

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.091, F.S.; specifying
4 circumstances under which firefighters,
5 emergency medical technicians, and paramedics
6 are considered to be acting within the scope of
7 their employment so as to qualify for workers'
8 compensation benefits; providing a declaration
9 of important state interest; amending s.
10 112.18, F.S.; expanding the provisions of law
11 with respect to disability in the line of duty
12 to include all law enforcement officers and
13 certain correctional officers; providing a
14 finding of important state interest; amending
15 s. 440.02, F.S.; redefining the terms
16 "employee" and "independent contractor";
17 prohibiting exemptions from coverage for
18 commercial construction job sites; defining the
19 terms "commercial building" and "residential
20 building"; amending s. 440.05, F.S.; requiring
21 employers to maintain business records
22 specified by rules of the Division of Workers'
23 Compensation, relative to exemptions from
24 coverage; revising requirements for election of
25 exemptions for coverage; amending s. 440.10,
26 F.S.; providing penalties for employers who
27 fail to secure compensation; amending s.
28 440.107, F.S.; requiring and authorizing the
29 division to issue stop-work orders and to
30 impose certain penalties against employers who
31 fail to secure compensation; requiring the

1 division to notify the Department of Business
2 and Professional Regulation; amending s.
3 440.13, F.S.; providing for responsibilities of
4 the three-member panel; requiring provision of
5 data and support services by the division;
6 revising the limitation on medical fees;
7 providing for discontinuance of medical care
8 under a managed care plan regardless of the
9 date of an accident; amending s. 440.191, F.S.;
10 revising duties of the Employee Assistance and
11 Ombudsman Office; removing a requirement that
12 an employee exhaust certain dispute-resolution
13 procedures before filing a petition requesting
14 benefits; amending s. 440.25, F.S.; revising
15 procedures for mediation and hearings;
16 extending the time for ordering and holding
17 mediation conferences; providing requirements
18 for granting a continuance; providing for
19 mediation conducted by mediators other than
20 from the Office of the Judges of Compensation
21 Claims; requiring that the parties complete
22 pretrial stipulations before concluding
23 mediation; extending the time for holding final
24 hearings; providing for waiver of any benefit
25 not raised at the final hearing; providing for
26 an expedited determination of pay; requiring
27 that certain claims be resolved through an
28 expedited process; providing for dismissal for
29 lack of prosecution; limiting the payment of
30 interest and the attachment of attorney's fees;
31 amending s. 440.34, F.S.; revising provisions

1 governing the award of claimant's attorney's
2 fees; limiting the attachment of claimant's
3 attorney's fees; amending s. 440.381, F.S.;
4 requiring that the application for workers'
5 compensation coverage contain a sworn statement
6 by the agent; providing a penalty for carriers
7 that fail to comply with audit requirements;
8 revising requirements for audits; amending s.
9 440.40, F.S.; requiring employers to post a
10 notice related to the anti-fraud reward
11 program; amending s. 440.45, F.S., relating to
12 the Office of the Judges of Compensation
13 Claims; clarifying the responsibilities of the
14 director of the Division of Administrative
15 Hearings as agency head of the Office of the
16 Judges of Compensation Claims; amending ss.
17 489.114 and 489.510, F.S.; revising provisions
18 governing the verification by the division of
19 coverage of persons engaged in the business of
20 contracting; specifying an administrative fine
21 for contractors who are in noncompliance with
22 chapter 440, F.S., to be paid to the Department
23 of Business and Professional Regulation;
24 amending s. 626.9892, F.S.; revising the
25 criteria for the anti-fraud program; requiring
26 the Department of Insurance to conduct a study
27 related to workers' compensation for persons
28 engaged in the construction industry; providing
29 an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 440.091, Florida Statutes, is
2 amended to read:

3 440.091 Law enforcement officer, firefighter,
4 emergency medical technician, or paramedic; when acting within
5 the course of employment.--

6 (1) If an employee:

7 (a)~~(1)~~ Is elected, appointed, or employed full time by
8 a municipality, the state, or any political subdivision and is
9 vested with authority to bear arms and make arrests and the
10 employee's primary responsibility is the prevention or
11 detection of crime or the enforcement of the penal, criminal,
12 traffic, or highway laws of the state;

13 (b)~~(2)~~ Was discharging that primary responsibility
14 within the state in a place and under circumstances reasonably
15 consistent with that primary responsibility; and

16 (c)~~(3)~~ Was not engaged in services for which he or she
17 was paid by a private employer, and the employee and his or
18 her public employer had no agreement providing for workers'
19 compensation coverage for that private employment;

20
21 the employee is considered ~~shall be deemed~~ to have been acting
22 within the course of employment. The term "employee" as used
23 in this subsection ~~section~~ includes all certified supervisory
24 and command personnel whose duties include, in whole or in
25 part, responsibilities for the supervision, training,
26 guidance, and management of full-time law enforcement
27 officers, part-time law enforcement officers, or auxiliary law
28 enforcement officers but does not include support personnel
29 employed by the employing agency.

30 (2) If a firefighter as defined by s. 112.191(1)(b) is
31 engaged in extinguishing a fire, or protecting and saving life

1 or property due to a fire in this state in an emergency, and
2 such activities would be considered to be within the course of
3 his or her employment as a firefighter and covered by the
4 employer's workers' compensation coverage except for the fact
5 that the firefighter was off duty or that the location of the
6 fire was outside the employer's jurisdiction or area of
7 responsibility, such activities are considered to be within
8 the course of employment. This subsection does not apply if
9 the firefighter is performing activities for which he or she
10 is paid by another employer or contractor.

11 (3) If an emergency medical technician or paramedic is
12 appointed or employed full time by a municipality, the state,
13 or any political subdivision, is certified under chapter 401,
14 is providing basic life support or advanced life support
15 services, as defined in s. 401.23, in an emergency situation
16 in this state, and such activities would be considered to be
17 within the course of his or her employment as an emergency
18 medical technician or paramedic and covered by the employer's
19 workers' compensation coverage except for the fact that the
20 location of the emergency was outside of the employer's
21 jurisdiction or area of responsibility, such activities are
22 considered to be within the course of employment. The
23 provisions of this subsection do not apply if the emergency
24 medical technician or paramedic is performing activities for
25 which he or she is paid by another employer or contractor.

26 Section 2. It is declared by the Legislature that
27 firefighters perform state and municipal functions, that it is
28 their duty to protect life and property at their own risk and
29 peril, and that their activities are vital to the public
30 safety. Therefore, the Legislature declares that it fulfills
31 an important state interest to provide workers' compensation

1 coverage to firefighters while engaged in extinguishing a
2 fire, or protecting and saving life or property due to a fire
3 in this state while off duty or engaging in such activities at
4 a fire located outside the employer's jurisdiction or area of
5 responsibility. It is further declared by the Legislature that
6 emergency medical technicians and paramedics perform municipal
7 and state functions, that it is their duty to protect and
8 preserve life at their own risk and peril, and that their
9 activities are vital to the public health, safety, and
10 welfare. Therefore, the Legislature declares that it fulfills
11 an important state interest to provide workers' compensation
12 coverage to emergency medical technicians and paramedics while
13 engaged in basic life support and advanced life support
14 services due to an emergency in this state that is outside of
15 their employer's jurisdiction or area of responsibility.
16 Pursuant to Section 18, Article VII of the State Constitution,
17 the Legislature determines and declares that the provisions of
18 this act fulfill an important state interest.

19 Section 3. Section 112.18, Florida Statutes, is
20 amended to read:

21 112.18 Firefighters and ~~state~~ law enforcement
22 officers; special provisions relative to disability.--

23 (1) Any condition or impairment of health of any
24 Florida state, municipal, county, port authority, special tax
25 district, or fire control district firefighter or any state
26 law enforcement officer or correctional officer as defined in
27 s. 943.10(1), (2), or (3) caused by tuberculosis, heart
28 disease, or hypertension resulting in total or partial
29 disability or death shall be presumed to have been accidental
30 and to have been suffered in the line of duty unless the
31 contrary be shown by competent evidence. However, any such

1 firefighter or ~~state~~ law enforcement officer shall have
2 successfully passed a physical examination upon entering into
3 any such service as a firefighter or ~~state~~ law enforcement
4 officer, which examination failed to reveal any evidence of
5 any such condition. Such presumption shall not apply to
6 benefits payable under or granted in a policy of life
7 insurance or disability insurance, unless the insurer and
8 insured have negotiated for such additional benefits to be
9 included in the policy contract.

10 (2) This section shall be construed to authorize the
11 above governmental entities to negotiate policy contracts for
12 life and disability insurance to include accidental death
13 benefits or double indemnity coverage which shall include the
14 presumption that any condition or impairment of health of any
15 firefighter, law enforcement officer, or correctional officer
16 caused by tuberculosis, heart disease, or hypertension
17 resulting in total or partial disability or death was
18 accidental and suffered in the line of duty, unless the
19 contrary be shown by competent evidence.

20 Section 4. The Legislature finds that a proper and
21 legitimate state purpose is served when law enforcement
22 officers, correctional officers, and correctional probation
23 officers are included in the class that benefits from the
24 presumption that tuberculosis, heart disease, or hypertension
25 resulting in total or partial disability or death is
26 accidental and suffered in the line of duty unless the
27 contrary be shown by competent evidence. Therefore, the
28 Legislature determines and declares that this act fulfills an
29 important state interest.

30
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1 Section 5. Paragraphs (b), (c), and (d) of subsection
2 (14) of section 440.02, Florida Statutes, are amended, and
3 subsections (40) and (41) are added to that section, to read:

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

7 (14)

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

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

15 2. As to officers of a corporation who are actively
16 engaged in the construction industry, no more than three
17 officers may elect to be exempt from this chapter by filing
18 written notice of the election with the division as provided
19 in s. 440.05. However, any exemption obtained by a corporate
20 officer of a corporation actively engaged in the construction
21 industry is not applicable with respect to any commercial
22 building project estimated to be valued at \$250,000 or
23 greater.

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

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

31

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

19 2. Notwithstanding the provisions of subparagraph 1.,
20 the term "employee" includes a sole proprietor or partner
21 actively engaged in the construction industry with respect to
22 any commercial building project estimated to be valued at
23 \$250,000 or greater. Any exemption obtained is not applicable,
24 with respect to work performed at such a commercial building
25 project.

26 (d) "Employee" does not include:
27 1. An independent contractor, if:
28 a. The independent contractor maintains a separate
29 business with his or her own work facility, truck, equipment,
30 materials, or similar accommodations;
31

1 b. The independent contractor holds or has applied for
2 a federal employer identification number, unless the
3 independent contractor is a sole proprietor who is not
4 required to obtain a federal employer identification number
5 under state or federal requirements;

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

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

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

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

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

22 h. The independent contractor has continuing or
23 recurring business liabilities or obligations; and

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

27
28 However, the determination as to whether an individual
29 included in the Standard Industrial Classification Manual of
30 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
31 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,

1 2448, or 2449, or a newspaper delivery person, is an
2 independent contractor is governed not by the criteria in this
3 paragraph but by common-law principles, giving due
4 consideration to the business activity of the individual.
5 Notwithstanding the provisions of this paragraph or any other
6 provision of this chapter, with respect to any commercial
7 building project estimated to be valued at \$250,000 or
8 greater, a person who is actively engaged in the construction
9 industry is not an independent contractor and is either an
10 employer or an employee who may not be exempt from the
11 coverage requirements of this chapter.

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

15 3. Bands, orchestras, and musical and theatrical
16 performers, including disk jockeys, performing in licensed
17 premises as defined in chapter 562, if a written contract
18 evidencing an independent contractor relationship is entered
19 into before the commencement of such entertainment.

20 4. An owner-operator of a motor vehicle who transports
21 property under a written contract with a motor carrier which
22 evidences a relationship by which the owner-operator assumes
23 the responsibility of an employer for the performance of the
24 contract, if the owner-operator is required to furnish the
25 necessary motor vehicle equipment and all costs incidental to
26 the performance of the contract, including, but not limited
27 to, fuel, taxes, licenses, repairs, and hired help; and the
28 owner-operator is paid a commission for transportation service
29 and is not paid by the hour or on some other time-measured
30 basis.

31

1 5. A person whose employment is both casual and not in
2 the course of the trade, business, profession, or occupation
3 of the employer.

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

11 a. Persons who serve in private nonprofit agencies and
12 who receive no compensation other than expenses in an amount
13 less than or equivalent to the standard mileage and per diem
14 expenses provided to salaried employees in the same agency or,
15 if such agency does not have salaried employees who receive
16 mileage and per diem, then such volunteers who receive no
17 compensation other than expenses in an amount less than or
18 equivalent to the customary mileage and per diem paid to
19 salaried workers in the community as determined by the
20 division; and

21 b. Volunteers participating in federal programs
22 established under Pub. L. No. 93-113.

23 7. Any officer of a corporation who elects to be
24 exempt from this chapter.

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

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

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

15 11. A person who performs services as a sports
16 official for an entity sponsoring an interscholastic sports
17 event or for a public entity or private, nonprofit
18 organization that sponsors an amateur sports event. For
19 purposes of this subparagraph, such a person is an independent
20 contractor. For purposes of this subparagraph, the term
21 "sports official" means any person who is a neutral
22 participant in a sports event, including, but not limited to,
23 umpires, referees, judges, linespersons, scorekeepers, or
24 timekeepers. This subparagraph does not apply to any person
25 employed by a district school board who serves as a sports
26 official as required by the employing school board or who
27 serves as a sports official as part of his or her
28 responsibilities during normal school hours.

29 (40) "Commercial building" means any building or
30 structure intended for commercial or industrial use, or any
31 building or structure intended for multifamily use of more

1 than four dwelling units, as well as any accessory use
2 structures constructed in conjunction with the principle
3 structure. The term, "commercial building," does not include
4 the conversion of any existing residential building to a
5 commercial building.

6 (41) "Residential building" means any building or
7 structure intended for residential use containing four or
8 fewer dwelling units and any structures intended as an
9 accessory use to the residential structure.

10 Section 6. Subsections (10), (11), (12), and (13) are
11 added to section 440.05, Florida Statutes, to read:

12 440.05 Election of exemption; revocation of election;
13 notice; certification.--

14 (10) Each sole proprietor, partner, or officer of a
15 corporation who is actively engaged in the construction
16 industry and who elects an exemption from this chapter shall
17 maintain business records as specified by the division by
18 rule, which rules must include the provision that any
19 corporation with exempt officers and any partnership actively
20 engaged in the construction industry with exempt partners must
21 maintain written statements of those exempted persons
22 affirmatively acknowledging each such individual's exempt
23 status.

24 (11) Any sole proprietor or partner actively engaged
25 in the construction industry claiming an exemption under this
26 section shall maintain a copy of his or her federal income tax
27 records for each of the immediately previous 3 years in which
28 he or she claims an exemption. Such federal income tax records
29 must include a complete copy of the following for each year in
30 which an exemption is claimed:

31

1 (a) For sole proprietors, a copy of Federal Income Tax
2 Form 1040 and its accompanying Schedule C;

3 (b) For partners, a copy of the partner's Federal
4 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
5 Form 1040 and its accompanying Schedule E.

6
7 A sole proprietor or partner shall produce, upon request by
8 the division, a copy of those documents together with a
9 statement by the sole proprietor or partner that the tax
10 records provided are true and accurate copies of what the sole
11 proprietor or partner has filed with the federal Internal
12 Revenue Service. The statement must be signed under oath by
13 the sole proprietor or partner and must be notarized. The
14 division shall issue a stop-work order under s. 440.107(5) to
15 any sole proprietor or partner who fails or refuses to produce
16 a copy of the tax records and affidavit required under this
17 paragraph to the division within 3 business days after the
18 request is made.

19 (12) For those sole proprietors or partners that have
20 not been in business long enough to provide the information
21 required of an established business, the division shall
22 require such sole proprietor or partner to provide copies of
23 the most recently filed Federal Income Tax Form 1040. The
24 division shall establish by rule such other criteria to show
25 that the sole proprietor or partner intends to engage in a
26 legitimate enterprise within the construction industry and is
27 not otherwise attempting to evade the requirements of this
28 section. The division shall establish by rule the form and
29 format of financial information required to be submitted by
30 such employers.

31

1 (13) Any corporate officer claiming an exemption under
2 this section must be listed on the records of this state's
3 Secretary of State, Division of Corporations, as a corporate
4 officer. If the person who claims an exemption as a corporate
5 officer is not so listed on the records of the Secretary of
6 State, the individual must provide to the division, upon
7 request by the division, a notarized affidavit stating that
8 the individual is a bona fide officer of the corporation and
9 stating the date his or her appointment or election as a
10 corporate officer became or will become effective. The
11 statement must be signed under oath by both the officer and
12 the president or chief operating officer of the corporation
13 and must be notarized. The division shall issue a stop-work
14 order under s. 440.107(1) to any corporation who employs a
15 person who claims to be exempt as a corporate officer but who
16 fails or refuses to produce the documents required under this
17 subsection to the division within 3 business days after the
18 request is made.

19 Section 7. Subsection (1) of section 440.10, Florida
20 Statutes, is amended to read:

21 440.10 Liability for compensation.--

22 (1)(a) Every employer coming within the provisions of
23 this chapter, including any brought within the chapter by
24 waiver of exclusion or of exemption, shall be liable for, and
25 shall secure, the payment to his or her employees, or any
26 physician, surgeon, or pharmacist providing services under the
27 provisions of s. 440.13, of the compensation payable under ss.
28 440.13, 440.15, and 440.16. Any contractor or subcontractor
29 who engages in any public or private construction in the state
30 shall secure and maintain compensation for his or her
31 employees under this chapter as provided in s. 440.38.

1 (b) In case a contractor sublets any part or parts of
2 his or her contract work to a subcontractor or subcontractors,
3 all of the employees of such contractor and subcontractor or
4 subcontractors engaged on such contract work shall be deemed
5 to be employed in one and the same business or establishment;
6 and the contractor shall be liable for, and shall secure, the
7 payment of compensation to all such employees, except to
8 employees of a subcontractor who has secured such payment.

9 (c) A contractor may require a subcontractor to
10 provide evidence of workers' compensation insurance or a copy
11 of his or her certificate of election. A subcontractor
12 electing to be exempt as a sole proprietor, partner, or
13 officer of a corporation shall provide a copy of his or her
14 certificate of election to the contractor.

15 (d)1. If a contractor becomes liable for the payment
16 of compensation to the employees of a subcontractor who has
17 failed to secure such payment in violation of s. 440.38, the
18 contractor or other third-party payor shall be entitled to
19 recover from the subcontractor all benefits paid or payable
20 plus interest unless the contractor and subcontractor have
21 agreed in writing that the contractor will provide coverage.

22 2. If a contractor or third-party payor becomes liable
23 for the payment of compensation to the employee of a
24 subcontractor who is actively engaged in the construction
25 industry and has elected to be exempt from the provisions of
26 this chapter, but whose election is invalid, the contractor or
27 third-party payor may recover from the claimant, partnership,
28 or corporation all benefits paid or payable plus interest,
29 unless the contractor and the subcontractor have agreed in
30 writing that the contractor will provide coverage.

31

1 (e) A subcontractor is not liable for the payment of
2 compensation to the employees of another subcontractor on such
3 contract work and is not protected by the
4 exclusiveness-of-liability provisions of s. 440.11 from action
5 at law or in admiralty on account of injury of such employee
6 of another subcontractor.

7 (f) If an employer ~~willfully~~ fails to secure
8 compensation as required by this chapter, the division may
9 assess against the employer a penalty not to exceed \$5,000 for
10 each employee of that employer who is classified by the
11 employer as an independent contractor but who is found by the
12 division to not meet the criteria for an independent
13 contractor that are set forth in s. 440.02. The division shall
14 adopt rules to administer the provisions of this paragraph.

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

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

20 2. The independent contractor provides the general
21 contractor with a valid certificate of workers' compensation
22 insurance or a valid certificate of exemption issued by the
23 division.

24
25 A sole proprietor, partner, or officer of a corporation who
26 elects exemption from this chapter by filing a certificate of
27 election under s. 440.05 may not recover benefits or
28 compensation under this chapter. An independent contractor who
29 provides the general contractor with both an affidavit stating
30 that he or she meets the requirements of s. 440.02(14)(d) and
31 a certificate of exemption is not an employee under s.

1 440.02(14)(c) and may not recover benefits under this chapter.
2 For purposes of determining the appropriate premium for
3 workers' compensation coverage, carriers may not consider any
4 person who meets the requirements of this paragraph to be an
5 employee.

6 Section 8. Subsections (5) and (7) of section 440.107,
7 Florida Statutes, are amended, and subsection (12) is added to
8 that section to read:

9 440.107 Division powers to enforce employer compliance
10 with coverage requirements.--

11 (5) Whenever the division determines that an employer
12 who is required to secure the payment to his or her employees
13 of the compensation provided for by this chapter has failed to
14 do so, such failure shall be deemed an immediate serious
15 danger to public health, safety, or welfare sufficient to
16 justify service by the division of a stop-work order on the
17 employer, requiring the cessation of all business operations
18 at the place of employment or job site. If the division makes
19 such a determination, the division shall issue a stop-work
20 order within 72 hours.The order shall take effect upon the
21 date of service upon the employer, unless the employer
22 provides evidence satisfactory to the division of having
23 secured any necessary insurance or self-insurance and pays a
24 civil penalty to the division, to be deposited by the division
25 into the Workers' Compensation Administration Trust Fund, in
26 the amount of \$100 per day for each day the employer was not
27 in compliance with this chapter.

28 (7) In addition to any penalty, stop-work order, or
29 injunction, the division shall ~~may~~ assess against any
30 employer, who has failed to secure the payment of compensation
31

1 as required by this chapter, a penalty in the following amount
2 of:

3 (a) An amount equal to at least the amount that the
4 employer would have paid or up to twice the amount the
5 employer would have paid during periods it illegally failed to
6 secure payment of compensation in the preceding 3-year period
7 based on the employer's payroll during the preceding 3-year
8 period; or

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

10

11 Any penalty assessed under this subsection is due within 30
12 days after the date on which the employer is notified, except
13 that, if the division has posted a stop-work order or obtained
14 injunctive relief against the employer, payment is due, in
15 addition to those conditions set forth in this section, as a
16 condition to relief from a stop-work order or an injunction.
17 Interest shall accrue on amounts not paid when due at the rate
18 of 1 percent per month. The division shall adopt rules to
19 administer this section.

20 (12) If the division finds that an employer who is
21 certified or registered under part I or part II of chapter 489
22 and who is required to secure payment of the compensation
23 provided for by this chapter to his or her employees has
24 failed to do so, the division shall immediately notify the
25 Department of Business and Professional Regulation.

26 Section 9. Subsection (12) and paragraph (b) of
27 subsection (14) of section 440.13, Florida Statutes, are
28 amended to read:

29 440.13 Medical services and supplies; penalty for
30 violations; limitations.--

31

1 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2 REIMBURSEMENT ALLOWANCES.--

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

1 exceed the percentage of increase in the Consumer Price Index
2 for the previous year. An individual physician, hospital,
3 ambulatory surgical center, pain program, or work-hardening
4 program shall be reimbursed either the usual and customary
5 charge for treatment, care, and attendance, the agreed-upon
6 contract price, or the maximum reimbursement allowance in the
7 appropriate schedule, whichever is less.

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

19 (c) Reimbursement for all fees and other charges for
20 such treatment, care, and attendance, including treatment,
21 care, and attendance provided by any hospital or other health
22 care provider, ambulatory surgical center, work-hardening
23 program, or pain program, must not exceed the amounts provided
24 by the uniform schedule of maximum reimbursement allowances as
25 determined by the panel or as otherwise provided in this
26 section. This subsection also applies to independent medical
27 examinations performed by health care providers under this
28 chapter. Until the three-member panel approves a uniform
29 schedule of maximum reimbursement allowances and it becomes
30 effective, all compensable charges for treatment, care, and
31 attendance provided by physicians, ambulatory surgical

1 centers, work-hardening programs, or pain programs shall be
2 reimbursed at the lowest maximum reimbursement allowance
3 across all 1992 schedules of maximum reimbursement allowances
4 for the services provided regardless of the place of service.
5 In determining the uniform schedule, the panel shall first
6 approve the data which it finds representative of prevailing
7 charges in the state for similar treatment, care, and
8 attendance of injured persons. Each health care provider,
9 health care facility, ambulatory surgical center,
10 work-hardening program, or pain program receiving workers'
11 compensation payments shall maintain records verifying their
12 usual charges. In establishing the uniform schedule of maximum
13 reimbursement allowances, the panel must consider:

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

17 2. The impact upon cost to employers for providing a
18 level of reimbursement for treatment, care, and attendance
19 which will ensure the availability of treatment, care, and
20 attendance required by injured workers;

21 3. The financial impact of the reimbursement
22 allowances upon health care providers and health care
23 facilities, including trauma centers as defined in s.
24 395.4001, and its effect upon their ability to make available
25 to injured workers such medically necessary remedial
26 treatment, care, and attendance. The uniform schedule of
27 maximum reimbursement allowances must be reasonable, must
28 promote health care cost containment and efficiency with
29 respect to the workers' compensation health care delivery
30 system, and must be sufficient to ensure availability of such
31

1 medically necessary remedial treatment, care, and attendance
2 to injured workers; and

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

6 (d) In addition to establishing the uniform schedule
7 of maximum reimbursement allowances, the panel shall:

8 1. Take testimony, receive records, and collect data
9 to evaluate the adequacy of the workers' compensation fee
10 schedule, nationally recognized fee schedules and alternative
11 methods of reimbursement to certified health care providers
12 and health care facilities for inpatient and outpatient
13 treatment and care.

14 2. Survey certified health care providers and health
15 care facilities to determine the availability and
16 accessibility of workers' compensation health care delivery
17 systems for injured workers.

18 3. Survey carriers to determine the estimated impact
19 on carrier costs and workers' compensation premium rates by
20 implementing changes to the carrier reimbursement schedule or
21 implementing alternative reimbursement methods.

22 4. Submit recommendations on or before January 1,
23 2003, and biennially thereafter, to the President of the
24 Senate and the Speaker of the House of Representatives on
25 methods to improve the workers' compensation health care
26 delivery system.

27
28 The division shall provide data to the panel, including but
29 not limited to utilization trends in the workers' compensation
30 health care delivery system. The division shall provide the
31 panel with an annual report regarding the resolution of

1 medical reimbursement disputes and any actions pursuant to s.
2 440.13(8). The division shall provide administrative support
3 and service to the panel to the extent requested by the panel.

4 (14) PAYMENT OF MEDICAL FEES.--

5 (b) Fees charged for remedial treatment, care, and
6 attendance, except for independent medical examinations, may
7 not exceed the applicable fee schedules adopted under this
8 chapter.

9 Section 10. Paragraph (a) of subsection (2) of section
10 440.134, Florida Statutes, is amended to read:

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

13 (2)(a) The self-insured employer or carrier may,
14 subject to the terms and limitations specified elsewhere in
15 this section and chapter, furnish to the employee solely
16 through managed care arrangements such medically necessary
17 remedial treatment, care, and attendance for such period as
18 the nature of the injury or the process of recovery requires.
19 For any self-insured employer or carrier who elects to deliver
20 the medical benefits required by this chapter through a method
21 other than a workers' compensation managed care arrangement,
22 the discontinuance of the use of the workers' compensation
23 managed care arrangement shall be without regard to the date
24 of the accident, notwithstanding any other provision of law or
25 rule.

26 Section 11. Section 440.191, Florida Statutes, is
27 amended to read:

28 440.191 Employee Assistance and Ombudsman Office.--

29 (1)(a) In order to effect the self-executing features
30 of the Workers' Compensation Law, this chapter shall be
31 construed to permit injured employees and employers or the

1 employer's carrier to resolve disagreements without undue
2 expense, costly litigation, or delay in the provisions of
3 benefits. It is the duty of all who participate in the
4 workers' compensation system, including, but not limited to,
5 carriers, service providers, health care providers, attorneys,
6 employers, managed care arrangements, and employees, to
7 attempt to resolve disagreements in good faith and to
8 cooperate with the division's efforts to resolve disagreements
9 between the parties. The division may by rule prescribe
10 definitions that are necessary for the effective
11 administration of this section.

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

19 (c) The Employee Assistance and Ombudsman Office,
20 Division of Workers' Compensation, shall be a resource
21 available to all employees who participate in the workers'
22 compensation system and shall take all steps necessary to
23 educate and disseminate information to employees and
24 employers. Upon receiving a notice of injury or death, the
25 Employee Assistance and Ombudsman Office may initiate contact
26 with the injured employee or employee's representative to
27 discuss rights and responsibilities of the employee under this
28 chapter and the services available through the Employee
29 Assistance and Ombudsman Office.

30 ~~(2)(a) An employee may not file a petition requesting~~
31 ~~any benefit under this chapter unless the employee has~~

1 ~~exhausted the procedures for informal dispute resolution under~~
2 ~~this section.~~

3 (a)~~(b)~~ If at any time the employer or its carrier
4 fails to provide benefits to which the employee believes she
5 or he is entitled, the employee shall contact the office to
6 request assistance in resolving the dispute. The office may
7 review a petition for benefits filed under s. 440.192 ~~shall~~
8 ~~investigate the dispute~~ and may ~~shall~~ attempt to facilitate an
9 agreement between the employee and the employer or carrier.
10 The employee, the employer, and the carrier shall cooperate
11 with the office and shall timely provide the office with any
12 documents or other information that it may require in
13 connection with its efforts under this section.

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

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

1 with this section, unless expressly authorized elsewhere in
2 this chapter.

3 Section 12. Subsections (1), (3), and (4) of section
4 440.25, Florida Statutes, are amended to read:

5 440.25 Procedures for mediation and hearings.--

6 (1) Within 90 ~~21~~ days after a petition for benefits is
7 filed under s. 440.192, a mediation conference concerning such
8 petition shall be held. Within 40 ~~7~~ days after such petition
9 is filed, the judge of compensation claims shall notify the
10 interested parties by order that a mediation conference
11 concerning such petition will be held unless the parties have
12 notified the Office of the Judges of Compensation Claims that
13 a mediation has been held. Such order must ~~notice shall~~ give
14 the date by which, ~~time, and location of~~ the mediation
15 conference must be held. Such order ~~notice~~ may be served
16 personally upon the interested parties or may be sent to the
17 interested parties by mail. The claimant or the adjuster of
18 the employer or carrier may, at the mediator's discretion,
19 attend the mediation conference by telephone or, if agreed to
20 by the parties, other electronic means. A continuance may be
21 granted if the requesting party demonstrates to the judge of
22 compensation claims that the reason for requesting the
23 continuance arises from circumstances beyond the party's
24 control. Any order granting a continuance must set forth the
25 date of the rescheduled mediation conference. A mediation
26 conference may not be used solely for the purpose of mediating
27 attorney's fees.

28 (3)(a) Such mediation conference shall be conducted
29 informally and does not require the use of formal rules of
30 evidence or procedure. Any information from the files,
31 reports, case summaries, mediator's notes, or other

1 communications or materials, oral or written, relating to a
2 mediation conference under this section obtained by any person
3 performing mediation duties is privileged and confidential and
4 may not be disclosed without the written consent of all
5 parties to the conference. Any research or evaluation effort
6 directed at assessing the mediation program activities or
7 performance must protect the confidentiality of such
8 information. Each party to a mediation conference has a
9 privilege during and after the conference to refuse to
10 disclose and to prevent another from disclosing communications
11 made during the conference whether or not the contested issues
12 are successfully resolved. This subsection and paragraphs
13 (4)(a) and (b) shall not be construed to prevent or inhibit
14 the discovery or admissibility of any information that is
15 otherwise subject to discovery or that is admissible under
16 applicable law or rule of procedure, except that any conduct
17 or statements made during a mediation conference or in
18 negotiations concerning the conference are inadmissible in any
19 proceeding under this chapter.

20 1. Unless the parties conduct a private mediation
21 under subparagraph 2., mediation shall be conducted by a
22 mediator selected by the Director of the Division of
23 Administrative Hearings from among mediators ~~shall select a~~
24 ~~mediator. The mediator shall be~~ employed on a full-time basis
25 by the Office of the Judges of Compensation Claims. A mediator
26 must be a member of The Florida Bar for at least 5 years and
27 must complete a mediation training program approved by the
28 Director of the Division of Administrative Hearings. Adjunct
29 mediators may be employed by the Office of the Judges of
30 Compensation Claims on an as-needed basis and shall be
31 selected from a list prepared by the Director of the Division

1 of Administrative Hearings. An adjunct mediator must be
2 independent of all parties participating in the mediation
3 conference. An adjunct mediator must be a member of The
4 Florida Bar for at least 5 years and must complete a mediation
5 training program approved by the Director of the Division of
6 Administrative Hearings. An adjunct mediator shall have
7 access to the office, equipment, and supplies of the judge of
8 compensation claims in each district.

9 2. With respect to any mediation occurring on or after
10 January 1, 2003, if the parties agree or if mediators are not
11 available under subparagraph 1. to conduct the required
12 mediation within the period specified in this section, the
13 parties shall hold a mediation conference at the carrier's
14 expense within the 90-day period set for mediation. The
15 mediation conference shall be conducted by a mediator
16 certified under s. 44.106. If the parties do not agree upon a
17 mediator within 10 days after the date of the order, the
18 claimant shall notify the judge in writing and the judge shall
19 appoint a mediator under this subparagraph within 7 days.In
20 the event both parties agree, the results of the mediation
21 conference shall be binding and neither party shall have a
22 right to appeal the results. In the event either party refuses
23 to agree to the results of the mediation conference, the
24 results of the mediation conference as well as the testimony,
25 witnesses, and evidence presented at the conference shall not
26 be admissible at any subsequent proceeding on the claim. The
27 mediator shall not be called in to testify or give deposition
28 to resolve any claim for any hearing before the judge of
29 compensation claims. The employer may be represented by an
30 attorney at the mediation conference if the employee is also
31 represented by an attorney at the mediation conference.

1 (c) The parties shall complete the pretrial
2 stipulations before the conclusion of the mediation conference
3 if the claims, except for attorney's fees and costs, have not
4 been settled and if any claims in any filed petition remain
5 unresolved. The judge of compensation claims may impose
6 sanctions against a party or both parties for failing to
7 complete the pretrial stipulations before the conclusion of
8 the mediation conference.

9 (4)(a) If the parties fail to agree upon written
10 submission of pretrial stipulations at the mediation
11 conference, on the 10th day following commencement of
12 mediation, the questions in dispute have not been resolved,
13 the judge of compensation claims shall order hold a pretrial
14 hearing to occur within 14 days after the date of mediation
15 ordered by the judge of compensation claims. The judge of
16 compensation claims shall give the interested parties at least
17 7 days' advance notice of the pretrial hearing by mail. At the
18 pretrial hearing, the judge of compensation claims shall,
19 subject to paragraph (b), set a date for the final hearing
20 that allows the parties at least 60 ~~30~~ days to conduct
21 discovery unless the parties consent to an earlier hearing
22 date.

23 (b) The final hearing must be held and concluded
24 within 90 ~~45~~ days after the mediation conference is held
25 ~~pretrial hearing~~. Continuances may be granted only if the
26 requesting party demonstrates to the judge of compensation
27 claims that the reason for requesting the continuance arises
28 from circumstances beyond the party's control. The written
29 consent of the claimant must be obtained before any request
30 from a claimant's attorney is granted for an additional
31 continuance after the initial continuance has been granted.

1 Any order granting a continuance must set forth the date and
2 time of the rescheduled hearing. A continuance may be granted
3 only if the requesting party demonstrates to the judge of
4 compensation claims that the reason for requesting the
5 continuance arises from circumstances beyond the control of
6 the parties. The judge of compensation claims shall report any
7 grant of two or more continuances to the Deputy Chief Judge.

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

11 (d) The final hearing shall be held within 210 days
12 after receipt of the petition for benefits in the county where
13 the injury occurred, if the injury occurred in this state,
14 unless otherwise agreed to between the parties and authorized
15 by the judge of compensation claims in the county where the
16 injury occurred. If the injury occurred outside ~~without~~ the
17 state and is one for which compensation is payable under this
18 chapter, then the final hearing ~~above referred to~~ may be held
19 in the county of the employer's residence or place of
20 business, or in any other county of the state ~~that~~ ~~which~~ will,
21 in the discretion of the Deputy Chief Judge, be the most
22 convenient for a hearing. The final hearing shall be conducted
23 by a judge of compensation claims, who shall, within 30 days
24 after final hearing or closure of the hearing record, unless
25 otherwise agreed by the parties, enter a final order on the
26 merits of the disputed issues. The judge of compensation
27 claims may enter an abbreviated final order in cases in which
28 compensability is not disputed. Either party may request
29 separate findings of fact and conclusions of law. At the final
30 ~~such~~ hearing, the claimant and employer may each present
31 evidence with ~~in~~ respect to the claims presented by the

1 petition for benefits of such claim and may be represented by
2 any attorney authorized in writing for such purpose. When
3 there is a conflict in the medical evidence submitted at the
4 hearing, the provisions of s. 440.13 shall apply. The report
5 or testimony of the expert medical advisor shall be made a
6 part of the record of the proceeding and shall be given the
7 same consideration by the judge of compensation claims as is
8 accorded other medical evidence submitted in the proceeding;
9 and all costs incurred in connection with such examination and
10 testimony may be assessed as costs in the proceeding, subject
11 to the provisions of s. 440.13. No judge of compensation
12 claims may make a finding of a degree of permanent impairment
13 that is greater than the greatest permanent impairment rating
14 given the claimant by any examining or treating physician,
15 except upon stipulation of the parties. Any benefit due but
16 not raised at the final hearing which was ripe, due, or owing
17 at the time of the final hearing is waived.

18 (e) The order making an award or rejecting the claim,
19 referred to in this chapter as a "compensation order," shall
20 set forth the findings of ultimate facts and the mandate; and
21 the order need not include any other reason or justification
22 for such mandate. The compensation order shall be filed in the
23 Office of the Judges of Compensation Claims at Tallahassee. A
24 copy of such compensation order shall be sent by mail to the
25 parties and attorneys of record at the last known address of
26 each, with the date of mailing noted thereon.

27 (f) Each judge of compensation claims is required to
28 submit a special report to the Deputy Chief Judge in each
29 contested workers' compensation case in which the case is not
30 determined within 30 days of final hearing or closure of the
31 hearing record. Said form shall be provided by the director of

1 the Division of Administrative Hearings and shall contain the
2 names of the judge of compensation claims and of the attorneys
3 involved and a brief explanation by the judge of compensation
4 claims as to the reason for such a delay in issuing a final
5 order.

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

14 (h) To expedite dispute resolution and to enhance the
15 self-executing features of the Workers' Compensation Law, the
16 Deputy Chief Judge shall make provision by rule or order for
17 the resolution of appropriate motions by judges of
18 compensation claims without oral hearing upon submission of
19 brief written statements in support and opposition, and for
20 expedited discovery and docketing. Unless the judge of
21 compensation claims, for good cause, orders a hearing under
22 paragraph (i), each claim in a petition relating to the
23 determination of pay under s. 440.14 shall be resolved under
24 this paragraph without oral hearing.

25 (i) To further expedite dispute resolution and to
26 enhance the self-executing features of the system, those
27 petitions filed in accordance with s. 440.192 that involve a
28 claim for benefits of \$5,000 or less shall, in the absence of
29 compelling evidence to the contrary, be presumed to be
30 appropriate for expedited resolution under this paragraph; and
31 any other claim filed in accordance with s. 440.192, upon the

1 written agreement of both parties and application by either
2 party, may similarly be resolved under this paragraph. A claim
3 in a petition or \$5,000 or less for medical benefits only or a
4 petition for reimbursement for mileage for medical purposes
5 shall, in the absence of compelling evidence to the contrary,
6 be resolved through the expedited dispute-resolution process
7 provided in this paragraph.For purposes of expedited
8 resolution pursuant to this paragraph, the Deputy Chief Judge
9 shall make provision by rule or order for expedited and
10 limited discovery and expedited docketing in such cases. At
11 least 15 days prior to hearing, the parties shall exchange and
12 file with the judge of compensation claims a pretrial outline
13 of all issues, defenses, and witnesses on a form adopted by
14 the Deputy Chief Judge; provided, in no event shall such
15 hearing be held without 15 days' written notice to all
16 parties. No pretrial hearing shall be held. The judge of
17 compensation claims shall limit all argument and presentation
18 of evidence at the hearing to a maximum of 30 minutes, and
19 such hearings shall not exceed 30 minutes in length. Neither
20 party shall be required to be represented by counsel. The
21 employer or carrier may be represented by an adjuster or other
22 qualified representative. The employer or carrier and any
23 witness may appear at such hearing by telephone. The rules of
24 evidence shall be liberally construed in favor of allowing
25 introduction of evidence.

26 (j) A judge of compensation claims may, upon the
27 motion of a party or the judge's own motion, dismiss a
28 petition for lack of prosecution if a petition, response,
29 motion, order, request for hearing, or notice of deposition
30 has not been filed during the previous 12 months unless good
31

1 cause is shown. A dismissal for lack of prosecution is without
2 prejudice and does not require a hearing.

3 (k) A judge of compensation claims may not award
4 interest on unpaid medical bills and the amount of such bills
5 may not be used to calculate the amount of interest awarded.
6 Regardless of the date benefits were initially requested,
7 attorney's fees do not attach under this subsection until 30
8 days after the date the carrier or self-insured employer
9 receives the petition.

10 Section 13. Subsection (3) of section 440.34, Florida
11 Statutes, is amended to read:

12 440.34 Attorney's fees; costs.--

13 (3) If the claimant should prevail in any proceedings
14 before a judge of compensation claims or court, there shall be
15 taxed against the employer the reasonable costs of such
16 proceedings, not to include the attorney's fees of the
17 claimant. A claimant shall be responsible for the payment of
18 her or his own attorney's fees, except that a claimant shall
19 be entitled to recover a reasonable attorney's fee from a
20 carrier or employer:

21 (a) Against whom she or he successfully asserts a
22 petition claim for medical benefits only, if the claimant has
23 not filed or is not entitled to file at such time a claim for
24 disability, permanent impairment, wage-loss, or death
25 benefits, arising out of the same accident; ~~or~~

26 (b) In any case in which the employer or carrier files
27 a response to petition denying benefits with the Office of the
28 Judges of Compensation Claims and the injured person has
29 employed an attorney in the successful prosecution of the
30 petition claim; ~~or~~

31

1 (c) In a proceeding in which a carrier or employer
2 denies that an accident ~~injury~~ occurred for which compensation
3 benefits are payable, and the claimant prevails on the issue
4 of compensability; or

5 (d) In cases where the claimant successfully prevails
6 in proceedings filed under s. 440.24 or s. 440.28.

7
8 Regardless of the date benefits were initially requested,
9 attorney's fees shall not attach under this subsection until
10 30 days after the date the carrier or employer, if
11 self-insured, receives the petition. In applying the factors
12 set forth in subsection (1) to cases arising under paragraphs
13 (a), (b), (c), and (d), the judge of compensation claims must
14 only consider only such benefits and the time reasonably spent
15 in obtaining them as were secured for the claimant within the
16 scope of paragraphs (a), (b), (c), and (d).

17 Section 14. Subsections (2), (3), and (6) of section
18 440.381, Florida Statutes, are amended to read:

19 440.381 Application for coverage; reporting payroll;
20 payroll audit procedures; penalties.--

21 (2) The application must contain a statement that the
22 filing of an application containing false, misleading, or
23 incomplete information with the purpose of avoiding or
24 reducing the amount of premiums for workers' compensation
25 coverage is a felony of the third degree, punishable as
26 provided in s. 775.082, s. 775.083, or s. 775.084. The
27 application must contain a sworn statement by the employer
28 attesting to the accuracy of the information submitted and
29 acknowledging the provisions of former s. 440.37(4). The
30 application must contain a sworn statement by the agent
31 attesting that the agent explained to the employer or officer

1 the classification codes that are used for premium
2 calculations.

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

30 (6) If an employer ~~intentionally~~ understates or
31 conceals payroll, or misrepresents or conceals employee duties

1 so as to avoid proper classification for premium calculations,
2 or misrepresents or conceals information pertinent to the
3 computation and application of an experience rating
4 modification factor, the employer, or the employer's agent or
5 attorney, shall pay to the insurance carrier a penalty of 10
6 times the amount of the difference in premium paid and the
7 amount the employer should have paid and reasonable attorney's
8 fees. The penalty may be enforced in the circuit courts of
9 this state.

10 Section 15. Section 440.40, Florida Statutes, is
11 amended to read:

12 440.40 Compensation notice.--Every employer who has
13 secured compensation under the provisions of this chapter
14 shall keep posted in a conspicuous place or places in and
15 about her or his place or places of business typewritten or
16 printed notices, in accordance with a form prescribed by the
17 division, the following:

18 (1) A notice stating that such employer has secured
19 the payment of compensation in accordance with the provisions
20 of this chapter. Such notices shall contain the name and
21 address of the carrier, if any, with whom the employer has
22 secured payment of compensation and the date of the expiration
23 of the policy. The division may by rule prescribe the form of
24 the notices and require carriers to provide the notices to
25 policyholders.

26 (2) A notice stating: "Anti-Fraud Reward
27 Program.--Rewards of up to \$25,000 may be paid to persons
28 providing information to the Department of Insurance leading
29 to the arrest and conviction of persons committing insurance
30 fraud, including employers who illegally fail to obtain
31 workers' compensation coverage. Persons may report suspected

1 fraud to the department at...(Phone No.).... A person is not
2 subject to civil liability for furnishing such information, if
3 such person acts without malice, fraud, or bad faith."

4 Section 16. Subsection (1) of section 440.45, Florida
5 Statutes, is amended to read:

6 440.45 Office of the Judges of Compensation Claims.--

7 (1)(a) There is created the Office of the Judges of
8 Compensation Claims within the Department of Management
9 Services. The Office of the Judges of Compensation Claims
10 shall be headed by the Deputy Chief Judge of Compensation
11 Claims. The Deputy Chief Judge shall report to the director of
12 the Division of Administrative Hearings. The Deputy Chief
13 Judge shall be appointed by the Governor for a term of 4 years
14 from a list of three names submitted by the statewide
15 nominating commission created under subsection (2). The Deputy
16 Chief Judge must demonstrate prior administrative experience
17 and possess the same qualifications for appointment as a judge
18 of compensation claims, and the procedure for reappointment of
19 the Deputy Chief Judge will be the same as for reappointment
20 of a judge of compensation claims. The office shall be a
21 separate budget entity and the director of the Division of
22 Administrative Hearings shall be its agency head for all
23 purposes, including, but not limited to, rulemaking pursuant
24 to subsection (4) and establishing agency policies and
25 procedures. The Department of Management Services shall
26 provide administrative support and service to the office to
27 the extent requested by the director of the Division of
28 Administrative Hearings but shall not direct, supervise, or
29 control the Office of the Judges of Compensation Claims in any
30 manner, including, but not limited to, personnel, purchasing,
31 budgetary matters, or property transactions. The operating

1 budget of the Office of the Judges of Compensation Claims
2 shall be paid out of the Workers' Compensation Administration
3 Trust Fund established in s. 440.50.

4 (b) The current term of the Chief Judge of
5 Compensation Claims shall expire October 1, 2001. Effective
6 October 1, 2001, the position of Deputy Chief Judge of
7 Compensation Claims is created.

8 Section 17. Section 489.114, Florida Statutes, is
9 amended to read:

10 489.114 Evidence of workers' compensation
11 coverage.--Except as provided in s. 489.115(5)(d), any person,
12 business organization, or qualifying agent engaged in the
13 business of contracting in this state and certified or
14 registered under this part shall, as a condition precedent to
15 the issuance or renewal of a certificate, registration, or
16 certificate of authority of the contractor, provide to the
17 Construction Industry Licensing Board, as provided by board
18 rule, evidence of workers' compensation coverage pursuant to
19 chapter 440. In the event that the Division of Workers'
20 Compensation of the Department of Labor and Employment
21 Security receives notice of the cancellation of a policy of
22 workers' compensation insurance insuring a person or entity
23 governed by this section, the Division of Workers'
24 Compensation shall certify and identify all persons or
25 entities by certification or registration license number to
26 the department after verification is made by the Division of
27 Workers' Compensation that ~~such cancellation has occurred or~~
28 ~~that~~ persons or entities governed by this section are no
29 longer covered by workers' compensation insurance. Such
30 certification and verification by the Division of Workers'
31 Compensation may ~~shall~~ result ~~solely~~ from records furnished to

1 the Division of Workers' Compensation by the persons or
2 entities governed by this section or an investigation
3 completed by the Division of Workers' Compensation. The
4 department shall notify the persons or entities governed by
5 this section who have been determined to be in noncompliance
6 with chapter 440, and the persons or entities notified shall
7 provide certification of compliance with chapter 440 to the
8 department and pay an administrative fine in the amount of
9 \$500 ~~as provided by rule~~. The failure to maintain workers'
10 compensation coverage as required by law shall be grounds for
11 the board to revoke, suspend, or deny the issuance or renewal
12 of a certificate, registration, or certificate of authority of
13 the contractor under the provisions of s. 489.129.

14 Section 18. Section 489.510, Florida Statutes, is
15 amended to read:

16 489.510 Evidence of workers' compensation
17 coverage.--Except as provided in s. 489.515(3)(b), any person,
18 business organization, or qualifying agent engaged in the
19 business of contracting in this state and certified or
20 registered under this part shall, as a condition precedent to
21 the issuance or renewal of a certificate or registration of
22 the contractor, provide to the Electrical Contractors'
23 Licensing Board, as provided by board rule, evidence of
24 workers' compensation coverage pursuant to chapter 440. In
25 the event that the Division of Workers' Compensation of the
26 Department of Labor and Employment Security receives notice of
27 the cancellation of a policy of workers' compensation
28 insurance insuring a person or entity governed by this
29 section, the Division of Workers' Compensation shall certify
30 and identify all persons or entities by certification or
31 registration license number to the department after

1 verification is made by the Division of Workers' Compensation
2 that ~~such cancellation has occurred or that~~ persons or
3 entities governed by this section are no longer covered by
4 workers' compensation insurance. Such certification and
5 verification by the Division of Workers' Compensation may
6 shall result ~~solely~~ from records furnished to the Division of
7 Workers' Compensation by the persons or entities governed by
8 this section or an investigation completed by the Division of
9 Workers' Compensation. The department shall notify the persons
10 or entities governed by this section who have been determined
11 to be in noncompliance with chapter 440, and the persons or
12 entities notified shall provide certification of compliance
13 with chapter 440 to the department and pay an administrative
14 fine in the amount of \$500 ~~as provided by rule~~. The failure
15 to maintain workers' compensation coverage as required by law
16 shall be grounds for the board to revoke, suspend, or deny the
17 issuance or renewal of a certificate or registration of the
18 contractor under the provisions of s. 489.533.

19 Section 19. Subsection (2) of section 626.9892,
20 Florida Statutes, is amended to read:

21 626.9892 Anti-Fraud Reward Program; reporting of
22 insurance fraud.--

23 (2) The department may pay rewards of up to \$25,000 to
24 persons providing information leading to the arrest and
25 conviction of persons committing ~~complex or organized~~ crimes
26 investigated by the Division of Insurance Fraud arising from
27 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989,
28 or s. 817.234.

29 Section 20. The Department of Insurance, in
30 consultation with the board of governors of the joint
31 underwriting association authorized under section 627.311,

1 Florida Statutes, shall conduct a study of the response of the
2 insurance market in meeting the need for coverage among
3 construction industry employers at a rate that is not
4 inadequate, excessive, or unfairly discriminatory, and any
5 actual or potential availability concerns. The scope of the
6 study shall include a review of workers' compensation
7 insurance currently provided or required in other states and
8 possible alternative coverages. The department shall submit a
9 report recommending any changes needed to promote availability
10 of coverage at a rate that is not inadequate, excessive, or
11 unfairly discriminatory, to the President of the Senate and
12 the Speaker of the House of Representatives on or before
13 February 1, 2003.

14 Section 21. This act shall take effect July 1, 2002.
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