

612-229AX-32

Bill No. 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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The Committee on Transportation & Economic Development
Appropriations 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, 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

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

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.

26 (4) All powers, duties, functions, rules, records,
27 personnel, property, and unexpended balances of
28 appropriations, allocations, and other funds of the
29 Unemployment Appeals Commission relating to the commission's
30 specified authority, powers, duties, and responsibilities are
31 transferred by a type two transfer, as defined in s. 20.06(2),

1 Florida Statutes, to the Agency for Workforce Innovation.
2 (5) The Office of Information Systems is transferred
3 by a type two transfer, as defined in s. 20.06(2), Florida
4 Statutes, from the Department of Labor and Employment Security
5 to the State Technology Office. Upon completion of this
6 transfer, the State Technology Office and the Department of
7 Insurance shall enter into discussions to determine whether it
8 would be technologically feasible and cost effective to
9 separate the workers' compensation related systems and
10 transfer ownership of these systems to the Department of
11 Insurance. If the State Technology Office determines that it
12 would be technologically feasible and cost effective to
13 transfer ownership of the workers' compensation related
14 systems to the Department of Insurance, the State Technology
15 Office and the Department of Insurance shall jointly develop
16 and implement a plan to transfer these systems to the
17 Department of Insurance.

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

26 (b) The records, property, and unexpended balances of
27 appropriations, allocations, and other funds and resources of
28 the Office of the Secretary and the Office of Administrative
29 Services of the Department of Labor and Employment Security
30 which support the activities and functions transferred under
31 subsection (1) to the Agency for Health Care Administration

1 are transferred as provided in s. 20.06(2), Florida Statutes,
2 to the Agency for Health Care Administration.

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

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

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

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

1 which support the activities and functions transferred under
2 subsection (5) to the State Technology Office are transferred
3 as provided in s. 20.06(2), Florida Statutes, to the State
4 Technology Office.

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

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

22 (9) Notwithstanding any other provision of law, any
23 binding contract or interagency agreement existing on or
24 before July 1, 2002, between the Department of Labor and
25 Employment Security, or an entity or agent of the department,
26 and any other agency, entity, or person shall continue as a
27 binding contract or agreement for the remainder of the term of
28 such contract or agreement with the successor department,
29 agency, or entity responsible for the program, activity, or
30 functions relative to the contract or agreement.

31 (10) This act does not affect the validity of any

1 judicial or administrative proceeding involving the Department
2 of Labor and Employment Security which is pending as of the
3 effective date of any transfer under this act. The successor
4 department, agency, or entity responsible for the program,
5 activity, or function relative to the proceeding shall be
6 substituted, as of the effective date of the applicable
7 transfer under this act, for the Department of Labor and
8 Employment Security as a party in interest in any such
9 proceedings.

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

20 (12) To expedite the leasing of facilities for
21 implementation of the provisions of this act, the Department
22 of Revenue, the Agency for Health Care Administration, the
23 Department of Education, the Department of Business and
24 Professional Regulation, the Agency for Workforce Innovation,
25 and the State Technology Office are exempt from the
26 requirements of any state laws relating to the leasing of
27 space, including, but not limited to, the requirements imposed
28 by s. 255.25, Florida Statutes, and any rules adopted under
29 such laws; however, all leases entered into under this act on
30 or before June 30, 2002, must be submitted for approval to the
31 Department of Management Services at the earliest practicable

1 time. This subsection shall take effect upon this act becoming
2 a law and shall expire July 1, 2002.

3 (13) Notwithstanding any provisions of chapter 120,
4 Florida Statutes, to the contrary, the Department of
5 Insurance, the Agency for Health Care Administration, the
6 Department of Education, the Department of Business and
7 Professional Regulation, the Agency for Workforce Innovation,
8 and the State Technology Office are authorized to develop
9 emergency rules relating to and in furtherance of the orderly
10 implementation of the provisions of this act. This subsection
11 shall take effect upon this act becoming a law, and these
12 emergency rules shall be valid for a period of 90 days after
13 July 1, 2002.

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

16 20.13 Department of Insurance.--There is created a
17 Department of Insurance.

18 (2) The following divisions of the Department of
19 Insurance are established:

20 (k) Division of Workers' Compensation.

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

23 20.50 Agency for Workforce Innovation.--There is
24 created the Agency for Workforce Innovation within the
25 Department of Management Services. The agency shall be a
26 separate budget entity, and the director of the agency shall
27 be the agency head for all purposes. The agency shall not be
28 subject to control, supervision, or direction by the
29 Department of Management Services in any manner, including,
30 but not limited to, personnel, purchasing, transactions
31 involving real or personal property, and budgetary matters.

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

24 (a) The Office of Workforce Services shall administer
 25 ~~state merit system program staff within the~~ unemployment
 26 compensation program, the Rapid Response program, the Work
 27 Opportunity Tax Credit program, the Alien Labor Certification
 28 program, and any other programs that are delivered directly by
 29 agency staff rather than through the one-stop workforce
 30 ~~service delivery system, pursuant to policies of Workforce~~
 31 ~~Florida, Inc. The office shall be responsible for delivering~~

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

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

27 1. ~~Establishing standards and controls for reporting~~
28 ~~budgeting, expenditure, and performance information for~~
29 ~~assessing outcomes, service delivery, and financial~~
30 ~~administration of workforce programs pursuant to s. 445.004(5)~~
31 ~~and (9).~~

1 ~~1.2.~~ Establishing monitoring, quality assurance, and
2 quality improvement systems that routinely assess the quality
3 and effectiveness of contracted programs and services.

4 ~~2.3.~~ Annual review of each regional workforce board
5 and administrative entity to ensure adequate systems of
6 reporting and control are in place, and monitoring, quality
7 assurance, and quality improvement activities are conducted
8 routinely, and corrective action is taken to eliminate
9 deficiencies.

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

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

28 2. Information systems that support service
29 integration and case management by providing for case tracking
30 for participants in welfare transition programs.

31 3. Information systems that support school readiness

1 services.

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

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

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

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

30 (c) Welfare-to-work grants administered by the United
31 States Department of Labor under Title IV, s. 403, of the

1 Social Security Act, as amended.

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

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

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

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

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

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

25 (j) The Unemployment Compensation program provided
26 pursuant to chapter 443.

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

30 Section 4. Paragraph (m) of subsection (2) of section
31 110.205, Florida Statutes, is amended to read:

1 110.205 Career service; exemptions.--

2 (2) EXEMPT POSITIONS.--The exempt positions that are

3 not covered by this part include the following:

4 (m) All assistant division director, deputy division

5 director, and bureau chief positions in any department, and

6 those positions determined by the department to have

7 managerial responsibilities comparable to such positions,

8 which positions include, but are not limited to, positions in

9 the Department of Health, the Department of Children and

10 Family Services, and the Department of Corrections that are

11 assigned primary duties of serving as the superintendent or

12 assistant superintendent, or warden or assistant warden, of an

13 institution; positions in the Department of Corrections that

14 are assigned primary duties of serving as the circuit

15 administrator or deputy circuit administrator; positions in

16 the Department of Transportation that are assigned primary

17 duties of serving as regional toll managers and managers of

18 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions

19 in the Department of Environmental Protection that are

20 assigned the duty of an Environmental Administrator or program

21 administrator; ~~those positions described in s. 20.171 as~~

22 ~~included in the Senior Management Service~~ and positions in

23 the Department of Health that are assigned the duties of

24 Environmental Administrator, Assistant County Health

25 Department Director, and County Health Department Financial

26 Administrator. Unless otherwise fixed by law, the department

27 shall set the salary and benefits of these positions in

28 accordance with the rules established for the Selected Exempt

29 Service.

30 Section 5. Paragraph (h) of subsection (2) of section

31 112.19, Florida Statutes, is amended to read:

1 112.19 Law enforcement, correctional, and correctional
2 probation officers; death benefits.--
3 (2)
4 (h)1. Any employer who employs a full-time law
5 enforcement, correctional, or correctional probation officer
6 who, on or after January 1, 1995, suffers a catastrophic
7 injury, as defined in s. 440.02 ~~s. 440.02(37)~~, in the line of
8 duty shall pay the entire premium of the employer's health
9 insurance plan for the injured employee, the injured
10 employee's spouse, and for each dependent child of the injured
11 employee until the child reaches the age of majority or until
12 the end of the calendar year in which the child reaches the
13 age of 25 if the child continues to be dependent for support,
14 or the child is a full-time or part-time student and is
15 dependent for support. The term "health insurance plan" does
16 not include supplemental benefits that are not part of the
17 basic group health insurance plan. If the injured employee
18 subsequently dies, the employer shall continue to pay the
19 entire health insurance premium for the surviving spouse until
20 remarried, and for the dependent children, under the
21 conditions outlined in this paragraph. However:
22 a. Health insurance benefits payable from any other
23 source shall reduce benefits payable under this section.
24 b. It is unlawful for a person to willfully and
25 knowingly make, or cause to be made, or to assist, conspire
26 with, or urge another to make, or cause to be made, any false,
27 fraudulent, or misleading oral or written statement to obtain
28 health insurance coverage as provided under this paragraph. A
29 person who violates this sub-subparagraph commits a
30 misdemeanor of the first degree, punishable as provided in s.
31 775.082 or s. 775.083.

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

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

24 Section 6. Paragraph (g) of subsection (2) of section
 25 112.191, Florida Statutes, is amended to read:

26 112.191 Firefighters; death benefits.--

27 (2)

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

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

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

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

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

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

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

15
16 Notwithstanding any provision of this section to the contrary,
17 the death benefits provided in paragraphs (b), (c), and (f)
18 shall also be applicable and paid in cases where a firefighter
19 received bodily injury prior to July 1, 1993, and subsequently
20 died on or after July 1, 1993, as a result of such
21 in-line-of-duty injury.

22 Section 7. Section 121.125, Florida Statutes, is
23 amended to read:

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

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

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

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

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

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

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

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

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

31 Section 10. Subsections (3) through (39) of section

1 440.02, Florida Statutes, are renumbered as subsections (4)
2 through (40), respectively, a new subsection (3) is added to
3 said section, and present subsections (11), (13), and (14) of
4 said section are amended, to read:

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

8 (3) "Agency" means the Agency for Health Care
9 Administration.

10 (12)~~(11)~~ "Department" means the Department of
11 Insurance Labor and Employment Security.

12 (14)~~(13)~~ "Division" means the Division of Workers'
13 Compensation of the Department of Insurance Labor and
14 Employment Security.

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

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

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

27 2. As to officers of a corporation who are actively
28 engaged in the construction industry, no more than three
29 officers may elect to be exempt from this chapter by filing
30 written notice of the election with the department division as
31 provided in s. 440.05.

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

5
 6 Services are presumed to have been rendered to the corporation
 7 if the officer is compensated by other than dividends upon
 8 shares of stock of the corporation which the officer owns.

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

27 (d) "Employee" does not include:

28 1. An independent contractor, if:

29 a. The independent contractor maintains a separate
 30 business with his or her own work facility, truck, equipment,
 31 materials, or similar accommodations;

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

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

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

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

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

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

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

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

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

1 2448, or 2449, or a newspaper delivery person, is an
2 independent contractor is governed not by the criteria in this
3 paragraph but by common-law principles, giving due
4 consideration to the business activity of the individual.

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

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

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

24 5. A person whose employment is both casual and not in
25 the course of the trade, business, profession, or occupation
26 of the employer.

27 6. A volunteer, except a volunteer worker for the
28 state or a county, municipality, or other governmental entity.
29 A person who does not receive monetary remuneration for
30 services is presumed to be a volunteer unless there is
31 substantial evidence that a valuable consideration was

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

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1 a written agreement with a company which provides any
2 dispatch, marketing, insurance, communications, or other
3 services under which the driver and any fees or charges paid
4 by the driver to the company for such services are not
5 conditioned upon, or expressed as a proportion of, fare
6 revenues.

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

21 Section 11. Section 440.021, Florida Statutes, is
22 amended to read:

23 440.021 Exemption of workers' compensation from
24 chapter 120.--Workers' compensation adjudications by judges of
25 compensation claims are exempt from chapter 120, and no judge
26 of compensation claims shall be considered an agency or a part
27 thereof. Communications of the result of investigations by the
28 department division pursuant to s. 440.185(4) are exempt from
29 chapter 120. In all instances in which the department division
30 institutes action to collect a penalty or interest which may
31 be due pursuant to this chapter, the penalty or interest shall

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

13 Section 12. Section 440.05, Florida Statutes, is
14 amended to read:

15 440.05 Election of exemption; revocation of election;
16 notice; certification.--

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

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

27 (3) Each sole proprietor, partner, or officer of a
28 corporation who is actively engaged in the construction
29 industry and who elects an exemption from this chapter or who,
30 after electing such exemption, revokes that exemption, must
31 mail a written notice to such effect to the department

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

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

23 (4) The notice of election to be exempt from the
24 provisions of this chapter must contain a notice that clearly
25 states in substance the following: "Any person who, knowingly
26 and with intent to injure, defraud, or deceive the department
27 ~~division~~ or any employer or employee, insurance company, or
28 purposes program, files a notice of election to be exempt
29 containing any false or misleading information is guilty of a
30 felony of the third degree." Each person filing a notice of
31 election to be exempt shall personally sign the notice and

1 attest that he or she has reviewed, understands, and
2 acknowledges the foregoing notice.

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

14 (6) A construction industry certificate of election to
15 be exempt which is issued in accordance with this section
16 shall be valid for 2 years after the effective date stated
17 thereon. Both the effective date and the expiration date must
18 be listed on the face of the certificate by the department
19 ~~division~~. The construction industry certificate must expire at
20 midnight, 2 years from its issue date, as noted on the face of
21 the exemption certificate. Any person who has received from
22 the department ~~division~~ a construction industry certificate of
23 election to be exempt which is in effect on December 31, 1998,
24 shall file a new notice of election to be exempt by the last
25 day in his or her birth month following December 1, 1998. A
26 construction industry certificate of election to be exempt may
27 be revoked before its expiration by the sole proprietor,
28 partner, or officer for whom it was issued or by the division
29 for the reasons stated in this section. At least 60 days
30 prior to the expiration date of a construction industry
31 certificate of exemption issued after December 1, 1998, the

1 ~~department division~~ shall send notice of the expiration date
2 and an application for renewal to the certificateholder at the
3 address on the certificate.

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

9 (8)(a) The ~~department division~~ must assess a fee of
10 \$50 with each request for a construction industry certificate
11 of election to be exempt or renewal of election to be exempt
12 under this section.

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

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

26 Section 13. Paragraph (d) of subsection (7) of section
27 440.09, Florida Statutes, is amended to read:

28 440.09 Coverage.--

29 (7)

30 (d) The ~~agency division~~ shall provide by rule for the
31 authorization and regulation of drug-testing policies,

1 procedures, and methods. Testing of injured employees shall
2 not commence until such rules are adopted.

3 Section 14. Paragraphs (f) and (g) of subsection (1)
4 of section 440.10, Florida Statutes, are amended to read:

5 440.10 Liability for compensation.--

6 (1)

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

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

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

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

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

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

6 Section 15. Subsection (2), paragraph (a) of
 7 subsection (3), and paragraph (g) of subsection (7) of section
 8 440.102, Florida Statutes, are amended to read:

9 440.102 Drug-free workplace program requirements.--The
 10 following provisions apply to a drug-free workplace program
 11 implemented pursuant to law or to rules adopted by the Agency
 12 for Health Care Administration:

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

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

- 1 (a) One time only, prior to testing, an employer shall
2 give all employees and job applicants for employment a written
3 policy statement which contains:
- 4 1. A general statement of the employer's policy on
5 employee drug use, which must identify:
- 6 a. The types of drug testing an employee or job
7 applicant may be required to submit to, including
8 reasonable-suspicion drug testing or drug testing conducted on
9 any other basis.
- 10 b. The actions the employer may take against an
11 employee or job applicant on the basis of a positive confirmed
12 drug test result.
- 13 2. A statement advising the employee or job applicant
14 of the existence of this section.
- 15 3. A general statement concerning confidentiality.
- 16 4. Procedures for employees and job applicants to
17 confidentially report to a medical review officer the use of
18 prescription or nonprescription medications to a medical
19 review officer both before and after being tested.
- 20 5. A list of the most common medications, by brand
21 name or common name, as applicable, as well as by chemical
22 name, which may alter or affect a drug test. A list of such
23 medications as developed by the Agency for Health Care
24 Administration shall be available to employers through the
25 ~~Division of Workers' Compensation of the department of Labor~~
26 ~~and Employment Security.~~
- 27 6. The consequences of refusing to submit to a drug
28 test.
- 29 7. A representative sampling of names, addresses, and
30 telephone numbers of employee assistance programs and local
31 drug rehabilitation programs.

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

11 9. A statement informing the employee or job applicant
12 of his or her responsibility to notify the laboratory of any
13 administrative or civil action brought pursuant to this
14 section.

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

18 11. A statement regarding any applicable collective
19 bargaining agreement or contract and the right to appeal to
20 the Public Employees Relations Commission or applicable court.

21 12. A statement notifying employees and job applicants
22 of their right to consult with a medical review officer for
23 technical information regarding prescription or
24 nonprescription medication.

25 (7) EMPLOYER PROTECTION.--

26 (g) This section does not prohibit an employer from
27 conducting medical screening or other tests required,
28 permitted, or not disallowed by any statute, rule, or
29 regulation for the purpose of monitoring exposure of employees
30 to toxic or other unhealthy substances in the workplace or in
31 the performance of job responsibilities. Such screening or

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

16 Section 16. Section 440.103, Florida Statutes, is
17 amended to read:

18 440.103 Building permits; identification of minimum
19 premium policy.--Except as otherwise provided in this chapter,
20 every employer shall, as a condition to receiving a building
21 permit, show proof that it has secured compensation for its
22 employees under this chapter as provided in ss. 440.10 and
23 440.38. Such proof of compensation must be evidenced by a
24 certificate of coverage issued by the carrier, a valid
25 exemption certificate approved by the department or the former
26 Division of Workers' Compensation of the Department of Labor
27 and Employment Security, or a copy of the employer's authority
28 to self-insure and shall be presented each time the employer
29 applies for a building permit. As provided in s. 627.413(5),
30 each certificate of coverage must show, on its face, whether
31 or not coverage is secured under the minimum premium

1 provisions of rules adopted by rating organizations licensed
2 by the department of ~~Insurance~~. The words "minimum premium
3 policy" or equivalent language shall be typed, printed,
4 stamped, or legibly handwritten.

5 Section 17. Subsection (1) of section 440.104, Florida
6 Statutes, is amended to read:

7 440.104 Competitive bidder; civil actions.--

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

16 Section 18. Paragraph (a) of subsection (2) of section
17 440.105, Florida Statutes, is amended to read:

18 440.105 Prohibited activities; reports; penalties;
19 limitations.--

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

23 (a) It shall be unlawful for any employer to
24 knowingly:

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

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

31 3. Discharge, discipline, or take any other adverse

1 personnel action against any employee for disclosing
2 information to the department ~~division~~ or any law enforcement
3 agency relating to any violation or suspected violation of any
4 of the provisions of this chapter or rules promulgated
5 hereunder.

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

8 Section 19. Subsections (3) and (4) of section
9 440.106, Florida Statutes, are amended to read:

10 440.106 Civil remedies; administrative penalties.--

11 (3) Whenever any group or individual self-insurer,
12 carrier, rating bureau, or agent or other representative of
13 any carrier or rating bureau is determined to have violated s.
14 440.105, the department ~~of Insurance~~ may revoke or suspend the
15 authority or certification of any group or individual
16 self-insurer, carrier, agent, or broker.

17 (4) The department ~~division~~ shall report any
18 contractor determined in violation of requirements of this
19 chapter to the appropriate state licensing board for
20 disciplinary action.

21 Section 20. Section 440.107, Florida Statutes, is
22 amended to read:

23 440.107 Department ~~Division~~ powers to enforce employer
24 compliance with coverage requirements.--

25 (1) The Legislature finds that the failure of an
26 employer to comply with the workers' compensation coverage
27 requirements under this chapter poses an immediate danger to
28 public health, safety, and welfare. The Legislature authorizes
29 the department ~~division~~ to secure employer compliance with the
30 workers' compensation coverage requirements and authorizes the
31 department ~~division~~ to conduct investigations for the purpose

1 of ensuring employer compliance.

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

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

28 (4) If a person has refused to obey a subpoena to
29 appear before the department ~~division~~ or its authorized
30 representative and produce evidence requested by the
31 department ~~division~~ or to give testimony about the matter that

1 is under investigation, a court has jurisdiction to issue an
 2 order requiring compliance with the subpoena if the court has
 3 jurisdiction in the geographical area where the inquiry is
 4 being carried on or in the area where the person who has
 5 refused the subpoena is found, resides, or transacts business.
 6 Failure to obey such a court order may be punished by the
 7 court as contempt.

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

24 (6) The department ~~division~~ may file a complaint in
 25 the circuit court in and for Leon County to enjoin any
 26 employer, who has failed to secure compensation as required by
 27 this chapter, from employing individuals and from conducting
 28 business until the employer presents evidence satisfactory to
 29 the department ~~division~~ of having secured payment for
 30 compensation and pays a civil penalty to the department
 31 ~~division~~, to be deposited by the department ~~division~~ into the

1 Workers' Compensation Administration Trust Fund, in the amount
2 of \$100 per day for each day the employer was not in
3 compliance with this chapter.

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

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

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

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

22 (8) The department ~~division~~ may bring an action in
23 circuit court to recover penalties assessed under this
24 section, including any interest owed to the department
25 ~~division~~ pursuant to this section. In any action brought by
26 the department ~~division~~ pursuant to this section in which it
27 prevails, the circuit court shall award costs, including the
28 reasonable costs of investigation and a reasonable attorney's
29 fee.

30 (9) Any judgment obtained by the department ~~division~~
31 and any penalty due pursuant to the service of a stop-work

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

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

22 (11) Actions by the department ~~division~~ under this
23 section must be contested as provided in chapter 120. All
24 civil penalties assessed by the department ~~division~~ must be
25 paid into the Workers' Compensation Administration Trust Fund.
26 The department ~~division~~ shall return any sums previously paid,
27 upon conclusion of an action, if the department ~~division~~ fails
28 to prevail and if so directed by an order of court or an
29 administrative hearing officer. The requirements of this
30 subsection may be met by posting a bond in an amount equal to
31 twice the penalty and in a form approved by the department

1 ~~division.~~

2 Section 21. Subsection (1) of section 440.108, Florida
3 Statutes, is amended to read:

4 440.108 Investigatory records relating to workers'
5 compensation employer compliance; confidentiality.--

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

- 25 (a) Jeopardize the integrity of another active
26 investigation;
- 27 (b) Reveal a trade secret, as defined in s. 688.002;
- 28 (c) Reveal business or personal financial information;
- 29 (d) Reveal the identity of a confidential source;
- 30 (e) Defame or cause unwarranted damage to the good
31 name or reputation of an individual or jeopardize the safety

1 of an individual; or

2 (f) Reveal investigative techniques or procedures.

3 Section 22. Subsection (2) of section 440.12, Florida
4 Statutes, is amended to read:

5 440.12 Time for commencement and limits on weekly rate
6 of compensation.--

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

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

20 (b) Adjusted to the nearest dollar.

21
22 For the purpose of this subsection, the "statewide average
23 weekly wage" means the average weekly wage paid by employers
24 subject to the Florida Unemployment Compensation Law as
25 reported to the Agency for Workforce Innovation ~~department~~ for
26 the four calendar quarters ending each June 30, which average
27 weekly wage shall be determined by the Agency for Workforce
28 Innovation ~~department~~ on or before November 30 of each year
29 and shall be used in determining the maximum weekly
30 compensation rate with respect to injuries occurring in the
31 calendar year immediately following. The statewide average

1 weekly wage determined by the Agency for Workforce Innovation
2 ~~department~~ shall be reported annually to the Legislature.

3 Section 23. Section 440.125, Florida Statutes, is
4 amended to read:

5 440.125 Medical records and reports; identifying
6 information in employee medical bills; confidentiality.--

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

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

31 (3) The department may share any confidential and

1 exempt information received pursuant to s. 440.13 with the
2 Agency for Health Care Administration in furtherance of the
3 agency's official duties under ss. 440.13 and 440.134. The
4 agency shall maintain the confidential and exempt status of
5 the information.

6 Section 24. Subsections (1), (3), (4), (5), (6), (7),
7 (8), (9), (11), (12), (13), and (15) of section 440.13,
8 Florida Statutes, are amended to read:

9 440.13 Medical services and supplies; penalty for
10 violations; limitations.--

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

12 (a) "Alternate medical care" means a change in
13 treatment or health care provider.

14 (b) "Attendant care" means care rendered by trained
15 professional attendants which is beyond the scope of household
16 duties. Family members may provide nonprofessional attendant
17 care, but may not be compensated under this chapter for care
18 that falls within the scope of household duties and other
19 services normally and gratuitously provided by family members.

20 "Family member" means a spouse, father, mother, brother,
21 sister, child, grandchild, father-in-law, mother-in-law, aunt,
22 or uncle.

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

26 (d) "Catastrophic injury" means an injury as defined
27 in s. 440.02.

28 (e) "Certified health care provider" means a health
29 care provider who has been certified by the agency ~~division~~ or
30 who has entered an agreement with a licensed managed care
31 organization to provide treatment to injured workers under

1 this section. Certification of such health care provider must
2 include documentation that the health care provider has read
3 and is familiar with the portions of the statute, impairment
4 guides, and rules which govern the provision of remedial
5 treatment, care, and attendance.

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

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

12 (h) "Health care facility" means any hospital licensed
13 under chapter 395 and any health care institution licensed
14 under chapter 400.

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

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

25 (k) "Independent medical examination" means an
26 objective evaluation of the injured employee's medical
27 condition, including, but not limited to, impairment or work
28 status, performed by a physician or an expert medical advisor
29 at the request of a party, a judge of compensation claims, or
30 the agency division to assist in the resolution of a dispute
31 arising under this chapter.

1 (1) "Instance of overutilization" means a specific
2 inappropriate service or level of service provided to an
3 injured employee.

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

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

27 (o) "Palliative care" means noncurative medical
28 services that mitigate the conditions, effects, or pain of an
29 injury.

30 (p) "Pattern or practice of overutilization" means
31 repetition of instances of overutilization within a specific

1 medical case or multiple cases by a single health care
2 provider.

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

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

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

19 (t) "Utilization control" means a systematic process
20 of implementing measures that assure overall management and
21 cost containment of services delivered.

22 (u) "Utilization review" means the evaluation of the
23 appropriateness of both the level and the quality of health
24 care and health services provided to a patient, including, but
25 not limited to, evaluation of the appropriateness of
26 treatment, hospitalization, or office visits based on
27 medically accepted standards. Such evaluation must be
28 accomplished by means of a system that identifies the
29 utilization of medical services based on medically accepted
30 standards as established by medical consultants with
31 qualifications similar to those providing the care under

1 review, and that refers patterns and practices of
2 overutilization to the agency division.

3 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

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

31 (d) A carrier must respond, by telephone or in

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

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

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

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

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

28 (i) Notwithstanding paragraph (d), a claim for
29 specialist consultations, surgical operations,
30 physiotherapeutic or occupational therapy procedures, X-ray
31 examinations, or special diagnostic laboratory tests that cost

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

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

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

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

18 (b) Upon the request of the department ~~Division of~~
19 ~~Workers' Compensation~~, each medical report or bill obtained or
20 received by the employer, the carrier, or the injured
21 employee, or the attorney for the employer, carrier, or
22 injured employee, with respect to the remedial treatment,
23 care, and attendance of the injured employee, including any
24 report of an examination, diagnosis, or disability evaluation,
25 must be filed with the department ~~Division of Workers'~~
26 ~~Compensation~~ pursuant to rules adopted by the department in
27 consultation with the agency division. The health care
28 provider shall also furnish to the injured employee or to his
29 or her attorney, on demand, a copy of his or her office chart,
30 records, and reports, and may charge the injured employee an
31 amount authorized by the department ~~division~~ for the copies.

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1 Each such health care provider shall provide to the agency or
2 department ~~division~~ information about the remedial treatment,
3 care, and attendance which the agency or department ~~division~~
4 reasonably requests.

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

25 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

26 (a) In any dispute concerning overutilization, medical
27 benefits, compensability, or disability under this chapter,
28 the carrier or the employee may select an independent medical
29 examiner. The examiner may be a health care provider treating
30 or providing other care to the employee. An independent
31 medical examiner may not render an opinion outside his or her

1 area of expertise, as demonstrated by licensure and applicable
2 practice parameters.

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

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

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

11 3. The examiner is unavailable due to injury, death,
12 or relocation outside a reasonably accessible geographic area;
13 or

14 4. The parties agree to an alternate examiner.
15

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

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

30 (d) If the employee fails to appear for the
31 independent medical examination without good cause and fails

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1 to advise the physician at least 24 hours before the scheduled
2 date for the examination that he or she cannot appear, the
3 employee is barred from recovering compensation for any period
4 during which he or she has refused to submit to such
5 examination. Further, the employee shall reimburse the carrier
6 50 percent of the physician's cancellation or no-show fee
7 unless the carrier that schedules the examination fails to
8 timely provide to the employee a written confirmation of the
9 date of the examination pursuant to paragraph (c) which
10 includes an explanation of why he or she failed to appear. The
11 employee may appeal to a judge of compensation claims for
12 reimbursement when the carrier withholds payment in excess of
13 the authority granted by this section.

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

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

23 (6) UTILIZATION REVIEW.--Carriers shall review all
24 bills, invoices, and other claims for payment submitted by
25 health care providers in order to identify overutilization and
26 billing errors, and may hire peer review consultants or
27 conduct independent medical evaluations. Such consultants,
28 including peer review organizations, are immune from liability
29 in the execution of their functions under this subsection to
30 the extent provided in s. 766.101. If a carrier finds that
31 overutilization of medical services or a billing error has

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1 occurred, it must disallow or adjust payment for such services
2 or error without order of a judge of compensation claims or
3 the agency division, if the carrier, in making its
4 determination, has complied with this section and rules
5 adopted by the agency division.

6 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

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

24 (c) Within 60 days after receipt of all documentation,
25 the agency division must provide to the petitioner, the
26 carrier, and the affected parties a written determination of
27 whether the carrier properly adjusted or disallowed payment.
28 The agency division must be guided by standards and policies
29 set forth in this chapter, including all applicable
30 reimbursement schedules, in rendering its determination.

31 (d) If the agency division finds an improper

1 disallowance or improper adjustment of payment by an insurer,
2 the insurer shall reimburse the health care provider,
3 facility, insurer, or employer within 30 days, subject to the
4 penalties provided in this subsection.

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

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

15 1. Repayment of the appropriate amount to the health
16 care provider.

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

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

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

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

29 (b) If the agency ~~division~~ determines that a health
30 care provider has engaged in a pattern or practice of
31 overutilization or a violation of this chapter or rules

1 adopted by the agency division, it may impose one or more of
2 the following penalties:

- 3 1. An order of the agency division barring the
- 4 provider from payment under this chapter;
- 5 2. Deauthorization of care under review;
- 6 3. Denial of payment for care rendered in the future;
- 7 4. Decertification of a health care provider certified
- 8 as an expert medical advisor under subsection (9) or of a
- 9 rehabilitation provider certified under s. 440.49;
- 10 5. An administrative fine assessed by the agency
- 11 division in an amount not to exceed \$5,000 per instance of
- 12 overutilization or violation; and
- 13 6. Notification of and review by the appropriate
- 14 licensing authority pursuant to s. 440.106(3).

15 (9) EXPERT MEDICAL ADVISORS.--

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

30 (b) The agency division shall contract with or employ
31 expert medical advisors to provide peer review or medical

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

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

31 (d) The expert medical advisor must complete his or

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

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

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

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

23 (a) The Agency for Health Care Administration Division
24 ~~of Workers' Compensation of the Department of Labor and~~
25 ~~Employment Security~~ may investigate health care providers to
26 determine whether providers are complying with this chapter
27 and with rules adopted by the agency division, whether the
28 providers are engaging in overutilization, and whether
29 providers are engaging in improper billing practices. If the
30 agency division finds that a health care provider has
31 improperly billed, overutilized, or failed to comply with

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

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

29 (c) The agency division has exclusive jurisdiction to
30 decide any matters concerning reimbursement, to resolve any
31 overutilization dispute under subsection (7), and to decide

1 any question concerning overutilization under subsection (8),
2 which question or dispute arises after January 1, 1994.

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

13 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
14 REIMBURSEMENT ALLOWANCES.--

15 (a) A three-member panel is created, consisting of the
16 Insurance Commissioner, or the Insurance Commissioner's
17 designee, and two members to be appointed by the Governor,
18 subject to confirmation by the Senate, one member who, on
19 account of present or previous vocation, employment, or
20 affiliation, shall be classified as a representative of
21 employers, the other member who, on account of previous
22 vocation, employment, or affiliation, shall be classified as a
23 representative of employees. The panel shall determine
24 statewide schedules of maximum reimbursement allowances for
25 medically necessary treatment, care, and attendance provided
26 by physicians, hospitals, ambulatory surgical centers,
27 work-hardening programs, pain programs, and durable medical
28 equipment. The maximum reimbursement allowances for inpatient
29 hospital care shall be based on a schedule of per diem rates,
30 to be approved by the three-member panel no later than March
31 1, 1994, to be used in conjunction with a precertification

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1 manual as determined by the agency division. All compensable
2 charges for hospital outpatient care shall be reimbursed at 75
3 percent of usual and customary charges. Until the three-member
4 panel approves a schedule of per diem rates for inpatient
5 hospital care and it becomes effective, all compensable
6 charges for hospital inpatient care must be reimbursed at 75
7 percent of their usual and customary charges. Annually, the
8 three-member panel shall adopt schedules of maximum
9 reimbursement allowances for physicians, hospital inpatient
10 care, hospital outpatient care, ambulatory surgical centers,
11 work-hardening programs, and pain programs. However, the
12 maximum percentage of increase in the individual reimbursement
13 allowance may not exceed the percentage of increase in the
14 Consumer Price Index for the previous year. An individual
15 physician, hospital, ambulatory surgical center, pain program,
16 or work-hardening program shall be reimbursed either the usual
17 and customary charge for treatment, care, and attendance, the
18 agreed-upon contract price, or the maximum reimbursement
19 allowance in the appropriate schedule, whichever is less.

20 (b) As to reimbursement for a prescription medication,
21 the reimbursement amount for a prescription shall be the
22 average wholesale price times 1.2 plus \$4.18 for the
23 dispensing fee, except where the carrier has contracted for a
24 lower amount. Fees for pharmaceuticals and pharmaceutical
25 services shall be reimbursable at the applicable fee schedule
26 amount. Where the employer or carrier has contracted for such
27 services and the employee elects to obtain them through a
28 provider not a party to the contract, the carrier shall
29 reimburse at the schedule, negotiated, or contract price,
30 whichever is lower.

31 (c) Reimbursement for all fees and other charges for

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

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

29 2. The impact upon cost to employers for providing a
30 level of reimbursement for treatment, care, and attendance
31 which will ensure the availability of treatment, care, and

1 attendance required by injured workers;

2 3. The financial impact of the reimbursement
3 allowances upon health care providers and health care
4 facilities, including trauma centers as defined in s.
5 395.4001, and its effect upon their ability to make available
6 to injured workers such medically necessary remedial
7 treatment, care, and attendance. The uniform schedule of
8 maximum reimbursement allowances must be reasonable, must
9 promote health care cost containment and efficiency with
10 respect to the workers' compensation health care delivery
11 system, and must be sufficient to ensure availability of such
12 medically necessary remedial treatment, care, and attendance
13 to injured workers; and

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

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

23 (a) Engaged in professional or other misconduct or
24 incompetency in connection with medical services rendered
25 under this chapter;

26 (b) Exceeded the limits of his or her or its
27 professional competence in rendering medical care under this
28 chapter, or to have made materially false statements regarding
29 his or her or its qualifications in his or her application;

30 (c) Failed to transmit copies of medical reports to
31 the employer or carrier, or failed to submit full and truthful

1 medical reports of all his or her or its findings to the
2 employer or carrier as required under this chapter;
3 (d) Solicited, or employed another to solicit for
4 himself or herself or itself or for another, professional
5 treatment, examination, or care of an injured employee in
6 connection with any claim under this chapter;
7 (e) Refused to appear before, or to answer upon
8 request of, the agency ~~division~~ or any duly authorized officer
9 of the state, any legal question, or to produce any relevant
10 book or paper concerning his or her conduct under any
11 authorization granted to him or her under this chapter;
12 (f) Self-referred in violation of this chapter or
13 other laws of this state; or
14 (g) Engaged in a pattern of practice of
15 overutilization or a violation of this chapter or rules
16 adopted by the agency ~~division~~.
17 (15) PRACTICE PARAMETERS.--
18 (a) The Agency for Health Care Administration, in
19 conjunction with the department ~~division~~ and appropriate
20 health professional associations and health-related
21 organizations shall develop and may adopt by rule
22 scientifically sound practice parameters for medical
23 procedures relevant to workers' compensation claimants.
24 Practice parameters developed under this section must focus on
25 identifying effective remedial treatments and promoting the
26 appropriate utilization of health care resources. Priority
27 must be given to those procedures that involve the greatest
28 utilization of resources either because they are the most
29 costly or because they are the most frequently performed.
30 Practice parameters for treatment of the 10 top procedures
31 associated with workers' compensation injuries including the

1 remedial treatment of lower-back injuries must be developed by
2 December 31, 1994.

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

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

16 (d) Practice parameters developed under this section
17 must be used by carriers and the agency ~~division~~ in evaluating
18 the appropriateness and overutilization of medical services
19 provided to injured employees.

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

22 440.134 Workers' compensation managed care
23 arrangement.--

24 (23) The agency shall immediately notify the
25 ~~department of Insurance and the Department of Labor and~~
26 ~~Employment Security~~ whenever it issues an administrative
27 complaint or an order or otherwise initiates legal proceedings
28 resulting in, or which may result in, suspension or revocation
29 of an insurer's authorization.

30 Section 26. Subsections (3) and (4) of section 440.14,
31 Florida Statutes, are amended to read:

1 440.14 Determination of pay.--

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

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

13 Section 27. Paragraphs (d) and (f) of subsection (1),
14 paragraphs (c) and (d) of subsection (2), subsections (3),
15 (4), and (6), and paragraphs (b) and (c) of subsection (10) of
16 section 440.15, Florida Statutes, are amended to read:

17 440.15 Compensation for disability.--Compensation for
18 disability shall be paid to the employee, subject to the
19 limits provided in s. 440.12(2), as follows:

20 (1) PERMANENT TOTAL DISABILITY.--

21 (d) If an employee who is being paid compensation for
22 permanent total disability becomes rehabilitated to the extent
23 that she or he establishes an earning capacity, the employee
24 shall be paid, instead of the compensation provided in
25 paragraph (a), benefits pursuant to subsection (3). The
26 department ~~division~~ shall adopt rules to enable a permanently
27 and totally disabled employee who may have reestablished an
28 earning capacity to undertake a trial period of reemployment
29 without prejudicing her or his return to permanent total
30 status in the case that such employee is unable to sustain an
31 earning capacity.

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

24 2.a. The department ~~division~~ shall provide by rule for
25 the periodic reporting to the department ~~division~~ of all
26 earnings of any nature and social security income by the
27 injured employee entitled to or claiming additional
28 compensation under subparagraph 1. Neither the department
29 ~~division~~ nor the employer or carrier shall make any payment of
30 those additional benefits provided by subparagraph 1. for any
31 period during which the employee willfully fails or refuses to

1 report upon request by the department ~~division~~ in the manner
2 prescribed by such rules.

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

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

20 (2) TEMPORARY TOTAL DISABILITY.--

21 (c) Temporary total disability benefits paid pursuant
22 to this subsection shall include such period as may be
23 reasonably necessary for training in the use of artificial
24 members and appliances, and shall include such period as the
25 employee may be receiving training and education under a
26 program pursuant to s. 440.491. Notwithstanding s. 440.02(9),
27 the date of maximum medical improvement for purposes of
28 paragraph (3)(b) shall be no earlier than the last day for
29 which such temporary disability benefits are paid.

30 (d) The department ~~division~~ shall, by rule, provide
31 for the periodic reporting to the department ~~division~~,

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

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

12 (a) Impairment benefits.--

13 1. Once the employee has reached the date of maximum
14 medical improvement, impairment benefits are due and payable
15 within 20 days after the carrier has knowledge of the
16 impairment.

17 2. The three-member panel, in cooperation with the
18 department ~~division~~, shall establish and use a uniform
19 permanent impairment rating schedule. This schedule must be
20 based on medically or scientifically demonstrable findings as
21 well as the systems and criteria set forth in the American
22 Medical Association's Guides to the Evaluation of Permanent
23 Impairment; the Snellen Charts, published by American Medical
24 Association Committee for Eye Injuries; and the Minnesota
25 Department of Labor and Industry Disability Schedules. The
26 schedule should be based upon objective findings. The schedule
27 shall be more comprehensive than the AMA Guides to the
28 Evaluation of Permanent Impairment and shall expand the areas
29 already addressed and address additional areas not currently
30 contained in the guides. On August 1, 1979, and pending the
31 adoption, by rule, of a permanent schedule, Guides to the

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

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

30 a. The expiration of a period computed at the rate of
31 3 weeks for each percentage point of impairment; or

1 b. The death of the employee.

2 4. After the employee has been certified by a doctor

3 as having reached maximum medical improvement or 6 weeks

4 before the expiration of temporary benefits, whichever occurs

5 earlier, the certifying doctor shall evaluate the condition of

6 the employee and assign an impairment rating, using the

7 impairment schedule referred to in subparagraph 2.

8 Compensation is not payable for the mental, psychological, or

9 emotional injury arising out of depression from being out of

10 work. If the certification and evaluation are performed by a

11 doctor other than the employee's treating doctor, the

12 certification and evaluation must be submitted to the treating

13 doctor, and the treating doctor must indicate agreement or

14 disagreement with the certification and evaluation. The

15 certifying doctor shall issue a written report to the

16 department ~~division~~, the employee, and the carrier certifying

17 that maximum medical improvement has been reached, stating the

18 impairment rating, and providing any other information

19 required by the department by rule ~~division~~. If the employee

20 has not been certified as having reached maximum medical

21 improvement before the expiration of 102 weeks after the date

22 temporary total disability benefits begin to accrue, the

23 carrier shall notify the treating doctor of the requirements

24 of this section.

25 5. The carrier shall pay the employee impairment

26 income benefits for a period based on the impairment rating.

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

28 and procedures governing the method of payment of wage loss

29 and impairment benefits for dates of accidents before January

30 1, 1994, and for dates of accidents on or after January 1,

31 1994.

1 (b) Supplemental benefits.--
2 1. All supplemental benefits must be paid in
3 accordance with this subsection. An employee is entitled to
4 supplemental benefits as provided in this paragraph as of the
5 expiration of the impairment period, if:
6 a. The employee has an impairment rating from the
7 compensable injury of 20 percent or more as determined
8 pursuant to this chapter;
9 b. The employee has not returned to work or has
10 returned to work earning less than 80 percent of the
11 employee's average weekly wage as a direct result of the
12 employee's impairment; and
13 c. The employee has in good faith attempted to obtain
14 employment commensurate with the employee's ability to work.
15 2. If an employee is not entitled to supplemental
16 benefits at the time of payment of the final weekly impairment
17 income benefit because the employee is earning at least 80
18 percent of the employee's average weekly wage, the employee
19 may become entitled to supplemental benefits at any time
20 within 1 year after the impairment income benefit period ends
21 if:
22 a. The employee earns wages that are less than 80
23 percent of the employee's average weekly wage for a period of
24 at least 90 days;
25 b. The employee meets the other requirements of
26 subparagraph 1.; and
27 c. The employee's decrease in earnings is a direct
28 result of the employee's impairment from the compensable
29 injury.
30 3. If an employee earns wages that are at least 80
31 percent of the employee's average weekly wage for a period of

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

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

31 4.5. After the initial determination of supplemental

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

14 ~~5.6.~~ The carrier shall begin payment of supplemental
15 benefits not later than the seventh day after the expiration
16 date of the impairment income benefit period and shall
17 continue to timely pay those benefits. The carrier may request
18 a mediation conference for the purpose of contesting the
19 employee's entitlement to or the amount of supplemental income
20 benefits.

21 ~~6.7.~~ Supplemental benefits are calculated quarterly
22 and paid monthly. For purposes of calculating supplemental
23 benefits, 80 percent of the employee's average weekly wage and
24 the average wages the employee has earned per week are
25 compared quarterly. For purposes of this paragraph, if the
26 employee is offered a bona fide position of employment that
27 the employee is capable of performing, given the physical
28 condition of the employee and the geographic accessibility of
29 the position, the employee's weekly wages are considered
30 equivalent to the weekly wages for the position offered to the
31 employee.

1 ~~7.8.~~ Supplemental benefits are payable at the rate of
 2 80 percent of the difference between 80 percent of the
 3 employee's average weekly wage determined pursuant to s.
 4 440.14 and the weekly wages the employee has earned during the
 5 reporting period, not to exceed the maximum weekly income
 6 benefit under s. 440.12.

7 ~~8.9.~~ The department ~~division~~ may by rule define terms
 8 that are necessary for the administration of this section and
 9 forms and procedures governing the method of payment of
 10 supplemental benefits for dates of accidents before January 1,
 11 1994, and for dates of accidents on or after January 1, 1994.

12 (c) Duration of temporary impairment and supplemental
 13 income benefits.--The employee's eligibility for temporary
 14 benefits, impairment income benefits, and supplemental
 15 benefits terminates on the expiration of 401 weeks after the
 16 date of injury.

17 (4) TEMPORARY PARTIAL DISABILITY.--

18 (a) In case of temporary partial disability,
 19 compensation shall be equal to 80 percent of the difference
 20 between 80 percent of the employee's average weekly wage and
 21 the salary, wages, and other remuneration the employee is able
 22 to earn, as compared weekly; however, the weekly benefits may
 23 not exceed an amount equal to 66 2/3 percent of the
 24 employee's average weekly wage at the time of injury. In order
 25 to simplify the comparison of the preinjury average weekly
 26 wage with the salary, wages, and other remuneration the
 27 employee is able to earn, the department ~~division~~ may by rule
 28 provide for the modification of the weekly comparison so as to
 29 coincide as closely as possible with the injured worker's pay
 30 periods. The amount determined to be the salary, wages, and
 31 other remuneration the employee is able to earn shall in no

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1 case be less than the sum actually being earned by the
2 employee, including earnings from sheltered employment.

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

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

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

30 (b) If the provisions of 42 U.S.C. s. 424(a) are
31 amended to provide for a reduction or increase of the

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

13 (c) No disability compensation benefits payable for
14 any week, including those benefits provided by paragraph
15 (1)(f), shall be reduced pursuant to this subsection until the
16 Social Security Administration determines the amount otherwise
17 payable to the employee under 42 U.S.C. ss. 402 and 423 and
18 the employee has begun receiving such social security benefit
19 payments. The employee shall, upon demand by the department
20 division, the employer, or the carrier, authorize the Social
21 Security Administration to release disability information
22 relating to her or him and authorize the Division of
23 Unemployment Compensation to release unemployment compensation
24 information relating to her or him, in accordance with rules
25 to be adopted promulgated by the department division
26 prescribing the procedure and manner for requesting the
27 authorization and for compliance by the employee. Neither the
28 department division nor the employer or carrier shall make any
29 payment of benefits for total disability or those additional
30 benefits provided by paragraph (1)(f) for any period during
31 which the employee willfully fails or refuses to authorize the

1 release of information in the manner and within the time
2 prescribed by such rules. The authority for release of
3 disability information granted by an employee under this
4 paragraph shall be effective for a period not to exceed 12
5 months, such authority to be renewable as the department
6 ~~division~~ may prescribe by rule.

7 Section 28. Subsections (2), (3), (4), (5), (7), and
8 (10) of section 440.185, Florida Statutes, are amended to
9 read:

10 440.185 Notice of injury or death; reports; penalties
11 for violations.--

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

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

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

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

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

24 (e) Such other information as the department ~~division~~
25 may require.

26

27 The carrier shall, within 14 days after the employer's receipt
28 of the form reporting the injury, file the information
29 required by this subsection with the department ~~division~~ in
30 Tallahassee. However, the department ~~division~~ may by rule
31 provide for a different reporting system for those types of

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1 injuries which it determines should be reported in a different
2 manner and for those cases which involve minor injuries
3 requiring professional medical attention in which the employee
4 does not lose more than 7 days of work as a result of the
5 injury and is able to return to the job immediately after
6 treatment and resume regular work.

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

14 (4) Within 3 days after the employer or the employee
15 informs the carrier of an injury the carrier shall mail to the
16 injured worker an informational brochure approved by the
17 department ~~division~~ which sets forth in clear and
18 understandable language an explanation of the rights,
19 benefits, procedures for obtaining benefits and assistance,
20 criminal penalties, and obligations of injured workers and
21 their employers under the Florida Workers' Compensation Law.
22 Annually, the carrier or its third-party administrator shall
23 mail to the employer an informational brochure approved by the
24 department ~~division~~ which sets forth in clear and
25 understandable language an explanation of the rights,
26 benefits, procedures for obtaining benefits and assistance,
27 criminal penalties, and obligations of injured workers and
28 their employers under the Florida Workers' Compensation Law.
29 All such informational brochures shall contain a notice that
30 clearly states in substance the following: "Any person who,
31 knowingly and with intent to injure, defraud, or deceive any

1 employer or employee, insurance company, or self-insured
2 program, files a statement of claim containing any false or
3 misleading information commits a felony of the third degree."

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

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

30 (10) The department ~~division~~ may by rule prescribe
31 forms and procedures governing the submission of the change in

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1 claims administration report and the risk class code and
2 standard industry code report for all lost time and denied
3 lost-time cases. The department ~~division~~ may by rule define
4 terms that are necessary for the effective administration of
5 this section.

6 Section 29. Subsection (1) and paragraph (d) of
7 subsection (2) of section 440.191, Florida Statutes, are
8 amended to read:

9 440.191 Employee Assistance and Ombudsman Office.--

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

24 (b) An Employee Assistance and Ombudsman Office is
25 created within the department ~~Division of Workers'~~
26 ~~Compensation~~ to inform and assist injured workers, employers,
27 carriers, and health care providers in fulfilling their
28 responsibilities under this chapter. The department ~~division~~
29 may by rule specify forms and procedures for administering
30 requests for assistance provided by this section.

31 (c) The Employee Assistance and Ombudsman Office~~7~~

1 ~~Division of Workers' Compensation~~, shall be a resource
2 available to all employees who participate in the workers'
3 compensation system and shall take all steps necessary to
4 educate and disseminate information to employees and
5 employers.

6 (2)

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

20 Section 30. Subsection (1) of section 440.192, Florida
21 Statutes, is amended to read:

22 440.192 Procedure for resolving benefit disputes.--

23 (1) Subject to s. 440.191, any employee who has not
24 received a benefit to which the employee believes she or he is
25 entitled under this chapter shall file by certified mail, or
26 by electronic means approved by the Deputy Chief Judge, with
27 the Office of the Judges of Compensation Claims a petition for
28 benefits which meets the requirements of this section. The
29 ~~department division~~ shall inform employees of the location of
30 the Office of the Judges of Compensation Claims for purposes
31 of filing a petition for benefits. The employee shall also

1 serve copies of the petition for benefits by certified mail,
2 or by electronic means approved by the Deputy Chief Judge,
3 upon the employer and the employer's carrier. The Deputy Chief
4 Judge shall refer the petitions to the judges of compensation
5 claims.

6 Section 31. Subsections (1), (3), and (4) of section
7 440.1925, Florida Statutes, are amended to read:

8 440.1925 Procedure for resolving maximum medical
9 improvement or permanent impairment disputes.--

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

23 (3) Disputes shall be resolved under this section
24 when:

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

28 (b) The independent medical examiner's opinion on the
29 date of the employee's maximum medical improvement and degree
30 or permanent impairment differs from the opinion of the
31 employee's treating physician on either of those issues, or

1 from the opinion of the expert medical advisor appointed by
2 the agency ~~division~~ on the degree of permanent impairment; or

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

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

11 Section 32. Subsections (3), (6), (8), (9), (10),
12 (11), (12), (15), (16), and (17) of section 440.20, Florida
13 Statutes, are amended to read:

14 440.20 Time for payment of compensation; penalties for
15 late payment.--

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

23 (6) If any installment of compensation for death or
24 dependency benefits, disability, permanent impairment, or wage
25 loss payable without an award is not paid within 7 days after
26 it becomes due, as provided in subsection (2), subsection (3),
27 or subsection (4), there shall be added to such unpaid
28 installment a punitive penalty of an amount equal to 20
29 percent of the unpaid installment or \$5, which shall be paid
30 at the same time as, but in addition to, such installment of
31 compensation, unless notice is filed under subsection (4) or

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

25 (8) In addition to any other penalties provided by
26 this chapter for late payment, if any installment of
27 compensation is not paid when it becomes due, the employer,
28 carrier, or servicing agent shall pay interest thereon at the
29 rate of 12 percent per year from the date the installment
30 becomes due until it is paid, whether such installment is
31 payable without an order or under the terms of an order. The

1 interest payment shall be the greater of the amount of
2 interest due or \$5.

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

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

17 (c) In order to ensure carrier compliance under this
18 chapter and provisions of the Florida Insurance Code, the
19 department division shall monitor the performance of carriers
20 by conducting market conduct examinations, as provided in s.
21 624.3161, and conducting investigations, as provided in s.
22 624.317. The department division shall impose penalties on
23 ~~establish by rule minimum performance standards for carriers~~
24 ~~to ensure that a minimum of 90 percent of all compensation~~
25 ~~benefits are timely paid. The division shall fine a carrier as~~
26 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~
27 ~~of compensation pursuant to s. 624.4211 that is below the~~
28 ~~minimum 90 percent performance standard.~~ This paragraph does
29 not affect the imposition of any penalties or interest due to
30 the claimant. If a carrier contracts with a servicing agent to
31 fulfill its administrative responsibilities under this

1 chapter, the payment practices of the servicing agent are
2 deemed the payment practices of the carrier for the purpose of
3 assessing penalties against the carrier.

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

16 (10) Whenever the department ~~division~~ deems it
17 advisable, it may require any employer to make a deposit with
18 the Treasurer to secure the prompt and convenient payments of
19 such compensation; and payments therefrom upon any awards
20 shall be made upon order of the department ~~division~~ or judge
21 of compensation claims.

22 (11)(a) When a claimant is not represented by counsel,
23 upon joint petition of all interested parties, a lump-sum
24 payment in exchange for the employer's or carrier's release
25 from liability for future medical expenses, as well as future
26 payments of compensation expenses and any other benefits
27 provided under this chapter, shall be allowed at any time in
28 any case in which the employer or carrier has filed a written
29 notice of denial within 120 days after the employer receives
30 notice of the injury, and the judge of compensation claims at
31 a hearing to consider the settlement proposal finds a

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

25 (b) When a claimant is not represented by counsel,
26 upon joint petition of all interested parties, a lump-sum
27 payment in exchange for the employer's or carrier's release
28 from liability for future medical expenses, as well as future
29 payments of compensation and rehabilitation expenses, and any
30 other benefits provided under this chapter, may be allowed at
31 any time in any case after the injured employee has attained

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

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

18 (c) Notwithstanding s. 440.21(2), when a claimant is
19 represented by counsel, the claimant may waive all rights to
20 any and all benefits under this chapter by entering into a
21 settlement agreement releasing the employer and the carrier
22 from liability for workers' compensation benefits in exchange
23 for a lump-sum payment to the claimant. The settlement
24 agreement requires approval by the judge of compensation
25 claims only as to the attorney's fees paid to the claimant's
26 attorney by the claimant. The parties need not submit any
27 information or documentation in support of the settlement,
28 except as needed to justify the amount of the attorney's fees.
29 Neither the employer nor the carrier is responsible for any
30 attorney's fees relating to the settlement and release of
31 claims under this section. Payment of the lump-sum settlement

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1 amount must be made within 14 days after the date the judge of
2 compensation claims mails the order approving the attorney's
3 fees. Any order entered by a judge of compensation claims
4 approving the attorney's fees as set out in the settlement
5 under this subsection is not considered to be an award and is
6 not subject to modification or review. The judge of
7 compensation claims shall report these settlements to the
8 Deputy Chief Judge in accordance with the requirements set
9 forth in paragraphs (a) and (b). Settlements entered into
10 under this subsection are valid and apply to all dates of
11 accident.

12 (d)1. With respect to any lump-sum settlement under
13 this subsection, a judge of compensation claims must consider
14 at the time of the settlement, whether the settlement
15 allocation provides for the appropriate recovery of child
16 support arrearages.

17 2. When reviewing any settlement of lump-sum payment
18 pursuant to this subsection, judges of compensation claims
19 shall consider the interests of the worker and the worker's
20 family when approving the settlement, which must consider and
21 provide for appropriate recovery of past due support.

22 (e) This section applies to all claims that the
23 parties have not previously settled, regardless of the date of
24 accident.

25 (12)(a) Liability of an employer for future payments
26 of compensation may not be discharged by advance payment
27 unless prior approval of a judge of compensation claims or the
28 department division has been obtained as hereinafter provided.
29 The approval shall not constitute an adjudication of the
30 claimant's percentage of disability.

31 (b) When the claimant has reached maximum recovery and

1 returned to her or his former or equivalent employment with no
2 substantial reduction in wages, such approval of a reasonable
3 advance payment of a part of the compensation payable to the
4 claimant may be given informally by letter by a judge of
5 compensation claims or, by the department ~~division~~ ~~director~~,
6 ~~or by the administrator of claims of the division.~~

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

11 1. An advance payment of compensation not in excess of
12 \$2,000 may be approved informally by letter, without hearing,
13 by any judge of compensation claims or the Chief Judge.

14 2. An advance payment of compensation not in excess of
15 \$2,000 may be ordered by any judge of compensation claims
16 after giving the interested parties an opportunity for a
17 hearing thereon pursuant to not less than 10 days' notice by
18 mail, unless such notice is waived, and after giving due
19 consideration to the interests of the person entitled thereto.
20 When the parties have stipulated to an advance payment of
21 compensation not in excess of \$2,000, such advance may be
22 approved by an order of a judge of compensation claims, with
23 or without hearing, or informally by letter by any such judge
24 of compensation claims, or by the department ~~division~~
25 ~~director~~, if such advance is found to be for the best
26 interests of the person entitled thereto.

27 3. When the parties have stipulated to an advance
28 payment in excess of \$2,000, subject to the approval of the
29 department ~~division~~, such payment may be approved by a judge
30 of compensation claims by order if the judge finds that such
31 advance payment is for the best interests of the person

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1 entitled thereto and is reasonable under the circumstances of
2 the particular case. The judge of compensation claims shall
3 make or cause to be made such investigations as she or he
4 considers necessary concerning the stipulation and, in her or
5 his discretion, may have an investigation of the matter made
6 by the Department of Education Rehabilitation Section of the
7 ~~division~~. The stipulation and the report of any investigation
8 shall be deemed a part of the record of the proceedings.

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

28 (15)(a) The department division shall examine on an
29 ongoing basis claims files in accordance with ss. 624.3161 and
30 624.310(5) and this chapter in order to identify questionable
31 claims-handling techniques, questionable patterns or practices

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

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

- 27 1. May administer oaths, examine and cross-examine
 28 witnesses, receive oral and documentary evidence; and
- 29 2. Shall have the power to subpoena witnesses, compel
 30 their attendance and testimony, and require by subpoena the
 31 production of books, papers, records, files, correspondence,

1 documents, or other evidence which is relevant to the inquiry.

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

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

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

28 (f) The department ~~division~~ shall promulgate rules
29 providing guidelines to carriers, as defined in s. 440.02,
30 self-insurers, and employers to indicate behavior that may be
31 construed as questionable claims-handling techniques,

1 questionable patterns of claims, repeated unreasonably
2 controverted claims, or poor payment practices.

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

9 (17) The department ~~division~~ may by rule establish
10 audit procedures and set standards for the Automated Carrier
11 Performance System.

12 Section 33. Subsections (1) and (2) of section
13 440.207, Florida Statutes, are amended to read:

14 440.207 Workers' compensation system guide.--

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

20 (2) The department ~~division~~ shall publish an
21 understandable guide to the workers' compensation system which
22 shall contain an explanation of benefits provided; services
23 provided by the Employee Assistance and Ombudsman Office;
24 procedures regarding mediation, the hearing process, and civil
25 and criminal penalties; relevant rules of the department
26 ~~division~~; and such other information as the department
27 ~~division~~ believes will inform employees, employers, carriers,
28 and those providing services pursuant to this chapter of their
29 rights and responsibilities under this chapter and the rules
30 of the department ~~division~~. For the purposes of this
31 subsection, a guide is understandable if the text of the guide

1 is written at a level of readability not exceeding the eighth
2 grade level, as determined by a recognized readability test.

3 Section 34. Subsection (1) of section 440.211, Florida
4 Statutes, is amended to read:

5 440.211 Authorization of collective bargaining
6 agreement.--

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

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

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

22 (c) The use of a limited list of physicians to conduct
23 independent medical examinations which the parties may agree
24 shall be the exclusive source of independent medical examiners
25 pursuant to this chapter.

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

28 (e) A vocational rehabilitation or retraining program.

29 Section 35. Subsections (1), (2), and (3) of section
30 440.24, Florida Statutes, are amended to read:

31 440.24 Enforcement of compensation orders;

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1 penalties.--

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

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

26 (3) In any case where the employer is a self-insurer
27 and fails to comply with any compensation order of a judge of
28 compensation claims or court within 10 days after such order
29 becomes final, the department division may suspend or revoke
30 any authorization previously given to the employer to become a
31 self-insurer, and the department division may sell such of the

1 securities deposited by such self-insurer with the department
2 ~~division~~ as may be necessary to satisfy such order.

3 Section 36. Subsections (5) and (7) of section 440.25,
4 Florida Statutes, are amended to read:

5 440.25 Procedures for mediation and hearings.--

6 (5)(a) Procedures with respect to appeals from orders
7 of judges of compensation claims shall be governed by rules
8 adopted by the Supreme Court. Such an order shall become final
9 30 days after mailing of copies of such order to the parties,
10 unless appealed pursuant to such rules.

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

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

29 (c) As a condition of filing a notice of appeal to the
30 District Court of Appeal, First District, an employer who has
31 not secured the payment of compensation under this chapter in

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1 compliance with s. 440.38 shall file with the notice of appeal
2 a good and sufficient bond, as provided in s. 59.13,
3 conditioned to pay the amount of the demand and any interest
4 and costs payable under the terms of the order if the appeal
5 is dismissed, or if the District Court of Appeal, First
6 District, affirms the award in any amount. Upon the failure of
7 such employer to file such bond with the judge of compensation
8 claims or the District Court of Appeal, First District, along
9 with the notice of appeal, the District Court of Appeal, First
10 District, shall dismiss the notice of appeal.

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

28 Section 37. Section 440.271, Florida Statutes, is
29 amended to read:

30 440.271 Appeal of order of judge of compensation
31 claims.--Review of any order of a judge of compensation claims

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1 entered pursuant to this chapter shall be by appeal to the
2 District Court of Appeal, First District. Appeals shall be
3 filed in accordance with rules of procedure prescribed by the
4 Supreme Court for review of such orders. The department
5 ~~division~~ shall be given notice of any proceedings pertaining
6 to s. 440.25, regarding indigency, or s. 440.49, regarding the
7 Special Disability Trust Fund, and shall have the right to
8 intervene in any proceedings.

9 Section 38. Section 440.345, Florida Statutes, is
10 amended to read:

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

18 Section 39. Section 440.35, Florida Statutes, is
19 amended to read:

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

28 Section 40. Subsections (1), (2), and (3) of section
29 440.38, Florida Statutes, are amended to read:

30 440.38 Security for compensation; insurance carriers
31 and self-insurers.--

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

3 (a) By insuring and keeping insured the payment of
4 such compensation with any stock company or mutual company or
5 association or exchange, authorized to do business in the
6 state;

7 (b) By furnishing satisfactory proof to the department
8 ~~division~~ of its financial ability to pay such compensation
9 individually and on behalf of its subsidiary and affiliated
10 companies with employees in this state and receiving an
11 authorization from the department ~~division~~ to pay such
12 compensation directly in accordance with the following
13 provisions:

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

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1 Self-Insurers Guaranty Association, Incorporated, created
2 pursuant to s. 440.385. Any employer securing compensation in
3 accordance with the provisions of this paragraph shall be
4 known as a self-insurer and shall be classed as a carrier of
5 her or his own insurance.

6 2. If the employer fails to maintain the foregoing
7 requirements, the department ~~division~~ shall revoke the
8 employer's authority to self-insure, unless the employer
9 provides to the department ~~division~~ the certified opinion of
10 an independent actuary who is a member of the American Academy
11 ~~Society~~ of Actuaries as to the actuarial present value of the
12 employer's determined and estimated future compensation
13 payments based on cash reserves, using a 4-percent discount
14 rate, and a qualifying security deposit equal to 1.5 times the
15 value so certified. The employer shall thereafter annually
16 provide such a certified opinion until such time as the
17 employer meets the requirements of subparagraph 1. The
18 qualifying security deposit shall be adjusted at the time of
19 each such annual report. Upon the failure of the employer to
20 timely provide such opinion or to timely provide a security
21 deposit in an amount equal to 1.5 times the value certified in
22 the latest opinion, the department ~~division~~ shall then revoke
23 such employer's authorization to self-insure, and such failure
24 shall be deemed to constitute an immediate serious danger to
25 the public health, safety, or welfare sufficient to justify
26 the summary suspension of the employer's authorization to
27 self-insure pursuant to s. 120.68.

28 3. Upon the suspension or revocation of the employer's
29 authorization to self-insure, the employer shall provide to
30 the department ~~division~~ and to the Florida Self-Insurers
31 Guaranty Association, Incorporated, created pursuant to s.

1 440.385 the certified opinion of an independent actuary who is
2 a member of the American Academy ~~Society~~ of Actuaries of the
3 actuarial present value of the determined and estimated future
4 compensation payments of the employer for claims incurred
5 while the member exercised the privilege of self-insurance,
6 using a discount rate of 4 percent. The employer shall provide
7 such an opinion at 6-month intervals thereafter until such
8 time as the latest opinion shows no remaining value of claims.
9 With each such opinion, the employer shall deposit with the
10 department ~~division~~ a qualifying security deposit in an amount
11 equal to the value certified by the actuary. The association
12 has a cause of action against an employer, and against any
13 successor of the employer, who fails to timely provide such
14 opinion or who fails to timely maintain the required security
15 deposit with the department ~~division~~. The association shall
16 recover a judgment in the amount of the actuarial present
17 value of the determined and estimated future compensation
18 payments of the employer for claims incurred while the
19 employer exercised the privilege of self-insurance, together
20 with attorney's fees. For purposes of this section, the
21 successor of an employer means any person, business entity, or
22 group of persons or business entities, which holds or acquires
23 legal or beneficial title to the majority of the assets or the
24 majority of the shares of the employer.

25 4. A qualifying security deposit shall consist, at the
26 option of the employer, of:

27 a. Surety bonds, in a form and containing such terms
28 as prescribed by the department ~~division~~, issued by a
29 corporation surety authorized to transact surety business by
30 the Department of Insurance, and whose policyholders' and
31 financial ratings, as reported in A.M. Best's Insurance

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1 Reports, Property-Liability, are not less than "A" and "V",
2 respectively.

3 b. Irrevocable letters of credit in favor of the
4 department ~~division~~ issued by financial institutions located
5 within this state, the deposits of which are insured through
6 the Federal Deposit Insurance Corporation.

7 5. The qualifying security deposit shall be held by
8 the department ~~division~~ exclusively for the benefit of
9 workers' compensation claimants. The security shall not be
10 subject to assignment, execution, attachment, or any legal
11 process whatsoever, except as necessary to guarantee the
12 payment of compensation under this chapter. No surety bond
13 may be terminated, and no letter of credit may be allowed to
14 expire, without 90 days' prior notice to the department
15 ~~division~~ and deposit by the self-insuring employer of some
16 other qualifying security deposit of equal value within 10
17 business days after such notice. Failure to provide such
18 notice or failure to timely provide qualifying replacement
19 security after such notice shall constitute grounds for the
20 department ~~division~~ to call or sue upon the surety bond or to
21 exercise its rights under a letter of credit. Current
22 self-insured employers must comply with this section on or
23 before December 31, 2001, or upon the maturity of existing
24 security deposits, whichever occurs later. The department
25 ~~division~~ may specify by rule the amount of the qualifying
26 security deposit required prior to authorizing an employer to
27 self-insure and the amount of net worth required for an
28 employer to qualify for authorization to self-insure;

29 (c) By entering into a contract with a public utility
30 under an approved utility-provided self-insurance program as
31 set forth in s. 624.46225 in effect as of July 1, 1983. The

1 ~~department division~~ shall adopt rules to implement this
2 paragraph;

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

6 (e) In accordance with s. 440.135, an employer, other
7 than a local government unit, may elect coverage under the
8 Workers' Compensation Law and retain the benefit of the
9 exclusiveness of liability provided in s. 440.11 by obtaining
10 a 24-hour health insurance policy from an authorized property
11 and casualty insurance carrier or an authorized life and
12 health insurance carrier, or by participating in a fully or
13 partially self-insured 24-hour health plan that is established
14 or maintained by or for two or more employers, so long as the
15 law of this state is not preempted by the Employee Retirement
16 Income Security Act of 1974, Pub. L. No. 93-406, or any
17 amendment to that law, which policy or plan must provide, for
18 at least occupational injuries and illnesses, medical benefits
19 that are comparable to those required by this chapter. A local
20 government unit, as a single employer, in accordance with s.
21 440.135, may participate in the 24-hour health insurance
22 coverage plan referenced in this paragraph. Disputes and
23 remedies arising under policies issued under this section are
24 governed by the terms and conditions of the policies and under
25 the applicable provisions of the Florida Insurance Code and
26 rules adopted under the insurance code and other applicable
27 laws of this state. The 24-hour health insurance policy may
28 provide for health care by a health maintenance organization
29 or a preferred provider organization. The premium for such
30 24-hour health insurance policy shall be paid entirely by the
31 employer. The 24-hour health insurance policy may use

1 deductibles and coinsurance provisions that require the
2 employee to pay a portion of the actual medical care received
3 by the employee. If an employer obtains a 24-hour health
4 insurance policy or self-insured plan to secure payment of
5 compensation as to medical benefits, the employer must also
6 obtain an insurance policy or policies that provide indemnity
7 benefits as follows:

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

11 2. If indemnity benefits are provided for both
12 occupational-related and nonoccupational-related disability,
13 such benefits must be comparable to those required by this
14 chapter, except that they must be based on 60 percent of the
15 average weekly wages.

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

18 4. Policies providing coverage under this subsection
19 must use prescribed and acceptable underwriting standards,
20 forms, and policies approved by the Department of Insurance.
21 If any insurance policy that provides coverage under this
22 section is canceled, terminated, or nonrenewed for any reason,
23 the cancellation, termination, or nonrenewal is ineffective
24 until the self-insured employer or insurance carrier or
25 carriers notify the division and the Department of Insurance
26 of the cancellation, termination, or nonrenewal, and until the
27 department ~~division~~ has actually received the notification.
28 The division must be notified of replacement coverage under a
29 workers' compensation and employer's liability insurance
30 policy or plan by the employer prior to the effective date of
31 the cancellation, termination, or nonrenewal; or

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1 (f) By entering into a contract with an individual
2 self-insurer under an approved individual
3 self-insurer-provided self-insurance program as set forth in
4 s. 624.46225. The department ~~division~~ may adopt rules to
5 administer this subsection.

6 (2)(a) The department ~~division~~ shall adopt rules by
7 which businesses may become qualified to provide underwriting
8 claims-adjusting, loss control, and safety engineering
9 services to self-insurers.

10 (b) The department ~~division~~ shall adopt rules
11 requiring self-insurers to file any reports necessary to
12 fulfill the requirements of this chapter. Any self-insurer
13 who fails to file any report as prescribed by the rules
14 adopted by the department ~~division~~ shall be subject to a civil
15 penalty not to exceed \$100 for each such failure.

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

22 (b) The department ~~division~~ shall suspend or revoke
23 any authorization to a self-insurer for good cause, as defined
24 by rule of the department ~~division~~. No suspension or
25 revocation shall affect the liability of any self-insurer
26 already incurred.

27 (c) Violation of s. 440.381 by a self-insurance fund
28 shall result in the imposition of a fine not to exceed \$1,000
29 per audit if the self-insurance fund fails to act on said
30 audits by correcting errors in employee classification or
31 accepted applications for coverage where it knew employee

1 classifications were incorrect. Such fines shall be levied by
2 the department ~~division~~ and deposited into the Workers'
3 Compensation Administration Trust Fund.

4 Section 41. Subsections (3) and (7) of section
5 440.381, Florida Statutes, are amended to read:

6 440.381 Application for coverage; reporting payroll;
7 payroll audit procedures; penalties.--

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

31 (7) If an employee suffering a compensable injury was

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1 not reported as earning wages on the last quarterly earnings
2 report filed with the Division of Unemployment Compensation
3 before the accident, the employer shall indemnify the carrier
4 for all workers' compensation benefits paid to or on behalf of
5 the employee unless the employer establishes that the employee
6 was hired after the filing of the quarterly report, in which
7 case the employer and employee shall attest to the fact that
8 the employee was employed by the employer at the time of the
9 injury. ~~It shall be the responsibility of the Division of
10 Workers' Compensation to collect all necessary data so as to
11 enable it to notify the carrier of the name of an injured
12 worker who was not reported as earning wages on the last
13 quarterly earnings report. The division is hereby authorized
14 to release such records to the carrier which will enable the
15 carrier to seek reimbursement as provided under this
16 subsection.~~ Failure of the employer to indemnify the insurer
17 within 21 days after demand by the insurer shall constitute
18 grounds for the insurer to immediately cancel coverage. Any
19 action for indemnification brought by the carrier shall be
20 cognizable in the circuit court having jurisdiction where the
21 employer or carrier resides or transacts business. The
22 insurer shall be entitled to a reasonable attorney's fee if it
23 recovers any portion of the benefits paid in such action.

24 Section 42. Subsections (1), (2), (3), (4), (5), (6),
25 (8), (9), and (10) of section 440.385, Florida Statutes, are
26 amended to read:

27 440.385 Florida Self-Insurers Guaranty Association,
28 Incorporated.--

29 (1) CREATION OF ASSOCIATION.--

30 (a) There is created a nonprofit corporation to be
31 known as the "Florida Self-Insurers Guaranty Association,

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1 Incorporated," hereinafter referred to as "the association."
2 Upon incorporation of the association, all individual
3 self-insurers as defined in ss. 440.02(23)(a) and
4 440.38(1)(b), other than individual self-insurers which are
5 public utilities or governmental entities, shall be members of
6 the association as a condition of their authority to
7 individually self-insure in this state. The association shall
8 perform its functions under a plan of operation as established
9 and approved under subsection (5) and shall exercise its
10 powers and duties through a board of directors as established
11 under subsection (2). The corporation shall have those powers
12 granted or permitted corporations not for profit, as provided
13 in chapter 617.

14 (b) A member may voluntarily withdraw from the
15 association when the member voluntarily terminates the
16 self-insurance privilege and pays all assessments due to the
17 date of such termination. However, the withdrawing member
18 shall continue to be bound by the provisions of this section
19 relating to the period of his or her membership and any claims
20 charged pursuant thereto. The withdrawing member who is a
21 member on or after January 1, 1991, shall also be required to
22 provide to the department ~~division~~ upon withdrawal, and at
23 12-month intervals thereafter, satisfactory proof that it
24 continues to meet the standards of s. 440.38(1)(b)1. in
25 relation to claims incurred while the withdrawing member
26 exercised the privilege of self-insurance. Such reporting
27 shall continue until the withdrawing member satisfies the
28 department ~~division~~ that there is no remaining value to claims
29 incurred while the withdrawing member was self-insured. If
30 during this reporting period the withdrawing member fails to
31 meet the standards of s. 440.38(1)(b)1., the withdrawing

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

30 (2) BOARD OF DIRECTORS.--The board of directors of the
31 association shall consist of nine persons and shall be

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1 organized as established in the plan of operation. With
2 ~~respect to initial appointments, the Secretary of Labor and~~
3 ~~Employment Security shall, by July 15, 1982, approve and~~
4 ~~appoint to the board persons who are experienced with~~
5 ~~self-insurance in this state and who are recommended by the~~
6 ~~individual self-insurers in this state required to become~~
7 ~~members of the association pursuant to the provisions of~~
8 ~~paragraph (1)(a). In the event the secretary finds that any~~
9 ~~person so recommended does not have the necessary~~
10 ~~qualifications for service on the board and a majority of the~~
11 ~~board has been appointed, the secretary shall request the~~
12 ~~directors thus far approved and appointed to recommend another~~
13 ~~person for appointment to the board. Each director shall~~
14 ~~serve for a 4-year term and may be reappointed. Appointments~~
15 ~~after June 30, 2002, other than initial appointments shall be~~
16 ~~made by the Insurance Commissioner ~~Secretary of Labor and~~~~
17 ~~Employment Security upon recommendation of members of the~~
18 ~~association. Any vacancy on the board shall be filled for the~~
19 ~~remaining period of the term in the same manner as~~
20 ~~appointments other than initial appointments are made. Each~~
21 ~~director shall be reimbursed for expenses incurred in carrying~~
22 ~~out the duties of the board on behalf of the association.~~

23 (3) POWERS AND DUTIES.--

24 (a) Upon creation of the Insolvency Fund pursuant to
25 the provisions of subsection (4), the association is obligated
26 for payment of compensation under this chapter to insolvent
27 members' employees resulting from incidents and injuries
28 existing prior to the member becoming an insolvent member and
29 from incidents and injuries occurring within 30 days after the
30 member has become an insolvent member, provided the incidents
31 giving rise to claims for compensation under this chapter

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

17 (b) The association may:

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

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

22 3. Sue or be sued.

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

25 5. Purchase such reinsurance as is determined
26 necessary pursuant to the plan of operation.

27 6. Review all applicants for membership in the
28 association. Prior to a final determination by the department
29 ~~Division of Workers' Compensation~~ as to whether or not to
30 approve any applicant for membership in the association, the
31 association may issue opinions to the department ~~division~~

1 concerning any applicant, which opinions shall be considered
2 by the department ~~division~~ prior to any final determination.

3 7. Charge fees to any member of the association to
4 cover the actual costs of examining the financial and safety
5 conditions of that member.

6 8. Charge an applicant for membership in the
7 association a fee sufficient to cover the actual costs of
8 examining the financial condition of the applicant.

9 (c)1. To the extent necessary to secure funds for the
10 payment of covered claims and also to pay the reasonable costs
11 to administer them, the department ~~of Labor and Employment~~
12 ~~Security~~, upon certification of the board of directors, shall
13 levy assessments based on the annual normal premium each
14 employer would have paid had the employer not been
15 self-insured. Every assessment shall be made as a uniform
16 percentage of the figure applicable to all individual
17 self-insurers, provided that the assessment levied against any
18 self-insurer in any one year shall not exceed 1 percent of the
19 annual normal premium during the calendar year preceding the
20 date of the assessment. Assessments shall be remitted to and
21 administered by the board of directors in the manner specified
22 by the approved plan. Each employer so assessed shall have at
23 least 30 days' written notice as to the date the assessment is
24 due and payable. The association shall levy assessments
25 against any newly admitted member of the association so that
26 the basis of contribution of any newly admitted member is the
27 same as previously admitted members, provision for which shall
28 be contained in the plan of operation.

29 2. If, in any one year, funds available from such
30 assessments, together with funds previously raised, are not
31 sufficient to make all the payments or reimbursements then

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1 owing, the funds available shall be prorated, and the unpaid
2 portion shall be paid as soon thereafter as sufficient
3 additional funds become available.

4 3. No state funds of any kind shall be allocated or
5 paid to the association or any of its accounts except those
6 state funds accruing to the association by and through the
7 assignment of rights of an insolvent employer.

8 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
9 operation or the adoption of rules by the department of ~~Labor~~
10 ~~and Employment Security~~ pursuant to subsection (5), there
11 shall be created an Insolvency Fund to be managed by the
12 association.

13 (a) The Insolvency Fund is created for purposes of
14 meeting the obligations of insolvent members incurred while
15 members of the association and after the exhaustion of any
16 bond, as required under this chapter. However, if such bond,
17 surety, or reinsurance policy is payable to the Florida
18 Self-Insurers Guaranty Association, the association shall
19 commence to provide benefits out of the Insolvency Fund and be
20 reimbursed from the bond, surety, or reinsurance policy. The
21 method of operation of the Insolvency Fund shall be defined in
22 the plan of operation as provided in subsection (5).

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

25 (c) The department may offer certain amendments to the
26 plan of operation to the board of directors of the association
27 for purposes of assuring the ongoing financial soundness of
28 the Insolvency Fund and its ability to meet the obligations of
29 this section.

30 (d) The department actuary may make certain
31 recommendations to improve the orderly payment of claims.

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1 (5) PLAN OF OPERATION.--The association shall operate
2 pursuant to a plan of operation approved by the board of
3 directors. The plan of operation in effect on June 30, 2002,
4 and approved by the Department of Labor and Employment
5 Security shall remain in effect until it is subsequently
6 revised by amendments approved by the Department of Insurance.
7 ~~By September 15, 1982, the board of directors shall submit to~~
8 ~~the Department of Labor and Employment Security a proposed~~
9 ~~plan of operation for the administration of the association~~
10 ~~and the Insolvency Fund.~~

11 (a) The purpose of the plan of operation shall be to
12 provide the association and the board of directors with the
13 authority and responsibility to establish the necessary
14 programs and to take the necessary actions to protect against
15 the insolvency of a member of the association. In addition,
16 the plan shall provide that the members of the association
17 shall be responsible for maintaining an adequate Insolvency
18 Fund to meet the obligations of insolvent members provided for
19 under this act and shall authorize the board of directors to
20 contract and employ those persons with the necessary expertise
21 to carry out this stated purpose.

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

31 (b)(c) All member employers shall comply with the plan

1 of operation.

2 (c)~~(d)~~ The plan of operation shall:

3 1. Establish the procedures whereby all the powers and
4 duties of the association under subsection (3) will be
5 performed.

6 2. Establish procedures for handling assets of the
7 association.

8 3. Establish the amount and method of reimbursing
9 members of the board of directors under subsection (2).

10 4. Establish procedures by which claims may be filed
11 with the association and establish acceptable forms of proof
12 of covered claims. Notice of claims to the receiver or
13 liquidator of the insolvent employer shall be deemed notice to
14 the association or its agent, and a list of such claims shall
15 be submitted periodically to the association or similar
16 organization in another state by the receiver or liquidator.

17 5. Establish regular places and times for meetings of
18 the board of directors.

19 6. Establish procedures for records to be kept of all
20 financial transactions of the association and its agents and
21 the board of directors.

22 7. Provide that any member employer aggrieved by any
23 final action or decision of the association may appeal to the
24 department within 30 days after the action or decision.

25 8. Establish the procedures whereby recommendations of
26 candidates for the board of directors shall be submitted to
27 the department.

28 9. Contain additional provisions necessary or proper
29 for the execution of the powers and duties of the association.

30 (d)~~(e)~~ The plan of operation may provide that any or
31 all of the powers and duties of the association, except those

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

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

16 (a) The department shall:

17 1. Notify the association of the existence of an
18 insolvent employer not later than 3 days after it receives
19 notice of the determination of insolvency.

20 2. Upon request of the board of directors, provide the
21 association with a statement of the annual normal premiums of
22 each member employer.

23 (b) The department may:

24 1. Require that the association notify the member
25 employers and any other interested parties of the
26 determination of insolvency and of their rights under this
27 section. Such notification shall be by mail at the last known
28 address thereof when available; but, if sufficient information
29 for notification by mail is not available, notice by
30 publication in a newspaper of general circulation shall be
31 sufficient.

1 2. Suspend or revoke the authority of any member
2 employer failing to pay an assessment when due or failing to
3 comply with the plan of operation to self-insure in this
4 state. As an alternative, the department may levy a fine on
5 any member employer failing to pay an assessment when due.
6 Such fine shall not exceed 5 percent of the unpaid assessment
7 per month, except that no fine shall be less than \$100 per
8 month.

9 3. Revoke the designation of any servicing facility if
10 the department finds that claims are being handled
11 unsatisfactorily.

12 (8) PREVENTION OF INSOLVENCIES.--To aid in the
13 detection and prevention of employer insolvencies:

14 (a) Upon determination by majority vote that any
15 member employer may be insolvent or in a financial condition
16 hazardous to the employees thereof or to the public, it shall
17 be the duty of the board of directors to notify the department
18 ~~of Labor and Employment Security~~ of any information indicating
19 such condition.

20 (b) The board of directors may, upon majority vote,
21 request that the department determine the condition of any
22 member employer which the board in good faith believes may no
23 longer be qualified to be a member of the association. Within
24 30 days of the receipt of such request or, for good cause
25 shown, within a reasonable time thereafter, the department
26 shall make such determination and shall forthwith advise the
27 board of its findings. Each request for a determination shall
28 be kept on file by the department, but the request shall not
29 be open to public inspection prior to the release of the
30 determination to the public.

31 (c) It shall also be the duty of the department to

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1 report to the board of directors when it has reasonable cause
2 to believe that a member employer may be in such a financial
3 condition as to be no longer qualified to be a member of the
4 association.

5 (d) The board of directors may, upon majority vote,
6 make reports and recommendations to the department upon any
7 matter which is germane to the solvency, liquidation,
8 rehabilitation, or conservation of any member employer. Such
9 reports and recommendations shall not be considered public
10 documents.

11 (e) The board of directors may, upon majority vote,
12 make recommendations to the department for the detection and
13 prevention of employer insolvencies.

14 (f) The board of directors shall, at the conclusion of
15 any member's insolvency in which the association was obligated
16 to pay covered claims, prepare a report on the history and
17 cause of such insolvency, based on the information available
18 to the association, and shall submit such report to the
19 department.

20 (9) EXAMINATION OF THE ASSOCIATION.--The association
21 shall be subject to examination and regulation by the
22 department ~~of Labor and Employment Security~~. No later than
23 March 30 of each year, the board of directors shall submit a
24 financial report for the preceding calendar year in a form
25 approved by the department.

26 (10) IMMUNITY.--There shall be no liability on the
27 part of, and no cause of action of any nature shall arise
28 against, any member employer, the association or its agents or
29 employees, the board of directors, or the department ~~of Labor~~
30 ~~and Employment Security~~ or its representatives for any action
31 taken by them in the performance of their powers and duties

1 under this section.

2 Section 43. Section 440.40, Florida Statutes, is
3 amended to read:

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

17 Section 44. Section 440.41, Florida Statutes, is
18 amended to read:

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

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

1 the carrier.

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

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

10 Section 45. Subsection (3) of section 440.42, Florida
11 Statutes, is amended to read:

12 440.42 Insurance policies; liability.--

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

1 Section 46. Section 440.44, Florida Statutes, is
2 amended to read:

3 440.44 Workers' compensation; staff organization.--

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

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

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

31 (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL

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1 ADMINISTRATION.--Subject to the other provisions of this
2 chapter, the division is authorized to appoint, and prescribe
3 the duties and powers of, bureau chiefs, attorneys,
4 accountants, medical advisers, technical assistants,
5 inspectors, claims examiners, and such other employees as may
6 be necessary in the performance of their ~~its~~ duties under this
7 chapter.

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

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

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

1 obsolete records of the Office of the Judges of Compensation
2 Claims.

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

11 Section 47. Subsection (1) of section 440.45, Florida
12 Statutes, is amended to read:

13 440.45 Office of the Judges of Compensation Claims.--

14 (1)(a) There is created the Office of the Judges of
15 Compensation Claims within the Department of Management
16 Services. The Office of the Judges of Compensation Claims
17 shall be headed by the Deputy Chief Judge of Compensation
18 Claims. The Deputy Chief Judge shall report to the director of
19 the Division of Administrative Hearings. The Deputy Chief
20 Judge shall be appointed by the Governor for a term of 4 years
21 from a list of three names submitted by the statewide
22 nominating commission created under subsection (2). The Deputy
23 Chief Judge must demonstrate prior administrative experience
24 and possess the same qualifications for appointment as a judge
25 of compensation claims, and the procedure for reappointment of
26 the Deputy Chief Judge will be the same as for reappointment
27 of a judge of compensation claims. The office shall be a
28 separate budget entity and the director of the Division of
29 Administrative Hearings shall be its agency head for all
30 purposes, including, but not limited to, rulemaking and
31 establishing agency policies and procedures. The Department

1 of Management Services shall provide administrative support
 2 and service to the office to the extent requested by the
 3 director of the Division of Administrative Hearings but shall
 4 not direct, supervise, or control the Office of the Judges of
 5 Compensation Claims in any manner, including, but not limited
 6 to, personnel, purchasing, budgetary matters, or property
 7 transactions. The operating budget of the Office of the Judges
 8 of Compensation Claims shall be paid out of the Workers'
 9 Compensation Administration Trust Fund established in s.
 10 440.50.

11 (b) The current term of the Chief Judge of
 12 Compensation Claims shall expire October 1, 2001. Effective
 13 October 1, 2001, the position of Deputy Chief Judge of
 14 Compensation Claims is created.

15 Section 48. Subsections (1), (2), (7), (8), (9), (10),
 16 and (11) of section 440.49, Florida Statutes, are amended to
 17 read:

18 440.49 Limitation of liability for subsequent injury
 19 through Special Disability Trust Fund.--

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

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

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

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

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

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

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

28 2. The permanent disability or permanent impairment
29 resulting from the subsequent accident or occupational disease
30 is materially and substantially greater than that which would
31 have resulted had the permanent physical impairment not

1 existed, and the employer has been required to pay, and has
2 paid, permanent total disability or permanent impairment
3 benefits for that materially and substantially greater
4 disability;

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

13 4. Death would not have been accelerated if the
14 permanent physical impairment had not existed.

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

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

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

29 (7) REIMBURSEMENT OF EMPLOYER.--

30 (a) The right to reimbursement as provided in this
31 section is barred unless written notice of claim of the right

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

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

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

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1 reimbursement. This paragraph shall apply to all claims
2 notwithstanding the provisions of subsection (12).

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

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

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

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

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

29 (8) PREFERRED WORKER PROGRAM.--The Department of
30 Education division or administrator shall issue identity cards
31 to preferred workers upon request by qualified employees and

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

13 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

22 b. Two times the disbursements of the most recent
23 calendar year.

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

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

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

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

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

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

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

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

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

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

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

26 Section 49. Paragraphs (b) through (h) of subsection
27 (1) of section 440.491, Florida Statutes, are redesignated as
28 paragraphs (c) through (i), respectively, a new paragraph (b)
29 is added to said subsection, and paragraph (c) of subsection
30 (1), paragraph (a) of subsection (3), paragraph (b) of
31 subsection (4), paragraphs (b) and (c) of subsection (5), and

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

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

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

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

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

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

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

28 (4) REEMPLOYMENT ASSESSMENTS.--

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

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

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

6 (b) If the rehabilitation provider concludes that
7 training and education are necessary to return the employee to
8 suitable gainful employment, or if the employee has not
9 returned to suitable gainful employment within 180 days after
10 referral for reemployment services or receives \$2,500 in
11 reemployment services, whichever comes first, the carrier must
12 discontinue reemployment services and refer the employee to
13 the department ~~division~~ for a vocational evaluation.
14 Notwithstanding any provision of chapter 289 or chapter 627,
15 the cost of a reemployment assessment and the first \$2,500 in
16 reemployment services to an injured employee must not be
17 treated as loss adjustment expense for workers' compensation
18 ratemaking purposes.

19 (c) A carrier may voluntarily provide medical care
20 coordination or reemployment services to the employee at
21 intervals more frequent than those required in this section.
22 For the purpose of monitoring reemployment, the carrier or the
23 rehabilitation provider shall report to the department
24 ~~division~~, in the manner prescribed by the department ~~division~~,
25 the date of reemployment and wages of the employee. The
26 carrier shall report its voluntary service activity to the
27 department ~~division~~ as required by rule. Voluntary services
28 offered by the carrier for any of the following injuries must
29 be considered benefits for purposes of ratemaking: traumatic
30 brain injury; spinal cord injury; amputation, including loss
31 of an eye or eyes; burns of 5 percent or greater of the total

1 body surface.

2 (6) TRAINING AND EDUCATION.--

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

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

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1 precluded from voluntarily paying additional temporary total
2 disability compensation beyond that period. If an employee
3 requires temporary residence at or near a facility or an
4 institution providing training and education which is located
5 more than 50 miles away from the employee's customary
6 residence, the reasonable cost of board, lodging, or travel
7 must be borne by the department ~~division~~ from the Workers'
8 Compensation Administration Trust Fund established by s.
9 440.50. An employee who refuses to accept training and
10 education that is recommended by the vocational evaluator and
11 considered necessary by the department ~~division~~ is subject to
12 a 50-percent reduction in weekly compensation benefits,
13 including wage-loss benefits, as determined under s.
14 440.15(3)(b).

15 (7) PROVIDER QUALIFICATIONS.--

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

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

30 (c) The department ~~division~~ shall monitor and evaluate
31 each rehabilitation service provider, facility, and agency

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

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

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

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

27 Section 50. Section 440.50, Florida Statutes, is
28 amended to read:

29 440.50 Workers' Compensation Administration Trust
30 Fund.--

31 (1)(a) There is established in the State Treasury a

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

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

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

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

30 (4) All civil penalties provided in this chapter, if
31 not voluntarily paid, may be collected by civil suit brought

1 by the department ~~division~~ and shall be paid into such fund.

2 Section 51. Section 440.51, Florida Statutes, is
3 amended to read:

4 440.51 Expenses of administration.--

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

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

17 (b) The total expenses of administration shall be
18 prorated among the carriers writing compensation insurance in
19 the state and self-insurers. The net premiums collected by
20 carriers and the amount of premiums calculated by the
21 department ~~division~~ for self-insured employers are the basis
22 for computing the amount to be assessed. When reporting
23 deductible policy premium for purposes of computing
24 assessments levied after July 1, 2001, full policy premium
25 value must be reported prior to application of deductible
26 discounts or credits. This amount may be assessed as a
27 specific amount or as a percentage of net premiums payable as
28 the department ~~division~~ may direct, provided such amount so
29 assessed shall not exceed 2.75 percent, beginning January 1,
30 2001, except during the interim period from July 1, 2000,
31 through December 31, 2000, such assessments shall not exceed 4

1 percent of such net premiums. The carriers may elect to make
2 the payments required under s. 440.15(1)(f) rather than having
3 these payments made by the department ~~division~~. In that
4 event, such payments will be credited to the carriers, and the
5 amount due by the carrier under this section will be reduced
6 accordingly.

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

20 (3) If any carrier fails to pay the amounts assessed
21 against him or her under the provisions of this section within
22 60 days from the time such notice is served upon him or her,
23 the department ~~of insurance upon being advised by the division~~
24 may suspend or revoke the authorization to insure compensation
25 in accordance with the procedure in s. 440.38(3)(a). The
26 department ~~division~~ may permit a carrier to remit any
27 underpayment of assessments for assessments levied after
28 January 1, 2001.

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

31 (5) Any amount so assessed against and paid by an

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1 insurance carrier, self-insurer authorized pursuant to s.
2 624.4621, or commercial self-insurance fund authorized under
3 ss. 624.460-624.488 shall be allowed as a deduction against
4 the amount of any other tax levied by the state upon the
5 premiums, assessments, or deposits for workers' compensation
6 insurance on contracts or policies of said insurance carrier,
7 self-insurer, or commercial self-insurance fund. Any insurance
8 carrier claiming such a deduction against the amount of any
9 such tax shall not be required to pay any additional
10 retaliatory tax levied pursuant to s. 624.5091 as a result of
11 claiming such deduction. Because deductions under this
12 subsection are available to insurance carriers, s. 624.5091
13 does not limit such deductions in any manner.

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

21 (b) The Department of Insurance may require from each
22 self-insurer, at such time and in accordance with such
23 regulations as the Department of Insurance prescribes, reports
24 in respect to wages paid, the amount of premiums such
25 self-insurer would have to pay if insured, and all payments of
26 compensation made by such self-insurer during each prior
27 period, and may determine the amounts paid by each
28 self-insurer and the amounts paid by all self-insurers during
29 such period. For the purposes of this section, the payroll
30 records of each self-insurer shall be open to annual
31 inspection and audit by the Department of Insurance or its

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1 authorized representative, during regular business hours; and
2 if any audit of such records of a self-insurer discloses a
3 deficiency in the amounts reported to the Department of
4 Insurance or in the amounts paid to the Department of
5 Insurance by a self-insurer pursuant to this section, the
6 Department of Insurance may assess the cost of such audit
7 against the self-insurer.

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

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

25 (9) In addition to the above, it shall be the duty of
26 the division to keep the accident experience, as classified by
27 the division, by industry as follows:

- 28 (a) Cause of the injury;
29 (b) Nature of the injury; and
30 (c) Type of disability.

31 (10) In every case where the duration of disability

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1 exceeds 30 days, the carrier shall establish a sufficient
2 reserve to pay all benefits to which the injured employee, or
3 in case of death, his or her dependents, may be entitled to
4 under the law. In establishing the reserve, consideration
5 shall be given to the nature of the injury, the probable
6 period of disability, and the estimated cost of medical
7 benefits.

8 (11) The department ~~division~~ shall furnish to any
9 employer or carrier, upon request, its individual experience.
10 ~~The division shall furnish to the Department of Insurance,~~
11 ~~upon request, the Florida experience as developed under~~
12 ~~accident year or calendar year.~~

13 (12) In addition to any other penalties provided by
14 this law, the failure to submit any report or other
15 information required by this law shall be just cause to
16 suspend the right of a self-insurer to operate as such ~~or~~
17 ~~upon certification by the division to the Department of~~
18 ~~insurance that a carrier has failed or refused to furnish such~~
19 ~~reports,~~ shall be just cause for the department of ~~Insurance~~
20 to suspend or revoke the license of such carrier.

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

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

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

29 (14) Before July 1 in each year, the plan shall notify
30 the department ~~division~~ of the amount of the plan's gross
31 written premiums for the preceding calendar year. Whenever the

1 plan's gross written premiums reported to the department
 2 ~~division~~ are less than \$30 million, the department ~~division~~
 3 shall transfer to the plan, subject to appropriation by the
 4 Legislature, an amount not to exceed the plan's fixed
 5 administrative expenses for the preceding calendar year.

6 Section 52. Subsections (1) and (3) of section 440.52,
 7 Florida Statutes, are amended to read:

8 440.52 Registration of insurance carriers; notice of
 9 cancellation or expiration of policy; suspension or revocation
 10 of authority.--

11 (1) Each insurance carrier who desires to write such
 12 compensation insurance in compliance with this chapter shall
 13 be required, before writing such insurance, to register with
 14 the department ~~division~~ and pay a registration fee of \$100.
 15 This shall be deposited by the department ~~division~~ in the fund
 16 created by s. 440.50.

17 (3) If the department ~~division~~ finds, after due notice
 18 and a hearing at which the insurance carrier is entitled to be
 19 heard in person or by counsel and present evidence, that the
 20 insurance carrier has repeatedly failed to comply with its
 21 obligations under this chapter, the department ~~division~~ may
 22 ~~request the Department of Insurance to~~ suspend or revoke the
 23 authorization of such insurance carrier to write workers'
 24 compensation insurance under this chapter. Such suspension or
 25 revocation shall not affect the liability of any such
 26 insurance carrier under policies in force prior to the
 27 suspension or revocation.

28 Section 53. Section 440.525, Florida Statutes, is
 29 amended to read:

30 440.525 Examination of carriers.--~~Beginning July 1,~~
 31 ~~1994, The Division of Workers' Compensation of the department~~

1 ~~of Labor and Employment Security~~ may examine each carrier as
 2 often as is warranted to ensure that carriers are fulfilling
 3 their obligations under the law, ~~and shall examine each~~
 4 ~~carrier not less frequently than once every 3 years. The~~
 5 ~~examination must cover the preceding 3 fiscal years of the~~
 6 ~~carrier's operations and must commence within 12 months after~~
 7 ~~the end of the most recent fiscal year being covered by the~~
 8 ~~examination.~~The examination may cover any period of the
 9 carrier's operations since the last previous examination.

10 Section 54. Section 440.572, Florida Statutes, is
 11 amended to read:

12 440.572 Authorization for individual self-insurer to
 13 provide coverage.--An individual self-insurer having a net
 14 worth of not less than \$250 million as authorized by s.
 15 440.38(1)(f) may assume by contract the liabilities under this
 16 chapter of contractors and subcontractors, or each of them,
 17 employed by or on behalf of such individual self-insurer when
 18 performing work on or adjacent to property owned or used by
 19 the individual self-insurer by the department ~~division~~. The
 20 net worth of the individual self-insurer shall include the
 21 assets of the self-insurer's parent company and its
 22 subsidiaries, sister companies, affiliated companies, and
 23 other related entities, located within the geographic
 24 boundaries of the state.

25 Section 55. Section 440.59, Florida Statutes, is
 26 amended to read:

27 440.59 Reporting requirements.--
 28 (+) The department shall annually prepare a report of
 29 the administration of this chapter for the preceding calendar
 30 year, including a detailed statement of the receipts of and
 31 expenditures from the fund established in s. 440.50 and a

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1 statement of the causes of the accidents leading to the
2 injuries for which the awards were made, together with such
3 recommendations as the department considers advisable. On or
4 before September 15 of each year, the department shall submit
5 a copy of the report to the Governor, the President of the
6 Senate, the Speaker of the House of Representatives, the
7 Democratic and Republican Leaders of the Senate and the House
8 of Representatives, and the chairs of the legislative
9 committees having jurisdiction over workers' compensation.

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

26 ~~(3) The division shall prepare an annual report for~~
27 ~~all claims for which the employee lost more than 7 days from~~
28 ~~work and shall submit a copy of the report to the Governor,~~
29 ~~the President of the Senate, the Speaker of the House of~~
30 ~~Representatives, the Democratic and Republican Leaders of the~~
31 ~~Senate and the House of Representatives, and the chairs of the~~

1 ~~legislative committees having jurisdiction over workers'~~
 2 ~~compensation, on or before September 15 of each year. The~~
 3 ~~annual report shall include a status report on all cases~~
 4 ~~involving work-related injuries in the previous 10 years. The~~
 5 ~~annual report shall include, but not be limited to, the number~~
 6 ~~of open and closed cases, the number of cases receiving~~
 7 ~~various types of benefits, and the cash and medical benefits~~
 8 ~~paid between the date of injury and the evaluation date in~~
 9 ~~each case.~~

10 Section 56. Section 440.591, Florida Statutes, is
 11 amended to read:

12 440.591 Administrative procedure; rulemaking
 13 authority.--The department, the agency, and the Department of
 14 Education ~~may division has authority to~~ adopt rules pursuant
 15 to ss. 120.536(1) and 120.54 to implement the provisions of
 16 this chapter conferring duties upon it.

17 Section 57. Section 440.593, Florida Statutes, is
 18 amended to read:

19 440.593 Electronic reporting.--

20 (1) The department ~~division~~ may establish an
 21 electronic reporting system requiring or authorizing an
 22 employer or carrier to submit required forms, reports, or
 23 other information electronically rather than by other means.
 24 The department ~~division~~ may establish different deadlines for
 25 submitting forms, reports, or information to the department
 26 ~~division~~, or to its authorized agent, via the electronic
 27 reporting system than are otherwise required when reporting
 28 information by other means.

29 (2) The department ~~division~~ may require any carrier to
 30 submit data electronically, either directly or through a
 31 third-party vendor, and may require any carrier or vendor

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1 submitting data to the department ~~division~~ electronically to
2 be certified by the department ~~division~~. The department
3 ~~division~~ may specify performance requirements for any carrier
4 or vendor submitting data electronically.

5 (3) The department ~~division~~ may revoke the
6 certification of any carrier or vendor determined by the
7 department ~~division~~ to be in noncompliance with performance
8 standards prescribed by rule for electronic submissions.

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

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

14 Section 58. Subsections (1), (4), and (5) of section
15 443.012, Florida Statutes, are amended to read:

16 443.012 Unemployment Appeals Commission.--

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

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

31 (b) The chair shall have the authority to appoint a

1 general counsel and such other personnel as may be necessary
2 to carry out the duties and responsibilities of the
3 commission.

4 (c) The chair shall have the qualifications required
5 by law for a judge of the circuit court and shall not engage
6 in any other business vocation or employment. Notwithstanding
7 any other provisions of existing law, the chair shall be paid
8 a salary equal to that paid under state law to a judge of the
9 circuit court.

10 (d) The remaining members shall be paid a stipend of
11 \$100 for each day they are engaged in the work of the
12 commission. The chair and other members shall also be
13 reimbursed for travel expenses, as provided in s. 112.061.

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

17 (4) The property, personnel, and appropriations
18 relating to the specified authority, powers, duties, and
19 responsibilities of the commission shall be provided to the
20 commission by the Agency for Workforce Innovation ~~Department~~
21 ~~of Labor and Employment Security~~.

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

26 Section 59. Subsection (12) of section 443.036,
27 Florida Statutes, is amended to read:

28 443.036 Definitions.--As used in this chapter, unless
29 the context clearly requires otherwise:

30 (12) COMMISSION.--"Commission" means the Unemployment
31 Appeals Commission ~~of the Department of Labor and Employment~~

1 Security.

2 Section 60. Subsection (3) of section 447.02, Florida
3 Statutes, is amended to read:

4 447.02 Definitions.--The following terms, when used in
5 this chapter, shall have the meanings ascribed to them in this
6 section:

7 (3) The term "department" means the Department of
8 Business and Professional Regulation ~~Labor and Employment~~
9 ~~Security~~.

10 Section 61. Subsection (4) of section 447.305, Florida
11 Statutes, is amended to read:

12 447.305 Registration of employee organization.--

13 (4) Notification of registrations and renewals of
14 registration shall be furnished at regular intervals by the
15 commission to the Department of Business and Professional
16 Regulation ~~Labor and Employment Security~~.

17 Section 62. Subsection (4) of section 450.012, Florida
18 Statutes, is amended to read:

19 450.012 Definitions.--For the purpose of this chapter,
20 the word, phrase, or term:

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

23 Section 63. Paragraph (j) of subsection (1) of section
24 450.191, Florida Statutes, is amended to read:

25 450.191 Executive Office of the Governor; powers and
26 duties.--

27 (1) The Executive Office of the Governor is authorized
28 and directed to:

29 (j) Cooperate with the farm labor office of the
30 Department of Business and Professional Regulation ~~Labor and~~
31 ~~Employment Security~~ in the recruitment and referral of migrant

1 laborers and other persons for the planting, cultivation, and
2 harvesting of agricultural crops in Florida.

3 Section 64. Subsection (2) of section 450.28, Florida
4 Statutes, is amended to read:

5 450.28 Definitions.--

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

8 Section 65. Subsections (1) and (5) of section
9 624.3161, Florida Statutes, are amended to read:

10 624.3161 Market conduct examinations.--

11 (1) As often as it deems necessary, the department
12 shall examine each licensed rating organization, each advisory
13 organization, each group, association, carrier, as defined in
14 s. 440.02, or other organization of insurers which engages in
15 joint underwriting or joint reinsurance, and each authorized
16 insurer transacting in this state any class of insurance to
17 which the provisions of chapter 627 are applicable. The
18 examination shall be for the purpose of ascertaining
19 compliance by the person examined with the applicable
20 provisions of chapters 440, 624, 626, 627, and 635.

21 (5) Such examinations shall also be subject to the
22 applicable provisions of chapter 440 and ss. 624.318, 624.319,
23 624.321, and 624.322.

24 Section 66. Paragraph (m) of subsection (1) of section
25 626.88, Florida Statutes, is amended to read:

26 626.88 Definitions of "administrator" and "insurer".--

27 (1) For the purposes of this part, an "administrator"
28 is any person who directly or indirectly solicits or effects
29 coverage of, collects charges or premiums from, or adjusts or
30 settles claims on residents of this state in connection with
31 authorized commercial self-insurance funds or with insured or

1 self-insured programs which provide life or health insurance
2 coverage or coverage of any other expenses described in s.
3 624.33(1), other than any of the following persons:

4 (m) A person approved by the ~~Division of Workers'~~
5 ~~Compensation of the~~ Department of Insurance ~~Labor and~~
6 ~~Employment Security~~ who administers only self-insured workers'
7 compensation plans.

8 Section 67. Subsection (9) of section 626.989, Florida
9 Statutes, is amended to read:

10 626.989 Investigation by department or Division of
11 Insurance Fraud; compliance; immunity; confidential
12 information; reports to division; division investigator's
13 power of arrest.--

14 (9) In recognition of the complementary roles of
15 investigating instances of workers' compensation fraud and
16 enforcing compliance with the workers' compensation coverage
17 requirements under chapter 440, the ~~Division of Insurance~~
18 ~~Fraud of the~~ Department of Insurance is ~~and the Division of~~
19 ~~Workers' Compensation of the Department of Labor and~~
20 ~~Employment Security~~ are directed to prepare and submit a joint
21 performance report to the President of the Senate and the
22 Speaker of the House of Representatives by November 1, 2003 ~~of~~
23 ~~each year for each of the next 2 years~~, and then by November 1
24 every 3 years thereafter, describing the results obtained in
25 achieving compliance with the workers' compensation coverage
26 requirements and reducing the incidence of workers'
27 compensation fraud.

28 Section 68. Section 627.0915, Florida Statutes, is
29 amended to read:

30 627.0915 Rate filings; workers' compensation,
31 drug-free workplace, and safe employers.--The Department of

1 Insurance shall approve rating plans for workers' compensation
 2 insurance that give specific identifiable consideration in the
 3 setting of rates to employers that either implement a
 4 drug-free workplace program pursuant to rules adopted by the
 5 ~~Division of Workers' Compensation of the~~ Department of
 6 Insurance ~~Labor and Employment Security~~ or implement a safety
 7 program pursuant to provisions of the rating plan or implement
 8 both a drug-free workplace program and a safety program. The
 9 plans must be actuarially sound and must state the savings
 10 anticipated to result from such drug-testing and safety
 11 programs.

12 Section 69. Subsection (3) of section 627.914, Florida
 13 Statutes, is amended to read:

14 627.914 Reports of information by workers'
 15 compensation insurers required.--

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

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

23 (b) A statistical or rating organization may be used
 24 by individual self-insurers for the purposes of reporting the
 25 data required by this section and calculating experience
 26 ratings.

27 Section 70. Sections 20.171 and 440.4416, Florida
 28 Statutes, are repealed.

29 Section 71. If any provision of this act or its
 30 application to any person or circumstance is held invalid, the
 31 invalidity does not affect other provisions or applications of

1 the act which can be given effect without the invalid
2 provision or application, and to this end the provisions of
3 this act are severable.

4 Section 72. Except as otherwise provided herein, this
5 act shall take effect July 1, 2002.

6
7

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

9 And the title is amended as follows:

10 remove: the entire title

11

12 and insert:

13

A bill to be entitled

14

An act relating to transferring and reassigning

15

divisions, functions, and responsibilities of

16

the Department of Labor and Employment

17

Security; providing for a type two transfer of

18

the Division of Workers' Compensation to the

19

Department of Insurance; providing for a type

20

two transfer of workers' compensation medical

21

services to the Agency for Health Care

22

Administration; providing for a type two

23

transfer of workers' compensation

24

rehabilitation and reemployment services to the

25

Department of Education; providing for a type

26

two transfer of the administration of child

27

labor laws to the Department of Business and

28

Professional Regulation; providing for

29

comparable pay grades for the transferred

30

positions; authorizing the Department of

31

Insurance to reclassify and reorganize

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1 positions within the department and establish
2 regional offices; authorizing the Department of
3 Insurance to enter into contracts; providing
4 for existing contracts to be subject to review
5 and cancellation; providing for a type two
6 transfer of certain functions of the Office of
7 the Secretary and the Office of Administrative
8 Services of the Department of Labor and
9 Employment Security relating to labor
10 organizations and migrant and farm labor
11 registration to the Department of Business and
12 Professional Regulation; providing for a type
13 two transfer of other workplace regulation
14 functions to the Department of Business and
15 Professional Regulation; providing for the
16 transfer of the Unemployment Appeals Commission
17 to the Agency for Workforce Innovation by a
18 type two transfer; providing for the transfer
19 of the Office of Information Systems to the
20 State Technology Office by a type two transfer;
21 requiring the State Technology Office and the
22 Department of Insurance to determine whether it
23 is feasible to transfer ownership of the
24 Workers' Compensation Integrated System to the
25 Department of Insurance; authorizing the
26 Department of Banking and Finance, in
27 conjunction with the Office of the Attorney
28 General, to use unexpended funds to settle
29 certain claims; providing for the continuation
30 of contracts or agreements of the Department of
31 Labor and Employment Security; providing for a

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1 successor department, agency, or entity to be
2 substituted for the Department of Labor and
3 Employment Security as a party in interest in
4 pending proceedings; exempting specified state
5 agencies, on a temporary basis, from provisions
6 relating to procurement of property and
7 services and leasing of space; authorizing
8 specified state agencies to develop temporary
9 emergency rules relating to the implementation
10 of the act; amending s. 20.13, F.S.;
11 establishing the Division of Workers'
12 Compensation within the Department of
13 Insurance; amending s. 20.50, F.S.; revising
14 provisions relating to the Agency for Workforce
15 Innovation to conform; revising
16 responsibilities of certain offices within the
17 agency; specifying that the Unemployment
18 Appeals Commission is not subject to the
19 agency; amending ss. 110.205, 112.19, 112.191,
20 121.125, 122.03, and 238.06, F.S., to conform;
21 amending s. 440.02, F.S.; providing a
22 definition for the term "agency"; conforming
23 definitions of "department" and "division" to
24 the transfer of the Division of Workers'
25 Compensation; amending ss. 440.021, 440.05,
26 440.09, 440.10, 440.102, 440.103, 440.104,
27 440.105, 440.106, 440.107, 440.108, 440.12, and
28 440.125, F.S.; conforming references to reflect
29 the transfer of the Division of Workers'
30 Compensation; amending s. 440.13, F.S.,
31 relating to medical services and supplies under

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1 the workers' compensation law; reassigning
2 certain functions from the Division of Workers'
3 Compensation to the Agency for Health Care
4 Administration; conforming agency references to
5 reflect the transfer of the Division of
6 Workers' Compensation; amending ss. 440.134 and
7 440.14, F.S.; conforming provisions to changes
8 made by the act; amending s. 440.15, F.S.;
9 providing for the agency to specify certain
10 forms and procedures governing wage loss and
11 impairment benefits; conforming a cross
12 reference; amending ss. 440.185, 440.191,
13 440.192, and 440.1925, F.S.; conforming
14 provisions to changes made by the act; amending
15 ss. 440.20, 440.207, and 440.211, F.S.,
16 relating to payment of compensation; conforming
17 provisions to changes made by the act; amending
18 s. 440.24, F.S.; providing for the sale of
19 securities on deposit to satisfy a compensation
20 order; amending ss. 440.25 and 440.271, F.S.,
21 relating to mediation, hearings, and appeals;
22 conforming provisions to changes made by the
23 act; amending ss. 440.345 and 440.35, F.S.,
24 relating to the reporting of attorney's fees
25 and employer records of injury or death;
26 conforming provisions to changes made by the
27 act; amending ss. 440.38, 440.381, and 440.385,
28 F.S., relating to security for compensation by
29 insurance carriers and self-insurers, audits of
30 payroll and classifications, and the creation,
31 board of directors, powers and duties,

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1 insolvency fund, and plan of operation for the
2 Florida Self-Insurance Guaranty Association;
3 conforming references to reflect the transfer
4 of the Division of Workers' Compensation;
5 amending ss. 440.40, 440.41, and 440.42, F.S.,
6 relating to employers posting notice of
7 compensation, substitution of carriers for
8 employers with respect to notice and the effect
9 of an order, and expiration of insurance
10 policies, to conform; amending s. 440.44, F.S.,
11 relating to the administration of the Workers'
12 Compensation Law; conforming references to
13 reflect the transfer of the Division of
14 Workers' Compensation; amending s. 440.45,
15 F.S., relating to the Office of the Judges of
16 Compensation Claims; clarifying the
17 responsibilities of the director of the
18 Division of Administrative Hearings as agency
19 head of the Office of the Judges of
20 Compensation Claims; amending s. 440.49, F.S.,
21 relating to the Special Disability Trust Fund;
22 conforming references to reflect the transfer
23 of the Division of Workers' Compensation;
24 reassigning responsibility for a report on the
25 Special Disability Trust Fund to the Department
26 of Insurance; amending s. 440.491, F.S.,
27 relating to the reemployment of injured
28 workers; conforming references to the transfer
29 of rehabilitation and reemployment services to
30 the Department of Education; amending ss.
31 440.50, 440.51, and 440.52, F.S., relating to

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

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1 F.S.; providing that notification of
2 registrations and renewals of registration
3 shall be furnished to the Department of
4 Business and Professional Regulation, to
5 conform; amending s. 450.012, F.S.; conforming
6 the definition of "department" to the transfer
7 of the regulation of child labor to the
8 Department of Business and Professional
9 Regulation; amending s. 450.191, F.S., relating
10 to the duties of the Executive Office of the
11 Governor with respect to migrant labor;
12 conforming provisions to changes made by the
13 act; amending s. 450.28, F.S.; conforming the
14 definition of "department" to the transfer of
15 the regulation of farm labor to the Department
16 of Business and Professional Regulation;
17 amending s. 624.3161, F.S., relating to
18 insurance market conduct examinations;
19 conforming provisions to changes made by the
20 act; amending s. 626.88, F.S., relating to
21 self-insurance definitions; conforming
22 provisions to changes made by the act; amending
23 s. 626.989, F.S., relating to Division of
24 Insurance Fraud reporting requirements;
25 conforming provisions to changes made by the
26 act and establishing reporting deadlines;
27 amending s. 627.0915, F.S.; conforming
28 departmental references to changes made by the
29 act; amending s. 627.914, F.S., relating to
30 reporting requirements by self-insurers;
31 conforming provisions to changes made by the

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1 act; repealing s. 20.171, F.S., relating to the
2 establishment and the authority and
3 organizational structure of the Department of
4 Labor and Employment Security; repealing s.
5 440.4416, F.S., relating to the Workers'
6 Compensation Oversight Board; providing for
7 severability; providing effective dates.
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