

By the Committee on Banking and Insurance; and Senator Latvala

311-830-02

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 the position of
30 General Counsel of the Department of Labor and
31 Employment Security to the Department of

1 Insurance by a type two transfer; amending s.
2 20.13, F.S.; establishing the Division of
3 Workers' Compensation within the Department of
4 Insurance; amending s. 440.02, F.S.; providing
5 a definition for the term "agency"; conforming
6 definitions of "department" and "division" to
7 the transfer of the Division of Workers'
8 Compensation; amending ss. 440.021, 440.05,
9 440.09, 440.10, 440.102, 440.103, 440.105,
10 440.106, 440.107, 440.108, 440.125, F.S.;
11 conforming references to reflect the transfer
12 of the Division of Workers' Compensation;
13 amending s. 440.13, F.S., relating to medical
14 services and supplies under the workers'
15 compensation law; reassigning certain functions
16 from the Division of Workers' Compensation to
17 the Agency for Health Care Administration;
18 conforming agency references to reflect the
19 transfer of the Division of Workers'
20 Compensation; amending ss. 440.134, 440.14,
21 440.15, 440.185, 440.191, 440.192, 440.1925,
22 F.S.; conforming provisions to changes made by
23 the act; amending s. 440.20, 440.207, 440.211,
24 F.S., relating to payment of compensation;
25 conforming provisions to changes made by the
26 act; amending s. 440.24, F.S.; providing for
27 the sale of securities on deposit to satisfy a
28 compensation order; amending ss. 440.25,
29 440.271, F.S., relating to mediation, hearings,
30 and appeals; conforming provisions to changes
31 made by the act; amending ss. 440.345, 440.35,

1 F.S., relating to the reporting of attorney's
2 fees and employer records of injury or death;
3 conforming provisions to changes made by the
4 act; amending s. 440.38, F.S.; transferring
5 operation of provisions requiring the securing
6 of payment of compensation by employers from
7 the Division of Workers' Compensation of the
8 Department of Labor and Employment Security to
9 the Florida Self-Insurer's Guaranty
10 Association, Incorporated, and the Department
11 of Insurance; revising and clarifying
12 requirements and procedures; providing powers
13 and duties of the association and the
14 departments; providing for allocation or
15 payment of state funds to the association for
16 certain purposes; providing rulemaking
17 authority; amending s. 440.381, F.S., relating
18 to audits of payroll and classifications;
19 conforming provisions to changes made by the
20 act; amending s. 440.385, F.S.; revising and
21 clarifying provisions relating to the
22 association's creation, board of directors,
23 powers and duties, insolvency fund, and plan of
24 operation; providing additional powers of the
25 association; transferring the powers and duties
26 of the Department of Labor and Employment
27 Security relating to the association to the
28 Department of Insurance and revising such
29 powers and duties; providing additional powers
30 and duties of the Department of Insurance;
31 providing for oversight of the association by

1 the department; deleting certain provisions
2 relating to detection and prevention of
3 employer insolvencies; amending s. 440.386,
4 F.S.; providing parity for the association with
5 the Department of Insurance relating to
6 proceedings for delinquency, liquidation, and
7 conservation of assets; amending ss. 440.40,
8 440.41, 440.42, F.S., relating to employers
9 posting notice of compensation, substitution of
10 carriers for employers with respect to notice
11 and the effect of an order, and expiration of
12 insurance policies; conforming references to
13 reflect the transfer of the Division of
14 Workers' Compensation; amending s. 440.44,
15 F.S., relating to the administration of the
16 Workers' Compensation Law; conforming
17 references to reflect the transfer of the
18 Division of Workers' Compensation; amending s.
19 440.49, F.S., relating to the Special
20 Disability Trust Fund; conforming references to
21 reflect the transfer of the Division of
22 Workers' Compensation; reassigning
23 responsibility for a report on the Special
24 Disability Trust Fund to the Department of
25 Insurance; amending s. 440.491, F.S., relating
26 to the reemployment of injured workers;
27 conforming references to the transfer of
28 rehabilitation and reemployment services to the
29 Department of Education; amending ss. 440.50,
30 440.51, 440.52, F.S., relating to the Workers'
31 Compensation Administration Trust Fund,

1 expenses of administration, and certain
2 responsibilities of insurance carriers;
3 conforming references to reflect the transfer
4 of the Division of Workers' Compensation;
5 amending s. 440.525, F.S., relating to the
6 examination of carriers; conforming agency
7 references to the transfer of programs from the
8 Department of Labor and Employment Security to
9 the Department of Insurance; amending ss.
10 440.572, 440.59, 440.591, 440.593, F.S.,
11 relating to authorization to self-insure,
12 reporting requirements, and rulemaking
13 authority; conforming provisions to changes
14 made by the act; amending s. 443.012, F.S.;
15 providing for the Unemployment Appeals
16 Commission to be created within the Agency for
17 Workforce Innovation rather than the Department
18 of Labor and Employment Security; conforming
19 provisions; amending s. 443.036, F.S.;
20 conforming the definition of "commission" to
21 the transfer of the Unemployment Appeals
22 Commission to the Agency for Workforce
23 Innovation; amending s. 447.02, F.S.;
24 conforming the definition of "department" to
25 the transfer of the regulation of labor
26 organizations to the Department of Business and
27 Professional Regulation; amending s. 447.305,
28 F.S.; providing that notification of
29 registrations and renewals of registration
30 shall be furnished to the Department of
31 Business and Professional Regulation, to

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

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. (1) All powers, duties, functions, rules,
29 records, personnel, property, and unexpended balances of
30 appropriations, allocations, and other funds of the Division
31 of Workers' Compensation are transferred by a type two

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

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

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

31

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 related systems and
27 transfer ownership of these systems to the Department of
28 Insurance. If the Department of Insurance ultimately
29 determines that it is technologically feasible and cost
30 effective to transfer ownership of these systems from the
31 State Technology Office to the Department of Insurance, the

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

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

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

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

28 (d) The records, property, and unexpended balances of
29 appropriations, allocations, and other funds and resources of
30 the Office of the Secretary and the Office of Administrative
31 Services of the Department of Labor and Employment Security

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

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

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

22 (7) The Department of Management Services shall become
23 the custodian of any property of the Department of Labor and
24 Employment Security which is not otherwise transferred for the
25 purposes of chapter 273, Florida Statutes. The Department of
26 Management Services is authorized to permit the use of such
27 property by organizations as necessary to implement the
28 provisions of this act.

29 (8) The Department of Banking and Finance, in
30 conjunction with the Office of the Attorney General, may use
31 any unexpended balances of the Department of Labor and

1 Employment Security to settle any claims or leases, pay out
2 personnel annual leave or sick leave, or close out other costs
3 owed by the department, regardless of whether such costs
4 relate to federal, state, or local governments, department
5 employees, or the private sector. Any remaining balances of
6 the department shall be transferred as directed by this act or
7 by budget amendment.

8 (9) Except as otherwise provided in subsection (1) and
9 notwithstanding any other provision of law, any binding
10 contract or interagency agreement existing on or before
11 January 1, 2002, between the Department of Labor and
12 Employment Security, or an entity or agent of the department,
13 and any other agency, entity, or person shall continue as a
14 binding contract or agreement for the remainder of the term of
15 such contract or agreement with the successor department,
16 agency, or entity responsible for the program, activity, or
17 functions relative to the contract or agreement.

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

28 (11) To expedite the acquisition of goods and services
29 for implementation of the provisions of this act, the
30 Department of Insurance, the Agency for Health Care
31 Administration, the Department of Education, the Department of

1 Business and Professional Regulation, the Agency for Workforce
2 Innovation, and the State Technology Office are exempt from
3 the provisions of chapter 287, Florida Statutes, when
4 contracting for the purchase or lease of goods or services
5 under this act. This section shall take effect upon this act
6 becoming a law and shall expire July 1, 2002.

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

21 (13) Notwithstanding any provisions of chapter 120,
22 Florida Statutes, to the contrary, the Department of
23 Insurance, the Agency for Health Care Administration, the
24 Department of Education, the Department of Business and
25 Professional Regulation, the Agency for Workforce Innovation,
26 and the State Technology Office are authorized to develop
27 emergency rules relating to and in furtherance of the orderly
28 implementation of the provisions of this act. This section
29 shall take effect upon this act becoming a law, and these
30 emergency rules shall be valid for a period of 180 days after
31 January 1, 2002.

1 (14) The General Counsel position and the related
2 property and unexpended balances of appropriations,
3 allocations, and other funds, are transferred from the Office
4 of General Counsel of the Department of Labor and Employment
5 Security to the Department of Insurance by a type two
6 transfer, as defined in section 20.06(2), Florida Statutes.

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

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

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

13 (k) Division of Workers' Compensation.

14 Section 3. Subsections (3) through (39) of section
15 440.02, Florida Statutes, are renumbered as subsections (4)
16 through (40), respectively, a new subsection (3) is added to
17 that section, and renumbered subsections (12), (14), and (15)
18 are amended, to read:

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

22 (3) "Agency" means the Agency for Health Care
23 Administration.

24 (12)(11) "Department" means the Department of
25 Insurance ~~Labor and Employment Security.~~

26 (14)(13) "Division" means the Division of Workers'
27 Compensation of the Department of Insurance ~~Labor and~~
28 Employment Security.

29 (15)(14)(a) "Employee" means any person engaged in any
30 employment under any appointment or contract of hire or
31 apprenticeship, express or implied, oral or written, whether

1 lawfully or unlawfully employed, and includes, but is not
2 limited to, aliens and minors.

3 (b) "Employee" includes any person who is an officer
4 of a corporation and who performs services for remuneration
5 for such corporation within this state, whether or not such
6 services are continuous.

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

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

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

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

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

1 than three partners in a partnership that is actively engaged
2 in the construction industry may elect to be excluded. A sole
3 proprietor or partner who is actively engaged in the
4 construction industry and who elects to be exempt from this
5 chapter by filing a written notice of the election with the
6 department ~~division~~ as provided in s. 440.05 is not an
7 employee. For purposes of this chapter, an independent
8 contractor is an employee unless he or she meets all of the
9 conditions set forth in subparagraph (d)1.

10 (d) "Employee" does not include:

11 1. An independent contractor, if:

12 a. The independent contractor maintains a separate
13 business with his or her own work facility, truck, equipment,
14 materials, or similar accommodations;

15 b. The independent contractor holds or has applied for
16 a federal employer identification number, unless the
17 independent contractor is a sole proprietor who is not
18 required to obtain a federal employer identification number
19 under state or federal requirements;

20 c. The independent contractor performs or agrees to
21 perform specific services or work for specific amounts of
22 money and controls the means of performing the services or
23 work;

24 d. The independent contractor incurs the principal
25 expenses related to the service or work that he or she
26 performs or agrees to perform;

27 e. The independent contractor is responsible for the
28 satisfactory completion of work or services that he or she
29 performs or agrees to perform and is or could be held liable
30 for a failure to complete the work or services;

31

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

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

6 h. The independent contractor has continuing or
7 recurring business liabilities or obligations; and

8 i. The success or failure of the independent
9 contractor's business depends on the relationship of business
10 receipts to expenditures.

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

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

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

28 4. An owner-operator of a motor vehicle who transports
29 property under a written contract with a motor carrier which
30 evidences a relationship by which the owner-operator assumes
31 the responsibility of an employer for the performance of the

1 contract, if the owner-operator is required to furnish the
2 necessary motor vehicle equipment and all costs incidental to
3 the performance of the contract, including, but not limited
4 to, fuel, taxes, licenses, repairs, and hired help; and the
5 owner-operator is paid a commission for transportation service
6 and is not paid by the hour or on some other time-measured
7 basis.

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

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

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

28 b. Volunteers participating in federal programs
29 established under Pub. L. No. 93-113.

30 7. Any officer of a corporation who elects to be
31 exempt from this chapter.

1 8. A sole proprietor or officer of a corporation who
2 actively engages in the construction industry, and a partner
3 in a partnership that is actively engaged in the construction
4 industry, who elects to be exempt from the provisions of this
5 chapter. Such sole proprietor, officer, or partner is not an
6 employee for any reason until the notice of revocation of
7 election filed pursuant to s. 440.05 is effective.

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

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

22 11. A person who performs services as a sports
23 official for an entity sponsoring an interscholastic sports
24 event or for a public entity or private, nonprofit
25 organization that sponsors an amateur sports event. For
26 purposes of this subparagraph, such a person is an independent
27 contractor. For purposes of this subparagraph, the term
28 "sports official" means any person who is a neutral
29 participant in a sports event, including, but not limited to,
30 umpires, referees, judges, linespersons, scorekeepers, or
31 timekeepers. This subparagraph does not apply to any person

1 employed by a district school board who serves as a sports
2 official as required by the employing school board or who
3 serves as a sports official as part of his or her
4 responsibilities during normal school hours.

5 Section 4. Section 440.021, Florida Statutes, is
6 amended to read:

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

28 Section 5. Section 440.05, Florida Statutes, is
29 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Section 6. Paragraph (d) of subsection (7) of section
12 440.09, Florida Statutes, is amended to read:

13 440.09 Coverage.--

14 (7)

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

19 Section 7. Paragraphs (f) and (g) of subsection (1) of
20 section 440.10, Florida Statutes, are amended to read:

21 440.10 Liability for compensation.--

22 (1)

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (7) EMPLOYER PROTECTION.--

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

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

3 Section 9. Section 440.103, Florida Statutes, is
4 amended to read:

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

22 Section 10. Paragraph (a) of subsection (2) of section
23 440.105, Florida Statutes, is amended to read:

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

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

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

31

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

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

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

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

15 Section 11. Subsections (3) and (4) of section
16 440.106, Florida Statutes, are amended to read:

17 440.106 Civil remedies; administrative penalties.--

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

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

28 Section 12. Section 440.107, Florida Statutes, is
29 amended to read:

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

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

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

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

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

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

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

31

1 (6) The department ~~division~~ may file a complaint in
2 the circuit court in and for Leon County to enjoin any
3 employer, who has failed to secure compensation as required by
4 this chapter, from employing individuals and from conducting
5 business until the employer presents evidence satisfactory to
6 the department ~~division~~ of having secured payment for
7 compensation and pays a civil penalty to the department
8 ~~division~~, to be deposited by the department ~~division~~ into the
9 Workers' Compensation Administration Trust Fund, in the amount
10 of \$100 per day for each day the employer was not in
11 compliance with this chapter.

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

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

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

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

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

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

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

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

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

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

10 Section 13. Subsection (1) of section 440.108, Florida
11 Statutes, is amended to read:

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

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

31

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

3 (a) Jeopardize the integrity of another active
4 investigation;

5 (b) Reveal a trade secret, as defined in s. 688.002;

6 (c) Reveal business or personal financial information;

7 (d) Reveal the identity of a confidential source;

8 (e) Defame or cause unwarranted damage to the good
9 name or reputation of an individual or jeopardize the safety
10 of an individual; or

11 (f) Reveal investigative techniques or procedures.

12 Section 14. Section 440.125, Florida Statutes, is
13 amended to read:

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

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

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

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

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

15 Section 15. Subsections (1), (3), (4), (5), (6), (7),
16 (8), (9), (11), (12), (13), and (15) of section 440.13,
17 Florida Statutes, are amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

13 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

1 eligible for workers' compensation benefits. To refuse to make
2 such treatment available is cause for revocation of a license.

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

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

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

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

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

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

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

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

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.

30
31

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

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

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

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

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

27 (9) EXPERT MEDICAL ADVISORS.--

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

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

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

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

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

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

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

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

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

3 (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 (15) PRACTICE PARAMETERS.--

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

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

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

31

1 (d) Practice parameters developed under this section
2 must be used by carriers and the agency ~~division~~ in evaluating
3 the appropriateness and overutilization of medical services
4 provided to injured employees.

5 Section 16. Subsection (23) of section 440.134,
6 Florida Statutes, is amended to read:

7 440.134 Workers' compensation managed care
8 arrangement.--

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

15 Section 17. Subsection (3) of section 440.14, Florida
16 Statutes, is amended to read:

17 440.14 Determination of pay.--

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

22 Section 18. Paragraphs (d) and (f) of subsection (1),
23 paragraphs (c) and (d) of subsection (2), subsections (3),
24 (4), and (5), and paragraphs (b) and (c) of subsection (10) of
25 section 440.15, Florida Statutes, are amended to read:

26 440.15 Compensation for disability.--Compensation for
27 disability shall be paid to the employee, subject to the
28 limits provided in s. 440.12(2), as follows:

29 (1) PERMANENT TOTAL DISABILITY.--

30 (d) If an employee who is being paid compensation for
31 permanent total disability becomes rehabilitated to the extent

1 that she or he establishes an earning capacity, the employee
2 shall be paid, instead of the compensation provided in
3 paragraph (a), benefits pursuant to subsection (3). The
4 department ~~division~~ shall adopt rules to enable a permanently
5 and totally disabled employee who may have reestablished an
6 earning capacity to undertake a trial period of reemployment
7 without prejudicing her or his return to permanent total
8 status in the case that such employee is unable to sustain an
9 earning capacity.

10 (f)1. If permanent total disability results from
11 injuries that occurred subsequent to June 30, 1955, and for
12 which the liability of the employer for compensation has not
13 been discharged under s. 440.20(11), the injured employee
14 shall receive additional weekly compensation benefits equal to
15 5 percent of her or his weekly compensation rate, as
16 established pursuant to the law in effect on the date of her
17 or his injury, multiplied by the number of calendar years
18 since the date of injury. The weekly compensation payable and
19 the additional benefits payable under this paragraph, when
20 combined, may not exceed the maximum weekly compensation rate
21 in effect at the time of payment as determined pursuant to s.
22 440.12(2). Entitlement to these supplemental payments shall
23 cease at age 62 if the employee is eligible for social
24 security benefits under 42 U.S.C. ss. 402 and 423, whether or
25 not the employee has applied for such benefits. These
26 supplemental benefits shall be paid by the department ~~division~~
27 out of the Workers' Compensation Administration Trust Fund
28 when the injury occurred subsequent to June 30, 1955, and
29 before July 1, 1984. These supplemental benefits shall be paid
30 by the employer when the injury occurred on or after July 1,
31

1 1984. Supplemental benefits are not payable for any period
2 prior to October 1, 1974.

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

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

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

30 (2) TEMPORARY TOTAL DISABILITY.--

31

1 (c) Temporary total disability benefits paid pursuant
2 to this subsection shall include such period as may be
3 reasonably necessary for training in the use of artificial
4 members and appliances, and shall include such period as the
5 employee may be receiving training and education under a
6 program pursuant to s. 440.491. Notwithstanding s. 440.02 ~~s.~~
7 ~~440.02(9)~~, the date of maximum medical improvement for
8 purposes of paragraph (3)(b) shall be no earlier than the last
9 day for which such temporary disability benefits are paid.

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

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

23 (a) Impairment benefits.--

24 1. Once the employee has reached the date of maximum
25 medical improvement, impairment benefits are due and payable
26 within 20 days after the carrier has knowledge of the
27 impairment.

28 2. The three-member panel, in cooperation with the
29 department ~~division~~, shall establish and use a uniform
30 permanent impairment rating schedule. This schedule must be
31 based on medically or scientifically demonstrable findings as

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

31

1 3. All impairment income benefits shall be based on an
2 impairment rating using the impairment schedule referred to in
3 subparagraph 2. Impairment income benefits are paid weekly at
4 the rate of 50 percent of the employee's average weekly
5 temporary total disability benefit not to exceed the maximum
6 weekly benefit under s. 440.12. An employee's entitlement to
7 impairment income benefits begins the day after the employee
8 reaches maximum medical improvement or the expiration of
9 temporary benefits, whichever occurs earlier, and continues
10 until the earlier of:

11 a. The expiration of a period computed at the rate of
12 3 weeks for each percentage point of impairment; or

13 b. The death of the employee.

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

1 | been certified as having reached maximum medical improvement
2 | before the expiration of 102 weeks after the date temporary
3 | total disability benefits begin to accrue, the carrier shall
4 | notify the treating doctor of the requirements of this
5 | section.

6 | 5. The carrier shall pay the employee impairment
7 | income benefits for a period based on the impairment rating.

8 | 6. The department ~~division~~ may by rule specify forms
9 | and procedures governing the method of payment of wage loss
10 | and impairment benefits for dates of accidents before January
11 | 1, 1994, and for dates of accidents on or after January 1,
12 | 1994.

13 | (b) Supplemental benefits.--

14 | 1. All supplemental benefits must be paid in
15 | accordance with this subsection. An employee is entitled to
16 | supplemental benefits as provided in this paragraph as of the
17 | expiration of the impairment period, if:

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

21 | b. The employee has not returned to work or has
22 | returned to work earning less than 80 percent of the
23 | employee's average weekly wage as a direct result of the
24 | employee's impairment; and

25 | c. The employee has in good faith attempted to obtain
26 | employment commensurate with the employee's ability to work.

27 | 2. If an employee is not entitled to supplemental
28 | benefits at the time of payment of the final weekly impairment
29 | income benefit because the employee is earning at least 80
30 | percent of the employee's average weekly wage, the employee
31 | may become entitled to supplemental benefits at any time

1 within 1 year after the impairment income benefit period ends
2 if:

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

6 b. The employee meets the other requirements of
7 subparagraph 1.; and

8 c. The employee's decrease in earnings is a direct
9 result of the employee's impairment from the compensable
10 injury.

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

27 4. During the period that impairment income benefits
28 or supplemental income benefits are being paid, the carrier
29 has the affirmative duty to determine at least annually
30 whether any extended unemployment or underemployment is a
31 direct result of the employee's impairment. To accomplish this

1 purpose, the department ~~division~~ may require periodic reports
2 from the employee and the carrier, and it may, at the
3 carrier's expense, require any physical or other examinations,
4 vocational assessments, or other tests or diagnoses necessary
5 to verify that the carrier is performing its duty. Not more
6 than once in each 12 calendar months, the employee and the
7 carrier may each request that the department ~~division~~ review
8 the status of the employee and determine whether the carrier
9 has performed its duty with respect to whether the employee's
10 unemployment or underemployment is a direct result of
11 impairment from the compensable injury.

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

26 6. The carrier shall begin payment of supplemental
27 benefits not later than the seventh day after the expiration
28 date of the impairment income benefit period and shall
29 continue to timely pay those benefits. The carrier may request
30 a mediation conference for the purpose of contesting the
31

1 employee's entitlement to or the amount of supplemental income
2 benefits.

3 7. Supplemental benefits are calculated quarterly and
4 paid monthly. For purposes of calculating supplemental
5 benefits, 80 percent of the employee's average weekly wage and
6 the average wages the employee has earned per week are
7 compared quarterly. For purposes of this paragraph, if the
8 employee is offered a bona fide position of employment that
9 the employee is capable of performing, given the physical
10 condition of the employee and the geographic accessibility of
11 the position, the employee's weekly wages are considered
12 equivalent to the weekly wages for the position offered to the
13 employee.

14 8. Supplemental benefits are payable at the rate of 80
15 percent of the difference between 80 percent of the employee's
16 average weekly wage determined pursuant to s. 440.14 and the
17 weekly wages the employee has earned during the reporting
18 period, not to exceed the maximum weekly income benefit under
19 s. 440.12.

20 9. The department ~~division~~ may by rule define terms
21 that are necessary for the administration of this section and
22 forms and procedures governing the method of payment of
23 supplemental benefits for dates of accidents before January 1,
24 1994, and for dates of accidents on or after January 1, 1994.

25 (c) Duration of temporary impairment and supplemental
26 income benefits.--The employee's eligibility for temporary
27 benefits, impairment income benefits, and supplemental
28 benefits terminates on the expiration of 401 weeks after the
29 date of injury.

30 (4) TEMPORARY PARTIAL DISABILITY.--

31

1 (a) In case of temporary partial disability,
2 compensation shall be equal to 80 percent of the difference
3 between 80 percent of the employee's average weekly wage and
4 the salary, wages, and other remuneration the employee is able
5 to earn, as compared weekly; however, the weekly benefits may
6 not exceed an amount equal to $66 \frac{2}{3}$ percent of the
7 employee's average weekly wage at the time of injury. In order
8 to simplify the comparison of the preinjury average weekly
9 wage with the salary, wages, and other remuneration the
10 employee is able to earn, the department ~~division~~ may by rule
11 provide for the modification of the weekly comparison so as to
12 coincide as closely as possible with the injured worker's pay
13 periods. The amount determined to be the salary, wages, and
14 other remuneration the employee is able to earn shall in no
15 case be less than the sum actually being earned by the
16 employee, including earnings from sheltered employment.

17 (b) Such benefits shall be paid during the continuance
18 of such disability, not to exceed a period of 104 weeks, as
19 provided by this subsection and subsection (2). Once the
20 injured employee reaches the maximum number of weeks,
21 temporary disability benefits cease and the injured worker's
22 permanent impairment must be determined. The department
23 ~~division~~ may by rule specify forms and procedures governing
24 the method of payment of temporary disability benefits for
25 dates of accidents before January 1, 1994, and for dates of
26 accidents on or after January 1, 1994.

27 (6) OBLIGATION TO REHIRE.--If the employer has not in
28 good faith made available to the employee, within a 100-mile
29 radius of the employee's residence, work appropriate to the
30 employee's physical limitations within 30 days after the
31 carrier notifies the employer of maximum medical improvement

1 and the employee's physical limitations, the employer shall
2 pay to the department ~~division~~ for deposit into the Workers'
3 Compensation Administration Trust Fund a fine of \$250 for
4 every \$5,000 of the employer's workers' compensation premium
5 or payroll, not to exceed \$2,000 per violation, as the
6 department ~~division~~ requires by rule. The employer is not
7 subject to this subsection if the employee is receiving
8 permanent total disability benefits or if the employer has 50
9 or fewer employees.

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

13 (b) If the provisions of 42 U.S.C. s. 424(a) are
14 amended to provide for a reduction or increase of the
15 percentage of average current earnings that the sum of
16 compensation benefits payable under this chapter and the
17 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
18 the amount of the reduction of benefits provided in this
19 subsection shall be reduced or increased accordingly. The
20 department ~~division~~ may by rule specify forms and procedures
21 governing the method for calculating and administering the
22 offset of benefits payable under this chapter and benefits
23 payable under 42 U.S.C. ss. 402 and 423. The department
24 ~~division~~ shall have first priority in taking any available
25 social security offsets on dates of accidents occurring before
26 July 1, 1984.

27 (c) No disability compensation benefits payable for
28 any week, including those benefits provided by paragraph
29 (1)(f), shall be reduced pursuant to this subsection until the
30 Social Security Administration determines the amount otherwise
31 payable to the employee under 42 U.S.C. ss. 402 and 423 and

1 the employee has begun receiving such social security benefit
2 payments. The employee shall, upon demand by the department
3 ~~division~~, the employer, or the carrier, authorize the Social
4 Security Administration to release disability information
5 relating to her or him and authorize the Division of
6 Unemployment Compensation to release unemployment compensation
7 information relating to her or him, in accordance with rules
8 to be promulgated by the department ~~division~~ prescribing the
9 procedure and manner for requesting the authorization and for
10 compliance by the employee. Neither the department ~~division~~
11 nor the employer or carrier shall make any payment of benefits
12 for total disability or those additional benefits provided by
13 paragraph (1)(f) for any period during which the employee
14 willfully fails or refuses to authorize the release of
15 information in the manner and within the time prescribed by
16 such rules. The authority for release of disability
17 information granted by an employee under this paragraph shall
18 be effective for a period not to exceed 12 months, such
19 authority to be renewable as the department ~~division~~ may
20 prescribe by rule.

21 Section 19. Subsections (2), (3), (4), (5), (7), and
22 (10) of section 440.185, Florida Statutes, are amended to
23 read:

24 440.185 Notice of injury or death; reports; penalties
25 for violations.--

26 (2) Within 7 days after actual knowledge of injury or
27 death, the employer shall report such injury or death to its
28 carrier, in a format prescribed by the department ~~division~~,
29 and shall provide a copy of such report to the employee or the
30 employee's estate. The report of injury shall contain the
31 following information:

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

9
10 The carrier shall, within 14 days after the employer's receipt
11 of the form reporting the injury, file the information
12 required by this subsection with the department ~~division in~~
13 ~~Tallahassee~~. However, the department ~~division~~ may by rule
14 provide for a different reporting system for those types of
15 injuries which it determines should be reported in a different
16 manner and for those cases which involve minor injuries
17 requiring professional medical attention in which the employee
18 does not lose more than 7 days of work as a result of the
19 injury and is able to return to the job immediately after
20 treatment and resume regular work.

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

28 (4) Within 3 days after the employer or the employee
29 informs the carrier of an injury the carrier shall mail to the
30 injured worker an informational brochure approved by the
31 department ~~division~~ which sets forth in clear and

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

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

28 (7) Every carrier shall file with the department
29 ~~division~~ within 21 days after the issuance of a policy or
30 contract of insurance such policy information as the
31 department ~~division~~ requires, including notice of whether the

1 policy is a minimum premium policy. Notice of cancellation or
2 expiration of a policy as set out in s. 440.42(3) shall be
3 mailed to the department ~~division~~ in accordance with rules
4 adopted by the department ~~division~~ under chapter 120. The
5 department ~~division~~ may contract with a private entity for the
6 collection of policy information required to be filed by
7 carriers under this subsection and the receipt of notices of
8 cancellation or expiration of a policy required to be filed by
9 carriers under s. 440.42(3). The submission of policy
10 information or notices of cancellation or expiration to the
11 contracted private entity satisfies the filing requirements of
12 this subsection and s. 440.42(3).

13 (10) The department ~~division~~ may by rule prescribe
14 forms and procedures governing the submission of the change in
15 claims administration report and the risk class code and
16 standard industry code report for all lost time and denied
17 lost-time cases. The department ~~division~~ may by rule define
18 terms that are necessary for the effective administration of
19 this section.

20 Section 20. Subsection (1) and paragraph (d) of
21 subsection (2) of section 440.191, Florida Statutes, are
22 amended to read:

23 440.191 Employee Assistance and Ombudsman Office.--

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

1 employers, and employees, to attempt to resolve disagreements
2 in good faith and to cooperate with the department's
3 ~~division's~~ efforts to resolve disagreements between the
4 parties. The department ~~division~~ may by rule prescribe
5 definitions that are necessary for the effective
6 administration of this section.

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

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

20 (2)

21 (d) The Employee Assistance and Ombudsman Office may
22 assign an ombudsman to assist the employee in resolving the
23 dispute. If the dispute is not resolved within 30 days after
24 the employee contacts the office, the ombudsman shall, at the
25 employee's request, assist the employee in drafting a petition
26 for benefits and explain the procedures for filing petitions.
27 The department ~~division~~ may by rule determine the method used
28 to calculate the 30-day period. The Employee Assistance and
29 Ombudsman Office may not represent employees before the judges
30 of compensation claims. An employer or carrier may not pay any
31 attorneys' fees on behalf of the employee for services

1 rendered or costs incurred in connection with this section,
2 unless expressly authorized elsewhere in this chapter.

3 Section 21. Subsection (1) of section 440.192, Florida
4 Statutes, is amended to read:

5 440.192 Procedure for resolving benefit disputes.--

6 (1) Subject to s. 440.191, any employee who has not
7 received a benefit to which the employee believes she or he is
8 entitled under this chapter shall file by certified mail, or
9 by electronic means approved by the Deputy Chief Judge, with
10 the Office of the Judges of Compensation Claims a petition for
11 benefits which meets the requirements of this section. The
12 department ~~division~~ shall inform employees of the location of
13 the Office of the Judges of Compensation Claims for purposes
14 of filing a petition for benefits. The employee shall also
15 serve copies of the petition for benefits by certified mail,
16 or by electronic means approved by the Deputy Chief Judge,
17 upon the employer and the employer's carrier. The Deputy Chief
18 Judge shall refer the petitions to the judges of compensation
19 claims.

20 Section 22. Subsections (1), (3), and (4) of section
21 440.1925, Florida Statutes, are amended to read:

22 440.1925 Procedure for resolving maximum medical
23 improvement or permanent impairment disputes.--

24 (1) Notwithstanding the limitations on carrier
25 independent medical examinations in s. 440.13, an employee or
26 carrier who wishes to obtain an opinion other than the opinion
27 of the treating physician or an agency ~~a division~~ advisor on
28 the issue of permanent impairment may obtain one independent
29 medical examination, except that the employee or carrier who
30 selects the treating physician is not entitled to obtain an
31 alternate opinion on the issue of permanent impairment, unless

1 the parties otherwise agree. This section and s. 440.13(2) do
2 not permit an employee or a carrier to obtain an additional
3 medical opinion on the issue of permanent impairment by
4 requesting an alternate treating physician pursuant to s.
5 440.13.

6 (3) Disputes shall be resolved under this section
7 when:

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

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

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

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

25 Section 23. Subsections (3), (6), (8), (9), (10),
26 (11), (12), (15), (16), and (17) of section 440.20, Florida
27 Statutes, are amended to read:

28 440.20 Time for payment of compensation; penalties for
29 late payment.--

30 (3) Upon making payment, or upon suspension or
31 cessation of payment for any reason, the carrier shall

1 immediately notify the department ~~division~~ that it has
2 commenced, suspended, or ceased payment of compensation. The
3 department ~~division~~ may require such notification in any
4 format and manner it deems necessary to obtain accurate and
5 timely reporting.

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

1 insurance policy cannot provide that this sum will be paid by
2 the carrier if the department ~~division~~ or the judge of
3 compensation claims determines that the punitive penalty
4 should be made by the employer rather than the carrier. Any
5 additional installment of compensation paid by the carrier
6 pursuant to this section shall be paid directly to the
7 employee.

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

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

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

31

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

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

31

1 (10) Whenever the department ~~division~~ deems it
2 advisable, it may require any employer to make a deposit with
3 the Treasurer to secure the prompt and convenient payments of
4 such compensation; and payments therefrom upon any awards
5 shall be made upon order of the department ~~division~~ or judge
6 of compensation claims.

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

1 the judge of compensation claims, it shall be considered void.
2 Upon approval of a lump-sum settlement under this subsection,
3 the judge of compensation claims shall send a report to the
4 Chief Judge of the amount of the settlement and a statement of
5 the nature of the controversy. The Chief Judge shall keep a
6 record of all such reports filed by each judge of compensation
7 claims and shall submit to the Legislature a summary of all
8 such reports filed under this subsection annually by September
9 15.

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

1 review under s. 440.28, to determine whether such final
2 disposition will definitely aid the rehabilitation of the
3 injured worker or otherwise is clearly for the best interests
4 of the person entitled to compensation and, in her or his
5 discretion, may have an investigation made by the Department
6 of Education Rehabilitation Section of the Division of
7 ~~Workers' Compensation~~. The joint petition and the report of
8 any investigation so made will be deemed a part of the
9 proceeding. An employer shall have the right to appear at any
10 hearing pursuant to this subsection which relates to the
11 discharge of such employer's liability and to present
12 testimony at such hearing. The carrier shall provide
13 reasonable notice to the employer of the time and date of any
14 such hearing and inform the employer of her or his rights to
15 appear and testify. The probability of the death of the
16 injured employee or other person entitled to compensation
17 before the expiration of the period during which such person
18 is entitled to compensation shall, in the absence of special
19 circumstances making such course improper, be determined in
20 accordance with the most recent United States Life Tables
21 published by the National Office of Vital Statistics of the
22 United States Department of Health and Human Services. The
23 probability of the happening of any other contingency
24 affecting the amount or duration of the compensation, except
25 the possibility of the remarriage of a surviving spouse, shall
26 be disregarded. As a condition of approving a lump-sum payment
27 to a surviving spouse, the judge of compensation claims, in
28 the judge of compensation claims' discretion, may require
29 security which will ensure that, in the event of the
30 remarriage of such surviving spouse, any unaccrued future
31 payments so paid may be recovered or recouped by the employer

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

3 (c) Notwithstanding s. 440.21(2), when a claimant is
4 represented by counsel, the claimant may waive all rights to
5 any and all benefits under this chapter by entering into a
6 settlement agreement releasing the employer and the carrier
7 from liability for workers' compensation benefits in exchange
8 for a lump-sum payment to the claimant. The settlement
9 agreement requires approval by the judge of compensation
10 claims only as to the attorney's fees paid to the claimant's
11 attorney by the claimant. The parties need not submit any
12 information or documentation in support of the settlement,
13 except as needed to justify the amount of the attorney's fees.
14 Neither the employer nor the carrier is responsible for any
15 attorney's fees relating to the settlement and release of
16 claims under this section. Payment of the lump-sum settlement
17 amount must be made within 14 days after the date the judge of
18 compensation claims mails the order approving the attorney's
19 fees. Any order entered by a judge of compensation claims
20 approving the attorney's fees as set out in the settlement
21 under this subsection is not considered to be an award and is
22 not subject to modification or review. The judge of
23 compensation claims shall report these settlements to the
24 Deputy Chief Judge in accordance with the requirements set
25 forth in paragraphs (a) and (b). Settlements entered into
26 under this subsection are valid and apply to all dates of
27 accident.

28 (d)1. With respect to any lump-sum settlement under
29 this subsection, a judge of compensation claims must consider
30 at the time of the settlement, whether the settlement

31

1 allocation provides for the appropriate recovery of child
2 support arrearages.

3 2. When reviewing any settlement of lump-sum payment
4 pursuant to this subsection, judges of compensation claims
5 shall consider the interests of the worker and the worker's
6 family when approving the settlement, which must consider and
7 provide for appropriate recovery of past due support.

8 (e) This section applies to all claims that the
9 parties have not previously settled, regardless of the date of
10 accident.

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

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

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

28 1. An advance payment of compensation not in excess of
29 \$2,000 may be approved informally by letter, without hearing,
30 by any judge of compensation claims or the Chief Judge.

31

1 2. An advance payment of compensation not in excess of
2 \$2,000 may be ordered by any judge of compensation claims
3 after giving the interested parties an opportunity for a
4 hearing thereon pursuant to not less than 10 days' notice by
5 mail, unless such notice is waived, and after giving due
6 consideration to the interests of the person entitled thereto.
7 When the parties have stipulated to an advance payment of
8 compensation not in excess of \$2,000, such advance may be
9 approved by an order of a judge of compensation claims, with
10 or without hearing, or informally by letter by any such judge
11 of compensation claims, or by the department ~~division~~
12 ~~director~~, if such advance is found to be for the best
13 interests of the person entitled thereto.

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

27 (d) When an application for an advance payment in
28 excess of \$2,000 is opposed by the employer or carrier, it
29 shall be heard by a judge of compensation claims after giving
30 the interested parties not less than 10 days' notice of such
31 hearing by mail, unless such notice is waived. In her or his

1 discretion, the judge of compensation claims may have an
2 investigation of the matter made by the Department of
3 Education Rehabilitation Section of the division, in which
4 event the report and recommendation of that section will be
5 deemed a part of the record of the proceedings. If the judge
6 of compensation claims finds that such advance payment is for
7 the best interests of the person entitled to compensation,
8 will not materially prejudice the rights of the employer and
9 carrier, and is reasonable under the circumstances of the
10 case, she or he may order the same paid. However, in no event
11 may any such advance payment under this paragraph be granted
12 in excess of \$7,500 or 26 weeks of benefits in any 48-month
13 period, whichever is greater, from the date of the last
14 advance payment.

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

1 ~~Insurance~~ shall take appropriate action so as to bring such
2 general business practices to a halt pursuant to s.
3 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.
4 The department ~~division~~ may initiate investigations of
5 questionable techniques, patterns, practices, or repeated
6 unreasonably controverted claims. The department ~~division~~ may
7 by rule establish penalties for violations and forms and
8 procedures for corrective action plans and for auditing
9 carriers.

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

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

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

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

28 (d) Subpoenas shall be served, and proof of such
29 service made, in the same manner as if issued by a circuit
30 court. Witness fees, costs, and reasonable travel expenses, if
31

1 | claimed, shall be allowed the same as for testimony in a
2 | circuit court.

3 | (e) ~~The division shall publish annually a report which~~
4 | ~~indicates the promptness of first payment of compensation~~
5 | ~~records of each carrier or self-insurer so as to focus~~
6 | ~~attention on those carriers or self-insurers with poor payment~~
7 | ~~records for the preceding year. A copy of such report shall be~~
8 | ~~certified to The department of Insurance which shall take~~
9 | ~~appropriate steps so as to cause such poor carrier payment~~
10 | ~~practices to halt pursuant to s. 440.38(3)(a). In addition,~~
11 | ~~the department ~~division~~ shall take appropriate action so as to~~
12 | ~~halt such poor payment practices of self-insurers. "Poor~~
13 | ~~payment practice" means a practice of late payment sufficient~~
14 | ~~to constitute a general business practice.~~

15 | (f) The department ~~division~~ shall promulgate rules
16 | providing guidelines to carriers, self-insurers, and employers
17 | to indicate behavior that may be construed as questionable
18 | claims-handling techniques, questionable patterns of claims,
19 | repeated unreasonably controverted claims, or poor payment
20 | practices.

21 | (16) No penalty assessed under this section may be
22 | recouped by any carrier or self-insurer in the rate base, the
23 | premium, or any rate filing. ~~In the case of carriers, The~~
24 | ~~Department of Insurance shall enforce this subsection; and in~~
25 | ~~the case of self-insurers, the division shall enforce this~~
26 | ~~subsection.~~

27 | (17) The department ~~division~~ may by rule establish
28 | audit procedures and set standards for the Automated Carrier
29 | Performance System.

30 | Section 24. Subsections (1) and (2) of section
31 | 440.207, Florida Statutes, are amended to read:

1 440.207 Workers' compensation system guide.--

2 (1) The department ~~Division of Workers' Compensation~~
3 ~~of the Department of Labor and Employment Security~~ shall
4 educate all persons providing or receiving benefits pursuant
5 to this chapter as to their rights and responsibilities under
6 this chapter.

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

21 Section 25. Subsection (1) of section 440.211, Florida
22 Statutes, is amended to read:

23 440.211 Authorization of collective bargaining
24 agreement.--

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

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

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

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

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

15 (e) A vocational rehabilitation or retraining program.

16 Section 26. Subsections (1), (2), and (3) of section
17 440.24, Florida Statutes, are amended to read:

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

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

1 the court shall have jurisdiction to issue a writ of execution
2 or such other process or final order as may be necessary to
3 enforce the terms of such order of the judge of compensation
4 claims.

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

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

22 Section 27. Subsections (5) and (7) of section 440.25,
23 Florida Statutes, are amended to read:

24 440.25 Procedures for mediation and hearings.--

25 (5)(a) Procedures with respect to appeals from orders
26 of judges of compensation claims shall be governed by rules
27 adopted by the Supreme Court. Such an order shall become final
28 30 days after mailing of copies of such order to the parties,
29 unless appealed pursuant to such rules.

30 (b) An appellant may be relieved of any necessary
31 filing fee by filing a verified petition of indigency for

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

1 the appellant, the department ~~division~~, and all other
2 interested parties, all of whom shall be parties to the
3 proceedings. The judge of compensation claims may enter an
4 order without such hearing if no objection is filed by an
5 interested party within 20 days from the service date of the
6 verified petition relating to record costs. Such proceedings
7 shall be conducted in accordance with the provisions of this
8 section and with the workers' compensation rules of procedure,
9 to the extent applicable. In the event an insolvency petition
10 is granted, the judge of compensation claims shall direct the
11 department ~~division~~ to pay record costs and filing fees from
12 the Workers' Compensation Administrative Trust Fund pending
13 final disposition of the costs of appeal. The department
14 ~~division~~ may transcribe or arrange for the transcription of
15 the record in any proceeding for which it is ordered to pay
16 the cost of the record.

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

30 (7) An injured employee claiming or entitled to
31 compensation shall submit to such physical examination by a

1 certified expert medical advisor approved by the agency
2 ~~division~~ or the judge of compensation claims as the agency
3 ~~division~~ or the judge of compensation claims may require. The
4 place or places shall be reasonably convenient for the
5 employee. Such physician or physicians as the employee,
6 employer, or carrier may select and pay for may participate in
7 an examination if the employee, employer, or carrier so
8 requests. Proceedings shall be suspended and no compensation
9 shall be payable for any period during which the employee may
10 refuse to submit to examination. Any interested party shall
11 have the right in any case of death to require an autopsy, the
12 cost thereof to be borne by the party requesting it; and the
13 judge of compensation claims shall have authority to order and
14 require an autopsy and may, in her or his discretion, withhold
15 her or his findings and award until an autopsy is held.

16 Section 28. Section 440.271, Florida Statutes, is
17 amended to read:

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

28 Section 29. Section 440.345, Florida Statutes, is
29 amended to read:

30 440.345 Reporting of attorney's fees.--All fees paid
31 to attorneys for services rendered under this chapter shall be

1 reported to the Office of the Judges of Compensation Claims as
2 the Office of the Judges of Compensation Claims requires by
3 rule. ~~The Office of the Judges of Compensation Claims shall~~
4 ~~annually summarize such data in a report to the Workers'~~
5 ~~Compensation Oversight Board.~~

6 Section 30. Section 440.35, Florida Statutes, is
7 amended to read:

8 440.35 Record of injury or death.--Every employer
9 shall keep a record in respect of any injury to an employee.
10 Such record shall contain such information of disability or
11 death in respect of such injury as the department division may
12 by regulation require, and shall be available to inspection by
13 the department division or by any state authority at such time
14 and under such conditions as the department division may by
15 regulation prescribe.

16 Section 31. Subsections (1), (2), and (3) of section
17 440.38, Florida Statutes, are amended to read:

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

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

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

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

1 companies with employees in this state and receiving an
2 authorization from the Department of Insurance ~~division~~ to pay
3 such compensation directly. The association shall review the
4 financial strength of applicants for membership, current
5 members, and former members and make recommendations to the
6 department regarding their qualifications to self-insure in
7 accordance with this act and ss. 440.385 and 440.386. The
8 department shall consult with the association on any
9 recommendation before taking action.~~the following provisions:~~

10 1. The association ~~division~~ may recommend that the
11 Department of Insurance require an employer to deposit with
12 the association ~~division~~ a qualifying security deposit. The
13 association ~~division~~ shall recommend ~~determine~~ the type and
14 amount of the qualifying security deposit and shall prescribe
15 conditions for the qualifying security deposit, which shall
16 include authorization for the association ~~division~~ to call the
17 qualifying security deposit in the case of default. ~~In~~
18 ~~addition, the division shall require,~~As a condition to
19 authorization to self-insure, the employer shall provide proof
20 that the employer has provided for competent personnel with
21 whom to deliver benefits and to provide a safe working
22 environment. ~~Further,~~The employer ~~division~~ shall also provide
23 evidence of ~~require such employer to carry~~ reinsurance at
24 levels that will ensure the financial strength and actuarial
25 soundness of such employer in accordance with rules adopted
26 ~~promulgated~~ by the Department of Insurance ~~division~~. The
27 Department of Insurance ~~division~~ may by rule require that, in
28 the event of an individual self-insurer's insolvency, such
29 qualifying security deposits and reinsurance policies are
30 payable to the ~~Florida Self-Insurers Guaranty~~ association,
31 ~~incorporated, created pursuant to s. 440.385.~~ Any employer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

31

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

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

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

21 Section 32. Subsections (3) and (7) of section
22 440.381, Florida Statutes, are amended to read:

23 440.381 Application for coverage; reporting payroll;
24 payroll audit procedures; penalties.--

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

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

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

1 ~~carrier to seek reimbursement as provided under this~~
2 ~~subsection.~~ Failure of the employer to indemnify the insurer
3 within 21 days after demand by the insurer shall constitute
4 grounds for the insurer to immediately cancel coverage. Any
5 action for indemnification brought by the carrier shall be
6 cognizable in the circuit court having jurisdiction where the
7 employer or carrier resides or transacts business. The
8 insurer shall be entitled to a reasonable attorney's fee if it
9 recovers any portion of the benefits paid in such action.

10 Section 33. Section 440.385, Florida Statutes, is
11 amended to read:

12 440.385 Florida Self-Insurers Guaranty Association,
13 Incorporated.--

14 (1) CREATION OF ASSOCIATION.--

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

1 Department of Insurance shall have oversight responsibility as
2 set forth in this act. The association is specifically
3 authorized to enter into agreements with the State of Florida
4 to perform specified services.

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

1 withdrawing member who is a member on or after January 1,
2 1991, shall thereupon, and at 6-month intervals thereafter,
3 provide to the ~~division and the~~ association the certified
4 opinion of an independent actuary who is a member of the
5 American Academy ~~Society~~ of Actuaries of the actuarial present
6 value of the determined and estimated future compensation
7 payments of the member for claims incurred while the member
8 was a self-insurer, using a discount rate of 4 percent. With
9 each such opinion, the withdrawing member shall deposit with
10 the association ~~division~~ security in an amount equal to the
11 value certified by the actuary and of a type that is
12 acceptable for qualifying security deposits under s.
13 440.38(1)(b). The withdrawing member shall continue to
14 provide such opinions and to provide such security until such
15 time as the latest opinion shows no remaining value of claims.
16 The association has a cause of action against a withdrawing
17 member, and against any successor of a withdrawing member, who
18 fails to timely provide the required opinion or who fails to
19 maintain the required deposit with the division. The
20 association shall be entitled to recover a judgment in the
21 amount of the actuarial present value of the determined and
22 estimated future compensation payments of the withdrawing
23 member for claims incurred during the time that the
24 withdrawing member exercised the privilege of self-insurance,
25 together with reasonable attorney's fees. The association is
26 also entitled to recover reasonable attorney's fees in any
27 action to compel production of any actuarial report required
28 by this statute. For purposes of this section, the successor
29 of a withdrawing member means any person, business entity, or
30 group of persons or business entities, which holds or acquires
31

1 legal or beneficial title to the majority of the assets or the
2 majority of the shares of the withdrawing member.

3 (2) BOARD OF DIRECTORS.--The board of directors of the
4 association shall consist of nine persons and shall be
5 organized as established in the plan of operation. All board
6 members shall be experienced in self-insurance in this state.

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

28 (3) POWERS AND DUTIES.--

29 (a) Upon creation of the Insolvency Fund pursuant to
30 the provisions of subsection (4), the association is obligated
31 for payment of compensation under this chapter to insolvent

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

22 (b) The association may:

- 23 1. Employ or retain such persons as are necessary to
24 handle claims and perform other duties of the association.
25 2. Borrow funds necessary to effect the purposes of
26 this section in accord with the plan of operation.
27 3. Sue or be sued.
28 4. Negotiate and become a party to such contracts as
29 are necessary to carry out the purposes of this section.
30 5. Purchase such reinsurance as is determined
31 necessary pursuant to the plan of operation.

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

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

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

27 b. Require the employer to provide a certified opinion
28 of an independent actuary who is a member of the American
29 Academy of Actuaries as to the actuarial present value of the
30 employer's estimated current and future compensation payments,
31 using a 4-percent discount rate.

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

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

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

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

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

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

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

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

30 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
31 operation ~~or the adoption of rules by the Department of Labor~~

1 ~~and Employment Security pursuant to subsection (5)~~, there
2 shall be created an Insolvency Fund to be managed by the
3 association.

4 (a) The Insolvency Fund is created for purposes of
5 meeting the obligations of insolvent members incurred while
6 members of the association and after the exhaustion of any
7 security deposit bond, as required under this chapter.

8 However, if such security deposit bond, ~~surety~~, or reinsurance
9 policy is payable to the Florida Self-Insurers Guaranty
10 Association, the association shall commence to provide
11 benefits out of the Insolvency Fund and be reimbursed from the
12 security deposit bond, ~~surety~~, or reinsurance policy. The
13 method of operation of the Insolvency Fund shall be defined in
14 the plan of operation as provided in subsection (5).

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

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

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

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

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 34. 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 35. Section 440.40, Florida Statutes, is
2 amended to read:

3 440.40 Compensation notice.--Every employer who has
4 secured compensation under the provisions of this chapter
5 shall keep posted in a conspicuous place or places in and
6 about her or his place or places of business typewritten or
7 printed notices, in accordance with a form prescribed by the
8 department ~~division~~, stating that such employer has secured
9 the payment of compensation in accordance with the provisions
10 of this chapter. Such notices shall contain the name and
11 address of the carrier, if any, with whom the employer has
12 secured payment of compensation and the date of the expiration
13 of the policy. The department ~~division~~ may by rule prescribe
14 the form of the notices and require carriers to provide the
15 notices to policyholders.

16 Section 36. Section 440.41, Florida Statutes, is
17 amended to read:

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

29 (1) Notice to or knowledge of an employer of the
30 occurrence of the injury shall be notice to or knowledge of
31 the carrier.

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

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

9 Section 37. Subsection (3) of section 440.42, Florida
10 Statutes, is amended to read:

11 440.42 Insurance policies; liability.--

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

31

1 Section 38. Section 440.44, Florida Statutes, is
2 amended to read:

3 440.44 Workers' compensation; staff organization.--

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

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

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

31

1 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL
2 ADMINISTRATION.--Subject to the other provisions of this
3 chapter, the department, the agency, and the Department of
4 Education are ~~division is~~ authorized to appoint, and prescribe
5 the duties and powers of, bureau chiefs, attorneys,
6 accountants, medical advisers, technical assistants,
7 inspectors, claims examiners, and such other employees as may
8 be necessary in the performance of their ~~its~~ duties under this
9 chapter.

10 (5) OFFICE.--The department, the agency, the
11 Department of Education,~~division~~ and the Deputy Chief Judge
12 shall maintain and keep open during reasonable business hours
13 an office, which shall be provided in the Capitol or some
14 other suitable building in the City of Tallahassee, for the
15 transaction of business under this chapter, at which office
16 the official records and papers shall be kept. The office
17 shall be furnished and equipped. The department, the agency
18 ~~division~~, any judge of compensation claims, or the Deputy
19 Chief Judge may hold sessions and conduct hearings at any
20 place within the state. The Office of the Judges of
21 Compensation Claims shall maintain the 17 district offices, 31
22 judges of compensation claims, and 31 mediators as they exist
23 on June 30, 2001.

24 (6) SEAL.--The department ~~division~~ and the judges of
25 compensation claims shall have a seal upon which shall be
26 inscribed the words "State of Florida Department of
27 Insurance--Seal" and "Division of Administrative
28 Hearings--Seal," respectively.

29 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
30 ~~division~~ is expressly authorized to provide by regulation for
31 and to destroy obsolete records of the department ~~division~~.

1 The Division of Administrative Hearings is expressly
2 authorized to provide by regulation for and to destroy
3 obsolete records of the Office of the Judges of Compensation
4 Claims.

5 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
6 and functions requiring administrative hearings, the
7 department and the agency ~~division~~ shall proceed in accordance
8 with the Administrative Procedure Act. The authority of the
9 department and the agency ~~division~~ to issue orders resulting
10 from administrative hearings as provided for in this chapter
11 shall not infringe upon the jurisdiction of the judges of
12 compensation claims.

13 Section 39. Subsections (1), (2), (7), (8), (9), (10),
14 and (11) of section 440.49, Florida Statutes, are amended to
15 read:

16 440.49 Limitation of liability for subsequent injury
17 through Special Disability Trust Fund.--

18 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
19 for workers with disabilities to achieve employment or to
20 become reemployed following an injury, and it is the desire of
21 the Legislature to facilitate the return of these workers to
22 the workplace, it is the purpose of this section to encourage
23 the employment, reemployment, and accommodation of the
24 physically disabled by reducing an employer's insurance
25 premium for reemploying an injured worker, to decrease
26 litigation between carriers on apportionment issues, and to
27 protect employers from excess liability for compensation and
28 medical expense when an injury to a physically disabled worker
29 merges with, aggravates, or accelerates her or his preexisting
30 permanent physical impairment to cause either a greater
31 disability or permanent impairment, or an increase in

1 expenditures for temporary compensation or medical benefits
2 than would have resulted from the injury alone. The department
3 ~~division~~ or the administrator shall inform all employers of
4 the existence and function of the fund and shall interpret
5 eligibility requirements liberally. However, this subsection
6 shall not be construed to create or provide any benefits for
7 injured employees or their dependents not otherwise provided
8 by this chapter. The entitlement of an injured employee or her
9 or his dependents to compensation under this chapter shall be
10 determined without regard to this subsection, the provisions
11 of which shall be considered only in determining whether an
12 employer or carrier who has paid compensation under this
13 chapter is entitled to reimbursement from the Special
14 Disability Trust Fund.

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

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

18 (b) "Preferred worker" means a worker who, because of
19 a permanent impairment resulting from a compensable injury or
20 occupational disease, is unable to return to the worker's
21 regular employment.

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

23 1. If the permanent physical impairment had not
24 existed, the subsequent accident or occupational disease would
25 not have occurred;

26 2. The permanent disability or permanent impairment
27 resulting from the subsequent accident or occupational disease
28 is materially and substantially greater than that which would
29 have resulted had the permanent physical impairment not
30 existed, and the employer has been required to pay, and has
31 paid, permanent total disability or permanent impairment

1 benefits for that materially and substantially greater
2 disability;

3 3. The preexisting permanent physical impairment is
4 aggravated or accelerated as a result of the subsequent injury
5 or occupational disease, or the preexisting impairment has
6 contributed, medically and circumstantially, to the need for
7 temporary compensation, medical, or attendant care and the
8 employer has been required to pay, and has paid, temporary
9 compensation, medical, or attendant care benefits for the
10 aggravated preexisting permanent impairment; or

11 4. Death would not have been accelerated if the
12 permanent physical impairment had not existed.

13 (d) "Excess permanent compensation" means that
14 compensation for permanent impairment, or permanent total
15 disability or death benefits, for which the employer or
16 carrier is otherwise entitled to reimbursement from the
17 Special Disability Trust Fund.

18 (e) "Administrator" means the entity selected by the
19 division to review, allow, deny, compromise, controvert, and
20 litigate claims of the Special Disability Trust Fund.

21
22 In addition to the definitions contained in this subsection,
23 the department ~~division~~ may by rule prescribe definitions that
24 are necessary for the effective administration of this
25 section.

26 (7) REIMBURSEMENT OF EMPLOYER.--

27 (a) The right to reimbursement as provided in this
28 section is barred unless written notice of claim of the right
29 to such reimbursement is filed by the employer or carrier
30 entitled to such reimbursement with the department ~~division~~ or
31 administrator at Tallahassee within 2 years after the date the

1 employee last reached maximum medical improvement, or within 2
2 years after the date of the first payment of compensation for
3 permanent total disability, wage loss, or death, whichever is
4 later. The notice of claim must contain such information as
5 the department ~~division~~ by rule requires or as established by
6 the administrator; and the employer or carrier claiming
7 reimbursement shall furnish such evidence in support of the
8 claim as the department ~~division~~ or administrator reasonably
9 may require.

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

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

31

1 (d) Each notice of claim filed or refiled on or after
2 July 1, 1997, must be accompanied by a notification fee as
3 provided in paragraph (9)(d). A proof of claim must be filed
4 within 1 year after the date the notice of claim is filed or
5 refiled, accompanied by a proof-of-claim fee as provided in
6 paragraph (9)(d), or the claim shall be barred. The
7 notification fee shall be waived if both the notice of claim
8 and proof of claim are submitted together as a single filing.
9 The Special Disability Trust Fund shall, within 180 days after
10 receipt of the proof of claim, serve notice of the acceptance
11 of the claim for reimbursement. This paragraph shall apply to
12 all claims notwithstanding the provisions of subsection (12).

13 (e) For dates of accident on or after January 1, 1994,
14 the Special Disability Trust Fund shall, within 120 days of
15 receipt of notice that a carrier has been required to pay, and
16 has paid over \$10,000 in benefits, serve notice of the
17 acceptance of the claim for reimbursement. Failure of the
18 Special Disability Trust Fund to serve notice of acceptance
19 shall give rise to the right to request a hearing on the claim
20 for reimbursement. If the Special Disability Trust Fund
21 through its representative denies or controverts the claim,
22 the right to such reimbursement shall be barred unless an
23 application for a hearing thereon is filed with the department
24 ~~division~~ or administrator at Tallahassee within 60 days after
25 notice to the employer or carrier of such denial or
26 controversion. When such application for a hearing is timely
27 filed, the claim shall be heard and determined in accordance
28 with the procedure prescribed in s. 440.25, to the extent that
29 such procedure is applicable, and in accordance with the
30 workers' compensation rules of procedure. In such proceeding
31 on a claim for reimbursement, the Special Disability Trust

1 Fund shall be made the party respondent, and no findings of
2 fact made with respect to the claim of the injured employee or
3 the dependents for compensation, including any finding made or
4 order entered pursuant to s. 440.20(11), shall be res
5 judicata. The Special Disability Trust Fund may not be joined
6 or made a party to any controversy or dispute between an
7 employee and the dependents and the employer or between two or
8 more employers or carriers without the written consent of the
9 fund.

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

23 (g) The department ~~division~~ may by rule require
24 specific forms and procedures for the administration and
25 processing of claims made through the Special Disability Trust
26 Fund.

27 (8) PREFERRED WORKER PROGRAM.--The Department of
28 Education ~~division~~ or administrator shall issue identity cards
29 to preferred workers upon request by qualified employees and
30 the Department of Insurance shall reimburse an employer, from
31 the Special Disability Trust Fund, for the cost of workers'

1 compensation premium related to the preferred workers payroll
2 for up to 3 years of continuous employment upon satisfactory
3 evidence of placement and issuance of payroll and
4 classification records and upon the employee's certification
5 of employment. The department and the Department of Education
6 ~~division~~ may by rule prescribe definitions, forms, and
7 procedures for the administration of the preferred worker
8 program. The Department of Education ~~division~~ may by rule
9 prescribe the schedule for submission of forms for
10 participation in the program.

11 (9) SPECIAL DISABILITY TRUST FUND.--

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

1 (b)1. The Special Disability Trust Fund shall be
2 maintained by annual assessments upon the insurance companies
3 writing compensation insurance in the state, the commercial
4 self-insurers under ss. 624.462 and 624.4621, the assessable
5 mutuals under s. 628.601, and the self-insurers under this
6 chapter, which assessments shall become due and be paid
7 quarterly at the same time and in addition to the assessments
8 provided in s. 440.51. The department ~~division~~ shall estimate
9 annually in advance the amount necessary for the
10 administration of this subsection and the maintenance of this
11 fund and shall make such assessment in the manner hereinafter
12 provided.

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

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

20 b. Two times the disbursements of the most recent
21 calendar year.

22
23 Such amount shall be prorated among the insurance companies
24 writing compensation insurance in the state and the
25 self-insurers. Provided however, for those carriers that have
26 excluded ceded reinsurance premiums from their assessments on
27 or before January 1, 2000, no assessments on ceded reinsurance
28 premiums shall be paid by those carriers until such time as
29 the former Division of Workers' Compensation of the Department
30 of Labor and Employment Security or the department ~~division~~
31 advises each of those carriers of the impact that the

1 inclusion of ceded reinsurance premiums has on their
2 assessment. The department ~~division~~ may not recover any past
3 underpayments of assessments levied against any carrier that
4 on or before January 1, 2000, excluded ceded reinsurance
5 premiums from their assessment prior to the point that the
6 former Division of Workers' Compensation of the Department of
7 Labor and Employment Security or the department ~~division~~
8 advises of the appropriate assessment that should have been
9 paid.

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

18 4. The Treasurer is authorized to receive and credit
19 to such Special Disability Trust Fund any sum or sums that may
20 at any time be contributed to the state by the United States
21 under any Act of Congress, or otherwise, to which the state
22 may be or become entitled by reason of any payments made out
23 of such fund.

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

27 (d) The Special Disability Trust Fund shall be
28 supplemented by a \$250 notification fee on each notice of
29 claim filed or refiled after July 1, 1997, and a \$500 fee on
30 each proof of claim filed in accordance with subsection (7).
31 Revenues from the fee shall be deposited into the Special

1 Disability Trust Fund and are exempt from the deduction
2 required by s. 215.20. The fees provided in this paragraph
3 shall not be imposed upon any insurer which is in receivership
4 with the Department of Insurance.

5 (e) The department ~~of Labor and Employment Security~~ or
6 administrator shall report annually on the status of the
7 Special Disability Trust Fund. The report shall update the
8 estimated undiscounted and discounted fund liability, as
9 determined by an independent actuary, change in the total
10 number of notices of claim on file with the fund in addition
11 to the number of newly filed notices of claim, change in the
12 number of proofs of claim processed by the fund, the fee
13 revenues refunded and revenues applied to pay down the
14 liability of the fund, the average time required to reimburse
15 accepted claims, and the average administrative costs per
16 claim. The department or administrator shall submit its
17 report to the Governor, the President of the Senate, and the
18 Speaker of the House of Representatives by December 1 of each
19 year.

20 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
21 CLAIMS; EXPENSES.--The department ~~division~~ or administrator
22 shall administer the Special Disability Trust Fund with
23 authority to allow, deny, compromise, controvert, and litigate
24 claims made against it and to designate an attorney to
25 represent it in proceedings involving claims against the fund,
26 including negotiation and consummation of settlements,
27 hearings before judges of compensation claims, and judicial
28 review. The department ~~division~~ or administrator or the
29 attorney designated by it shall be given notice of all
30 hearings and proceedings involving the rights or obligations
31 of such fund and shall have authority to make expenditures for

1 such medical examinations, expert witness fees, depositions,
2 transcripts of testimony, and the like as may be necessary to
3 the proper defense of any claim. All expenditures made in
4 connection with conservation of the fund, including the salary
5 of the attorney designated to represent it and necessary
6 travel expenses, shall be allowed and paid from the Special
7 Disability Trust Fund as provided in this section upon the
8 presentation of itemized vouchers therefor approved by the
9 department division.

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

25 Section 40. Present paragraphs (b) through (h) of
26 subsection (1) of section 440.491, Florida Statutes, are
27 redesignated as paragraphs (c) through (i), respectively, and
28 a new paragraph (b) is added to that subsection, and paragraph
29 (c) of subsection (1), paragraph (a) of subsection (3),
30 paragraph (b) of subsection (4), paragraphs (b) and (c) of
31

1 subsection (5), and subsections (6), (7), and (8) of that
2 section are amended, to read:

3 440.491 Reemployment of injured workers;
4 rehabilitation.--

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

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

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

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

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

28 (4) REEMPLOYMENT ASSESSMENTS.--

29 (b) The carrier shall authorize only a qualified
30 rehabilitation provider to provide the reemployment
31 assessment. The rehabilitation provider shall conduct its

1 assessment and issue a report to the carrier, the employee,
2 and the department ~~division~~ within 30 days after the time such
3 assessment is complete.

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

6 (b) If the rehabilitation provider concludes that
7 training and education are necessary to return the employee to
8 suitable gainful employment, or if the employee has not
9 returned to suitable gainful employment within 180 days after
10 referral for reemployment services or receives \$2,500 in
11 reemployment services, whichever comes first, the carrier must
12 discontinue reemployment services and refer the employee to
13 the department ~~division~~ for a vocational evaluation.

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

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

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1 of an eye or eyes; burns of 5 percent or greater of the total
2 body surface.

3 (6) TRAINING AND EDUCATION.--

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

24 (b) When it appears that an employee who has attained
25 maximum medical improvement requires training and education to
26 obtain suitable gainful employment, the employer shall pay the
27 employee additional temporary total compensation while the
28 employee receives such training and education for a period not
29 to exceed 26 weeks, which period may be extended for an
30 additional 26 weeks or less, if such extended period is
31 determined to be necessary and proper by a judge of

1 compensation claims. However, a carrier or employer is not
2 precluded from voluntarily paying additional temporary total
3 disability compensation beyond that period. If an employee
4 requires temporary residence at or near a facility or an
5 institution providing training and education which is located
6 more than 50 miles away from the employee's customary
7 residence, the reasonable cost of board, lodging, or travel
8 must be borne by the department ~~division~~ from the Workers'
9 Compensation Administration Trust Fund established by s.
10 440.50. An employee who refuses to accept training and
11 education that is recommended by the vocational evaluator and
12 considered necessary by the department ~~division~~ is subject to
13 a 50-percent reduction in weekly compensation benefits,
14 including wage-loss benefits, as determined under s.
15 440.15(3)(b).

16 (7) PROVIDER QUALIFICATIONS.--

17 (a) The department ~~division~~ shall investigate and
18 maintain a directory of each qualified public and private
19 rehabilitation provider, facility, and agency, and shall
20 establish by rule the minimum qualifications, credentials, and
21 requirements that each rehabilitation service provider,
22 facility, and agency must satisfy to be eligible for listing
23 in the directory. These minimum qualifications and credentials
24 must be based on those generally accepted within the service
25 specialty for which the provider, facility, or agency is
26 approved.

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

31

1 (c) The department ~~division~~ shall monitor and evaluate
2 each rehabilitation service provider, facility, and agency
3 qualified under this subsection to ensure its compliance with
4 the minimum qualifications and credentials established by the
5 department ~~division~~. The failure of a qualified rehabilitation
6 service provider, facility, or agency to provide the
7 department ~~division~~ with information requested or access
8 necessary for the department ~~division~~ to satisfy its
9 responsibilities under this subsection is grounds for
10 disqualifying the provider, facility, or agency from further
11 referrals.

12 (d) A qualified rehabilitation service provider,
13 facility, or agency may not be authorized by an employer, a
14 carrier, or the department ~~division~~ to provide any services,
15 including expert testimony, under this section in this state
16 unless the provider, facility, or agency is listed or has been
17 approved for listing in the directory. This restriction does
18 not apply to services provided outside this state under this
19 section.

20 (e) The department ~~division~~, after consultation with
21 representatives of employees, employers, carriers,
22 rehabilitation providers, and qualified training and education
23 providers, shall adopt rules governing professional practices
24 and standards.

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

29 Section 41. Section 440.50, Florida Statutes, is
30 amended to read:

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1 440.50 Workers' Compensation Administration Trust
2 Fund.--

3 (1)(a) There is established in the State Treasury a
4 special fund to be known as the "Workers' Compensation
5 Administration Trust Fund" for the purpose of providing for
6 the payment of all expenses in respect to the administration
7 of this chapter, including the vocational rehabilitation of
8 injured employees as provided in s. 440.49 and the payments
9 due under s. 440.15(1)(f), the funding of the fixed
10 administrative expenses of the plan, and the funding of the
11 Bureau of Workers' Compensation Fraud within the Department of
12 Insurance. Such fund shall be administered by the department
13 division.

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

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

23 (3) The Treasurer shall deposit any moneys paid into
24 such fund into such depository banks as the department
25 ~~division~~ may designate and is authorized to invest any portion
26 of the fund which, in the opinion of the department ~~division~~,
27 is not needed for current requirements, in the same manner and
28 subject to all the provisions of the law with respect to the
29 deposit of state funds by such Treasurer. All interest earned
30 by such portion of the fund as may be invested by the

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1 Treasurer shall be collected by him or her and placed to the
2 credit of such fund.

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

6 Section 42. Section 440.51, Florida Statutes, is
7 amended to read:

8 440.51 Expenses of administration.--

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

12 (a) The department ~~division~~ shall, by July 1 of each
13 year, notify carriers and self-insurers of the assessment
14 rate, which shall be based on the anticipated expenses of the
15 administration of this chapter for the next calendar year.
16 Such assessment rate shall take effect January 1 of the next
17 calendar year and shall be included in workers' compensation
18 rate filings approved by the Department of Insurance which
19 become effective on or after January 1 of the next calendar
20 year. Assessments shall become due and be paid quarterly.

21 (b) The total expenses of administration shall be
22 prorated among the carriers writing compensation insurance in
23 the state and self-insurers. The net premiums collected by
24 carriers and the amount of premiums calculated by the
25 department ~~division~~ for self-insured employers are the basis
26 for computing the amount to be assessed. When reporting
27 deductible policy premium for purposes of computing
28 assessments levied after July 1, 2001, full policy premium
29 value must be reported prior to application of deductible
30 discounts or credits. This amount may be assessed as a
31 specific amount or as a percentage of net premiums payable as

1 the department ~~division~~ may direct, provided such amount so
2 assessed shall not exceed 2.75 percent, beginning January 1,
3 2001, except during the interim period from July 1, 2000,
4 through December 31, 2000, such assessments shall not exceed 4
5 percent of such net premiums. The carriers may elect to make
6 the payments required under s. 440.15(1)(f) rather than having
7 these payments made by the department ~~division~~. In that event,
8 such payments will be credited to the carriers, and the amount
9 due by the carrier under this section will be reduced
10 accordingly.

11 (2) The department ~~division~~ shall provide by
12 regulation for the collection of the amounts assessed against
13 each carrier. Such amounts shall be paid within 30 days from
14 the date that notice is served upon such carrier. If such
15 amounts are not paid within such period, there may be assessed
16 for each 30 days the amount so assessed remains unpaid, a
17 civil penalty equal to 10 percent of the amount so unpaid,
18 which shall be collected at the same time and a part of the
19 amount assessed. For those carriers who excluded ceded
20 reinsurance premiums from their assessments prior to January
21 1, 2000, the department ~~division~~ shall not recover any past
22 underpayments of assessments related to ceded reinsurance
23 premiums prior to January 1, 2001, against such carriers.

24 (3) If any carrier fails to pay the amounts assessed
25 against him or her under the provisions of this section within
26 60 days from the time such notice is served upon him or her,
27 the department ~~of insurance upon being advised by the division~~
28 may suspend or revoke the authorization to insure compensation
29 in accordance with the procedure in s. 440.38(3)(a). The
30 department ~~division~~ may permit a carrier to remit any

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1 underpayment of assessments for assessments levied after
2 January 1, 2001.

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

5 (5) Any amount so assessed against and paid by an
6 insurance carrier, self-insurer authorized pursuant to s.
7 624.4621, or commercial self-insurance fund authorized under
8 ss. 624.460-624.488 shall be allowed as a deduction against
9 the amount of any other tax levied by the state upon the
10 premiums, assessments, or deposits for workers' compensation
11 insurance on contracts or policies of said insurance carrier,
12 self-insurer, or commercial self-insurance fund. Any insurance
13 carrier claiming such a deduction against the amount of any
14 such tax shall not be required to pay any additional
15 retaliatory tax levied pursuant to s. 624.5091 as a result of
16 claiming such deduction. Because deductions under this
17 subsection are available to insurance carriers, s. 624.5091
18 does not limit such deductions in any manner.

19 (6)(a) The department ~~division~~ may require from each
20 carrier, at such time and in accordance with such regulations
21 as the department ~~division~~ may prescribe, reports in respect
22 to all gross earned premiums and of all payments of
23 compensation made by such carrier during each prior period,
24 and may determine the amounts paid by each carrier and the
25 amounts paid by all carriers during such period.

26 (b) The Department of Insurance may require from each
27 self-insurer, at such time and in accordance with such
28 regulations as the Department of Insurance prescribes, reports
29 in respect to wages paid, the amount of premiums such
30 self-insurer would have to pay if insured, and all payments of
31 compensation made by such self-insurer during each prior

1 period, and may determine the amounts paid by each
2 self-insurer and the amounts paid by all self-insurers during
3 such period. For the purposes of this section, the payroll
4 records of each self-insurer shall be open to annual
5 inspection and audit by the Department of Insurance or its
6 authorized representative, during regular business hours; and
7 if any audit of such records of a self-insurer discloses a
8 deficiency in the amounts reported to the Department of
9 Insurance or in the amounts paid to the Department of
10 Insurance by a self-insurer pursuant to this section, the
11 Department of Insurance may assess the cost of such audit
12 against the self-insurer.

13 (7) The department ~~division~~ shall keep accumulated
14 cost records of all injuries occurring within the state coming
15 within the purview of this chapter on a policy and
16 calendar-year basis. For the purpose of this chapter, a
17 "calendar year" is defined as the year in which the injury is
18 reported to the department ~~division~~; "policy year" is defined
19 as that calendar year in which the policy becomes effective,
20 and the losses under such policy shall be chargeable against
21 the policy year so defined.

22 (8) The department ~~division~~ shall assign an account
23 number to each employer under this chapter and an account
24 number to each insurance carrier authorized to write workers'
25 compensation insurance in the state; and it shall be the duty
26 of the department ~~division~~ under the account number so
27 assigned to keep the cost experience of each carrier and the
28 cost experience of each employer under the account number so
29 assigned by calendar and policy year, as above defined.

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

- 4 (a) Cause of the injury;
5 (b) Nature of the injury; and
6 (c) Type of disability.

7 (10) In every case where the duration of disability
8 exceeds 30 days, the carrier shall establish a sufficient
9 reserve to pay all benefits to which the injured employee, or
10 in case of death, his or her dependents, may be entitled to
11 under the law. In establishing the reserve, consideration
12 shall be given to the nature of the injury, the probable
13 period of disability, and the estimated cost of medical
14 benefits.

15 (11) The department ~~division~~ shall furnish to any
16 employer or carrier, upon request, its individual experience.
17 ~~The division shall furnish to the Department of Insurance,~~
18 ~~upon request, the Florida experience as developed under~~
19 ~~accident year or calendar year.~~

20 (12) In addition to any other penalties provided by
21 this law, the failure to submit any report or other
22 information required by this law shall be just cause to
23 suspend the right of a self-insurer to operate as such, ~~or,~~
24 ~~upon certification by the division to the Department of~~
25 ~~Insurance that a carrier has failed or refused to furnish such~~
26 ~~reports,~~ shall be just cause for the department ~~of Insurance~~
27 to suspend or revoke the license of such carrier.

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

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

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

6 (14) Before July 1 in each year, the plan shall notify
7 the department ~~division~~ of the amount of the plan's gross
8 written premiums for the preceding calendar year. Whenever the
9 plan's gross written premiums reported to the department
10 ~~division~~ are less than \$30 million, the department ~~division~~
11 shall transfer to the plan, subject to appropriation by the
12 Legislature, an amount not to exceed the plan's fixed
13 administrative expenses for the preceding calendar year.

14 Section 43. Section 440.52, Florida Statutes, is
15 amended to read:

16 440.52 Registration of insurance carriers; notice of
17 cancellation or expiration of policy; suspension or revocation
18 of authority.--

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

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

28 (3) If the department ~~division~~ finds, after due notice
29 and a hearing at which the insurance carrier is entitled to be
30 heard in person or by counsel and present evidence, that the
31 insurance carrier has repeatedly failed to comply with its

1 obligations under this chapter, the department ~~division~~ may
2 ~~request the Department of Insurance to~~ suspend or revoke the
3 authorization of such insurance carrier to write workers'
4 compensation insurance under this chapter. Such suspension or
5 revocation shall not affect the liability of any such
6 insurance carrier under policies in force prior to the
7 suspension or revocation.

8 (4) In addition to the penalties prescribed in
9 subsection (3), violation of s. 440.381 by an insurance
10 carrier shall result in the imposition of a fine not to exceed
11 \$1,000 per audit, if the insurance carrier fails to act on
12 said audits by correcting errors in employee classification or
13 accepted applications for coverage where it knew employee
14 classifications were incorrect. Such fines shall be levied by
15 the Department of Insurance and deposited into the Insurance
16 Commissioner's Regulatory Trust Fund.

17 Section 44. Section 440.525, Florida Statutes, is
18 amended to read:

19 440.525 Examination of carriers.--~~Beginning July 1,~~
20 ~~1994,~~The Division of Workers' Compensation of the Department
21 of Insurance ~~Labor and Employment Security~~ may examine each
22 carrier as often as is warranted to ensure that carriers are
23 fulfilling their obligations under the law, and shall examine
24 each carrier not less frequently than once every 3 years. The
25 examination must cover the preceding 3 fiscal years of the
26 carrier's operations and must commence within 12 months after
27 the end of the most recent fiscal year being covered by the
28 examination. The examination may cover any period of the
29 carrier's operations since the last previous examination.

30 Section 45. Section 440.572, Florida Statutes, is
31 amended to read:

1 440.572 Authorization for individual self-insurer to
2 provide coverage.--An individual self-insurer having a net
3 worth of not less than \$250 million as authorized by s.
4 440.38(1)(f) may assume by contract the liabilities under this
5 chapter of contractors and subcontractors, or each of them,
6 employed by or on behalf of such individual self-insurer when
7 performing work on or adjacent to property owned or used by
8 the individual self-insurer by the department ~~division~~. The
9 net worth of the individual self-insurer shall include the
10 assets of the self-insurer's parent company and its
11 subsidiaries, sister companies, affiliated companies, and
12 other related entities, located within the geographic
13 boundaries of the state.

14 Section 46. Subsections (2) and (3) of section 440.59,
15 Florida Statutes, are amended to read:

16 440.59 Reporting requirements.--

17 (2) The department ~~division~~ shall annually prepare a
18 closed claim report for all claims for which the employee lost
19 more than 7 days from work and shall submit a copy of the
20 report to the Governor, the President of the Senate, the
21 Speaker of the House of Representatives, the Democratic and
22 Republican Leaders of the Senate and the House of
23 Representatives, and the chairs of the legislative committees
24 having jurisdiction over workers' compensation on or before
25 September 15 of each year. The closed claim report shall
26 include, but not be limited to, an analysis of all claims
27 closed during the preceding year as to the date of accident,
28 age of the injured employee, occupation of the injured
29 employee, type of injury, body part affected, type and
30 duration of indemnity benefits paid, permanent impairment
31 rating, medical benefits identified by type of health care

1 provider, and type and cost of any rehabilitation benefits
2 provided.

3 (3) The department ~~division~~ shall prepare an annual
4 report for all claims for which the employee lost more than 7
5 days from work and shall submit a copy of the report to the
6 Governor, the President of the Senate, the Speaker of the
7 House of Representatives, the Democratic and Republican
8 Leaders of the Senate and the House of Representatives, and
9 the chairs of the legislative committees having jurisdiction
10 over workers' compensation, on or before September 15 of each
11 year. The annual report shall include a status report on all
12 cases involving work-related injuries in the previous 10
13 years. The annual report shall include, but not be limited to,
14 the number of open and closed cases, the number of cases
15 receiving various types of benefits, and the cash and medical
16 benefits paid between the date of injury and the evaluation
17 date in each case.

18 Section 47. Section 440.591, Florida Statutes, is
19 amended to read:

20 440.591 Administrative procedure; rulemaking
21 authority.--The department, the agency, and the Department of
22 Education may ~~division has authority to~~ adopt rules pursuant
23 to ss. 120.536(1) and 120.54 to implement the provisions of
24 this chapter conferring duties upon them ~~it~~.

25 Section 48. Section 440.593, Florida Statutes, is
26 amended to read:

27 440.593 Electronic reporting.--

28 (1) The department ~~division~~ may establish an
29 electronic reporting system requiring or authorizing an
30 employer or carrier to submit required forms, reports, or
31 other information electronically rather than by other means.

1 The department ~~division~~ may establish different deadlines for
2 submitting forms, reports, or information to the department
3 ~~division~~, or to its authorized agent, via the electronic
4 reporting system than are otherwise required when reporting
5 information by other means.

6 (2) The department ~~division~~ may require any carrier to
7 submit data electronically, either directly or through a
8 third-party vendor, and may require any carrier or vendor
9 submitting data to the department ~~division~~ electronically to
10 be certified by the department ~~division~~. The department
11 ~~division~~ may specify performance requirements for any carrier
12 or vendor submitting data electronically.

13 (3) The department ~~division~~ may revoke the
14 certification of any carrier or vendor determined by the
15 department ~~division~~ to be in noncompliance with performance
16 standards prescribed by rule for electronic submissions.

17 (4) The department ~~division~~ may assess a civil
18 penalty, not to exceed \$500 for each violation, as prescribed
19 by rule.

20 (5) The department ~~may division is authorized to~~ adopt
21 rules to administer this section.

22 Section 49. Subsections (1), (4), and (5) of section
23 443.012, Florida Statutes, are amended to read:

24 443.012 Unemployment Appeals Commission.--

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

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

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

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

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

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

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

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

30 (5) The commission shall not be subject to control,
31 supervision, or direction by the Agency for Workforce

1 ~~Innovation Department of Labor and Employment Security~~ in the
2 performance of its powers and duties under this chapter.

3 Section 50. Subsection (12) of section 443.036,
4 Florida Statutes, is amended to read:

5 443.036 Definitions.--As used in this chapter, unless
6 the context clearly requires otherwise:

7 (12) COMMISSION.--"Commission" means the Unemployment
8 Appeals Commission ~~of the Department of Labor and Employment~~
9 ~~Security~~.

10 Section 51. Subsection (3) of section 447.02, Florida
11 Statutes, is amended to read:

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

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

18 Section 52. Subsection (4) of section 447.305, Florida
19 Statutes, is amended to read:

20 447.305 Registration of employee organization.--

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

25 Section 53. Subsection (4) of section 450.012, Florida
26 Statutes, is amended to read:

27 450.012 Definitions.--For the purpose of this chapter,
28 the word, phrase, or term:

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

31

1 Section 54. Paragraph (j) of subsection (1) of section
2 450.191, Florida Statutes, is amended to read:

3 450.191 Executive Office of the Governor; powers and
4 duties.--

5 (1) The Executive Office of the Governor is authorized
6 and directed to:

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

12 Section 55. Subsection (2) of section 450.28, Florida
13 Statutes, is amended to read:

14 450.28 Definitions.--

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

17 Section 56. Section 627.0915, Florida Statutes, is
18 amended to read:

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

1 Section 57. Paragraph (m) of subsection (2) of section
2 110.205, Florida Statutes, is amended to read:

3 110.205 Career service; exemptions.--

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

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

1 Section 58. Paragraph (h) of subsection (2) of section
2 112.19, Florida Statutes, is amended to read:

3 112.19 Law enforcement, correctional, and correctional
4 probation officers; death benefits.--

5 (2)

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

24 a. Health insurance benefits payable from any other
25 source shall reduce benefits payable under this section.

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

1 misdemeanor of the first degree, punishable as provided in s.
2 775.082 or s. 775.083.

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

14 2. In order for the officer, spouse, and dependent
15 children to be eligible for such insurance coverage, the
16 injury must have occurred as the result of the officer's
17 response to fresh pursuit, the officer's response to what is
18 reasonably believed to be an emergency, or an unlawful act
19 perpetrated by another. Except as otherwise provided herein,
20 nothing in this paragraph shall be construed to limit health
21 insurance coverage for which the officer, spouse, or dependent
22 children may otherwise be eligible, except that a person who
23 qualifies under this section shall not be eligible for the
24 health insurance subsidy provided under chapter 121, chapter
25 175, or chapter 185.

26 Section 59. Paragraph (g) of subsection (2) of section
27 112.191, Florida Statutes, is amended to read:

28 112.191 Firefighters; death benefits.--

29 (2)

30 (g)1. Any employer who employs a full-time firefighter
31 who, on or after January 1, 1995, suffers a catastrophic

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

16 a. Health insurance benefits payable from any other
17 source shall reduce benefits payable under this section.

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

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

1 benefits paid due to the fraud or other prohibited activity.
2 For purposes of this sub-subparagraph, "conviction" means a
3 determination of guilt that is the result of a plea or trial,
4 regardless of whether adjudication is withheld.

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

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

24 Section 60. Section 121.125, Florida Statutes, is
25 amended to read:

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

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

16 Section 61. Subsection (7) of section 122.03, Florida
17 Statutes, is amended to read:

18 122.03 Contributions; participants; prior service
19 credit.--

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

1 earlier of the date of maximum medical improvement ~~has been~~
2 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date
3 termination has occurred as defined in s. 121.021(39). The
4 employer of record at the time of the worker's compensation
5 injury or illness shall make the required employee and
6 employer retirement contributions based on the member's rate
7 of monthly compensation immediately prior to receipt of
8 workers' compensation payments.

9 Section 62. Subsection (10) of section 238.06, Florida
10 Statutes, is amended to read:

11 238.06 Membership application, creditable service, and
12 time for making contributions.--

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

31

1 of monthly compensation immediately prior to his or her
2 receiving workers' compensation payments.

3 Section 63. Subsection (1) of section 440.10, Florida
4 Statutes, is amended to read:

5 440.10 Liability for compensation.--

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

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

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

30 (d)1. If a contractor becomes liable for the payment
31 of compensation to the employees of a subcontractor who has

1 failed to secure such payment in violation of s. 440.38, the
2 contractor or other third-party payor shall be entitled to
3 recover from the subcontractor all benefits paid or payable
4 plus interest unless the contractor and subcontractor have
5 agreed in writing that the contractor will provide coverage.

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

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

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

28 (g) For purposes of this section, a person is
29 conclusively presumed to be an independent contractor if:
30
31

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

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

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

21 Section 64. Subsection (1) of section 440.104, Florida
22 Statutes, is amended to read:

23 440.104 Competitive bidder; civil actions.--

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

1 Section 65. Subsection (4) of section 440.14, Florida
2 Statutes, is amended to read:

3 440.14 Determination of pay.--

4 (4) Upon termination of the employee or upon
5 termination of the payment of fringe benefits of any employee
6 who is collecting indemnity benefits pursuant to s. 440.15(2)
7 or (3)(b), the employer shall within 7 days of such
8 termination file a corrected 13-week wage statement reflecting
9 the wages paid and the fringe benefits that had been paid to
10 the injured employee, as provided ~~defined~~ in s. 440.02(28) ~~s.~~
11 ~~440.02(27)~~.

12 Section 66. Sections 20.171 and 440.4416, Florida
13 Statutes, are repealed.

14 Section 67. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 invalidity does not affect other provisions or applications of
17 the act which can be given effect without the invalid
18 provision or application, and to this end the provisions of
19 this act are severable.

20 Section 68. This act shall take effect January 1,
21 2002.

22
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 Senate Bill 66-C

26 The committee substitute provides technical, conforming
27 changes to abolish the Department of Labor and Employment
28 Security and transfer functions, programs, and positions of
29 the department.
30
31