in an amount

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

9 b. Volunteers participating in federal programs
10 established under Pub. L. No. 93-113.

11 7. Any officer of a corporation who elects to be
12 exempt from this chapter.

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

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

26 10. A taxicab, limousine, or other passenger
27 vehicle-for-hire driver who operates said vehicles pursuant to
28 a written agreement with a company which provides any
29 dispatch, marketing, insurance, communications, or other
30 services under which the driver and any fees or charges paid
31 by the driver to the company for such services are not

1 conditioned upon, or expressed as a proportion of, fare
2 revenues.

3 (40) "Agency" means the Agency for Health Care
4 Administration.

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

7 440.021 Exemption of workers' compensation from
8 chapter 120.--Workers' compensation adjudications by judges of
9 compensation claims are exempt from chapter 120, and no judge
10 of compensation claims shall be considered an agency or a part
11 thereof. Communications of the result of investigations by the
12 department division pursuant to s. 440.185(4) are exempt from
13 chapter 120. In all instances in which the department division
14 institutes action to collect a penalty or interest which may
15 be due pursuant to this chapter, the penalty or interest shall
16 be assessed without hearing, and the party against which such
17 penalty or interest is assessed shall be given written notice
18 of such assessment and shall have the right to protest within
19 20 days of such notice. Upon receipt of a timely notice of
20 protest and after such investigation as may be necessary, the
21 department division shall, if it agrees with such protest,
22 notify the protesting party that the assessment has been
23 revoked. If the department division does not agree with the
24 protest, it shall refer the matter to the judge of
25 compensation claims for determination pursuant to s.
26 440.25(2)-(5). Such action of the department division is
27 exempt from the provisions of chapter 120.

28 Section 9. Section 440.05, Florida Statutes, is
29 amended to read:

30 440.05 Election of exemption; revocation of election;
31 notice; certification.--

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

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

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

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

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

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

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

29 (6) A construction industry certificate of election to
30 be exempt which is issued in accordance with this section
31 shall be valid for 2 years after the effective date stated

1 thereon. Both the effective date and the expiration date must
2 be listed on the face of the certificate by the department
3 division. The construction industry certificate must expire at
4 midnight, 2 years from its issue date, as noted on the face of
5 the exemption certificate. Any person who has received from
6 the department ~~division~~ a construction industry certificate of
7 election to be exempt which is in effect on December 31, 1998,
8 shall file a new notice of election to be exempt by the last
9 day in his or her birth month following December 1, 1998. A
10 construction industry certificate of election to be exempt may
11 be revoked before its expiration by the sole proprietor,
12 partner, or officer for whom it was issued or by the
13 department ~~division~~ for the reasons stated in this section.

14 At least 60 days prior to the expiration date of a
15 construction industry certificate of exemption issued after
16 December 1, 1998, the department ~~division~~ shall send notice of
17 the expiration date and an application for renewal to the
18 certificateholder at the address on the certificate.

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

24 (8)(a) The department ~~division~~ must assess a fee of
25 \$50 with each request for a construction industry certificate
26 of election to be exempt or renewal of election to be exempt
27 under this section.

28 (b) The funds collected by the department ~~division~~
29 shall be used to administer this section, to audit the
30 businesses that pay the fee for compliance with any
31

1 requirements of this chapter, and to enforce compliance with
2 the provisions of this chapter.

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

11 Section 10. Paragraph (d) of subsection (7) of section
12 440.09, Florida Statutes, is amended to read:

13 440.09 Coverage.--

14 (7)

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

19 Section 11. Paragraphs (f) and (g) of subsection (1)
20 of section 440.10, Florida Statutes, are amended to read:

21 440.10 Liability for compensation.--

22 (1)

23 (f) If an employer willfully fails to secure
24 compensation as required by this chapter, the department
25 ~~division~~ may assess against the employer a penalty not to
26 exceed \$5,000 for each employee of that employer who is
27 classified by the employer as an independent contractor but
28 who is found by the department ~~division~~ to not meet the
29 criteria for an independent contractor that are set forth in
30 s. 440.02.

31

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

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

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

10
11 A sole proprietor, partner, or officer of a corporation who
12 elects exemption from this chapter by filing a certificate of
13 election under s. 440.05 may not recover benefits or
14 compensation under this chapter. An independent contractor
15 who provides the general contractor with both an affidavit
16 stating that he or she meets the requirements of s.
17 440.02(14)(d) and a certificate of exemption is not an
18 employee under s. 440.02(14)(c) and may not recover benefits
19 under this chapter. For purposes of determining the
20 appropriate premium for workers' compensation coverage,
21 carriers may not consider any person who meets the
22 requirements of this paragraph to be an employee.

23 Section 12. Subsection (2), paragraph (a) of
24 subsection (3), and paragraph (g) of subsection (7) of section
25 440.102, Florida Statutes, are amended to read:

26 440.102 Drug-free workplace program requirements.--The
27 following provisions apply to a drug-free workplace program
28 implemented pursuant to law or to rules adopted by the Agency
29 for Health Care Administration:

30 (2) DRUG TESTING.--An employer may test an employee or
31 job applicant for any drug described in paragraph (1)(c). In

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

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

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

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

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

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

30 2. A statement advising the employee or job applicant
31 of the existence of this section.

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

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

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

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

11 (7) EMPLOYER PROTECTION.--

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

1 agreement as negotiated by the appropriate certified
2 bargaining agent before such testing is implemented.

3 Section 13. Section 440.103, Florida Statutes, is
4 amended to read:

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

22 Section 14. Paragraph (a) of subsection (2) of section
23 440.105, Florida Statutes, is amended to read:

24 440.105 Prohibited activities; reports; penalties;
25 limitations.--

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

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

31

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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 and manner it deems necessary to obtain accurate and
29 timely 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 format and manner form prescribed by the department division,
14 stating that such final payment has been made and stating the
15 total amount of compensation paid, the name of the employee
16 and of any other person to whom compensation has been paid,
17 the date of the injury or death, and the date to which
18 compensation has been 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 29. 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 30. Subsection (1) of section 440.211, Florida
16 Statutes, is amended to read:

17 440.211 Authorization of collective bargaining
18 agreement.--

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

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

31

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

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

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

10 (e) A vocational rehabilitation or retraining program.

11 Section 31. Subsections (1), (2), and (3) of section
12 440.24, Florida Statutes, are amended to read:

13 440.24 Enforcement of compensation orders;
14 penalties.--

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

31

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

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

18 Section 32. Subsections (4), (5), and (7) of section
19 440.25, Florida Statutes, are amended to read:

20 440.25 Procedures for mediation and hearings.--

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

31

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

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

10 (d) The hearing shall be held in the county where the
11 injury occurred, if the injury occurred in this state, unless
12 otherwise agreed to between the parties and authorized by the
13 judge of compensation claims in the county where the injury
14 occurred. If the injury occurred without the state and is one
15 for which compensation is payable under this chapter, then the
16 hearing above referred to may be held in the county of the
17 employer's residence or place of business, or in any other
18 county of the state which will, in the discretion of the Chief
19 Judge, be the most convenient for a hearing. The hearing shall
20 be conducted by a judge of compensation claims, who shall,
21 within 14 days after final hearing, unless otherwise agreed by
22 the parties, determine the dispute in a summary manner. At
23 such hearing, the claimant and employer may each present
24 evidence in respect of such claim and may be represented by
25 any attorney authorized in writing for such purpose. When
26 there is a conflict in the medical evidence submitted at the
27 hearing, the provisions of s. 440.13 shall apply. The report
28 or testimony of the expert medical advisor shall be made a
29 part of the record of the proceeding and shall be given the
30 same consideration by the judge of compensation claims as is
31 accorded other medical evidence submitted in the proceeding;

1 and all costs incurred in connection with such examination and
2 testimony may be assessed as costs in the proceeding, subject
3 to the provisions of s. 440.13. No judge of compensation
4 claims may make a finding of a degree of permanent impairment
5 that is greater than the greatest permanent impairment rating
6 given the claimant by any examining or treating physician,
7 except upon stipulation of the parties.

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

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

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

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

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

16 (j) To further expedite dispute resolution and to
17 enhance the self-executing features of the system, those
18 petitions filed in accordance with s. 440.192 that involve a
19 claim for benefits of \$5,000 or less shall, in the absence of
20 compelling evidence to the contrary, be presumed to be
21 appropriate for expedited resolution under this paragraph; and
22 any other claim filed in accordance with s. 440.192, upon the
23 written agreement of both parties and application by either
24 party, may similarly be resolved under this paragraph. For
25 purposes of expedited resolution pursuant to this paragraph,
26 the Chief Judge shall make provision by rule or order for
27 expedited and limited discovery and expedited docketing in
28 such cases. At least 15 days prior to hearing, the parties
29 shall exchange and file with the judge of compensation claims
30 a pretrial outline of all issues, defenses, and witnesses on a
31 form promulgated by the Chief Judge; provided, in no event

1 shall such hearing be held without 15 days' written notice to
2 all parties. No pretrial hearing shall be held. The judge of
3 compensation claims shall limit all argument and presentation
4 of evidence at the hearing to a maximum of 30 minutes, and
5 such hearings shall not exceed 30 minutes in length. Neither
6 party shall be required to be represented by counsel. The
7 employer or carrier may be represented by an adjuster or other
8 qualified representative. The employer or carrier and any
9 witness may appear at such hearing by telephone. The rules of
10 evidence shall be liberally construed in favor of allowing
11 introduction of evidence.

12 (5)(a) Procedures with respect to appeals from orders
13 of judges of compensation claims shall be governed by rules
14 adopted by the Supreme Court. Such an order shall become final
15 30 days after mailing of copies of such order to the parties,
16 unless appealed pursuant to such rules.

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

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

1 the Workers' Compensation Administrative Trust Fund pending
2 final disposition of the costs of appeal. The department
3 ~~division~~ may transcribe or arrange for the transcription of
4 the record in any proceeding for which it is ordered to pay
5 the cost of the record. In the event the insolvency petition
6 is denied, the judge of compensation claims may enter an order
7 requiring the petitioner to reimburse the department ~~division~~
8 for costs incurred in opposing the petition, including
9 investigation and travel expenses.

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

23 (7) An injured employee claiming or entitled to
24 compensation shall submit to such physical examination by a
25 certified expert medical advisor approved by the agency
26 ~~division~~ or the judge of compensation claims as the agency
27 ~~division~~ or the judge of compensation claims may require. The
28 place or places shall be reasonably convenient for the
29 employee. Such physician or physicians as the employee,
30 employer, or carrier may select and pay for may participate in
31 an examination if the employee, employer, or carrier so

1 requests. Proceedings shall be suspended and no compensation
2 shall be payable for any period during which the employee may
3 refuse to submit to examination. Any interested party shall
4 have the right in any case of death to require an autopsy, the
5 cost thereof to be borne by the party requesting it; and the
6 judge of compensation claims shall have authority to order and
7 require an autopsy and may, in her or his discretion, withhold
8 her or his findings and award until an autopsy is held.

9 Section 33. Section 440.271, Florida Statutes, is
10 amended to read:

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

21 Section 34. Section 440.345, Florida Statutes, is
22 amended to read:

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

29 Section 35. Section 440.35, Florida Statutes, is
30 amended to read:

31

1 440.35 Record of injury or death.--Every employer
2 shall keep a record in respect of any injury to an employee.
3 Such record shall contain such information of disability or
4 death in respect of such injury as the department ~~division~~ may
5 by regulation require, and shall be available to inspection by
6 the department ~~division~~ or by any state authority at such time
7 and under such conditions as the department ~~division~~ may by
8 regulation prescribe.

9 Section 36. Subsections (1), (2), and (3) of section
10 440.38, Florida Statutes, are amended to read:

11 440.38 Security for compensation; insurance carriers
12 and self-insurers.--

13 (1) Every employer shall secure the payment of
14 compensation under this chapter:

15 (a) By insuring and keeping insured the payment of
16 such compensation with any stock company or mutual company or
17 association or exchange, authorized to do business in the
18 state;

19 (b) By furnishing satisfactory proof to the Florida
20 Self-Insurers Guaranty Association, Incorporated, created in
21 s. 440.385, that it has the financial strength necessary to
22 assure timely payment of all current and future claims
23 ~~division of its financial ability to pay such compensation~~
24 individually and on behalf of its subsidiary and affiliated
25 companies with employees in this state and receiving an
26 authorization from the Department of Insurance, ~~division~~ to
27 pay such compensation directly. The association shall review
28 the financial strength of applicants for membership, current
29 members, and former members and make recommendations to the
30 department regarding their qualifications to self-insure in
31 accordance with this act and ss. 440.385 and 440.386. The

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

1 ~~Incorporated, created pursuant to s. 440.385.~~ Any employer
2 securing compensation in accordance with the provisions of
3 this paragraph shall be known as a self-insurer and shall be
4 classed as a carrier of her or his own insurance. All such
5 employers shall, if requested, provide the association an
6 actuarial report signed by a member of the American Academy of
7 Actuaries providing an opinion of the appropriate present
8 value of the reserves for current and future compensation
9 claims. If any member or former member of the association
10 refuses to timely provide such a report, the association may
11 obtain an order from a circuit court requiring the member to
12 produce such a report and ordering such other relief as the
13 court determines appropriate. The association shall be
14 entitled to recover all reasonable costs and attorney's fees
15 in such proceedings.

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

1 amount equal to 1.5 times the value certified in the latest
2 opinion, the association shall provide such information to the
3 department along with a recommendation, and the Department of
4 Insurance division shall then revoke ~~an such~~ employer's
5 authorization to self-insure, ~~and such~~ Failure to comply with
6 this provision shall be deemed to constitute an immediate
7 serious danger to the public health, safety, or welfare
8 sufficient to justify the summary suspension of the employer's
9 authorization to self-insure pursuant to s. 120.68.

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

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

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

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

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

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

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

27 ~~e. Securities issued by this state and backed by the~~
28 ~~full faith and credit of this state.~~

29 5. The qualifying security deposit shall be held by
30 the association division, or by a depository authorized by the
31 ~~division~~, exclusively for the benefit of workers' compensation

1 claimants. The security shall not be subject to assignment,
2 execution, attachment, or any legal process whatsoever, except
3 as necessary to guarantee the payment of compensation under
4 this chapter. No surety bond may be terminated, and no letter
5 of credit ~~other qualifying security~~ may be allowed to expire
6 ~~lapse~~, without 90 days' prior written notice to the
7 association division and the deposit by the self-insuring
8 employer of some other qualifying security deposit of equal
9 value within 10 business days after such notice. Failure to
10 provide such written notice or failure to timely provide
11 qualifying replacement security after such notice shall
12 constitute grounds for the association division to call or sue
13 upon the surety bond, or to ~~act with respect to other pledged~~
14 ~~security in any manner necessary to preserve its value for the~~
15 ~~purposes intended by this section, including the exercise its~~
16 ~~of rights under a letter of credit.~~ Current self-insured
17 employers must comply with this section on or before December
18 31, 2001, or upon maturity of existing security deposits,
19 whichever occurs later ~~the sale of any security at then~~
20 ~~prevailing market rates, or the withdrawal of any funds~~
21 ~~represented by any certificate of deposit forming part of the~~
22 ~~qualifying security deposit.~~ The Department of Insurance
23 ~~division~~ may specify by rule the amount of the qualifying
24 security deposit required prior to authorizing an employer to
25 self-insure and the amount of net worth required for an
26 employer to qualify for authorization to self-insure;
27 (c) By entering into a contract with a public utility
28 under an approved utility-provided self-insurance program as
29 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
30 1983. The Department of Insurance ~~division~~ shall adopt rules
31 to implement this paragraph;

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

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

1 by the employee. If an employer obtains a 24-hour health
2 insurance policy or self-insured plan to secure payment of
3 compensation as to medical benefits, the employer must also
4 obtain an insurance policy or policies that provide indemnity
5 benefits as follows:

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

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

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

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

31

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

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

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

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

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

28 (b)~~(c)~~ Violation of s. 440.381 by a self-insurance
29 fund shall result in the imposition of a fine not to exceed
30 \$1,000 per audit if the self-insurance fund fails to act on
31 said audits by correcting errors in employee classification or

1 accepted applications for coverage where it knew employee
2 classifications were incorrect. Such fines shall be levied by
3 the Department of Insurance ~~division~~ and deposited into the
4 Workers' Compensation Administration Trust Fund.

5 Section 37. Subsections (3) and (7) of section
6 440.381, Florida Statutes, are amended to read:

7 440.381 Application for coverage; reporting payroll;
8 payroll audit procedures; penalties.--

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

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

25 Section 38. Section 440.385, Florida Statutes, is
26 amended to read:

27 440.385 Florida Self-Insurers Guaranty Association,
28 Incorporated.--

29 (1) CREATION OF ASSOCIATION.--

30 (a) There is created a nonprofit corporation to be
31 known as the "Florida Self-Insurers Guaranty Association,

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

20 (b) A member may voluntarily withdraw from the
21 association when the member voluntarily terminates the
22 self-insurance privilege and pays all assessments due to the
23 date of such termination. However, the withdrawing member
24 shall continue to be bound by the provisions of this section
25 relating to the period of his or her membership and any claims
26 charged pursuant thereto. The withdrawing member who is a
27 member on or after January 1, 1991, shall also be required to
28 provide to the association ~~division~~ upon withdrawal, and at
29 12-month intervals thereafter, satisfactory proof, including,
30 if requested by the association, a report of known and
31 potential claims certified by a member of the American Academy

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

1 member, and against any successor of a withdrawing member, who
2 fails to timely provide the required opinion or who fails to
3 maintain the required deposit with the division. The
4 association shall be entitled to recover a judgment in the
5 amount of the actuarial present value of the determined and
6 estimated future compensation payments of the withdrawing
7 member for claims incurred during the time that the
8 withdrawing member exercised the privilege of self-insurance,
9 together with reasonable attorney's fees. The association is
10 also entitled to recover reasonable attorney's fees in any
11 action to compel production of any actuarial report required
12 by this statute. For purposes of this section, the successor
13 of a withdrawing member means any person, business entity, or
14 group of persons or business entities, which holds or acquires
15 legal or beneficial title to the majority of the assets or the
16 majority of the shares of the withdrawing member.

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

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

11 (3) POWERS AND DUTIES.--

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

1 the covered claims and, to such extent, shall have all rights,
2 duties, and obligations of the insolvent employer as if the
3 employer had not become insolvent. However, in no event shall
4 the association be liable for any penalties or interest.

5 (b) The association may:

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

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

10 3. Sue or be sued.

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

13 5. Purchase such reinsurance as is determined
14 necessary pursuant to the plan of operation.

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

27 7. Collect and review financial information from
28 employers and make recommendations to the Department of
29 Insurance regarding the appropriate security deposit and
30 reinsurance amounts necessary for an employer to demonstrate
31 that it has the financial strength necessary to assure the

1 timely payment of all current and future claims. The
2 association may audit and examine an employer to verify the
3 financial strength of its current and former members. If the
4 association determines that a current or former self-insured
5 employer does not have the financial strength necessary to
6 assure the timely payment of all current and estimated future
7 claims, the association may recommend to the department that
8 the department:

9 a. Revoke the employer's self-insurance privilege.

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

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

29 8.7. Charge fees to any member of the association to
30 cover the actual costs of examining the financial and safety
31 conditions of that member.

1 9.8. 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 10. Implement any and all procedures necessary to
5 ensure compliance with regulatory actions taken by the
6 department.

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

29 2. If, in any one year, funds available from such
30 assessments, together with funds previously raised, are not
31 sufficient to make all the payments or reimbursements then

1 owing, the funds available shall be prorated, and the unpaid
2 portion shall be paid as soon thereafter as sufficient
3 additional funds become available.

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

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

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

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

31

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

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

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

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

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

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

14 (b)(c) All member employers shall comply with the plan
15 of operation.

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

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

20 2. Establish procedures for handling assets of the
21 association.

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

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

31

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

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

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

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

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

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

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

31 (a) The department shall+

1 ~~1.~~ review recommendations of the association
2 concerning whether current or former self-insured employers or
3 members of the association have the financial strength
4 necessary to ensure the timely payment of all current and
5 estimated future claims. If the association determines an
6 employer does not have the financial strength necessary to
7 ensure the timely payment of all current and future claims and
8 recommends action pursuant to paragraph (3)(b), the Department
9 of Insurance may take such action as necessary to order the
10 employer to comply with the recommendation.~~Notify the~~
11 ~~association of the existence of an insolvent employer not~~
12 ~~later than 3 days after it receives notice of the~~
13 ~~determination of insolvency.~~

14 (b) The department may:

15 1. Contract with the association for services, which
16 may include, but not be limited to, the following:

17 a. Process applications for self-insurance.

18 b. Collect and review financial statements and loss
19 reserve information from individual self-insurers.

20 c. Collect and maintain files for original security
21 deposit documents and reinsurance policies from individual
22 self-insurers and, if necessary, perfect security interests in
23 security deposits.

24 d. Process compliance documentation for individual
25 self-insurers and provide same to the Department of Insurance.

26 e. Collect all data necessary to calculate annual
27 premium for all individual self-insurers, including individual
28 self-insurers that are public utilities or governmental
29 entities, and provide such calculated annual premium to the
30 Department of Insurance for assessment purposes.

31

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

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

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

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

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

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

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

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

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

4 (7) EFFECT OF PAID CLAIMS.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Section 39. Subsections (2), (3), and (4) of section
30 440.386, Florida Statutes, are amended to read:

31

1 440.386 Individual self-insurers' insolvency;
2 conservation; liquidation.--

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

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

1 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
2 SELF-INSURERS.--

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

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

17 Section 40. Section 440.40, Florida Statutes, is
18 amended to read:

19 440.40 Compensation notice.--Every employer who has
20 secured compensation under the provisions of this chapter
21 shall keep posted in a conspicuous place or places in and
22 about her or his place or places of business typewritten or
23 printed notices, in accordance with a form prescribed by the
24 department division, stating that such employer has secured
25 the payment of compensation in accordance with the provisions
26 of this chapter. Such notices shall contain the name and
27 address of the carrier, if any, with whom the employer has
28 secured payment of compensation and the date of the expiration
29 of the policy. The department division may by rule prescribe
30 the form of the notices and require carriers to provide the
31 notices to policyholders.

1 Section 41. Section 440.41, Florida Statutes, is
2 amended to read:

3 440.41 Substitution of carrier for employer.--In any
4 case where the employer is not a self-insurer, in order that
5 the liability for compensation imposed by this chapter may be
6 most effectively discharged by the employer, and in order that
7 the administration of this chapter in respect of such
8 liability may be facilitated, the department ~~division~~ shall by
9 regulation provide for the discharge, by the carrier for such
10 employer, of such obligations and duties of the employer in
11 respect of such liability, imposed by this chapter upon the
12 employer, as it considers proper in order to effectuate the
13 provisions of this chapter. For such purposes:

14 (1) Notice to or knowledge of an employer of the
15 occurrence of the injury shall be notice to or knowledge of
16 the carrier.

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

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

25 Section 42. Subsection (3) of section 440.42, Florida
26 Statutes, is amended to read:

27 440.42 Insurance policies; liability.--

28 (3) No contract or policy of insurance issued by a
29 carrier under this chapter shall expire or be canceled until
30 at least 30 days have elapsed after a notice of cancellation
31 has been sent to the department ~~division~~ and to the employer

1 in accordance with the provisions of s. 440.185(7). However,
2 when duplicate or dual coverage exists by reason of two
3 different carriers having issued policies of insurance to the
4 same employer securing the same liability, it shall be
5 presumed that only that policy with the later effective date
6 shall be in force and that the earlier policy terminated upon
7 the effective date of the latter. In the event that both
8 policies carry the same effective date, one of the policies
9 may be canceled instanter upon filing a notice of cancellation
10 with the department ~~division~~ and serving a copy thereof upon
11 the employer in such manner as the department ~~division~~
12 prescribes by rule. The department ~~division~~ may by rule
13 prescribe the content of the notice of retroactive
14 cancellation and specify the time, place, and manner in which
15 the notice of cancellation is to be served.

16 Section 43. Section 440.44, Florida Statutes, is
17 amended to read:

18 440.44 Workers' compensation; staff organization.--

19 (1) INTERPRETATION OF LAW.--As a guide to the
20 interpretation of this chapter, the Legislature takes due
21 notice of federal social and labor acts and hereby creates an
22 agency to administer such acts passed for the benefit of
23 employees and employers in Florida industry, and desires to
24 meet the requirements of such federal acts wherever not
25 inconsistent with the Constitution and laws of Florida.

26 (2) INTENT.--It is the intent of the Legislature that
27 the department, the agency, and the Department of Education
28 ~~division~~ assume an active and forceful role in their ~~its~~
29 administration of this act, so as to ensure that the system
30 operates efficiently and with maximum benefit to both
31 employers and employees.

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

13 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL
14 ADMINISTRATION.--Subject to the other provisions of this
15 chapter, the department, the agency, and the Department of
16 Education are ~~division is~~ authorized to appoint, and prescribe
17 the duties and powers of, bureau chiefs, attorneys,
18 accountants, medical advisers, technical assistants,
19 inspectors, claims examiners, and such other employees as may
20 be necessary in the performance of its duties under this
21 chapter.

22 (5) OFFICE.--The department, the agency, the
23 Department of Education,~~division~~ and the Chief Judge shall
24 maintain and keep open during reasonable business hours an
25 office, which shall be provided in the Capitol or some other
26 suitable building in the City of Tallahassee, for the
27 transaction of business under this chapter, at which office
28 the official records and papers shall be kept. The office
29 shall be furnished and equipped. The department, the agency
30 ~~division,~~ any judge of compensation claims, or the Chief Judge
31

1 may hold sessions and conduct hearings at any place within the
2 state.

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

9 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
10 ~~division~~ is expressly authorized to provide by regulation for
11 and to destroy obsolete records of the department ~~division and~~
12 ~~commission~~.

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

21 Section 44. Section 440.4416, Florida Statutes, is
22 amended to read:

23 440.4416 Workers' Compensation Oversight Board.--

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

29 (a) Five ~~Six~~ members selected by the Insurance
30 Commissioner ~~Governor~~, none of whom shall be a member of the
31

1 Legislature at the time of appointment, consisting of the
2 following:

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

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

9 3. One representative of workers' compensation
10 claimants' attorneys.

11 4. One representative of workers' compensation defense
12 attorneys.

13 5. One representative who is an employer or a
14 nonsalaried and nonmanagement employee.

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

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

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

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

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

1 1. ~~A representative of employers who employs fewer~~
2 ~~than 10 employees in Florida and who is a licensed general~~
3 ~~contractor actively engaged in the construction industry in~~
4 ~~this state for which workers' compensation coverage is~~
5 ~~provided pursuant to this chapter.~~

6 ~~2.~~ A representative of employers who employs at least
7 10 employees in Florida for which workers' compensation
8 coverage is provided pursuant to this chapter.

9 2.3. A representative of employees who is a
10 nonsalaried and nonmanagement employee of an employer
11 employing at least 25 employees.

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

15 ~~(d)(e)~~ The terms of all current board members shall
16 expire December 31, 2001. New ~~The original~~ appointments to the
17 board shall be made on or before January 1, 2002 ~~1994~~.
18 Vacancies in the membership of the board shall be filled in
19 the same manner as the original appointments. ~~Except as to ex~~
20 ~~officio members of the board,~~Three appointees of the
21 Insurance Commissioner ~~Governor~~, one appointee ~~two appointees~~
22 of the President of the Senate, and one appointee ~~two~~
23 ~~appointees~~ of the Speaker of the House of Representatives
24 shall serve for terms of 2 years, and the remaining appointees
25 shall serve for terms of 4 years. Thereafter, all members
26 shall serve for terms of 4 years; except that a vacancy shall
27 be filled by appointment for the remainder of the term. ~~The~~
28 ~~board shall have an organizational meeting on or before March~~
29 ~~1, 1994, the time and place of such meeting to be determined~~
30 ~~by the Governor.~~

31

1 ~~(e)(f)~~ Each member is accountable to the Insurance
2 Commissioner ~~Governor~~ for proper performance of his or her
3 duties as a member of the board. The Insurance Commissioner
4 ~~Governor~~ may remove from office any member for malfeasance,
5 misfeasance, neglect of duty, drunkenness, incompetence,
6 permanent inability to perform official duties, or for
7 pleading guilty or nolo contendere to, or having been
8 adjudicated guilty of, a first degree misdemeanor or a felony.

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

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

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

18 1. Conduct public hearings.

19 ~~2. Report to the Legislature by January 1, 1995, as to~~
20 ~~the feasibility of a return-to-work program that includes~~
21 ~~incentives for employers who encourage such a program and~~
22 ~~disincentives for employers who hinder such a program.~~

23 ~~2.3.~~ Prescribe qualifications for board employees.

24 ~~3.4.~~ Appear on its own behalf before other boards,
25 commissions, or agencies of the state or Federal Government.

26 ~~4.5.~~ Make and execute contracts to the extent that
27 such contracts are consistent with duties and powers set forth
28 in this section and elsewhere in the law of this state.

29 (b) The board shall adopt bylaws, formulate workers'
30 compensation legislation or amendments, review, advise, and
31 appear before the Legislature in connection with legislation

1 that impacts the workers' compensation system, advise the
2 division on policy, administrative and legislative issues, and
3 appear before other state or federal agencies in connection
4 with matters impacting the workers' compensation system.

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

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

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

28 (f) The board shall submit all formal reports and
29 publications made by the board to the division at least 30
30 days before the release or publication of the information. The
31

1 board shall include in all formal reports and publications any
2 response from the division.

3 (3) EXECUTIVE DIRECTOR; EXPENSES.--

4 (a) The board shall appoint an executive director to
5 direct and supervise the administrative affairs and general
6 management of the board who shall be subject to the provisions
7 of part IV of chapter 110. The executive director must have at
8 least 5 years' experience in workers' compensation. The
9 executive director may employ persons and obtain technical
10 assistance as authorized by the board and shall attend all
11 meetings of the board. Board employees shall be exempt from
12 part II of chapter 110.

13 (b) In addition to per diem and travel expenses
14 authorized by s. 112.061, board members shall receive
15 compensation of \$50 for each full day allocable to business of
16 the board. The board shall promulgate procedures defining
17 "business" for purposes of receiving compensation. Such
18 procedures shall require each member to maintain time records
19 and submit such records to the executive director on a monthly
20 basis. Failure to timely file such monthly record shall
21 extinguish the member's entitlement to compensation for the
22 subject period. Travel outside this state shall be approved by
23 the secretary of the department. Expenses associated with the
24 administration of this section shall be appropriated and paid
25 for from the trust fund created by s. 440.50.

26 Section 45. Subsections (1), (2), (7), (8), (9), (10),
27 and (11) of section 440.49, Florida Statutes, are amended to
28 read:

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

31

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

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

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

1 (b) "Preferred worker" means a worker who, because of
2 a permanent impairment resulting from a compensable injury or
3 occupational disease, is unable to return to the worker's
4 regular employment.

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

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

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

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

25 4. Death would not have been accelerated if the
26 permanent physical impairment had not existed.

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

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

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

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

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

14 (7) REIMBURSEMENT OF EMPLOYER.--

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

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

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

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

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

31

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

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

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

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

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

30 (9) SPECIAL DISABILITY TRUST FUND.--
31

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

21 (b)1. The Special Disability Trust Fund shall be
22 maintained by annual assessments upon the insurance companies
23 writing compensation insurance in the state, the commercial
24 self-insurers under ss. 624.462 and 624.4621, the assessable
25 mutuals under s. 628.601, and the self-insurers under this
26 chapter, which assessments shall become due and be paid
27 quarterly at the same time and in addition to the assessments
28 provided in s. 440.51. The department ~~division~~ shall estimate
29 annually in advance the amount necessary for the
30 administration of this subsection and the maintenance of this
31

1 fund and shall make such assessment in the manner hereinafter
2 provided.

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

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

10 b. Two times the disbursements of the most recent
11 calendar year.

12

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

30 3. The net premiums written by the companies for
31 workers' compensation in this state and the net premium

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

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

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

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

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

1 number of proofs of claim processed by the fund, the fee
2 revenues refunded and revenues applied to pay down the
3 liability of the fund, the average time required to reimburse
4 accepted claims, and the average administrative costs per
5 claim. The department or administrator shall submit its
6 report to the Governor, the President of the Senate, and the
7 Speaker of the House of Representatives by December 1 of each
8 year.

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

1 travel expenses, shall be allowed and paid from the Special
2 Disability Trust Fund as provided in this section upon the
3 presentation of itemized vouchers therefor approved by the
4 department division.

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

20 Section 46. Section 440.491, Florida Statutes, is
21 amended to read:

22 440.491 Reemployment of injured workers;
23 rehabilitation.--

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

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

29 (b) "Medical care coordination" includes, but is not
30 limited to, coordinating physical rehabilitation services such
31 as medical, psychiatric, or therapeutic treatment for the

1 injured employee, providing health training to the employee
2 and family, and monitoring the employee's recovery. The
3 purposes of medical care coordination are to minimize the
4 disability and recovery period without jeopardizing medical
5 stability, to assure that proper medical treatment and other
6 restorative services are timely provided in a logical
7 sequence, and to contain medical costs.

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

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

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

30
31

1 (f) "Reemployment status review" means a review to
2 determine whether an injured employee is at risk of not
3 returning to work.

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

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

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

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

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

1 reemployment status of the employee at 90-day intervals as
2 long as the employee remains unemployed, is not receiving
3 medical care coordination or reemployment services, and is
4 receiving the benefits specified in this subsection.

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

9 (4) REEMPLOYMENT ASSESSMENTS.--

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

14 1. The carrier determines that the employee is at risk
15 of remaining unemployed.

16 2. The case involves catastrophic or serious injury.

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

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

1 within 15 days of receipt of the assessment report or notice
2 of the employee's election, whichever is later.

3 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
4 SERVICES.--

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

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

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

1 by rule. Voluntary services offered by the carrier for any of
2 the following injuries must be considered benefits for
3 purposes of ratemaking: traumatic brain injury; spinal cord
4 injury; amputation, including loss of an eye or eyes; burns of
5 5 percent or greater of the total body surface.

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

12 (6) TRAINING AND EDUCATION.--

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

1 standards pertaining to employee eligibility, course curricula
2 and duration, and associated costs.

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

26 (7) PROVIDER QUALIFICATIONS.--

27 (a) The Department of Education ~~division~~ shall
28 investigate and maintain a directory of each qualified public
29 and private rehabilitation provider, facility, and agency, and
30 shall establish by rule the minimum qualifications,
31 credentials, and requirements that each rehabilitation service

1 provider, facility, and agency must satisfy to be eligible for
2 listing in the directory. These minimum qualifications and
3 credentials must be based on those generally accepted within
4 the service specialty for which the provider, facility, or
5 agency is approved.

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

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

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

30 (e) The Department of Education ~~division~~, after
31 consultation with representatives of employees, employers,

1 carriers, rehabilitation providers, and qualified training and
2 education providers, shall adopt rules governing professional
3 practices and standards.

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

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

12 Section 47. Section 440.50, Florida Statutes, is
13 amended to read:

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

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

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

1 fund in annual payments equal to not less than 10 percent of
2 moneys received for such Special Disability Trust Fund.

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

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

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

19 Section 48. Section 440.51, Florida Statutes, is
20 amended to read:

21 440.51 Expenses of administration.--

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

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

1 | become effective on or after January 1 of the next calendar
2 | year. Assessments shall become due and be paid quarterly.

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

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

1 amount assessed. For those carriers who excluded ceded
2 reinsurance premiums from their assessments prior to January
3 1, 2000, the department division shall not recover any past
4 underpayments of assessments related to ceded reinsurance
5 premiums prior to January 1, 2001, against such carriers.

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

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

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

31

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

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

26 (7) The department ~~division~~ shall keep accumulated
27 cost records of all injuries occurring within the state coming
28 within the purview of this chapter on a policy and
29 calendar-year basis. For the purpose of this chapter, a
30 "calendar year" is defined as the year in which the injury is
31 reported to the department ~~division~~; "policy year" is defined

1 as that calendar year in which the policy becomes effective,
2 and the losses under such policy shall be chargeable against
3 the policy year so defined.

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

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

15 (a) Cause of the injury;

16 (b) Nature of the injury; and

17 (c) Type of disability.

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

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

31

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

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

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

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

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

25 Section 49. Section 440.52, Florida Statutes, is
26 amended to read:

27 440.52 Registration of insurance carriers; notice of
28 cancellation or expiration of policy; suspension or revocation
29 of authority.--

30 ~~(1) Each insurance carrier who desires to write such~~
31 ~~compensation insurance in compliance with this chapter shall~~

1 ~~be required, before writing such insurance, to register with~~
2 ~~the division and pay a registration fee of \$100. This shall be~~
3 ~~deposited by the division in the fund created by s. 440.50.~~

4 (1)~~(2)~~ A carrier or self-insurance fund that receives
5 notice pursuant to s. 440.05 shall notify the contractor of
6 the cancellation or expiration of the insurance.

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

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

27 Section 50. Section 440.525, Florida Statutes, is
28 amended to read:

29 440.525 Examination of carriers.--~~Beginning July 1,~~
30 ~~1994, The Division of Workers' Compensation of the department~~
31 ~~of Labor and Employment Security~~ may examine each carrier as

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

9 Section 51. Section 440.572, Florida Statutes, is
10 amended to read:

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

24 Section 52. Section 440.59, Florida Statutes, is
25 amended to read:

26 440.59 Reporting requirements.--

27 (1) The department ~~of Labor and Employment Security~~
28 shall annually prepare a report of the administration of this
29 chapter for the preceding calendar year, including a detailed
30 statement of the receipts of and expenditures from the fund
31 established in s. 440.50 and a statement of the causes of the

1 accidents leading to the injuries for which the awards were
2 made, together with such recommendations as the department
3 considers advisable. On or before September 15 of each year,
4 the department shall submit a copy of the report to the
5 Governor, the President of the Senate, the Speaker of the
6 House of Representatives, the Democratic and Republican
7 Leaders of the Senate and the House of Representatives, and
8 the chairs of the legislative committees having jurisdiction
9 over workers' compensation.

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

26 (3) The department ~~division~~ shall annually prepare a
27 closed claim report for all claims for which the employee lost
28 more than 7 days from work and shall submit a copy of the
29 report to the Governor, the President of the Senate, the
30 Speaker of the House of Representatives, the Democratic and
31 Republican Leaders of the Senate and the House of

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

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

30 (5) The Chief Judge must prepare an annual report
31 summarizing the disposition of mediation conferences and must

1 submit the report to the Governor, the President of the
2 Senate, the Speaker of the House of Representatives, the
3 Democratic and Republican Leaders of the Senate and the House
4 of Representatives, and the chairs of the legislative
5 committees having jurisdiction over workers' compensation, on
6 or before September 15 of each year.

7 Section 53. Section 440.591, Florida Statutes, is
8 amended to read:

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

14 Section 54. Section 440.593, Florida Statutes, is
15 amended to read:

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

24 Section 55. Subsections (1), (4), and (5) of section
25 443.012, Florida Statutes, are amended to read:

26 443.012 Unemployment Appeals Commission.--

27 (1) There is created within the Agency for Workforce
28 Innovation ~~Department of Labor and Employment Security~~ an
29 Unemployment Appeals Commission, hereinafter referred to as
30 the "commission." The commission shall consist of a chair and
31 two other members to be appointed by the Governor, subject to

1 confirmation by the Senate. Not more than one appointee must
2 be a person who, on account of previous vocation, employment,
3 or affiliation, is classified as a representative of
4 employers; and not more than one such appointee must be a
5 person who, on account of previous vocation, employment, or
6 affiliation, is classified as a representative of employees.

7 (a) The chair shall devote his or her entire time to
8 commission duties and shall be responsible for the
9 administrative functions of the commission.

10 (b) The chair shall have the authority to appoint a
11 general counsel and such other personnel as may be necessary
12 to carry out the duties and responsibilities of the
13 commission.

14 (c) The chair shall have the qualifications required
15 by law for a judge of the circuit court and shall not engage
16 in any other business vocation or employment. Notwithstanding
17 any other provisions of existing law, the chair shall be paid
18 a salary equal to that paid under state law to a judge of the
19 circuit court.

20 (d) The remaining members shall be paid a stipend of
21 \$100 for each day they are engaged in the work of the
22 commission. The chair and other members shall also be
23 reimbursed for travel expenses, as provided in s. 112.061.

24 (e) The total salary and travel expenses of each
25 member of the commission shall be paid from the Employment
26 Security Administration Trust Fund.

27 (4) The property, personnel, and appropriations
28 relating to the specified authority, powers, duties, and
29 responsibilities of the commission shall be provided to the
30 commission by the Agency for Workforce Innovation ~~Department~~
31 ~~of Labor and Employment Security~~.

1 (5) The commission shall not be subject to control,
2 supervision, or direction by the Agency for Workforce
3 Innovation ~~Department of Labor and Employment Security~~ in the
4 performance of its powers and duties under this chapter.

5 Section 56. Subsections (12) and (15) of section
6 443.036, Florida Statutes, are amended to read:

7 443.036 Definitions.--As used in this chapter, unless
8 the context clearly requires otherwise:

9 (12) COMMISSION.--"Commission" means the Unemployment
10 Appeals Commission of the Agency for Workforce Innovation
11 ~~Department of Labor and Employment Security~~.

12 (15) DIVISION.--"Division" means the Division of
13 Unemployment Compensation of the Agency for Workforce
14 Innovation ~~Department of Labor and Employment Security~~.

15 Section 57. Subsection (3) of section 447.02, Florida
16 Statutes, is amended to read:

17 447.02 Definitions.--The following terms, when used in
18 this chapter, shall have the meanings ascribed to them in this
19 section:

20 (3) The term "department" means the Department of
21 Business and Professional Regulation ~~Labor and Employment~~
22 ~~Security~~.

23 Section 58. Subsections (1), (3), and (4) of section
24 447.205, Florida Statutes, are amended to read:

25 447.205 Public Employees Relations Commission.--

26 (1) There is hereby created within the Department of
27 Management Services ~~Labor and Employment Security~~ the Public
28 Employees Relations Commission, hereinafter referred to as the
29 "commission." The commission shall be composed of a chair and
30 two full-time members to be appointed by the Governor, subject
31 to confirmation by the Senate, from persons representative of

1 the public and known for their objective and independent
2 judgment, who shall not be employed by, or hold any commission
3 with, any governmental unit in the state or any employee
4 organization, as defined in this part, while in such office.
5 In no event shall more than one appointee be a person who, on
6 account of previous vocation, employment, or affiliation, is,
7 or has been, classified as a representative of employers; and
8 in no event shall more than one such appointee be a person
9 who, on account of previous vocation, employment, or
10 affiliation, is, or has been, classified as a representative
11 of employees or employee organizations. The commissioners
12 shall devote full time to commission duties and shall not
13 engage in any other business, vocation, or employment while in
14 such office. ~~Beginning January 1, 1980, the chair shall be~~
15 ~~appointed for a term of 4 years, one commissioner for a term~~
16 ~~of 1 year, and one commissioner for a term of 2 years.~~
17 Thereafter, Every term of office shall be for 4 years; and
18 each term of the office of chair shall commence on January 1
19 of the second year following each regularly scheduled general
20 election at which a Governor is elected to a full term of
21 office. In the event of a vacancy prior to the expiration of
22 a term of office, an appointment shall be made for the
23 unexpired term of that office. The chair shall be responsible
24 for the administrative functions of the commission and shall
25 have the authority to employ such personnel as may be
26 necessary to carry out the provisions of this part. Once
27 appointed to the office of chair, the chair shall serve as
28 chair for the duration of the term of office of chair.
29 Nothing contained herein prohibits a chair or commissioner
30 from serving multiple terms.
31

1 (3) The commission, in the performance of its powers
2 and duties under this part, shall not be subject to control,
3 supervision, or direction by the Department of Management
4 Services Labor and Employment Security.

5 (4) The property, personnel, and appropriations
6 related to the commission's specified authority, powers,
7 duties, and responsibilities shall be provided to the
8 commission by the Department of Management Services Labor and
9 Employment Security.

10 Section 59. Subsection (4) of section 447.305, Florida
11 Statutes, is amended to read:

12 447.305 Registration of employee organization.--

13 (4) Notification of registrations and renewals of
14 registration shall be furnished at regular intervals by the
15 commission to the Department of Business and Professional
16 Regulation Labor and Employment Security.

17 Section 60. Subsection (4) of section 450.012, Florida
18 Statutes, is amended to read:

19 450.012 Definitions.--For the purpose of this chapter,
20 the word, phrase, or term:

21 (4) "Department" means the Department of Business and
22 Professional Regulation Labor and Employment Security.

23 Section 61. Subsection (1) of section 450.191, Florida
24 Statutes, is amended to read:

25 450.191 Executive Office of the Governor; powers and
26 duties.--

27 (1) The Executive Office of the Governor is authorized
28 and directed to:

29 (a) Advise and consult with employers of migrant
30 workers as to the ways and means of improving living
31 conditions of seasonal workers;

1 (b) Cooperate with the Department of Health in
2 establishing minimum standards of preventive and curative
3 health and of housing and sanitation in migrant labor camps
4 and in making surveys to determine the adequacy of preventive
5 and curative health services available to occupants of migrant
6 labor camps;

7 (c) Provide coordination for the enforcement of ss.
8 381.008-381.0088;

9 (d) Cooperate with the other departments of government
10 in coordinating all applicable labor laws, including, but not
11 limited to, those relating to private employment agencies,
12 child labor, wage payments, wage claims, and crew leaders;

13 (e) Cooperate with the Department of Education to
14 provide educational facilities for the children of migrant
15 laborers;

16 (f) Cooperate with the Department of Highway Safety
17 and Motor Vehicles to establish minimum standards for the
18 transporting of migrant laborers;

19 (g) Cooperate with the Department of Agriculture and
20 Consumer Services to conduct an education program for
21 employers of migrant laborers pertaining to the standards,
22 methods, and objectives of the office;

23 (h) Cooperate with the Department of Children and
24 Family Services in coordinating all public assistance programs
25 as they may apply to migrant laborers;

26 (i) Coordinate all federal, state, and local programs
27 pertaining to migrant laborers; and

28 (j) Cooperate with the farm labor office of the
29 Department of Business and Professional Regulation ~~labor and~~
30 ~~Employment Security~~ in the recruitment and referral of migrant
31

1 laborers and other persons for the planting, cultivation, and
2 harvesting of agricultural crops in Florida.

3 Section 62. Subsection (2) of section 450.28, Florida
4 Statutes, is amended to read:

5 450.28 Definitions.--

6 (2) "Department" means the Department of Business and
7 Professional Regulation ~~Labor and Employment Security~~.

8 Section 63. Subsection (3) of section 468.529, Florida
9 Statutes, is amended to read:

10 468.529 Licensee's insurance; employment tax; benefit
11 plans.--

12 (3) A licensed employee leasing company shall within
13 30 days of initiation or termination notify its workers'
14 compensation insurance carrier, the Department of Insurance
15 ~~Division of Workers' Compensation~~, and the Division of
16 Unemployment Compensation of the Department of Revenue ~~Labor~~
17 ~~and Employment Security~~ of both the initiation or the
18 termination of the company's relationship with any client
19 company.

20 Section 64. Subsections (1) and (5) of section
21 624.3161, Florida Statutes, are amended to read:

22 624.3161 Market conduct examinations.--

23 (1) As often as it deems necessary, the department
24 shall examine each licensed rating organization, each advisory
25 organization, each group, association, carrier as defined in
26 s. 440.02, or other organization of insurers which engages in
27 joint underwriting or joint reinsurance, and each authorized
28 insurer transacting in this state any class of insurance to
29 which the provisions of chapter 627 are applicable. The
30 examination shall be for the purpose of ascertaining

31

1 compliance by the person examined with the applicable
2 provisions of chapters 440,624, 626, 627, and 635.

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

6 Section 65. Paragraph (m) of subsection (1) of section
7 626.88, Florida Statutes, is amended to read:

8 626.88 Definitions of "administrator" and "insurer".--

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

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

21 Section 66. Subsection (9) of section 626.989, Florida
22 Statutes, is amended to read:

23 626.989 Investigation by department or Division of
24 Insurance Fraud; compliance; immunity; confidential
25 information; reports to division; division investigator's
26 power of arrest.--

27 (9) In recognition of the complementary roles of
28 investigating instances of workers' compensation fraud and
29 enforcing compliance with the workers' compensation coverage
30 requirements under chapter 440, the Division of Insurance
31 Fraud of the Department of Insurance is ~~and the Division of~~

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

10 Section 67. Section 627.0915, Florida Statutes, is
11 amended to read:

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

30 Section 68. Subsection (5) of section 627.914, Florida
31 Statutes, is amended to read:

1 627.914 Reports of information by workers'
2 compensation insurers required.--

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

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

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

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

18 Section 69. Section 20.171, Florida Statutes, is
19 repealed.

20 Section 70. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 invalidity does not affect other provisions or applications of
23 the act which can be given effect without the invalid
24 provision or application, and to this end the provisions of
25 this act are severable.

26 Section 71. To the extent that any conflict exists
27 between this act and the provisions of SB 1926, or similar
28 legislation, which transfers the Office of Judges of
29 Compensation Claims to the Division of Administration
30 Hearings, the provisions of SB 1926 or the similar legislation
31 shall control.

1 Section 72. Except as otherwise expressly provided in
2 this act, this act shall take effect October 1, 2001.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for Sb 2224

4 This committee substitute does the following:

- 5 - Abolishes the Department of Labor and Employment
6 Security, effective October 1, 2001 and provides for
7 transferring the remaining programs in the department to
8 several agencies.
- 9 - Transfers the functions of the Division of Workers'
10 Compensation from the Department of Labor and Employment
11 Security to the Department of Insurance, effective
12 October 1, 2001, without personnel.
- 13 - Requires the Department of Labor and Employment Security
14 to provide administrative support to the Division of
15 Workers' Compensation and the Office of the Judges of
16 Compensation Claims during the transition period of July
17 1, 2001-October 1, 2001. Authorizes the transfer of up
18 to \$300,000 from the Workers' Compensation Administrative
19 Trust Fund to fund the administrative support.
- 20 - Type II transfers the Office of the Judges of
21 Compensation Claims and 18 Division of Workers'
22 Compensation support positions for this Office to the
23 Division of Administrative Hearings on October 1, 2001.
- 24 - Type II transfers 98 positions associated with workers'
25 compensation rehabilitation and reemployment services
26 from Department of Labor and Employment Security to the
27 Division of Vocational Rehabilitation in the Department
28 of Education on October 1, 2001.
- 29 - Type II transfers 29 positions from the Division of
30 Workers' Compensation to Agency for Health Care
31 Administration effective July 1, 2001.
- Type II transfers the farm labor and child labor programs
to the Department of Business and Professional Regulation
effective July 1, 2001.
- Type II transfers the Unemployment Appeals Commission to
the Agency for Workforce Innovation effective July 1,
2001.
- Type II transfers the Public Employees Relations
Commission to the Department of Management Services
effective July 1, 2001.
- Type II transfers the Office of Information Systems to
the State Technology Office effective July 1, 2001.
- Provides for the Department of Insurance and the State
Technology Office to determine if it would be
technologically feasible and cost effective to separate
the Workers' Compensation Integrated System from its
current mainframe and transfer ownership to Department of
Insurance.

- 1 - Appropriates to Department of Business and Professional
2 Regulation \$407,621 from the Department of Labor and
3 Employment Security Administrative Trust Fund, \$320,000
4 from the Crew Chief Registration Trust Fund and
5 \$1,301,272 General Revenue for the farm labor program.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31