

By Senator Latvala

311-747A-02

1                                   A bill to be entitled  
2           An act transferring and reassigning divisions,  
3           functions, and responsibilities of the  
4           Department of Labor and Employment Security;  
5           providing for a type two transfer of the  
6           Division of Workers' Compensation to the  
7           Department of Insurance; providing for a type  
8           two transfer of workers' compensation medical  
9           services to the Agency for Health Care  
10          Administration; providing for a type two  
11          transfer of workers' compensation  
12          rehabilitation and reemployment services to the  
13          Department of Education; providing for a type  
14          two transfer of the administration of child  
15          labor laws to the Department of Business and  
16          Professional Regulation; providing for  
17          comparable pay grades for the transferred  
18          positions; authorizing the Department of  
19          Insurance to reorganize positions within the  
20          department and establish regional offices;  
21          authorizing the Department of Insurance to  
22          enter into contracts; providing for existing  
23          contracts to be subject to review and  
24          cancellation; providing for a type two transfer  
25          of certain functions of the Office of the  
26          Secretary and the Office of Administrative  
27          Services of the Department of Labor and  
28          Employment Security relating to labor  
29          organizations and migrant and farm labor  
30          registration to the Department of Business and  
31          Professional Regulation; providing for a type

1 two transfer of other workplace regulation  
2 functions to the Department of Business and  
3 Professional Regulation; providing for the  
4 transfer of the Unemployment Appeals Commission  
5 to the Agency for Workforce Innovation by a  
6 type two transfer; providing for the transfer  
7 of the Office of Information Systems to the  
8 State Technology Office by a type two transfer;  
9 requiring the State Technology Office and the  
10 Department of Insurance to determine whether it  
11 is feasible to transfer ownership of the  
12 Workers' Compensation Integrated System to the  
13 Department of Insurance; authorizing the  
14 Department of Banking and Finance, in  
15 conjunction with the Office of the Attorney  
16 General, to use unexpended funds to settle  
17 certain claims; providing for the continuation  
18 of contracts or agreements of the Department of  
19 Labor and Employment Security; providing for a  
20 successor department, agency, or entity to be  
21 substituted for the Department of Labor and  
22 Employment Security as a party in interest in  
23 pending proceedings; exempting specified state  
24 agencies, on a temporary basis, from provisions  
25 relating to procurement of property and  
26 services and leasing of space; authorizing  
27 specified state agencies to develop temporary  
28 emergency rules relating to the implementation  
29 of this act; transferring certain positions  
30 within the Office of General Counsel of the  
31 Department of Labor and Employment Security to

1 the Department of Insurance by a type two  
2 transfer; amending s. 20.13, F.S.; establishing  
3 the Division of Workers' Compensation within  
4 the Department of Insurance; amending s.  
5 440.02, F.S.; providing a definition for the  
6 term "agency"; conforming definitions of  
7 "department" and "division" to the transfer of  
8 the Division of Workers' Compensation; amending  
9 ss. 440.102, 440.125, F.S.; conforming agency  
10 references to reflect the transfer of the  
11 Division of Workers' Compensation; amending s.  
12 440.13, F.S., relating to medical services and  
13 supplies under the workers' compensation law;  
14 reassigning certain functions from the Division  
15 of Workers' Compensation to the Agency for  
16 Health Care Administration; conforming agency  
17 references to reflect the transfer of the  
18 Division of Workers' Compensation; amending s.  
19 440.15, F.S.; providing for the agency to  
20 specify certain forms and procedures governing  
21 wage loss and impairment benefits; conforming a  
22 cross-reference; amending ss. 440.1925, 440.20,  
23 440.207, F.S., relating to payment of  
24 compensation; conforming provisions to changes  
25 made by the act; amending s. 440.24, F.S.;  
26 providing for the sale of securities on deposit  
27 to satisfy a compensation order; amending ss.  
28 440.25, 440.271, F.S., relating to mediation,  
29 hearings, and appeals; conforming provisions to  
30 changes made by the act; amending s. 440.38,  
31 F.S.; transferring operation of provisions

1 requiring the securing of payment of  
2 compensation by employers from the Division of  
3 Workers' Compensation of the Department of  
4 Labor and Employment Security to the Florida  
5 Self-Insurer's Guaranty Association,  
6 Incorporated, and the Department of Insurance;  
7 revising and clarifying requirements and  
8 procedures; providing powers and duties of the  
9 association and the departments; providing for  
10 allocation or payment of state funds to the  
11 association for certain purposes; providing  
12 rulemaking authority; amending s. 440.381,  
13 F.S., relating to audits of payroll and  
14 classifications; conforming provisions to  
15 changes made by the act; amending s. 440.385,  
16 F.S.; revising and clarifying provisions  
17 relating to the association's creation, board  
18 of directors, powers and duties, insolvency  
19 fund, and plan of operation; providing  
20 additional powers of the association;  
21 transferring the powers and duties of the  
22 Department of Labor and Employment Security  
23 relating to the association to the Department  
24 of Insurance and revising such powers and  
25 duties; providing additional powers and duties  
26 of the Department of Insurance; providing for  
27 oversight of the association by the department;  
28 deleting certain provisions relating to  
29 detection and prevention of employer  
30 insolvencies; amending s. 440.386, F.S. ;  
31 providing parity for the association with the

1 Department of Insurance relating to proceedings  
2 for delinquency, liquidation, and conservation  
3 of assets; amending s. 440.49, F.S. ;  
4 reassigning responsibility for a report on the  
5 Special Disability Trust Fund to the Department  
6 of Insurance; amending s. 440.491, F.S.,  
7 relating to the reemployment of injured  
8 workers; conforming references to the transfer  
9 of rehabilitation and reemployment services to  
10 the Department of Education; amending s.  
11 440.525, F.S., relating to the examination of  
12 carriers; conforming agency references to the  
13 transfer of programs from the Department of  
14 Labor and Employment Security to the Department  
15 of Revenue; amending s. 443.012, F.S. ;  
16 providing for the Unemployment Appeals  
17 Commission to be created within the Agency for  
18 Workforce Innovation rather than the Department  
19 of Labor and Employment Security; conforming  
20 provisions; amending s. 443.036, F.S. ;  
21 conforming the definition of "commission" to  
22 the transfer of the Unemployment Appeals  
23 Commission to the Agency for Workforce  
24 Innovation; amending s. 447.02, F.S. ;  
25 conforming the definition of "department" to  
26 the transfer of the regulation of labor  
27 organizations to the Department of Business and  
28 Professional Regulation; amending s. 447.305,  
29 F.S. ; providing that notification of  
30 registrations and renewals of registration  
31 shall be furnished to the Department of

1 Business and Professional Regulation, to  
2 conform; amending s. 450.012, F.S.; conforming  
3 the definition of "department" to the transfer  
4 of the regulation of child labor to the  
5 Department of Business and Professional  
6 Regulation; amending s. 450.191, F.S., relating  
7 to the duties of the Executive Office of the  
8 Governor with respect to migrant labor;  
9 conforming provisions to changes made by the  
10 act; amending s. 450.28, F.S.; conforming the  
11 definition of "department" to the transfer of  
12 the regulation of farm labor to the Department  
13 of Business and Professional Regulation;  
14 amending s. 627.0915, F.S.; conforming  
15 departmental references to changes made by the  
16 act; amending ss. 110.205, 112.19, 112.191,  
17 121.125, 122.03, 238.06, 440.10, 440.104,  
18 440.14, F.S., to conform; repealing s. 20.171,  
19 F.S., relating to the establishment and the  
20 authority and organizational structure of the  
21 Department of Labor and Employment Security;  
22 repealing s. 440.4416, F.S., relating to the  
23 Workers' Compensation Oversight Board;  
24 providing for severability; providing an  
25 effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. (1) All powers, duties, functions, rules,  
30 records, personnel, property, and unexpended balances of  
31 appropriations, allocations, and other funds of the Division

1 of Workers' Compensation are transferred by a type two  
2 transfer, as defined in section 20.06(2), Florida Statutes,  
3 from the Department of Labor and Employment Security to the  
4 Department of Insurance, except as otherwise provided in this  
5 section. Nineteen full-time equivalent positions and the  
6 associated funding for salaries, benefits, and expenses  
7 related to oversight of medical services in workers'  
8 compensation provider relations, dispute and complaint  
9 resolution, program evaluation, data management, and carrier  
10 compliance and review are transferred by a type two transfer,  
11 as defined in section 20.06(2), Florida Statutes, from the  
12 Department of Labor and Employment Security to the Agency for  
13 Health Care Administration; 96 full-time equivalent positions,  
14 and the associated funding for salaries, benefits, and  
15 expenses related to the rehabilitation and reemployment of  
16 injured workers are transferred by a type two transfer, as  
17 defined in section 20.06(2), Florida Statutes, from the  
18 Department of Labor and Employment Security to the Department  
19 of Education; and 11 full-time equivalent positions and the  
20 associated funding for salaries, benefits, and expenses  
21 related to the administration of child labor laws under  
22 chapter 450, Florida Statutes, are transferred by a type two  
23 transfer, as defined in section 20.06(2), Florida Statutes,  
24 from the Department of Labor and Employment Security to the  
25 Department of Business and Professional Regulation. To the  
26 extent feasible, the positions established by the Department  
27 of Insurance will be at pay grades comparable to the positions  
28 established by the Department of Labor and Employment Security  
29 based on the classification codes and specifications of the  
30 positions for work to be performed at the Department of  
31 Insurance. The Department of Insurance shall determine the

1 number of positions needed to administer the provisions of  
2 chapter 440, Florida Statutes. The number of positions the  
3 department determines is needed may not exceed the number of  
4 authorized positions and the salary and benefits that were  
5 authorized for the Division of Workers' Compensation within  
6 the Department of Labor and Employment Security prior to the  
7 transfer. The Department of Insurance is further authorized to  
8 reassign, reorganize, or otherwise transfer positions to  
9 appropriate administrative subdivisions within the department  
10 and to establish such regional offices as are necessary to  
11 properly enforce and administer its responsibilities under the  
12 Florida Insurance Code and chapter 440, Florida Statutes. The  
13 department may also enter into contracts with public or  
14 private entities to administer its duties and responsibilities  
15 associated with the transfer of the Division of Workers'  
16 Compensation. All existing contracts related to those  
17 functions that are transferred to the Department of Insurance  
18 are subject to cancellation or renewal upon review by the  
19 Department of Insurance.

20 (2) All powers, duties, functions, rules, records,  
21 personnel, property, and unexpended balances of  
22 appropriations, allocations, and other funds of the Office of  
23 the Secretary and the Office of Administrative Services of the  
24 Department of Labor and Employment Security related to the  
25 regulation of labor organizations under chapter 447, Florida  
26 Statutes, and the administration of migrant labor and farm  
27 labor laws under chapter 450, Florida Statutes, are  
28 transferred by a type two transfer, as defined in section  
29 20.06(2), Florida Statutes, from the Department of Labor and  
30 Employment Security to the Department of Business and  
31 Professional Regulation.



1           (3) Any other powers, duties, functions, rules,  
2 records, property, and unexpended balances of appropriations,  
3 allocations, and other funds of the Department of Labor and  
4 Employment Security not otherwise transferred by this act  
5 relating to workplace regulation and enforcement, including,  
6 but not limited to, those under chapter 448, Florida Statutes,  
7 are transferred by a type two transfer, as defined in section  
8 20.06(2), Florida Statutes, from the Department of Labor and  
9 Employment Security to the Department of Business and  
10 Professional Regulation.

11           (4) All powers, duties, functions, rules, records,  
12 personnel, property, and unexpended balances of  
13 appropriations, allocations, and other funds of the  
14 Unemployment Appeals Commission relating to the commission's  
15 specified authority, powers, duties, and responsibilities are  
16 transferred by a type two transfer, as defined in section  
17 20.06(2), Florida Statutes, to the Agency for Workforce  
18 Innovation.

19           (5) The Office of Information Systems is transferred  
20 by a type two transfer, as defined in s. 20.06(2), Florida  
21 Statutes, from the Department of Labor and Employment Security  
22 to the State Technology Office. Upon completion of this  
23 transfer, the State Technology Office and the Department of  
24 Insurance shall enter into discussions to determine whether it  
25 would be technologically feasible and cost effective to  
26 separate the Workers' Compensation Integrated System from its  
27 current mainframe platform and transfer ownership of this  
28 system to the Department of Insurance. If the Department of  
29 Insurance ultimately determines that it is technologically  
30 feasible and cost effective to transfer ownership of the  
31 Workers' Compensation Integrated System from the State

1 Technology Office to the Department of Insurance, the State  
2 Technology Office and the Department of Insurance shall  
3 jointly develop and implement a plan to transfer this system  
4 to the Department of Insurance.

5 (6)(a) The records, property, and unexpended balances  
6 of appropriations, allocations, and other funds and resources  
7 of the Office of the Secretary and the Office of  
8 Administrative Services of the Department of Labor and  
9 Employment Security which support the activities and functions  
10 transferred under subsection (1) to the Department of  
11 Insurance are transferred as provided in section 20.06(2),  
12 Florida Statutes, to the Department of Insurance.

13 (b) The records, property, and unexpended balances of  
14 appropriations, allocations, and other funds and resources of  
15 the Office of the Secretary and the Office of Administrative  
16 Services of the Department of Labor and Employment Security  
17 which support the activities and functions transferred under  
18 subsection (1) to the Agency for Health Care Administration  
19 are transferred as provided in section 20.06(2), Florida  
20 Statutes, to the Agency for Health Care Administration.

21 (c) The records, property, and unexpended balances of  
22 appropriations, allocations, and other funds and resources of  
23 the Office of the Secretary and the Office of Administrative  
24 Services of the Department of Labor and Employment Security  
25 which support the activities and functions transferred under  
26 subsection (1) to the Department of Education are transferred  
27 as provided in section 20.06(2), Florida Statutes, to the  
28 Department of Education.

29 (d) The records, property, and unexpended balances of  
30 appropriations, allocations, and other funds and resources of  
31 the Office of the Secretary and the Office of Administrative

1 Services of the Department of Labor and Employment Security  
2 which support the activities and functions transferred under  
3 subsections (1), (2), and (3) to the Department of Business  
4 and Professional Regulation are transferred as provided in  
5 section 20.06(2), Florida Statutes, to the Department of  
6 Business and Professional Regulation.

7 (e) The records, property, and unexpended balances of  
8 appropriations, allocations, and other funds and resources of  
9 the Office of the Secretary and the Office of Administrative  
10 Services of the Department of Labor and Employment Security  
11 which support the activities and functions transferred under  
12 subsection (4) to the Agency for Workforce Innovation are  
13 transferred as provided in section 20.06(2), Florida Statutes,  
14 to the Agency for Workforce Innovation.

15 (f) The records, property, and unexpended balances of  
16 appropriations, allocations, and other funds and resources of  
17 the Office of the Secretary and the Office of Administrative  
18 Services of the Department of Labor and Employment Security  
19 which support the activities and functions transferred under  
20 subsection (5) to the State Technology Office are transferred  
21 as provided in section 20.06(2), Florida Statutes, to the  
22 State Technology Office.

23 (7) The transfer of any programs, activities, and  
24 functions under this act shall include the transfer of any  
25 records and unexpended balances of appropriations,  
26 allocations, or other funds related to such programs,  
27 activities, and functions. Any surplus records and unexpended  
28 balances of appropriations, allocations, or other funds not so  
29 transferred shall be transferred to the Department of  
30 Management Services for proper disposition. The Department of  
31 Management Services shall become the custodian of any property

1 of the Department of Labor and Employment Security which is  
2 not otherwise transferred for the purposes of chapter 273,  
3 Florida Statutes. The Department of Management Services is  
4 authorized to permit the use of such property by organizations  
5 as necessary to implement the provisions of this act.

6 (8) The Department of Banking and Finance, in  
7 conjunction with the Office of the Attorney General, may use  
8 any unexpended balances of the Department of Labor and  
9 Employment Security to settle any claims or leases, pay out  
10 personnel annual leave or sick leave, or close out other costs  
11 owed by the department, regardless of whether such costs  
12 relate to federal, state, or local governments, department  
13 employees, or the private sector. Any remaining balances of  
14 the department shall be transferred as directed by this act or  
15 by budget amendment.

16 (9) Except as otherwise provided in subsection (1) and  
17 notwithstanding any other provision of law, any binding  
18 contract or interagency agreement existing on or before  
19 January 1, 2002, between the Department of Labor and  
20 Employment Security, or an entity or agent of the department,  
21 and any other agency, entity, or person shall continue as a  
22 binding contract or agreement for the remainder of the term of  
23 such contract or agreement with the successor department,  
24 agency, or entity responsible for the program, activity, or  
25 functions relative to the contract or agreement.

26 (10) This act does not affect the validity of any  
27 judicial or administrative proceeding involving the Department  
28 of Labor and Employment Security which is pending as of the  
29 effective date of any transfer under this act. The successor  
30 department, agency, or entity responsible for the program,  
31 activity, or function relative to the proceeding shall be

1 substituted, as of the effective date of the applicable  
2 transfer under this act, for the Department of Labor and  
3 Employment Security as a party in interest in any such  
4 proceedings.

5 (11) To expedite the acquisition of goods and services  
6 for implementation of the provisions of this act, the  
7 Department of Insurance, the Agency for Health Care  
8 Administration, the Department of Education, the Department of  
9 Business and Professional Regulation, the Agency for Workforce  
10 Innovation, and the State Technology Office are exempt from  
11 the provisions of chapter 287, Florida Statutes, when  
12 contracting for the purchase or lease of goods or services  
13 under this act. This section shall take effect upon this act  
14 becoming a law and shall expire July 1, 2002.

15 (12) To expedite the leasing of facilities for  
16 implementation of the provisions of this act, the Department  
17 of Revenue, the Agency for Health Care Administration, the  
18 Department of Education, the Department of Business and  
19 Professional Regulation, the Agency for Workforce Innovation,  
20 and the State Technology Office are exempt from the  
21 requirements of any state laws relating to the leasing of  
22 space, including, but not limited to, the requirements imposed  
23 by section 255.25, Florida Statutes, and any rules adopted  
24 under such laws; however, all leases entered into under this  
25 act through July 1, 2002, must be submitted for approval to  
26 the Department of Management Services at the earliest  
27 practicable time. This section shall take effect upon this act  
28 becoming a law and shall expire July 1, 2002.

29 (13) Notwithstanding any provisions of chapter 120,  
30 Florida Statutes, to the contrary, the Department of  
31 Insurance, the Agency for Health Care Administration, the

1 Department of Education, the Department of Business and  
2 Professional Regulation, the Agency for Workforce Innovation,  
3 and the State Technology Office are authorized to develop  
4 emergency rules relating to and in furtherance of the orderly  
5 implementation of the provisions of this act. This section  
6 shall take effect upon this act becoming a law, and these  
7 emergency rules shall be valid for a period of 180 days after  
8 January 1, 2002.

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

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

18 20.13 Department of Insurance.--There is created a  
19 Department of Insurance.

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

22 (k) Division of Workers' Compensation.

23 Section 3. Subsections (3) through (39) of section  
24 440.02, Florida Statutes, are renumbered as subsections (4)  
25 through (40), respectively, a new subsection (3) is added to  
26 said section, and renumbered subsections (12) and (14) are  
27 amended, to read:

28 440.02 Definitions.--When used in this chapter, unless  
29 the context clearly requires otherwise, the following terms  
30 shall have the following meanings:

31

1           (3) "Agency" means the Agency for Health Care  
2 Administration.

3           (12)~~(11)~~ "Department" means the Department of  
4 Insurance ~~Labor and Employment Security.~~

5           (14)~~(13)~~ "Division" means the Division of Workers'  
6 Compensation of the Department of Insurance ~~Labor and~~  
7 ~~Employment Security.~~

8           Section 4. Paragraph (a) of subsection (3) of section  
9 440.102, Florida Statutes, is amended to read:

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

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

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

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

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

24           b. The actions the employer may take against an  
25 employee or job applicant on the basis of a positive confirmed  
26 drug test result.

27           2. A statement advising the employee or job applicant  
28 of the existence of this section.

29           3. A general statement concerning confidentiality.

30           4. Procedures for employees and job applicants to  
31 confidentially report to a medical review officer the use of

1 prescription or nonprescription medications to a medical  
2 review officer both before and after being tested.

3           5. A list of the most common medications, by brand  
4 name or common name, as applicable, as well as by chemical  
5 name, which may alter or affect a drug test. A list of such  
6 medications as developed by the Agency for Health Care  
7 Administration shall be available to employers through the  
8 Division of Workers' Compensation of the Department of  
9 Insurance ~~Labor and Employment Security~~.

10           6. The consequences of refusing to submit to a drug  
11 test.

12           7. A representative sampling of names, addresses, and  
13 telephone numbers of employee assistance programs and local  
14 drug rehabilitation programs.

15           8. A statement that an employee or job applicant who  
16 receives a positive confirmed test result may contest or  
17 explain the result to the medical review officer within 5  
18 working days after receiving written notification of the test  
19 result; that if an employee's or job applicant's explanation  
20 or challenge is unsatisfactory to the medical review officer,  
21 the medical review officer shall report a positive test result  
22 back to the employer; and that a person may contest the drug  
23 test result pursuant to law or to rules adopted by the Agency  
24 for Health Care Administration.

25           9. A statement informing the employee or job applicant  
26 of his or her responsibility to notify the laboratory of any  
27 administrative or civil action brought pursuant to this  
28 section.

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



1           11. A statement regarding any applicable collective  
2 bargaining agreement or contract and the right to appeal to  
3 the Public Employees Relations Commission or applicable court.

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

8           Section 5. Section 440.125, Florida Statutes, is  
9 amended to read:

10           440.125 Medical records and reports; identifying  
11 information in employee medical bills; confidentiality.--

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

21           (2) The Legislature finds that it is a public  
22 necessity that an injured employee's medical records and  
23 medical reports and information identifying the employee in  
24 medical bills held by the department, agency, or Department of  
25 Education ~~Division of Workers' Compensation~~ pursuant to s.  
26 440.13 be confidential and exempt from the public records law.  
27 Public access to such information is an invasion of the  
28 injured employee's right to privacy in that personal,  
29 sensitive information would be revealed, and public knowledge  
30 of such information could lead to discrimination against the  
31 employee by coworkers and others. Additionally, there is

1 little utility in providing public access to such information  
2 in that the effectiveness and efficiency of the workers'  
3 compensation program can be otherwise adequately monitored and  
4 evaluated.

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

11 Section 6. Subsections (1), (3), (4), (5), (6), (7),  
12 (8), (9), (11), (12), and (13) of section 440.13, Florida  
13 Statutes, are amended to read:

14 440.13 Medical services and supplies; penalty for  
15 violations; limitations.--

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

17 (a) "Alternate medical care" means a change in  
18 treatment or health care provider.

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

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

31

1 (d) "Catastrophic injury" means an injury as defined  
2 in s. 440.02.

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

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

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

18 (h) "Health care facility" means any hospital licensed  
19 under chapter 395 and any health care institution licensed  
20 under chapter 400.

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

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

31

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

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

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

26           (n) "Medicine" means a drug prescribed by an  
27 authorized health care provider and includes only generic  
28 drugs or single-source patented drugs for which there is no  
29 generic equivalent, unless the authorized health care provider  
30 writes or states that the brand-name drug as defined in s.  
31 465.025 is medically necessary, or is a drug appearing on the

1 schedule of drugs created pursuant to s. 465.025(6), or is  
2 available at a cost lower than its generic equivalent.

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

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

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

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

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

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

29 (u) "Utilization review" means the evaluation of the  
30 appropriateness of both the level and the quality of health  
31 care and health services provided to a patient, including, but

1 not limited to, evaluation of the appropriateness of  
2 treatment, hospitalization, or office visits based on  
3 medically accepted standards. Such evaluation must be  
4 accomplished by means of a system that identifies the  
5 utilization of medical services based on medically accepted  
6 standards as established by medical consultants with  
7 qualifications similar to those providing the care under  
8 review, and that refers patterns and practices of  
9 overutilization to the agency division.

10 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

11 (a) As a condition to eligibility for payment under  
12 this chapter, a health care provider who renders services must  
13 be a certified health care provider and must receive  
14 authorization from the carrier before providing treatment.  
15 This paragraph does not apply to emergency care. The agency  
16 ~~division~~ shall adopt rules to implement the certification of  
17 health care providers.

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

31

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 agency division, unless the referral is for emergency  
7 treatment.

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

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

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

30  
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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 agency  
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 agency ~~division~~, an employer, or a  
2 carrier, or any agent or representative of the agency  
3 ~~division~~, an employer, or a carrier to select the pharmacy or  
4 pharmacist which the sick or injured employee must use;  
5 condition coverage or payment on the basis of the pharmacy or  
6 pharmacist utilized; or to otherwise interfere in the  
7 selection by the sick or injured employee of a pharmacy or  
8 pharmacist.

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

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

27 (b) Upon the request of the division ~~of Workers'~~  
28 ~~Compensation~~, each medical report or bill obtained or received  
29 by the employer, the carrier, or the injured employee, or the  
30 attorney for the employer, carrier, or injured employee, with  
31 respect to the remedial treatment, care, and attendance of the

1 injured employee, including any report of an examination,  
2 diagnosis, or disability evaluation, must be filed with the  
3 department ~~Division of Workers' Compensation~~ pursuant to rules  
4 adopted by the department in consultation with the agency  
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 department ~~division~~ for the copies. Each such health care  
10 provider shall provide to the agency or department ~~division~~  
11 information about the remedial treatment, care, and attendance  
12 which the agency or department ~~division~~ 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, an  
19 authorized qualified rehabilitation provider, or the attorney  
20 for the employer or carrier, the medical records of an injured  
21 employee must be furnished to those persons and the medical  
22 condition of the injured employee must be discussed with those  
23 persons, if the records and the discussions are restricted to  
24 conditions relating to the workplace injury. Any such  
25 discussions may be held before or after the filing of a claim  
26 without the knowledge, consent, or presence of any other party  
27 or his or her agent or representative. A health care provider  
28 who willfully refuses to provide medical records or to discuss  
29 the medical condition of the injured employee, after a  
30 reasonable request is made for such information pursuant to

31

1 this subsection, shall be subject by the agency ~~division~~ to  
2 one or more of the penalties set forth in paragraph (8)(b).

3 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

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

23 4. The parties agree to an alternate examiner.  
24

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

30 (c) The carrier may, at its election, contact the  
31 claimant directly to schedule a reasonable time for an

1 independent medical examination. The carrier must confirm the  
2 scheduling agreement in writing within 5 days and notify  
3 claimant's counsel, if any, at least 7 days before the date  
4 upon which the independent medical examination is scheduled to  
5 occur. An attorney representing a claimant is not authorized  
6 to schedule independent medical evaluations under this  
7 subsection.

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

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

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

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

15           (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

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

1 to the agency ~~division~~ within 10 days constitutes a waiver of  
2 all objections to the petition.

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

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

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

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

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

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

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

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

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

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

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

27           (9) EXPERT MEDICAL ADVISORS.--

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

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

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

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



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

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

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

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

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

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

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

25 (b) The department division shall monitor and audit  
26 carriers, as provided in s. 624.3161, to determine if medical  
27 bills are paid in accordance with this section and department  
28 ~~division~~ rules. ~~Any employer, if self-insured, or carrier~~  
29 ~~found by the division not to be within 90 percent compliance~~  
30 ~~as to the payment of medical bills after July 1, 1994, must be~~  
31 ~~assessed a fine not to exceed 1 percent of the prior year's~~

1 ~~assessment levied against such entity under s. 440.51 for~~  
2 ~~every quarter in which the entity fails to attain 90-percent~~  
3 ~~compliance. The department division shall fine or otherwise~~  
4 ~~discipline an employer or carrier, pursuant to this chapter,~~  
5 ~~the insurance code, or rules adopted by the department~~  
6 ~~division, for each late payment of compensation that is below~~  
7 ~~the minimum 90-percent performance standard. Any carrier that~~  
8 ~~is found to be not in compliance in subsequent consecutive~~  
9 ~~quarters must implement a medical-bill review program approved~~  
10 ~~by the division, and the carrier is subject to disciplinary~~  
11 ~~action by the Department of Insurance.~~

12 (c) The agency ~~division~~ has exclusive jurisdiction to  
13 decide any matters concerning reimbursement, to resolve any  
14 overutilization dispute under subsection (7), and to decide  
15 any question concerning overutilization under subsection (8),  
16 which question or dispute arises after January 1, 1994.

17 (d) The following agency ~~division~~ actions do not  
18 constitute agency action subject to review under ss. 120.569  
19 and 120.57 and do not constitute actions subject to s. 120.56:  
20 referral by the entity responsible for utilization review; a  
21 decision by the agency ~~division~~ to refer a matter to a peer  
22 review committee; establishment by a health care provider or  
23 entity of procedures by which a peer review committee reviews  
24 the rendering of health care services; and the review  
25 proceedings, report, and recommendation of the peer review  
26 committee.

27 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
28 REIMBURSEMENT ALLOWANCES.--

29 (a) A three-member panel is created, consisting of the  
30 Insurance Commissioner, or the Insurance Commissioner's  
31 designee, and two members to be appointed by the Governor,

1 subject to confirmation by the Senate, one member who, on  
2 account of present or previous vocation, employment, or  
3 affiliation, shall be classified as a representative of  
4 employers, the other member who, on account of previous  
5 vocation, employment, or affiliation, shall be classified as a  
6 representative of employees. The panel shall determine  
7 statewide schedules of maximum reimbursement allowances for  
8 medically necessary treatment, care, and attendance provided  
9 by physicians, hospitals, ambulatory surgical centers,  
10 work-hardening programs, pain programs, and durable medical  
11 equipment. The maximum reimbursement allowances for inpatient  
12 hospital care shall be based on a schedule of per diem rates,  
13 to be approved by the three-member panel no later than March  
14 1, 1994, to be used in conjunction with a precertification  
15 manual as determined by the agency ~~division~~. All compensable  
16 charges for hospital outpatient care shall be reimbursed at 75  
17 percent of usual and customary charges. Until the three-member  
18 panel approves a schedule of per diem rates for inpatient  
19 hospital care and it becomes effective, all compensable  
20 charges for hospital inpatient care must be reimbursed at 75  
21 percent of their usual and customary charges. Annually, the  
22 three-member panel shall adopt schedules of maximum  
23 reimbursement allowances for physicians, hospital inpatient  
24 care, hospital outpatient care, ambulatory surgical centers,  
25 work-hardening programs, and pain programs. However, the  
26 maximum percentage of increase in the individual reimbursement  
27 allowance may not exceed the percentage of increase in the  
28 Consumer Price Index for the previous year. An individual  
29 physician, hospital, ambulatory surgical center, pain program,  
30 or work-hardening program shall be reimbursed either the usual  
31 and customary charge for treatment, care, and attendance, the

1 agreed-upon contract price, or the maximum reimbursement  
2 allowance in the appropriate schedule, whichever is less.

3 (b) As to reimbursement for a prescription medication,  
4 the reimbursement amount for a prescription shall be the  
5 average wholesale price times 1.2 plus \$4.18 for the  
6 dispensing fee, except where the carrier has contracted for a  
7 lower amount. Fees for pharmaceuticals and pharmaceutical  
8 services shall be reimbursable at the applicable fee schedule  
9 amount. Where the employer or carrier has contracted for such  
10 services and the employee elects to obtain them through a  
11 provider not a party to the contract, the carrier shall  
12 reimburse at the schedule, negotiated, or contract price,  
13 whichever is lower.

14 (c) Reimbursement for all fees and other charges for  
15 such treatment, care, and attendance, including treatment,  
16 care, and attendance provided by any hospital or other health  
17 care provider, ambulatory surgical center, work-hardening  
18 program, or pain program, must not exceed the amounts provided  
19 by the uniform schedule of maximum reimbursement allowances as  
20 determined by the panel or as otherwise provided in this  
21 section. This subsection also applies to independent medical  
22 examinations performed by health care providers under this  
23 chapter. Until the three-member panel approves a uniform  
24 schedule of maximum reimbursement allowances and it becomes  
25 effective, all compensable charges for treatment, care, and  
26 attendance provided by physicians, ambulatory surgical  
27 centers, work-hardening programs, or pain programs shall be  
28 reimbursed at the lowest maximum reimbursement allowance  
29 across all 1992 schedules of maximum reimbursement allowances  
30 for the services provided regardless of the place of service.  
31 In determining the uniform schedule, the panel shall first

1 approve the data which it finds representative of prevailing  
2 charges in the state for similar treatment, care, and  
3 attendance of injured persons. Each health care provider,  
4 health care facility, ambulatory surgical center,  
5 work-hardening program, or pain program receiving workers'  
6 compensation payments shall maintain records verifying their  
7 usual charges. In establishing the uniform schedule of maximum  
8 reimbursement allowances, the panel must consider:

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

12       2. The impact upon cost to employers for providing a  
13 level of reimbursement for treatment, care, and attendance  
14 which will ensure the availability of treatment, care, and  
15 attendance required by injured workers;

16       3. The financial impact of the reimbursement  
17 allowances upon health care providers and health care  
18 facilities, including trauma centers as defined in s.  
19 395.4001, and its effect upon their ability to make available  
20 to injured workers such medically necessary remedial  
21 treatment, care, and attendance. The uniform schedule of  
22 maximum reimbursement allowances must be reasonable, must  
23 promote health care cost containment and efficiency with  
24 respect to the workers' compensation health care delivery  
25 system, and must be sufficient to ensure availability of such  
26 medically necessary remedial treatment, care, and attendance  
27 to injured workers; and

28       4. The most recent average maximum allowable rate of  
29 increase for hospitals determined by the Health Care Board  
30 under chapter 408.

31

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

7           (a) Engaged in professional or other misconduct or  
8 incompetency in connection with medical services rendered  
9 under this chapter;

10           (b) Exceeded the limits of his or her or its  
11 professional competence in rendering medical care under this  
12 chapter, or to have made materially false statements regarding  
13 his or her or its qualifications in his or her application;

14           (c) Failed to transmit copies of medical reports to  
15 the employer or carrier, or failed to submit full and truthful  
16 medical reports of all his or her or its findings to the  
17 employer or carrier as required under this chapter;

18           (d) Solicited, or employed another to solicit for  
19 himself or herself or itself or for another, professional  
20 treatment, examination, or care of an injured employee in  
21 connection with any claim under this chapter;

22           (e) Refused to appear before, or to answer upon  
23 request of, the agency ~~division~~ or any duly authorized officer  
24 of the state, any legal question, or to produce any relevant  
25 book or paper concerning his or her conduct under any  
26 authorization granted to him or her under this chapter;

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

29           (g) Engaged in a pattern of practice of  
30 overutilization or a violation of this chapter or rules  
31 adopted by the agency ~~division~~.

1           Section 7. Paragraph (c) of subsection (2) and  
2 paragraph (a) of subsection (3) of section 440.15, Florida  
3 Statutes, are amended to read:

4           440.15 Compensation for disability.--Compensation for  
5 disability shall be paid to the employee, subject to the  
6 limits provided in s. 440.12(2), as follows:

7           (2) TEMPORARY TOTAL DISABILITY.--

8           (c) Temporary total disability benefits paid pursuant  
9 to this subsection shall include such period as may be  
10 reasonably necessary for training in the use of artificial  
11 members and appliances, and shall include such period as the  
12 employee may be receiving training and education under a  
13 program pursuant to s. 440.491. Notwithstanding s. 440.02 ~~s.~~  
14 ~~440.02(9)~~, the date of maximum medical improvement for  
15 purposes of paragraph (3)(b) shall be no earlier than the last  
16 day for which such temporary disability benefits are paid.

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

18           (a) Impairment benefits.--

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

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



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

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

1 reaches maximum medical improvement or the expiration of  
2 temporary benefits, whichever occurs earlier, and continues  
3 until the earlier of:

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

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

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

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

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

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

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

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

22           Section 8. Subsections (3), (6), (8), (9), (10), (11),  
23 (12), (15), (16), and (17) of section 440.20, Florida  
24 Statutes, are amended to read:

25           440.20 Time for payment of compensation; penalties for  
26 late payment.--

27           (3) Upon making payment, or upon suspension or  
28 cessation of payment for any reason, the carrier shall  
29 immediately notify the department ~~division~~ that it has  
30 commenced, suspended, or ceased payment of compensation. The  
31 department ~~division~~ may require such notification in any

1 | format and manner it deems necessary to obtain accurate and  
2 | timely reporting.

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

1 should be made by the employer rather than the carrier. Any  
2 additional installment of compensation paid by the carrier  
3 pursuant to this section shall be paid directly to the  
4 employee.

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

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

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

28 (c) In order to ensure carrier compliance under this  
29 chapter and provisions of the insurance code, the department  
30 ~~division~~ shall monitor the performance of carriers by  
31 conducting market conduct examinations, as provided in s.

1 624.3161, and conducting investigations, as provided in s.  
2 624.317. The department division shall impose penalties on  
3 ~~establish by rule minimum performance standards for carriers~~  
4 ~~to ensure that a minimum of 90 percent of all compensation~~  
5 ~~benefits are timely paid. The division shall fine a carrier as~~  
6 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~  
7 ~~of compensation pursuant to s. 624.4211 that is below the~~  
8 ~~minimum 90 percent performance standard. This paragraph does~~  
9 not affect the imposition of any penalties or interest due to  
10 the claimant. If a carrier contracts with a servicing agent to  
11 fulfill its administrative responsibilities under this  
12 chapter, the payment practices of the servicing agent are  
13 deemed the payment practices of the carrier for the purpose of  
14 assessing penalties against the carrier.

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

27 (10) Whenever the department division deems it  
28 advisable, it may require any employer to make a deposit with  
29 the Treasurer to secure the prompt and convenient payments of  
30 such compensation; and payments therefrom upon any awards

31

1 shall be made upon order of the department ~~division~~ or judge  
2 of compensation claims.

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

1 the nature of the controversy. The Chief Judge shall keep a  
2 record of all such reports filed by each judge of compensation  
3 claims and shall submit to the Legislature a summary of all  
4 such reports filed under this subsection annually by September  
5 15.

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



1 | discretion, may have an investigation made by the Department  
2 | of Education Rehabilitation Section of the Division of  
3 | ~~Workers' Compensation~~. The joint petition and the report of  
4 | any investigation so made will be deemed a part of the  
5 | proceeding. An employer shall have the right to appear at any  
6 | hearing pursuant to this subsection which relates to the  
7 | discharge of such employer's liability and to present  
8 | testimony at such hearing. The carrier shall provide  
9 | reasonable notice to the employer of the time and date of any  
10 | such hearing and inform the employer of her or his rights to  
11 | appear and testify. The probability of the death of the  
12 | injured employee or other person entitled to compensation  
13 | before the expiration of the period during which such person  
14 | is entitled to compensation shall, in the absence of special  
15 | circumstances making such course improper, be determined in  
16 | accordance with the most recent United States Life Tables  
17 | published by the National Office of Vital Statistics of the  
18 | United States Department of Health and Human Services. The  
19 | probability of the happening of any other contingency  
20 | affecting the amount or duration of the compensation, except  
21 | the possibility of the remarriage of a surviving spouse, shall  
22 | be disregarded. As a condition of approving a lump-sum payment  
23 | to a surviving spouse, the judge of compensation claims, in  
24 | the judge of compensation claims' discretion, may require  
25 | security which will ensure that, in the event of the  
26 | remarriage of such surviving spouse, any unaccrued future  
27 | payments so paid may be recovered or recouped by the employer  
28 | or carrier. Such applications shall be considered and  
29 | determined in accordance with s. 440.25.

30 |           (c) Notwithstanding s. 440.21(2), when a claimant is  
31 | represented by counsel, the claimant may waive all rights to

1 any and all benefits under this chapter by entering into a  
2 settlement agreement releasing the employer and the carrier  
3 from liability for workers' compensation benefits in exchange  
4 for a lump-sum payment to the claimant. The settlement  
5 agreement requires approval by the judge of compensation  
6 claims only as to the attorney's fees paid to the claimant's  
7 attorney by the claimant. The parties need not submit any  
8 information or documentation in support of the settlement,  
9 except as needed to justify the amount of the attorney's fees.  
10 Neither the employer nor the carrier is responsible for any  
11 attorney's fees relating to the settlement and release of  
12 claims under this section. Payment of the lump-sum settlement  
13 amount must be made within 14 days after the date the judge of  
14 compensation claims mails the order approving the attorney's  
15 fees. Any order entered by a judge of compensation claims  
16 approving the attorney's fees as set out in the settlement  
17 under this subsection is not considered to be an award and is  
18 not subject to modification or review. The judge of  
19 compensation claims shall report these settlements to the  
20 Deputy Chief Judge in accordance with the requirements set  
21 forth in paragraphs (a) and (b). Settlements entered into  
22 under this subsection are valid and apply to all dates of  
23 accident.

24 (d)1. With respect to any lump-sum settlement under  
25 this subsection, a judge of compensation claims must consider  
26 at the time of the settlement, whether the settlement  
27 allocation provides for the appropriate recovery of child  
28 support arrearages.

29 2. When reviewing any settlement of lump-sum payment  
30 pursuant to this subsection, judges of compensation claims  
31 shall consider the interests of the worker and the worker's

1 family when approving the settlement, which must consider and  
2 provide for appropriate recovery of past due support.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 9. Subsection (1) of section 440.207, Florida  
24 Statutes, is amended to read:

25 440.207 Workers' compensation system guide.--

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

31

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

3           440.24 Enforcement of compensation orders;  
4 penalties.--

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

21           (2) In any case where the employer is insured and the  
22 carrier fails to comply with any compensation order of a judge  
23 of compensation claims or court within 10 days after such  
24 order becomes final, ~~the division shall notify the department~~  
25 ~~of Insurance of such failure, and the Department of Insurance~~  
26 shall thereupon suspend the license of such carrier to do an  
27 insurance business in this state, until such carrier has  
28 complied with such order.

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



1 becomes final, the department ~~division~~ may suspend or revoke  
2 any authorization previously given to the employer to become a  
3 self-insurer, and the Florida Self-Insurer's Guaranty  
4 Association ~~division~~ may sell such of the securities deposited  
5 by such self-insurer with the association ~~division~~ as may be  
6 necessary to satisfy such order.

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

9 440.25 Procedures for mediation and hearings.--

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

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

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

1 the record in any proceeding for which it is ordered to pay  
2 the cost of the record.

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

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

1 require an autopsy and may, in her or his discretion, withhold  
2 her or his findings and award until an autopsy is held.

3 Section 12. Section 440.271, Florida Statutes, is  
4 amended to read:

5 440.271 Appeal of order of judge of compensation  
6 claims.--Review of any order of a judge of compensation claims  
7 entered pursuant to this chapter shall be by appeal to the  
8 District Court of Appeal, First District. Appeals shall be  
9 filed in accordance with rules of procedure prescribed by the  
10 Supreme Court for review of such orders. The department  
11 ~~division~~ shall be given notice of any proceedings pertaining  
12 to s. 440.25, regarding indigency, or s. 440.49, regarding the  
13 Special Disability Trust Fund, and shall have the right to  
14 intervene in any proceedings.

15 Section 13. Subsections (1), (2), and (3) of section  
16 440.38, Florida Statutes, are amended to read:

17 440.38 Security for compensation; insurance carriers  
18 and self-insurers.--

19 (1) Every employer shall secure the payment of  
20 compensation under this chapter:

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

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

1 authorization from the Department of Insurance ~~division~~ to pay  
2 such compensation directly. The association shall review the  
3 financial strength of applicants for membership, current  
4 members, and former members and make recommendations to the  
5 department regarding their qualifications to self-insure in  
6 accordance with this act and ss. 440.385 and 440.386. The  
7 department shall consult with the association on any  
8 recommendation before taking action.~~the following provisions:~~  
9       1. The association ~~division~~ may recommend that the  
10 Department of Insurance require an employer to deposit with  
11 the association ~~division~~ a qualifying security deposit. The  
12 association ~~division~~ shall recommend ~~determine~~ the type and  
13 amount of the qualifying security deposit and shall prescribe  
14 conditions for the qualifying security deposit, which shall  
15 include authorization for the association ~~division~~ to call the  
16 qualifying security deposit in the case of default. ~~In~~  
17 ~~addition, the division shall require,~~As a condition to  
18 authorization to self-insure, the employer shall provide proof  
19 that the employer has provided for competent personnel with  
20 whom to deliver benefits and to provide a safe working  
21 environment. ~~Further,~~The employer ~~division~~ shall also provide  
22 evidence of ~~require such employer to carry~~ reinsurance at  
23 levels that will ensure the financial strength and actuarial  
24 soundness of such employer in accordance with rules adopted  
25 ~~promulgated~~ by the Department of Insurance ~~division~~. The  
26 Department of Insurance ~~division~~ may by rule require that, in  
27 the event of an individual self-insurer's insolvency, such  
28 qualifying security deposits and reinsurance policies are  
29 payable to the ~~Florida Self-Insurers Guaranty~~ association,  
30 ~~incorporated, created pursuant to s. 440.385.~~ Any employer  
31 securing compensation in accordance with the provisions of

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

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

1 department along with a recommendation, and the Department of  
2 Insurance division shall then revoke an such employer's  
3 authorization to self-insure, ~~and such~~ Failure to comply with  
4 this provision shall be deemed to constitute an immediate  
5 serious danger to the public health, safety, or welfare  
6 sufficient to justify the summary suspension of the employer's  
7 authorization to self-insure pursuant to s. 120.68.

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

1 the successor of an employer means any person, business  
2 entity, or group of persons or business entities, which holds  
3 or acquires legal or beneficial title to the majority of the  
4 assets or the majority of the shares of the employer.

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

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

14 b. Irrevocable letters of credit in favor of the  
15 association ~~division~~ issued by financial institutions located  
16 within this state, the deposits of which are insured through  
17 the Federal Deposit Insurance Corporation.

18 5. The qualifying security deposit shall be held by  
19 the association ~~division~~ exclusively for the benefit of  
20 workers' compensation claimants. The security shall not be  
21 subject to assignment, execution, attachment, or any legal  
22 process whatsoever, except as necessary to guarantee the  
23 payment of compensation under this chapter. No surety bond may  
24 be terminated, and no letter of credit may be allowed to  
25 expire, without 90 days' prior written notice to the  
26 association ~~division~~ and the deposit by the self-insuring  
27 employer of some other qualifying security deposit of equal  
28 value within 10 business days after such notice. Failure to  
29 provide such written notice or failure to timely provide  
30 qualifying replacement security after such notice shall  
31 constitute grounds for the association ~~division~~ to call or sue



1 upon the surety bond or to exercise its rights under a letter  
2 of credit. Current self-insured employers must comply with  
3 this section on or before December 31, 2001, or upon the  
4 maturity of existing security deposits, whichever occurs  
5 later. The Department of Insurance ~~division~~ may specify by  
6 rule the amount of the qualifying security deposit required  
7 prior to authorizing an employer to self-insure and the amount  
8 of net worth required for an employer to qualify for  
9 authorization to self-insure;

10 (c) By entering into a contract with a public utility  
11 under an approved utility-provided self-insurance program as  
12 set forth in s. 624.46225 in effect as of July 1, 1983. The  
13 Department of Insurance ~~division~~ shall adopt rules to  
14 implement this paragraph;

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

18 (e) In accordance with s. 440.135, an employer, other  
19 than a local government unit, may elect coverage under the  
20 Workers' Compensation Law and retain the benefit of the  
21 exclusiveness of liability provided in s. 440.11 by obtaining  
22 a 24-hour health insurance policy from an authorized property  
23 and casualty insurance carrier or an authorized life and  
24 health insurance carrier, or by participating in a fully or  
25 partially self-insured 24-hour health plan that is established  
26 or maintained by or for two or more employers, so long as the  
27 law of this state is not preempted by the Employee Retirement  
28 Income Security Act of 1974, Pub. L. No. 93-406, or any  
29 amendment to that law, which policy or plan must provide, for  
30 at least occupational injuries and illnesses, medical benefits  
31 that are comparable to those required by this chapter. A local

1 government unit, as a single employer, in accordance with s.  
2 440.135, may participate in the 24-hour health insurance  
3 coverage plan referenced in this paragraph. Disputes and  
4 remedies arising under policies issued under this section are  
5 governed by the terms and conditions of the policies and under  
6 the applicable provisions of the Florida Insurance Code and  
7 rules adopted under the insurance code and other applicable  
8 laws of this state. The 24-hour health insurance policy may  
9 provide for health care by a health maintenance organization  
10 or a preferred provider organization. The premium for such  
11 24-hour health insurance policy shall be paid entirely by the  
12 employer. The 24-hour health insurance policy may use  
13 deductibles and coinsurance provisions that require the  
14 employee to pay a portion of the actual medical care received  
15 by the employee. If an employer obtains a 24-hour health  
16 insurance policy or self-insured plan to secure payment of  
17 compensation as to medical benefits, the employer must also  
18 obtain an insurance policy or policies that provide indemnity  
19 benefits as follows:

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

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

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

30 4. Policies providing coverage under this subsection  
31 must use prescribed and acceptable underwriting standards,

1 forms, and policies approved by the Department of Insurance.  
2 If any insurance policy that provides coverage under this  
3 section is canceled, terminated, or nonrenewed for any reason,  
4 the cancellation, termination, or nonrenewal is ineffective  
5 until the self-insured employer or insurance carrier or  
6 carriers notify ~~the division~~ and the Department of Insurance  
7 of the cancellation, termination, or nonrenewal, and until the  
8 Department of Insurance ~~division~~ has actually received the  
9 notification. The Department of Insurance ~~division~~ must be  
10 notified of replacement coverage under a workers' compensation  
11 and employer's liability insurance policy or plan by the  
12 employer prior to the effective date of the cancellation,  
13 termination, or nonrenewal; or

14 (f) By entering into a contract with an individual  
15 self-insurer under an approved individual  
16 self-insurer-provided self-insurance program as set forth in  
17 s. 624.46225. The Department of Insurance ~~division~~ may adopt  
18 rules to administer this subsection.

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

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

29 ~~(3)(a) The license of any stock company or mutual~~  
30 ~~company or association or exchange authorized to do insurance~~  
31 ~~business in the state shall for good cause, upon~~

1 ~~recommendation of the division, be suspended or revoked by the~~  
2 ~~Department of Insurance. No suspension or revocation shall~~  
3 ~~affect the liability of any carrier already incurred.~~

4       (a)~~(b)~~ The Department of Insurance ~~division~~ shall  
5 suspend or revoke any authorization to a self-insurer for  
6 failure to comply with this act or for good cause, as defined  
7 by rule of the department ~~division~~. No suspension or  
8 revocation shall affect the liability of any self-insurer  
9 already incurred.

10       (b)~~(c)~~ Violation of s. 440.381 by a self-insurance  
11 fund shall result in the imposition of a fine not to exceed  
12 \$1,000 per audit if the self-insurance fund fails to act on  
13 said audits by correcting errors in employee classification or  
14 accepted applications for coverage where it knew employee  
15 classifications were incorrect. Such fines shall be levied by  
16 the Department of Insurance ~~division~~ and deposited into the  
17 Workers' Compensation Administration Trust Fund.

18       Section 14. Subsections (3) and (7) of section  
19 440.381, Florida Statutes, are amended to read:

20       440.381 Application for coverage; reporting payroll;  
21 payroll audit procedures; penalties.--

22       (3) The ~~department of Insurance and the Department of~~  
23 ~~Labor and Employment Security~~ shall establish by rule minimum  
24 requirements for audits of payroll and classifications in  
25 order to ensure that the appropriate premium is charged for  
26 workers' compensation coverage. The rules shall ensure that  
27 audits performed by both carriers and employers are adequate  
28 to provide that all sources of payments to employees,  
29 subcontractors, and independent contractors have been reviewed  
30 and that the accuracy of classification of employees has been  
31 verified. The rules shall provide that employers in all

1 classes other than the construction class be audited not less  
2 frequently than biennially and may provide for more frequent  
3 audits of employers in specified classifications based on  
4 factors such as amount of premium, type of business, loss  
5 ratios, or other relevant factors. In no event shall employers  
6 in the construction class, generating more than the amount of  
7 premium required to be experience rated, be audited less than  
8 annually. The annual audits required for construction classes  
9 shall consist of physical onsite audits. Payroll verification  
10 audit rules must include, but need not be limited to, the use  
11 of state and federal reports of employee income, payroll and  
12 other accounting records, certificates of insurance maintained  
13 by subcontractors, and duties of employees.

14 (7) If an employee suffering a compensable injury was  
15 not reported as earning wages on the last quarterly earnings  
16 report filed with the Division of Unemployment Compensation  
17 before the accident, the employer shall indemnify the carrier  
18 for all workers' compensation benefits paid to or on behalf of  
19 the employee unless the employer establishes that the employee  
20 was hired after the filing of the quarterly report, in which  
21 case the employer and employee shall attest to the fact that  
22 the employee was employed by the employer at the time of the  
23 injury. ~~It shall be the responsibility of the Division of~~  
24 ~~Workers' Compensation to collect all necessary data so as to~~  
25 ~~enable it to notify the carrier of the name of an injured~~  
26 ~~worker who was not reported as earning wages on the last~~  
27 ~~quarterly earnings report. The division is hereby authorized~~  
28 ~~to release such records to the carrier which will enable the~~  
29 ~~carrier to seek reimbursement as provided under this~~  
30 ~~subsection.~~ Failure of the employer to indemnify the insurer  
31 within 21 days after demand by the insurer shall constitute

1 grounds for the insurer to immediately cancel coverage. Any  
2 action for indemnification brought by the carrier shall be  
3 cognizable in the circuit court having jurisdiction where the  
4 employer or carrier resides or transacts business. The  
5 insurer shall be entitled to a reasonable attorney's fee if it  
6 recovers any portion of the benefits paid in such action.

7 Section 15. Section 440.385, Florida Statutes, is  
8 amended to read:

9 440.385 Florida Self-Insurers Guaranty Association,  
10 Incorporated.--

11 (1) CREATION OF ASSOCIATION.--

12 (a) There is created a nonprofit corporation to be  
13 known as the "Florida Self-Insurers Guaranty Association,  
14 Incorporated," hereinafter referred to as "the association."  
15 Upon incorporation of the association, all individual  
16 self-insurers as defined in ss. 440.02(24)(a)~~ss.~~  
17 ~~440.02(23)(a)~~ and 440.38(1)(b), other than individual  
18 self-insurers which are public utilities or governmental  
19 entities, shall be members of the association as a condition  
20 of their authority to individually self-insure in this state.  
21 The association corporation shall perform its functions under  
22 a plan of operation as established and approved under  
23 subsection (5) and shall exercise its powers and duties  
24 through a board of directors as established under subsection  
25 (2). The association corporation shall have those powers  
26 granted or permitted associations corporations not for profit,  
27 as provided in chapter 617. The activities of the association  
28 shall be subject to review by the Department of Insurance. The  
29 Department of Insurance shall have oversight responsibility as  
30 set forth in this act. The association is specifically

1 authorized to enter into agreements with the State of Florida  
2 to perform specified services.

3 (b) A member may voluntarily withdraw from the  
4 association when the member voluntarily terminates the  
5 self-insurance privilege and pays all assessments due to the  
6 date of such termination. However, the withdrawing member  
7 shall continue to be bound by the provisions of this section  
8 relating to the period of his or her membership and any claims  
9 charged pursuant thereto. The withdrawing member who is a  
10 member on or after January 1, 1991, shall also be required to  
11 provide to the association ~~division~~ upon withdrawal, and at  
12 12-month intervals thereafter, satisfactory proof, including,  
13 if requested by the association, a report of known and  
14 potential claims certified by a member of the American Academy  
15 of Actuaries, that it continues to meet the standards of s.  
16 440.38(1)(b)1. in relation to claims incurred while the  
17 withdrawing member exercised the privilege of self-insurance.  
18 Such reporting shall continue until the withdrawing member  
19 demonstrates to ~~satisfies~~ the association ~~division~~ that there  
20 is no remaining value to claims incurred while the withdrawing  
21 member was self-insured. If a withdrawing member fails or  
22 refuses to timely provide an actuarial report to the  
23 association, the association may obtain an order from a  
24 circuit court requiring the member to produce such a report  
25 and ordering such other relief as the court determines  
26 appropriate. The association shall be entitled to recover all  
27 reasonable costs and attorney's fees expended in such  
28 proceedings. If during this reporting period the withdrawing  
29 member fails to meet the standards of s. 440.38(1)(b)1., the  
30 withdrawing member who is a member on or after January 1,  
31 1991, shall thereupon, and at 6-month intervals thereafter,

1 provide to the ~~division and the~~ association the certified  
2 opinion of an independent actuary who is a member of the  
3 American Academy ~~Society~~ of Actuaries of the actuarial present  
4 value of the determined and estimated future compensation  
5 payments of the member for claims incurred while the member  
6 was a self-insurer, using a discount rate of 4 percent. With  
7 each such opinion, the withdrawing member shall deposit with  
8 the association ~~division~~ security in an amount equal to the  
9 value certified by the actuary and of a type that is  
10 acceptable for qualifying security deposits under s.  
11 440.38(1)(b). The withdrawing member shall continue to  
12 provide such opinions and to provide such security until such  
13 time as the latest opinion shows no remaining value of claims.  
14 The association has a cause of action against a withdrawing  
15 member, and against any successor of a withdrawing member, who  
16 fails to timely provide the required opinion or who fails to  
17 maintain the required deposit with the division. The  
18 association shall be entitled to recover a judgment in the  
19 amount of the actuarial present value of the determined and  
20 estimated future compensation payments of the withdrawing  
21 member for claims incurred during the time that the  
22 withdrawing member exercised the privilege of self-insurance,  
23 together with reasonable attorney's fees. The association is  
24 also entitled to recover reasonable attorney's fees in any  
25 action to compel production of any actuarial report required  
26 by this statute. For purposes of this section, the successor  
27 of a withdrawing member means any person, business entity, or  
28 group of persons or business entities, which holds or acquires  
29 legal or beneficial title to the majority of the assets or the  
30 majority of the shares of the withdrawing member.  
31



1           (2) BOARD OF DIRECTORS.--The board of directors of the  
2 association shall consist of nine persons and shall be  
3 organized as established in the plan of operation. All board  
4 members shall be experienced in self-insurance in this state.  
5 ~~With respect to initial appointments, the Secretary of Labor~~  
6 ~~and Employment Security shall, by July 15, 1982, approve and~~  
7 ~~appoint to the board persons who are experienced with~~  
8 ~~self-insurance in this state and who are recommended by the~~  
9 ~~individual self-insurers in this state required to become~~  
10 ~~members of the association pursuant to the provisions of~~  
11 ~~paragraph (1)(a). In the event the secretary finds that any~~  
12 ~~person so recommended does not have the necessary~~  
13 ~~qualifications for service on the board and a majority of the~~  
14 ~~board has been appointed, the secretary shall request the~~  
15 ~~directors thus far approved and appointed to recommend another~~  
16 ~~person for appointment to the board.Each director shall serve~~  
17 ~~for a 4-year term and may be reappointed. Appointments after~~  
18 ~~December 31, 2001, other than initial appointments shall be~~  
19 ~~made by the Insurance Commissioner ~~Secretary of Labor and~~~~  
20 ~~Employment Security upon recommendation of members of the~~  
21 ~~association. Any vacancy on the board shall be filled for the~~  
22 ~~remaining period of the term in the same manner as~~  
23 ~~appointments other than initial appointments are made. Each~~  
24 ~~director shall be reimbursed for expenses incurred in carrying~~  
25 ~~out the duties of the board on behalf of the association.~~

26           (3) POWERS AND DUTIES.--

27           (a) Upon creation of the Insolvency Fund pursuant to  
28 the provisions of subsection (4), the association is obligated  
29 for payment of compensation under this chapter to insolvent  
30 members' employees resulting from incidents and injuries  
31 existing prior to the member becoming an insolvent member and

1 from incidents and injuries occurring within 30 days after the  
2 member has become an insolvent member, provided the incidents  
3 giving rise to claims for compensation under this chapter  
4 occur during the year in which such insolvent member is a  
5 member of the guaranty fund and was assessable pursuant to the  
6 plan of operation, and provided the employee makes timely  
7 claim for such payments according to procedures set forth by a  
8 court of competent jurisdiction over the delinquency or  
9 bankruptcy proceedings of the insolvent member. Such  
10 obligation includes only that amount due the injured worker or  
11 workers of the insolvent member under this chapter. In no  
12 event is the association obligated to a claimant in an amount  
13 in excess of the obligation of the insolvent member. The  
14 association shall be deemed the insolvent employer for  
15 purposes of this chapter to the extent of its obligation on  
16 the covered claims and, to such extent, shall have all rights,  
17 duties, and obligations of the insolvent employer as if the  
18 employer had not become insolvent. However, in no event shall  
19 the association be liable for any penalties or interest.

20 (b) The association may:

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

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

25 3. Sue or be sued.

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

28 5. Purchase such reinsurance as is determined  
29 necessary pursuant to the plan of operation.

30 6. Review all applicants for membership in the  
31 association to determine whether the applicant is qualified

1 for membership under the law. The association shall recommend  
2 to the Department of Insurance that the application be  
3 accepted or rejected based on the criteria set forth in s.  
4 440.38(1)(b). The department shall approve or disapprove the  
5 application. ~~Prior to a final determination by the Division of~~  
6 ~~Workers' Compensation as to whether or not to approve any~~  
7 ~~applicant for membership in the association, the association~~  
8 ~~may issue opinions to the division concerning any applicant,~~  
9 ~~which opinions shall be considered by the division prior to~~  
10 ~~any final determination.~~

11 7. Collect and review financial information from  
12 employers and make recommendations to the Department of  
13 Insurance regarding the appropriate security deposit and  
14 reinsurance amounts necessary for an employer to demonstrate  
15 that it has the financial strength necessary to assure the  
16 timely payment of all current and future claims. The  
17 association may audit and examine an employer to verify the  
18 financial strength of its current and former members. If the  
19 association determines that a current or former self-insured  
20 employer does not have the financial strength necessary to  
21 assure the timely payment of all current and estimated future  
22 claims, the association may recommend to the department that  
23 the department:

- 24 a. Revoke the employer's self-insurance privilege.  
25 b. Require the employer to provide a certified opinion  
26 of an independent actuary who is a member of the American  
27 Academy of Actuaries as to the actuarial present value of the  
28 employer's estimated current and future compensation payments,  
29 using a 4-percent discount rate.  
30 c. Require an increase in the employer's security  
31 deposit in an amount determined by the association to be

1 necessary to assure payment of compensation claims. The  
2 department shall act on such recommendations. The association  
3 has a cause of action against an employer, and against any  
4 successor of an employer, who fails to provide an additional  
5 security deposit required by the department. The association  
6 shall recover a judgment in the amount of the requested  
7 additional security deposit together with reasonable  
8 attorney's fees. For the purposes of this section, the  
9 successor of an employer is any person, business entity, or  
10 group of persons or business entities that holds or acquires  
11 legal or beneficial title to the majority of the assets or the  
12 majority of the shares of the employer.

13 ~~8.7.~~ Charge fees to any member of the association to  
14 cover the actual costs of examining the financial and safety  
15 conditions of that member.

16 ~~9.8.~~ Charge an applicant for membership in the  
17 association a fee sufficient to cover the actual costs of  
18 examining the financial condition of the applicant.

19 10. Implement any and all procedures necessary to  
20 ensure compliance with regulatory actions taken by the  
21 department.

22 (c)1. To the extent necessary to secure funds for the  
23 payment of covered claims and also to pay the reasonable costs  
24 to administer them, the association, subject to approval by  
25 the Department of Insurance Labor and Employment Security,  
26 ~~upon certification of the board of directors,~~ shall levy  
27 assessments based on the annual written normal premium each  
28 employer would have paid had the employer not been  
29 self-insured. Every assessment shall be made as a uniform  
30 percentage of the figure applicable to all individual  
31 self-insurers, provided that the assessment levied against any

1 self-insurer in any one year shall not exceed 1 percent of the  
2 annual written ~~normal~~ premium during the calendar year  
3 preceding the date of the assessment. Assessments shall be  
4 remitted to and administered by the board of directors in the  
5 manner specified by the approved plan. Each employer so  
6 assessed shall have at least 30 days' written notice as to the  
7 date the assessment is due and payable. The association shall  
8 levy assessments against any newly admitted member of the  
9 association so that the basis of contribution of any newly  
10 admitted member is the same as previously admitted members,  
11 provision for which shall be contained in the plan of  
12 operation.

13           2. If, in any one year, funds available from such  
14 assessments, together with funds previously raised, are not  
15 sufficient to make all the payments or reimbursements then  
16 owing, the funds available shall be prorated, and the unpaid  
17 portion shall be paid as soon thereafter as sufficient  
18 additional funds become available.

19           3. Funds may be allocated or paid from the Workers'  
20 Compensation Administration Trust Fund to contract with the  
21 association to perform services required by law. However, no  
22 state funds of any kind shall be allocated or paid to the  
23 association or any of its accounts for payment of covered  
24 claims or related expenses except those state funds accruing  
25 to the association by and through the assignment of rights of  
26 an insolvent employer. The department shall not levy any  
27 assessment on the Florida Self-Insurance Guaranty Association.

28           (4) ~~INSOLVENCY FUND.--Upon the adoption of a plan of~~  
29 ~~operation or the adoption of rules by the Department of Labor~~  
30 ~~and Employment Security pursuant to subsection (5), there~~  
31

1 shall be created an Insolvency Fund to be managed by the  
2 association.

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

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

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

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

23 (5) PLAN OF OPERATION.--The association shall operate  
24 pursuant to a plan of operation approved by the board of  
25 directors. The plan of operation in effect on November 1,  
26 2001, and approved by the Department of Labor and Employment  
27 Security shall remain in effect. However, any amendments to  
28 the plan shall not become effective until approved by the  
29 Department of Insurance.~~By September 15, 1982, the board of~~  
30 ~~directors shall submit to the Department of Labor and~~

31

1 ~~Employment Security a proposed plan of operation for the~~  
2 ~~administration of the association and the Insolvency Fund.~~

3 (a) The purpose of the plan of operation shall be to  
4 provide the association and the board of directors with the  
5 authority and responsibility to establish the necessary  
6 programs and to take the necessary actions to protect against  
7 the insolvency of a member of the association. In addition,  
8 the plan shall provide that the members of the association  
9 shall be responsible for maintaining an adequate Insolvency  
10 Fund to meet the obligations of insolvent members provided for  
11 under this act and shall authorize the board of directors to  
12 contract and employ those persons with the necessary expertise  
13 to carry out this stated purpose. By June 1, 2002, the board  
14 of directors shall submit to the Department of Insurance a  
15 proposed plan of operation for the administration of the  
16 association. The Department of Insurance shall approve the  
17 plan by order, consistent with this act. The Department of  
18 Insurance shall approve any amendments to the plan, by order  
19 consistent with this act, and determined appropriate to carry  
20 out the duties and responsibilities of the association.

21 ~~(b) The plan of operation, and any amendments thereto,~~  
22 ~~shall take effect upon approval in writing by the department.~~  
23 ~~If the board of directors fails to submit a plan by September~~  
24 ~~15, 1982, or fails to make required amendments to the plan~~  
25 ~~within 30 days thereafter, the department shall promulgate~~  
26 ~~such rules as are necessary to effectuate the provisions of~~  
27 ~~this subsection. Such rules shall continue in force until~~  
28 ~~modified by the department or superseded by a plan submitted~~  
29 ~~by the board of directors and approved by the department.~~

30 (b)(c) All member employers shall comply with the plan  
31 of operation.

1            (c)~~(d)~~ The plan of operation shall:  
2            1. Establish the procedures whereby all the powers and  
3 duties of the association under subsection (3) will be  
4 performed.  
5            2. Establish procedures for handling assets of the  
6 association.  
7            3. Establish the amount and method of reimbursing  
8 members of the board of directors under subsection (2).  
9            4. Establish procedures by which claims may be filed  
10 with the association and establish acceptable forms of proof  
11 of covered claims. Notice of claims to the receiver or  
12 liquidator of the insolvent employer shall be deemed notice to  
13 the association or its agent, and a list of such claims shall  
14 be submitted periodically to the association or similar  
15 organization in another state by the receiver or liquidator.  
16            5. Establish regular places and times for meetings of  
17 the board of directors.  
18            6. Establish procedures for records to be kept of all  
19 financial transactions of the association and its agents and  
20 the board of directors.  
21            7. Provide that any member employer aggrieved by any  
22 final action or decision of the association may appeal to the  
23 department within 30 days after the action or decision.  
24            8. Establish the procedures whereby recommendations of  
25 candidates for the board of directors shall be submitted to  
26 the department.  
27            9. Contain additional provisions necessary or proper  
28 for the execution of the powers and duties of the association.  
29            (d)~~(e)~~ The plan of operation may provide that any or  
30 all of the powers and duties of the association, except those  
31 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to



1 a corporation, association, or other organization which  
2 performs or will perform functions similar to those of this  
3 association or its equivalent in two or more states. Such a  
4 corporation, association, or organization shall be reimbursed  
5 as a servicing facility would be reimbursed and shall be paid  
6 for its performance of any other functions of the association.  
7 A delegation of powers or duties under this subsection shall  
8 take effect only with the approval of both the board of  
9 directors and the department and may be made only to a  
10 corporation, association, or organization which extends  
11 protection which is not substantially less favorable and  
12 effective than the protection provided by this section.

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

15 (a) The department shall+

16 ~~1. review recommendations of the association~~  
17 concerning whether current or former self-insured employers or  
18 members of the association have the financial strength  
19 necessary to ensure the timely payment of all current and  
20 estimated future claims. If the association determines an  
21 employer does not have the financial strength necessary to  
22 ensure the timely payment of all current and future claims and  
23 recommends action pursuant to paragraph (3)(b), the Department  
24 of Insurance may take such action as necessary to order the  
25 employer to comply with the recommendation.~~Notify the~~  
26 ~~association of the existence of an insolvent employer not~~  
27 ~~later than 3 days after it receives notice of the~~  
28 ~~determination of insolvency.~~

29 (b) The department may:

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

- 1           a. Process applications for self-insurance.  
2           b. Collect and review financial statements and loss  
3 reserve information from individual self-insurers.  
4           c. Collect and maintain files for original security  
5 deposit documents and reinsurance policies from individual  
6 self-insurers and, if necessary, perfect security interests in  
7 security deposits.  
8           d. Process compliance documentation for individual  
9 self-insurers and provide same to the Department of Insurance.  
10          e. Collect all data necessary to calculate annual  
11 premium for all individual self-insurers, including individual  
12 self-insurers that are public utilities or governmental  
13 entities, and provide such calculated annual premium to the  
14 Department of Insurance for assessment purposes.  
15          f. Inspect and audit annually, if necessary, the  
16 payroll and other records of each individual self-insurer,  
17 including individual self-insurers that are public utilities  
18 or governmental entities, in order to determine the wages paid  
19 by each individual self-insurer, the premium such individual  
20 self-insurer would have to pay if insured, and all payments of  
21 compensation made by such individual self-insurer during each  
22 prior period with the results of such audit provided to the  
23 Department of Insurance. For the purposes of this section,  
24 the payroll records of each individual self-insurer shall be  
25 open to inspection and audit by the association, the  
26 department, or their authorized representative, during regular  
27 business hours.  
28          g. Provide legal representation to implement the  
29 administration and audit of individual self-insurers and make  
30 recommendations regarding prosecution of any administrative or  
31

1 legal proceedings necessitated by the department's regulation  
2 of the individual self-insurers.

3       2. Contract with an attorney or attorneys recommended  
4 by the association for representation of the department in any  
5 administrative or legal proceedings necessitated by the  
6 recommended regulation of the individual self-insurers. ~~Upon~~  
7 ~~request of the board of directors, provide the association~~  
8 ~~with a statement of the annual normal premiums of each member~~  
9 ~~employer.~~

10       ~~(b) The department may:~~

11       3.1. Direct the association to require from each  
12 individual self-insurer, at such time and in accordance with  
13 such regulations as the department prescribes, reports in  
14 respect to wages paid, the amount of premiums such individual  
15 self-insurer would have to pay if insured, and all payments of  
16 compensation made by such individual self-insurer during each  
17 prior period and determine the amounts paid by each individual  
18 self-insurer and the amounts paid by all individual  
19 self-insurers during such period. For the purposes of this  
20 section, the payroll records of each individual self-insurer  
21 shall be open to annual inspection and audit by the  
22 association, the department, or their authorized  
23 representative, during regular business hours, and if any  
24 audit of such records of an individual self-insurer discloses  
25 a deficiency in the amount reported to the association or in  
26 the amounts paid to the Department of Insurance by an  
27 individual self-insurer for its assessment for the Workers'  
28 Compensation Administration Trust Fund, the Department of  
29 Insurance or the association may assess the cost of such audit  
30 against the individual self-insurer.

1           4. Require that the association notify the member  
2 employers and any other interested parties of the  
3 determination of insolvency and of their rights under this  
4 section. Such notification shall be by mail at the last known  
5 address thereof when available; but, if sufficient information  
6 for notification by mail is not available, notice by  
7 publication in a newspaper of general circulation shall be  
8 sufficient.

9           ~~5.2.~~ Suspend or revoke the authority of any member  
10 employer failing to pay an assessment when due or failing to  
11 comply with the plan of operation to self-insure in this  
12 state. As an alternative, the department may levy a fine on  
13 any member employer failing to pay an assessment when due.  
14 Such fine shall not exceed 5 percent of the unpaid assessment  
15 per month, except that no fine shall be less than \$100 per  
16 month.

17           ~~3. Revoke the designation of any servicing facility if~~  
18 ~~the department finds that claims are being handled~~  
19 ~~unsatisfactorily.~~

20           (7) EFFECT OF PAID CLAIMS.--

21           (a) Any person who recovers from the association under  
22 this section shall be deemed to have assigned his or her  
23 rights to the association to the extent of such recovery.  
24 Every claimant seeking the protection of this section shall  
25 cooperate with the association to the same extent as such  
26 person would have been required to cooperate with the  
27 insolvent member. The association shall have no cause of  
28 action against the employee of the insolvent member for any  
29 sums the association has paid out, except such causes of  
30 action as the insolvent member would have had if such sums had  
31 been paid by the insolvent member. In the case of an

1 insolvent member operating on a plan with assessment  
2 liability, payments of claims by the association shall not  
3 operate to reduce the liability of the insolvent member to the  
4 receiver, liquidator, or statutory successor for unpaid  
5 assessments.

6 (b) The receiver, liquidator, or statutory successor  
7 of an insolvent member shall be bound by settlements of  
8 covered claims by the association or a similar organization in  
9 another state. The court having jurisdiction shall grant such  
10 claims priority against the assets of the insolvent member  
11 equal to that to which the claimant would have been entitled  
12 in the absence of this section. The expense of the association  
13 or similar organization in handling claims shall be accorded  
14 the same priority as the expenses of the liquidator.

15 (c) The association shall file periodically with the  
16 receiver or liquidator of the insolvent member statements of  
17 the covered claims paid by the association and estimates of  
18 anticipated claims on the association, which shall preserve  
19 the rights of the association against the assets of the  
20 insolvent member.

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

23 ~~(a)~~ upon determination by majority vote that any  
24 member employer may be insolvent or in a financial condition  
25 hazardous to the employees thereof or to the public, it shall  
26 be the duty of the board of directors to notify the Department  
27 of Insurance ~~Labor and Employment Security~~ of any information  
28 indicating such condition.

29 ~~(b) The board of directors may, upon majority vote,~~  
30 ~~request that the department determine the condition of any~~  
31 ~~member employer which the board in good faith believes may no~~

1 ~~longer be qualified to be a member of the association. Within~~  
2 ~~30 days of the receipt of such request or, for good cause~~  
3 ~~shown, within a reasonable time thereafter, the department~~  
4 ~~shall make such determination and shall forthwith advise the~~  
5 ~~board of its findings. Each request for a determination shall~~  
6 ~~be kept on file by the department, but the request shall not~~  
7 ~~be open to public inspection prior to the release of the~~  
8 ~~determination to the public.~~

9 ~~(c) It shall also be the duty of the department to~~  
10 ~~report to the board of directors when it has reasonable cause~~  
11 ~~to believe that a member employer may be in such a financial~~  
12 ~~condition as to be no longer qualified to be a member of the~~  
13 ~~association.~~

14 ~~(d) The board of directors may, upon majority vote,~~  
15 ~~make reports and recommendations to the department upon any~~  
16 ~~matter which is germane to the solvency, liquidation,~~  
17 ~~rehabilitation, or conservation of any member employer. Such~~  
18 ~~reports and recommendations shall not be considered public~~  
19 ~~documents.~~

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

23 ~~(f) The board of directors shall, at the conclusion of~~  
24 ~~any member's insolvency in which the association was obligated~~  
25 ~~to pay covered claims, prepare a report on the history and~~  
26 ~~cause of such insolvency, based on the information available~~  
27 ~~to the association, and shall submit such report to the~~  
28 ~~department.~~

29 (9) EXAMINATION OF THE ASSOCIATION.--The association  
30 shall be subject to examination and regulation by the  
31 Department of Insurance ~~Labor and Employment Security~~. No

1 later than March 30 of each year, the board of directors shall  
2 submit an audited a financial statement report for the  
3 preceding calendar year in a form approved by the department.

4 (10) IMMUNITY.--There shall be no liability on the  
5 part of, and no cause of action of any nature shall arise  
6 against, any member employer, the association or its agents or  
7 employees, the board of directors, or the Department of  
8 Insurance Labor and Employment Security or its representatives  
9 for any action taken by them in the performance of their  
10 powers and duties under this section.

11 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT  
12 JUDGMENTS.--All proceedings in which an insolvent employer is  
13 a party, or is obligated to defend a party, in any court or  
14 before any quasi-judicial body or administrative board in this  
15 state shall be stayed for up to 6 months, or for such  
16 additional period from the date the employer becomes an  
17 insolvent member, as is deemed necessary by a court of  
18 competent jurisdiction to permit proper defense by the  
19 association of all pending causes of action as to any covered  
20 claims arising from a judgment under any decision, verdict, or  
21 finding based on the default of the insolvent member. The  
22 association, either on its own behalf or on behalf of the  
23 insolvent member, may apply to have such judgment, order,  
24 decision, verdict, or finding set aside by the same court or  
25 administrator that made such judgment, order, decision,  
26 verdict, or finding and shall be permitted to defend against  
27 such claim on the merits. If requested by the association,  
28 the stay of proceedings may be shortened or waived.

29 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding  
30 any other provision of this chapter, a covered claim, as  
31 defined herein, with respect to which settlement is not

1 effected and pursuant to which suit is not instituted against  
2 the insured of an insolvent member or the association within 1  
3 year after the deadline for filing claims with the receiver of  
4 the insolvent member, or any extension of the deadline, shall  
5 thenceforth be barred as a claim against the association.

6 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired  
7 by a member by refund, dividend, or otherwise from the  
8 association shall be payable within 30 days of receipt to the  
9 Department of Insurance for deposit with the Treasurer to the  
10 credit of the General Revenue Fund. All provisions of chapter  
11 220 relating to penalties and interest on delinquent corporate  
12 income tax payments apply to payments due under this  
13 subsection.

14 Section 16. Subsections (2), (3), and (4) of section  
15 440.386, Florida Statutes, are amended to read:

16 440.386 Individual self-insurers' insolvency;  
17 conservation; liquidation.--

18 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
19 Department of Insurance or the Florida Self-Insurers Guaranty  
20 Association, Incorporated, may commence a delinquency ~~any such~~  
21 proceeding by application to the court for an order directing  
22 the individual self-insurer to show cause why the department  
23 or association should not have the relief prayed for. ~~The~~  
24 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may  
25 ~~petition the department to commence such proceedings, and upon~~  
26 ~~receipt of such petition, the department shall commence such~~  
27 ~~proceeding.~~ On the return of such order to show cause, and  
28 after a full hearing, the court shall either deny the  
29 application or grant the application, together with such other  
30 relief as the nature of the case and the interests of the  
31 claimants, creditors, stockholders, members, subscribers, or



1 public may require. The Department of Insurance and the  
2 association shall give Florida Self-Insurers Guaranty  
3 ~~Association, Incorporated, shall be given~~ reasonable written  
4 notice to each other ~~by the department~~ of all hearings which  
5 pertain to an adjudication of insolvency of a member  
6 individual self-insurer.

7 (3) GROUNDS FOR LIQUIDATION.--The Department of  
8 Insurance or the association may apply to the court for an  
9 order appointing a receiver and directing the receiver to  
10 liquidate the business of a domestic individual self-insurer  
11 if such individual self-insurer is insolvent. ~~Florida~~  
12 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~  
13 ~~the department to apply to the court for such order. Upon~~  
14 ~~receipt of such petition, the department shall apply to the~~  
15 ~~court for such order.~~

16 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL  
17 SELF-INSURERS.--

18 (a) The Department of Insurance or the association may  
19 apply to the court for an order appointing a receiver or  
20 ancillary receiver, and directing the receiver to conserve the  
21 assets within this state, of a foreign individual self-insurer  
22 if such individual self-insurer is insolvent. ~~Florida~~  
23 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~  
24 ~~the department to apply for such order, and, upon receipt of~~  
25 ~~such petition, the department shall apply to the court for~~  
26 ~~such order.~~

27 (b) An order to conserve the assets of an individual  
28 self-insurer shall require the receiver forthwith to take  
29 possession of the property of the receiver within the state  
30 and to conserve it, subject to the further direction of the  
31 court.

1           Section 17. Subsection (8) and paragraph (e) of  
2 subsection (9) of section 440.49, Florida Statutes, are  
3 amended to read:

4           440.49 Limitation of liability for subsequent injury  
5 through Special Disability Trust Fund.--

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

21           (9) SPECIAL DISABILITY TRUST FUND.--

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

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

6 Section 18. Present paragraphs (b) through (h) of  
7 subsection (1) of section 440.491, Florida Statutes, are  
8 redesignated as paragraphs (c) through (i), respectively, and  
9 a new paragraph (b) is added to that subsection, and paragraph  
10 (c) of subsection (1), paragraph (a) of subsection (3),  
11 paragraph (b) of subsection (4), paragraphs (b) and (c) of  
12 subsection (5), and subsections (6), (7), and (8) of that  
13 section are amended, to read:

14 440.491 Reemployment of injured workers;  
15 rehabilitation.--

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

17 (b) "Department" means the Department of Education.

18 (d)(c) "Qualified rehabilitation provider" means a  
19 rehabilitation nurse, rehabilitation counselor, vocational  
20 evaluator, rehabilitation facility, or agency approved by the  
21 Department of Education ~~division~~ as qualified to provide  
22 reemployment assessments, medical care coordination,  
23 reemployment services, or vocational evaluations under this  
24 chapter.

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

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

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

8 (4) REEMPLOYMENT ASSESSMENTS.--

9 (b) The carrier shall authorize only a qualified  
10 rehabilitation provider to provide the reemployment  
11 assessment. The rehabilitation provider shall conduct its  
12 assessment and issue a report to the carrier, the employee,  
13 and the department ~~division~~ within 30 days after the time such  
14 assessment is complete.

15 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT  
16 SERVICES.--

17 (b) If the rehabilitation provider concludes that  
18 training and education are necessary to return the employee to  
19 suitable gainful employment, or if the employee has not  
20 returned to suitable gainful employment within 180 days after  
21 referral for reemployment services or receives \$2,500 in  
22 reemployment services, whichever comes first, the carrier must  
23 discontinue reemployment services and refer the employee to  
24 the department ~~division~~ for a vocational evaluation.

25 Notwithstanding any provision of chapter 289 or chapter 627,  
26 the cost of a reemployment assessment and the first \$2,500 in  
27 reemployment services to an injured employee must not be  
28 treated as loss adjustment expense for workers' compensation  
29 ratemaking purposes.

30 (c) A carrier may voluntarily provide medical care  
31 coordination or reemployment services to the employee at

1 intervals more frequent than those required in this section.  
2 For the purpose of monitoring reemployment, the carrier or the  
3 rehabilitation provider shall report to the department  
4 ~~division~~, in the manner prescribed by the department ~~division~~,  
5 the date of reemployment and wages of the employee. The  
6 carrier shall report its voluntary service activity to the  
7 department ~~division~~ as required by rule. Voluntary services  
8 offered by the carrier for any of the following injuries must  
9 be considered benefits for purposes of ratemaking: traumatic  
10 brain injury; spinal cord injury; amputation, including loss  
11 of an eye or eyes; burns of 5 percent or greater of the total  
12 body surface.

13 (6) TRAINING AND EDUCATION.--

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

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

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

26 (7) PROVIDER QUALIFICATIONS.--

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

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

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

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

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

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

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

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

7 Section 19. Section 440.525, Florida Statutes, is  
8 amended to read:

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

20 Section 20. Subsections (1), (4), and (5) of section  
21 443.012, Florida Statutes, are amended to read:

22 443.012 Unemployment Appeals Commission.--

23 (1) There is created within the Agency for Workforce  
24 Innovation ~~Department of Labor and Employment Security~~ an  
25 Unemployment Appeals Commission, hereinafter referred to as  
26 the "commission." The commission shall consist of a chair and  
27 two other members to be appointed by the Governor, subject to  
28 confirmation by the Senate. Not more than one appointee must  
29 be a person who, on account of previous vocation, employment,  
30 or affiliation, is classified as a representative of  
31 employers; and not more than one such appointee must be a



1 person who, on account of previous vocation, employment, or  
2 affiliation, is classified as a representative of employees.

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

6 (b) The chair shall have the authority to appoint a  
7 general counsel and such other personnel as may be necessary  
8 to carry out the duties and responsibilities of the  
9 commission.

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

16 (d) The remaining members shall be paid a stipend of  
17 \$100 for each day they are engaged in the work of the  
18 commission. The chair and other members shall also be  
19 reimbursed for travel expenses, as provided in s. 112.061.

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

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

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

1           Section 21. Subsection (12) of section 443.036,  
2 Florida Statutes, is amended to read:

3           443.036 Definitions.--As used in this chapter, unless  
4 the context clearly requires otherwise:

5           (12) COMMISSION.--"Commission" means the Unemployment  
6 Appeals Commission of the Department of Labor and Employment  
7 Security.

8           Section 22. Subsection (3) of section 447.02, Florida  
9 Statutes, is amended to read:

10           447.02 Definitions.--The following terms, when used in  
11 this chapter, shall have the meanings ascribed to them in this  
12 section:

13           (3) The term "department" means the Department of  
14 Business and Professional Regulation ~~Labor and Employment~~  
15 ~~Security~~.

16           Section 23. Subsection (4) of section 447.305, Florida  
17 Statutes, is amended to read:

18           447.305 Registration of employee organization.--

19           (4) Notification of registrations and renewals of  
20 registration shall be furnished at regular intervals by the  
21 commission to the Department of Business and Professional  
22 Regulation ~~Labor and Employment Security~~.

23           Section 24. Subsection (4) of section 450.012, Florida  
24 Statutes, is amended to read:

25           450.012 Definitions.--For the purpose of this chapter,  
26 the word, phrase, or term:

27           (4) "Department" means the Department of Business and  
28 Professional Regulation ~~Labor and Employment Security~~.

29           Section 25. Paragraph (j) of subsection (1) of section  
30 450.191, Florida Statutes, is amended to read:

31

1           450.191 Executive Office of the Governor; powers and  
2 duties.--

3           (1) The Executive Office of the Governor is authorized  
4 and directed to:

5           (j) Cooperate with the farm labor office of the  
6 Department of Business and Professional Regulation ~~Labor and~~  
7 ~~Employment Security~~ in the recruitment and referral of migrant  
8 laborers and other persons for the planting, cultivation, and  
9 harvesting of agricultural crops in Florida.

10           Section 26. Subsection (2) of section 450.28, Florida  
11 Statutes, is amended to read:

12           450.28 Definitions.--

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

15           Section 27. Section 627.0915, Florida Statutes, is  
16 amended to read:

17           627.0915 Rate filings; workers' compensation,  
18 drug-free workplace, and safe employers.--The Department of  
19 Insurance shall approve rating plans for workers' compensation  
20 insurance that give specific identifiable consideration in the  
21 setting of rates to employers that either implement a  
22 drug-free workplace program pursuant to rules adopted by the  
23 Division of Workers' Compensation of the Department of  
24 Insurance ~~Labor and Employment Security~~ or implement a safety  
25 program pursuant to provisions of the rating plan or implement  
26 both a drug-free workplace program and a safety program. The  
27 plans must be actuarially sound and must state the savings  
28 anticipated to result from such drug-testing and safety  
29 programs.

30           Section 28. Paragraph (m) of subsection (2) of section  
31 110.205, Florida Statutes, is amended to read:

1 110.205 Career service; exemptions.--

2 (2) EXEMPT POSITIONS.--The exempt positions that are  
3 not covered by this part include the following:

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

30 Section 29. Paragraph (h) of subsection (2) of section  
31 112.19, Florida Statutes, is amended to read:

1           112.19 Law enforcement, correctional, and correctional  
2 probation officers; death benefits.--

3           (2)

4           (h)1. Any employer who employs a full-time law  
5 enforcement, correctional, or correctional probation officer  
6 who, on or after January 1, 1995, suffers a catastrophic  
7 injury, as defined in s. 440.02 ~~s. 440.02(37)~~, in the line of  
8 duty shall pay the entire premium of the employer's health  
9 insurance plan for the injured employee, the injured  
10 employee's spouse, and for each dependent child of the injured  
11 employee until the child reaches the age of majority or until  
12 the end of the calendar year in which the child reaches the  
13 age of 25 if the child continues to be dependent for support,  
14 or the child is a full-time or part-time student and is  
15 dependent for support. The term "health insurance plan" does  
16 not include supplemental benefits that are not part of the  
17 basic group health insurance plan. If the injured employee  
18 subsequently dies, the employer shall continue to pay the  
19 entire health insurance premium for the surviving spouse until  
20 remarried, and for the dependent children, under the  
21 conditions outlined in this paragraph. However:

22           a. Health insurance benefits payable from any other  
23 source shall reduce benefits payable under this section.

24           b. It is unlawful for a person to willfully and  
25 knowingly make, or cause to be made, or to assist, conspire  
26 with, or urge another to make, or cause to be made, any false,  
27 fraudulent, or misleading oral or written statement to obtain  
28 health insurance coverage as provided under this paragraph. A  
29 person who violates this sub-subparagraph commits a  
30 misdemeanor of the first degree, punishable as provided in s.  
31 775.082 or s. 775.083.

1           c. In addition to any applicable criminal penalty,  
2 upon conviction for a violation as described in  
3 sub-subparagraph b., a law enforcement, correctional, or  
4 correctional probation officer or other beneficiary who  
5 receives or seeks to receive health insurance benefits under  
6 this paragraph shall forfeit the right to receive such health  
7 insurance benefits, and shall reimburse the employer for all  
8 benefits paid due to the fraud or other prohibited activity.  
9 For purposes of this sub-subparagraph, "conviction" means a  
10 determination of guilt that is the result of a plea or trial,  
11 regardless of whether adjudication is withheld.

12           2. In order for the officer, spouse, and dependent  
13 children to be eligible for such insurance coverage, the  
14 injury must have occurred as the result of the officer's  
15 response to fresh pursuit, the officer's response to what is  
16 reasonably believed to be an emergency, or an unlawful act  
17 perpetrated by another. Except as otherwise provided herein,  
18 nothing in this paragraph shall be construed to limit health  
19 insurance coverage for which the officer, spouse, or dependent  
20 children may otherwise be eligible, except that a person who  
21 qualifies under this section shall not be eligible for the  
22 health insurance subsidy provided under chapter 121, chapter  
23 175, or chapter 185.

24           Section 30. Paragraph (g) of subsection (2) of section  
25 112.191, Florida Statutes, is amended to read:

26           112.191 Firefighters; death benefits.--

27           (2)

28           (g)1. Any employer who employs a full-time firefighter  
29 who, on or after January 1, 1995, suffers a catastrophic  
30 injury, as defined in s. 440.02 ~~s. 440.02(37)~~, in the line of  
31 duty shall pay the entire premium of the employer's health

1 insurance plan for the injured employee, the injured  
2 employee's spouse, and for each dependent child of the injured  
3 employee until the child reaches the age of majority or until  
4 the end of the calendar year in which the child reaches the  
5 age of 25 if the child continues to be dependent for support,  
6 or the child is a full-time or part-time student and is  
7 dependent for support. The term "health insurance plan" does  
8 not include supplemental benefits that are not part of the  
9 basic group health insurance plan. If the injured employee  
10 subsequently dies, the employer shall continue to pay the  
11 entire health insurance premium for the surviving spouse until  
12 remarried, and for the dependent children, under the  
13 conditions outlined in this paragraph. However:

14       a. Health insurance benefits payable from any other  
15 source shall reduce benefits payable under this section.

16       b. It is unlawful for a person to willfully and  
17 knowingly make, or cause to be made, or to assist, conspire  
18 with, or urge another to make, or cause to be made, any false,  
19 fraudulent, or misleading oral or written statement to obtain  
20 health insurance coverage as provided under this paragraph. A  
21 person who violates this sub-subparagraph commits a  
22 misdemeanor of the first degree, punishable as provided in s.  
23 775.082 or s. 775.083.

24       c. In addition to any applicable criminal penalty,  
25 upon conviction for a violation as described in  
26 sub-subparagraph b., a firefighter or other beneficiary who  
27 receives or seeks to receive health insurance benefits under  
28 this paragraph shall forfeit the right to receive such health  
29 insurance benefits, and shall reimburse the employer for all  
30 benefits paid due to the fraud or other prohibited activity.  
31 For purposes of this sub-subparagraph, "conviction" means a

1 determination of guilt that is the result of a plea or trial,  
2 regardless of whether adjudication is withheld.

3           2. In order for the firefighter, spouse, and dependent  
4 children to be eligible for such insurance coverage, the  
5 injury must have occurred as the result of the firefighter's  
6 response to what is reasonably believed to be an emergency  
7 involving the protection of life or property, or an unlawful  
8 act perpetrated by another. Except as otherwise provided  
9 herein, nothing in this paragraph shall be construed to limit  
10 health insurance coverage for which the firefighter, spouse,  
11 or dependent children may otherwise be eligible, except that a  
12 person who qualifies for benefits under this section shall not  
13 be eligible for the health insurance subsidy provided under  
14 chapter 121, chapter 175, or chapter 185.

15

16 Notwithstanding any provision of this section to the contrary,  
17 the death benefits provided in paragraphs (b), (c), and (f)  
18 shall also be applicable and paid in cases where a firefighter  
19 received bodily injury prior to July 1, 1993, and subsequently  
20 died on or after July 1, 1993, as a result of such  
21 in-line-of-duty injury.

22           Section 31. Section 121.125, Florida Statutes, is  
23 amended to read:

24           121.125 Credit for workers' compensation payment  
25 periods.--A member of the retirement system created by this  
26 chapter who has been eligible or becomes eligible to receive  
27 workers' compensation payments for an injury or illness  
28 occurring during his or her employment while a member of any  
29 state retirement system shall, upon return to active  
30 employment with a covered employer for 1 calendar month or  
31 upon approval for disability retirement in accordance with s.



1 121.091(4), receive full retirement credit for the period  
2 prior to such return to active employment or disability  
3 retirement for which the workers' compensation payments were  
4 received. However, no member may receive retirement credit  
5 for any such period occurring after the earlier of the date of  
6 maximum medical improvement ~~has been attained~~ as defined in s.  
7 440.02 ~~s. 440.02(9)~~ or the date termination has occurred as  
8 defined in s. 121.021(39). The employer of record at the time  
9 of the worker's compensation injury or illness shall make the  
10 required retirement contributions based on the member's rate  
11 of monthly compensation immediately prior to his or her  
12 receiving workers' compensation payments for retirement credit  
13 received by the member.

14 Section 32. Subsection (7) of section 122.03, Florida  
15 Statutes, is amended to read:

16 122.03 Contributions; participants; prior service  
17 credit.--

18 (7) A member of the retirement system created by this  
19 chapter who has been eligible or becomes eligible to receive  
20 workers' compensation payments for an injury or illness  
21 occurring during his or her employment while a member of any  
22 state retirement system shall, upon his or her return to  
23 active employment with a covered employer for 1 calendar month  
24 or upon his or her approval for disability retirement in  
25 accordance with s. 122.09, receive full retirement credit for  
26 the period prior to such return to active employment or  
27 disability retirement for which the workers' compensation  
28 payments were received. However, no member may receive  
29 retirement credit for any such period occurring after the  
30 earlier of the date of maximum medical improvement ~~has been~~  
31 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date

1 termination has occurred as defined in s. 121.021(39). The  
2 employer of record at the time of the worker's compensation  
3 injury or illness shall make the required employee and  
4 employer retirement contributions based on the member's rate  
5 of monthly compensation immediately prior to receipt of  
6 workers' compensation payments.

7 Section 33. Subsection (10) of section 238.06, Florida  
8 Statutes, is amended to read:

9 238.06 Membership application, creditable service, and  
10 time for making contributions.--

11 (10) A member of the retirement system created by this  
12 chapter who has been eligible or becomes eligible to receive  
13 workers' compensation payments for an injury or illness  
14 occurring during his or her employment while a member of any  
15 state retirement system shall, upon his or her return to  
16 active employment with a covered employer for 1 calendar month  
17 or upon his or her approval for disability retirement in  
18 accordance with s. 238.07, receive full retirement credit for  
19 the period prior to such return to active employment or  
20 disability retirement for which the workers' compensation  
21 payments were received. However, no member may receive  
22 retirement credit for any such period occurring after the  
23 earlier of the date of maximum medical improvement ~~has been~~  
24 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date  
25 termination has occurred as defined in s. 121.021(39). The  
26 employer of record at the time of the worker's compensation  
27 injury or illness shall make the required employee and  
28 employer retirement contributions based on the member's rate  
29 of monthly compensation immediately prior to his or her  
30 receiving workers' compensation payments.

31

1           Section 34. Subsection (1) of section 440.10, Florida  
2 Statutes, is amended to read:

3           440.10 Liability for compensation.--

4           (1)(a) Every employer coming within the provisions of  
5 this chapter, including any brought within the chapter by  
6 waiver of exclusion or of exemption, shall be liable for, and  
7 shall secure, the payment to his or her employees, or any  
8 physician, surgeon, or pharmacist providing services under the  
9 provisions of s. 440.13, of the compensation payable under ss.  
10 440.13, 440.15, and 440.16. Any contractor or subcontractor  
11 who engages in any public or private construction in the state  
12 shall secure and maintain compensation for his or her  
13 employees under this chapter as provided in s. 440.38.

14           (b) In case a contractor sublets any part or parts of  
15 his or her contract work to a subcontractor or subcontractors,  
16 all of the employees of such contractor and subcontractor or  
17 subcontractors engaged on such contract work shall be deemed  
18 to be employed in one and the same business or establishment;  
19 and the contractor shall be liable for, and shall secure, the  
20 payment of compensation to all such employees, except to  
21 employees of a subcontractor who has secured such payment.

22           (c) A contractor may require a subcontractor to  
23 provide evidence of workers' compensation insurance or a copy  
24 of his or her certificate of election. A subcontractor  
25 electing to be exempt as a sole proprietor, partner, or  
26 officer of a corporation shall provide a copy of his or her  
27 certificate of election to the contractor.

28           (d)1. If a contractor becomes liable for the payment  
29 of compensation to the employees of a subcontractor who has  
30 failed to secure such payment in violation of s. 440.38, the  
31 contractor or other third-party payor shall be entitled to

1 recover from the subcontractor all benefits paid or payable  
2 plus interest unless the contractor and subcontractor have  
3 agreed in writing that the contractor will provide coverage.

4         2. If a contractor or third-party payor becomes liable  
5 for the payment of compensation to the employee of a  
6 subcontractor who is actively engaged in the construction  
7 industry and has elected to be exempt from the provisions of  
8 this chapter, but whose election is invalid, the contractor or  
9 third-party payor may recover from the claimant, partnership,  
10 or corporation all benefits paid or payable plus interest,  
11 unless the contractor and the subcontractor have agreed in  
12 writing that the contractor will provide coverage.

13         (e) A subcontractor is not liable for the payment of  
14 compensation to the employees of another subcontractor on such  
15 contract work and is not protected by the  
16 exclusiveness-of-liability provisions of s. 440.11 from action  
17 at law or in admiralty on account of injury of such employee  
18 of another subcontractor.

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

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

28         1. The independent contractor provides the general  
29 contractor with an affidavit stating that he or she meets all  
30 the requirements of s. 440.02(15)(d)~~s. 440.02(14)(d)~~; and

31

1           2. The independent contractor provides the general  
2 contractor with a valid certificate of workers' compensation  
3 insurance or a valid certificate of exemption issued by the  
4 division.

5  
6 A sole proprietor, partner, or officer of a corporation who  
7 elects exemption from this chapter by filing a certificate of  
8 election under s. 440.05 may not recover benefits or  
9 compensation under this chapter. An independent contractor  
10 who provides the general contractor with both an affidavit  
11 stating that he or she meets the requirements of s.  
12 440.02(15)(d)~~s. 440.02(14)(d)~~ and a certificate of exemption  
13 is not an employee under s. 440.02(15)(c)~~s. 440.02(14)(c)~~ and  
14 may not recover benefits under this chapter. For purposes of  
15 determining the appropriate premium for workers' compensation  
16 coverage, carriers may not consider any person who meets the  
17 requirements of this paragraph to be an employee.

18           Section 35. Subsection (1) of section 440.104, Florida  
19 Statutes, is amended to read:

20           440.104 Competitive bidder; civil actions.--

21           (1) Any person engaged in the construction industry,  
22 as provided in s. 440.02 ~~s. 440.02(7)~~, who loses a competitive  
23 bid for a contract shall have a cause of action for damages  
24 against the person awarded the contract for which the bid was  
25 made, if the person making the losing bid establishes that the  
26 winning bidder knew or should have known that he or she was in  
27 violation of s. 440.10, s. 440.105, or s. 440.38 while  
28 performing the work under the contract.

29           Section 36. Subsection (4) of section 440.14, Florida  
30 Statutes, is amended to read:

31           440.14 Determination of pay.--

1           (4) Upon termination of the employee or upon  
2 termination of the payment of fringe benefits of any employee  
3 who is collecting indemnity benefits pursuant to s. 440.15(2)  
4 or (3)(b), the employer shall within 7 days of such  
5 termination file a corrected 13-week wage statement reflecting  
6 the wages paid and the fringe benefits that had been paid to  
7 the injured employee, as provided defined in s. 440.02(28)~~s.~~  
8 ~~440.02(27)~~.

9           Section 37. Sections 20.171 and 440.4416, Florida  
10 Statutes, are repealed.

11           Section 38. If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 invalidity does not affect other provisions or applications of  
14 the act which can be given effect without the invalid  
15 provision or application, and to this end the provisions of  
16 this act are severable.

17           Section 39. This act shall take effect January 1,  
18 2002.

19  
20                           \*\*\*\*\*

21   LEGISLATIVE SUMMARY

22           Transfers various divisions, offices, and functions from  
23 the Department of Labor and Employment Security to the  
24 Department of Insurance, the Agency for Health Care  
25 Administration, the Department of Education, the  
26 Department of Business and Professional Regulation, and  
27 the State Technology Office. Transfers the Unemployment  
28 Appeals Commission to the Agency for Workforce  
29 Innovation. Makes other revisions, to conform. (See bill  
30 for details.)  
31

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.