

758-114CXB-32

Bill No. CS/HB 1643

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Clarke offered the following:

Amendment (with title amendment)

Remove: everything after the enacting clause,

and insert:

Section 1. (1) All powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Division of Workers' Compensation are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Insurance, except as otherwise provided in this subsection, as follows: the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to oversight of medical services in workers' compensation provider relations, dispute and complaint resolution, program evaluation, data management, and review of carrier medical bill payments are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security

758-114CXB-32

Bill No. CS/HB 1643

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

1 to the Agency for Health Care Administration; the full-time
2 equivalent positions and the associated funding for salaries,
3 benefits, other capital outlay, and expenses related to the
4 rehabilitation and reemployment of injured workers are
5 transferred by a type two transfer, as defined in s. 20.06(2),
6 Florida Statutes, from the Department of Labor and Employment
7 Security to the Department of Education; and the full-time
8 equivalent positions and the associated funding for salaries,
9 benefits, other capital outlay, and expenses related to the
10 administration of child labor laws under chapter 450, Florida
11 Statutes, are transferred by a type two transfer, as defined
12 in s. 20.06(2), Florida Statutes, from the Department of Labor
13 and Employment Security to the Department of Business and
14 Professional Regulation. To the extent feasible, the positions
15 transferred to the Department of Insurance will be
16 reclassified to pay grades comparable to the positions
17 established by the Department of Labor and Employment
18 Security, based on the classification codes and specifications
19 of the positions for work to be performed at the Department of
20 Insurance. The number of positions the department establishes
21 may not exceed the number of authorized positions and the
22 salary and benefits that were authorized for the Division of
23 Workers' Compensation within the Department of Labor and
24 Employment Security prior to the transfer. The Department of
25 Insurance is further authorized to reassign, reorganize,
26 reclassify, or otherwise transfer positions to appropriate
27 administrative subdivisions within the department and to
28 establish such regional offices as are necessary to properly
29 enforce and administer its responsibilities under the Florida
30 Insurance Code and chapter 440, Florida Statutes. The
31 department may also enter into contracts with public or

758-114CXB-32

Bill No. CS/HB 1643

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

1 private entities to administer its duties and responsibilities
2 associated with the transfer of the Division of Workers'
3 Compensation.

4 (2) All powers, duties, functions, rules, records,
5 personnel, property, and unexpended balances of
6 appropriations, allocations, and other funds of the Office of
7 the Secretary and the Office of Administrative Services of the
8 Department of Labor and Employment Security related to the
9 regulation of labor organizations under chapter 447, Florida
10 Statutes, and the administration of migrant labor and farm
11 labor laws under chapter 450, Florida Statutes, are
12 transferred by a type two transfer, as defined in s. 20.06(2),
13 Florida Statutes, from the Department of Labor and Employment
14 Security to the Department of Business and Professional
15 Regulation.

16 (3) Any other powers, duties, functions, rules,
17 records, property, and unexpended balances of appropriations,
18 allocations, and other funds of the Department of Labor and
19 Employment Security not otherwise transferred by this act
20 relating to workplace regulation and enforcement, including,
21 but not limited to, those under chapter 448, Florida Statutes,
22 are transferred by a type two transfer, as defined in s.
23 20.06(2), Florida Statutes, from the Department of Labor and
24 Employment Security to the Department of Business and
25 Professional Regulation. The Department of Business and
26 Professional Regulation is authorized to reassign, reorganize,
27 reclassify, or otherwise transfer positions to appropriate
28 administrative subdivisions within the department to
29 accomplish its workplace regulation responsibilities.

30 (4) All powers, duties, functions, rules, records,
31 personnel, property, and unexpended balances of

758-114CXB-32

Bill No. CS/HB 1643

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

1 appropriations, allocations, and other funds of the
2 Unemployment Appeals Commission relating to the commission's
3 specified authority, powers, duties, and responsibilities are
4 transferred by a type two transfer, as defined in s. 20.06(2),
5 Florida Statutes, to the Agency for Workforce Innovation.

6 (5) The Office of Information Systems is transferred
7 by a type two transfer, as defined in s. 20.06(2), Florida
8 Statutes, from the Department of Labor and Employment Security
9 to the State Technology Office. Upon completion of this
10 transfer, the State Technology Office and the Department of
11 Insurance shall enter into discussions to determine whether it
12 would be technologically feasible and cost effective to
13 separate the workers' compensation related systems and
14 transfer ownership of these systems to the Department of
15 Insurance. If the Department of Insurance determines that it
16 would be technologically feasible and cost effective to
17 transfer ownership of the workers' compensation related
18 systems from the State Technology Office to the Department of
19 Insurance, the Department of Insurance shall submit a transfer
20 plan and budget amendment requesting the transfer of these
21 systems. The transfer plan and budget amendment must be
22 approved by the Legislative Budget Commission.

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

31 (b) The records, property, and unexpended balances of

1 appropriations, allocations, and other funds and resources of
2 the Office of the Secretary and the Office of Administrative
3 Services of the Department of Labor and Employment Security
4 which support the activities and functions transferred under
5 subsection (1) to the Agency for Health Care Administration
6 are transferred as provided in s. 20.06(2), Florida Statutes,
7 to the Agency for Health Care Administration.

8 (c) The records, property, and unexpended balances of
9 appropriations, allocations, and other funds and resources of
10 the Office of the Secretary and the Office of Administrative
11 Services of the Department of Labor and Employment Security
12 which support the activities and functions transferred under
13 subsection (1) to the Department of Education are transferred
14 as provided in s. 20.06(2), Florida Statutes, to the
15 Department of Education.

16 (d) The records, property, and unexpended balances of
17 appropriations, allocations, and other funds and resources of
18 the Office of the Secretary and the Office of Administrative
19 Services of the Department of Labor and Employment Security
20 which support the activities and functions transferred under
21 subsections (1), (2), and (3) to the Department of Business
22 and Professional Regulation are transferred as provided in s.
23 20.06(2), Florida Statutes, to the Department of Business and
24 Professional Regulation.

25 (e) The records, property, and unexpended balances of
26 appropriations, allocations, and other funds and resources of
27 the Office of the Secretary and the Office of Administrative
28 Services of the Department of Labor and Employment Security
29 which support the activities and functions transferred under
30 subsection (4) to the Agency for Workforce Innovation are
31 transferred as provided in s. 20.06(2), Florida Statutes, to

1 the Agency for Workforce Innovation.

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

10 (7) The Department of Management Services shall become
11 the custodian of any property of the Department of Labor and
12 Employment Security which is not otherwise transferred for the
13 purposes of chapter 273, Florida Statutes. The Department of
14 Management Services is authorized to permit the use of such
15 property by organizations as necessary to implement the
16 provisions of this act.

17 (8) Any binding contract or interagency agreement
18 existing on or before July 1, 2002, between the Department of
19 Labor and Employment Security, or an entity or agent of the
20 department, and any other agency, entity, or person shall
21 continue as a binding contract or agreement for the remainder
22 of the term of such contract or agreement with the successor
23 department, agency, or entity responsible for the program,
24 activity, or functions relative to the contract or agreement.

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

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

4 (10) So that the farm labor, child labor, and
5 workplace regulation programs may be fully integrated into the
6 mission of the Department of Business and Professional
7 Regulation in an effective manner, notwithstanding the
8 provisions of ss. 216.292 and 216.351, Florida Statutes, upon
9 this act becoming a law, the Department of Business and
10 Professional Regulation is authorized to transfer resources
11 between services and make revisions to the authorized budget
12 as necessary to reengineer business processes for the purpose
13 of reducing costs and increasing program efficiencies. These
14 actions are subject to the review and approval provisions in
15 s. 216.177, Florida Statutes.

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

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

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

22 (k) Division of Workers' Compensation.

23 Section 3. Subsections (2) and (3) of section 20.50,
24 Florida Statutes, are amended to read:

25 20.50 Agency for Workforce Innovation.--There is
26 created the Agency for Workforce Innovation within the
27 Department of Management Services. The agency shall be a
28 separate budget entity, and the director of the agency shall
29 be the agency head for all purposes. The agency shall not be
30 subject to control, supervision, or direction by the
31 Department of Management Services in any manner, including,

758-114CXB-32

Bill No. CS/HB 1643

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

1 but not limited to, personnel, purchasing, transactions
2 involving real or personal property, and budgetary matters.

3 (2) The Agency for Workforce Innovation shall be the
4 designated administrative agency for receipt of federal
5 workforce development grants and other federal funds, and
6 shall carry out the duties and responsibilities assigned by
7 the Governor under each federal grant assigned to the agency.
8 The agency shall be a separate budget entity and shall expend
9 each revenue source as provided by federal and state law and
10 as provided in plans developed by and agreements with
11 Workforce Florida, Inc. The agency shall prepare and submit as
12 a separate budget entity a unified budget request for
13 workforce development, in accordance with chapter 216 for, and
14 in conjunction with, Workforce Florida, Inc., and its board.
15 The head of the agency is the director of Workforce
16 Innovation, who shall be appointed by the Governor.
17 Accountability and reporting functions of the agency shall be
18 administered by the director or his or her designee. Included
19 in these functions are budget management, financial
20 management, audit, performance management standards and
21 controls, assessing outcomes of service delivery, and
22 financial administration of workforce programs pursuant to s.
23 445.004(5) and (9). Within the agency's overall organizational
24 structure, the agency shall include the following offices
25 which shall have the specified responsibilities:

26 (a) The Office of Workforce Services shall administer
27 ~~state merit system program staff within the~~ unemployment
28 compensation program, the Rapid Response program, the Work
29 Opportunity Tax Credit program, the Alien Labor Certification
30 program, and any other programs that are delivered directly by
31 agency staff rather than through the one-stop workforce

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~service delivery system, pursuant to policies of Workforce~~
2 ~~Florida, Inc. The office shall be responsible for delivering~~
3 ~~services through the one-stop delivery system and for ensuring~~
4 ~~that participants in welfare transition programs receive case~~
5 ~~management services, diversion assistance, support services,~~
6 ~~including subsidized child care and transportation services,~~
7 ~~Medicaid services, and transition assistance to enable them to~~
8 ~~succeed in the workforce. The office shall be directed by the~~
9 ~~Deputy Director for Workforce Services, who shall be appointed~~
10 ~~by and serve at the pleasure of the director.~~

11 (b) The Office of Program Support Workforce Investment
12 and Accountability shall administer state merit system program
13 staff within the workforce service delivery system, pursuant
14 to policies of Workforce Florida, Inc. The office shall be
15 responsible for delivering services through the one-stop
16 delivery system and for ensuring that participants in welfare
17 transition programs receive case management services,
18 diversion assistance, support services, including subsidized
19 child care and transportation services, Medicaid services, and
20 transition assistance to enable them to succeed in the
21 workforce. The office shall also be responsible for program
22 quality assurance, grants and contract management procurement,
23 contracting, financial management, accounting, audits, and
24 reporting verification. The office shall be directed by the
25 Deputy Director for Program Support Workforce Investment and
26 Accountability, who shall be appointed by and serve at the
27 pleasure of the director. The office shall be responsible
28 for:

29 ~~1. Establishing standards and controls for reporting~~
30 ~~budgeting, expenditure, and performance information for~~
31 ~~assessing outcomes, service delivery, and financial~~

1 ~~administration of workforce programs pursuant to s. 445.004(5)~~
2 ~~and (9).~~

3 ~~1.2.~~ Establishing monitoring, quality assurance, and
4 quality improvement systems that routinely assess the quality
5 and effectiveness of contracted programs and services.

6 ~~2.3.~~ Annual review of each regional workforce board
7 and administrative entity to ensure adequate systems of
8 reporting and control are in place, and monitoring, quality
9 assurance, and quality improvement activities are conducted
10 routinely, and corrective action is taken to eliminate
11 deficiencies.

12 (c) The Office of Agency Support ~~Workforce Information~~
13 Services shall be responsible for procurement, human resource
14 services, and information services including delivering
15 ~~deliver~~ information on labor markets, employment, occupations,
16 and performance, and shall implement and maintain information
17 systems that are required for the effective operation of the
18 one-stop delivery system and the school readiness services
19 system, including, but not limited to, those systems described
20 in s. 445.009. The office will be under the direction of the
21 Deputy Director for Agency Support ~~Workforce Information~~
22 Services, who shall be appointed by and serve at the pleasure
23 of the director. The office shall be responsible for
24 establishing:

25 1. Information systems and controls that report
26 reliable, timely and accurate fiscal and performance data for
27 assessing outcomes, service delivery, and financial
28 administration of workforce programs pursuant to s. 445.004(5)
29 and (9).

30 2. Information systems that support service
31 integration and case management by providing for case tracking

1 for participants in welfare transition programs.

2 3. Information systems that support school readiness
3 services.

4 (d) The Unemployment Appeals Commission, authorized by
5 s. 443.012, shall not be subject to the control, supervision,
6 or direction by the Agency for Workforce Innovation in the
7 performance of its powers and duties but shall receive any and
8 all support and assistance from the agency that may be
9 required for the performance of its duties.

10 (3) The Agency for Workforce Innovation shall serve as
11 the designated agency for purposes of each federal workforce
12 development grant assigned to it for administration. The
13 agency shall carry out the duties assigned to it by the
14 Governor, under the terms and conditions of each grant. The
15 agency shall have the level of authority and autonomy
16 necessary to be the designated recipient of each federal grant
17 assigned to it, and shall disperse such grants pursuant to the
18 plans and policies of Workforce Florida, Inc. The director
19 may, upon delegation from the Governor and pursuant to
20 agreement with Workforce Florida, Inc., sign contracts,
21 grants, and other instruments as necessary to execute
22 functions assigned to the agency. Notwithstanding other
23 provisions of law, the following federal grants and other
24 funds are assigned for administration to the Agency for
25 Workforce Innovation:

26 (a) Programs authorized under Title I of the Workforce
27 Investment Act of 1998, Pub. L. No. 105-220, except for
28 programs funded directly by the United States Department of
29 Labor under Title I, s. 167.

30 (b) Programs authorized under the Wagner-Peyser Act of
31 1933, as amended, 29 U.S.C. ss. 49 et seq.

758-114CXB-32

Bill No. CS/HB 1643

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

1 (c) Welfare-to-work grants administered by the United
2 States Department of Labor under Title IV, s. 403, of the
3 Social Security Act, as amended.

4 (d) Activities authorized under Title II of the Trade
5 Act of 1974, as amended, 2 U.S.C. ss. 2271 et seq., and the
6 Trade Adjustment Assistance Program.

7 (e) Activities authorized under chapter 41 of Title 38
8 U.S.C., including job counseling, training, and placement for
9 veterans.

10 (f) Employment and training activities carried out
11 under the Community Services Block Grant Act, 42 U.S.C. ss.
12 9901 et seq.

13 (g) Employment and training activities carried out
14 under funds awarded to this state by the United States
15 Department of Housing and Urban Development.

16 (h) Designated state and local program expenditures
17 under part A of Title IV of the Social Security Act for
18 welfare transition workforce services associated with the
19 Temporary Assistance for Needy Families Program.

20 (i) Programs authorized under the National and
21 Community Service Act of 1990, 42 U.S.C. ss. 12501 et seq.,
22 and the Service-America programs, the National Service Trust
23 programs, the Civilian Community Corps, the Corporation for
24 National and Community Service, the American Conservation and
25 Youth Service Corps, and the Points of Light Foundation
26 programs, if such programs are awarded to the state.

27 (j) The Unemployment Compensation program provided
28 pursuant to chapter 443.

29 (k)~~(j)~~ Other programs funded by federal or state
30 appropriations, as determined by the Legislature in the
31 General Appropriations Act or by law.

1 Section 4. Paragraph (m) of subsection (2) of section
2 110.205, Florida Statutes, is amended to read:
3 110.205 Career service; exemptions.--
4 (2) EXEMPT POSITIONS.--The exempt positions that are
5 not covered by this part include the following:
6 (m) All assistant division director, deputy division
7 director, and bureau chief positions in any department, and
8 those positions determined by the department to have
9 managerial responsibilities comparable to such positions,
10 which positions include, but are not limited to, positions in
11 the Department of Health, the Department of Children and
12 Family Services, and the Department of Corrections that are
13 assigned primary duties of serving as the superintendent or
14 assistant superintendent, or warden or assistant warden, of an
15 institution; positions in the Department of Corrections that
16 are assigned primary duties of serving as the circuit
17 administrator or deputy circuit administrator; positions in
18 the Department of Transportation that are assigned primary
19 duties of serving as regional toll managers and managers of
20 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
21 in the Department of Environmental Protection that are
22 assigned the duty of an Environmental Administrator or program
23 administrator; ~~those positions described in s. 20.171 as~~
24 ~~included in the Senior Management Service~~ and positions in
25 the Department of Health that are assigned the duties of
26 Environmental Administrator, Assistant County Health
27 Department Director, and County Health Department Financial
28 Administrator. Unless otherwise fixed by law, the department
29 shall set the salary and benefits of these positions in
30 accordance with the rules established for the Selected Exempt
31 Service.

1 Section 5. Paragraph (h) of subsection (2) of section
2 112.19, Florida Statutes, is amended to read:

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

5 (2)

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

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

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

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

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

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

26 Section 6. Paragraph (g) of subsection (2) of section
27 112.191, Florida Statutes, is amended to read:

28 112.191 Firefighters; death benefits.--

29 (2)

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

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

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

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

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

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

24 Section 7. Section 121.125, Florida Statutes, is
25 amended to read:

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

16 Section 8. Subsection (7) of section 122.03, Florida
17 Statutes, is amended to read:

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

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

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

1 receiving workers' compensation payments.

2 Section 10. Section 440.015, Florida Statutes, is
3 amended to read:

4 440.015 Legislative intent.--It is the intent of the
5 Legislature that the Workers' Compensation Law be interpreted
6 so as to assure the quick and efficient delivery of disability
7 and medical benefits to an injured worker and to facilitate
8 the worker's return to gainful reemployment at a reasonable
9 cost to the employer. It is the specific intent of the
10 Legislature that workers' compensation cases shall be decided
11 on their merits. The workers' compensation system in Florida
12 is based on a mutual renunciation of common-law rights and
13 defenses by employers and employees alike. In addition, it is
14 the intent of the Legislature that the facts in a workers'
15 compensation case are not to be interpreted liberally in favor
16 of either the rights of the injured worker or the rights of
17 the employer. Additionally, the Legislature hereby declares
18 that disputes concerning the facts in workers' compensation
19 cases are not to be given a broad liberal construction in
20 favor of the employee on the one hand or of the employer on
21 the other hand, and the laws pertaining to workers'
22 compensation are to be construed in accordance with the basic
23 principles of statutory construction and not liberally in
24 favor of either employee or employer. It is the intent of the
25 Legislature to ensure the prompt delivery of benefits to the
26 injured worker. Therefore, an efficient and self-executing
27 system must be created which is not an economic or
28 administrative burden. The department, agency, the Department
29 of Education, and the Division of Administrative Hearings
30 ~~Division of Workers' Compensation~~ shall administer the
31 Workers' Compensation Law in a manner which facilitates the

1 self-execution of the system and the process of ensuring a
2 prompt and cost-effective delivery of payments.

3 Section 11. Subsections (3) through (39) of section
4 440.02, Florida Statutes, are renumbered as subsections (4)
5 through (40), respectively, a new subsection (3) is added to
6 that section, and present subsections (11), (13), and (14) of
7 said section are amended, to read:

8 440.02 Definitions.--When used in this chapter, unless
9 the context clearly requires otherwise, the following terms
10 shall have the following meanings:

11 (3) "Agency" means the Agency for Health Care
12 Administration.

13 (12)(11) "Department" means the Department of
14 Insurance Labor and Employment Security.

15 (14)(13) "Division" means the Division of Workers'
16 Compensation of the Department of Insurance Labor and
17 Employment Security.

18 (15)(14)(a) "Employee" means any person engaged in any
19 employment under any appointment or contract of hire or
20 apprenticeship, express or implied, oral or written, whether
21 lawfully or unlawfully employed, and includes, but is not
22 limited to, aliens and minors.

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

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

30 2. As to officers of a corporation who are actively
31 engaged in the construction industry, no more than three

1 officers may elect to be exempt from this chapter by filing
2 written notice of the election with the department ~~division~~ as
3 provided in s. 440.05.

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

8
9 Services are presumed to have been rendered to the corporation
10 if the officer is compensated by other than dividends upon
11 shares of stock of the corporation which the officer owns.

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

30 (d) "Employee" does not include:

31 1. An independent contractor, if:

- 1 a. The independent contractor maintains a separate
- 2 business with his or her own work facility, truck, equipment,
- 3 materials, or similar accommodations;
- 4 b. The independent contractor holds or has applied for
- 5 a federal employer identification number, unless the
- 6 independent contractor is a sole proprietor who is not
- 7 required to obtain a federal employer identification number
- 8 under state or federal requirements;
- 9 c. The independent contractor performs or agrees to
- 10 perform specific services or work for specific amounts of
- 11 money and controls the means of performing the services or
- 12 work;
- 13 d. The independent contractor incurs the principal
- 14 expenses related to the service or work that he or she
- 15 performs or agrees to perform;
- 16 e. The independent contractor is responsible for the
- 17 satisfactory completion of work or services that he or she
- 18 performs or agrees to perform and is or could be held liable
- 19 for a failure to complete the work or services;
- 20 f. The independent contractor receives compensation
- 21 for work or services performed for a commission or on a
- 22 per-job or competitive-bid basis and not on any other basis;
- 23 g. The independent contractor may realize a profit or
- 24 suffer a loss in connection with performing work or services;
- 25 h. The independent contractor has continuing or
- 26 recurring business liabilities or obligations; and
- 27 i. The success or failure of the independent
- 28 contractor's business depends on the relationship of business
- 29 receipts to expenditures.

30
31 However, the determination as to whether an individual

758-114CXB-32

Bill No. CS/HB 1643

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

1 included in the Standard Industrial Classification Manual of
2 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
3 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
4 2448, or 2449, or a newspaper delivery person, is an
5 independent contractor is governed not by the criteria in this
6 paragraph but by common-law principles, giving due
7 consideration to the business activity of the individual.

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

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

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

27 5. A person whose employment is both casual and not in
28 the course of the trade, business, profession, or occupation
29 of the employer.

30 6. A volunteer, except a volunteer worker for the
31 state or a county, municipality, or other governmental entity.

758-114CXB-32

Bill No. CS/HB 1643

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

1 A person who does not receive monetary remuneration for
2 services is presumed to be a volunteer unless there is
3 substantial evidence that a valuable consideration was
4 intended by both employer and employee. For purposes of this
5 chapter, the term "volunteer" includes, but is not limited to:
6 a. Persons who serve in private nonprofit agencies and
7 who receive no compensation other than expenses in an amount
8 less than or equivalent to the standard mileage and per diem
9 expenses provided to salaried employees in the same agency or,
10 if such agency does not have salaried employees who receive
11 mileage and per diem, then such volunteers who receive no
12 compensation other than expenses in an amount less than or
13 equivalent to the customary mileage and per diem paid to
14 salaried workers in the community as determined by the
15 department ~~division~~; and
16 b. Volunteers participating in federal programs
17 established under Pub. L. No. 93-113.
18 7. Any officer of a corporation who elects to be
19 exempt from this chapter.
20 8. A sole proprietor or officer of a corporation who
21 actively engages in the construction industry, and a partner
22 in a partnership that is actively engaged in the construction
23 industry, who elects to be exempt from the provisions of this
24 chapter. Such sole proprietor, officer, or partner is not an
25 employee for any reason until the notice of revocation of
26 election filed pursuant to s. 440.05 is effective.
27 9. An exercise rider who does not work for a single
28 horse farm or breeder, and who is compensated for riding on a
29 case-by-case basis, provided a written contract is entered
30 into prior to the commencement of such activity which
31 evidences that an employee/employer relationship does not

758-114CXB-32

Bill No. CS/HB 1643

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

1 exist.

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

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

24 Section 12. Section 440.021, Florida Statutes, is
25 amended to read:

26 440.021 Exemption of workers' compensation from
27 chapter 120.--Workers' compensation adjudications by judges of
28 compensation claims are exempt from chapter 120, and no judge
29 of compensation claims shall be considered an agency or a part
30 thereof. Communications of the result of investigations by the
31 department ~~division~~ pursuant to s. 440.185(4) are exempt from

758-114CXB-32

Bill No. CS/HB 1643

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

1 chapter 120. In all instances in which the department division
2 institutes action to collect a penalty or interest which may
3 be due pursuant to this chapter, the penalty or interest shall
4 be assessed without hearing, and the party against which such
5 penalty or interest is assessed shall be given written notice
6 of such assessment and shall have the right to protest within
7 20 days of such notice. Upon receipt of a timely notice of
8 protest and after such investigation as may be necessary, the
9 department division shall, if it agrees with such protest,
10 notify the protesting party that the assessment has been
11 revoked. If the department division does not agree with the
12 protest, it shall refer the matter to the judge of
13 compensation claims for determination pursuant to s.
14 440.25(2)-(5). Such action of the department division is
15 exempt from the provisions of chapter 120.

16 Section 13. Section 440.05, Florida Statutes, is
17 amended to read:

18 440.05 Election of exemption; revocation of election;
19 notice; certification.--

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

25 (2) Each sole proprietor or partner who elects to be
26 included in the definition of "employee" or who, after such
27 election, revokes that election must mail to the department
28 division in Tallahassee notice to such effect, in accordance
29 with a form to be prescribed by the department division.

30 (3) Each sole proprietor, partner, or officer of a
31 corporation who is actively engaged in the construction

758-114CXB-32

Bill No. CS/HB 1643

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

1 industry and who elects an exemption from this chapter or who,
2 after electing such exemption, revokes that exemption, must
3 mail a written notice to such effect to the department
4 ~~division~~ on a form prescribed by the department ~~division~~. The
5 notice of election to be exempt from the provisions of this
6 chapter must be notarized and under oath. The notice of
7 election to be exempt which is submitted to the department
8 ~~division~~ by the sole proprietor, partner, or officer of a
9 corporation must list the name, federal tax identification
10 number, social security number, all certified or registered
11 licenses issued pursuant to chapter 489 held by the person
12 seeking the exemption, a copy of relevant documentation as to
13 employment status filed with the Internal Revenue Service as
14 specified by the department ~~division~~, a copy of the relevant
15 occupational license in the primary jurisdiction of the
16 business, and, for corporate officers and partners, the
17 registration number of the corporation or partnership filed
18 with the Division of Corporations of the Department of State.
19 The notice of election to be exempt must identify each sole
20 proprietorship, partnership, or corporation that employs the
21 person electing the exemption and must list the social
22 security number or federal tax identification number of each
23 such employer and the additional documentation required by
24 this section. In addition, the notice of election to be exempt
25 must provide that the sole proprietor, partner, or officer
26 electing an exemption is not entitled to benefits under this
27 chapter, must provide that the election does not exceed
28 exemption limits for officers and partnerships provided in s.
29 440.02, and must certify that any employees of the sole
30 proprietor, partner, or officer electing an exemption are
31 covered by workers' compensation insurance. Upon receipt of

758-114CXB-32

Bill No. CS/HB 1643

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

1 the notice of the election to be exempt, receipt of all
2 application fees, and a determination by the department
3 ~~division~~ that the notice meets the requirements of this
4 subsection, the department ~~division~~ shall issue a
5 certification of the election to the sole proprietor, partner,
6 or officer, unless the department ~~division~~ determines that the
7 information contained in the notice is invalid. The department
8 ~~division~~ shall revoke a certificate of election to be exempt
9 from coverage upon a determination by the department ~~division~~
10 that the person does not meet the requirements for exemption
11 or that the information contained in the notice of election to
12 be exempt is invalid. The certificate of election must list
13 the names of the sole proprietorship, partnership, or
14 corporation listed in the request for exemption. A new
15 certificate of election must be obtained each time the person
16 is employed by a new sole proprietorship, partnership, or
17 corporation that is not listed on the certificate of election.
18 A copy of the certificate of election must be sent to each
19 workers' compensation carrier identified in the request for
20 exemption. Upon filing a notice of revocation of election, a
21 sole proprietor, partner, or officer who is a subcontractor
22 must notify her or his contractor. Upon revocation of a
23 certificate of election of exemption by the department
24 ~~division~~, the department ~~division~~ shall notify the workers'
25 compensation carriers identified in the request for exemption.

26 (4) The notice of election to be exempt from the
27 provisions of this chapter must contain a notice that clearly
28 states in substance the following: "Any person who, knowingly
29 and with intent to injure, defraud, or deceive the department
30 ~~division~~ or any employer or employee, insurance company, or
31 purposes program, files a notice of election to be exempt

1 containing any false or misleading information is guilty of a
2 felony of the third degree." Each person filing a notice of
3 election to be exempt shall personally sign the notice and
4 attest that he or she has reviewed, understands, and
5 acknowledges the foregoing notice.

6 (5) A notice given under subsection (1), subsection
7 (2), or subsection (3) shall become effective when issued by
8 the department ~~division~~ or 30 days after an application for an
9 exemption is received by the department ~~division~~, whichever
10 occurs first. However, if an accident or occupational disease
11 occurs less than 30 days after the effective date of the
12 insurance policy under which the payment of compensation is
13 secured or the date the employer qualified as a self-insurer,
14 such notice is effective as of 12:01 a.m. of the day following
15 the date it is mailed to the department ~~division~~ in
16 Tallahassee.

17 (6) A construction industry certificate of election to
18 be exempt which is issued in accordance with this section
19 shall be valid for 2 years after the effective date stated
20 thereon. Both the effective date and the expiration date must
21 be listed on the face of the certificate by the department
22 ~~division~~. The construction industry certificate must expire at
23 midnight, 2 years from its issue date, as noted on the face of
24 the exemption certificate. Any person who has received from
25 the division a construction industry certificate of election
26 to be exempt which is in effect on December 31, 1998, shall
27 file a new notice of election to be exempt by the last day in
28 his or her birth month following December 1, 1998. A
29 construction industry certificate of election to be exempt may
30 be revoked before its expiration by the sole proprietor,
31 partner, or officer for whom it was issued or by the

1 ~~department division~~ for the reasons stated in this section.
2 At least 60 days prior to the expiration date of a
3 construction industry certificate of exemption issued after
4 December 1, 1998, the ~~department division~~ shall send notice of
5 the expiration date and an application for renewal to the
6 certificateholder at the address on the certificate.

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

12 (8)(a) The ~~department division~~ must assess a fee of
13 \$50 with each request for a construction industry certificate
14 of election to be exempt or renewal of election to be exempt
15 under this section.

16 (b) The funds collected by the ~~department division~~
17 shall be used to administer this section, to audit the
18 businesses that pay the fee for compliance with any
19 requirements of this chapter, and to enforce compliance with
20 the provisions of this chapter.

21 (9) The ~~department division~~ may by rule prescribe
22 forms and procedures for filing an election of exemption,
23 revocation of election to be exempt, and notice of election of
24 coverage for all employers and require specified forms to be
25 submitted by all employers in filing for the election of
26 exemption. The ~~department division~~ may by rule prescribe forms
27 and procedures for issuing a certificate of the election of
28 exemption.

29 Section 14. Paragraph (d) of subsection (7) of section
30 440.09, Florida Statutes, is amended to read:

31 440.09 Coverage.--

1 (7)
 2 (d) The agency ~~division~~ shall provide by rule for the
 3 authorization and regulation of drug-testing policies,
 4 procedures, and methods. Testing of injured employees shall
 5 not commence until such rules are adopted.

6 Section 15. Paragraphs (f) and (g) of subsection (1)
 7 of section 440.10, Florida Statutes, are amended to read:

8 440.10 Liability for compensation.--

9 (1)

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

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

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

23 2. The independent contractor provides the general
 24 contractor with a valid certificate of workers' compensation
 25 insurance or a valid certificate of exemption issued by the
 26 department ~~division~~.

27
 28 A sole proprietor, partner, or officer of a corporation who
 29 elects exemption from this chapter by filing a certificate of
 30 election under s. 440.05 may not recover benefits or
 31 compensation under this chapter. An independent contractor

1 who provides the general contractor with both an affidavit
 2 stating that he or she meets the requirements of s.
 3 440.02~~(14)(d)~~ and a certificate of exemption is not an
 4 employee under s. 440.02~~(14)(e)~~ and may not recover benefits
 5 under this chapter. For purposes of determining the
 6 appropriate premium for workers' compensation coverage,
 7 carriers may not consider any person who meets the
 8 requirements of this paragraph to be an employee.

9 Section 16. Subsection (2), paragraph (a) of
 10 subsection (3), and paragraph (g) of subsection (7) of section
 11 440.102, Florida Statutes, are amended to read:

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

16 (2) DRUG TESTING.--An employer may test an employee or
 17 job applicant for any drug described in paragraph (1)(c). In
 18 order to qualify as having established a drug-free workplace
 19 program which affords an employer the ability to qualify for
 20 the discounts provided under s. 627.0915 and deny medical and
 21 indemnity benefits, under this chapter all drug testing
 22 conducted by employers shall be in conformity with the
 23 standards and procedures established in this section and all
 24 applicable rules adopted pursuant to this section. However, an
 25 employer does not have a legal duty under this section to
 26 request an employee or job applicant to undergo drug testing.
 27 If an employer fails to maintain a drug-free workplace program
 28 in accordance with the standards and procedures established in
 29 this section and in applicable rules, the employer shall not
 30 be eligible for discounts under s. 627.0915. All employers
 31 qualifying for and receiving discounts provided under s.

1 627.0915 must be reported annually by the insurer to the
2 department division.

3 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--prior to
4 his or her receiving workers' compensation payments.

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

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

10 a. The types of drug testing an employee or job
11 applicant may be required to submit to, including
12 reasonable-suspicion drug testing or drug testing conducted on
13 any other basis.

14 b. The actions the employer may take against an
15 employee or job applicant on the basis of a positive confirmed
16 drug test result.

17 2. A statement advising the employee or job applicant
18 of the existence of this section.

19 3. A general statement concerning confidentiality.

20 4. Procedures for employees and job applicants to
21 confidentially report to a medical review officer the use of
22 prescription or nonprescription medications to a medical
23 review officer both before and after being tested.

24 5. A list of the most common medications, by brand
25 name or common name, as applicable, as well as by chemical
26 name, which may alter or affect a drug test. A list of such
27 medications as developed by the Agency for Health Care
28 Administration shall be available to employers through the
29 ~~Division of Workers' Compensation of the department of Labor~~
30 ~~and Employment Security~~.

31 6. The consequences of refusing to submit to a drug

1 test.

2 7. A representative sampling of names, addresses, and
3 telephone numbers of employee assistance programs and local
4 drug rehabilitation programs.

5 8. A statement that an employee or job applicant who
6 receives a positive confirmed test result may contest or
7 explain the result to the medical review officer within 5
8 working days after receiving written notification of the test
9 result; that if an employee's or job applicant's explanation
10 or challenge is unsatisfactory to the medical review officer,
11 the medical review officer shall report a positive test result
12 back to the employer; and that a person may contest the drug
13 test result pursuant to law or to rules adopted by the Agency
14 for Health Care Administration.

15 9. A statement informing the employee or job applicant
16 of his or her responsibility to notify the laboratory of any
17 administrative or civil action brought pursuant to this
18 section.

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

22 11. A statement regarding any applicable collective
23 bargaining agreement or contract and the right to appeal to
24 the Public Employees Relations Commission or applicable court.

25 12. A statement notifying employees and job applicants
26 of their right to consult with a medical review officer for
27 technical information regarding prescription or
28 nonprescription medication.

29 (7) EMPLOYER PROTECTION.--

30 (g) This section does not prohibit an employer from
31 conducting medical screening or other tests required,

758-114CXB-32

Bill No. CS/HB 1643

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

1 permitted, or not disallowed by any statute, rule, or
2 regulation for the purpose of monitoring exposure of employees
3 to toxic or other unhealthy substances in the workplace or in
4 the performance of job responsibilities. Such screening or
5 testing is limited to the specific substances expressly
6 identified in the applicable statute, rule, or regulation,
7 unless prior written consent of the employee is obtained for
8 other tests. Such screening or testing need not be in
9 compliance with the rules adopted by the Agency for Health
10 Care Administration under this chapter or under s. 112.0455. A
11 public employer may, through the use of an unbiased selection
12 procedure, conduct random drug tests of employees occupying
13 safety-sensitive or special-risk positions if the testing is
14 performed in accordance with drug-testing rules adopted by the
15 Agency for Health Care Administration and the department of
16 ~~Labor and Employment Security~~. If applicable, random drug
17 testing must be specified in a collective bargaining agreement
18 as negotiated by the appropriate certified bargaining agent
19 before such testing is implemented.

20 Section 17. Section 440.103, Florida Statutes, is
21 amended to read:

22 440.103 Building permits; identification of minimum
23 premium policy.--Except as otherwise provided in this chapter,
24 every employer shall, as a condition to receiving a building
25 permit, show proof that it has secured compensation for its
26 employees under this chapter as provided in ss. 440.10 and
27 440.38. Such proof of compensation must be evidenced by a
28 certificate of coverage issued by the carrier, a valid
29 exemption certificate approved by the department or the former
30 Division of Workers' Compensation of the Department of Labor
31 and Employment Security, or a copy of the employer's authority

758-114CXB-32

Bill No. CS/HB 1643

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

1 to self-insure and shall be presented each time the employer
2 applies for a building permit. As provided in s. 627.413(5),
3 each certificate of coverage must show, on its face, whether
4 or not coverage is secured under the minimum premium
5 provisions of rules adopted by rating organizations licensed
6 by the department ~~of Insurance~~. The words "minimum premium
7 policy" or equivalent language shall be typed, printed,
8 stamped, or legibly handwritten.

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

11 440.104 Competitive bidder; civil actions.--

12 (1) Any person engaged in the construction industry,
13 as provided in s. 440.02 ~~s. 440.02(7)~~, who loses a competitive
14 bid for a contract shall have a cause of action for damages
15 against the person awarded the contract for which the bid was
16 made, if the person making the losing bid establishes that the
17 winning bidder knew or should have known that he or she was in
18 violation of s. 440.10, s. 440.105, or s. 440.38 while
19 performing the work under the contract.

20 Section 19. Paragraph (a) of subsection (2) of section
21 440.105, Florida Statutes, is amended to read:

22 440.105 Prohibited activities; reports; penalties;
23 limitations.--

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

27 (a) It shall be unlawful for any employer to
28 knowingly:

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

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

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

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

12 Section 20. Subsections (3) and (4) of section
13 440.106, Florida Statutes, are amended to read:

14 440.106 Civil remedies; administrative penalties.--

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

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

25 Section 21. Section 440.107, Florida Statutes, is
26 amended to read:

27 440.107 Department ~~Division~~ powers to enforce employer
28 compliance with coverage requirements.--

29 (1) The Legislature finds that the failure of an
30 employer to comply with the workers' compensation coverage
31 requirements under this chapter poses an immediate danger to

1 public health, safety, and welfare. The Legislature authorizes
2 the department ~~division~~ to secure employer compliance with the
3 workers' compensation coverage requirements and authorizes the
4 department ~~division~~ to conduct investigations for the purpose
5 of ensuring employer compliance.

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

25 (3) In discharging its duties, the department ~~division~~
26 may administer oaths and affirmations, certify to official
27 acts, issue subpoenas to compel the attendance of witnesses
28 and the production of books, papers, correspondence,
29 memoranda, and other records deemed necessary by the
30 department ~~division~~ as evidence in order to ensure proper
31 compliance with the coverage provisions of this chapter.

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

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

28 (6) The department ~~division~~ may file a complaint in
29 the circuit court in and for Leon County to enjoin any
30 employer, who has failed to secure compensation as required by
31 this chapter, from employing individuals and from conducting

1 business until the employer presents evidence satisfactory to
2 the department ~~division~~ of having secured payment for
3 compensation and pays a civil penalty to the department
4 ~~division~~, to be deposited by the department ~~division~~ into the
5 Workers' Compensation Administration Trust Fund, in the amount
6 of \$100 per day for each day the employer was not in
7 compliance with this chapter.

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

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

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

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

26 (8) The department ~~division~~ may bring an action in
27 circuit court to recover penalties assessed under this
28 section, including any interest owed to the department
29 ~~division~~ pursuant to this section. In any action brought by
30 the department ~~division~~ pursuant to this section in which it
31 prevails, the circuit court shall award costs, including the

758-114CXB-32

Bill No. CS/HB 1643

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

1 reasonable costs of investigation and a reasonable attorney's
2 fee.

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

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

26 (11) Actions by the department division under this
27 section must be contested as provided in chapter 120. All
28 civil penalties assessed by the department division must be
29 paid into the Workers' Compensation Administration Trust Fund.
30 The department division shall return any sums previously paid,
31 upon conclusion of an action, if the department division fails

758-114CXB-32

Bill No. CS/HB 1643

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

1 to prevail and if so directed by an order of court or an
2 administrative hearing officer. The requirements of this
3 subsection may be met by posting a bond in an amount equal to
4 twice the penalty and in a form approved by the department
5 division.

6 Section 22. Subsection (1) of section 440.108, Florida
7 Statutes, is amended to read:

8 440.108 Investigatory records relating to workers'
9 compensation employer compliance; confidentiality.--

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

29 (a) Jeopardize the integrity of another active
30 investigation;

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

- 1 (c) Reveal business or personal financial information;
- 2 (d) Reveal the identity of a confidential source;
- 3 (e) Defame or cause unwarranted damage to the good
- 4 name or reputation of an individual or jeopardize the safety
- 5 of an individual; or
- 6 (f) Reveal investigative techniques or procedures.

7 Section 23. Subsection (2) of section 440.12, Florida
8 Statutes, is amended to read:

9 440.12 Time for commencement and limits on weekly rate
10 of compensation.--

11 (2) Compensation for disability resulting from
12 injuries which occur after December 31, 1974, shall not be
13 less than \$20 per week. However, if the employee's wages at
14 the time of injury are less than \$20 per week, he or she shall
15 receive his or her full weekly wages. If the employee's wages
16 at the time of the injury exceed \$20 per week, compensation
17 shall not exceed an amount per week which is:

18 (a) Equal to 100 percent of the statewide average
19 weekly wage, determined as hereinafter provided for the year
20 in which the injury occurred; however, the increase to 100
21 percent from 66 2/3 percent of the statewide average weekly
22 wage shall apply only to injuries occurring on or after August
23 1, 1979; and

24 (b) Adjusted to the nearest dollar.

25
26 For the purpose of this subsection, the "statewide average
27 weekly wage" means the average weekly wage paid by employers
28 subject to the Florida Unemployment Compensation Law as
29 reported to the Agency for Workforce Innovation ~~department~~ for
30 the four calendar quarters ending each June 30, which average
31 weekly wage shall be determined by the Agency for Workforce

758-114CXB-32

Bill No. CS/HB 1643

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

1 Innovation department on or before November 30 of each year
2 and shall be used in determining the maximum weekly
3 compensation rate with respect to injuries occurring in the
4 calendar year immediately following. The statewide average
5 weekly wage determined by the Agency for Workforce Innovation
6 ~~department~~ shall be reported annually to the Legislature.

7 Section 24. Section 440.125, Florida Statutes, is
8 amended to read:

9 440.125 Medical records and reports; identifying
10 information in employee medical bills; confidentiality.--
11 ~~(1)~~ Any medical records and medical reports of an
12 injured employee and any information identifying an injured
13 employee in medical bills which are provided to the
14 ~~department, Division of Workers' Compensation of the~~
15 ~~Department of Labor and Employment Security~~ pursuant to s.
16 440.13 are confidential and exempt from the provisions of s.
17 119.07(1) and s. 24(a), Art. I of the State Constitution,
18 except as otherwise provided by this chapter. The department
19 may share any such confidential and exempt records, reports,
20 or information received pursuant to s. 440.13 with the Agency
21 for Health Care Administration and the Department of Education
22 in furtherance of their official duties under ss. 440.13 and
23 440.134. The agency and the department shall maintain the
24 confidential and exempt status of such records, reports, and
25 information received.

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

9 Section 25. Subsections (1), (3), (4), (5), (6), (7),
10 (8), (9), (11), (12), (13), and (15) of section 440.13,
11 Florida Statutes, are amended to read:

12 440.13 Medical services and supplies; penalty for
13 violations; limitations.--

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

15 (a) "Alternate medical care" means a change in
16 treatment or health care provider.

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

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

29 (d) "Catastrophic injury" means an injury as defined
30 in s. 440.02.

31 (e) "Certified health care provider" means a health

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

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

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

15 (h) "Health care facility" means any hospital licensed
16 under chapter 395 and any health care institution licensed
17 under chapter 400.

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

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

28 (k) "Independent medical examination" means an
29 objective evaluation of the injured employee's medical
30 condition, including, but not limited to, impairment or work
31 status, performed by a physician or an expert medical advisor

758-114CXB-32

Bill No. CS/HB 1643

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

1 at the request of a party, a judge of compensation claims, or
2 the agency division to assist in the resolution of a dispute
3 arising under this chapter.

4 (l) "Instance of overutilization" means a specific
5 inappropriate service or level of service provided to an
6 injured employee.

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

22 (n) "Medicine" means a drug prescribed by an
23 authorized health care provider and includes only generic
24 drugs or single-source patented drugs for which there is no
25 generic equivalent, unless the authorized health care provider
26 writes or states that the brand-name drug as defined in s.
27 465.025 is medically necessary, or is a drug appearing on the
28 schedule of drugs created pursuant to s. 465.025(6), or is
29 available at a cost lower than its generic equivalent.

30 (o) "Palliative care" means noncurative medical
31 services that mitigate the conditions, effects, or pain of an

1 injury.

2 (p) "Pattern or practice of overutilization" means
3 repetition of instances of overutilization within a specific
4 medical case or multiple cases by a single health care
5 provider.

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

12 (r) "Physician" or "doctor" means a physician licensed
13 under chapter 458, an osteopathic physician licensed under
14 chapter 459, a chiropractic physician licensed under chapter
15 460, a podiatric physician licensed under chapter 461, an
16 optometrist licensed under chapter 463, or a dentist licensed
17 under chapter 466, each of whom must be certified by the
18 agency division as a health care provider.

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

22 (t) "Utilization control" means a systematic process
23 of implementing measures that assure overall management and
24 cost containment of services delivered.

25 (u) "Utilization review" means the evaluation of the
26 appropriateness of both the level and the quality of health
27 care and health services provided to a patient, including, but
28 not limited to, evaluation of the appropriateness of
29 treatment, hospitalization, or office visits based on
30 medically accepted standards. Such evaluation must be
31 accomplished by means of a system that identifies the

758-114CXB-32

Bill No. CS/HB 1643

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

1 utilization of medical services based on medically accepted
2 standards as established by medical consultants with
3 qualifications similar to those providing the care under
4 review, and that refers patterns and practices of
5 overutilization to the agency division.

6 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

27 (c) A health care provider may not refer the employee
28 to another health care provider, diagnostic facility, therapy
29 center, or other facility without prior authorization from the
30 carrier, except when emergency care is rendered. Any referral
31 must be to a health care provider that has been certified by

1 the agency division, unless the referral is for emergency
2 treatment.

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

12 (e) Carriers shall adopt procedures for receiving,
13 reviewing, documenting, and responding to requests for
14 authorization. Such procedures shall be for a health care
15 provider certified under this section.

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

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

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

31 (i) Notwithstanding paragraph (d), a claim for

758-114CXB-32

Bill No. CS/HB 1643

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

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

20 (j) Notwithstanding anything in this chapter to the
21 contrary, a sick or injured employee shall be entitled, at all
22 times, to free, full, and absolute choice in the selection of
23 the pharmacy or pharmacist dispensing and filling
24 prescriptions for medicines required under this chapter. It is
25 expressly forbidden for the agency ~~division~~, an employer, or a
26 carrier, or any agent or representative of the agency
27 ~~division~~, an employer, or a carrier to select the pharmacy or
28 pharmacist which the sick or injured employee must use;
29 condition coverage or payment on the basis of the pharmacy or
30 pharmacist utilized; or to otherwise interfere in the
31 selection by the sick or injured employee of a pharmacy or

1 pharmacist.

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

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

21 (b) Upon the request of the department or agency
22 ~~Division of Workers' Compensation~~, each medical report or bill
23 obtained or received by the employer, the carrier, or the
24 injured employee, or the attorney for the employer, carrier,
25 or injured employee, with respect to the remedial treatment,
26 care, and attendance of the injured employee, including any
27 report of an examination, diagnosis, or disability evaluation,
28 must be filed with the department or agency ~~Division of~~
29 ~~Workers' Compensation~~ pursuant to rules adopted by the
30 department in consultation with the agency ~~division~~. The
31 health care provider shall also furnish to the injured

1 employee or to his or her attorney, on demand, a copy of his
2 or her office chart, records, and reports, and may charge the
3 injured employee an amount authorized by the department
4 ~~division~~ for the copies. Each such health care provider shall
5 provide to the agency or department ~~division~~ information about
6 the remedial treatment, care, and attendance which the agency
7 or department ~~division~~ reasonably requests.

8 (c) It is the policy for the administration of the
9 workers' compensation system that there be reasonable access
10 to medical information by all parties to facilitate the
11 self-executing features of the law. Notwithstanding the
12 limitations in s. 456.057 and subject to the limitations in s.
13 381.004, upon the request of the employer, the carrier, an
14 authorized qualified rehabilitation provider, or the attorney
15 for the employer or carrier, the medical records of an injured
16 employee must be furnished to those persons and the medical
17 condition of the injured employee must be discussed with those
18 persons, if the records and the discussions are restricted to
19 conditions relating to the workplace injury. Any such
20 discussions may be held before or after the filing of a claim
21 without the knowledge, consent, or presence of any other party
22 or his or her agent or representative. A health care provider
23 who willfully refuses to provide medical records or to discuss
24 the medical condition of the injured employee, after a
25 reasonable request is made for such information pursuant to
26 this subsection, shall be subject by the agency ~~division~~ to
27 one or more of the penalties set forth in paragraph (8)(b).

28 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

29 (a) In any dispute concerning overutilization, medical
30 benefits, compensability, or disability under this chapter,
31 the carrier or the employee may select an independent medical

1 examiner. The examiner may be a health care provider treating
2 or providing other care to the employee. An independent
3 medical examiner may not render an opinion outside his or her
4 area of expertise, as demonstrated by licensure and applicable
5 practice parameters.

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

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

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

14 3. The examiner is unavailable due to injury, death,
15 or relocation outside a reasonably accessible geographic area;
16 or

17 4. The parties agree to an alternate examiner.
18

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

24 (c) The carrier may, at its election, contact the
25 claimant directly to schedule a reasonable time for an
26 independent medical examination. The carrier must confirm the
27 scheduling agreement in writing within 5 days and notify
28 claimant's counsel, if any, at least 7 days before the date
29 upon which the independent medical examination is scheduled to
30 occur. An attorney representing a claimant is not authorized
31 to schedule independent medical evaluations under this

1 subsection.

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

17 (e) No medical opinion other than the opinion of a
18 medical advisor appointed by the judge of compensation claims
19 or agency division, an independent medical examiner, or an
20 authorized treating provider is admissible in proceedings
21 before the judges of compensation claims.

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

26 (6) UTILIZATION REVIEW.--Carriers shall review all
27 bills, invoices, and other claims for payment submitted by
28 health care providers in order to identify overutilization and
29 billing errors, and may hire peer review consultants or
30 conduct independent medical evaluations. Such consultants,
31 including peer review organizations, are immune from liability

1 in the execution of their functions under this subsection to
2 the extent provided in s. 766.101. If a carrier finds that
3 overutilization of medical services or a billing error has
4 occurred, it must disallow or adjust payment for such services
5 or error without order of a judge of compensation claims or
6 the agency division, if the carrier, in making its
7 determination, has complied with this section and rules
8 adopted by the agency division.

9 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

21 (b) The carrier must submit to the agency division
22 within 10 days after receipt of the petition all documentation
23 substantiating the carrier's disallowance or adjustment.
24 Failure of the carrier to submit the requested documentation
25 to the agency division within 10 days constitutes a waiver of
26 all objections to the petition.

27 (c) Within 60 days after receipt of all documentation,
28 the agency division must provide to the petitioner, the
29 carrier, and the affected parties a written determination of
30 whether the carrier properly adjusted or disallowed payment.
31 The agency division must be guided by standards and policies

1 set forth in this chapter, including all applicable
2 reimbursement schedules, in rendering its determination.

3 (d) If the agency ~~division~~ finds an improper
4 disallowance or improper adjustment of payment by an insurer,
5 the insurer shall reimburse the health care provider,
6 facility, insurer, or employer within 30 days, subject to the
7 penalties provided in this subsection.

8 (e) The agency ~~division~~ shall adopt rules to carry out
9 this subsection. The rules may include provisions for
10 consolidating petitions filed by a petitioner and expanding
11 the timetable for rendering a determination upon a
12 consolidated petition.

13 (f) Any carrier that engages in a pattern or practice
14 of arbitrarily or unreasonably disallowing or reducing
15 payments to health care providers may be subject to one or
16 more of the following penalties imposed by the agency
17 ~~division~~:

18 1. Repayment of the appropriate amount to the health
19 care provider.

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

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

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

27 (a) Carriers must report to the agency ~~division~~ all
28 instances of overutilization including, but not limited to,
29 all instances in which the carrier disallows or adjusts
30 payment. The agency ~~division~~ shall determine whether a pattern
31 or practice of overutilization exists.

1 (b) If the agency division determines that a health
2 care provider has engaged in a pattern or practice of
3 overutilization or a violation of this chapter or rules
4 adopted by the agency division, it may impose one or more of
5 the following penalties:

6 1. An order of the agency division barring the
7 provider from payment under this chapter;

8 2. Deauthorization of care under review;

9 3. Denial of payment for care rendered in the future;

10 4. Decertification of a health care provider certified
11 as an expert medical advisor under subsection (9) or of a
12 rehabilitation provider certified under s. 440.49;

13 5. An administrative fine assessed by the agency
14 division in an amount not to exceed \$5,000 per instance of
15 overutilization or violation; and

16 6. Notification of and review by the appropriate
17 licensing authority pursuant to s. 440.106(3).

18 (9) EXPERT MEDICAL ADVISORS.--

19 (a) The agency division shall certify expert medical
20 advisors in each specialty to assist the agency division and
21 the judges of compensation claims within the advisor's area of
22 expertise as provided in this section. The agency division
23 shall, in a manner prescribed by rule, in certifying,
24 recertifying, or decertifying an expert medical advisor,
25 consider the qualifications, training, impartiality, and
26 commitment of the health care provider to the provision of
27 quality medical care at a reasonable cost. As a prerequisite
28 for certification or recertification, the agency division
29 shall require, at a minimum, that an expert medical advisor
30 have specialized workers' compensation training or experience
31 under the workers' compensation system of this state and board

758-114CXB-32

Bill No. CS/HB 1643

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

1 certification or board eligibility.

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

16 (c) If there is disagreement in the opinions of the
17 health care providers, if two health care providers disagree
18 on medical evidence supporting the employee's complaints or
19 the need for additional medical treatment, or if two health
20 care providers disagree that the employee is able to return to
21 work, the agency division may, and the judge of compensation
22 claims shall, upon his or her own motion or within 15 days
23 after receipt of a written request by either the injured
24 employee, the employer, or the carrier, order the injured
25 employee to be evaluated by an expert medical advisor. The
26 opinion of the expert medical advisor is presumed to be
27 correct unless there is clear and convincing evidence to the
28 contrary as determined by the judge of compensation claims.
29 The expert medical advisor appointed to conduct the evaluation
30 shall have free and complete access to the medical records of
31 the employee. An employee who fails to report to and cooperate

758-114CXB-32

Bill No. CS/HB 1643

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

1 with such evaluation forfeits entitlement to compensation
2 during the period of failure to report or cooperate.

3 (d) The expert medical advisor must complete his or
4 her evaluation and issue his or her report to the agency
5 ~~division~~ or to the judge of compensation claims within 45 days
6 after receipt of all medical records. The expert medical
7 advisor must furnish a copy of the report to the carrier and
8 to the employee.

9 (e) An expert medical advisor is not liable under any
10 theory of recovery for evaluations performed under this
11 section without a showing of fraud or malice. The protections
12 of s. 766.101 apply to any officer, employee, or agent of the
13 agency ~~division~~ and to any officer, employee, or agent of any
14 entity with which the agency ~~division~~ has contracted under
15 this subsection.

16 (f) If the agency ~~division~~ or a judge of compensation
17 claims determines that the services of a certified expert
18 medical advisor are required to resolve a dispute under this
19 section, the carrier must compensate the advisor for his or
20 her time in accordance with a schedule adopted by the agency
21 ~~division~~. The agency ~~division~~ may assess a penalty not to
22 exceed \$500 against any carrier that fails to timely
23 compensate an advisor in accordance with this section.

24 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
25 AND THE DEPARTMENT OF INSURANCE ~~DIVISION~~; JURISDICTION.--

26 (a) The Agency for Health Care Administration ~~Division~~
27 ~~of Workers' Compensation of the Department of Labor and~~
28 ~~Employment Security~~ may investigate health care providers to
29 determine whether providers are complying with this chapter
30 and with rules adopted by the agency ~~division~~, whether the
31 providers are engaging in overutilization, and whether

758-114CXB-32

Bill No. CS/HB 1643

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

1 providers are engaging in improper billing practices. If the
2 agency division finds that a health care provider has
3 improperly billed, overutilized, or failed to comply with
4 agency division rules or the requirements of this chapter it
5 must notify the provider of its findings and may determine
6 that the health care provider may not receive payment from the
7 carrier or may impose penalties as set forth in subsection (8)
8 or other sections of this chapter. If the health care provider
9 has received payment from a carrier for services that were
10 improperly billed or for overutilization, it must return those
11 payments to the carrier. The agency division may assess a
12 penalty not to exceed \$500 for each overpayment that is not
13 refunded within 30 days after notification of overpayment by
14 the agency division or carrier.

15 (b) The department division shall monitor and audit
16 carriers as provided in s. 624.3161, to determine if medical
17 bills are paid in accordance with this section and department
18 division rules. ~~Any employer, if self-insured, or carrier~~
19 ~~found by the division not to be within 90 percent compliance~~
20 ~~as to the payment of medical bills after July 1, 1994, must be~~
21 ~~assessed a fine not to exceed 1 percent of the prior year's~~
22 ~~assessment levied against such entity under s. 440.51 for~~
23 ~~every quarter in which the entity fails to attain 90-percent~~
24 ~~compliance. The department division shall fine or otherwise~~
25 discipline an employer or carrier, pursuant to this chapter,
26 the insurance code, or rules adopted by the department
27 division, for each late payment of compensation that is below
28 the minimum 90-percent performance standard. Any carrier that
29 is found to be not in compliance in subsequent consecutive
30 quarters must implement a medical bill review program approved
31 by the division, and the carrier is subject to disciplinary

1 ~~action by the Department of Insurance.~~

2 (c) The agency ~~division~~ has exclusive jurisdiction to
3 decide any matters concerning reimbursement, to resolve any
4 overutilization dispute under subsection (7), and to decide
5 any question concerning overutilization under subsection (8),
6 which question or dispute arises after January 1, 1994.

7 (d) The following agency ~~division~~ actions do not
8 constitute agency action subject to review under ss. 120.569
9 and 120.57 and do not constitute actions subject to s. 120.56:
10 referral by the entity responsible for utilization review; a
11 decision by the agency ~~division~~ to refer a matter to a peer
12 review committee; establishment by a health care provider or
13 entity of procedures by which a peer review committee reviews
14 the rendering of health care services; and the review
15 proceedings, report, and recommendation of the peer review
16 committee.

17 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
18 REIMBURSEMENT ALLOWANCES.--

19 (a) A three-member panel is created, consisting of the
20 Insurance Commissioner, or the Insurance Commissioner's
21 designee, and two members to be appointed by the Governor,
22 subject to confirmation by the Senate, one member who, on
23 account of present or previous vocation, employment, or
24 affiliation, shall be classified as a representative of
25 employers, the other member who, on account of previous
26 vocation, employment, or affiliation, shall be classified as a
27 representative of employees. The panel shall determine
28 statewide schedules of maximum reimbursement allowances for
29 medically necessary treatment, care, and attendance provided
30 by physicians, hospitals, ambulatory surgical centers,
31 work-hardening programs, pain programs, and durable medical

758-114CXB-32

Bill No. CS/HB 1643

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

1 equipment. The maximum reimbursement allowances for inpatient
2 hospital care shall be based on a schedule of per diem rates,
3 to be approved by the three-member panel no later than March
4 1, 1994, to be used in conjunction with a precertification
5 manual as determined by the agency division. All compensable
6 charges for hospital outpatient care shall be reimbursed at 75
7 percent of usual and customary charges. Until the three-member
8 panel approves a schedule of per diem rates for inpatient
9 hospital care and it becomes effective, all compensable
10 charges for hospital inpatient care must be reimbursed at 75
11 percent of their usual and customary charges. Annually, the
12 three-member panel shall adopt schedules of maximum
13 reimbursement allowances for physicians, hospital inpatient
14 care, hospital outpatient care, ambulatory surgical centers,
15 work-hardening programs, and pain programs. However, the
16 maximum percentage of increase in the individual reimbursement
17 allowance may not exceed the percentage of increase in the
18 Consumer Price Index for the previous year. An individual
19 physician, hospital, ambulatory surgical center, pain program,
20 or work-hardening program shall be reimbursed either the usual
21 and customary charge for treatment, care, and attendance, the
22 agreed-upon contract price, or the maximum reimbursement
23 allowance in the appropriate schedule, whichever is less.

24 (b) As to reimbursement for a prescription medication,
25 the reimbursement amount for a prescription shall be the
26 average wholesale price times 1.2 plus \$4.18 for the
27 dispensing fee, except where the carrier has contracted for a
28 lower amount. Fees for pharmaceuticals and pharmaceutical
29 services shall be reimbursable at the applicable fee schedule
30 amount. Where the employer or carrier has contracted for such
31 services and the employee elects to obtain them through a

758-114CXB-32

Bill No. CS/HB 1643

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

1 provider not a party to the contract, the carrier shall
2 reimburse at the schedule, negotiated, or contract price,
3 whichever is lower.

4 (c) Reimbursement for all fees and other charges for
5 such treatment, care, and attendance, including treatment,
6 care, and attendance provided by any hospital or other health
7 care provider, ambulatory surgical center, work-hardening
8 program, or pain program, must not exceed the amounts provided
9 by the uniform schedule of maximum reimbursement allowances as
10 determined by the panel or as otherwise provided in this
11 section. This subsection also applies to independent medical
12 examinations performed by health care providers under this
13 chapter. Until the three-member panel approves a uniform
14 schedule of maximum reimbursement allowances and it becomes
15 effective, all compensable charges for treatment, care, and
16 attendance provided by physicians, ambulatory surgical
17 centers, work-hardening programs, or pain programs shall be
18 reimbursed at the lowest maximum reimbursement allowance
19 across all 1992 schedules of maximum reimbursement allowances
20 for the services provided regardless of the place of service.
21 In determining the uniform schedule, the panel shall first
22 approve the data which it finds representative of prevailing
23 charges in the state for similar treatment, care, and
24 attendance of injured persons. Each health care provider,
25 health care facility, ambulatory surgical center,
26 work-hardening program, or pain program receiving workers'
27 compensation payments shall maintain records verifying their
28 usual charges. In establishing the uniform schedule of maximum
29 reimbursement allowances, the panel must consider:

30 1. The levels of reimbursement for similar treatment,
31 care, and attendance made by other health care programs or

1 third-party providers;

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

6 3. The financial impact of the reimbursement
7 allowances upon health care providers and health care
8 facilities, including trauma centers as defined in s.
9 395.4001, and its effect upon their ability to make available
10 to injured workers such medically necessary remedial
11 treatment, care, and attendance. The uniform schedule of
12 maximum reimbursement allowances must be reasonable, must
13 promote health care cost containment and efficiency with
14 respect to the workers' compensation health care delivery
15 system, and must be sufficient to ensure availability of such
16 medically necessary remedial treatment, care, and attendance
17 to injured workers; and

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

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

27 (a) Engaged in professional or other misconduct or
28 incompetency in connection with medical services rendered
29 under this chapter;

30 (b) Exceeded the limits of his or her or its
31 professional competence in rendering medical care under this

1 chapter, or to have made materially false statements regarding
2 his or her or its qualifications in his or her application;

3 (c) Failed to transmit copies of medical reports to
4 the employer or carrier, or failed to submit full and truthful
5 medical reports of all his or her or its findings to the
6 employer or carrier as required under this chapter;

7 (d) Solicited, or employed another to solicit for
8 himself or herself or itself or for another, professional
9 treatment, examination, or care of an injured employee in
10 connection with any claim under this chapter;

11 (e) Refused to appear before, or to answer upon
12 request of, the agency ~~division~~ or any duly authorized officer
13 of the state, any legal question, or to produce any relevant
14 book or paper concerning his or her conduct under any
15 authorization granted to him or her under this chapter;

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

18 (g) Engaged in a pattern of practice of
19 overutilization or a violation of this chapter or rules
20 adopted by the agency ~~division~~.

21 (15) PRACTICE PARAMETERS.--

22 (a) The Agency for Health Care Administration, in
23 conjunction with the department ~~division~~ and appropriate
24 health professional associations and health-related
25 organizations shall develop and may adopt by rule
26 scientifically sound practice parameters for medical
27 procedures relevant to workers' compensation claimants.
28 Practice parameters developed under this section must focus on
29 identifying effective remedial treatments and promoting the
30 appropriate utilization of health care resources. Priority
31 must be given to those procedures that involve the greatest

758-114CXB-32

Bill No. CS/HB 1643

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

1 utilization of resources either because they are the most
2 costly or because they are the most frequently performed.
3 Practice parameters for treatment of the 10 top procedures
4 associated with workers' compensation injuries including the
5 remedial treatment of lower-back injuries must be developed by
6 December 31, 1994.

7 (b) The guidelines may be initially based on
8 guidelines prepared by nationally recognized health care
9 institutions and professional organizations but should be
10 tailored to meet the workers' compensation goal of returning
11 employees to full employment as quickly as medically possible,
12 taking into consideration outcomes data collected from managed
13 care providers and any other inpatient and outpatient
14 facilities serving workers' compensation claimants.

15 (c) Procedures must be instituted which provide for
16 the periodic review and revision of practice parameters based
17 on the latest outcomes data, research findings, technological
18 advancements, and clinical experiences, at least once every 3
19 years.

20 (d) Practice parameters developed under this section
21 must be used by carriers and the agency division in evaluating
22 the appropriateness and overutilization of medical services
23 provided to injured employees.

24 Section 26. Subsection (23) of section 440.134,
25 Florida Statutes, is amended to read:

26 440.134 Workers' compensation managed care
27 arrangement.--

28 (23) The agency shall immediately notify the
29 department ~~of Insurance and the Department of Labor and~~
30 ~~Employment Security~~ whenever it issues an administrative
31 complaint or an order or otherwise initiates legal proceedings

1 resulting in, or which may result in, suspension or revocation
2 of an insurer's authorization.

3 Section 27. Subsections (3) and (4) of section 440.14,
4 Florida Statutes, are amended to read:

5 440.14 Determination of pay.--

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

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

17 Section 28. Paragraphs (d) and (f) of subsection (1),
18 paragraphs (c) and (d) of subsection (2), subsections (3),
19 (4), and (6), and paragraphs (b) and (c) of subsection (10) of
20 section 440.15, Florida Statutes, are amended to read:

21 440.15 Compensation for disability.--Compensation for
22 disability shall be paid to the employee, subject to the
23 limits provided in s. 440.12(2), as follows:

24 (1) PERMANENT TOTAL DISABILITY.--

25 (d) If an employee who is being paid compensation for
26 permanent total disability becomes rehabilitated to the extent
27 that she or he establishes an earning capacity, the employee
28 shall be paid, instead of the compensation provided in
29 paragraph (a), benefits pursuant to subsection (3). The
30 department ~~division~~ shall adopt rules to enable a permanently
31 and totally disabled employee who may have reestablished an

758-114CXB-32

Bill No. CS/HB 1643

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

1 earning capacity to undertake a trial period of reemployment
2 without prejudicing her or his return to permanent total
3 status in the case that such employee is unable to sustain an
4 earning capacity.

5 (f)1. If permanent total disability results from
6 injuries that occurred subsequent to June 30, 1955, and for
7 which the liability of the employer for compensation has not
8 been discharged under s. 440.20(11), the injured employee
9 shall receive additional weekly compensation benefits equal to
10 5 percent of her or his weekly compensation rate, as
11 established pursuant to the law in effect on the date of her
12 or his injury, multiplied by the number of calendar years
13 since the date of injury. The weekly compensation payable and
14 the additional benefits payable under this paragraph, when
15 combined, may not exceed the maximum weekly compensation rate
16 in effect at the time of payment as determined pursuant to s.
17 440.12(2). Entitlement to these supplemental payments shall
18 cease at age 62 if the employee is eligible for social
19 security benefits under 42 U.S.C. ss. 402 and 423, whether or
20 not the employee has applied for such benefits. These
21 supplemental benefits shall be paid by the department ~~division~~
22 out of the Workers' Compensation Administration Trust Fund
23 when the injury occurred subsequent to June 30, 1955, and
24 before July 1, 1984. These supplemental benefits shall be paid
25 by the employer when the injury occurred on or after July 1,
26 1984. Supplemental benefits are not payable for any period
27 prior to October 1, 1974.

28 2.a. The department ~~division~~ shall provide by rule for
29 the periodic reporting to the department ~~division~~ of all
30 earnings of any nature and social security income by the
31 injured employee entitled to or claiming additional

758-114CXB-32

Bill No. CS/HB 1643

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

1 compensation under subparagraph 1. Neither the department
2 ~~division~~ nor the employer or carrier shall make any payment of
3 those additional benefits provided by subparagraph 1. for any
4 period during which the employee willfully fails or refuses to
5 report upon request by the department ~~division~~ in the manner
6 prescribed by such rules.

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

19 3. When an injured employee receives a full or partial
20 lump-sum advance of the employee's permanent total disability
21 compensation benefits, the employee's benefits under this
22 paragraph shall be computed on the employee's weekly
23 compensation rate as reduced by the lump-sum advance.

24 (2) TEMPORARY TOTAL DISABILITY.--

25 (c) Temporary total disability benefits paid pursuant
26 to this subsection shall include such period as may be
27 reasonably necessary for training in the use of artificial
28 members and appliances, and shall include such period as the
29 employee may be receiving training and education under a
30 program pursuant to s. 440.491. Notwithstanding s. 440.02(9),
31 the date of maximum medical improvement for purposes of

1 paragraph (3)(b) shall be no earlier than the last day for
2 which such temporary disability benefits are paid.

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

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

16 (a) Impairment benefits.--

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

1 temporary benefits, whichever occurs earlier, and continues
2 until the earlier of:

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

5 b. The death of the employee.

6 4. After the employee has been certified by a doctor
7 as having reached maximum medical improvement or 6 weeks
8 before the expiration of temporary benefits, whichever occurs
9 earlier, the certifying doctor shall evaluate the condition of
10 the employee and assign an impairment rating, using the
11 impairment schedule referred to in subparagraph 2.

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

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

31 6. The department ~~division~~ may by rule specify forms

1 and procedures governing the method of payment of wage loss
2 and impairment benefits for dates of accidents before January
3 1, 1994, and for dates of accidents on or after January 1,
4 1994.

5 (b) Supplemental benefits.--

6 1. All supplemental benefits must be paid in
7 accordance with this subsection. An employee is entitled to
8 supplemental benefits as provided in this paragraph as of the
9 expiration of the impairment period, if:

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

13 b. The employee has not returned to work or has
14 returned to work earning less than 80 percent of the
15 employee's average weekly wage as a direct result of the
16 employee's impairment; and

17 c. The employee has in good faith attempted to obtain
18 employment commensurate with the employee's ability to work.

19 2. If an employee is not entitled to supplemental
20 benefits at the time of payment of the final weekly impairment
21 income benefit because the employee is earning at least 80
22 percent of the employee's average weekly wage, the employee
23 may become entitled to supplemental benefits at any time
24 within 1 year after the impairment income benefit period ends
25 if:

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

29 b. The employee meets the other requirements of
30 subparagraph 1.; and

31 c. The employee's decrease in earnings is a direct

758-114CXB-32

Bill No. CS/HB 1643

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

1 result of the employee's impairment from the compensable
2 injury.

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

19 ~~4. During the period that impairment income benefits~~
20 ~~or supplemental income benefits are being paid, the carrier~~
21 ~~has the affirmative duty to determine at least annually~~
22 ~~whether any extended unemployment or underemployment is a~~
23 ~~direct result of the employee's impairment. To accomplish this~~
24 ~~purpose, the division may require periodic reports from the~~
25 ~~employee and the carrier, and it may, at the carrier's~~
26 ~~expense, require any physical or other examinations,~~
27 ~~vocational assessments, or other tests or diagnoses necessary~~
28 ~~to verify that the carrier is performing its duty. Not more~~
29 ~~than once in each 12 calendar months, the employee and the~~
30 ~~carrier may each request that the division review the status~~
31 ~~of the employee and determine whether the carrier has~~

1 ~~performed its duty with respect to whether the employee's~~
2 ~~unemployment or underemployment is a direct result of~~
3 ~~impairment from the compensable injury.~~

4 ~~4.5.~~ After the initial determination of supplemental
5 benefits, the employee must file a statement with the carrier
6 stating that the employee has earned less than 80 percent of
7 the employee's average weekly wage as a direct result of the
8 employee's impairment, stating the amount of wages the
9 employee earned in the filing period, and stating that the
10 employee has in good faith sought employment commensurate with
11 the employee's ability to work. The statement must be filed
12 quarterly on a form and in the manner prescribed by the
13 ~~department division~~. The ~~department division~~ may modify the
14 filing period as appropriate to an individual case. Failure to
15 file a statement relieves the carrier of liability for
16 supplemental benefits for the period during which a statement
17 is not filed.

18 ~~5.6.~~ The carrier shall begin payment of supplemental
19 benefits not later than the seventh day after the expiration
20 date of the impairment income benefit period and shall
21 continue to timely pay those benefits. The carrier may request
22 a mediation conference for the purpose of contesting the
23 employee's entitlement to or the amount of supplemental income
24 benefits.

25 ~~6.7.~~ Supplemental benefits are calculated quarterly
26 and paid monthly. For purposes of calculating supplemental
27 benefits, 80 percent of the employee's average weekly wage and
28 the average wages the employee has earned per week are
29 compared quarterly. For purposes of this paragraph, if the
30 employee is offered a bona fide position of employment that
31 the employee is capable of performing, given the physical

758-114CXB-32

Bill No. CS/HB 1643

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

1 condition of the employee and the geographic accessibility of
2 the position, the employee's weekly wages are considered
3 equivalent to the weekly wages for the position offered to the
4 employee.

5 ~~7.8.~~ Supplemental benefits are payable at the rate of
6 80 percent of the difference between 80 percent of the
7 employee's average weekly wage determined pursuant to s.
8 440.14 and the weekly wages the employee has earned during the
9 reporting period, not to exceed the maximum weekly income
10 benefit under s. 440.12.

11 ~~8.9.~~ The department ~~division~~ may by rule define terms
12 that are necessary for the administration of this section and
13 forms and procedures governing the method of payment of
14 supplemental benefits for dates of accidents before January 1,
15 1994, and for dates of accidents on or after January 1, 1994.

16 (c) Duration of temporary impairment and supplemental
17 income benefits.--The employee's eligibility for temporary
18 benefits, impairment income benefits, and supplemental
19 benefits terminates on the expiration of 401 weeks after the
20 date of injury.

21 (4) TEMPORARY PARTIAL DISABILITY.--

22 (a) In case of temporary partial disability,
23 compensation shall be equal to 80 percent of the difference
24 between 80 percent of the employee's average weekly wage and
25 the salary, wages, and other remuneration the employee is able
26 to earn, as compared weekly; however, the weekly benefits may
27 not exceed an amount equal to 66 2/3 percent of the
28 employee's average weekly wage at the time of injury. In order
29 to simplify the comparison of the preinjury average weekly
30 wage with the salary, wages, and other remuneration the
31 employee is able to earn, the department ~~division~~ may by rule

758-114CXB-32

Bill No. CS/HB 1643

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

1 provide for the modification of the weekly comparison so as to
2 coincide as closely as possible with the injured worker's pay
3 periods. The amount determined to be the salary, wages, and
4 other remuneration the employee is able to earn shall in no
5 case be less than the sum actually being earned by the
6 employee, including earnings from sheltered employment.

7 (b) Such benefits shall be paid during the continuance
8 of such disability, not to exceed a period of 104 weeks, as
9 provided by this subsection and subsection (2). Once the
10 injured employee reaches the maximum number of weeks,
11 temporary disability benefits cease and the injured worker's
12 permanent impairment must be determined. The department
13 ~~division~~ may by rule specify forms and procedures governing
14 the method of payment of temporary disability benefits for
15 dates of accidents before January 1, 1994, and for dates of
16 accidents on or after January 1, 1994.

17 (6) OBLIGATION TO REHIRE.--If the employer has not in
18 good faith made available to the employee, within a 100-mile
19 radius of the employee's residence, work appropriate to the
20 employee's physical limitations within 30 days after the
21 carrier notifies the employer of maximum medical improvement
22 and the employee's physical limitations, the employer shall
23 pay to the department ~~division~~ for deposit into the Workers'
24 Compensation Administration Trust Fund a fine of \$250 for
25 every \$5,000 of the employer's workers' compensation premium
26 or payroll, not to exceed \$2,000 per violation, as the
27 department ~~division~~ requires by rule. The employer is not
28 subject to this subsection if the employee is receiving
29 permanent total disability benefits or if the employer has 50
30 or fewer employees.

31 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER

758-114CXB-32

Bill No. CS/HB 1643

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

1 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
2 ACT.--

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

17 (c) No disability compensation benefits payable for
18 any week, including those benefits provided by paragraph
19 (1)(f), shall be reduced pursuant to this subsection until the
20 Social Security Administration determines the amount otherwise
21 payable to the employee under 42 U.S.C. ss. 402 and 423 and
22 the employee has begun receiving such social security benefit
23 payments. The employee shall, upon demand by the department
24 ~~division~~, the employer, or the carrier, authorize the Social
25 Security Administration to release disability information
26 relating to her or him and authorize the Division of
27 Unemployment Compensation to release unemployment compensation
28 information relating to her or him, in accordance with rules
29 to be adopted ~~promulgated~~ by the department division
30 prescribing the procedure and manner for requesting the
31 authorization and for compliance by the employee. Neither the

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~department division~~ nor the employer or carrier shall make any
2 payment of benefits for total disability or those additional
3 benefits provided by paragraph (1)(f) for any period during
4 which the employee willfully fails or refuses to authorize the
5 release of information in the manner and within the time
6 prescribed by such rules. The authority for release of
7 disability information granted by an employee under this
8 paragraph shall be effective for a period not to exceed 12
9 months, such authority to be renewable as the department
10 ~~division~~ may prescribe by rule.

11 Section 29. Subsections (2), (3), (4), (5), (7), and
12 (10) of section 440.185, Florida Statutes, are amended to
13 read:

14 440.185 Notice of injury or death; reports; penalties
15 for violations.--

16 (2) Within 7 days after actual knowledge of injury or
17 death, the employer shall report such injury or death to its
18 carrier, in a format prescribed by the department division,
19 and shall provide a copy of such report to the employee or the
20 employee's estate. The report of injury shall contain the
21 following information:

22 (a) The name, address, and business of the employer;

23 (b) The name, social security number, street, mailing
24 address, telephone number, and occupation of the employee;

25 (c) The cause and nature of the injury or death;

26 (d) The year, month, day, and hour when, and the
27 particular locality where, the injury or death occurred; and

28 (e) Such other information as the department division
29 may require.

30

31 The carrier shall, within 14 days after the employer's receipt

1 of the form reporting the injury, file the information
2 required by this subsection with the department division in
3 Tallahassee. However, the department division may by rule
4 provide for a different reporting system for those types of
5 injuries which it determines should be reported in a different
6 manner and for those cases which involve minor injuries
7 requiring professional medical attention in which the employee
8 does not lose more than 7 days of work as a result of the
9 injury and is able to return to the job immediately after
10 treatment and resume regular work.

11 (3) In addition to the requirements of subsection (2),
12 the employer shall notify the department division within 24
13 hours by telephone or telegraph of any injury resulting in
14 death. However, this special notice shall not be required
15 when death results subsequent to the submission to the
16 department division of a previous report of the injury
17 pursuant to subsection (2).

18 (4) Within 3 days after the employer or the employee
19 informs the carrier of an injury the carrier shall mail to the
20 injured worker an informational brochure approved by the
21 department division which sets forth in clear and
22 understandable language an explanation of the rights,
23 benefits, procedures for obtaining benefits and assistance,
24 criminal penalties, and obligations of injured workers and
25 their employers under the Florida Workers' Compensation Law.
26 Annually, the carrier or its third-party administrator shall
27 mail to the employer an informational brochure approved by the
28 department division which sets forth in clear and
29 understandable language an explanation of the rights,
30 benefits, procedures for obtaining benefits and assistance,
31 criminal penalties, and obligations of injured workers and

758-114CXB-32

Bill No. CS/HB 1643

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

1 their employers under the Florida Workers' Compensation Law.
2 All such informational brochures shall contain a notice that
3 clearly states in substance the following: "Any person who,
4 knowingly and with intent to injure, defraud, or deceive any
5 employer or employee, insurance company, or self-insured
6 program, files a statement of claim containing any false or
7 misleading information commits a felony of the third degree."

8 (5) Additional reports with respect to such injury and
9 of the condition of such employee, including copies of medical
10 reports, funeral expenses, and wage statements, shall be filed
11 by the employer or carrier to the department ~~division~~ at such
12 times and in such manner as the department ~~division~~ may
13 prescribe by rule. In carrying out its responsibilities under
14 this chapter, the department or agency ~~division~~ may by rule
15 provide for the obtaining of any medical records relating to
16 medical treatment provided pursuant to this chapter,
17 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

18 (7) Every carrier shall file with the department
19 ~~division~~ within 21 days after the issuance of a policy or
20 contract of insurance such policy information as the
21 department ~~division~~ requires, including notice of whether the
22 policy is a minimum premium policy. Notice of cancellation or
23 expiration of a policy as set out in s. 440.42(3) shall be
24 mailed to the department ~~division~~ in accordance with rules
25 adopted by the department ~~division~~ under chapter 120. The
26 department ~~division~~ may contract with a private entity for the
27 collection of policy information required to be filed by
28 carriers under this subsection and the receipt of notices of
29 cancellation or expiration of a policy required to be filed by
30 carriers under s. 440.42(3). The submission of policy
31 information or notices of cancellation or expiration to the

1 contracted private entity satisfies the filing requirements of
2 this subsection and s. 440.42(3).

3 (10) The department ~~division~~ may by rule prescribe
4 forms and procedures governing the submission of the change in
5 claims administration report and the risk class code and
6 standard industry code report for all lost time and denied
7 lost-time cases. The department ~~division~~ may by rule define
8 terms that are necessary for the effective administration of
9 this section.

10 Section 30. Subsection (1) and paragraph (d) of
11 subsection (2) of section 440.191, Florida Statutes, are
12 amended to read:

13 440.191 Employee Assistance and Ombudsman Office.--

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

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

1 responsibilities under this chapter. The department division
 2 may by rule specify forms and procedures for administering
 3 requests for assistance provided by this section.

4 (c) The Employee Assistance and Ombudsman Office,
 5 ~~Division of Workers' Compensation~~, shall be a resource
 6 available to all employees who participate in the workers'
 7 compensation system and shall take all steps necessary to
 8 educate and disseminate information to employees and
 9 employers.

10 (2)

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

24 Section 31. Subsection (1) of section 440.192, Florida
 25 Statutes, is amended to read:

26 440.192 Procedure for resolving benefit disputes.--

27 (1) Subject to s. 440.191, any employee who has not
 28 received a benefit to which the employee believes she or he is
 29 entitled under this chapter shall file by certified mail, or
 30 by electronic means approved by the Deputy Chief Judge, with
 31 the Office of the Judges of Compensation Claims a petition for

758-114CXB-32

Bill No. CS/HB 1643

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

1 benefits which meets the requirements of this section. The
2 department ~~division~~ shall inform employees of the location of
3 the Office of the Judges of Compensation Claims for purposes
4 of filing a petition for benefits. The employee shall also
5 serve copies of the petition for benefits by certified mail,
6 or by electronic means approved by the Deputy Chief Judge,
7 upon the employer and the employer's carrier. The Deputy Chief
8 Judge shall refer the petitions to the judges of compensation
9 claims.

10 Section 32. Subsections (1), (3), and (4) of section
11 440.1925, Florida Statutes, are amended to read:

12 440.1925 Procedure for resolving maximum medical
13 improvement or permanent impairment disputes.--

14 (1) Notwithstanding the limitations on carrier
15 independent medical examinations in s. 440.13, an employee or
16 carrier who wishes to obtain an opinion other than the opinion
17 of the treating physician or an agency ~~a division~~ advisor on
18 the issue of permanent impairment may obtain one independent
19 medical examination, except that the employee or carrier who
20 selects the treating physician is not entitled to obtain an
21 alternate opinion on the issue of permanent impairment, unless
22 the parties otherwise agree. This section and s. 440.13(2) do
23 not permit an employee or a carrier to obtain an additional
24 medical opinion on the issue of permanent impairment by
25 requesting an alternate treating physician pursuant to s.
26 440.13.

27 (3) Disputes shall be resolved under this section
28 when:

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

758-114CXB-32

Bill No. CS/HB 1643

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

1 (b) The independent medical examiner's opinion on the
2 date of the employee's maximum medical improvement and degree
3 or permanent impairment differs from the opinion of the
4 employee's treating physician on either of those issues, or
5 from the opinion of the expert medical advisor appointed by
6 the agency ~~division~~ on the degree of permanent impairment; or

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

10 (4) Only opinions of the employee's treating
11 physician, an agency ~~a division~~ medical advisor, or an
12 independent medical examiner are admissible in proceedings
13 before a judge of compensation claims to resolve maximum
14 medical improvement or impairment disputes.

15 Section 33. Subsections (3), (6), (8), (9), (10),
16 (11), (12), (15), (16), and (17) of section 440.20, Florida
17 Statutes, are amended to read:

18 440.20 Time for payment of compensation; penalties for
19 late payment.--

20 (3) Upon making payment, or upon suspension or
21 cessation of payment for any reason, the carrier shall
22 immediately notify the department ~~division~~ that it has
23 commenced, suspended, or ceased payment of compensation. The
24 department ~~division~~ may require such notification in any
25 format and manner it deems necessary to obtain accurate and
26 timely reporting.

27 (6) If any installment of compensation for death or
28 dependency benefits, disability, permanent impairment, or wage
29 loss payable without an award is not paid within 7 days after
30 it becomes due, as provided in subsection (2), subsection (3),
31 or subsection (4), there shall be added to such unpaid

758-114CXB-32

Bill No. CS/HB 1643

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

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

29 (8) In addition to any other penalties provided by
30 this chapter for late payment, if any installment of
31 compensation is not paid when it becomes due, the employer,

758-114CXB-32

Bill No. CS/HB 1643

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

1 carrier, or servicing agent shall pay interest thereon at the
2 rate of 12 percent per year from the date the installment
3 becomes due until it is paid, whether such installment is
4 payable without an order or under the terms of an order. The
5 interest payment shall be the greater of the amount of
6 interest due or \$5.

7 (a) Within 30 days after final payment of compensation
8 has been made, the employer, carrier, or servicing agent shall
9 send to the department division a notice, in accordance with a
10 format and manner form prescribed by the department division,
11 stating that such final payment has been made and stating the
12 total amount of compensation paid, the name of the employee
13 and of any other person to whom compensation has been paid,
14 the date of the injury or death, and the date to which
15 compensation has been paid.

16 (b) If the employer, carrier, or servicing agent fails
17 to so notify the department division within such time, the
18 department division shall assess against such employer,
19 carrier, or servicing agent a civil penalty in an amount not
20 over \$100.

21 (c) In order to ensure carrier compliance under this
22 chapter and provisions of the Florida Insurance Code, the
23 department division shall monitor the performance of carriers
24 by conducting market conduct examinations, as provided in s.
25 624.3161, and conducting investigations, as provided in s.
26 624.317. The department division shall establish by rule
27 minimum performance standards for carriers to ensure that a
28 minimum of 90 percent of all compensation benefits are timely
29 paid. The department division shall fine a carrier as provided
30 in s. 440.13(11)(b) up to ~~\$250~~^{\$50} for each late payment of
31 compensation. If the department finds patterns or practices of

1 untimely payment, the department shall impose penalties as
2 provided pursuant to s. 624.4211 that is below the minimum 90
3 percent performance standard. This paragraph does not affect
4 the imposition of any penalties or interest due to the
5 claimant. If a carrier contracts with a servicing agent to
6 fulfill its administrative responsibilities under this
7 chapter, the payment practices of the servicing agent are
8 deemed the payment practices of the carrier for the purpose of
9 assessing penalties against the carrier.

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

22 (10) Whenever the department division deems it
23 advisable, it may require any employer to make a deposit with
24 the Treasurer to secure the prompt and convenient payments of
25 such compensation; and payments therefrom upon any awards
26 shall be made upon order of the department division or judge
27 of compensation claims.

28 (11)(a) When a claimant is not represented by counsel,
29 upon joint petition of all interested parties, a lump-sum
30 payment in exchange for the employer's or carrier's release
31 from liability for future medical expenses, as well as future

758-114CXB-32

Bill No. CS/HB 1643

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

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

31 (b) When a claimant is not represented by counsel,

758-114CXB-32

Bill No. CS/HB 1643

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

23 (c) Notwithstanding s. 440.21(2), when a claimant is
24 represented by counsel, the claimant may waive all rights to
25 any and all benefits under this chapter by entering into a
26 settlement agreement releasing the employer and the carrier
27 from liability for workers' compensation benefits in exchange
28 for a lump-sum payment to the claimant. The settlement
29 agreement requires approval by the judge of compensation
30 claims only as to the attorney's fees paid to the claimant's
31 attorney by the claimant. The parties need not submit any

758-114CXB-32

Bill No. CS/HB 1643

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

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

17 (d)1. With respect to any lump-sum settlement under
18 this subsection, a judge of compensation claims must consider
19 at the time of the settlement, whether the settlement
20 allocation provides for the appropriate recovery of child
21 support arrearages.

22 2. When reviewing any settlement of lump-sum payment
23 pursuant to this subsection, judges of compensation claims
24 shall consider the interests of the worker and the worker's
25 family when approving the settlement, which must consider and
26 provide for appropriate recovery of past due support.

27 (e) This section applies to all claims that the
28 parties have not previously settled, regardless of the date of
29 accident.

30 (12)(a) Liability of an employer for future payments
31 of compensation may not be discharged by advance payment

1 unless prior approval of a judge of compensation claims or the
2 ~~department division~~ has been obtained as hereinafter provided.
3 The approval shall not constitute an adjudication of the
4 claimant's percentage of disability.

5 (b) When the claimant has reached maximum recovery and
6 returned to her or his former or equivalent employment with no
7 substantial reduction in wages, such approval of a reasonable
8 advance payment of a part of the compensation payable to the
9 claimant may be given informally by letter by a judge of
10 compensation claims ~~or, by the department division director,~~
11 ~~or by the administrator of claims of the division.~~

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

16 1. An advance payment of compensation not in excess of
17 \$2,000 may be approved informally by letter, without hearing,
18 by any judge of compensation claims or the Chief Judge.

19 2. An advance payment of compensation not in excess of
20 \$2,000 may be ordered by any judge of compensation claims
21 after giving the interested parties an opportunity for a
22 hearing thereon pursuant to not less than 10 days' notice by
23 mail, unless such notice is waived, and after giving due
24 consideration to the interests of the person entitled thereto.
25 When the parties have stipulated to an advance payment of
26 compensation not in excess of \$2,000, such advance may be
27 approved by an order of a judge of compensation claims, with
28 or without hearing, or informally by letter by any such judge
29 of compensation claims, or by the ~~department division~~
30 ~~director~~, if such advance is found to be for the best
31 interests of the person entitled thereto.

758-114CXB-32

Bill No. CS/HB 1643

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

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

14 (d) When an application for an advance payment in
15 excess of \$2,000 is opposed by the employer or carrier, it
16 shall be heard by a judge of compensation claims after giving
17 the interested parties not less than 10 days' notice of such
18 hearing by mail, unless such notice is waived. In her or his
19 discretion, the judge of compensation claims may have an
20 investigation of the matter made ~~by the Rehabilitation Section~~
21 ~~of the division~~, in which event the report and recommendation
22 ~~of that section~~ will be deemed a part of the record of the
23 proceedings. If the judge of compensation claims finds that
24 such advance payment is for the best interests of the person
25 entitled to compensation, will not materially prejudice the
26 rights of the employer and carrier, and is reasonable under
27 the circumstances of the case, she or he may order the same
28 paid. However, in no event may any such advance payment under
29 this paragraph be granted in excess of \$7,500 or 26 weeks of
30 benefits in any 48-month period, whichever is greater, from
31 the date of the last advance payment.

1 (15)(a) The department division shall examine on an
 2 ongoing basis claims files in accordance with s. 624.3161 and
 3 may impose fines pursuant to s. 624.310(5) and this chapter in
 4 order to identify questionable claims-handling techniques,
 5 questionable patterns or practices of claims, or a pattern of
 6 repeated unreasonably controverted claims by ~~employers,~~
 7 ~~carriers,~~ as defined in s. 440.02, ~~self-insurers, health care~~
 8 ~~providers, health care facilities, training and education~~
 9 ~~providers, or any others~~ providing services to employees
 10 pursuant to this chapter ~~and may certify its findings to the~~
 11 ~~Department of Insurance.~~ If the department finds such
 12 questionable techniques, patterns, or repeated unreasonably
 13 controverted claims as constitute a general business practice
 14 of a carrier, as defined in s. 440.02 ~~in the judgment of the~~
 15 ~~division shall be certified in its findings by the division to~~
 16 ~~the Department of Insurance or such other appropriate~~
 17 ~~licensing agency. Such certification by the division is exempt~~
 18 ~~from the provisions of chapter 120. Upon receipt of any such~~
 19 ~~certification,~~ the department of Insurance shall take
 20 appropriate action so as to bring such general business
 21 practices to a halt pursuant to s. 440.38(3)~~(a)~~ or may impose
 22 penalties pursuant to s. 624.4211. The department division may
 23 initiate investigations of questionable techniques, patterns,
 24 practices, or repeated unreasonably controverted claims. The
 25 department division may by rule establish forms and procedures
 26 for corrective action plans and for auditing carriers.

27 (b) As to any examination, investigation, or hearing
 28 being conducted under this chapter, the Insurance Commissioner
 29 ~~or his or her Secretary of Labor and Employment Security or~~
 30 ~~the secretary's~~ designee:

31 1. May administer oaths, examine and cross-examine

1 witnesses, receive oral and documentary evidence; and

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

6 (c) If any person refuses to comply with any such
7 subpoena or to testify as to any matter concerning which she
8 or he may be lawfully interrogated, the Circuit Court of Leon
9 County or of the county wherein such examination,
10 investigation, or hearing is being conducted, or of the county
11 wherein such person resides, may, on the application of the
12 department, issue an order requiring such person to comply
13 with the subpoena and to testify.

14 (d) Subpoenas shall be served, and proof of such
15 service made, in the same manner as if issued by a circuit
16 court. Witness fees, costs, and reasonable travel expenses, if
17 claimed, shall be allowed the same as for testimony in a
18 circuit court.

19 (e) The department ~~division~~ shall publish annually a
20 report which indicates the promptness of first payment of
21 compensation records of each carrier or self-insurer so as to
22 focus attention on those carriers or self-insurers with poor
23 payment records for the preceding year. ~~A copy of such report~~
24 ~~shall be certified to~~ The department ~~of Insurance which~~ shall
25 take appropriate steps so as to cause such poor carrier
26 payment practices to halt pursuant to s. 440.38(3)(a). In
27 addition, the department ~~division~~ shall take appropriate
28 action so as to halt such poor payment practices of
29 self-insurers. "Poor payment practice" means a practice of
30 late payment sufficient to constitute a general business
31 practice.

758-114CXB-32

Bill No. CS/HB 1643

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

1 (f) The department ~~division~~ shall promulgate rules
2 providing guidelines to carriers, as defined in s. 440.02,
3 self-insurers, and employers to indicate behavior that may be
4 construed as questionable claims-handling techniques,
5 questionable patterns of claims, repeated unreasonably
6 controverted claims, or poor payment practices.

7 (16) No penalty assessed under this section may be
8 recouped by any carrier or self-insurer in the rate base, the
9 premium, or any rate filing. ~~In the case of carriers, The~~
10 Department of Insurance shall enforce this subsection; ~~and in~~
11 ~~the case of self-insurers, the division shall enforce this~~
12 ~~subsection.~~

13 (17) The department ~~division~~ may by rule establish
14 audit procedures and set standards for the Automated Carrier
15 Performance System.

16 Section 34. Subsections (1) and (2) of section
17 440.207, Florida Statutes, are amended to read:

18 440.207 Workers' compensation system guide.--

19 (1) The department ~~Division of Workers' Compensation~~
20 ~~of the Department of Labor and Employment Security~~ shall
21 educate all persons providing or receiving benefits pursuant
22 to this chapter as to their rights and responsibilities under
23 this chapter.

24 (2) The department ~~division~~ shall publish an
25 understandable guide to the workers' compensation system which
26 shall contain an explanation of benefits provided; services
27 provided by the Employee Assistance and Ombudsman Office;
28 procedures regarding mediation, the hearing process, and civil
29 and criminal penalties; relevant rules of the department
30 ~~division~~; and such other information as the department
31 ~~division~~ believes will inform employees, employers, carriers,

1 and those providing services pursuant to this chapter of their
2 rights and responsibilities under this chapter and the rules
3 of the department ~~division~~. For the purposes of this
4 subsection, a guide is understandable if the text of the guide
5 is written at a level of readability not exceeding the eighth
6 grade level, as determined by a recognized readability test.

7 Section 35. Subsection (1) of section 440.211, Florida
8 Statutes, is amended to read:

9 440.211 Authorization of collective bargaining
10 agreement.--

11 (1) Subject to the limitation stated in subsection
12 (2), a provision that is mutually agreed upon in any
13 collective bargaining agreement filed with the department
14 ~~division~~ between an individually self-insured employer or
15 other employer upon consent of the employer's carrier and a
16 recognized or certified exclusive bargaining representative
17 establishing any of the following shall be valid and binding:

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

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

26 (c) The use of a limited list of physicians to conduct
27 independent medical examinations which the parties may agree
28 shall be the exclusive source of independent medical examiners
29 pursuant to this chapter.

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

758-114CXB-32

Bill No. CS/HB 1643

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

1 (e) A vocational rehabilitation or retraining program.
2 Section 36. Subsections (1) and (2) of section 440.24,
3 Florida Statutes, are amended to read:

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

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

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

30 Section 37. Subsections (5) and (7) of section 440.25,
31 Florida Statutes, are amended to read:

1 440.25 Procedures for mediation and hearings.--
2 (5)(a) Procedures with respect to appeals from orders
3 of judges of compensation claims shall be governed by rules
4 adopted by the Supreme Court. Such an order shall become final
5 30 days after mailing of copies of such order to the parties,
6 unless appealed pursuant to such rules.
7 (b) An appellant may be relieved of any necessary
8 filing fee by filing a verified petition of indigency for
9 approval as provided in s. 57.081(1) and may be relieved in
10 whole or in part from the costs for preparation of the record
11 on appeal if, within 15 days after the date notice of the
12 estimated costs for the preparation is served, the appellant
13 files with the judge of compensation claims a copy of the
14 designation of the record on appeal, and a verified petition
15 to be relieved of costs. A verified petition filed prior to
16 the date of service of the notice of the estimated costs shall
17 be deemed not timely filed. The verified petition relating to
18 record costs shall contain a sworn statement that the
19 appellant is insolvent and a complete, detailed, and sworn
20 financial affidavit showing all the appellant's assets,
21 liabilities, and income. Failure to state in the affidavit all
22 assets and income, including marital assets and income, shall
23 be grounds for denying the petition with prejudice. The Office
24 of the Judges of Compensation Claims shall adopt rules as may
25 be required pursuant to this subsection, including forms for
26 use in all petitions brought under this subsection. The
27 appellant's attorney, or the appellant if she or he is not
28 represented by an attorney, shall include as a part of the
29 verified petition relating to record costs an affidavit or
30 affirmation that, in her or his opinion, the notice of appeal
31 was filed in good faith and that there is a probable basis for

758-114CXB-32

Bill No. CS/HB 1643

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

1 the District Court of Appeal, First District, to find
2 reversible error, and shall state with particularity the
3 specific legal and factual grounds for the opinion. Failure to
4 so affirm shall be grounds for denying the petition. A copy of
5 the verified petition relating to record costs shall be served
6 upon all interested parties. The judge of compensation claims
7 shall promptly conduct a hearing on the verified petition
8 relating to record costs, giving at least 15 days' notice to
9 the appellant, the department division, and all other
10 interested parties, all of whom shall be parties to the
11 proceedings. The judge of compensation claims may enter an
12 order without such hearing if no objection is filed by an
13 interested party within 20 days from the service date of the
14 verified petition relating to record costs. Such proceedings
15 shall be conducted in accordance with the provisions of this
16 section and with the workers' compensation rules of procedure,
17 to the extent applicable. In the event an insolvency petition
18 is granted, the judge of compensation claims shall direct the
19 department division to pay record costs and filing fees from
20 the Workers' Compensation Administration Trust Fund pending
21 final disposition of the costs of appeal. The department
22 division may transcribe or arrange for the transcription of
23 the record in any proceeding for which it is ordered to pay
24 the cost of the record.

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

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

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

24 Section 38. Section 440.271, Florida Statutes, is
25 amended to read:

26 440.271 Appeal of order of judge of compensation
27 claims.--Review of any order of a judge of compensation claims
28 entered pursuant to this chapter shall be by appeal to the
29 District Court of Appeal, First District. Appeals shall be
30 filed in accordance with rules of procedure prescribed by the
31 Supreme Court for review of such orders. The department

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~division~~ shall be given notice of any proceedings pertaining
2 to s. 440.25, regarding indigency, or s. 440.49, regarding the
3 Special Disability Trust Fund, and shall have the right to
4 intervene in any proceedings.

5 Section 39. Section 440.345, Florida Statutes, is
6 amended to read:

7 440.345 Reporting of attorney's fees.--All fees paid
8 to attorneys for services rendered under this chapter shall be
9 reported to the Office of the Judges of Compensation Claims as
10 the Division of Administrative Hearings ~~Office of the Judges~~
11 ~~of Compensation Claims~~ requires by rule. ~~The Office of the~~
12 ~~Judges of Compensation Claims shall annually summarize such~~
13 ~~data in a report to the Workers' Compensation Oversight Board.~~

14 Section 40. Section 440.35, Florida Statutes, is
15 amended to read:

16 440.35 Record of injury or death.--Every employer
17 shall keep a record in respect of any injury to an employee.
18 Such record shall contain such information of disability or
19 death in respect of such injury as the department ~~division~~ may
20 by regulation require, and shall be available to inspection by
21 the department ~~division~~ or by any state authority at such time
22 and under such conditions as the department ~~division~~ may by
23 regulation prescribe.

24 Section 41. Subsections (3) and (7) of section
25 440.381, Florida Statutes, are amended to read:

26 440.381 Application for coverage; reporting payroll;
27 payroll audit procedures; penalties.--

28 (3) ~~The department of Insurance and the Department of~~
29 ~~Labor and Employment Security~~ shall establish by rule minimum
30 requirements for audits of payroll and classifications in
31 order to ensure that the appropriate premium is charged for

758-114CXB-32

Bill No. CS/HB 1643

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

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~worker who was not reported as earning wages on the last~~
2 ~~quarterly earnings report. The division is hereby authorized~~
3 ~~to release such records to the carrier which will enable the~~
4 ~~carrier to seek reimbursement as provided under this~~
5 ~~subsection.~~ Failure of the employer to indemnify the insurer
6 within 21 days after demand by the insurer shall constitute
7 grounds for the insurer to immediately cancel coverage. Any
8 action for indemnification brought by the carrier shall be
9 cognizable in the circuit court having jurisdiction where the
10 employer or carrier resides or transacts business. The
11 insurer shall be entitled to a reasonable attorney's fee if it
12 recovers any portion of the benefits paid in such action.

13 Section 42. Section 440.40, Florida Statutes, is
14 amended to read:

15 440.40 Compensation notice.--Every employer who has
16 secured compensation under the provisions of this chapter
17 shall keep posted in a conspicuous place or places in and
18 about her or his place or places of business typewritten or
19 printed notices, in accordance with a form prescribed by the
20 department ~~division~~, stating that such employer has secured
21 the payment of compensation in accordance with the provisions
22 of this chapter. Such notices shall contain the name and
23 address of the carrier, if any, with whom the employer has
24 secured payment of compensation and the date of the expiration
25 of the policy. The department ~~division~~ may by rule prescribe
26 the form of the notices and require carriers to provide the
27 notices to policyholders.

28 Section 43. Section 440.41, Florida Statutes, is
29 amended to read:

30 440.41 Substitution of carrier for employer.--In any
31 case where the employer is not a self-insurer, in order that

758-114CXB-32

Bill No. CS/HB 1643

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

1 the liability for compensation imposed by this chapter may be
2 most effectively discharged by the employer, and in order that
3 the administration of this chapter in respect of such
4 liability may be facilitated, the department ~~division~~ shall by
5 regulation provide for the discharge, by the carrier for such
6 employer, of such obligations and duties of the employer in
7 respect of such liability, imposed by this chapter upon the
8 employer, as it considers proper in order to effectuate the
9 provisions of this chapter. For such purposes:

10 (1) Notice to or knowledge of an employer of the
11 occurrence of the injury shall be notice to or knowledge of
12 the carrier.

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

16 (3) Any requirement by the judges of compensation
17 claims, the department ~~division~~, or any court under any
18 compensation order, finding, or decision shall be binding upon
19 the carrier in the same manner and to the same extent as upon
20 the employer.

21 Section 44. Subsection (3) of section 440.42, Florida
22 Statutes, is amended to read:

23 440.42 Insurance policies; liability.--

24 (3) No contract or policy of insurance issued by a
25 carrier under this chapter shall expire or be canceled until
26 at least 30 days have elapsed after a notice of cancellation
27 has been sent to the department ~~division~~ and to the employer
28 in accordance with the provisions of s. 440.185(7). However,
29 when duplicate or dual coverage exists by reason of two
30 different carriers having issued policies of insurance to the
31 same employer securing the same liability, it shall be

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

12 Section 45. Section 440.44, Florida Statutes, is
13 amended to read:

14 440.44 Workers' compensation; staff organization.--

15 (1) INTERPRETATION OF LAW.--As a guide to the
16 interpretation of this chapter, the Legislature takes due
17 notice of federal social and labor acts and hereby creates an
18 agency to administer such acts passed for the benefit of
19 employees and employers in Florida industry, and desires to
20 meet the requirements of such federal acts wherever not
21 inconsistent with the Constitution and laws of Florida.

22 (2) INTENT.--It is the intent of the Legislature that
23 the department, the agency, the Department of Education, and
24 the Division of Administrative Hearings assume an active and
25 forceful role in its administration of this act, so as to
26 ensure that the system operates efficiently and with maximum
27 benefit to both employers and employees.

28 (3) EXPENDITURES.--The department, the agency, the
29 Department of Education, ~~division~~ and the director of the
30 Division of Administrative Hearings shall make such
31 expenditures, including expenditures for personal services and

758-114CXB-32

Bill No. CS/HB 1643

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

1 rent at the seat of government and elsewhere, for law books;
2 for telephone services and WATS lines; for books of reference,
3 periodicals, equipment, and supplies; and for printing and
4 binding as may be necessary in the administration of this
5 chapter. All expenditures in the administration of this
6 chapter shall be allowed and paid as provided in s. 440.50
7 upon the presentation of itemized vouchers therefor approved
8 by the department, the agency, the Department of Education,
9 division or the director of the Division of Administrative
10 Hearings.

11 (4) ~~MERIT SYSTEM PRINCIPLE OF PERSONNEL~~
12 ADMINISTRATION.--Subject to the other provisions of this
13 chapter, the department, the agency, the Department of
14 Education, and the Division of Administrative Hearings may
15 ~~division is authorized to~~ appoint, and prescribe the duties
16 and powers of, bureau chiefs, attorneys, accountants, medical
17 advisers, technical assistants, inspectors, claims examiners,
18 and such other employees as may be necessary in the
19 performance of their ~~its~~ duties under this chapter.

20 (5) OFFICE.--The department, the agency, the
21 Department of Education, ~~division~~ and the Deputy Chief Judge
22 shall maintain and keep open during reasonable business hours
23 an office, which shall be provided in the Capitol or some
24 other suitable building in the City of Tallahassee, for the
25 transaction of business under this chapter, at which office
26 the official records and papers shall be kept. The office
27 shall be furnished and equipped. The department, the agency
28 ~~division~~, any judge of compensation claims, or the Deputy
29 Chief Judge may hold sessions and conduct hearings at any
30 place within the state. The Office of the Judges of
31 Compensation Claims shall maintain the 17 district offices, 31

1 judges of compensation claims, and 31 mediators as they exist
2 on June 30, 2001.

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

8 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
9 ~~division~~ is expressly authorized to provide by regulation for
10 and to destroy obsolete records of the department ~~division~~.
11 The Division of Administrative Hearings is expressly
12 authorized to provide by regulation for and to destroy
13 obsolete records of the Office of the Judges of Compensation
14 Claims.

15 (8) PROCEDURE.--In the exercise of their ~~its~~ duties
16 and functions requiring administrative hearings, the
17 department and the agency ~~division~~ shall proceed in accordance
18 with the Administrative Procedure Act. The authority of the
19 department and the agency ~~division~~ to issue orders resulting
20 from administrative hearings as provided for in this chapter
21 shall not infringe upon the jurisdiction of the judges of
22 compensation claims.

23 Section 46. Subsection (1) of section 440.45, Florida
24 Statutes, is amended to read:

25 440.45 Office of the Judges of Compensation Claims.--

26 (1)(a) There is created the Office of the Judges of
27 Compensation Claims within the Department of Management
28 Services. The Office of the Judges of Compensation Claims
29 shall be headed by the Deputy Chief Judge of Compensation
30 Claims. The Deputy Chief Judge shall report to the director of
31 the Division of Administrative Hearings. The Deputy Chief

758-114CXB-32

Bill No. CS/HB 1643

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

1 Judge shall be appointed by the Governor for a term of 4 years
2 from a list of three names submitted by the statewide
3 nominating commission created under subsection (2). The Deputy
4 Chief Judge must demonstrate prior administrative experience
5 and possess the same qualifications for appointment as a judge
6 of compensation claims, and the procedure for reappointment of
7 the Deputy Chief Judge will be the same as for reappointment
8 of a judge of compensation claims. The office shall be a
9 separate budget entity and the director of the Division of
10 Administrative Hearings shall be its agency head for all
11 purposes, including, but not limited to, rulemaking pursuant
12 to subsection (4) and establishing agency policies and
13 procedures. The Department of Management Services shall
14 provide administrative support and service to the office to
15 the extent requested by the director of the Division of
16 Administrative Hearings but shall not direct, supervise, or
17 control the Office of the Judges of Compensation Claims in any
18 manner, including, but not limited to, personnel, purchasing,
19 budgetary matters, or property transactions. The operating
20 budget of the Office of the Judges of Compensation Claims
21 shall be paid out of the Workers' Compensation Administration
22 Trust Fund established in s. 440.50.

23 (b) The current term of the Chief Judge of
24 Compensation Claims shall expire October 1, 2001. Effective
25 October 1, 2001, the position of Deputy Chief Judge of
26 Compensation Claims is created.

27 Section 47. Subsections (1), (2), (7), (8), (9), (10),
28 and (11) of section 440.49, Florida Statutes, are amended to
29 read:

30 440.49 Limitation of liability for subsequent injury
31 through Special Disability Trust Fund.--

1 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
2 for workers with disabilities to achieve employment or to
3 become reemployed following an injury, and it is the desire of
4 the Legislature to facilitate the return of these workers to
5 the workplace, it is the purpose of this section to encourage
6 the employment, reemployment, and accommodation of the
7 physically disabled by reducing an employer's insurance
8 premium for reemploying an injured worker, to decrease
9 litigation between carriers on apportionment issues, and to
10 protect employers from excess liability for compensation and
11 medical expense when an injury to a physically disabled worker
12 merges with, aggravates, or accelerates her or his preexisting
13 permanent physical impairment to cause either a greater
14 disability or permanent impairment, or an increase in
15 expenditures for temporary compensation or medical benefits
16 than would have resulted from the injury alone. The department
17 ~~division~~ or the administrator shall inform all employers of
18 the existence and function of the fund and shall interpret
19 eligibility requirements liberally. However, this subsection
20 shall not be construed to create or provide any benefits for
21 injured employees or their dependents not otherwise provided
22 by this chapter. The entitlement of an injured employee or her
23 or his dependents to compensation under this chapter shall be
24 determined without regard to this subsection, the provisions
25 of which shall be considered only in determining whether an
26 employer or carrier who has paid compensation under this
27 chapter is entitled to reimbursement from the Special
28 Disability Trust Fund.

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

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

1 (b) "Preferred worker" means a worker who, because of
2 a permanent impairment resulting from a compensable injury or
3 occupational disease, is unable to return to the worker's
4 regular employment.

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

6 1. If the permanent physical impairment had not
7 existed, the subsequent accident or occupational disease would
8 not have occurred;

9 2. The permanent disability or permanent impairment
10 resulting from the subsequent accident or occupational disease
11 is materially and substantially greater than that which would
12 have resulted had the permanent physical impairment not
13 existed, and the employer has been required to pay, and has
14 paid, permanent total disability or permanent impairment
15 benefits for that materially and substantially greater
16 disability;

17 3. The preexisting permanent physical impairment is
18 aggravated or accelerated as a result of the subsequent injury
19 or occupational disease, or the preexisting impairment has
20 contributed, medically and circumstantially, to the need for
21 temporary compensation, medical, or attendant care and the
22 employer has been required to pay, and has paid, temporary
23 compensation, medical, or attendant care benefits for the
24 aggravated preexisting permanent impairment; or

25 4. Death would not have been accelerated if the
26 permanent physical impairment had not existed.

27 (d) "Excess permanent compensation" means that
28 compensation for permanent impairment, or permanent total
29 disability or death benefits, for which the employer or
30 carrier is otherwise entitled to reimbursement from the
31 Special Disability Trust Fund.

1 (e) "Administrator" means the entity selected by the
2 department ~~division~~ to review, allow, deny, compromise,
3 controvert, and litigate claims of the Special Disability
4 Trust Fund.

5
6 In addition to the definitions contained in this subsection,
7 the department ~~division~~ may by rule prescribe definitions that
8 are necessary for the effective administration of this
9 section.

10 (7) REIMBURSEMENT OF EMPLOYER.--

11 (a) The right to reimbursement as provided in this
12 section is barred unless written notice of claim of the right
13 to such reimbursement is filed by the employer or carrier
14 entitled to such reimbursement with the department ~~division~~ or
15 administrator at Tallahassee within 2 years after the date the
16 employee last reached maximum medical improvement, or within 2
17 years after the date of the first payment of compensation for
18 permanent total disability, wage loss, or death, whichever is
19 later. The notice of claim must contain such information as
20 the department ~~division~~ by rule requires or as established by
21 the administrator; and the employer or carrier claiming
22 reimbursement shall furnish such evidence in support of the
23 claim as the department ~~division~~ or administrator reasonably
24 may require.

25 (b) For notice of claims on the Special Disability
26 Trust Fund filed on or after July 1, 1978, the Special
27 Disability Trust Fund shall, within 120 days after receipt of
28 notice that a carrier has paid, been required to pay, or
29 accepted liability for excess compensation, serve notice of
30 the acceptance of the claim for reimbursement.

31 (c) A proof of claim must be filed on each notice of

1 claim on file as of June 30, 1997, within 1 year after July 1,
2 1997, or the right to reimbursement of the claim shall be
3 barred. A notice of claim on file on or before June 30, 1997,
4 may be withdrawn and refiled if, at the time refiled, the
5 notice of claim remains within the limitation period specified
6 in paragraph (a). Such refiling shall not toll, extend, or
7 otherwise alter in any way the limitation period applicable to
8 the withdrawn and subsequently refiled notice of claim. Each
9 proof of claim filed shall be accompanied by a proof-of-claim
10 fee as provided in paragraph (9)(d). The Special Disability
11 Trust Fund shall, within 120 days after receipt of the proof
12 of claim, serve notice of the acceptance of the claim for
13 reimbursement. This paragraph shall apply to all claims
14 notwithstanding the provisions of subsection (12).

15 (d) Each notice of claim filed or refiled on or after
16 July 1, 1997, must be accompanied by a notification fee as
17 provided in paragraph (9)(d). A proof of claim must be filed
18 within 1 year after the date the notice of claim is filed or
19 refiled, accompanied by a proof-of-claim fee as provided in
20 paragraph (9)(d), or the claim shall be barred. The
21 notification fee shall be waived if both the notice of claim
22 and proof of claim are submitted together as a single filing.
23 The Special Disability Trust Fund shall, within 180 days after
24 receipt of the proof of claim, serve notice of the acceptance
25 of the claim for reimbursement. This paragraph shall apply to
26 all claims notwithstanding the provisions of subsection (12).

27 (e) For dates of accident on or after January 1, 1994,
28 the Special Disability Trust Fund shall, within 120 days of
29 receipt of notice that a carrier has been required to pay, and
30 has paid over \$10,000 in benefits, serve notice of the
31 acceptance of the claim for reimbursement. Failure of the

758-114CXB-32

Bill No. CS/HB 1643

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

1 Special Disability Trust Fund to serve notice of acceptance
2 shall give rise to the right to request a hearing on the claim
3 for reimbursement. If the Special Disability Trust Fund
4 through its representative denies or controverts the claim,
5 the right to such reimbursement shall be barred unless an
6 application for a hearing thereon is filed with the department
7 ~~division~~ or administrator at Tallahassee within 60 days after
8 notice to the employer or carrier of such denial or
9 controversion. When such application for a hearing is timely
10 filed, the claim shall be heard and determined in accordance
11 with the procedure prescribed in s. 440.25, to the extent that
12 such procedure is applicable, and in accordance with the
13 workers' compensation rules of procedure. In such proceeding
14 on a claim for reimbursement, the Special Disability Trust
15 Fund shall be made the party respondent, and no findings of
16 fact made with respect to the claim of the injured employee or
17 the dependents for compensation, including any finding made or
18 order entered pursuant to s. 440.20(11), shall be res
19 judicata. The Special Disability Trust Fund may not be joined
20 or made a party to any controversy or dispute between an
21 employee and the dependents and the employer or between two or
22 more employers or carriers without the written consent of the
23 fund.

24 (f) When it has been determined that an employer or
25 carrier is entitled to reimbursement in any amount, the
26 employer or carrier shall be reimbursed annually from the
27 Special Disability Trust Fund for the compensation and medical
28 benefits paid by the employer or carrier for which the
29 employer or carrier is entitled to reimbursement, upon filing
30 request therefor and submitting evidence of such payment in
31 accordance with rules prescribed by the department ~~division~~,

1 which rules may include parameters for annual audits. The
2 Special Disability Trust Fund shall pay the approved
3 reimbursement requests on a first-in, first-out basis
4 reflecting the order in which the reimbursement requests were
5 received.

6 (g) The department ~~division~~ may by rule require
7 specific forms and procedures for the administration and
8 processing of claims made through the Special Disability Trust
9 Fund.

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

25 (9) SPECIAL DISABILITY TRUST FUND.--

26 (a) There is established in the State Treasury a
27 special fund to be known as the "Special Disability Trust
28 Fund," which shall be available only for the purposes stated
29 in this section; and the assets thereof may not at any time be
30 appropriated or diverted to any other use or purpose. The
31 Treasurer shall be the custodian of such fund, and all moneys

758-114CXB-32

Bill No. CS/HB 1643

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

1 and securities in such fund shall be held in trust by such
2 Treasurer and shall not be the money or property of the state.
3 The Treasurer is authorized to disburse moneys from such fund
4 only when approved by the department division or corporation
5 and upon the order of the Comptroller. The Treasurer shall
6 deposit any moneys paid into such fund into such depository
7 banks as the department division may designate and is
8 authorized to invest any portion of the fund which, in the
9 opinion of the department division, is not needed for current
10 requirements, in the same manner and subject to all the
11 provisions of the law with respect to the deposits of state
12 funds by such Treasurer. All interest earned by such portion
13 of the fund as may be invested by the Treasurer shall be
14 collected by her or him and placed to the credit of such fund.

15 (b)1. The Special Disability Trust Fund shall be
16 maintained by annual assessments upon the insurance companies
17 writing compensation insurance in the state, the commercial
18 self-insurers under ss. 624.462 and 624.4621, the assessable
19 mutuels under s. 628.601, and the self-insurers under this
20 chapter, which assessments shall become due and be paid
21 quarterly at the same time and in addition to the assessments
22 provided in s. 440.51. The department division shall estimate
23 annually in advance the amount necessary for the
24 administration of this subsection and the maintenance of this
25 fund and shall make such assessment in the manner hereinafter
26 provided.

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

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

3 b. Two times the disbursements of the most recent
4 calendar year.

5
6 Such amount shall be prorated among the insurance companies
7 writing compensation insurance in the state and the
8 self-insurers. Provided however, for those carriers that have
9 excluded ceded reinsurance premiums from their assessments on
10 or before January 1, 2000, no assessments on ceded reinsurance
11 premiums shall be paid by those carriers until such time as
12 the former Division of Workers' Compensation of the Department
13 of Labor and Employment Security or the department advises
14 each of those carriers of the impact that the inclusion of
15 ceded reinsurance premiums has on their assessment. The
16 department ~~division~~ may not recover any past underpayments of
17 assessments levied against any carrier that on or before
18 January 1, 2000, excluded ceded reinsurance premiums from
19 their assessment prior to the point that the former Division
20 of Workers' Compensation of the Department of Labor and
21 Employment Security or the department advises of the
22 appropriate assessment that should have been paid.

23 3. The net premiums written by the companies for
24 workers' compensation in this state and the net premium
25 written applicable to the self-insurers in this state are the
26 basis for computing the amount to be assessed as a percentage
27 of net premiums. Such payments shall be made by each carrier
28 and self-insurer to the department ~~division~~ for the Special
29 Disability Trust Fund in accordance with such regulations as
30 the department ~~division~~ prescribes.

31 4. The Treasurer is authorized to receive and credit

758-114CXB-32

Bill No. CS/HB 1643

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

1 to such Special Disability Trust Fund any sum or sums that may
2 at any time be contributed to the state by the United States
3 under any Act of Congress, or otherwise, to which the state
4 may be or become entitled by reason of any payments made out
5 of such fund.

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

9 (d) The Special Disability Trust Fund shall be
10 supplemented by a \$250 notification fee on each notice of
11 claim filed or refiled after July 1, 1997, and a \$500 fee on
12 each proof of claim filed in accordance with subsection (7).
13 Revenues from the fee shall be deposited into the Special
14 Disability Trust Fund and are exempt from the deduction
15 required by s. 215.20. The fees provided in this paragraph
16 shall not be imposed upon any insurer which is in receivership
17 with the Department of Insurance.

18 (e) The department ~~of Labor and Employment Security~~ or
19 administrator shall report annually on the status of the
20 Special Disability Trust Fund. The report shall update the
21 estimated undiscounted and discounted fund liability, as
22 determined by an independent actuary, change in the total
23 number of notices of claim on file with the fund in addition
24 to the number of newly filed notices of claim, change in the
25 number of proofs of claim processed by the fund, the fee
26 revenues refunded and revenues applied to pay down the
27 liability of the fund, the average time required to reimburse
28 accepted claims, and the average administrative costs per
29 claim. The department or administrator shall submit its
30 report to the Governor, the President of the Senate, and the
31 Speaker of the House of Representatives by December 1 of each

758-114CXB-32

Bill No. CS/HB 1643

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

1 year.

2 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
3 CLAIMS; EXPENSES.--The department ~~division~~ or administrator
4 shall administer the Special Disability Trust Fund with
5 authority to allow, deny, compromise, controvert, and litigate
6 claims made against it and to designate an attorney to
7 represent it in proceedings involving claims against the fund,
8 including negotiation and consummation of settlements,
9 hearings before judges of compensation claims, and judicial
10 review. The department ~~division~~ or administrator or the
11 attorney designated by it shall be given notice of all
12 hearings and proceedings involving the rights or obligations
13 of such fund and shall have authority to make expenditures for
14 such medical examinations, expert witness fees, depositions,
15 transcripts of testimony, and the like as may be necessary to
16 the proper defense of any claim. All expenditures made in
17 connection with conservation of the fund, including the salary
18 of the attorney designated to represent it and necessary
19 travel expenses, shall be allowed and paid from the Special
20 Disability Trust Fund as provided in this section upon the
21 presentation of itemized vouchers therefor approved by the
22 department ~~division~~.

23 (11) EFFECTIVE DATES.--This section does not apply to
24 any case in which the accident causing the subsequent injury
25 or death or the disablement or death from a subsequent
26 occupational disease occurred prior to July 1, 1955, or on or
27 after January 1, 1998. In no event shall the Special
28 Disability Trust Fund be liable for, or reimburse employers or
29 carriers for, any case in which the accident causing the
30 subsequent injury or death or the disablement or death from a
31 subsequent occupational disease occurred on or after January

1 1, 1998. The Special Disability Trust Fund shall continue to
2 reimburse employers or carriers for subsequent injuries
3 occurring prior to January 1, 1998, and the department
4 ~~division~~ shall continue to assess for and the department
5 ~~division~~ or administrator shall fund reimbursements as
6 provided in subsection (9) for this purpose.

7 Section 48. Paragraphs (b) through (h) of subsection
8 (1) of section 440.491, Florida Statutes, are redesignated as
9 paragraphs (c) through (i), respectively, a new paragraph (b)
10 is added to said subsection, and present paragraph (c) of
11 subsection (1), paragraph (a) of subsection (3), paragraph (b)
12 of subsection (4), paragraphs (b) and (c) of subsection (5),
13 and subsections (6), (7), and (8) of said section are amended,
14 to read:

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

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

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

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

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

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

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

9 (4) REEMPLOYMENT ASSESSMENTS.--

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

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

18 (b) If the rehabilitation provider concludes that
19 training and education are necessary to return the employee to
20 suitable gainful employment, or if the employee has not
21 returned to suitable gainful employment within 180 days after
22 referral for reemployment services or receives \$2,500 in
23 reemployment services, whichever comes first, the carrier must
24 discontinue reemployment services and refer the employee to
25 the department ~~division~~ for a vocational evaluation.
26 Notwithstanding any provision of chapter 289 or chapter 627,
27 the cost of a reemployment assessment and the first \$2,500 in
28 reemployment services to an injured employee must not be
29 treated as loss adjustment expense for workers' compensation
30 ratemaking purposes.

31 (c) A carrier may voluntarily provide medical care

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

14 (6) TRAINING AND EDUCATION.--

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

1 evaluator. The department ~~division~~ shall establish training
2 and education standards pertaining to employee eligibility,
3 course curricula and duration, and associated costs.

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

27 (7) PROVIDER QUALIFICATIONS.--

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

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

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

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

30 (e) The department ~~division~~, after consultation with
31 representatives of employees, employers, carriers,

1 rehabilitation providers, and qualified training and education
2 providers, shall adopt rules governing professional practices
3 and standards.

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

8 Section 49. Section 440.50, Florida Statutes, is
9 amended to read:

10 440.50 Workers' Compensation Administration Trust
11 Fund.--

12 (1)(a) There is established in the State Treasury a
13 special fund to be known as the "Workers' Compensation
14 Administration Trust Fund" for the purpose of providing for
15 the payment of all expenses in respect to the administration
16 of this chapter, including the vocational rehabilitation of
17 injured employees as provided in s. 440.49 and the payments
18 due under s. 440.15(1)(f), the funding of the fixed
19 administrative expenses of the plan, and the funding of the
20 Bureau of Workers' Compensation Fraud within the Department of
21 Insurance. Such fund shall be administered by the department
22 ~~division~~.

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

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

1 (3) The Treasurer shall deposit any moneys paid into
2 such fund into such depository banks as the department
3 ~~division~~ may designate and is authorized to invest any portion
4 of the fund which, in the opinion of the department ~~division~~,
5 is not needed for current requirements, in the same manner and
6 subject to all the provisions of the law with respect to the
7 deposit of state funds by such Treasurer. All interest earned
8 by such portion of the fund as may be invested by the
9 Treasurer shall be collected by him or her and placed to the
10 credit of such fund.

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

14 Section 50. Section 440.51, Florida Statutes, is
15 amended to read:

16 440.51 Expenses of administration.--

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

20 (a) The department ~~division~~ shall, by July 1 of each
21 year, notify carriers and self-insurers of the assessment
22 rate, which shall be based on the anticipated expenses of the
23 administration of this chapter for the next calendar year.
24 Such assessment rate shall take effect January 1 of the next
25 calendar year and shall be included in workers' compensation
26 rate filings approved by the Department of Insurance which
27 become effective on or after January 1 of the next calendar
28 year. Assessments shall become due and be paid quarterly.

29 (b) The total expenses of administration shall be
30 prorated among the carriers writing compensation insurance in
31 the state and self-insurers. The net premiums collected by

1 carriers and the amount of premiums calculated by the
2 department ~~division~~ for self-insured employers are the basis
3 for computing the amount to be assessed. When reporting
4 deductible policy premium for purposes of computing
5 assessments levied after July 1, 2001, full policy premium
6 value must be reported prior to application of deductible
7 discounts or credits. This amount may be assessed as a
8 specific amount or as a percentage of net premiums payable as
9 the department ~~division~~ may direct, provided such amount so
10 assessed shall not exceed 2.75 percent, beginning January 1,
11 2001, except during the interim period from July 1, 2000,
12 through December 31, 2000, such assessments shall not exceed 4
13 percent of such net premiums. The carriers may elect to make
14 the payments required under s. 440.15(1)(f) rather than having
15 these payments made by the department ~~division~~. In that
16 event, such payments will be credited to the carriers, and the
17 amount due by the carrier under this section will be reduced
18 accordingly.

19 (2) The department ~~division~~ shall provide by
20 regulation for the collection of the amounts assessed against
21 each carrier. Such amounts shall be paid within 30 days from
22 the date that notice is served upon such carrier. If such
23 amounts are not paid within such period, there may be assessed
24 for each 30 days the amount so assessed remains unpaid, a
25 civil penalty equal to 10 percent of the amount so unpaid,
26 which shall be collected at the same time and a part of the
27 amount assessed. For those carriers who excluded ceded
28 reinsurance premiums from their assessments prior to January
29 1, 2000, the department ~~division~~ shall not recover any past
30 underpayments of assessments related to ceded reinsurance
31 premiums prior to January 1, 2001, against such carriers.

1 (3) If any carrier fails to pay the amounts assessed
2 against him or her under the provisions of this section within
3 60 days from the time such notice is served upon him or her,
4 the department ~~of Insurance upon being advised by the division~~
5 may suspend or revoke the authorization to insure compensation
6 in accordance with the procedure in s. 440.38(3)(a). The
7 department ~~division~~ may permit a carrier to remit any
8 underpayment of assessments for assessments levied after
9 January 1, 2001.

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

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

26 (6)(a) The department ~~division~~ may require from each
27 carrier, at such time and in accordance with such regulations
28 as the department ~~division~~ may prescribe, reports in respect
29 to all gross earned premiums and of all payments of
30 compensation made by such carrier during each prior period,
31 and may determine the amounts paid by each carrier and the

1 amounts paid by all carriers during such period.

2 (b) The Department of Insurance may require from each
3 self-insurer, at such time and in accordance with such
4 regulations as the Department of Insurance prescribes, reports
5 in respect to wages paid, the amount of premiums such
6 self-insurer would have to pay if insured, and all payments of
7 compensation made by such self-insurer during each prior
8 period, and may determine the amounts paid by each
9 self-insurer and the amounts paid by all self-insurers during
10 such period. For the purposes of this section, the payroll
11 records of each self-insurer shall be open to annual
12 inspection and audit by the Department of Insurance or its
13 authorized representative, during regular business hours; and
14 if any audit of such records of a self-insurer discloses a
15 deficiency in the amounts reported to the Department of
16 Insurance or in the amounts paid to the Department of
17 Insurance by a self-insurer pursuant to this section, the
18 Department of Insurance may assess the cost of such audit
19 against the self-insurer.

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

29 (8) The department ~~division~~ shall assign an account
30 number to each employer under this chapter and an account
31 number to each insurance carrier authorized to write workers'

758-114CXB-32

Bill No. CS/HB 1643

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

1 compensation insurance in the state; and it shall be the duty
2 of the department ~~division~~ under the account number so
3 assigned to keep the cost experience of each carrier and the
4 cost experience of each employer under the account number so
5 assigned by calendar and policy year, as above defined.

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

- 9 (a) Cause of the injury;
10 (b) Nature of the injury; and
11 (c) Type of disability.

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

20 (11) The department ~~division~~ shall furnish to any
21 employer or carrier, upon request, its individual experience.
22 ~~The division shall furnish to the Department of Insurance,~~
23 ~~upon request, the Florida experience as developed under~~
24 ~~accident year or calendar year.~~

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

1 to suspend or revoke the license of such carrier.

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

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

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

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

18 Section 51. Subsections (1) and (3) of section 440.52,
19 Florida Statutes, are amended to read:

20 440.52 Registration of insurance carriers; notice of
21 cancellation or expiration of policy; suspension or revocation
22 of authority.--

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

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

758-114CXB-32

Bill No. CS/HB 1643

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

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

9 Section 52. Section 440.525, Florida Statutes, is
10 amended to read:

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

22 Section 53. Section 440.572, Florida Statutes, is
23 amended to read:

24 440.572 Authorization for individual self-insurer to
25 provide coverage.--An individual self-insurer having a net
26 worth of not less than \$250 million as authorized by s.
27 440.38(1)(f) may assume by contract the liabilities under this
28 chapter of contractors and subcontractors, or each of them,
29 employed by or on behalf of such individual self-insurer when
30 performing work on or adjacent to property owned or used by
31 the individual self-insurer by the department division. The

758-114CXB-32

Bill No. CS/HB 1643

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

1 net worth of the individual self-insurer shall include the
2 assets of the self-insurer's parent company and its
3 subsidiaries, sister companies, affiliated companies, and
4 other related entities, located within the geographic
5 boundaries of the state.

6 Section 54. Section 440.59, Florida Statutes, is
7 amended to read:

8 440.59 Reporting requirements.--

9 ~~(1)~~ The department shall annually prepare a report of
10 the administration of this chapter for the preceding calendar
11 year, including a detailed statement of the receipts of and
12 expenditures from the fund established in s. 440.50 and a
13 statement of the causes of the accidents leading to the
14 injuries for which the awards were made, together with such
15 recommendations as the department considers advisable. On or
16 before September 15 of each year, the department shall submit
17 a copy of the report to the Governor, the President of the
18 Senate, the Speaker of the House of Representatives, the
19 Democratic and Republican Leaders of the Senate and the House
20 of Representatives, and the chairs of the legislative
21 committees having jurisdiction over workers' compensation.

22 ~~(2) The division shall annually prepare a closed claim~~
23 ~~report for all claims for which the employee lost more than 7~~
24 ~~days from work and shall submit a copy of the report to the~~
25 ~~Governor, the President of the Senate, the Speaker of the~~
26 ~~House of Representatives, the Democratic and Republican~~
27 ~~Leaders of the Senate and the House of Representatives, and~~
28 ~~the chairs of the legislative committees having jurisdiction~~
29 ~~over workers' compensation on or before September 15 of each~~
30 ~~year. The closed claim report shall include, but not be~~
31 ~~limited to, an analysis of all claims closed during the~~

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~preceding year as to the date of accident, age of the injured~~
2 ~~employee, occupation of the injured employee, type of injury,~~
3 ~~body part affected, type and duration of indemnity benefits~~
4 ~~paid, permanent impairment rating, medical benefits identified~~
5 ~~by type of health care provider, and type and cost of any~~
6 ~~rehabilitation benefits provided.~~

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

22 Section 55. Section 440.591, Florida Statutes, is
23 amended to read:

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

29 Section 56. Section 440.593, Florida Statutes, is
30 amended to read:

31 440.593 Electronic reporting.--

1 (1) The department ~~division~~ may establish an
2 electronic reporting system requiring or authorizing an
3 employer or carrier to submit required forms, reports, or
4 other information electronically rather than by other means.
5 The department ~~division~~ may establish different deadlines for
6 submitting forms, reports, or information to the department
7 ~~division~~, or to its authorized agent, via the electronic
8 reporting system than are otherwise required when reporting
9 information by other means.

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

17 (3) The department ~~division~~ may revoke the
18 certification of any carrier or vendor determined by the
19 department ~~division~~ to be in noncompliance with performance
20 standards prescribed by rule for electronic submissions.

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

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

26 Section 57. Subsections (1), (4), and (5) of section
27 443.012, Florida Statutes, are amended to read:

28 443.012 Unemployment Appeals Commission.--

29 (1) There is created within the Agency for Workforce
30 Innovation ~~Department of Labor and Employment Security~~ an
31 Unemployment Appeals Commission, hereinafter referred to as

1 the "commission." The commission shall consist of a chair and
2 two other members to be appointed by the Governor, subject to
3 confirmation by the Senate. Not more than one appointee must
4 be a person who, on account of previous vocation, employment,
5 or affiliation, is classified as a representative of
6 employers; and not more than one such appointee must be a
7 person who, on account of previous vocation, employment, or
8 affiliation, is classified as a representative of employees.

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

12 (b) The chair shall have the authority to appoint a
13 general counsel and such other personnel as may be necessary
14 to carry out the duties and responsibilities of the
15 commission.

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

22 (d) The remaining members shall be paid a stipend of
23 \$100 for each day they are engaged in the work of the
24 commission. The chair and other members shall also be
25 reimbursed for travel expenses, as provided in s. 112.061.

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

29 (4) The property, personnel, and appropriations
30 relating to the specified authority, powers, duties, and
31 responsibilities of the commission shall be provided to the

1 commission by the Agency for Workforce Innovation ~~Department~~
2 ~~of Labor and Employment Security~~.

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

7 Section 58. Subsection (12) of section 443.036,
8 Florida Statutes, is amended to read:

9 443.036 Definitions.--As used in this chapter, unless
10 the context clearly requires otherwise:

11 (12) COMMISSION.--"Commission" means the Unemployment
12 Appeals Commission ~~of the Department of Labor and Employment~~
13 ~~Security~~.

14 Section 59. Subsection (3) of section 447.02, Florida
15 Statutes, is amended to read:

16 447.02 Definitions.--The following terms, when used in
17 this chapter, shall have the meanings ascribed to them in this
18 section:

19 (3) The term "department" means the Department of
20 Business and Professional Regulation ~~Labor and Employment~~
21 ~~Security~~.

22 Section 60. Subsection (4) of section 447.305, Florida
23 Statutes, is amended to read:

24 447.305 Registration of employee organization.--

25 (4) Notification of registrations and renewals of
26 registration shall be furnished at regular intervals by the
27 commission to the Department of Business and Professional
28 Regulation ~~Labor and Employment Security~~.

29 Section 61. Subsection (4) of section 450.012, Florida
30 Statutes, is amended to read:

31 450.012 Definitions.--For the purpose of this chapter,

1 the word, phrase, or term:

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

4 Section 62. Paragraph (j) of subsection (1) of section
5 450.191, Florida Statutes, is amended to read:

6 450.191 Executive Office of the Governor; powers and
7 duties.--

8 (1) The Executive Office of the Governor is authorized
9 and directed to:

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

15 Section 63. Subsection (2) of section 450.28, Florida
16 Statutes, is amended to read:

17 450.28 Definitions.--

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

20 Section 64. Subsections (1) and (5) of section
21 624.3161, Florida Statutes, are amended to read:

22 624.3161 Market conduct examinations.--

23 (1) As often as it deems necessary, the department
24 shall examine each licensed rating organization, each advisory
25 organization, each group, association, carrier, as defined in
26 s. 440.02, or other organization of insurers which engages in
27 joint underwriting or joint reinsurance, and each authorized
28 insurer transacting in this state any class of insurance to
29 which the provisions of chapter 627 are applicable. The
30 examination shall be for the purpose of ascertaining
31 compliance by the person examined with the applicable

1 provisions of chapters 440,624, 626, 627, and 635.

2 (5) Such examinations shall also be subject to the
3 applicable provisions of chapter 440 and ss. 624.318, 624.319,
4 624.321, and 624.322.

5 Section 65. Paragraph (m) of subsection (1) of section
6 626.88, Florida Statutes, is amended to read:

7 626.88 Definitions of "administrator" and "insurer".--

8 (1) For the purposes of this part, an "administrator"
9 is any person who directly or indirectly solicits or effects
10 coverage of, collects charges or premiums from, or adjusts or
11 settles claims on residents of this state in connection with
12 authorized commercial self-insurance funds or with insured or
13 self-insured programs which provide life or health insurance
14 coverage or coverage of any other expenses described in s.
15 624.33(1), other than any of the following persons:

16 (m) A person approved by the ~~Division of Workers'~~
17 ~~Compensation of the~~ Department of Insurance Labor and
18 ~~Employment Security~~ who administers only self-insured workers'
19 compensation plans.

20 Section 66. Subsection (9) of section 626.989, Florida
21 Statutes, is amended to read:

22 626.989 Investigation by department or Division of
23 Insurance Fraud; compliance; immunity; confidential
24 information; reports to division; division investigator's
25 power of arrest.--

26 (9) In recognition of the complementary roles of
27 investigating instances of workers' compensation fraud and
28 enforcing compliance with the workers' compensation coverage
29 requirements under chapter 440, the ~~Division of Insurance~~
30 ~~Fraud of the~~ Department of Insurance is and the ~~Division of~~
31 ~~Workers' Compensation of the Department of Labor and~~

758-114CXB-32

Bill No. CS/HB 1643

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

1 ~~Employment Security~~ are directed to prepare and submit a joint
2 performance report to the President of the Senate and the
3 Speaker of the House of Representatives by November 1, 2003 ~~of~~
4 ~~each year for each of the next 2 years~~, and then by November 1
5 every 3 years thereafter, describing the results obtained in
6 achieving compliance with the workers' compensation coverage
7 requirements and reducing the incidence of workers'
8 compensation fraud.

9 Section 67. Section 627.0915, Florida Statutes, is
10 amended to read:

11 627.0915 Rate filings; workers' compensation,
12 drug-free workplace, and safe employers.--The Department of
13 Insurance shall approve rating plans for workers' compensation
14 insurance that give specific identifiable consideration in the
15 setting of rates to employers that either implement a
16 drug-free workplace program pursuant to rules adopted by the
17 ~~Division of Workers' Compensation of the~~ Department of
18 Insurance Labor and Employment Security or implement a safety
19 program pursuant to provisions of the rating plan or implement
20 both a drug-free workplace program and a safety program. The
21 plans must be actuarially sound and must state the savings
22 anticipated to result from such drug-testing and safety
23 programs.

24 Section 68. Subsection (3) of section 627.914, Florida
25 Statutes, is amended to read:

26 627.914 Reports of information by workers'
27 compensation insurers required.--

28 (3) Individual self-insurers as defined in s. 440.02
29 shall report only Florida data as prescribed in paragraphs
30 (2)(a)-(e) to the ~~Division of Workers' Compensation of the~~
31 department ~~of Labor and Employment Security~~.

1 (a) The department ~~Division of Workers' Compensation~~
2 shall publish the dates and forms necessary to enable
3 individual self-insurers to comply with this section.

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

8 Section 69. Sections 20.171 and 440.4416, Florida
9 Statutes, are repealed.

10 Section 70. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 invalidity does not affect other provisions or applications of
13 the act which can be given effect without the invalid
14 provision or application, and to this end the provisions of
15 this act are severable.

16 Section 71. Except as otherwise provided herein, this
17 act shall take effect July 1, 2002.

18
19

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

21 And the title is amended as follows:

22 Remove: the entire title,

23

24 and insert:

25 A bill to be entitled
26 An act relating to transferring and reassigning
27 divisions, functions, and responsibilities of
28 the Department of Labor and Employment
29 Security; providing for a type two transfer of
30 the Division of Workers' Compensation to the
31 Department of Insurance; providing for a type

1 two transfer of workers' compensation medical
2 services to the Agency for Health Care
3 Administration; providing for a type two
4 transfer of workers' compensation
5 rehabilitation and reemployment services to the
6 Department of Education; providing for a type
7 two transfer of the administration of child
8 labor laws to the Department of Business and
9 Professional Regulation; providing for
10 comparable pay grades for the transferred
11 positions; authorizing the Department of
12 Insurance to reclassify and reorganize
13 positions within the department and establish
14 regional offices; authorizing the Department of
15 Insurance to enter into contracts; providing
16 for existing contracts to be subject to review
17 and cancellation; providing for a type two
18 transfer of certain functions of the Office of
19 the Secretary and the Office of Administrative
20 Services of the Department of Labor and
21 Employment Security relating to labor
22 organizations and migrant and farm labor
23 registration to the Department of Business and
24 Professional Regulation; providing for a type
25 two transfer of other workplace regulation
26 functions to the Department of Business and
27 Professional Regulation; providing for the
28 transfer of the Unemployment Appeals Commission
29 to the Agency for Workforce Innovation by a
30 type two transfer; providing for the transfer
31 of the Office of Information Systems to the

758-114CXB-32

Bill No. CS/HB 1643

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

1 State Technology Office by a type two transfer;
2 requiring the State Technology Office and the
3 Department of Insurance to determine whether it
4 is feasible to transfer ownership of the
5 Workers' Compensation Integrated System to the
6 Department of Insurance; providing for the
7 continuation of contracts or agreements of the
8 Department of Labor and Employment Security;
9 providing for a successor department, agency,
10 or entity to be substituted for the Department
11 of Labor and Employment Security as a party in
12 interest in pending proceedings; exempting
13 specified state agencies, on a temporary basis,
14 from provisions relating to procurement of
15 property and services and leasing of space;
16 authorizing specified state agencies to develop
17 temporary emergency rules relating to the
18 implementation of the act; amending s. 20.13,
19 F.S.; establishing the Division of Workers'
20 Compensation within the Department of
21 Insurance; amending s. 20.50, F.S.; revising
22 provisions relating to the Agency for Workforce
23 Innovation to conform; revising
24 responsibilities of certain offices within the
25 agency; specifying that the Unemployment
26 Appeals Commission is not subject to the
27 agency; amending ss. 110.205, 112.19, 112.191,
28 121.125, 122.03, 238.06, and 440.015, F.S., to
29 conform; amending s. 440.02, F.S.; providing a
30 definition for the term "agency"; conforming
31 definitions of "department" and "division" to

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

1 the transfer of the Division of Workers'
2 Compensation; amending ss. 440.021, 440.05,
3 440.09, 440.10, 440.102, 440.103, 440.104,
4 440.105, 440.106, 440.107, 440.108, 440.12, and
5 440.125, F.S.; conforming provisions to reflect
6 the transfer of the Division of Workers'
7 Compensation; amending s. 440.13, F.S.,
8 relating to medical services and supplies under
9 the workers' compensation law; reassigning
10 certain functions from the Division of Workers'
11 Compensation to the Agency for Health Care
12 Administration; conforming agency references to
13 reflect the transfer of the Division of
14 Workers' Compensation; amending ss. 440.134 and
15 440.14, F.S.; conforming provisions to changes
16 made by the act; amending s. 440.15, F.S.;
17 providing for the agency to specify certain
18 forms and procedures governing wage loss and
19 impairment benefits; conforming a cross
20 reference; amending ss. 440.185, 440.191,
21 440.192, and 440.1925, F.S.; conforming
22 provisions to changes made by the act; amending
23 ss. 440.20, 440.207, and 440.211, F.S.,
24 relating to payment of compensation; conforming
25 provisions to changes made by the act; amending
26 s. 440.24, F.S.; providing for the sale of
27 securities on deposit to satisfy a compensation
28 order; amending ss. 440.25 and 440.271, F.S.,
29 relating to mediation, hearings, and appeals;
30 conforming provisions to changes made by the
31 act; amending ss. 440.345 and 440.35, F.S.,

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

1 relating to the reporting of attorney's fees
2 and employer records of injury or death;
3 conforming provisions to changes made by the
4 act; amending s. 440.381, F.S., relating to
5 audits of payroll and classifications;
6 conforming provisions to reflect the transfer
7 of the Division of Workers' Compensation;
8 amending ss. 440.40, 440.41, and 440.42, F.S.,
9 relating to employers posting notice of
10 compensation, substitution of carriers for
11 employers with respect to notice and the effect
12 of an order, and expiration of insurance
13 policies, to conform; amending s. 440.44, F.S.,
14 relating to the administration of the Workers'
15 Compensation Law; conforming provisions to
16 reflect the transfer of the Division of
17 Workers' Compensation; amending s. 440.45,
18 F.S., relating to the Office of the Judges of
19 Compensation Claims; clarifying the
20 responsibilities of the director of the
21 Division of Administrative Hearings as agency
22 head of the Office of the Judges of
23 Compensation Claims; amending s. 440.49, F.S.,
24 relating to the Special Disability Trust Fund;
25 conforming provisions to reflect the transfer
26 of the Division of Workers' Compensation;
27 reassigning responsibility for a report on the
28 Special Disability Trust Fund to the Department
29 of Insurance; amending s. 440.491, F.S.,
30 relating to the reemployment of injured
31 workers; conforming provisions to the transfer

758-114CXB-32

Bill No. CS/HB 1643

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

1 of rehabilitation and reemployment services to
2 the Department of Education; amending ss.
3 440.50, 440.51, and 440.52, F.S., relating to
4 the Workers' Compensation Administration Trust
5 Fund, expenses of administration, and certain
6 responsibilities of insurance carriers;
7 conforming references to reflect the transfer
8 of the Division of Workers' Compensation;
9 amending s. 440.525, F.S., relating to the
10 examination of carriers; conforming agency
11 references to the transfer of programs from the
12 Department of Labor and Employment Security to
13 the Department of Insurance; amending s.
14 440.572, F.S., to conform; amending s. 440.59,
15 F.S., relating to division reporting
16 requirements; eliminating unnecessary reporting
17 requirements; amending ss. 440.591 and 440.593,
18 F.S., relating to authorization to self-insure,
19 reporting requirements, and rulemaking
20 authority; conforming provisions to changes
21 made by the act; amending s. 443.012, F.S.;
22 providing for the Unemployment Appeals
23 Commission to be created within the Agency for
24 Workforce Innovation rather than the Department
25 of Labor and Employment Security; conforming
26 provisions; amending s. 443.036, F.S.;
27 conforming the definition of "commission" to
28 the transfer of the Unemployment Appeals
29 Commission to the Agency for Workforce
30 Innovation; amending s. 447.02, F.S.;
31 conforming the definition of "department" to

758-114CXB-32

Bill No. CS/HB 1643

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

1 the transfer of the regulation of labor
2 organizations to the Department of Business and
3 Professional Regulation; amending s. 447.305,
4 F.S.; providing that notification of
5 registrations and renewals of registration
6 shall be furnished to the Department of
7 Business and Professional Regulation, to
8 conform; amending s. 450.012, F.S.; conforming
9 the definition of "department" to the transfer
10 of the regulation of child labor to the
11 Department of Business and Professional
12 Regulation; amending s. 450.191, F.S., relating
13 to the duties of the Executive Office of the
14 Governor with respect to migrant labor;
15 conforming provisions to changes made by the
16 act; amending s. 450.28, F.S.; conforming the
17 definition of "department" to the transfer of
18 the regulation of farm labor to the Department
19 of Business and Professional Regulation;
20 amending s. 624.3161, F.S., relating to
21 insurance market conduct examinations;
22 conforming provisions to changes made by the
23 act; amending s. 626.88, F.S., relating to
24 self-insurance definitions; conforming
25 provisions to changes made by the act; amending
26 s. 626.989, F.S., relating to Division of
27 Insurance Fraud reporting requirements;
28 conforming provisions to changes made by the
29 act and establishing reporting deadlines;
30 amending s. 627.0915, F.S.; conforming
31 departmental references to changes made by the

758-114CXB-32

Bill No. CS/HB 1643

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

1 act; amending s. 627.914, F.S., relating to
2 reporting requirements by self-insurers;
3 conforming provisions to changes made by the
4 act; repealing s. 20.171, F.S., relating to the
5 establishment and the authority and
6 organizational structure of the Department of
7 Labor and Employment Security; repealing s.
8 440.4416, F.S., relating to the Workers'
9 Compensation Oversight Board; providing for
10 severability; providing effective dates.
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