

By Senator Peaden

1-892-01

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 61.13, F.S.; providing that  
4           workers' compensation benefits are not exempt  
5           from child-support claims; amending s. 61.30,  
6           F.S.; providing that workers' compensation  
7           benefits and settlements count as income under  
8           child-support guidelines; amending s. 440.02,  
9           F.S.; defining terms; amending s. 440.05, F.S.;  
10          substantially revising provisions relating to  
11          exemption from ch. 440, F.S.; amending s.  
12          440.09, F.S.; providing guidelines for  
13          coverage; amending s. 440.10, F.S.; revising  
14          liability for compensation; revising criteria  
15          for conclusively presuming that a person is an  
16          independent contractor; amending s. 440.13,  
17          F.S.; providing maximum amounts that a family  
18          member may receive for nonprofessional  
19          attendant care; revising the standard for  
20          determining when an employer must pay for  
21          certain medical treatment; revising provisions  
22          relating to provider eligibility and  
23          authorization; allowing a carrier to provide  
24          certain financial incentives for reducing  
25          service costs and utilization; revising  
26          provisions relating to independent medical  
27          examinations; placing limitations on medical  
28          opinions in cases involving occupational  
29          disease or repetitive trauma; adding opinions  
30          of peer-review consultants to the list of  
31          admissible medical opinions; amending s.

1 440.134, F.S.; providing that workers'  
2 compensation managed care arrangements are  
3 optional rather than mandatory; amending s.  
4 440.14, F.S.; redefining the term  
5 "substantially the whole of 13 weeks" for  
6 purposes of determination of pay; providing  
7 requirements that must be met if concurrent  
8 employment is used in calculating the average  
9 weekly wage; amending s. 440.15, F.S.;  
10 prescribing the elements of a compensable  
11 injury eligible for permanent total benefits;  
12 changing the period for which and the rate at  
13 which impairment income benefits are paid;  
14 providing that compensation is not payable for  
15 certain conditions; amending s. 440.151, F.S.;  
16 providing an evidentiary standard relating to  
17 occupational diseases; excluding certain  
18 conditions from the term "occupational  
19 disease"; amending s. 440.185, F.S.; changing  
20 procedures relating to carriers' filings with  
21 the division; amending s. 440.191, F.S.;  
22 allowing the Employee Assistance Office to  
23 participate in an early intervention program;  
24 providing that specified claims are to be  
25 determined by a judge of compensation claims,  
26 without the parties being represented by  
27 counsel; providing for review; providing for a  
28 petition for benefits; amending procedures  
29 relating to disputed issues; amending s.  
30 440.192, F.S.; amending procedures for  
31 resolving benefit disputes; allowing the

1 dismissal of a portion of a petition; replacing  
2 a notice of denial with a response to petition;  
3 amending s. 440.20, F.S.; providing procedures  
4 for a carrier to fulfill its obligation to pay  
5 compensation directly to the employee;  
6 extending the time limit for paying  
7 compensation; replacing the term "award" with  
8 the term "order"; providing circumstances in  
9 which a hearing is unnecessary; providing  
10 procedures applicable when a claimant is not  
11 represented by an attorney; amending s. 440.22,  
12 F.S.; providing that the exemption of workers'  
13 compensation claims from creditors does not  
14 apply to child support or alimony; amending s.  
15 440.25, F.S.; revising procedures for mediation  
16 and hearings; providing for a Motion to Dismiss  
17 for Lack of Prosecution; prohibiting the award  
18 of interest on unpaid medical bills; amending  
19 s. 440.29, F.S.; revising the list of  
20 admissible evidentiary items; amending s.  
21 440.34, F.S.; prohibiting the payment of  
22 attorney's fees on specified issues;  
23 restricting the amounts of attorney's fees  
24 which may be awarded; amending s. 440.39, F.S.;  
25 providing that an employer has no duty to  
26 preserve certain evidence; amending s. 440.42,  
27 F.S.; revising provisions governing the  
28 expiration of insurance contracts or policies  
29 issued under ch. 440, F.S.; amending s. 440.45,  
30 F.S.; transferring the Office of the Judges of  
31 Compensation Claims from the Department of

1 Labor and Employment Security to the Department  
2 of Management Services; providing that the head  
3 of the office is the Deputy Chief Judge of  
4 Compensation Claims; providing for evaluating a  
5 judge's performance; providing for the Governor  
6 to appoint such judges; prescribing judges'  
7 qualifications; providing a procedure for  
8 instigating and resolving complaints against  
9 judges; providing for rulemaking; requiring a  
10 report; amending s. 627.914, F.S.; requiring  
11 self-insurance funds, as well as other  
12 insurers, to follow certain rules and plans in  
13 recording and reporting loss, expense, and  
14 claims experience; amending the date by which  
15 an annual report must be filed; repealing s.  
16 440.4416, F.S., relating to the Workers'  
17 Compensation Oversight Board; creating the  
18 Workers' Compensation Appeals Commission;  
19 providing for the Governor to select  
20 commissioners; providing for terms of office;  
21 providing for the Statewide Nominating  
22 Commission to review each commissioner's  
23 performance and to recommend for or against  
24 retention; providing for the appointment of  
25 associate commissioners; providing the  
26 commission with authority to review decisions  
27 of judges of compensation claims; providing  
28 that the commission is not an agency; providing  
29 for a presiding commissioner and prescribing  
30 his or her duties; providing for a clerk;  
31 providing a filing fee and exempting state

1 agencies; providing for a seal; allowing the  
2 commission to destroy its obsolete records;  
3 allowing reimbursement for travel expenses;  
4 providing for rules governing practice and  
5 procedure; providing effective dates.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Paragraph (b) of subsection (1) of section  
10 61.13, Florida Statutes, is amended to read:

11 61.13 Custody and support of children; visitation  
12 rights; power of court in making orders.--

13 (1)

14 (b) Each order for child support shall contain a  
15 provision for health insurance for the minor child when the  
16 insurance is reasonably available. Insurance is reasonably  
17 available if either the obligor or obligee has access at a  
18 reasonable rate to group insurance. The court may require the  
19 obligor either to provide health insurance coverage or to  
20 reimburse the obligee for the cost of health insurance  
21 coverage for the minor child when coverage is provided by the  
22 obligee. In either event, the court shall apportion the cost  
23 of coverage, and any noncovered medical, dental, and  
24 prescription medication expenses of the child, to both parties  
25 by adding the cost to the basic obligation determined pursuant  
26 to s. 61.30(6). The court may order that payment of uncovered  
27 medical, dental, and prescription medication expenses of the  
28 minor child be made directly to the payee on a percentage  
29 basis.  
30  
31

1           1. A copy of the court order for insurance coverage  
2 shall be served on the obligor's payor or union by the obligee  
3 or the IV-D agency when the following conditions are met:

4           a. The obligor fails to provide written proof to the  
5 obligee or the IV-D agency within 30 days of receiving  
6 effective notice of the court order, that the insurance has  
7 been obtained or that application for insurability has been  
8 made;

9           b. The obligee or IV-D agency serves written notice of  
10 its intent to enforce medical support on the obligor by mail  
11 at the obligor's last known address; and

12           c. The obligor fails within 15 days after the mailing  
13 of the notice to provide written proof to the obligee or the  
14 IV-D agency that the insurance coverage existed as of the date  
15 of mailing.

16           2. In cases in which the noncustodial parent provides  
17 health care coverage and the noncustodial parent changes  
18 employment and the new employer provides health care coverage,  
19 the IV-D agency shall transfer notice of the provision to the  
20 employer, which notice shall operate to enroll the child in  
21 the noncustodial parent's health plan, unless the noncustodial  
22 parent contests the notice. Notice to enforce medical  
23 coverage under this section shall be served by the IV-D agency  
24 upon the obligor by mail at the obligor's last known address.  
25 The obligor shall have 15 days from the date of mailing of the  
26 notice to contest the notice with the IV-D agency.

27           3. Upon receipt of the order pursuant to subparagraph  
28 1. or the notice pursuant to subparagraph 2., or upon  
29 application of the obligor pursuant to the order, the payor,  
30 union, or employer shall enroll the minor child as a  
31 beneficiary in the group insurance plan and withhold any

1 required premium from the obligor's income. If more than one  
2 plan is offered by the payor, union, or employer, the child  
3 shall be enrolled in the insurance plan in which the obligor  
4 is enrolled.

5 4. The Department of Revenue shall have the authority  
6 to adopt rules to implement the child support enforcement  
7 provisions of this section.

8 5. Exemption from creditors' claims pursuant to s.  
9 440.22 does not extend to claims of child support.

10 Section 2. Paragraph (a) of subsection (2) of section  
11 61.30, Florida Statutes, is amended to read:

12 61.30 Child support guidelines; retroactive child  
13 support.--

14 (2) Income shall be determined on a monthly basis for  
15 the obligor and for the obligee as follows:

16 (a) Gross income shall include, but is not limited to,  
17 the following items:

18 1. Salary or wages.

19 2. Bonuses, commissions, allowances, overtime, tips,  
20 and other similar payments.

21 3. Business income from sources such as  
22 self-employment, partnership, close corporations, and  
23 independent contracts. "Business income" means gross receipts  
24 minus ordinary and necessary expenses required to produce  
25 income.

26 4. Disability benefits.

27 5. All worker's compensation benefits and settlements.

28 6. Unemployment compensation.

29 7. Pension, retirement, or annuity payments.

30 8. Social security benefits.

31

1           9. Spousal support received from a previous marriage  
2 or court ordered in the marriage before the court.

3           10. Interest and dividends.

4           11. Rental income, which is gross receipts minus  
5 ordinary and necessary expenses required to produce the  
6 income.

7           12. Income from royalties, trusts, or estates.

8           13. Reimbursed expenses or in kind payments to the  
9 extent that they reduce living expenses.

10          14. Gains derived from dealings in property, unless  
11 the gain is nonrecurring.

12          Section 3. Section 440.02, Florida Statutes, is  
13 amended to read:

14          440.02 Definitions.--When used in this chapter, unless  
15 the context clearly requires otherwise, the following terms  
16 shall have the following meanings:

17          (1) "Accident" means only an unexpected or unusual  
18 event or result that happens suddenly. A mental or nervous  
19 injury due to stress, fright, or excitement only, or  
20 disability or death due to the accidental acceleration or  
21 aggravation of a venereal disease or of a disease due to the  
22 habitual use of alcohol or controlled substances or narcotic  
23 drugs, or a disease that manifests itself in the fear of or  
24 dislike for an individual because of the individual's race,  
25 color, religion, sex, national origin, age, or handicap is not  
26 an injury by accident arising out of the employment. An injury  
27 or disease that is caused by exposure to a toxic substance is  
28 not an injury by accident arising out of the employment unless  
29 there are epidemiological studies showing that exposure to the  
30 specific substance involved, at the levels to which the  
31 employee was exposed, can cause the precise injury or disease



1 sustained by the employee.If a preexisting disease or anomaly  
2 is accelerated or aggravated by an accident arising out of and  
3 in the course of employment, only acceleration of death or  
4 acceleration or aggravation of the preexisting condition  
5 reasonably attributable to the accident is compensable, with  
6 respect to death or permanent impairment.

7 (2) "Adoption" or "adopted" means legal adoption prior  
8 to the time of the injury.

9 (3) "Carrier" means any person or fund authorized  
10 under s. 440.38 to insure under this chapter and includes a  
11 self-insurer, and a commercial self-insurance fund authorized  
12 under s. 624.462.

13 (4) "Casual" as used in this section shall be taken to  
14 refer only to employments when the work contemplated is to be  
15 completed in not exceeding 10 working days, without regard to  
16 the number of persons employed, and when the total labor cost  
17 of such work is less than \$1,000~~\$100~~.

18 (5) "Child" includes a posthumous child, a child  
19 legally adopted prior to the injury of the employee, and a  
20 stepchild or acknowledged child born out of wedlock dependent  
21 upon the deceased, but does not include married children  
22 unless wholly dependent on the employee. "Grandchild" means a  
23 child as above defined of a child as above defined. "Brother"  
24 and "sister" include stepbrothers and stepsisters, half  
25 brothers and half sisters, and brothers and sisters by  
26 adoption, but does not include married brothers or married  
27 sisters unless wholly dependent on the employee. "Child,"  
28 "grandchild," "brother," and "sister" include only persons who  
29 at the time of the death of the deceased employees are under  
30 18 years of age, or under 22 years of age if a full-time  
31 student in an accredited educational institution.

1           (6) "Compensation" means the money allowance payable  
2 to an employee or to his or her dependents as provided for in  
3 this chapter.

4           (7) "Construction industry" means any business that  
5 carries out for-profit activities involving ~~the carrying out~~  
6 ~~of~~ any building, clearing, filling, excavation, or substantial  
7 improvement in the size or use of any structure or the  
8 appearance of any land. ~~When appropriate to the context,~~  
9 ~~"construction" refers to the act of construction or the result~~  
10 ~~of construction.~~ However, the term "construction" does shall  
11 not mean a homeowner's ~~landowner's~~ act of construction or the  
12 result of a construction upon his or her own premises,  
13 provided such premises are not intended to be sold or resold  
14 or leased by the owner within 1 year after the commencement of  
15 the construction.

16           (8) "Corporate officer" or "officer of a corporation"  
17 means any person who fills an office provided for in the  
18 corporate charter or articles of incorporation filed with the  
19 Division of Corporations of the Department of State or as  
20 permitted or required by chapter 607.

21           (9) "Date of maximum medical improvement" means the  
22 date after which further recovery from, or lasting improvement  
23 to, an injury or disease can no longer reasonably be  
24 anticipated, based upon reasonable medical probability.

25           (10) "Death" as a basis for a right to compensation  
26 means only death resulting from an injury.

27           (11) "Department" means the Department of Labor and  
28 Employment Security.

29           (12) "Disability" means incapacity because of the  
30 injury to earn in the same or any other employment the wages  
31 which the employee was receiving at the time of the injury.

1           (13) "Division" means the Division of Workers'  
2 Compensation of the Department of Labor and Employment  
3 Security.

4           (14)(a) "Employee" means any person who receives  
5 remuneration from an employer for the performance of any work  
6 or service or the provision of any goods or supplies, whether  
7 by engaged in any employment under any appointment or contract  
8 for of hire or apprenticeship, express or implied, oral or  
9 written, whether lawfully or unlawfully employed, and  
10 includes, but is not limited to, aliens and minors.

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

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

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

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

26  
27 Services are presumed to have been rendered to the corporation  
28 if the officer is compensated by other than dividends upon  
29 shares of stock of the corporation which the officer owns.

30           (c) The division may by rule establish those standard  
31 industrial classification codes and their definitions which

1 meet the criteria of the definition of the term "construction  
2 industry" as set forth in this section.

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

24 ~~(d) "Employee" does not include:~~  
25 ~~1. An independent contractor, if:~~  
26 ~~a. The independent contractor~~  
27 ~~1. Maintains a separate business with his or her own~~  
28 ~~work facility, truck, equipment, materials, or similar~~  
29 ~~accommodations;~~  
30 ~~2.b. Has a social security number; or The independent~~  
31 ~~contractor holds or has applied for a federal employer~~

1 identification number, if required to do so by any federal,  
2 state, or local statute, rule, or regulation ~~unless the~~  
3 ~~independent contractor is a sole proprietor who is not~~  
4 ~~required to obtain a federal employer identification number~~  
5 ~~under state or federal requirements;~~

6 ~~3.c. The independent contractor performs or agrees to~~  
7 ~~perform specific services or work for specific amounts of~~  
8 ~~money and Controls the means of performing the services or~~  
9 ~~work that he or she was hired to perform or supply;~~

10 ~~4.d. The independent contractor Incurs the principal~~  
11 ~~expenses related to the service or work that he or she~~  
12 ~~performs or agrees to perform;~~

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

17 ~~6.f. The independent contractor Receives compensation~~  
18 ~~for work or services performed for a commission or on a~~  
19 ~~per-job or competitive-bid basis and not on any other basis,~~  
20 ~~such as salary or wages;~~

21 ~~7.g. The independent contractor May realize a profit~~  
22 ~~or suffer a loss in connection with performing work or~~  
23 ~~services; and~~

24 ~~8.h. The independent contractor Has continuing or~~  
25 ~~recurring business liabilities or obligations. and~~

26 ~~i. The success or failure of the independent~~  
27 ~~contractor's business depends on the relationship of business~~  
28 ~~receipts to expenditures.~~

29  
30 However, no more than one person per trade per job site may be  
31 a nonemployee of the general contractor. The employer shall

1 post in a conspicuous place on each job site the name and  
2 federal employer identification number (or, if none is  
3 required, the social security number) of each person who is  
4 being paid by the general contractor for work performed on  
5 that job site but is a nonemployee of the general contractor.  
6 As used in this paragraph, the term "job site" means that  
7 project as defined by the relevant building permit, and the  
8 term "trade" means a trade required to be licensed as such by  
9 the Department of Business and Professional Regulation. Any  
10 person who is working in a trade that is not required to be  
11 licensed as such by the Department of Business and  
12 Professional Regulation is considered to be an employee of the  
13 general contractor.

14  
15 ~~However, the determination as to whether an individual~~  
16 ~~included in the Standard Industrial Classification Manual of~~  
17 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~  
18 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~  
19 ~~2448, or 2449, or a newspaper delivery person, is an~~  
20 ~~independent contractor is governed not by the criteria in this~~  
21 ~~paragraph but by common-law principles, giving due~~  
22 ~~consideration to the business activity of the individual.~~

23 (e) The term "employee" does not include:

24 1.2. A real estate salesperson or agent, if that  
25 person agrees, in writing, to perform for remuneration solely  
26 by way of commission.

27 2.3. Bands, orchestras, and musical and theatrical  
28 performers, including disk jockeys, performing in licensed  
29 premises as defined in chapter 562, if a written contract  
30 evidencing an independent contractor relationship is entered  
31 into before the commencement of such entertainment.

1           ~~3.4.~~ An owner-operator of a motor vehicle who  
2 transports property under a written contract with a motor  
3 carrier which evidences a relationship by which the  
4 owner-operator assumes the responsibility of an employer for  
5 the performance of the contract, if the owner-operator is  
6 required to furnish the necessary motor vehicle equipment and  
7 all costs incidental to the performance of the contract,  
8 including, but not limited to, fuel, taxes, licenses, repairs,  
9 and hired help; and the owner-operator is paid a commission  
10 for transportation service and is not paid by the hour or on  
11 some other time-measured basis.

12           ~~4.5.~~ A person whose employment is both casual and not  
13 in the course of the trade, business, profession, or  
14 occupation of the employer.

15           ~~5.6.~~ A volunteer, except a volunteer worker for the  
16 state or a county, municipality, or other governmental entity.  
17 A person who does not receive monetary remuneration for  
18 services is presumed to be a volunteer unless there is  
19 substantial evidence that a valuable consideration was  
20 intended by both employer and employee. For purposes of this  
21 chapter, the term "volunteer" includes, but is not limited to:

22           a. Persons who serve in private nonprofit agencies and  
23 who receive no compensation other than expenses in an amount  
24 less than or equivalent to the standard mileage and per diem  
25 expenses provided to salaried employees in the same agency or,  
26 if such agency does not have salaried employees who receive  
27 mileage and per diem, then such volunteers who receive no  
28 compensation other than expenses in an amount less than or  
29 equivalent to the customary mileage and per diem paid to  
30 salaried workers in the community as determined by the  
31 division; and

1           b. Volunteers participating in federal programs  
2 established under Pub. L. No. 93-113.

3           6. Domestic servants in private houses.

4           7. Agricultural laborers on a farm in the employ of a  
5 bona fide farmer or association of farmers who employ 5 or  
6 fewer regular employees and who employ fewer than 12 other  
7 employees at one time for seasonal agricultural labor that is  
8 completed in less than 30 days, if such seasonal employment  
9 does not exceed 45 days in the same calendar year. The term  
10 "farm" includes stock, dairy, poultry, fruit, fur-bearing  
11 animals, fish, and truck farms, ranches, nurseries, and  
12 orchards. The term "agricultural labor" includes field  
13 foremen, timekeepers, checkers, and other farm labor  
14 supervisory personnel.

15           8. Professional athletes, such as professional boxers,  
16 wrestlers, baseball, football, basketball, hockey, polo,  
17 tennis, jai alai, and similar players, and motor sports teams  
18 competing in a motor racing event as defined in s. 549.08.

19           9. Persons performing labor under a sentence of a  
20 court to perform community services as provided in s. 316.193.

21           ~~7. Any officer of a corporation who elects to be~~  
22 ~~exempt from this chapter.~~

23           ~~8. A sole proprietor or officer of a corporation who~~  
24 ~~actively engages in the construction industry, and a partner~~  
25 ~~in a partnership that is actively engaged in the construction~~  
26 ~~industry, who elects to be exempt from the provisions of this~~  
27 ~~chapter. Such sole proprietor, officer, or partner is not an~~  
28 ~~employee for any reason until the notice of revocation of~~  
29 ~~election filed pursuant to s. 440.05 is effective.~~

30           ~~10.9.~~ An exercise rider who does not work for a single  
31 horse farm or breeder, and who is compensated for riding on a



1 case-by-case basis, provided a written contract is entered  
2 into prior to the commencement of such activity which  
3 evidences that an employee/employer relationship does not  
4 exist.

5 ~~11.10.~~ A taxicab, limousine, or other passenger  
6 vehicle-for-hire driver who operates said vehicles pursuant to  
7 a written agreement with a company which provides any  
8 dispatch, marketing, insurance, communications, or other  
9 services under which the driver and any fees or charges paid  
10 by the driver to the company for such services are not  
11 conditioned upon, or expressed as a proportion of, fare  
12 revenues.

13 (15)(a) "Employer" means the state and all political  
14 subdivisions thereof, all public and quasi-public corporations  
15 therein, every person carrying on any employment, and the  
16 legal representative of a deceased person or the receiver or  
17 trustees of any person. If the employer is a corporation,  
18 parties in actual control of the corporation, including, but  
19 not limited to, the president, officers who exercise broad  
20 corporate powers, directors, and all shareholders who directly  
21 or indirectly own a controlling interest in the corporation,  
22 are considered the employer for the purposes of ss. 440.105  
23 and 440.106.

24 (b) However, a landowner shall not be considered the  
25 employer of any person hired by the landowner to carry out  
26 construction upon his or her own premises, if those premises  
27 are not intended for immediate sale or resale.

28 (16)(a) "Employment," means, not including subsection  
29 (4), the payment of any remuneration for work or services  
30 rendered or promised, or goods or services provided or  
31 promised and, subject to the other provisions of this chapter,

1 means any service performed by an employee for the person  
2 employing him or her; and—

3 ~~(b) "Employment" includes:~~

4 (a)1. Employment by the state and all political  
5 subdivisions thereof and all public and quasi-public  
6 corporations therein, including officers elected at the polls.

7 (b)2. All private employments in which four or more  
8 employees are employed by the same employer or, with respect  
9 to the construction industry, all private employment in which  
10 one or more employees are employed by the same employer.

11 (c)3. Volunteer firefighters responding to or  
12 assisting with fire or medical emergencies whether or not the  
13 firefighters are on duty.

14 ~~(c) "Employment" does not include service performed by  
15 or as:~~

16 ~~1. Domestic servants in private homes.~~

17 ~~2. Agricultural labor performed on a farm in the  
18 employ of a bona fide farmer, or association of farmers, who  
19 employs 5 or fewer regular employees and who employs fewer  
20 than 12 other employees at one time for seasonal agricultural  
21 labor that is completed in less than 30 days, provided such  
22 seasonal employment does not exceed 45 days in the same  
23 calendar year. The term "farm" includes stock, dairy, poultry,  
24 fruit, fur-bearing animals, fish, and truck farms, ranches,  
25 nurseries, and orchards. The term "agricultural labor"  
26 includes field foremen, timekeepers, checkers, and other farm  
27 labor supervisory personnel.~~

28 ~~3. Professional athletes, such as professional boxers,  
29 wrestlers, baseball, football, basketball, hockey, polo,  
30 tennis, jai alai, and similar players, and motorsports teams  
31 competing in a motor racing event as defined in s. 549.08.~~

1           ~~4. Labor under a sentence of a court to perform~~  
2 ~~community services as provided in s. 316.193.~~

3           (17) "Misconduct" includes, but is not limited to, the  
4 following, which shall not be construed in pari materia with  
5 each other:

6           (a) Conduct evincing such willful or wanton disregard  
7 of an employer's interests as is found in deliberate violation  
8 or disregard of standards of behavior which the employer has  
9 the right to expect of the employee; or

10           (b) Carelessness or negligence of such a degree or  
11 recurrence as to manifest culpability, wrongful intent, or  
12 evil design, or to show an intentional and substantial  
13 disregard of an employer's interests or of the employee's  
14 duties and obligations to the employer.

15           (18) "Injury" means personal injury or death by  
16 accident arising out of and in the course of employment, and  
17 such diseases or infection as naturally or unavoidably result  
18 from such injury. Damage to dentures, eyeglasses, prosthetic  
19 devices, and artificial limbs may be included in this  
20 definition only when the damage is shown to be part of, or in  
21 conjunction with, an accident. This damage must specifically  
22 occur as the result of an accident in the normal course of  
23 employment.

24           (19) "Parent" includes stepparents and parents by  
25 adoption, parents-in-law, and any persons who for more than 3  
26 years prior to the death of the deceased employee stood in the  
27 place of a parent to him or her and were dependent on the  
28 injured employee.

29           (20) "Partner" means any person who is a member of a  
30 partnership that is formed by two or more persons to carry on  
31 as coowners of a business with the understanding that there

1 will be a proportional sharing of the profits and losses  
2 between them. For the purposes of this chapter, a partner is a  
3 person who participates fully in the management of the  
4 partnership and who is personally liable for its debts.

5 (21) "Permanent impairment" means any anatomic or  
6 functional abnormality or loss determined as a percentage of  
7 the body as a whole, existing after the date of maximum  
8 medical improvement, which results from the injury.

9 (22) "Person" means individual, partnership,  
10 association, or corporation, including any public service  
11 corporation.

12 (23) "Self-insurer" means:

13 (a) Any employer who has secured payment of  
14 compensation pursuant to s. 440.38(1)(b) or (6) as an  
15 individual self-insurer;

16 (b) Any employer who has secured payment of  
17 compensation through a group self-insurance fund under s.  
18 624.4621;

19 (c) Any group self-insurance fund established under s.  
20 624.4621;

21 (d) A public utility as defined in s. 364.02 or s.  
22 366.02 that has assumed by contract the liabilities of  
23 contractors or subcontractors pursuant to s. 624.46225; or

24 (e) Any local government self-insurance fund  
25 established under s. 624.4622.

26 (24) "Sole proprietor" means a natural person who owns  
27 a form of business in which that person owns all the assets of  
28 the business and is solely liable for all the debts of the  
29 business.

30 (25) "Spouse" includes only a spouse substantially  
31 dependent for financial support upon the decedent and living

1 with the decedent at the time of the decedent's injury and  
2 death, or substantially dependent upon the decedent for  
3 financial support and living apart at that time for  
4 justifiable cause.

5 (26) "Time of injury" means the time of the occurrence  
6 of the accident resulting in the injury.

7 (27) "Wages" means the money rate at which the service  
8 rendered is recompensed under the contract of hiring in force  
9 at the time of the injury and includes only the wages earned  
10 and reported for federal income tax purposes on the job where  
11 the employee is injured and any other concurrent employment  
12 where he or she is also subject to workers' compensation  
13 coverage and benefits, together with the reasonable value of  
14 housing furnished to the employee by the employer which is the  
15 permanent year-round residence of the employee, and gratuities  
16 to the extent reported to the employer in writing as taxable  
17 income received in the course of employment from others than  
18 the employer and employer contributions for health insurance  
19 for the employee or the employee's dependents. However,  
20 housing furnished to migrant workers shall be included in  
21 wages unless provided after the time of injury. In employment  
22 in which an employee receives consideration for housing, the  
23 reasonable value of such housing compensation shall be the  
24 actual cost to the employer or based upon the Fair Market Rent  
25 Survey promulgated pursuant to s. 8 of the Housing and Urban  
26 Development Act of 1974, whichever is less. However, if  
27 employer contributions for housing or health insurance are  
28 continued after the time of the injury, the contributions are  
29 not "wages" for the purpose of calculating an employee's  
30 average weekly wage.

31

1           (28) "Weekly compensation rate" means and refers to  
2 the amount of compensation payable for a period of 7  
3 consecutive days, including any Saturdays, Sundays, holidays,  
4 and other nonworking days which fall within such period of 7  
5 consecutive days. When Saturdays, Sundays, holidays, or other  
6 nonworking days immediately follow the first 7 days of  
7 disability or occur at the end of a period of disability as  
8 the last day or days of such period, such nonworking days  
9 constitute a part of the period of disability with respect to  
10 which compensation is payable.

11           (29) "Construction design professional" means an  
12 architect, professional engineer, landscape architect, or  
13 surveyor and mapper, or any corporation, professional or  
14 general, that has a certificate to practice in the  
15 construction design field from the Department of Business and  
16 Professional Regulation.

17           (30) "Individual self-insurer" means any employer who  
18 has secured payment of compensation pursuant to s.  
19 440.38(1)(b) as an individual self-insurer.

20           (31) "Domestic individual self-insurer" means an  
21 individual self-insurer:

22           (a) Which is a corporation formed under the laws of  
23 this state;

24           (b) Who is an individual who is a resident of this  
25 state or whose primary place of business is located in this  
26 state; or

27           (c) Which is a partnership whose principals are  
28 residents of this state or whose primary place of business is  
29 located in this state.

30           (32) "Foreign individual self-insurer" means an  
31 individual self-insurer:

1 (a) Which is a corporation formed under the laws of  
2 any state, district, territory, or commonwealth of the United  
3 States other than this state;

4 (b) Who is an individual who is not a resident of this  
5 state and whose primary place of business is not located in  
6 this state; or

7 (c) Which is a partnership whose principals are not  
8 residents of this state and whose primary place of business is  
9 not located in this state.

10 (33) "Insolvent member" means an individual  
11 self-insurer which is a member of the Florida Self-Insurers  
12 Guaranty Association, Incorporated, or which was a member and  
13 has withdrawn pursuant to s. 440.385(1)(b), and which has been  
14 found insolvent, as defined in subparagraph (34)(a)1.,  
15 subparagraph (34)(a)2., or subparagraph (34)(a)3., by a court  
16 of competent jurisdiction in this or any other state, or meets  
17 the definition of subparagraph (34)(a)4.

18 (34) "Insolvency" or "insolvent" means:

19 (a) With respect to an individual self-insurer:

20 1. That all assets of the individual self-insurer, if  
21 made immediately available, would not be sufficient to meet  
22 all the individual self-insurer's liabilities;

23 2. That the individual self-insurer is unable to pay  
24 its debts as they become due in the usual course of business;

25 3. That the individual self-insurer has substantially  
26 ceased or suspended the payment of compensation to its  
27 employees as required in this chapter; or

28 4. That the individual self-insurer has sought  
29 protection under the United States Bankruptcy Code or has been  
30 brought under the jurisdiction of a court of bankruptcy as a  
31 debtor pursuant to the United States Bankruptcy Code.

1 (b) With respect to an employee claiming insolvency  
2 pursuant to s. 440.25(5), a person is insolvent who:

3 1. Has ceased to pay his or her debts in the ordinary  
4 course of business and cannot pay his or her debts as they  
5 become due; or

6 2. Has been adjudicated insolvent pursuant to the  
7 federal bankruptcy law.

8 (35) "Arising out of" pertains to occupational  
9 causation. An accidental injury or death arises out of  
10 employment if work performed in the course and scope of  
11 employment is the major contributing cause of the injury or  
12 death.

13 (36) "Soft-tissue injury" means an injury that  
14 produces damage to the soft tissues, rather than to the  
15 skeletal tissues or soft organs.

16 ~~(37) "Catastrophic injury" means a permanent~~  
17 ~~impairment constituted by:~~

18 ~~(a) Spinal cord injury involving severe paralysis of~~  
19 ~~an arm, a leg, or the trunk;~~

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

22 ~~(c) Severe brain or closed-head injury as evidenced~~  
23 ~~by:~~

24 ~~1. Severe sensory or motor disturbances;~~

25 ~~2. Severe communication disturbances;~~

26 ~~3. Severe complex integrated disturbances of cerebral~~  
27 ~~function;~~

28 ~~4. Severe episodic neurological disorders; or~~

29 ~~5. Other severe brain and closed-head injury~~  
30 ~~conditions at least as severe in nature as any condition~~  
31 ~~provided in subparagraphs 1.-4.;~~



1           ~~(d) Second-degree or third-degree burns of 25 percent~~  
2 ~~or more of the total body surface or third-degree burns of 5~~  
3 ~~percent or more to the face and hands;~~

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

5           ~~(f) Any other injury that would otherwise qualify~~  
6 ~~under this chapter of a nature and severity that would qualify~~  
7 ~~an employee to receive disability income benefits under Title~~  
8 ~~II or supplemental security income benefits under Title XVI of~~  
9 ~~the federal Social Security Act as the Social Security Act~~  
10 ~~existed on July 1, 1992, without regard to any time~~  
11 ~~limitations provided under that act.~~

12           (37)~~(38)~~ "Insurer" means a group self-insurers' fund  
13 authorized by s. 624.4621, an individual self-insurer  
14 authorized by s. 440.38, a commercial self-insurance fund  
15 authorized by s. 624.462, an assessable mutual insurer  
16 authorized by s. 628.6011, and an insurer licensed to write  
17 workers' compensation and employer's liability insurance in  
18 this state. The term "carrier," as used in this chapter, means  
19 an insurer as defined in this subsection.

20           (38)~~(39)~~ "Statement," for the purposes of ss. 440.105  
21 and 440.106, includes, but is not limited to, any notice,  
22 representation, statement, proof of injury, bill for services,  
23 diagnosis, prescription, hospital or doctor record, X ray,  
24 test result, or other evidence of loss, injury, or expense.

25           (39) "Medically necessary remedial treatment, care,  
26 and attendance" means remedial treatment, care, and attendance  
27 that an authorized treating physician has recommended in  
28 writing.

29           Section 4. Section 440.05, Florida Statutes, is  
30 amended to read:

31           (Substantial rewording of section. See

1           s. 440.05, F.S., for present text.)  
2           440.05 Election of exemption; revocation of  
3 election.--  
4           (1) The following classes of persons, as defined by s.  
5 440.02, who are not primarily engaged in the construction  
6 industry, as that term is defined in s. 440.02, are exempt  
7 from this chapter unless they elect otherwise in accordance  
8 with subsection (2):  
9           (a) Sole proprietors;  
10           (b) Partners as defined in this section; and  
11           (c) Corporate officers as defined in this section.  
12           (2) Any person who is exempted from this chapter under  
13 this section who secures, or whose employer secures for him or  
14 her, workers' compensation insurance coverage is considered to  
15 have waived the right to such an exemption and is subject to  
16 the provisions of this chapter.  
17           (3) Every enterprise conducting business in this state  
18 shall maintain business records as specified by the division  
19 by rule, which rules must include the provision that any  
20 corporation with exempt officers and any partnership with  
21 exempt partners must maintain written statements of those  
22 exempted persons affirmatively acknowledging each such  
23 individual's exempt status.  
24           (4) Any sole proprietor or partner claiming an  
25 exemption under this section shall maintain a copy of his or  
26 her federal income tax records for each of the immediately  
27 previous 3 years in which he or she claims an exemption. Such  
28 federal income tax records must include a complete copy of the  
29 following for each year in which an exemption is claimed:  
30           (a) For sole proprietors, a copy of Federal Income Tax  
31 Form 1040 and its accompanying Schedule C;

1           (b) For partners, a copy of the partner's Federal  
2 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax  
3 Form 1040 and its accompanying Schedule E. The sole proprietor  
4 or partner in question shall produce, upon request by the  
5 division, a copy of those documents together with a statement  
6 by the sole proprietor that the tax records provided are true  
7 and accurate copies of what the sole proprietor or partner has  
8 filed with the federal Internal Revenue Service. The statement  
9 must be signed under oath by the sole proprietor or partner in  
10 question and must be notarized. The division shall issue a  
11 stop-work order under s. 440.107(5) to any sole proprietor or  
12 partner who fails or refuses to produce a copy of the tax  
13 records and affidavit required under this paragraph to the  
14 division within 3 business days after that request and who has  
15 failed to otherwise secure insurance for the provision of  
16 workers' compensation benefits for himself or herself if  
17 required under this chapter to do so.

18           (5) Any corporate officer claiming an exemption under  
19 this section must be listed on the records of this state's  
20 Secretary of State, Division of Corporations, as a corporate  
21 officer. If the person who claims exemption as a corporate  
22 officer is not so listed on the records of the Secretary of  
23 State, the individual must provide to the division, upon  
24 request by the division, a notarized affidavit stating that  
25 the individual is a bona fide officer of the corporation and  
26 stating the date his or her appointment or election as a  
27 corporate officer became or will become effective. The  
28 statement must be signed under oath by both the officer in  
29 question and the president or chief operating officer of the  
30 corporation and must be notarized. The division shall issue a  
31 stop-work order under s. 440.107(1) to any person who claims

1 to be exempt as a corporate officer but who fails or refuses  
2 to produce the documents required under this subsection to the  
3 division within 3 business days after the request is made and  
4 who has failed to otherwise secure the insurance of workers'  
5 compensation benefits for himself or herself if required under  
6 this chapter to do so.

7 (6) A sole proprietor, partner, or corporate officer  
8 of a business entity that has not been in operation long  
9 enough to have filed with the Internal Revenue Service, or to  
10 have been required by the Internal Revenue Service to file,  
11 its first annual federal income tax return is not eligible for  
12 exemption from this chapter.

13 (7) Exemptions pertain only to the person claiming  
14 exemption and only for the entity that is the subject of the  
15 federal income tax reports filed by the person claiming the  
16 exemption. A separate exemption is required for every  
17 proprietorship, partnership, or corporation from which an  
18 individual receives any remuneration for labor, services, or  
19 products provided.

20 (8) Sole proprietors, partners, and corporate  
21 officers, as those terms are defined in s. 440.02, of sole  
22 proprietorships, partnerships, and corporations that are  
23 primarily engaged in the construction industry as that term is  
24 defined in s. 440.02 are not eligible for exemption from this  
25 chapter.

26 Section 5. Subsection (1) of section 440.09, Florida  
27 Statutes, is amended to read:

28 440.09 Coverage.--

29 (1) The employer shall pay compensation or furnish  
30 benefits required by this chapter if the employee suffers an  
31 accidental compensable injury or death arising out of work

1 performed in the course and the scope of employment. The  
2 injury, its occupational cause, and any resulting  
3 manifestations, or disability, or impairment shall be  
4 established to a reasonable degree of medical certainty and by  
5 objective medical findings. In cases involving occupational  
6 disease or repetitive exposure, or both, both causation and  
7 sufficient exposure to support causation must be proven by  
8 clear and convincing evidence. Mental or nervous injuries  
9 occurring as a manifestation of an injury compensable under  
10 this section shall be demonstrated by clear and convincing  
11 evidence through objective medical findings concerning the  
12 results of the injury from a division-certified psychiatrist.  
13 Compensation may not be paid as a result of any impairment  
14 rating for psychiatric impairments.

15 (a) This chapter does not require any compensation or  
16 benefits for any subsequent injury the employee suffers as a  
17 result of an original injury arising out of and in the course  
18 of employment unless the original injury is the major  
19 contributing cause of the subsequent injury.

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

27 (c) Death resulting from an operation by a surgeon  
28 furnished by the employer for the cure of hernia as required  
29 in s. 440.15(6) shall for the purpose of this chapter be  
30 considered to be a death resulting from the accident causing  
31 the hernia.

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

11           Section 6. Section 440.10, Florida Statutes, is  
12 amended to read:

13           440.10 Liability for compensation.--

14           (1)(a) Every employer coming within the provisions of  
15 this chapter, including any brought within the chapter by  
16 ~~waiver of exclusion or of exemption~~, shall be liable for, and  
17 shall secure, the payment to his or her employees, or any  
18 physician, surgeon, or pharmacist providing services under the  
19 provisions of s. 440.13, of the compensation payable under ss.  
20 440.13, 440.15, and 440.16. Any contractor or subcontractor  
21 who engages in any public or private construction in the state  
22 shall secure and maintain compensation for his or her  
23 employees under this chapter as provided in s. 440.38.

24           (b) In case a contractor sublets any part or parts of  
25 his or her contract work to a subcontractor or subcontractors,  
26 all of the employees of such contractor and subcontractor or  
27 subcontractors engaged on such contract work shall be deemed  
28 to be employed in one and the same business or establishment;  
29 and the contractor shall be liable for, and shall secure, the  
30 payment of compensation to all such employees, except to  
31 employees of a subcontractor who has secured such payment.

1           (c) A contractor may require a subcontractor to  
2 provide evidence of workers' compensation insurance or a copy  
3 of his or her certificate of election. A subcontractor  
4 electing to be exempt ~~as a sole proprietor, partner, or~~  
5 ~~officer of a corporation~~ shall provide a copy of his or her  
6 certificate of election to the contractor.

7           (d)1. If a contractor becomes liable for the payment  
8 of compensation to the employees of a subcontractor who has  
9 failed to secure such payment in violation of s. 440.38, the  
10 contractor or other third-party payor shall be entitled to  
11 recover from the subcontractor all benefits paid or payable  
12 plus interest unless the contractor and subcontractor have  
13 agreed in writing that the contractor will provide coverage.

14           2. If a contractor or third-party payor becomes liable  
15 for the payment of compensation to the employee of a  
16 subcontractor who is actively engaged in the construction  
17 industry and has elected to be exempt from the provisions of  
18 this chapter, but whose election is invalid, the contractor or  
19 third-party payor may recover from the claimant, partnership,  
20 or corporation all benefits paid or payable plus interest,  
21 unless the contractor and the subcontractor have agreed in  
22 writing that the contractor will provide coverage.

23           (e) A subcontractor is not liable for the payment of  
24 compensation to the employees of another subcontractor on such  
25 contract work and is not protected by the  
26 exclusiveness-of-liability provisions of s. 440.11 from action  
27 at law or in admiralty on account of injury of such employee  
28 of another subcontractor.

29           (f) If an employer willfully fails to secure  
30 compensation as required by this chapter, the division may  
31 assess against the employer a penalty not to exceed \$5,000 for

1 each employee of that employer who is classified by the  
2 employer as an independent contractor but who is found by the  
3 division to not meet the criteria for an independent  
4 contractor that are set forth in s. 440.02.

5 (g) For purposes of this section, a person is  
6 conclusively presumed to be an independent contractor if+

7 ~~1.~~ the independent contractor provides the general  
8 contractor with an affidavit stating that he or she meets all  
9 the requirements of s. 440.02(14)(d). And and

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

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

27 (2) Compensation shall be payable irrespective of  
28 fault as a cause for the injury, except as provided in s.  
29 440.09(3).

30 Section 7. Subsections (2), (3), (4), (5), and (6) of  
31 section 440.13, Florida Statutes, are amended to read:



1           440.13 Medical services and supplies; penalty for  
2 violations; limitations.--

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

4           (a) Subject to the limitations specified elsewhere in  
5 this chapter, the employer shall furnish to the employee such  
6 medically necessary remedial treatment, care, and attendance  
7 for such period as the nature of the injury or the process of  
8 recovery may require, including medicines, medical supplies,  
9 durable medical equipment, orthoses, prostheses, and other  
10 medically necessary apparatus. Remedial treatment, care, and  
11 attendance, including work-hardening programs or  
12 pain-management programs accredited by the Commission on  
13 Accreditation of Rehabilitation Facilities or Joint Commission  
14 on the Accreditation of Health Organizations or  
15 pain-management programs affiliated with medical schools,  
16 shall be considered as covered treatment only when such care  
17 is given based on a referral by a physician as defined in this  
18 chapter. Each facility shall maintain outcome data, including  
19 work status at discharges, total program charges, total number  
20 of visits, and length of stay. The department shall utilize  
21 such data and report annually to the President of the Senate  
22 and the Speaker of the House of Representatives regarding the  
23 efficacy and cost-effectiveness of such program, ~~no later than~~  
24 ~~October 1, 1994~~. Medically necessary treatment, care, and  
25 attendance does not include chiropractic services in excess of  
26 18 treatments or rendered 8 weeks beyond the date of the  
27 initial chiropractic treatment, whichever comes first, unless  
28 the carrier authorizes additional treatment or the employee is  
29 catastrophically injured.

30           (b) The employer shall provide appropriate  
31 professional or nonprofessional attendant care performed only

1 at the direction and control of a physician when such care is  
2 medically necessary. The value of nonprofessional attendant  
3 care provided by a family member must be determined as  
4 follows:

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

7 2. If the family member is employed and elects to  
8 leave that employment to provide attendant or custodial care,  
9 the per-hour value of that care equals the per-hour value of  
10 the family member's former employment, not to exceed the  
11 per-hour value of such care available in the community at  
12 large. However, the hourly rate paid to the family member must  
13 not exceed the hourly rate received in the employment that the  
14 family member quit to provide such care, nor may the weekly  
15 amount paid to the family member for providing such care  
16 exceed the weekly amount that the family member previously  
17 earned.A family member or a combination of family members  
18 providing nonprofessional attendant care under this paragraph  
19 may not be compensated for more than a total of 12 hours per  
20 day.

21 (c) When no medical treatment has been provided and ~~if~~  
22 the employer fails to provide any treatment or care required  
23 by this section after request by the injured employee, the  
24 employee may obtain such treatment at the expense of the  
25 employer, if the treatment is compensable and medically  
26 necessary. There must be a specific request for the treatment,  
27 and the employer or carrier must be given a reasonable time  
28 period within which to provide the treatment or care. However,  
29 the employee is not entitled to recover any amount personally  
30 expended for the treatment or service unless he or she has  
31 requested the employer to furnish that treatment or service

1 and the employer has failed, refused, or neglected to provide  
2 any medical treatment ~~do so~~ within a reasonable time or unless  
3 the nature of the injury requires such treatment, nursing, and  
4 services and the employer or his or her superintendent or  
5 foreman, having knowledge of the injury, has neglected to  
6 provide any ~~the~~ treatment or service.

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

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

26 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

27 (a) As a condition to eligibility for payment under  
28 this chapter, a health care provider who renders services must  
29 be a certified health care provider and must receive  
30 authorization from the carrier before providing treatment.

31 This paragraph does not apply to emergency care. The division

1 shall adopt rules to implement the certification of health  
2 care providers. As a one-time prerequisite to obtaining  
3 certification, the division shall require each physician to  
4 demonstrate proof of completion of a minimum 5-hour course  
5 that covers the subject areas of cost containment, utilization  
6 control, ergonomics, and the practice parameters adopted by  
7 the division governing the physician's field of practice. The  
8 division shall coordinate with the Agency for Health Care  
9 Administration, the Florida Medical Association, the Florida  
10 Osteopathic Medical Association, the Florida Chiropractic  
11 Association, the Florida Podiatric Medical Association, the  
12 Florida Optometric Association, the Florida Dental  
13 Association, and other health professional organizations and  
14 their respective boards as deemed necessary by the Agency for  
15 Health Care Administration in complying with this subsection.  
16 ~~No later than October 1, 1994,~~The division shall adopt rules  
17 regarding the criteria and procedures for approval of courses  
18 and the filing of proof of completion by the physicians.

19 (b) A health care provider who renders emergency care  
20 must notify the carrier by the close of the third business day  
21 after it has rendered such care. If the emergency care results  
22 in admission of the employee to a health care facility, the  
23 health care provider must notify the carrier by telephone  
24 within 24 hours after initial treatment. Emergency care is not  
25 compensable under this chapter unless the injury requiring  
26 emergency care arose as a result of a work-related accident.  
27 Pursuant to chapter 395, all licensed physicians and health  
28 care providers in this state shall be required to make their  
29 services available for emergency treatment of any employee  
30 eligible for workers' compensation benefits. To refuse to make  
31 such treatment available is cause for revocation of a license.

1 (c) A health care provider may not refer the employee  
2 to another health care provider, diagnostic facility, therapy  
3 center, or other facility without prior authorization from the  
4 carrier, except when emergency care is rendered. Any referral  
5 must be to a health care provider that has been certified by  
6 the division, unless the referral is for emergency treatment.

7 (d) A carrier must respond to a request for  
8 authorization made directly from a health care provider, by  
9 telephone or in writing, ~~to a request for authorization~~ by the  
10 close of the third business day after receipt of the request.  
11 A carrier who fails to respond to a written request for  
12 authorization for referral for medical treatment by the close  
13 of the third business day after receipt of the request made  
14 directly from a health care provider consents to the medical  
15 necessity for such treatment. All such requests must be made  
16 to the carrier. Notice to the carrier does not include notice  
17 to the employer.

18 (e) Carriers shall adopt procedures for receiving,  
19 reviewing, documenting, and responding to requests for  
20 authorization. Such procedures shall be for a health care  
21 provider certified under this section.

22 (f) By accepting payment under this chapter for  
23 treatment rendered to an injured employee, a health care  
24 provider consents to the jurisdiction of the division as set  
25 forth in subsection (11) and to the submission of all records  
26 and other information concerning such treatment to the  
27 division in connection with a reimbursement dispute, audit, or  
28 review as provided by this section. The health care provider  
29 must further agree to comply with any decision of the division  
30 rendered under this section.

31

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

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

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

27 (j) Notwithstanding anything in this chapter to the  
28 contrary, a sick or injured employee shall be entitled, at all  
29 times, to free, full, and absolute choice in the selection of  
30 the pharmacy or pharmacist dispensing and filling  
31 prescriptions for medicines required under this chapter. It is

1 expressly forbidden for the division, an employer, or a  
2 carrier, or any agent or representative of the division, an  
3 employer, or a carrier to select the pharmacy or pharmacist  
4 which the sick or injured employee must use; condition  
5 coverage or payment on the basis of the pharmacy or pharmacist  
6 utilized; or to otherwise interfere in the selection by the  
7 sick or injured employee of a pharmacy or pharmacist.

8 (k) Notwithstanding s. 440.13(12), the carrier may be  
9 allowed to provide for appropriate financial incentives to  
10 reduce service costs and utilization without sacrificing the  
11 quality of service.

12 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
13 DIVISION.--

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

29 (b) A ~~Each~~ medical report or bill obtained or received  
30 by the employer, the carrier, or the injured employee, or the  
31 attorney for the employer, carrier, or injured employee, with

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

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



1 subject by the division to one or more of the penalties set  
2 forth in paragraph (8)(b). As used in this paragraph, the term  
3 "to discuss" means to freely exchange ideas, facts, and  
4 findings among the parties and health care providers in a  
5 manner designed to aid the parties in reaching conclusions  
6 that will enable them to carry out their legal obligations and  
7 responsibilities.

8 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

18 (b) Each party is bound by his or her selection of an  
19 independent medical examiner as a result of injury, is  
20 entitled to only one such examiner and to an examiner only in  
21 one specialty, and is entitled to an alternate examiner only  
22 if:

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

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

28 3. The examiner is unavailable due to injury, death,  
29 or relocation outside a reasonably accessible geographic area;  
30 or

31 4. The parties agree to an alternate examiner.

1  
2 Any party may request, or a judge of compensation claims may  
3 require, designation of a division medical advisor as an  
4 independent medical examiner. The opinion of the advisors  
5 acting as examiners shall not be afforded the presumption set  
6 forth in paragraph (9)(c).

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

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

31

1           (e) Unless compensability has been denied, a ~~No~~  
2 medical opinion other than the opinion of a medical advisor  
3 appointed by the judge of compensation claims or division, an  
4 independent medical examiner, a peer-review consultant  
5 pursuant to a utilization review under subsection (6), or an  
6 authorized treating provider is inadmissible ~~admissible~~ in  
7 proceedings before the judges of compensation claims. In cases  
8 involving occupational disease or repetitive trauma, a medical  
9 opinion is inadmissible unless it is based on reliable  
10 scientific principles that are sufficiently established to  
11 have gained general acceptance in the pertinent area of  
12 specialty.

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

17           (6) UTILIZATION REVIEW.--Carriers shall review all  
18 bills, invoices, and other claims for payment submitted by  
19 health care providers in order to identify overutilization and  
20 billing errors, and may hire peer review consultants or  
21 conduct independent medical evaluations. Such consultants,  
22 including peer review organizations, are immune from liability  
23 in the execution of their functions under this subsection to  
24 the extent provided in s. 766.101. If a carrier finds that  
25 overutilization of medical services or a billing error has  
26 occurred, it must disallow or adjust payment for such services  
27 or error without order of a judge of compensation claims or  
28 the division, if the carrier, in making its determination, has  
29 complied with this section and rules adopted by the division.  
30 Any physician's action as a peer-review consultant or as an  
31 independent medical examiner is an independent medical

1 examination for purposes of resolving disputes arising as a  
2 result of the peer review or independent medical examination.  
3 The evaluation and such reports are admissible before the  
4 judge of compensation claims if the carrier decides to enter  
5 the reports into evidence; however, such independent medical  
6 evaluations must not be included in the number specified in  
7 subsection (5).

8 Section 8. Subsections (2) and (5) of section 440.134,  
9 Florida Statutes, are amended to read:

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

12 (2)(a) The employer may, subject to the limitations  
13 specified elsewhere in this chapter, furnish to the employee  
14 solely through managed-care arrangements such medically  
15 necessary remedial treatment, care, and attendance for such  
16 period as the nature of the injury or the process of recovery  
17 requires.

18 ~~(b)(a)~~ The agency shall authorize an insurer to offer  
19 or utilize a workers' compensation managed care arrangement  
20 after the insurer files a completed application along with the  
21 payment of a \$1,000 application fee, and upon the agency's  
22 being satisfied that the applicant has the ability to provide  
23 quality of care consistent with the prevailing professional  
24 standards of care and the insurer and its workers'  
25 compensation managed care arrangement otherwise meets the  
26 requirements of this section. No insurer may offer or utilize  
27 a managed care arrangement without such authorization. The  
28 authorization, unless sooner suspended or revoked, shall  
29 automatically expire 2 years after the date of issuance unless  
30 renewed by the insurer. The authorization shall be renewed  
31 upon application for renewal and payment of a renewal fee of

1 \$1,000, provided that the insurer is in compliance with the  
2 requirements of this section and any rules adopted hereunder.  
3 An application for renewal of the authorization shall be made  
4 90 days prior to expiration of the authorization, on forms  
5 provided by the agency. The renewal application shall not  
6 require the resubmission of any documents previously filed  
7 with the agency if such documents have remained valid and  
8 unchanged since their original filing.

9 ~~(b) Effective January 1, 1997, the employer shall,~~  
10 ~~subject to the limitations specified elsewhere in this~~  
11 ~~chapter, furnish to the employee solely through managed care~~  
12 ~~arrangements such medically necessary remedial treatment,~~  
13 ~~care, and attendance for such period as the nature of the~~  
14 ~~injury or the process of recovery requires.~~

15 (5) An insurer that offers or utilizes a workers'  
16 compensation managed care arrangement in this state must file  
17 a proposed managed care plan of operation with the agency in a  
18 format prescribed by the agency. The plan of operation must  
19 contain evidence that all covered services are available and  
20 accessible, including a demonstration that:

21 (a) Such services can be provided with reasonable  
22 promptness with respect to geographic location, hours of  
23 operation, and after-hour care. The hours of operation and  
24 availability of after-hour care must reflect usual practice in  
25 the local area. Geographic availability must reflect the usual  
26 travel times within the community.

27 (b) Unless the agency determines that insufficient  
28 numbers of providers are available, the number of providers in  
29 the workers' compensation managed care arrangement service  
30 area are sufficient, with respect to current and expected  
31 workers to be served by the arrangement, either:

1           1. By delivery of all required medical services; or  
2           2. Through the ability to make appropriate referrals  
3 within the provider network.

4           (c) There are written agreements with providers  
5 describing specific responsibilities.

6           (d) Emergency care is available 24 hours a day and 7  
7 days a week.

8           (e) In the case of covered services, there are written  
9 agreements with providers prohibiting such providers from  
10 billing or otherwise seeking reimbursement from or recourse  
11 against any injured worker.

12           Section 9. Paragraph (a) of subsection (1) of section  
13 440.14, Florida Statutes, is amended, and subsection (5) is  
14 added to that section, to read:

15           440.14 Determination of pay.--

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

21           (a) If the injured employee has worked in the  
22 employment in which she or he was working at the time of the  
23 injury, whether for the same or another employer, during  
24 substantially the whole of 13 weeks immediately preceding the  
25 injury, her or his average weekly wage shall be one-thirteenth  
26 of the total amount of wages earned in such employment during  
27 the 13 weeks. As used in this paragraph, the term  
28 "substantially the whole of 13 weeks" means an actual ~~shall be~~  
29 ~~deemed to mean and refer to a constructive~~ period of 13 weeks  
30 as a whole, which shall be defined as the 13 complete weeks,  
31 in accordance with the employer's regular payroll periods,

1 before the week in which the injury occurs, a consecutive  
2 period of 91 days, and the term "during substantially the  
3 whole of 13 weeks" shall be deemed to mean during not less  
4 than 90 percent of the total customary full-time hours of  
5 employment within such period considered as a whole.

6 (5) If concurrent employment is to be used in  
7 calculating the average weekly wage, the employee is  
8 responsible for providing earnings from concurrent employment  
9 to the employer/carrier within 45 days after the injury or  
10 after the first payment of compensation. Failure to provide  
11 such information will result in concurrent employment not  
12 being added to such calculation.

13 Section 10. Paragraph (b) of subsection (1), paragraph  
14 (a) of subsection (3), and paragraph (a) of subsection (10) of  
15 section 440.15, Florida Statutes, are amended to read:

16 440.15 Compensation for disability.--Compensation for  
17 disability shall be paid to the employee, subject to the  
18 limits provided in s. 440.12(2), as follows:

19 (1) PERMANENT TOTAL DISABILITY.--

20 (b) Any compensable injury eligible for permanent  
21 total benefits must be of a nature and severity that prevents  
22 the employee from being able to perform his or her previous  
23 work or any work available in substantial numbers within the  
24 national economy. If the employee is engaged in or is  
25 physically capable of being engaged in any gainful employment,  
26 including sheltered employment, he or she is not entitled to  
27 permanent total disability. The burden is on the employee to  
28 establish that he or she is unable, due to physical  
29 limitations, to perform even part-time sedentary work if such  
30 work is available within a 100-mile radius of the employee's  
31 residence.~~Only a catastrophic injury as defined in s. 440.02~~

1 ~~shall, in the absence of conclusive proof of a substantial~~  
2 ~~earning capacity, constitute permanent total disability. Only~~  
3 ~~claimants with catastrophic injuries are eligible for~~  
4 ~~permanent total benefits. In no other case may permanent total~~  
5 ~~disability be awarded.~~

6 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

7 (a) Impairment benefits.--

8 1. Once the employee has reached the date of maximum  
9 medical improvement, impairment benefits are due and payable  
10 within 20 days after the carrier has knowledge of the  
11 impairment.

12 2. The three-member panel, in cooperation with the  
13 division, shall establish and use a uniform permanent  
14 impairment rating schedule. This schedule must be based on  
15 medically or scientifically demonstrable findings as well as  
16 the systems and criteria set forth in the American Medical  
17 Association's Guides to the Evaluation of Permanent  
18 Impairment; the Snellen Charts, published by American Medical  
19 Association Committee for Eye Injuries; and the Minnesota  
20 Department of Labor and Industry Disability Schedules. The  
21 schedule should be based upon objective findings. The schedule  
22 shall be more comprehensive than the AMA Guides to the  
23 Evaluation of Permanent Impairment and shall expand the areas  
24 already addressed and address additional areas not currently  
25 contained in the guides. On August 1, 1979, and pending the  
26 adoption, by rule, of a permanent schedule, Guides to the  
27 Evaluation of Permanent Impairment, copyright 1977, 1971,  
28 1988, by the American Medical Association, shall be the  
29 temporary schedule and shall be used for the purposes hereof.  
30 For injuries after July 1, 1990, pending the adoption by  
31 division rule of a uniform disability rating schedule, the



1 Minnesota Department of Labor and Industry Disability Schedule  
2 shall be used unless that schedule does not address an injury.  
3 In such case, the Guides to the Evaluation of Permanent  
4 Impairment by the American Medical Association shall be used.  
5 Determination of permanent impairment under this schedule must  
6 be made by a physician licensed under chapter 458, a doctor of  
7 osteopathic medicine licensed under chapters 458 and 459, a  
8 chiropractic physician licensed under chapter 460, a podiatric  
9 physician licensed under chapter 461, an optometrist licensed  
10 under chapter 463, or a dentist licensed under chapter 466, as  
11 appropriate considering the nature of the injury. No other  
12 persons are authorized to render opinions regarding the  
13 existence of or the extent of permanent impairment.

14           3. All impairment income benefits shall be based on an  
15 impairment rating using the impairment schedule referred to in  
16 subparagraph 2. Impairment income benefits are paid biweekly  
17 ~~weekly~~ at the rate of 66 2/3 ~~50~~ percent of the employee's  
18 average weekly wage ~~temporary total disability benefit~~ not to  
19 exceed the maximum weekly benefit under s. 440.12. An  
20 employee's entitlement to impairment income benefits begins  
21 the day after the employee reaches maximum medical improvement  
22 or the expiration of temporary benefits, whichever occurs  
23 earlier, and continues until the earlier of:

24           a. The expiration of a period computed at the rate of  
25 3 weeks for each percentage point of impairment; or

26           b. The death of the employee.

27           4. After the employee has been certified by a doctor  
28 as having reached maximum medical improvement or 6 weeks  
29 before the expiration of temporary benefits, whichever occurs  
30 earlier, the certifying doctor shall evaluate the condition of  
31 the employee and assign an impairment rating, using the

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

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

21 6. The division may by rule specify forms and  
22 procedures governing the method of payment of wage loss ~~and~~  
23 ~~impairment~~ benefits for dates of accidents before January 1,  
24 1994, and impairment benefits for dates of accidents on or  
25 after January 1, 1994.

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

29 (a) Weekly compensation benefits payable under this  
30 chapter for disability resulting from injuries to an employee  
31 who becomes eligible for benefits under 42 U.S.C. s. 423 shall

1 be reduced to an amount whereby the sum of such compensation  
2 benefits payable under this chapter and such total benefits  
3 otherwise payable for such period to the employee and her or  
4 his dependents, had such employee not been entitled to  
5 benefits under this chapter, under 42 U.S.C. ~~s. ss-402~~ or 42  
6 U.S.C. s. and 423, does not exceed 80 percent of the  
7 employee's average weekly wage. However, this provision shall  
8 not operate to reduce an injured worker's benefits under this  
9 chapter to a greater extent than such benefits would have  
10 otherwise been reduced under 42 U.S.C. s. 424(a). This  
11 reduction of compensation benefits is not applicable to any  
12 compensation benefits payable for any week subsequent to the  
13 week in which the injured worker reaches the age of 62 years.

14 Section 11. Subsections (1) and (2) of section  
15 440.151, Florida Statutes, are amended to read:

16 440.151 Occupational diseases.--

17 (1)(a) Where the employer and employee are subject to  
18 the provisions of the Workers' Compensation Law, the  
19 disablement or death of an employee resulting from an  
20 occupational disease as hereinafter defined shall be treated  
21 as the happening of an injury by accident, notwithstanding any  
22 other provisions of this chapter, and the employee or, in case  
23 of death, the employee's dependents shall be entitled to  
24 compensation as provided by this chapter, except as  
25 hereinafter otherwise provided; and the practice and procedure  
26 prescribed by this chapter shall apply to all proceedings  
27 under this section, except as hereinafter otherwise provided.  
28 Provided, however, that in no case shall an employer be liable  
29 for compensation under the provisions of this section unless  
30 such disease has resulted from the nature of the employment in  
31 which the employee was engaged under such employer and was

1 actually contracted while so engaged, meaning by "nature of  
2 the employment" that to the occupation in which the employee  
3 was so engaged there is attached a particular hazard of such  
4 disease that distinguishes it from the usual run of  
5 occupations, or the incidence of such disease is substantially  
6 higher in the occupation in which the employee was so engaged  
7 than in the usual run of occupations, or, in case of death,  
8 unless death follows continuous disability from such disease,  
9 commencing within the period above limited, for which  
10 compensation has been paid or awarded, or timely claim made as  
11 provided in this section, and results within 350 weeks after  
12 such last exposure.

13 (b) No compensation shall be payable for an  
14 occupational disease if the employee, at the time of entering  
15 into the employment of the employer by whom the compensation  
16 would otherwise be payable, falsely represents herself or  
17 himself in writing as not having previously been disabled,  
18 laid off or compensated in damages or otherwise, because of  
19 such disease.

20 (c) Where an occupational disease is aggravated by any  
21 other disease or infirmity, not itself compensable, or where  
22 disability or death from any other cause, not itself  
23 compensable, is aggravated, prolonged, accelerated or in  
24 anywise contributed to by an occupational disease, the  
25 compensation payable shall be reduced and limited to such  
26 proportion only of the compensation that would be payable if  
27 the occupational disease were the sole cause of the disability  
28 or death as such occupational disease, as a causative factor,  
29 bears to all the causes of such disability or death, such  
30 reduction in compensation to be effected by reducing the  
31 number of weekly or monthly payments or the amounts of such

1 payments, as under the circumstances of the particular case  
2 may be for the best interest of the claimant or claimants.

3 (d) No compensation for death from an occupational  
4 disease shall be payable to any person whose relationship to  
5 the deceased, which under the provisions of this Workers'  
6 Compensation Law would give right to compensation, arose  
7 subsequent to the beginning of the first compensable  
8 disability, save only to afterborn children of a marriage  
9 existing at the beginning of such disability.

10 (e) No compensation shall be payable for disability or  
11 death resulting from tuberculosis arising out of and in the  
12 course of employment by the Department of Health at a state  
13 tuberculosis hospital, or aggravated by such employment, when  
14 the employee had suffered from said disease at any time prior  
15 to the commencement of such employment.

16 (f) Both causation and sufficient exposure to support  
17 causation must be proven by clear and convincing evidence.

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

1           Section 12. Subsection (7) of section 440.185, Florida  
2 Statutes, is amended to read:

3           440.185 Notice of injury or death; reports; penalties  
4 for violations.--

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

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

15           440.191 Employee Assistance and Ombudsman Office.--

16           (1)(a) In order to effect the self-executing features  
17 of the Workers' Compensation Law, this chapter shall be  
18 construed to permit injured employees and employers or the  
19 employer's carrier to resolve disagreements without undue  
20 expense, costly litigation, or delay in the provisions of  
21 benefits. It is the duty of all who participate in the  
22 workers' compensation system, including, but not limited to,  
23 carriers, service providers, health care providers, managed  
24 care arrangements, attorneys, employers, and employees, to  
25 attempt to resolve disagreements in good faith ~~and to~~  
26 ~~cooperate with the division's efforts to resolve disagreements~~  
27 ~~between the parties. The division may by rule prescribe~~  
28 ~~definitions that are necessary for the effective~~  
29 ~~administration of this section.~~

30           (b) An Employee Assistance and Ombudsman Office is  
31 created within the Division of Workers' Compensation to inform

1 and assist injured workers, employers, carriers, and health  
2 care providers in fulfilling their responsibilities under this  
3 chapter. ~~The division may by rule specify forms and procedures~~  
4 ~~for administering requests for assistance provided by this~~  
5 ~~section.~~

6 (c) The Employee Assistance and Ombudsman Office,  
7 Division of Workers' Compensation, shall be a resource  
8 available to all employees who participate in the workers'  
9 compensation system and shall take all steps necessary to  
10 educate and disseminate information to employees and  
11 employers. The Employee Assistance and Ombudsman Office may  
12 participate in an early intervention program. Upon  
13 notification of an industrial accident, the office may contact  
14 the injured employee and advise the employee of his or her  
15 rights and responsibilities under this chapter and of the  
16 services available to him or her under this section.

17 (d) All medical-only claims of \$5,000 or less,  
18 disputed issues as to the average weekly wage or  
19 medical-mileage reimbursement, or disputed issues as to  
20 independent medical examinations shall be determined with or  
21 without a hearing by a judge of compensation claims who has  
22 jurisdiction over the dispute. If the judge of compensation  
23 claims decides that a hearing is necessary, neither party may  
24 be represented by counsel during the hearing. Such matters  
25 must be handled pursuant to rules adopted by the Division of  
26 Administrative Hearings. Any order of the judge of  
27 compensation claims is reviewable under s. 440.271.

28 (2)(a) ~~An employee may not file a petition requesting~~  
29 ~~any benefit under this chapter unless the employee has~~  
30 ~~exhausted the procedures for informal dispute resolution under~~  
31 ~~this section.~~

1           (a)(b) If at any time the employer or its carrier  
2 fails to provide benefits to which the employee believes she  
3 or he is entitled, the employee shall file with the division,  
4 the employer, the carrier, the carrier's attorney, the  
5 Division of Administrative Hearings, and the judge of  
6 compensation claims who has jurisdiction over the petition for  
7 benefits a petition for benefits that meets the requirements  
8 of s. 440.192(1), (2), and (3)~~contact the office to request~~  
9 ~~assistance in resolving the dispute.~~ The office may shall  
10 investigate the dispute and may shall attempt to facilitate an  
11 agreement between the employee and the employer or carrier.  
12 The employee, the employer, and the carrier shall cooperate  
13 with the office and shall timely provide the office with any  
14 documents or other information that it may require in  
15 connection with its efforts under this section.

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

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



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

7 Section 14. Section 440.192, Florida Statutes, is  
8 amended to read:

9 440.192 Procedure for resolving benefit disputes.--

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

17 (1)(2) The Office of the Judges of Compensation Claims  
18 shall review each petition and shall dismiss each petition, or  
19 any portion of a petition, upon its own motion or upon the  
20 motion of any party, which that does not on its face  
21 specifically identify or itemize the following:

22 (a) Name, address, telephone number, and social  
23 security number of the employee.

24 (b) Name, address, and telephone number of the  
25 employer.

26 (c) A detailed description of the injury and cause of  
27 the injury, including the location of the occurrence and the  
28 date of any accident.

29 (d) A detailed description of the employee's job, work  
30 responsibilities, and work the employee was performing when  
31 the injury occurred.

1           (e) The time period for which compensation was not  
2 timely provided and the specific classification of  
3 compensation that was not timely provided.

4           (f) The medical treatment that has been recommended by  
5 an authorized treating physician but has not been provided. A  
6 copy of the written documentation by the authorized treating  
7 physician who recommended such care must be attached to the  
8 petition.

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

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

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

21           (j)~~(i)~~ The type or nature of treatment care or  
22 attendance sought and the justification for such treatment.

23           (k)~~(j)~~ Specific explanation of any other disputed  
24 issue that a judge of compensation claims will be called to  
25 rule upon.

26           (l) If the petition is for average weekly wage, the  
27 petition must include a copy of the 13-week wage statement and  
28 the specific details as to why the 13-week wage statement is  
29 incorrect, including the check stubs or other documentation to  
30 support the petition. If the issue is concurrent employment,  
31 the name and address of the concurrent employer, all check

1 stubs, days worked, and the amount that should be included in  
2 the average weekly wage and the reason therefor.

3 (2) The dismissal of any petition or any portion of a  
4 petition under this section shall be without prejudice and  
5 shall not require a hearing.

6 (3) A petition for benefits may contain a claim for  
7 past benefits and continuing benefits in any benefit category,  
8 but is limited to those in default and ripe, due, and owing on  
9 the date the petition is filed. If the employer has elected to  
10 satisfy its obligation to provide medical treatment, care, and  
11 attendance through a managed care arrangement designated under  
12 this chapter, the employee must exhaust all managed care  
13 grievance procedures before filing a petition for benefits  
14 under this section.

15 ~~(4) The petition must include a certification by the~~  
16 ~~claimant or, if the claimant is represented by counsel, the~~  
17 ~~claimant's attorney, stating that the claimant, or attorney if~~  
18 ~~the claimant is represented by counsel, has made a good faith~~  
19 ~~effort to resolve the dispute and that the claimant or~~  
20 ~~attorney was unable to resolve the dispute with the carrier.~~

21 (4)(5) All motions to dismiss must state with  
22 particularity the basis for the motion. The judge of  
23 compensation claims shall enter an order upon such motions  
24 without hearing, unless good cause for hearing is shown. When  
25 any petition or portion of a petition is dismissed for lack of  
26 specificity under this subsection, the claimant must be  
27 allowed 20 days after the date of the order of dismissal in  
28 which to file an amended petition. Any grounds for dismissal  
29 for lack of specificity under this section may be raised up to  
30 the time of filing of the pretrial stipulation not asserted

31

1 ~~within 30 days after receipt of the petition for benefits are~~  
2 ~~thereby waived.~~

3       (5)~~(6)~~ If the claimant is not represented by counsel,  
4 the Office of the Judges of Compensation Claims may request  
5 the Employee Assistance and Ombudsman Office to assist the  
6 claimant in filing a petition that meets the requirements of  
7 this section.

8       (6)~~(7)~~ Notwithstanding the provisions of s. 440.34, a  
9 judge of compensation claims may not award attorney's fees  
10 payable by the carrier for services expended or costs incurred  
11 prior to the 30 days after the filing of a petition ~~that does~~  
12 ~~not meet the requirements of this section.~~

13       (7)~~(8)~~ Within 30 ~~14~~ days after receipt of a petition  
14 for benefits by certified mail, the carrier must either pay  
15 the requested benefits ~~without prejudice to its right to deny~~  
16 ~~within 120 days from receipt of the petition or file a~~  
17 response to petition notice of denial with the division. The  
18 carrier must list all benefits requested but not paid and  
19 explain its justification for nonpayment in the response to  
20 petition notice of denial. The carrier must also state those  
21 benefits that have been paid or authorized, or both, in the  
22 response to petition. ~~A carrier that does not deny~~  
23 ~~compensability in accordance with s. 440.20(4) is deemed to~~  
24 ~~have accepted the employee's injuries as compensable, unless~~  
25 ~~it can establish material facts relevant to the issue of~~  
26 ~~compensability that could not have been discovered through~~  
27 ~~reasonable investigation within the 120-day period.~~ The  
28 carrier shall provide copies of the notice to the filing  
29 party, employer, and claimant by certified mail.

30  
31

1           Section 15. Paragraph (a) of subsection (1) and  
2 subsections (6), (7), and (11) of section 440.20, Florida  
3 Statutes, are amended to read:

4           440.20 Time for payment of compensation; penalties for  
5 late payment.--

6           (1)(a) Unless it denies compensability or entitlement  
7 to benefits, the carrier shall pay compensation directly to  
8 the employee as required by ss. 440.14, 440.15, and 440.16, in  
9 accordance with the obligations set forth in such sections. If  
10 authorized by the employee, the carrier's obligation to pay  
11 compensation directly to the employee is satisfied when the  
12 carrier directly deposits, by electronic transfer or other  
13 means, compensation into the employee's bank account or into a  
14 bank account that has been established by the carrier for the  
15 employee. Compensation by direct deposit is considered paid on  
16 the date the funds become available for withdrawal by the  
17 employee.

18           (6) If any installment of compensation for death or  
19 dependency benefits, disability, permanent impairment, or wage  
20 loss payable without an award is not paid within 7 days after  
21 it becomes due, as provided in subsection (2), subsection (3),  
22 or subsection (4), there shall be added to such unpaid  
23 installment a punitive penalty of an amount equal to 20  
24 percent of the unpaid installment or \$5, which shall be paid  
25 at the same time as, but in addition to, such installment of  
26 compensation, unless notice is filed under subsection (4) or  
27 unless such nonpayment results from conditions over which the  
28 employer or carrier had no control. When any installment of  
29 compensation payable without an order ~~award~~ has not been paid  
30 within 7 days after it became due and the claimant concludes  
31 the prosecution of the claim before a judge of compensation

1 claims without having specifically claimed additional  
2 compensation in the nature of a penalty under this section,  
3 the claimant will be deemed to have acknowledged that, owing  
4 to conditions over which the employer or carrier had no  
5 control, such installment could not be paid within the period  
6 prescribed for payment and to have waived the right to claim  
7 such penalty. However, during the course of a hearing, the  
8 judge of compensation claims shall on her or his own motion  
9 raise the question of whether such penalty should be awarded  
10 or excused. The division may assess without a hearing the  
11 punitive penalty against either the employer or the insurance  
12 carrier, depending upon who was at fault in causing the delay.  
13 The insurance policy cannot provide that this sum will be paid  
14 by the carrier if the division or the judge of compensation  
15 claims determines that the punitive penalty should be made by  
16 the employer rather than the carrier. Any additional  
17 installment of compensation paid by the carrier pursuant to  
18 this section shall be paid directly to the employee by check  
19 or, if authorized by the employee, by direct deposit into the  
20 employee's bank account or into a bank account that has been  
21 established by the carrier for the employee.

22 (7) If any compensation, payable under the terms of an  
23 order ~~award~~, is not paid within 30 ~~7~~ days after it becomes  
24 due, there shall be added to such unpaid compensation an  
25 amount equal to 20 percent thereof, which shall be paid at the  
26 same time as, but in addition to, such compensation, unless  
27 review of the compensation order making such award is had as  
28 provided in s. 440.25.

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

1 such reports filed under this subsection annually by September  
2 15.

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



1 investigation so made will be deemed a part of the proceeding.  
2 An employer shall have the right to appear at any hearing  
3 pursuant to this subsection which relates to the discharge of  
4 such employer's liability and to present testimony at such  
5 hearing. The carrier shall provide reasonable notice to the  
6 employer of the time and date of any such hearing and inform  
7 the employer of her or his rights to appear and testify. When  
8 the claimant is represented by counsel or when the claimant  
9 and carrier or employer are represented by counsel, final  
10 approval of the lump-sum settlement agreement, as provided for  
11 in a joint petition and stipulation, shall be approved by  
12 entry of an order within 7 days after the filing of such joint  
13 petition and stipulation without a hearing, ~~unless the judge~~  
14 ~~of compensation claims determines, in her or his discretion,~~  
15 ~~that additional testimony is needed before such settlement can~~  
16 ~~be approved or disapproved and so notifies the parties.~~ The  
17 probability of the death of the injured employee or other  
18 person entitled to compensation before the expiration of the  
19 period during which such person is entitled to compensation  
20 shall, in the absence of special circumstances making such  
21 course improper, be determined in accordance with the most  
22 recent United States Life Tables published by the National  
23 Office of Vital Statistics of the United States Department of  
24 Health and Human Services. The probability of the happening of  
25 any other contingency affecting the amount or duration of the  
26 compensation, except the possibility of the remarriage of a  
27 surviving spouse, shall not be disregarded. As a condition of  
28 approving a lump-sum payment to a surviving spouse, the judge  
29 of compensation claims, in the judge of compensation claims'  
30 discretion, may require security which will ensure that, in  
31 the event of the remarriage of such surviving spouse, any

1 unaccrued future payments so paid may be recovered or recouped  
2 by the employer or carrier. Such applications shall be  
3 considered and determined in accordance with s. 440.25.

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

7 Section 16. Section 440.22, Florida Statutes, is  
8 amended to read:

9 440.22 Assignment and exemption from claims of  
10 creditors.--No assignment, release, or commutation of  
11 compensation or benefits due or payable under this chapter  
12 except as provided by this chapter shall be valid, and such  
13 compensation and benefits shall be exempt from all claims of  
14 creditors, and from levy, execution and attachments or other  
15 remedy for recovery or collection of a debt, which exemption  
16 may not be waived. However, the exemption of workers'  
17 compensation claims from creditors does not extend to claims  
18 based on an award of child support or alimony.

19 Section 17. Section 440.25, Florida Statutes, is  
20 amended to read:

21 440.25 Procedures for mediation and hearings.--

22 (1) ~~Within 21 days after a petition for benefits is~~  
23 ~~filed under s. 440.192, a mediation conference concerning such~~  
24 ~~petition shall be held.~~ Within 40 7 days after a ~~such~~ petition  
25 for benefits is filed under s. 440.192, the judge of  
26 compensation claims shall notify the interested parties that a  
27 mediation conference concerning such petition has been  
28 scheduled ~~will be held~~. All pending petitions that have been  
29 filed for 30 days must be scheduled for mediation at the same  
30 time. Such notice shall give the date, ~~time, and location~~ of  
31 the mediation conference. Such notice may be served personally

1 upon the interested parties or may be sent to the interested  
2 parties by mail. Such mediation must be held within 60 days  
3 after the filing of the petition, unless there is a showing of  
4 good cause presented to the judge of compensation claims. If  
5 the judge of compensation claims grants a continuance, the  
6 date of the rescheduled mediation must be set forth in the  
7 order, and the mediation must be held on that date. However,  
8 if the employee and the employer/carrier are represented by  
9 counsel, the representative of the employer/carrier may attend  
10 the mediation via telephone if the representative lives  
11 outside the county where the mediation is being held. A  
12 mediation conference may not be used for the sole purpose of  
13 mediating attorney's fees.

14 (2) Any party who participates in a mediation  
15 conference shall not be precluded from requesting a hearing  
16 following the mediation conference should both parties not  
17 agree to be bound by the results of the mediation conference.  
18 A mediation conference is required to be held unless this  
19 requirement is waived by the Chief Judge. No later than 3 days  
20 prior to the mediation conference, all parties must submit any  
21 applicable motions, including, but not limited to, a motion to  
22 waive the mediation conference, to the judge of compensation  
23 claims.

24 (3) Such a mediation conference shall be conducted  
25 informally and does not require the use of formal rules of  
26 evidence or procedure. Any information from the files,  
27 reports, case summaries, mediator's notes, or other  
28 communications or materials, oral or written, relating to a  
29 mediation conference under this section obtained by any person  
30 performing mediation duties is privileged and confidential and  
31 may not be disclosed without the written consent of all

1 parties to the conference. Any research or evaluation effort  
2 directed at assessing the mediation program activities or  
3 performance must protect the confidentiality of such  
4 information. Each party to a mediation conference has a  
5 privilege during and after the conference to refuse to  
6 disclose and to prevent another from disclosing communications  
7 made during the conference whether or not the contested issues  
8 are successfully resolved. This subsection and paragraphs  
9 (4)(a) and (b) shall not be construed to prevent or inhibit  
10 the discovery or admissibility of any information that is  
11 otherwise subject to discovery or that is admissible under  
12 applicable law or rule of procedure, except that any conduct  
13 or statements made during a mediation conference or in  
14 negotiations concerning the conference are inadmissible in any  
15 proceeding under this chapter. The Division of Administrative  
16 Hearings shall maintain a list of mediators who have been  
17 certified under s. 44.106. Mediators shall be compensated and  
18 paid by the employer/carrier according to rules adopted by the  
19 Supreme Court as set forth in s. 44.102(5)(b).~~The Chief Judge~~  
20 ~~shall select a mediator. The mediator shall be employed on a~~  
21 ~~full-time basis by the Office of the Judges of Compensation~~  
22 ~~Claims. A mediator must be a member of The Florida Bar, for at~~  
23 ~~least 5 years and must complete a mediation training program~~  
24 pursuant to s. 44.106, and must be certified by the division  
25 as having completed a workers' compensation training program  
26 ~~approved by the Chief Judge. Adjunct mediators may be employed~~  
27 ~~by the Office of the Judges of Compensation Claims on an~~  
28 ~~as-needed basis and shall be selected from a list prepared by~~  
29 ~~the Chief Judge. An adjunct mediator must be independent of~~  
30 ~~all parties participating in the mediation conference. An~~  
31 ~~adjunct mediator must be a member of The Florida Bar for at~~

1 ~~least 5 years and must complete a mediation training program~~  
2 ~~approved by the Chief Judge. An adjunct mediator shall have~~  
3 ~~access to the office, equipment, and supplies of the judge of~~  
4 ~~compensation claims in each district.~~In the event both  
5 parties agree, the results of the mediation conference shall  
6 be binding and neither party shall have a right to appeal the  
7 results. If in the event either party refuses to agree at to  
8 ~~the results of~~ the mediation conference, the results of the  
9 mediation conference as well as the testimony, witnesses, and  
10 evidence presented at the conference shall not be admissible  
11 at any subsequent proceeding on the claim. The mediator shall  
12 not be called in to testify or give deposition to resolve any  
13 claim for any hearing before the judge of compensation claims.  
14 The employer may be represented by an attorney at the  
15 mediation conference if the employee is also represented by an  
16 attorney at the mediation conference.

17 (4)(a) If, on the 7th ~~10th~~ day following commencement  
18 of mediation, the questions in dispute have not been resolved,  
19 the judge of compensation claims shall schedule ~~hold~~ a  
20 pretrial hearing to be held within 90 days after the filing of  
21 the petition. The judge of compensation claims shall give the  
22 interested parties at least 7 days' advance notice of the  
23 pretrial hearing by mail. The notice must give the time, date,  
24 and location of the pretrial conference.~~At the pretrial~~  
25 ~~hearing,~~The judge of compensation claims shall, subject to  
26 paragraph (b), set a date for the final hearing that allows  
27 the parties 90 ~~at least 30~~ days after the date of the pretrial  
28 conference to conduct discovery unless the parties consent to  
29 an earlier hearing date.

30 (b) The final hearing must be held and concluded  
31 within 210 ~~45~~ days after the filing of the petition ~~pretrial~~

1 ~~hearing~~. Continuances may be granted only if the requesting  
2 party demonstrates to the judge of compensation claims that  
3 the reason for requesting the continuance arises from  
4 unforeseeable circumstances beyond the party's control. Any  
5 order on a continuance must set forth the date of that  
6 rescheduled final hearing.

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

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

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

18       (e)~~(f)~~ Each judge of compensation claims is required  
19 to submit a special report to the Chief Judge in each  
20 contested workers' compensation case in which a final order is  
21 not issued ~~the case is not determined~~ within 30 14 days after  
22 the ~~of~~ final hearing. Said form shall be provided by the Chief  
23 Judge and shall contain the names of the judge of compensation  
24 claims and of the attorneys involved and a brief explanation  
25 by the judge of compensation claims as to the reason for such  
26 a delay in issuing a final order. The Chief Judge shall  
27 compile these special reports into an annual public report to  
28 the Governor, the Secretary of Labor and Employment Security,  
29 the Legislature, The Florida Bar, and the appellate district  
30 judicial nominating commissions.

31

1        (f)~~(g)~~ Judges of compensation claims shall adopt and  
2 enforce uniform local rules for workers' compensation.

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

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

18        (i)~~(j)~~ To further expedite dispute resolution and to  
19 enhance the self-executing features of the system, those  
20 petitions filed in accordance with s. 440.192 that involve a  
21 claim for benefits of \$5,000 or less shall, in the absence of  
22 compelling evidence to the contrary, be presumed to be  
23 appropriate for expedited resolution under this paragraph; and  
24 any other claim filed in accordance with s. 440.192, upon the  
25 written agreement of both parties and application by either  
26 party, may similarly be resolved under this paragraph. For  
27 purposes of expedited resolution pursuant to this paragraph,  
28 the Chief Judge shall make provision by rule or order for  
29 expedited and limited discovery and expedited docketing in  
30 such cases. At least 15 days prior to hearing, the parties  
31 shall exchange and file with the judge of compensation claims



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

14 (j) A Motion to Dismiss for Lack of Prosecution may be  
15 filed if it appears that no record activity has been taken on  
16 a petition for a period of 1 year, regardless of whether or  
17 not compensation or medical benefits have been or are being  
18 paid. The judge shall, on his or her own motion or on a motion  
19 by a party in the judge's discretion, determine if a hearing  
20 is necessary and serve notice of hearing on the parties by  
21 regular mail at their last known addresses. The notice to  
22 dismiss shall be granted by the judge without a hearing or by  
23 the judge with a hearing unless a party shows good cause why  
24 the petition should remain pending.

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

28 (5)(a) Procedures with respect to appeals from orders  
29 of judges of compensation claims shall be governed by rules  
30 adopted by the Supreme Court. Such an order shall become final  
31

1 30 days after mailing of copies of such order to the parties,  
2 unless appealed pursuant to such rules.

3 (b) An appellant may be relieved of any necessary  
4 filing fee by filing a verified petition of indigency for  
5 approval as provided in s. 57.081(1) and may be relieved in  
6 whole or in part from the costs for preparation of the record  
7 on appeal if, within 15 days after the date notice of the  
8 estimated costs for the preparation is served, the appellant  
9 files with the judge of compensation claims a copy of the  
10 designation of the record on appeal, and a verified petition  
11 to be relieved of costs. A verified petition filed prior to  
12 the date of service of the notice of the estimated costs shall  
13 be deemed not timely filed. The verified petition relating to  
14 record costs shall contain a sworn statement that the  
15 appellant is insolvent and a complete, detailed, and sworn  
16 financial affidavit showing all the appellant's assets,  
17 liabilities, and income. Failure to state in the affidavit all  
18 assets and income, including marital assets and income, shall  
19 be grounds for denying the petition with prejudice. The  
20 division shall promulgate rules as may be required pursuant to  
21 this subsection, including forms for use in all petitions  
22 brought under this subsection. The appellant's attorney, or  
23 the appellant if she or he is not represented by an attorney,  
24 shall include as a part of the verified petition relating to  
25 record costs an affidavit or affirmation that, in her or his  
26 opinion, the notice of appeal was filed in good faith and that  
27 there is a probable basis for the District Court of Appeal,  
28 First District, to find reversible error, and shall state with  
29 particularity the specific legal and factual grounds for the  
30 opinion. Failure to so affirm shall be grounds for denying the  
31 petition. A copy of the verified petition relating to record

1 costs shall be served upon all interested parties, ~~including~~  
2 ~~the division and the Office of the General Counsel, Department~~  
3 ~~of Labor and Employment Security, in Tallahassee.~~ The judge of  
4 compensation claims shall promptly conduct a hearing on the  
5 verified petition relating to record costs, giving at least 15  
6 days' notice to the appellant, ~~the division, and~~ to all other  
7 interested parties, all of whom shall be parties to the  
8 proceedings. The judge of compensation claims may enter an  
9 order without such hearing if no objection is filed by an  
10 interested party within 20 days from the service date of the  
11 verified petition relating to record costs. Such proceedings  
12 shall be conducted in accordance with the provisions of this  
13 section and with the workers' compensation rules of procedure,  
14 to the extent applicable. In the event an insolvency petition  
15 is granted, the judge of compensation claims shall direct the  
16 division to pay record costs and filing fees from the Workers'  
17 Compensation Trust Fund pending final disposition of the costs  
18 of appeal. The division may transcribe or arrange for the  
19 transcription of the record in any proceeding for which it is  
20 ordered to pay the cost of the record. ~~In the event the~~  
21 ~~insolvency petition is denied, the judge of compensation~~  
22 ~~claims may enter an order requiring the petitioner to~~  
23 ~~reimburse the division for costs incurred in opposing the~~  
24 ~~petition, including investigation and travel expenses.~~

25 (c) As a condition of filing a notice of appeal to the  
26 District Court of Appeal, First District, an employer who has  
27 not secured the payment of compensation under this chapter in  
28 compliance with s. 440.38 shall file with the notice of appeal  
29 a good and sufficient bond, as provided in s. 59.13,  
30 conditioned to pay the amount of the demand and any interest  
31 and costs payable under the terms of the order if the appeal

1 is dismissed, or if the District Court of Appeal, First  
2 District, affirms the award in any amount. Upon the failure of  
3 such employer to file such bond with the judge of compensation  
4 claims or the District Court of Appeal, First District, along  
5 with the notice of appeal, the District Court of Appeal, First  
6 District, shall dismiss the notice of appeal.

7 (6) An award of compensation for disability may be  
8 made after the death of an injured employee.

9 (7) An injured employee claiming or entitled to  
10 compensation shall submit to such physical examination by a  
11 certified expert medical advisor approved by the division or  
12 the judge of compensation claims as the division or the judge  
13 of compensation claims may require. The place or places shall  
14 be reasonably convenient for the employee. Such physician or  
15 physicians as the employee, employer, or carrier may select  
16 and pay for may participate in an examination if the employee,  
17 employer, or carrier so requests. Proceedings shall be  
18 suspended and no compensation shall be payable for any period  
19 during which the employee may refuse to submit to examination.  
20 Any interested party shall have the right in any case of death  
21 to require an autopsy, the cost thereof to be borne by the  
22 party requesting it; and the judge of compensation claims  
23 shall have authority to order and require an autopsy and may,  
24 in her or his discretion, withhold her or his findings and  
25 award until an autopsy is held.

26 Section 18. Subsection (4) of section 440.29, Florida  
27 Statutes, is amended to read:

28 440.29 Procedure before the judge of compensation  
29 claims.--

30 (4) All medical reports of authorized treating health  
31 care providers, peer-review reports pursuant to utilization

1 review, and independent medical examinations relating to the  
2 claimant and subject accident shall be received into evidence  
3 by the judge of compensation claims upon proper motion.  
4 However, such records must be served on the opposing party at  
5 least 30 days before the final hearing. This section does not  
6 limit any right of further discovery, including, but not  
7 limited to, depositions.

8 Section 19. Section 440.34, Florida Statutes, is  
9 amended to read:

10 440.34 Attorney's fees; costs.--

11 (1) A fee, gratuity, or other consideration may not be  
12 paid for services rendered for a claimant in connection with  
13 any proceedings arising under this chapter, unless approved as  
14 reasonable by the judge of compensation claims or court having  
15 jurisdiction over such proceedings. Except as provided by this  
16 subsection, any attorney's fee approved by a judge of  
17 compensation claims for services rendered to a claimant must  
18 equal to 20 percent of the first \$5,000 of the amount of the  
19 benefits secured, 15 percent of the next \$5,000 of the amount  
20 of the benefits secured, 10 percent of the remaining amount of  
21 the benefits secured to be provided during the first 10 years  
22 after the date the claim is filed, and 5 percent of the  
23 benefits secured after 10 years. However, no fees are payable  
24 on the issue of average weekly wage, on medical issues under  
25 \$5,000, on medical mileage, or on issues relating to  
26 independent medical examinations.~~However, the judge of~~  
27 ~~compensation claims shall consider the following factors in~~  
28 ~~each case and may increase or decrease the attorney's fee if,~~  
29 ~~in her or his judgment, the circumstances of the particular~~  
30 ~~case warrant such action:~~

31

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

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

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

8           ~~(d) The time limitation imposed by the claimant or the~~  
9 ~~circumstances.~~

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

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

13           (2) In awarding a reasonable claimant's attorney's  
14 fee, the judge of compensation claims shall consider only  
15 those benefits to the claimant that the attorney is  
16 responsible for securing. The amount, statutory basis, and  
17 type of benefits obtained through legal representation shall  
18 be listed on all attorney's fees awarded by the judge of  
19 compensation claims. For purposes of this section, the term  
20 "benefits secured" means benefits obtained as a result of the  
21 claimant's attorney's legal services rendered in connection  
22 with the claim for benefits. However, such term does not  
23 include future medical benefits to be provided on any date  
24 more than 5 years after the date the claim is filed.

25           (3) If the claimant should prevail in any proceedings  
26 before a judge of compensation claims or court, there shall be  
27 taxed against the employer the reasonable costs of such  
28 proceedings, not to include the attorney's fees of the  
29 claimant. A claimant shall be responsible for the payment of  
30 her or his own attorney's fees, ~~except that a claimant shall~~  
31

1 ~~be entitled to recover a reasonable attorney's fee from a~~  
2 ~~carrier or employer.~~

3 ~~(a) Against whom she or he successfully asserts a~~  
4 ~~claim for medical benefits only, if the claimant has not filed~~  
5 ~~or is not entitled to file at such time a claim for~~  
6 ~~disability, permanent impairment, wage-loss, or death~~  
7 ~~benefits, arising out of the same accident; or~~

8 ~~(b) In any case in which the employer or carrier files~~  
9 ~~a notice of denial with the division and the injured person~~  
10 ~~has employed an attorney in the successful prosecution of the~~  
11 ~~claim; or~~

12 ~~(c) In a proceeding in which a carrier or employer~~  
13 ~~denies that an injury occurred for which compensation benefits~~  
14 ~~are payable, and the claimant prevails on the issue of~~  
15 ~~compensability; or~~

16 ~~(d) In cases where the claimant successfully prevails~~  
17 ~~in proceedings filed under s. 440.24 or s. 440.28.~~

18  
19 ~~In applying the factors set forth in subsection (1) to cases~~  
20 ~~arising under paragraphs (a), (b), (c), and (d), the judge of~~  
21 ~~compensation claims must only consider only such benefits and~~  
22 ~~the time reasonably spent in obtaining them as were secured~~  
23 ~~for the claimant within the scope of paragraphs (a), (b), (c),~~  
24 ~~and (d).~~

25 (4) In such cases in which the claimant is responsible  
26 for the payment of her or his own attorney's fees, such fees  
27 are a lien upon compensation payable to the claimant,  
28 notwithstanding s. 440.22.

29 (5) If any proceedings are had for review of any  
30 claim, award, or compensation order before the Workers'  
31 Compensation Appeals Commission or appellate any court, the

1 court may award the injured employee or dependent an  
2 attorney's fee to be paid by the employer or carrier, in its  
3 discretion, which shall be paid as the court may direct;  
4 however, such a fee must be at an hourly rate of \$125 or less  
5 and may not exceed \$3,000 per appeal.

6 ~~(6) A judge of compensation claims may not enter an~~  
7 ~~order approving the contents of a retainer agreement that~~  
8 ~~permits the escrowing of any portion of the employee's~~  
9 ~~compensation until benefits have been secured.~~

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

12 440.39 Compensation for injuries when third persons  
13 are liable.--

14 (8) This section does not impose on the employer a  
15 duty to preserve evidence pertaining to the industrial  
16 accident or to injuries arising therefrom.

17 Section 21. Subsection (3) of section 440.42, Florida  
18 Statutes, is amended to read:

19 440.42 Insurance policies; liability.--

20 (3) Each ~~No~~ contract or policy of insurance issued by  
21 a carrier under this chapter shall expire 1 year after the  
22 effective date of the contract or policy. A contract or policy  
23 of insurance issued by a carrier may not ~~or~~ be canceled before  
24 its expiration date unless ~~until~~ at least 30 days have elapsed  
25 after a notice of such cancellation has been sent by the  
26 carrier to the division and to the employer in accordance with  
27 the provisions of s. 440.185(7). However, when duplicate or  
28 dual coverage exists by reason of two different carriers  
29 having issued policies of insurance to the same employer  
30 securing the same liability, it shall be presumed that only  
31 that policy with the later effective date shall be in force



1 and that the earlier policy terminated upon the effective date  
2 of the latter. ~~If in the event that~~ both policies carry the  
3 same effective date, one of the policies may be canceled  
4 instanter upon filing a notice of cancellation with the  
5 division and serving a copy thereof upon the employer in such  
6 manner as the division prescribes by rule. The division may by  
7 rule prescribe the content of the notice of retroactive  
8 cancellation and specify the time, place, and manner in which  
9 the notice of cancellation is to be served.

10 Section 22. Section 440.45, Florida Statutes, is  
11 amended to read:

12 440.45 Office of the Judges of Compensation Claims.--

13 (1)(a) There is ~~hereby~~ created the Office of the  
14 Judges of Compensation Claims within the Department of  
15 Management Services ~~Labor and Employment Security~~. The Office  
16 of the Judges of Compensation Claims shall be headed by the  
17 Deputy Chief Judge of Compensation Claims. The Deputy Chief  
18 Judge shall report to the director of the Division of  
19 Administrative Hearings ~~a Chief Judge~~. The Deputy Chief Judge  
20 shall be appointed by the Governor for a term of 4 years from  
21 a list of three names submitted by the statewide nominating  
22 commission created under subsection (2). The Deputy Chief  
23 Judge must demonstrate prior administrative experience and  
24 possess the same qualifications for appointment as a judge of  
25 compensation claims, and the procedure for reappointment of  
26 the Deputy Chief Judge will be the same as for reappointment  
27 of a judge of compensation claims. The office shall be a  
28 separate budget entity and the director of the Division of  
29 Administrative Hearings ~~Chief Judge~~ shall be its agency head  
30 for all purposes. The Department of Management Services ~~Labor~~  
31 ~~and Employment Security~~ shall provide administrative support

1 and service to the office to the extent requested by the  
2 director of the Division of Administrative Hearings ~~Chief~~  
3 ~~Judge~~ but shall not direct, supervise, or control the Office  
4 of the Judges of Compensation Claims in any manner, including,  
5 but not limited to, personnel, purchasing, budgetary matters,  
6 or property transactions. The operating budget of the Office  
7 of the Judges of Compensation Claims shall be paid out of the  
8 Workers' Compensation Administration Trust Fund established in  
9 s. 440.50.

10 (b) The current term of the Chief Judge of  
11 Compensation Claims expires July 1, 2001. The position of  
12 Deputy Chief Judge of Compensation Claims is created and  
13 becomes effective July 1, 2001.

14 (2)(a) The Governor shall appoint full-time judges of  
15 compensation claims to conduct proceedings as required by this  
16 chapter or other law. No person may be nominated to serve as a  
17 judge of compensation claims unless he or she has been a  
18 member of The Florida Bar in good standing for the prior 5  
19 years and is experienced ~~knowledgeable~~ in the practice of law  
20 of workers' compensation. No judge of compensation claims  
21 shall engage in the private practice of law during a term of  
22 office.

23 (b) Except as provided in paragraph (c), the Governor  
24 shall appoint a judge of compensation claims from a list of  
25 three persons nominated by a statewide nominating commission.  
26 The statewide nominating commission shall be composed of the  
27 following:

28 1. Five members, at least one of whom must be a member  
29 of a minority group as defined in s. 288.703(3), one of each  
30 who resides in each of the territorial jurisdictions of the  
31 district courts of appeal, appointed by the Board of Governors

1 of The Florida Bar from among The Florida Bar members who are  
2 engaged in the practice of law. On July 1, 1999, the term of  
3 office of each person appointed by the Board of Governors of  
4 The Florida Bar to the commission expires. The Board of  
5 Governors shall appoint members who reside in the odd-numbered  
6 district court of appeal jurisdictions to 4-year terms each,  
7 beginning July 1, 1999, and members who reside in the  
8 even-numbered district court of appeal jurisdictions to 2-year  
9 terms each, beginning July 1, 1999. Thereafter, each member  
10 shall be appointed for a 4-year term;

11         2. Five electors, at least one of whom must be a  
12 member of a minority group as defined in s. 288.703(3), one of  
13 each who resides in each of the territorial jurisdictions of  
14 the district courts of appeal, appointed by the Governor. On  
15 July 1, 1999, the term of office of each person appointed by  
16 the Governor to the commission expires. The Governor shall  
17 appoint members who reside in the odd-numbered district court  
18 of appeal jurisdictions to 2-year terms each, beginning July  
19 1, 1999, and members who reside in the even-numbered district  
20 court of appeal jurisdictions to 4-year terms each, beginning  
21 July 1, 1999. Thereafter, each member shall be appointed for a  
22 4-year term; and

23         3. Five electors, at least one of whom must be a  
24 member of a minority group as defined in s. 288.703(3), one of  
25 each who resides in the territorial jurisdictions of the  
26 district courts of appeal, selected and appointed by a  
27 majority vote of the other 10 members of the commission. On  
28 October 1, 1999, the term of office of each person appointed  
29 to the commission by its other members expires. A majority of  
30 the other members of the commission shall appoint members who  
31 reside in the odd-numbered district court of appeal

1 | jurisdictions to 2-year terms each, beginning October 1, 1999,  
2 | and members who reside in the even-numbered district court of  
3 | appeal jurisdictions to 4-year terms each, beginning October  
4 | 1, 1999. Thereafter, each member shall be appointed for a  
5 | 4-year term.

6 |  
7 | A vacancy occurring on the commission shall be filled by the  
8 | original appointing authority for the unexpired balance of the  
9 | term. No attorney who appears before any judge of compensation  
10 | claims more than four times a year is eligible to serve on the  
11 | statewide nominating commission. The meetings and  
12 | determinations of the nominating commission as to the judges  
13 | of compensation claims shall be open to the public.

14 |       (c) Each judge of compensation claims shall be  
15 | appointed for a term of 4 years, but during the term of office  
16 | may be removed by the Governor for cause. Prior to the  
17 | expiration of a judge's term of office, the statewide  
18 | nominating commission shall review the judge's conduct and  
19 | determine whether the judge's performance is satisfactory. In  
20 | determining whether a judge's performance is satisfactory, the  
21 | commission shall consider the extent to which the judge has  
22 | met the requirements of this chapter, including, but not  
23 | limited to, the requirements of ss. 440.192(2), 440.25(1),  
24 | 440.25(4)(a)-(f), 440.34(2), and 440.442. If the commission  
25 | finds that judges generally are unable to meet a particular  
26 | statutory requirement for reasons beyond their control, the  
27 | commission shall request that the Legislature review that  
28 | particular requirement. If the judge's performance is deemed  
29 | satisfactory, the commission shall report its finding to the  
30 | Governor no later than 6 months prior to the expiration of the  
31 | judge's term of office. The Governor shall review the

1 commission's report and may reappoint the judge for an  
2 additional 4-year term. If the Governor does not reappoint the  
3 judge, the Governor shall inform the commission. The judge  
4 shall remain in office until the Governor has appointed a  
5 successor judge in accordance with paragraphs (a) and (b). If  
6 a vacancy occurs during a judge's unexpired term, the  
7 statewide nominating commission does not find the judge's  
8 performance is satisfactory, or the Governor does not  
9 reappoint the judge, the Governor shall appoint a successor  
10 judge for a term of 4 years in accordance with paragraph (b).

11 (d) The Governor may appoint any attorney who has 5  
12 years of experience in the practice of law in this state to  
13 serve as a Deputy Chief Judge or a judge of compensation  
14 claims on a temporary basis in the absence or disqualification  
15 of any full-time judge of compensation claims. However, an  
16 attorney so appointed by the Governor may not serve for a  
17 period exceeding 60 successive days.

18 (e) The director of the Division of Administrative  
19 Hearings may receive or initiate complaints, conduct  
20 investigations, and dismiss complaints against the Deputy  
21 Chief Judge and the judges of compensation claims. The  
22 director may recommend to the Governor the removal of the  
23 Deputy Chief Judge or a judge of compensation claims or  
24 recommend the discipline of a judge whose conduct during his  
25 or her term of office warrants such discipline. For purposes  
26 of this section, the term "discipline" includes reprimand,  
27 fine, and suspension with or without pay. At the conclusion of  
28 each investigation, the director shall submit preliminary  
29 findings of fact and recommendations to the judge of  
30 compensation claims who is the subject of the complaint. The  
31 judge of compensation claims has 20 days within which to

1 respond to the tentative findings. The response and the  
2 director's rebuttal to the response must be included in the  
3 final report submitted to the Governor.

4 ~~(3) The Chief Judge shall select from among the full~~  
5 ~~time judges of the office two or more judges to rotate as~~  
6 ~~docketing judges. Docketing judges shall review all claims for~~  
7 ~~benefits for consistency with the requirements of this chapter~~  
8 ~~and the rules of procedure, including, but not limited to,~~  
9 ~~specificity requirements, and shall dismiss any claim that~~  
10 ~~fails to comport with such rules and requirements. The~~  
11 ~~docketing judge shall not dismiss any claim with prejudice~~  
12 ~~without offering the parties an opportunity to appear and~~  
13 ~~present argument. The Chief Judge may as he or she deems~~  
14 ~~appropriate expand the duties of the docketing judges to~~  
15 ~~include resolution without hearing of other types of~~  
16 ~~procedural and substantive matters, including resolution of~~  
17 ~~fee disputes.~~

18 ~~(3)(4) The Chief Judge shall have the discretion to~~  
19 ~~require mediation and to designate qualified persons to act as~~  
20 ~~mediators in any dispute pending before the judges of~~  
21 ~~compensation claims and the division. The Deputy Chief Judge~~  
22 ~~shall coordinate with the Director of the Division of Workers'~~  
23 ~~Compensation to establish a mandatory mediation program to~~  
24 ~~facilitate early and efficient resolution of disputes arising~~  
25 ~~under this chapter and to establish training and continuing~~  
26 ~~education for new and sitting judges.~~

27 ~~(4)(5) The Office of the Judges of Compensation Claims~~  
28 ~~shall promulgate rules to effect the purposes of this section.~~  
29 ~~Such rules shall include procedural rules applicable to~~  
30 ~~workers' compensation claim resolution and uniform criteria~~  
31 ~~for measuring the performance of the office, including, but~~

1 not limited to, the number of cases assigned and disposed, the  
2 age of pending and disposed cases, timeliness of  
3 decisionmaking, extraordinary fee awards, and the data  
4 necessary for the judicial nominating commission to review the  
5 performance of judges as required in paragraph (2)(c) and  
6 other performance indicators. On or before November 1, 2001,  
7 the Office of the Judges of Compensation Claims shall submit a  
8 draft of these rules to the Governor, the President of the  
9 Senate, and the Speaker of the House of Representatives. The  
10 Legislature shall review the draft rules and may approve,  
11 modify and approve, disapprove, or take no action on the  
12 rules. If the Legislature approves the draft rules, or  
13 modifies and approves the draft rules, the Office of the  
14 Judges of Compensation Claims shall adopt the draft rules  
15 pursuant to chapter 120. If the Legislature disapproves the  
16 draft rules, the Legislature shall convey the reasons for its  
17 disapproval to the Office of the Judges of Compensation Claims  
18 for use in redrafting the rules.The workers' compensation  
19 rules of procedure approved by the Supreme Court shall apply  
20 until the rules promulgated by the Office of the Judges of  
21 Compensation Claims pursuant to this section become effective.  
22 (5)(6) Not later than December 1 of each year, the  
23 Office of the Judges of Compensation Claims and the Division  
24 of Workers' Compensation shall jointly issue a written report  
25 to the Governor, the House of Representatives, and the Senate,  
26 The Florida Bar, and the statewide nominating commission  
27 summarizing the amount, cost, and outcome of all litigation  
28 resolved in the prior fiscal year, summarizing the disposition  
29 of mediation conferences, the number of mediation conferences  
30 waived, the number of continuances granted, the number and  
31 disposition of litigated cases, the amount of attorney's fees

1 paid in each case, and the number of final orders not issued  
2 within 14 days after the final hearing ~~applications and~~  
3 ~~motions for mediation conferences~~ and recommending changes or  
4 improvements to the dispute resolution elements of the  
5 Workers' Compensation Law and regulations. If the Deputy Chief  
6 Judge finds that judges generally are unable to meet a  
7 particular statutory requirement for reasons beyond their  
8 control, the Deputy Chief Judge shall submit such findings and  
9 any recommendations to the Legislature.

10 Section 23. Effective July 1, 2001, section 627.914,  
11 Florida Statutes, is amended to read:

12 627.914 Reports of information by workers'  
13 compensation insurers required.--

14 (1) The department shall promulgate rules and  
15 statistical plans which shall thereafter be used by each  
16 insurer and each self-insurance fund as defined in s. 624.461  
17 in the recording and reporting of loss, expense, and claims  
18 experience, in order that the experience of all insurers and  
19 self-insurance funds ~~self-insurers~~ may be made available at  
20 least annually in such form and detail as may be necessary to  
21 aid the department in determining whether Florida experience  
22 for workers' compensation insurance is sufficient for  
23 establishing rates.

24 ~~(2) Any insurer authorized to write a policy of~~  
25 ~~workers' compensation insurance shall transmit the following~~  
26 ~~information to the department each year with its annual~~  
27 ~~report, and such information shall be reported on a net basis~~  
28 ~~with respect to reinsurance for nationwide experience and on a~~  
29 ~~direct basis for Florida experience.~~

30 ~~(a) Premiums written;~~

31 ~~(b) Premiums earned;~~



1           ~~(c) Dividends paid or credited to policyholders;~~  
2           ~~(d) Losses paid;~~  
3           ~~(e) Allocated loss adjustment expenses;~~  
4           ~~(f) The ratio of allocated loss adjustment expenses to~~  
5 ~~losses paid;~~  
6           ~~(g) Unallocated loss adjustment expenses;~~  
7           ~~(h) The ratio of unallocated loss adjustment expenses~~  
8 ~~to losses paid;~~  
9           ~~(i) The total of losses paid and unallocated and~~  
10 ~~allocated loss adjustment expenses;~~  
11           ~~(j) The ratio of losses paid and unallocated and~~  
12 ~~allocated loss adjustment expenses to premiums earned;~~  
13           ~~(k) The number of claims outstanding as of December 31~~  
14 ~~of each year;~~  
15           ~~(l) The total amount of losses unpaid as of December~~  
16 ~~31 of each year;~~  
17           ~~(m) The total amount of allocated and unallocated loss~~  
18 ~~adjustment expenses unpaid as of December 31 of each year; and~~  
19           ~~(n) The total of losses paid and allocated loss~~  
20 ~~adjustment expenses and unallocated loss adjustment expenses,~~  
21 ~~plus the total of losses unpaid as of December 31 of each year~~  
22 ~~and loss adjustment expenses unpaid as of December 31 of each~~  
23 ~~year.~~  
24           ~~(3) A report of the information required in subsection~~  
25 ~~(2) shall be filed no later than April 1 of each year and~~  
26 ~~shall include the information for the preceding year ending~~  
27 ~~December 31. All reports shall be on a calendar-accident year~~  
28 ~~basis, and each calendar-accident year shall be reported at~~  
29 ~~eight stages of development.~~  
30           (2)(4) Each insurer and self-insurance fund authorized  
31 to write a policy of workers' compensation insurance shall

1 transmit the information for paragraphs (a), (b), (c), (d),  
2 and (e) annually on both Florida experience and nationwide  
3 experience separately:

- 4 (a) Payrolls by classification.  
5 (b) Manual premiums by classification.  
6 (c) Standard premiums by classification.  
7 (d) Losses by classification and injury type.  
8 (e) Expenses.

9  
10 A report of this information shall be filed no later than July  
11 ~~April~~ 1 of each year. All reports shall be filed in  
12 accordance with standard reporting procedures for insurers,  
13 which procedures have received approval by the department, and  
14 shall contain data for the most recent policy period  
15 available. A statistical or rating organization may be used  
16 by insurers and self-insurance funds to report the data  
17 required by this section. The statistical rating organization  
18 shall report each data element in the aggregate only for  
19 insurers and self-insurance funds required to report under  
20 this section who elect to have the rating organization report  
21 on their behalf. Such insurers shall be named in the report.

22 ~~(3)(5)~~ Individual self-insurers as defined ~~authorized~~  
23 ~~to transact workers' compensation insurance as provided in s.~~  
24 440.02 shall report only Florida data as prescribed in  
25 paragraphs (a)-(e) of subsection ~~(2)(4)~~ to the Division of  
26 Workers' Compensation of the Department of Labor and  
27 Employment Security.

28 (a) The Division of Workers' Compensation shall  
29 publish the dates and forms necessary to enable self-insurers  
30 to comply with this section.

31

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

4           **(b)(c)** A statistical or rating organization may be  
5 used by individual self-insurers for the purposes of reporting  
6 the data required by this section and calculating experience  
7 ratings.

8           ~~(4)(6)~~ The department shall provide a summary of  
9 information provided pursuant to subsection ~~subsections~~ (2)  
10 ~~and (4)~~ in its annual report.

11           Section 24. Workers' Compensation Appeals  
12 Commission.--

13           **(1)(a)** There is created under the Administration  
14 Commission a Workers' Compensation Appeals Commission,  
15 consisting of a presiding commissioner and four other  
16 commissioners, all to be appointed by the Governor after  
17 October 1, 2001, but before May 15, 2002, and all to serve  
18 full time. The Governor shall select each commissioner from a  
19 list of three commissioners nominated by the judges of each of  
20 the five district courts of appeal. The seats on the Workers'  
21 Compensation Appeals Commission shall be numbered from one  
22 through five. Nominations for the commissioner of seat one  
23 shall be made by all the judges of the First District Court of  
24 Appeal. Nominations for the commissioner of seat two shall be  
25 made by all the judges of the Second District Court of Appeal.  
26 Nominations for the commissioner of seat three shall be made  
27 by all the judges of the Third District Court of Appeal.  
28 Nominations for the commissioner of seat four shall be made by  
29 all the judges of the Fourth District Court of Appeal.  
30 Nominations for the commissioner of seat five shall be made by  
31 all the judges of the Fifth District Court of Appeal. The

1 commissioners shall elect a presiding commissioner from among  
2 their number by majority vote. Each commissioner must have the  
3 qualifications required by law for judges of the district  
4 courts of appeal. In addition, the commissioners must have  
5 substantial experience in the field of workers' compensation.

6 (b) Each commissioner shall be appointed for a term of  
7 4 years, but, during his or her term of office, may be removed  
8 by the Governor for cause.

9 (c) Each appeal from an order of a judge of  
10 compensation claims must be considered by a commission panel  
11 consisting of two commissioners and the presiding  
12 commissioner.

13 (d) Before the term of office of a commissioner  
14 expires, the Statewide Nominating Commission shall review the  
15 conduct of the commissioner. The Statewide Nominating  
16 Commission shall furnish to the Governor, no later than 6  
17 months before the expiration of the commissioner's term, a  
18 report relating to retention. If the Statewide Nominating  
19 Commission recommends retention, the Governor shall reappoint  
20 the commissioner. However, if the Statewide Nominating  
21 Commission does not recommend retention, the judges of the  
22 respective district courts of appeal shall issue to the  
23 Governor a report that includes a list of three candidates for  
24 appointment as a commissioner. If a vacancy occurs during an  
25 unexpired term of a commissioner on the Workers' Compensation  
26 Appeals Commission, the judges of the respective district  
27 courts of appeal must nominate at least three candidates in  
28 accordance with the procedures set forth in this section.

29 (e) The Workers' Compensation Appeals Commission is  
30 subject to the Code of Judicial Conduct set forth in section  
31 440.442, Florida Statutes.

1           (2) The presiding commissioner, by order filed in the  
2 records of the commission and with the approval of the  
3 Governor, may appoint a currently commissioned judge of  
4 compensation claims as an associate commissioner to serve as a  
5 temporary commissioner. This appointment must be for such  
6 periods of time as not to cause an undue burden on the  
7 caseload in the judge's jurisdiction. An associate  
8 commissioner is to receive no additional pay for serving in  
9 that capacity other than reimbursement for expenses incurred  
10 in the performance of the additional duties.

11           (3) The total salaries and benefits of all  
12 commissioners of the commission are to be paid from the trust  
13 fund created under section 440.50, Florida Statutes.  
14 Notwithstanding any other provision of law, the commissioners  
15 shall be paid a salary equal to that paid under state law to  
16 the judges of district courts of appeal.

17           (4)(a) The commission is vested with all authority,  
18 powers, duties, and responsibilities relating to review of  
19 orders of judges of compensation claims in workers'  
20 compensation proceedings under chapter 440, Florida Statutes.  
21 The Workers' Compensation Appeals Commission shall review by  
22 appeal final orders of the judges of compensation claims  
23 entered pursuant to chapter 440, Florida Statutes. The First  
24 District Court of Appeal retains jurisdiction over all  
25 workers' compensation proceedings pending before it on October  
26 1, 2001. The commission may hold sessions and conduct hearings  
27 at any place within the state. A panel of three commissioners  
28 shall consider each case, and the concurrence of two  
29 commissioners is necessary for a decision. Any commissioner  
30 may request an en banc hearing for review of a final order of  
31 a judge of compensation claims.

1           (b) The Workers' Compensation Appeals Commission is  
2 placed, for administrative purposes, within the Administration  
3 Commission, but, in the performance of its powers and duties  
4 under chapter 440, Florida Statutes, the commission is not  
5 subject to control, supervision, or direction by the  
6 Administration Commission and is not an agency for purposes of  
7 chapter 120, Florida Statutes.

8           (c) The Department of Labor and Employment Security  
9 shall provide to the commission the property, personnel, and  
10 appropriations related to the commission's specified  
11 authority, powers, duties, and responsibilities.

12           (5) The commission shall make such expenditures,  
13 including expenditures for personnel services and rent at the  
14 seat of the government and elsewhere, for law books, reference  
15 materials, periodicals, furniture, equipment, and supplies,  
16 and for printing and binding, as are necessary in exercising  
17 its authority and powers and carrying out its duties and  
18 responsibilities. Expenditures of the commission shall be  
19 allowed and paid from the trust fund created under section  
20 440.50, Florida Statutes, upon the presentation of itemized  
21 vouchers therefor approved by the presiding commissioner.

22           (6) The commission, in its discretion, may charge for  
23 publications, subscriptions, and copies of records and  
24 documents. These fees must be deposited in the trust fund  
25 established under section 440.50, Florida Statutes.

26           (7)(a) The presiding commissioner shall exercise  
27 administrative supervision over the Workers' Compensation  
28 Appeals Commission and over the judges and other officers of  
29 such courts.

30           (b) The presiding commissioner of the Workers'  
31 Compensation Appeals Commission shall:

1           1. Assign commissioners to hear appeals from final  
2 orders of judges of compensation claims.

3           2. Hire and assign clerks and staff.

4           3. Regulate use of courtrooms.

5           4. Supervise dockets and calendars.

6           5. Do everything necessary to promote the prompt and  
7 efficient administration of justice in the courts over which  
8 he or she presides.

9           (c) The presiding commissioner may appoint an  
10 executive assistant to perform such duties as the presiding  
11 commissioner directs him or her to perform. The commission may  
12 employ research assistants or law clerks to assist the  
13 commissioners in performing their duties under this section.

14           (8)(a) The commission shall maintain and keep open  
15 during reasonable business hours a clerk's office, to be  
16 situated in the Capitol or another suitable building in Leon  
17 County, for the transaction of its business. All books,  
18 papers, records, and files, and the seal of the commission,  
19 must be kept at this office. The commission shall furnish and  
20 equip the office.

21           (b) The Workers' Compensation Appeals Commission shall  
22 appoint a clerk who shall hold office at the pleasure of the  
23 commission. Before entering upon the discharge of his or her  
24 duties, the clerk must give bond in the sum of \$5,000 payable  
25 to the Governor, to be approved by a majority of the members  
26 of the commission conditioned upon the faithful discharge of  
27 the duties of his or her office, which bond must be filed in  
28 the office of the Secretary of State.

29           (c) The clerk shall be paid an annual salary pursuant  
30 to chapter 25, Florida Statutes.

31

1           (d) The clerk may employ such deputies and clerical  
2 assistants as are necessary. Their number and compensation  
3 must be approved by the commission and paid from the annual  
4 appropriation for the Workers' Compensation Appeals Commission  
5 from the Workers' Compensation Administration Trust Fund.

6           (e) The clerk, upon the filing of a certified copy of  
7 a notice of appeal or petition, shall charge and collect a  
8 filing fee in the amount of \$250 for each case docketed, and  
9 shall charge and collect for copying, certifying, or  
10 furnishing opinions, records, papers, or other instruments,  
11 and for other services, the same service charges as those  
12 provided in section 28.24, Florida Statutes. The state or any  
13 state agency, when appearing as appellant or petitioner, is  
14 exempt from the filing fee required under this paragraph.

15           (f) The clerk of the Workers' Compensation Appeals  
16 Commission shall prepare each month, in duplicate, a statement  
17 of all fees collected and shall remit one copy of the  
18 statement, together with all fees collected by her or him, to  
19 the Comptroller, who shall deposit the fees in the Workers'  
20 Compensation Administration Trust Fund.

21           (9) The commission shall have a seal for the  
22 authentication of its orders, awards, and proceedings, upon  
23 which are inscribed the words "State of Florida Workers'  
24 Compensation Appeals Commission--Seal," and it must be  
25 judicially noticed.

26           (10) The commission is expressly authorized to destroy  
27 obsolete records of the commission.

28           (11) Workers' Compensation Appeals Commission  
29 commissioners shall be reimbursed for travel expenses as  
30 provided in section 112.061, Florida Statutes.

31



