

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ross and Alexander offered the following:

Amendment (with title amendment)

On page 4, line 1 of the bill

insert:

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

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

(14)

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

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

2. As to officers of a corporation who are actively

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1 engaged in the construction industry, no more than three
2 officers may elect to be exempt from this chapter by filing
3 written notice of the election with the division as provided
4 in s. 440.05. However, any exemption obtained by a corporate
5 officer of a corporation actively engaged in the construction
6 industry is not applicable with respect to any commercial
7 building project estimated to be valued at \$250,000 or
8 greater.

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

12
13 Services are presumed to have been rendered to the corporation
14 if the officer is compensated by other than dividends upon
15 shares of stock of the corporation which the officer owns.

16 (c)1. "Employee" includes a sole proprietor or a
17 partner who devotes full time to the proprietorship or
18 partnership and, except as provided in this paragraph, elects
19 to be included in the definition of employee by filing notice
20 thereof as provided in s. 440.05. Partners or sole proprietors
21 actively engaged in the construction industry are considered
22 employees unless they elect to be excluded from the definition
23 of employee by filing written notice of the election with the
24 division as provided in s. 440.05. However, no more than three
25 partners in a partnership that is actively engaged in the
26 construction industry may elect to be excluded. A sole
27 proprietor or partner who is actively engaged in the
28 construction industry and who elects to be exempt from this
29 chapter by filing a written notice of the election with the
30 division as provided in s. 440.05 is not an employee. For
31 purposes of this chapter, an independent contractor is an

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1 employee unless he or she meets all of the conditions set
2 forth in subparagraph (d)1.

3 2. Notwithstanding the provisions of subparagraph 1.,
4 the term "employee" includes a sole proprietor or partner
5 actively engaged in the construction industry with respect to
6 any commercial building project estimated to be valued at
7 \$250,000 or greater. Any exemption obtained is not applicable,
8 with respect to work performed at such a commercial building
9 project.

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 f. The independent contractor receives compensation

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1 for work or services performed for a commission or on a
2 per-job or competitive-bid basis and not on any other basis;

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

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

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

10

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

19 Notwithstanding the provisions of this paragraph or any other
20 provision of this chapter, with respect to any commercial
21 building project estimated to be valued at \$250,000 or
22 greater, a person who is actively engaged in the construction
23 industry is not an independent contractor and is either an
24 employer or an employee who may not be exempt from the
25 coverage requirements of this chapter.

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

29 3. Bands, orchestras, and musical and theatrical
30 performers, including disk jockeys, performing in licensed
31 premises as defined in chapter 562, if a written contract

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1 evidencing an independent contractor relationship is entered
2 into before the commencement of such entertainment.

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

14 5. A person whose employment is both casual and not in
15 the course of the trade, business, profession, or occupation
16 of the employer.

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

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

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1 salaried workers in the community as determined by the
2 division; and

3 b. Volunteers participating in federal programs
4 established under Pub. L. No. 93-113.

5 7. Any officer of a corporation who elects to be
6 exempt from this chapter.

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

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

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

28 11. A person who performs services as a sports
29 official for an entity sponsoring an interscholastic sports
30 event or for a public entity or private, nonprofit
31 organization that sponsors an amateur sports event. For

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1 purposes of this subparagraph, such a person is an independent
2 contractor. For purposes of this subparagraph, the term
3 "sports official" means any person who is a neutral
4 participant in a sports event, including, but not limited to,
5 umpires, referees, judges, linespersons, scorekeepers, or
6 timekeepers. This subparagraph does not apply to any person
7 employed by a district school board who serves as a sports
8 official as required by the employing school board or who
9 serves as a sports official as part of his or her
10 responsibilities during normal school hours.

11 (40) "Commercial building" means any building or
12 structure intended for commercial or industrial use, or any
13 building or structure intended for multifamily use of more
14 than four dwelling units, as well as any accessory use
15 structures constructed in conjunction with the principle
16 structure. The term, "commercial building," does not include
17 the conversion of any existing residential building to a
18 commercial building.

19 (41) "Residential building" means any building or
20 structure intended for residential use containing four or
21 fewer dwelling units and any structures intended as an
22 accessory use to the residential structure.

23 Section 4. Subsections (10), (11), (12), and (13) are
24 added to section 440.05, Florida Statutes, to read:

25 440.05 Election of exemption; revocation of election;
26 notice; certification.--

27 (10) Each sole proprietor, partner, or officer of a
28 corporation who is actively engaged in the construction
29 industry and who elects an exemption from this chapter shall
30 maintain business records as specified by the division by
31 rule, which rules must include the provision that any

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1 corporation with exempt officers and any partnership actively
2 engaged in the construction industry with exempt partners must
3 maintain written statements of those exempted persons
4 affirmatively acknowledging each such individual's exempt
5 status.

6 (11) Any sole proprietor or partner claiming an
7 exemption under this section shall maintain a copy of his or
8 her federal income tax records for each of the immediately
9 previous 3 years in which he or she claims an exemption. Such
10 federal income tax records must include a complete copy of the
11 following for each year in which an exemption is claimed:

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

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

17
18 A sole proprietor or partner shall produce, upon request by
19 the division, a copy of those documents together with a
20 statement by the sole proprietor or partner that the tax
21 records provided are true and accurate copies of what the sole
22 proprietor or partner has filed with the federal Internal
23 Revenue Service. The statement must be signed under oath by
24 the sole proprietor or partner and must be notarized. The
25 division shall issue a stop-work order under s. 440.107(5) to
26 any sole proprietor or partner who fails or refuses to produce
27 a copy of the tax records and affidavit required under this
28 paragraph to the division within 3 business days after the
29 request is made.

30 (12) For those sole proprietors or partners that have
31 not been in business long enough to provide the information

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1 required of an established business, the division shall
2 require such sole proprietor or partner to provide copies of
3 the most recently filed Federal Income Tax Form 1040. The
4 division shall establish by rule such other criteria to show
5 that the sole proprietor or partner intends to engage in a
6 legitimate enterprise within the construction industry and is
7 not otherwise attempting to evade the requirements of this
8 section. The division shall establish by rule the form and
9 format of financial information required to be submitted by
10 such employers.

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

29 Section 5. Subsection (1) of section 440.10, Florida
30 Statutes, is amended to read:

31 440.10 Liability for compensation.--

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

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

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

25 (d)1. If a contractor becomes liable for the payment
26 of compensation to the employees of a subcontractor who has
27 failed to secure such payment in violation of s. 440.38, the
28 contractor or other third-party payor shall be entitled to
29 recover from the subcontractor all benefits paid or payable
30 plus interest unless the contractor and subcontractor have
31 agreed in writing that the contractor will provide coverage.

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

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

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

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

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

29 2. The independent contractor provides the general
30 contractor with a valid certificate of workers' compensation
31 insurance or a valid certificate of exemption issued by the

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1 division.

2

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

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

18 440.107 Division powers to enforce employer compliance
19 with coverage requirements.--

20 (5) Whenever the division determines that an employer
21 who is required to secure the payment to his or her employees
22 of the compensation provided for by this chapter has failed to
23 do so, such failure shall be deemed an immediate serious
24 danger to public health, safety, or welfare sufficient to
25 justify service by the division of a stop-work order on the
26 employer, requiring the cessation of all business operations
27 at the place of employment or job site. If the division makes
28 such a determination, the division shall issue a stop-work
29 order within 72 hours.The order shall take effect upon the
30 date of service upon the employer, unless the employer
31 provides evidence satisfactory to the division of having

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1 secured any necessary insurance or self-insurance and pays a
2 civil penalty to the division, to be deposited by the division
3 into the Workers' Compensation Administration Trust Fund, in
4 the amount of \$100 per day for each day the employer was not
5 in compliance with this chapter.

6 (7) In addition to any penalty, stop-work order, or
7 injunction, the division shall ~~may~~ assess against any
8 employer, who has failed to secure the payment of compensation
9 as required by this chapter, a penalty in the following amount
10 of:

11 (a) An amount equal to at least the amount that the
12 employer would have paid or up to twice the amount the
13 employer would have paid during periods it illegally failed to
14 secure payment of compensation in the preceding 3-year period
15 based on the employer's payroll during the preceding 3-year
16 period; or

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

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

28 (12) If the division finds that an employer who is
29 certified or registered under part I or part II of chapter 489
30 and who is required to secure payment of the compensation
31 provided for by this chapter to his or her employees has

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1 failed to do so, the division shall immediately notify the
2 Department of Business and Professional Regulation.

3 Section 7. Subsection (14) of section 440.13, Florida
4 Statutes, is amended to read:

5 (14) PAYMENT OF MEDICAL FEES.--

6 (b) Fees charged for remedial treatment, care, and
7 attendance may not exceed the applicable fee schedules adopted
8 under this chapter, except as provided pursuant to a contract
9 entered into between an employer or carrier and a certified
10 health care provider or health care facility for the payment
11 of medical services for covered expenses.

12 Section 8. Section 440.191, Florida Statutes, is
13 amended to read:

14 440.191 Employee Assistance and Ombudsman Office.--

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

29 (b) An Employee Assistance and Ombudsman Office is
30 created within the Division of Workers' Compensation to inform
31 and assist injured workers, employers, carriers, ~~and~~ health

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1 care providers, and managed care arrangements in fulfilling
2 their responsibilities under this chapter. The division may by
3 rule specify forms and procedures for administering ~~requests~~
4 ~~for assistance provided by~~ this section.

5 (c) The Employee Assistance and Ombudsman Office,
6 Division of Workers' Compensation, shall be a resource
7 available to all employees who participate in the workers'
8 compensation system and shall take all steps necessary to
9 educate and disseminate information to employees and
10 employers. Upon receiving a notice of injury or death, the
11 Employee Assistance and Ombudsman Office may initiate contact
12 with the injured employee or employee's representative to
13 discuss rights and responsibilities of the employee under this
14 chapter and the services available through the Employee
15 Assistance and Ombudsman Office.

16 ~~(2)(a) An employee may not file a petition requesting~~
17 ~~any benefit under this chapter unless the employee has~~
18 ~~exhausted the procedures for informal dispute resolution under~~
19 ~~this section.~~

20 ~~(a)(b)~~ If at any time the employer or its carrier
21 fails to provide benefits to which the employee believes she
22 or he is entitled, the employee shall contact the office to
23 request assistance in resolving the dispute. The office may
24 review a petition for benefits filed under s. 440.192 shall
25 ~~investigate the dispute and may shall~~ attempt to facilitate an
26 agreement between the employee and the employer or carrier.
27 The employee, the employer, and the carrier shall cooperate
28 with the office and shall timely provide the office with any
29 documents or other information that it may require in
30 connection with its efforts under this section.

31 ~~(b)(c)~~ The office may compel parties to attend

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1 conferences in person or by telephone in an attempt to resolve
2 disputes quickly and in the most efficient manner possible.
3 Settlement agreements resulting from such conferences must be
4 submitted to the Office of the Judges of Compensation Claims
5 for approval.

6 ~~(c)(d)~~ The Employee Assistance and Ombudsman Office
7 may assign an ombudsman to assist the employee in resolving
8 the dispute. ~~If the dispute is not resolved within 30 days~~
9 ~~after the employee contacts the office,~~The ombudsman may
10 ~~shall~~, at the employee's request, assist the employee in
11 drafting a petition for benefits and explain the procedures
12 for filing petitions. ~~The division may by rule determine the~~
13 ~~method used to calculate the 30-day period.~~The Employee
14 Assistance and Ombudsman Office may not represent employees
15 before the judges of compensation claims. An employer or
16 carrier may not pay any attorneys' fees on behalf of the
17 employee for services rendered or costs incurred in connection
18 with this section, unless expressly authorized elsewhere in
19 this chapter.

20 Section 9. Subsections (1), (3), and (4) of section
21 440.25, Florida Statutes, are amended to read:

22 440.25 Procedures for mediation and hearings.--

23 (1) Within 90 ~~21~~ days after a petition for benefits is
24 filed under s. 440.192, a mediation conference concerning such
25 petition shall be held. Within 40 ~~7~~ days after such petition
26 is filed, the judge of compensation claims shall notify the
27 interested parties by order that a mediation conference
28 concerning such petition will be held unless the parties have
29 notified the Office of the Judges of Compensation Claims that
30 a mediation has been held. Such order must ~~notice shall~~ give
31 the date by which, ~~time, and location of~~ the mediation

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1 conference must be held. Such order ~~notice~~ may be served
2 personally upon the interested parties or may be sent to the
3 interested parties by mail. The claimant or the adjuster of
4 the employer or carrier may, at the mediator's discretion,
5 attend the mediation conference by telephone or, if agreed to
6 by the parties, other electronic means. A continuance may be
7 granted if the requesting party demonstrates to the judge of
8 compensation claims that the reason for requesting the
9 continuance arises from circumstances beyond the party's
10 control. Any order granting a continuance must set forth the
11 date of the rescheduled mediation conference. A mediation
12 conference may not be used solely for the purpose of mediating
13 attorney's fees.

14 (3)(a) Such mediation conference shall be conducted
15 informally and does not require the use of formal rules of
16 evidence or procedure. Any information from the files,
17 reports, case summaries, mediator's notes, or other
18 communications or materials, oral or written, relating to a
19 mediation conference under this section obtained by any person
20 performing mediation duties is privileged and confidential and
21 may not be disclosed without the written consent of all
22 parties to the conference. Any research or evaluation effort
23 directed at assessing the mediation program activities or
24 performance must protect the confidentiality of such
25 information. Each party to a mediation conference has a
26 privilege during and after the conference to refuse to
27 disclose and to prevent another from disclosing communications
28 made during the conference whether or not the contested issues
29 are successfully resolved. This subsection and paragraphs
30 (4)(a) and (b) shall not be construed to prevent or inhibit
31 the discovery or admissibility of any information that is

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1 otherwise subject to discovery or that is admissible under
2 applicable law or rule of procedure, except that any conduct
3 or statements made during a mediation conference or in
4 negotiations concerning the conference are inadmissible in any
5 proceeding under this chapter.

6 1. Unless the parties conduct a private mediation
7 under subparagraph 2., mediation shall be conducted by a
8 mediator selected by the Director of the Division of
9 Administrative Hearings from among mediators shall select a
10 mediator. The mediator shall be employed on a full-time basis
11 by the Office of the Judges of Compensation Claims. A mediator
12 must be a member of The Florida Bar for at least 5 years and
13 must complete a mediation training program approved by the
14 Director of the Division of Administrative Hearings. Adjunct
15 mediators may be employed by the Office of the Judges of
16 Compensation Claims on an as-needed basis and shall be
17 selected from a list prepared by the Director of the Division
18 of Administrative Hearings. An adjunct mediator must be
19 independent of all parties participating in the mediation
20 conference. An adjunct mediator must be a member of The
21 Florida Bar for at least 5 years and must complete a mediation
22 training program approved by the Director of the Division of
23 Administrative Hearings. An adjunct mediator shall have
24 access to the office, equipment, and supplies of the judge of
25 compensation claims in each district.

26 2. With respect to any mediation occurring on or after
27 January 1, 2003, if the parties agree or if mediators are not
28 available under subparagraph 1. to conduct the required
29 mediation within the period specified in this section, the
30 parties shall hold a mediation conference at the carrier's
31 expense within the 90-day period set for mediation. The

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1 mediation conference shall be conducted by a mediator
2 certified under s. 44.106. If the parties do not agree upon a
3 mediator within 10 days after the date of the order, the
4 claimant shall notify the judge in writing and the judge shall
5 appoint a mediator under this subparagraph within 7 days.In
6 the event both parties agree, the results of the mediation
7 conference shall be binding and neither party shall have a
8 right to appeal the results. In the event either party refuses
9 to agree to the results of the mediation conference, the
10 results of the mediation conference as well as the testimony,
11 witnesses, and evidence presented at the conference shall not
12 be admissible at any subsequent proceeding on the claim. The
13 mediator shall not be called in to testify or give deposition
14 to resolve any claim for any hearing before the judge of
15 compensation claims. The employer may be represented by an
16 attorney at the mediation conference if the employee is also
17 represented by an attorney at the mediation conference.

18 (c) The parties shall complete the pretrial
19 stipulations before the conclusion of the mediation conference
20 if the claims, except for attorney's fees and costs, have not
21 been settled and if any claims in any filed petition remain
22 unresolved. The judge of compensation claims may impose
23 sanctions against a party or both parties for failing to
24 complete the pretrial stipulations before the conclusion of
25 the mediation conference.

26 (4)(a) If the parties fail to agree upon written
27 submission of pretrial stipulations at the mediation
28 conference, on the 10th day following commencement of
29 mediation, the questions in dispute have not been resolved,
30 the judge of compensation claims shall order hold a pretrial
31 hearing to occur within 14 days after the date of mediation

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1 ordered by the judge of compensation claims. The judge of
2 compensation claims shall give the interested parties at least
3 7 days' advance notice of the pretrial hearing by mail. At the
4 pretrial hearing, the judge of compensation claims shall,
5 subject to paragraph (b), set a date for the final hearing
6 that allows the parties at least 60 ~~30~~ days to conduct
7 discovery unless the parties consent to an earlier hearing
8 date.

9 (b) The final hearing must be held and concluded
10 within 90 ~~45~~ days after the mediation conference is held
11 ~~pretrial hearing~~. Continuances may be granted only if the
12 requesting party demonstrates to the judge of compensation
13 claims that the reason for requesting the continuance arises
14 from circumstances beyond the party's control. The written
15 consent of the claimant must be obtained before any request
16 from a claimant's attorney is granted for an additional
17 continuance after the initial continuance has been granted.
18 Any order granting a continuance must set forth the date and
19 time of the rescheduled hearing. A continuance may be granted
20 only if the requesting party demonstrates to the judge of
21 compensation claims that the reason for requesting the
22 continuance arises from circumstances beyond the control of
23 the parties. The judge of compensation claims shall report any
24 grant of two or more continuances to the Deputy Chief Judge.

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

28 (d) The final hearing shall be held within 210 days
29 after receipt of the petition for benefits in the county where
30 the injury occurred, if the injury occurred in this state,
31 unless otherwise agreed to between the parties and authorized

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1 by the judge of compensation claims in the county where the
2 injury occurred. If the injury occurred outside ~~without~~ the
3 state and is one for which compensation is payable under this
4 chapter, then the final hearing ~~above referred to~~ may be held
5 in the county of the employer's residence or place of
6 business, or in any other county of the state ~~that~~ ~~which~~ will,
7 in the discretion of the Deputy Chief Judge, be the most
8 convenient for a hearing. The final hearing shall be conducted
9 by a judge of compensation claims, who shall, within 30 days
10 after final hearing or closure of the hearing record, unless
11 otherwise agreed by the parties, enter a final order on the
12 merits of the disputed issues. The judge of compensation
13 claims may enter an abbreviated final order in cases in which
14 compensability is not disputed. Either party may request
15 separate findings of fact and conclusions of law. At the final
16 ~~such~~ hearing, the claimant and employer may each present
17 evidence with ~~in~~ respect to the claims presented by the
18 petition for benefits of such claim and may be represented by
19 any attorney authorized in writing for such purpose. When
20 there is a conflict in the medical evidence submitted at the
21 hearing, the provisions of s. 440.13 shall apply. The report
22 or testimony of the expert medical advisor shall be made a
23 part of the record of the proceeding and shall be given the
24 same consideration by the judge of compensation claims as is
25 accorded other medical evidence submitted in the proceeding;
26 and all costs incurred in connection with such examination and
27 testimony may be assessed as costs in the proceeding, subject
28 to the provisions of s. 440.13. No judge of compensation
29 claims may make a finding of a degree of permanent impairment
30 that is greater than the greatest permanent impairment rating
31 given the claimant by any examining or treating physician,

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1 except upon stipulation of the parties. Any benefit due but
2 not raised at the final hearing which was ripe, due, or owing
3 at the time of the final hearing is waived.

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

13 (f) Each judge of compensation claims is required to
14 submit a special report to the Deputy Chief Judge in each
15 contested workers' compensation case in which the case is not
16 determined within 30 days of final hearing or closure of the
17 hearing record. Said form shall be provided by the director of
18 the Division of Administrative Hearings and shall contain the
19 names of the judge of compensation claims and of the attorneys
20 involved and a brief explanation by the judge of compensation
21 claims as to the reason for such a delay in issuing a final
22 order.

23 (g) Notwithstanding any other provision of this
24 section, the judge of compensation claims may require the
25 appearance of the parties and counsel before her or him
26 without written notice for an emergency conference where there
27 is a bona fide emergency involving the health, safety, or
28 welfare of an employee. An emergency conference under this
29 section may result in the entry of an order or the rendering
30 of an adjudication by the judge of compensation claims.

31 (h) To expedite dispute resolution and to enhance the

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1 self-executing features of the Workers' Compensation Law, the
2 Deputy Chief Judge shall make provision by rule or order for
3 the resolution of appropriate motions by judges of
4 compensation claims without oral hearing upon submission of
5 brief written statements in support and opposition, and for
6 expedited discovery and docketing. Unless the judge of
7 compensation claims, for good cause, orders a hearing under
8 paragraph (i), each claim in a petition relating to the
9 determination of pay under s. 440.14 shall be resolved under
10 this paragraph without oral hearing.

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

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

12 (j) A judge of compensation claims may, upon the
13 motion of a party or the judge's own motion, dismiss a
14 petition for lack of prosecution if a petition, response,
15 motion, order, request for hearing, or notice of deposition
16 has not been filed during the previous 12 months unless good
17 cause is shown. A dismissal for lack of prosecution is without
18 prejudice and does not require a hearing.

19 (k) A judge of compensation claims may not award
20 interest on unpaid medical bills and the amount of such bills
21 may not be used to calculate the amount of interest awarded.
22 Regardless of the date benefits were initially requested,
23 attorney's fees do not attach under this subsection until 30
24 days after the date the carrier or self-insured employer
25 receives the petition.

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

28 (3) If the claimant should prevail in any proceedings
29 before a judge of compensation claims or court, there shall be
30 taxed against the employer the reasonable costs of such
31 proceedings, not to include the attorney's fees of the

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1 claimant. A claimant shall be responsible for the payment of
2 her or his own attorney's fees, except that a claimant shall
3 be entitled to recover a reasonable attorney's fee from a
4 carrier or employer:

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

10 (b) In any case in which the employer or carrier files
11 a response to petition denying benefits with the Office of the
12 Judges of Compensation Claims and the injured person has
13 employed an attorney in the successful prosecution of the
14 petition claim; ~~or~~

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

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

21
22 Regardless of the date benefits were initially requested,
23 attorney's fees shall not attach under this subsection until
24 30 days after the date the carrier or employer, if
25 self-insured, receives the petition. In applying the factors
26 set forth in subsection (1) to cases arising under paragraphs
27 (a), (b), (c), and (d), the judge of compensation claims must
28 only consider only such benefits and the time reasonably spent
29 in obtaining them as were secured for the claimant within the
30 scope of paragraphs (a), (b), (c), and (d).

31 Section 11. Subsections (2), (3), and (6) of section

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1 440.381, Florida Statutes, are amended to read:

2 440.381 Application for coverage; reporting payroll;
3 payroll audit procedures; penalties.--

4 (2) The application must contain a statement that the
5 filing of an application containing false, misleading, or
6 incomplete information with the purpose of avoiding or
7 reducing the amount of premiums for workers' compensation
8 coverage is a felony of the third degree, punishable as
9 provided in s. 775.082, s. 775.083, or s. 775.084. The
10 application must contain a sworn statement by the employer
11 attesting to the accuracy of the information submitted and
12 acknowledging the provisions of former s. 440.37(4). The
13 application must contain a sworn statement by the agent
14 attesting that the agent explained to the employer or officer
15 the classification codes that are used for premium
16 calculations.

17 (3) The Department of Insurance and the Department of
18 Labor and Employment Security shall establish by rule minimum
19 requirements for audits of payroll and classifications in
20 order to ensure that the appropriate premium is charged for
21 workers' compensation coverage. The rules shall ensure that
22 audits performed by both carriers and employers are adequate
23 to provide that all sources of payments to employees,
24 subcontractors, and independent contractors have been reviewed
25 and that the accuracy of classification of employees has been
26 verified. The rules shall provide that employers in all
27 classes other than the construction class be audited not less
28 frequently than biennially and may provide for more frequent
29 audits of employers in specified classifications based on
30 factors such as amount of premium, type of business, loss
31 ratios, or other relevant factors. In no event shall employers

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1 in the construction class, generating more than the amount of
2 premium required to be experience rated, be audited less than
3 annually. The annual audits required for construction classes
4 shall consist of physical onsite audits. Payroll verification
5 audit rules must include, but need not be limited to, the use
6 of state and federal reports of employee income, payroll and
7 other accounting records, certificates of insurance maintained
8 by subcontractors, and duties of employees. At the completion
9 of an audit, the employer or officer of the corporation and
10 the auditor must print and sign their names on the audit
11 document and attach proof of identification to the audit
12 document.

13 (6) If an employer ~~intentionally~~ understates or
14 conceals payroll, or misrepresents or conceals employee duties
15 so as to avoid proper classification for premium calculations,
16 or misrepresents or conceals information pertinent to the
17 computation and application of an experience rating
18 modification factor, the employer, or the employer's agent or
19 attorney, shall pay to the insurance carrier a penalty of 10
20 times the amount of the difference in premium paid and the
21 amount the employer should have paid and reasonable attorney's
22 fees. The penalty may be enforced in the circuit courts of
23 this state.

24 Section 12. Section 440.40, Florida Statutes, is
25 amended to read:

26 440.40 Compensation notice.--Every employer who has
27 secured compensation under the provisions of this chapter
28 shall keep posted in a conspicuous place or places in and
29 about her or his place or places of business typewritten or
30 printed notices, in accordance with a form prescribed by the
31 division, the following:

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1 (1) A notice stating that such employer has secured
2 the payment of compensation in accordance with the provisions
3 of this chapter. Such notices shall contain the name and
4 address of the carrier, if any, with whom the employer has
5 secured payment of compensation and the date of the expiration
6 of the policy. The division may by rule prescribe the form of
7 the notices and require carriers to provide the notices to
8 policyholders.

9 (2) A notice stating: "Anti-Fraud Reward
10 Program.--Rewards of up to \$25,000 may be paid to persons
11 providing information to the Department of Insurance leading
12 to the arrest and conviction of persons committing insurance
13 fraud, including employers who illegally fail to obtain
14 workers' compensation coverage. Persons may report suspected
15 fraud to the department at...(Phone No.).... A person is not
16 subject to civil liability for furnishing such information, if
17 such person acts without malice, fraud, or bad faith."

18 Section 13. Subsection (1) of section 440.45, Florida
19 Statutes, is amended to read:

20 440.45 Office of the Judges of Compensation Claims.--

21 (1)(a) There is created the Office of the Judges of
22 Compensation Claims within the Department of Management
23 Services. The Office of the Judges of Compensation Claims
24 shall be headed by the Deputy Chief Judge of Compensation
25 Claims. The Deputy Chief Judge shall report to the director of
26 the Division of Administrative Hearings. The Deputy Chief
27 Judge shall be appointed by the Governor for a term of 4 years
28 from a list of three names submitted by the statewide
29 nominating commission created under subsection (2). The Deputy
30 Chief Judge must demonstrate prior administrative experience
31 and possess the same qualifications for appointment as a judge

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1 of compensation claims, and the procedure for reappointment of
2 the Deputy Chief Judge will be the same as for reappointment
3 of a judge of compensation claims. The office shall be a
4 separate budget entity and the director of the Division of
5 Administrative Hearings shall be its agency head for all
6 purposes, including, but not limited to, rulemaking pursuant
7 to subsection (4) and establishing agency policies and
8 procedures. The Department of Management Services shall
9 provide administrative support and service to the office to
10 the extent requested by the director of the Division of
11 Administrative Hearings but shall not direct, supervise, or
12 control the Office of the Judges of Compensation Claims in any
13 manner, including, but not limited to, personnel, purchasing,
14 budgetary matters, or property transactions. The operating
15 budget of the Office of the Judges of Compensation Claims
16 shall be paid out of the Workers' Compensation Administration
17 Trust Fund established in s. 440.50.

18 (b) The current term of the Chief Judge of
19 Compensation Claims shall expire October 1, 2001. Effective
20 October 1, 2001, the position of Deputy Chief Judge of
21 Compensation Claims is created.

22 Section 14. Section 489.114, Florida Statutes, is
23 amended to read:

24 489.114 Evidence of workers' compensation
25 coverage.--Except as provided in s. 489.115(5)(d), any person,
26 business organization, or qualifying agent engaged in the
27 business of contracting in this state and certified or
28 registered under this part shall, as a condition precedent to
29 the issuance or renewal of a certificate, registration, or
30 certificate of authority of the contractor, provide to the
31 Construction Industry Licensing Board, as provided by board

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1 rule, evidence of workers' compensation coverage pursuant to
2 chapter 440. In the event that the Division of Workers'
3 Compensation of the Department of Labor and Employment
4 Security receives notice of the cancellation of a policy of
5 workers' compensation insurance insuring a person or entity
6 governed by this section, the Division of Workers'
7 Compensation shall certify and identify all persons or
8 entities by certification or registration license number to
9 the department after verification is made by the Division of
10 Workers' Compensation that ~~such cancellation has occurred or~~
11 ~~that~~ persons or entities governed by this section are no
12 longer covered by workers' compensation insurance. Such
13 certification and verification by the Division of Workers'
14 Compensation may ~~shall~~ result ~~solely~~ from records furnished to
15 the Division of Workers' Compensation by the persons or
16 entities governed by this section or an investigation
17 completed by the Division of Workers' Compensation. The
18 department shall notify the persons or entities governed by
19 this section who have been determined to be in noncompliance
20 with chapter 440, and the persons or entities notified shall
21 provide certification of compliance with chapter 440 to the
22 department and pay an administrative fine in the amount of
23 \$500 ~~as provided by rule.~~ The failure to maintain workers'
24 compensation coverage as required by law shall be grounds for
25 the board to revoke, suspend, or deny the issuance or renewal
26 of a certificate, registration, or certificate of authority of
27 the contractor under the provisions of s. 489.129.

28 Section 15. Section 489.510, Florida Statutes, is
29 amended to read:

30 489.510 Evidence of workers' compensation
31 coverage.--Except as provided in s. 489.515(3)(b), any person,

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1 business organization, or qualifying agent engaged in the
2 business of contracting in this state and certified or
3 registered under this part shall, as a condition precedent to
4 the issuance or renewal of a certificate or registration of
5 the contractor, provide to the Electrical Contractors'
6 Licensing Board, as provided by board rule, evidence of
7 workers' compensation coverage pursuant to chapter 440. In
8 the event that the Division of Workers' Compensation of the
9 Department of Labor and Employment Security receives notice of
10 the cancellation of a policy of workers' compensation
11 insurance insuring a person or entity governed by this
12 section, the Division of Workers' Compensation shall certify
13 and identify all persons or entities by certification or
14 registration license number to the department after
15 verification is made by the Division of Workers' Compensation
16 that ~~such cancellation has occurred or that~~ persons or
17 entities governed by this section are no longer covered by
18 workers' compensation insurance. Such certification and
19 verification by the Division of Workers' Compensation may
20 shall result ~~solely~~ from records furnished to the Division of
21 Workers' Compensation by the persons or entities governed by
22 this section or an investigation completed by the Division of
23 Workers' Compensation. The department shall notify the persons
24 or entities governed by this section who have been determined
25 to be in noncompliance with chapter 440, and the persons or
26 entities notified shall provide certification of compliance
27 with chapter 440 to the department and pay an administrative
28 fine in the amount of \$500 ~~as provided by rule~~. The failure
29 to maintain workers' compensation coverage as required by law
30 shall be grounds for the board to revoke, suspend, or deny the
31 issuance or renewal of a certificate or registration of the

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1 contractor under the provisions of s. 489.533.

2 Section 16. Subsection (2) of section 626.9892,
3 Florida Statutes, is amended to read:

4 626.9892 Anti-Fraud Reward Program; reporting of
5 insurance fraud.--

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

12 Section 17. The Department of Insurance, in
13 consultation with the board of governors of the joint
14 underwriting association authorized under s. 627.311, Florida
15 Statutes, shall conduct a study of the response of the
16 insurance market in meeting the need for coverage among
17 construction industry employers at a rate that is not
18 inadequate, excessive, or unfairly discriminatory, and any
19 actual or potential availability concerns. The scope of the
20 study shall include a review of workers' compensation
21 insurance currently provided or required in other states and
22 possible alternative coverages. The department shall submit a
23 report recommending any changes needed to promote availability
24 of coverage at a rate that is not inadequate, excessive, or
25 unfairly discriminatory, to the President of the Senate and
26 the Speaker of the House of Representatives on or before
27 February 1, 2003.

28
29

30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 On page 1, line 9
2
3 after the semicolon, insert:
4 amending s. 440.02, F.S.; redefining the terms
5 "employee" and "independent contractor";
6 prohibiting exemptions from coverage for
7 commercial construction job sites; defining the
8 terms "commercial building" and "residential
9 building"; amending s. 440.05, F.S.; requiring
10 employers to maintain business records
11 specified by rules of the Division of Workers'
12 Compensation, relative to exemptions from
13 coverage; revising requirements for election of
14 exemptions for coverage; amending s. 440.10,
15 F.S.; providing penalties for employers who
16 fail to secure compensation; amending s.
17 440.107, F.S.; requiring and authorizing the
18 division to issue stop-work orders and to
19 impose certain penalties against employers who
20 fail to secure compensation; requiring the
21 division to notify the Department of Business
22 and Professional Regulation; amending s.
23 440.13, F.S.; revising the limitation on
24 medical fees; amending s. 440.191, F.S.;
25 revising duties of the Employee Assistance and
26 Ombudsman Office; removing a requirement that
27 an employee exhaust certain dispute-resolution
28 procedures before filing a petition requesting
29 benefits; amending s. 440.25, F.S.; revising
30 procedures for mediation and hearings;
31 extending the time for ordering and holding

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1 mediation conferences; providing requirements
2 for granting a continuance; providing for
3 mediation conducted by mediators other than
4 from the Office of the Judges of Compensation
5 Claims; requiring that the parties complete
6 pretrial stipulations before concluding
7 mediation; extending the time for holding final
8 hearings; providing for waiver of any benefit
9 not raised at the final hearing; providing for
10 an expedited determination of pay; requiring
11 that certain claims be resolved through an
12 expedited process; providing for dismissal for
13 lack of prosecution; limiting the payment of
14 interest and the attachment of attorney's fees;
15 amending s. 440.34, F.S.; revising provisions
16 governing the award of claimant's attorney's
17 fees; limiting the attachment of claimant's
18 attorney's fees; amending s. 440.381, F.S.;
19 requiring that the application for workers'
20 compensation coverage contain a sworn statement
21 by the agent; providing a penalty for carriers
22 that fail to comply with audit requirements;
23 revising requirements for audits; amending s.
24 440.40, F.S.; requiring employers to post a
25 notice related to the anti-fraud reward
26 program; amending s. 440.45, F.S., relating to
27 the Office of the Judges of Compensation
28 Claims; clarifying the responsibilities of the
29 director of the Division of Administrative
30 Hearings as agency head of the Office of the
31 Judges of Compensation Claims; amending ss.

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1 489.114 and 489.510, F.S.; revising provisions
2 governing the verification by the division of
3 coverage of persons engaged in the business of
4 contracting; specifying an administrative fine
5 for contractors who are in noncompliance with
6 chapter 440, F.S., to be paid to the Department
7 of Business and Professional Regulation;
8 amending s. 626.9892, F.S.; revising the
9 criteria for the anti-fraud program; requiring
10 the Department of Insurance to conduct a study
11 related to workers' compensation for persons
12 engaged in the construction industry;

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