

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

1 two transfer of other workplace regulation
2 functions to the Department of Business and
3 Professional Regulation; providing for the
4 transfer of the Unemployment Appeals Commission
5 to the Agency for Workforce Innovation by a
6 type two transfer; providing for the transfer
7 of the Office of Information Systems to the
8 State Technology Office by a type two transfer;
9 requiring the State Technology Office and the
10 Department of Insurance to determine whether it
11 is feasible to transfer ownership of the
12 Workers' Compensation Integrated System to the
13 Department of Insurance; providing for the
14 continuation of contracts or agreements of the
15 Department of Labor and Employment Security;
16 providing for a successor department, agency,
17 or entity to be substituted for the Department
18 of Labor and Employment Security as a party in
19 interest in pending proceedings; exempting
20 specified state agencies, on a temporary basis,
21 from provisions relating to procurement of
22 property and services and leasing of space;
23 authorizing specified state agencies to develop
24 temporary emergency rules relating to the
25 implementation of the act; amending s. 20.13,
26 F.S.; establishing the Division of Workers'
27 Compensation within the Department of
28 Insurance; amending s. 20.50, F.S.; revising
29 provisions relating to the Agency for Workforce
30 Innovation to conform; revising
31 responsibilities of certain offices within the

1 agency; specifying that the Unemployment
 2 Appeals Commission is not subject to the
 3 agency; amending ss. 110.205, 112.19, 112.191,
 4 121.125, 122.03, 238.06, and 440.015, F.S., to
 5 conform; amending s. 440.02, F.S.; providing a
 6 definition for the term "agency"; conforming
 7 definitions of "department" and "division" to
 8 the transfer of the Division of Workers'
 9 Compensation; amending ss. 440.021, 440.05,
 10 440.09, 440.10, 440.102, 440.103, 440.104,
 11 440.105, 440.106, 440.107, 440.108, 440.12, and
 12 440.125, F.S.; conforming provisions to reflect
 13 the transfer of the Division of Workers'
 14 Compensation; amending s. 440.13, F.S.,
 15 relating to medical services and supplies under
 16 the workers' compensation law; reassigning
 17 certain functions from the Division of Workers'
 18 Compensation to the Agency for Health Care
 19 Administration; conforming agency references to
 20 reflect the transfer of the Division of
 21 Workers' Compensation; amending ss. 440.134 and
 22 440.14, F.S.; conforming provisions to changes
 23 made by the act; amending s. 440.15, F.S.;
 24 providing for the agency to specify certain
 25 forms and procedures governing wage loss and
 26 impairment benefits; conforming a cross
 27 reference; amending ss. 440.185, 440.191,
 28 440.192, and 440.1925, F.S.; conforming
 29 provisions to changes made by the act; amending
 30 ss. 440.20, 440.207, and 440.211, F.S.,
 31 relating to payment of compensation; conforming

1 provisions to changes made by the act; amending
2 s. 440.24, F.S.; providing for the sale of
3 securities on deposit to satisfy a compensation
4 order; amending ss. 440.25 and 440.271, F.S.,
5 relating to mediation, hearings, and appeals;
6 conforming provisions to changes made by the
7 act; amending ss. 440.345 and 440.35, F.S.,
8 relating to the reporting of attorney's fees
9 and employer records of injury or death;
10 conforming provisions to changes made by the
11 act; amending s. 440.381, F.S., relating to
12 audits of payroll and classifications;
13 conforming provisions to reflect the transfer
14 of the Division of Workers' Compensation;
15 amending ss. 440.40, 440.41, and 440.42, F.S.,
16 relating to employers posting notice of
17 compensation, substitution of carriers for
18 employers with respect to notice and the effect
19 of an order, and expiration of insurance
20 policies, to conform; amending s. 440.44, F.S.,
21 relating to the administration of the Workers'
22 Compensation Law; conforming provisions to
23 reflect the transfer of the Division of
24 Workers' Compensation; amending s. 440.45,
25 F.S., relating to the Office of the Judges of
26 Compensation Claims; clarifying the
27 responsibilities of the director of the
28 Division of Administrative Hearings as agency
29 head of the Office of the Judges of
30 Compensation Claims; amending s. 440.49, F.S.,
31 relating to the Special Disability Trust Fund;

1 conforming provisions to reflect the transfer
2 of the Division of Workers' Compensation;
3 reassigning responsibility for a report on the
4 Special Disability Trust Fund to the Department
5 of Insurance; amending s. 440.491, F.S.,
6 relating to the reemployment of injured
7 workers; conforming provisions to the transfer
8 of rehabilitation and reemployment services to
9 the Department of Education; amending ss.
10 440.50, 440.51, and 440.52, F.S., relating to
11 the Workers' Compensation Administration Trust
12 Fund, expenses of administration, and certain
13 responsibilities of insurance carriers;
14 conforming references to reflect the transfer
15 of the Division of Workers' Compensation;
16 amending s. 440.525, F.S., relating to the
17 examination of carriers; conforming agency
18 references to the transfer of programs from the
19 Department of Labor and Employment Security to
20 the Department of Insurance; amending s.
21 440.572, F.S., to conform; amending s. 440.59,
22 F.S., relating to division reporting
23 requirements; eliminating unnecessary reporting
24 requirements; amending ss. 440.591 and 440.593,
25 F.S., relating to authorization to self-insure,
26 reporting requirements, and rulemaking
27 authority; conforming provisions to changes
28 made by the act; amending s. 443.012, F.S.;
29 providing for the Unemployment Appeals
30 Commission to be created within the Agency for
31 Workforce Innovation rather than the Department

1 of Labor and Employment Security; conforming
 2 provisions; amending s. 443.036, F.S.;
 3 conforming the definition of "commission" to
 4 the transfer of the Unemployment Appeals
 5 Commission to the Agency for Workforce
 6 Innovation; amending s. 447.02, F.S.;
 7 conforming the definition of "department" to
 8 the transfer of the regulation of labor
 9 organizations to the Department of Business and
 10 Professional Regulation; amending s. 447.305,
 11 F.S.; providing that notification of
 12 registrations and renewals of registration
 13 shall be furnished to the Department of
 14 Business and Professional Regulation, to
 15 conform; amending s. 450.012, F.S.; conforming
 16 the definition of "department" to the transfer
 17 of the regulation of child labor to the
 18 Department of Business and Professional
 19 Regulation; amending s. 450.191, F.S., relating
 20 to the duties of the Executive Office of the
 21 Governor with respect to migrant labor;
 22 conforming provisions to changes made by the
 23 act; amending s. 450.28, F.S.; conforming the
 24 definition of "department" to the transfer of
 25 the regulation of farm labor to the Department
 26 of Business and Professional Regulation;
 27 amending s. 624.3161, F.S., relating to
 28 insurance market conduct examinations;
 29 conforming provisions to changes made by the
 30 act; amending s. 626.88, F.S., relating to
 31 self-insurance definitions; conforming

1 provisions to changes made by the act; amending
 2 s. 626.989, F.S., relating to Division of
 3 Insurance Fraud reporting requirements;
 4 conforming provisions to changes made by the
 5 act and establishing reporting deadlines;
 6 amending s. 627.0915, F.S.; conforming
 7 departmental references to changes made by the
 8 act; amending s. 627.914, F.S., relating to
 9 reporting requirements by self-insurers;
 10 conforming provisions to changes made by the
 11 act; repealing s. 20.171, F.S., relating to the
 12 establishment and the authority and
 13 organizational structure of the Department of
 14 Labor and Employment Security; repealing s.
 15 440.4416, F.S., relating to the Workers'
 16 Compensation Oversight Board; providing for
 17 severability; providing effective dates.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. (1) All powers, duties, functions, rules,
 22 records, personnel, property, and unexpended balances of
 23 appropriations, allocations, and other funds of the Division
 24 of Workers' Compensation are transferred by a type two
 25 transfer, as defined in s. 20.06(2), Florida Statutes, from
 26 the Department of Labor and Employment Security to the
 27 Department of Insurance, except as otherwise provided in this
 28 subsection, as follows: the full-time equivalent positions and
 29 the associated funding for salaries, benefits, other capital
 30 outlay, and expenses related to oversight of medical services
 31 in workers' compensation provider relations, dispute and

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

1 establish such regional offices as are necessary to properly
2 enforce and administer its responsibilities under the Florida
3 Insurance Code and chapter 440, Florida Statutes. The
4 department may also enter into contracts with public or
5 private entities to administer its duties and responsibilities
6 associated with the transfer of the Division of Workers'
7 Compensation.

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

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

1 administrative subdivisions within the department to
2 accomplish its workplace regulation responsibilities.

3 (4) All powers, duties, functions, rules, records,
4 personnel, property, and unexpended balances of
5 appropriations, allocations, and other funds of the
6 Unemployment Appeals Commission relating to the commission's
7 specified authority, powers, duties, and responsibilities are
8 transferred by a type two transfer, as defined in s. 20.06(2),
9 Florida Statutes, to the Agency for Workforce Innovation.

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

27 (6)(a) The records, property, and unexpended balances
28 of appropriations, allocations, and other funds and resources
29 of the Office of the Secretary and the Office of
30 Administrative Services of the Department of Labor and
31 Employment Security which support the activities and functions

1 transferred under subsection (1) to the Department of
2 Insurance are transferred as provided in s. 20.06(2), Florida
3 Statutes, to the Department of Insurance.

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

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

20 (d) 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 subsections (1), (2), and (3) to the Department of Business
26 and Professional Regulation are transferred as provided in s.
27 20.06(2), Florida Statutes, to the Department of Business and
28 Professional Regulation.

29 (e) The records, property, and unexpended balances of
30 appropriations, allocations, and other funds and resources of
31 the Office of the Secretary and the Office of Administrative

1 Services of the Department of Labor and Employment Security
2 which support the activities and functions transferred under
3 subsection (4) to the Agency for Workforce Innovation are
4 transferred as provided in s. 20.06(2), Florida Statutes, to
5 the Agency for Workforce Innovation.

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

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

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

29 (9) This act does not affect the validity of any
30 judicial or administrative proceeding involving the Department
31 of Labor and Employment Security which is pending as of the

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

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

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

22 20.13 Department of Insurance.--There is created a
23 Department of Insurance.

24 (2) The following divisions of the Department of
25 Insurance are established:

26 (k) Division of Workers' Compensation.

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

29 20.50 Agency for Workforce Innovation.--There is
30 created the Agency for Workforce Innovation within the
31 Department of Management Services. The agency shall be a

1 separate budget entity, and the director of the agency shall
2 be the agency head for all purposes. The agency shall not be
3 subject to control, supervision, or direction by the
4 Department of Management Services in any manner, including,
5 but not limited to, personnel, purchasing, transactions
6 involving real or personal property, and budgetary matters.

7 (2) The Agency for Workforce Innovation shall be the
8 designated administrative agency for receipt of federal
9 workforce development grants and other federal funds, and
10 shall carry out the duties and responsibilities assigned by
11 the Governor under each federal grant assigned to the agency.
12 The agency shall be a separate budget entity and shall expend
13 each revenue source as provided by federal and state law and
14 as provided in plans developed by and agreements with
15 Workforce Florida, Inc. The agency shall prepare and submit as
16 a separate budget entity a unified budget request for
17 workforce development, in accordance with chapter 216 for, and
18 in conjunction with, Workforce Florida, Inc., and its board.
19 The head of the agency is the director of Workforce
20 Innovation, who shall be appointed by the Governor.

21 Accountability and reporting functions of the agency shall be
22 administered by the director or his or her designee. Included
23 in these functions are budget management, financial
24 management, audit, performance management standards and
25 controls, assessing outcomes of service delivery, and
26 financial administration of workforce programs pursuant to s.
27 445.004(5) and (9). Within the agency's overall organizational
28 structure, the agency shall include the following offices
29 which shall have the specified responsibilities:

30 (a) The Office of Workforce Services shall administer
31 ~~state merit system program staff within the~~ unemployment

1 compensation program, the Rapid Response program, the Work
2 Opportunity Tax Credit program, the Alien Labor Certification
3 program, and any other programs that are delivered directly by
4 agency staff rather than through the one-stop workforce
5 service delivery system, pursuant to policies of Workforce
6 Florida, Inc. The office shall be responsible for delivering
7 services through the one-stop delivery system and for ensuring
8 that participants in welfare transition programs receive case
9 management services, diversion assistance, support services,
10 including subsidized child care and transportation services,
11 Medicaid services, and transition assistance to enable them to
12 succeed in the workforce. The office shall be directed by the
13 Deputy Director for Workforce Services, who shall be appointed
14 by and serve at the pleasure of the director.

15 (b) The Office of Program Support Workforce Investment
16 and Accountability shall administer state merit system program
17 staff within the workforce service delivery system, pursuant
18 to policies of Workforce Florida, Inc. The office shall be
19 responsible for delivering services through the one-stop
20 delivery system and for ensuring that participants in welfare
21 transition programs receive case management services,
22 diversion assistance, support services, including subsidized
23 child care and transportation services, Medicaid services, and
24 transition assistance to enable them to succeed in the
25 workforce. The office shall also be responsible for program
26 quality assurance, grants and contract management procurement,
27 contracting, financial management, accounting, audits, and
28 reporting verification. The office shall be directed by the
29 Deputy Director for Program Support Workforce Investment and
30 Accountability, who shall be appointed by and serve at the
31

1 pleasure of the director. The office shall be responsible
2 for:

3 ~~1. Establishing standards and controls for reporting~~
4 ~~budgeting, expenditure, and performance information for~~
5 ~~assessing outcomes, service delivery, and financial~~
6 ~~administration of workforce programs pursuant to s. 445.004(5)~~
7 ~~and (9).~~

8 ~~1.2.~~ Establishing monitoring, quality assurance, and
9 quality improvement systems that routinely assess the quality
10 and effectiveness of contracted programs and services.

11 ~~2.3.~~ Annual review of each regional workforce board
12 and administrative entity to ensure adequate systems of
13 reporting and control are in place, and monitoring, quality
14 assurance, and quality improvement activities are conducted
15 routinely, and corrective action is taken to eliminate
16 deficiencies.

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

30 1. Information systems and controls that report
31 reliable, timely and accurate fiscal and performance data for

1 assessing outcomes, service delivery, and financial
2 administration of workforce programs pursuant to s. 445.004(5)
3 and (9).

4 2. Information systems that support service
5 integration and case management by providing for case tracking
6 for participants in welfare transition programs.

7 3. Information systems that support school readiness
8 services.

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

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

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

5 (b) Programs authorized under the Wagner-Peyser Act of
6 1933, as amended, 29 U.S.C. ss. 49 et seq.

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

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

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

16 (f) Employment and training activities carried out
17 under the Community Services Block Grant Act, 42 U.S.C. ss.
18 9901 et seq.

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

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

26 (i) Programs authorized under the National and
27 Community Service Act of 1990, 42 U.S.C. ss. 12501 et seq.,
28 and the Service-America programs, the National Service Trust
29 programs, the Civilian Community Corps, the Corporation for
30 National and Community Service, the American Conservation and
31

1 Youth Service Corps, and the Points of Light Foundation
2 programs, if such programs are awarded to the state.

3 (j) The Unemployment Compensation program provided
4 pursuant to chapter 443.

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

8 Section 4. Paragraph (m) of subsection (2) of section
9 110.205, Florida Statutes, is amended to read:

10 110.205 Career service; exemptions.--

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

13 (m) All assistant division director, deputy division
14 director, and bureau chief positions in any department, and
15 those positions determined by the department to have
16 managerial responsibilities comparable to such positions,
17 which positions include, but are not limited to, positions in
18 the Department of Health, the Department of Children and
19 Family Services, and the Department of Corrections that are
20 assigned primary duties of serving as the superintendent or
21 assistant superintendent, or warden or assistant warden, of an
22 institution; positions in the Department of Corrections that
23 are assigned primary duties of serving as the circuit
24 administrator or deputy circuit administrator; positions in
25 the Department of Transportation that are assigned primary
26 duties of serving as regional toll managers and managers of
27 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
28 in the Department of Environmental Protection that are
29 assigned the duty of an Environmental Administrator or program
30 administrator; ~~those positions described in s. 20.171 as~~
31 ~~included in the Senior Management Service~~ and positions in

1 the Department of Health that are assigned the duties of
2 Environmental Administrator, Assistant County Health
3 Department Director, and County Health Department Financial
4 Administrator. Unless otherwise fixed by law, the department
5 shall set the salary and benefits of these positions in
6 accordance with the rules established for the Selected Exempt
7 Service.

8 Section 5. Paragraph (h) of subsection (2) of section
9 112.19, Florida Statutes, is amended to read:

10 112.19 Law enforcement, correctional, and correctional
11 probation officers; death benefits.--

12 (2)

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

31

1 a. Health insurance benefits payable from any other
2 source shall reduce benefits payable under this section.

3 b. It is unlawful for a person to willfully and
4 knowingly make, or cause to be made, or to assist, conspire
5 with, or urge another to make, or cause to be made, any false,
6 fraudulent, or misleading oral or written statement to obtain
7 health insurance coverage as provided under this paragraph. A
8 person who violates this sub-subparagraph commits a
9 misdemeanor of the first degree, punishable as provided in s.
10 775.082 or s. 775.083.

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

22 2. In order for the officer, spouse, and dependent
23 children to be eligible for such insurance coverage, the
24 injury must have occurred as the result of the officer's
25 response to fresh pursuit, the officer's response to what is
26 reasonably believed to be an emergency, or an unlawful act
27 perpetrated by another. Except as otherwise provided herein,
28 nothing in this paragraph shall be construed to limit health
29 insurance coverage for which the officer, spouse, or dependent
30 children may otherwise be eligible, except that a person who
31 qualifies under this section shall not be eligible for the

1 health insurance subsidy provided under chapter 121, chapter
2 175, or chapter 185.

3 Section 6. Paragraph (g) of subsection (2) of section
4 112.191, Florida Statutes, is amended to read:

5 112.191 Firefighters; death benefits.--

6 (2)

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

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

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

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

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

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

25
26 Notwithstanding any provision of this section to the contrary,
27 the death benefits provided in paragraphs (b), (c), and (f)
28 shall also be applicable and paid in cases where a firefighter
29 received bodily injury prior to July 1, 1993, and subsequently
30 died on or after July 1, 1993, as a result of such
31 in-line-of-duty injury.

1 Section 7. Section 121.125, Florida Statutes, is
2 amended to read:

3 121.125 Credit for workers' compensation payment
4 periods.--A member of the retirement system created by this
5 chapter who has been eligible or becomes eligible to receive
6 workers' compensation payments for an injury or illness
7 occurring during his or her employment while a member of any
8 state retirement system shall, upon return to active
9 employment with a covered employer for 1 calendar month or
10 upon approval for disability retirement in accordance with s.
11 121.091(4), receive full retirement credit for the period
12 prior to such return to active employment or disability
13 retirement for which the workers' compensation payments were
14 received. However, no member may receive retirement credit
15 for any such period occurring after the earlier of the date of
16 maximum medical improvement ~~has been attained~~ as defined in s.
17 440.02 ~~s. 440.02(9)~~ or the date termination has occurred as
18 defined in s. 121.021(39). The employer of record at the time
19 of the worker's compensation injury or illness shall make the
20 required retirement contributions based on the member's rate
21 of monthly compensation immediately prior to his or her
22 receiving workers' compensation payments for retirement credit
23 received by the member.

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

26 122.03 Contributions; participants; prior service
27 credit.--

28 (7) A member of the retirement system created by this
29 chapter who has been eligible or becomes eligible to receive
30 workers' compensation payments for an injury or illness
31 occurring during his or her employment while a member of any

1 state retirement system shall, upon his or her return to
 2 active employment with a covered employer for 1 calendar month
 3 or upon his or her approval for disability retirement in
 4 accordance with s. 122.09, receive full retirement credit for
 5 the period prior to such return to active employment or
 6 disability retirement for which the workers' compensation
 7 payments were received. However, no member may receive
 8 retirement credit for any such period occurring after the
 9 earlier of the date of maximum medical improvement ~~has been~~
 10 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date
 11 termination has occurred as defined in s. 121.021(39). The
 12 employer of record at the time of the worker's compensation
 13 injury or illness shall make the required employee and
 14 employer retirement contributions based on the member's rate
 15 of monthly compensation immediately prior to receipt of
 16 workers' compensation payments.

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

19 238.06 Membership application, creditable service, and
 20 time for making contributions.--

21 (10) A member of the retirement system created by this
 22 chapter who has been eligible or becomes eligible to receive
 23 workers' compensation payments for an injury or illness
 24 occurring during his or her employment while a member of any
 25 state retirement system shall, upon his or her return to
 26 active employment with a covered employer for 1 calendar month
 27 or upon his or her approval for disability retirement in
 28 accordance with s. 238.07, receive full retirement credit for
 29 the period prior to such return to active employment or
 30 disability retirement for which the workers' compensation
 31 payments were received. However, no member may receive

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

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

12 440.015 Legislative intent.--It is the intent of the
13 Legislature that the Workers' Compensation Law be interpreted
14 so as to assure the quick and efficient delivery of disability
15 and medical benefits to an injured worker and to facilitate
16 the worker's return to gainful reemployment at a reasonable
17 cost to the employer. It is the specific intent of the
18 Legislature that workers' compensation cases shall be decided
19 on their merits. The workers' compensation system in Florida
20 is based on a mutual renunciation of common-law rights and
21 defenses by employers and employees alike. In addition, it is
22 the intent of the Legislature that the facts in a workers'
23 compensation case are not to be interpreted liberally in favor
24 of either the rights of the injured worker or the rights of
25 the employer. Additionally, the Legislature hereby declares
26 that disputes concerning the facts in workers' compensation
27 cases are not to be given a broad liberal construction in
28 favor of the employee on the one hand or of the employer on
29 the other hand, and the laws pertaining to workers'
30 compensation are to be construed in accordance with the basic
31 principles of statutory construction and not liberally in

1 favor of either employee or employer. It is the intent of the
 2 Legislature to ensure the prompt delivery of benefits to the
 3 injured worker. Therefore, an efficient and self-executing
 4 system must be created which is not an economic or
 5 administrative burden. The department, agency, the Department
 6 of Education, and the Division of Administrative Hearings
 7 ~~Division of Workers' Compensation~~ shall administer the
 8 Workers' Compensation Law in a manner which facilitates the
 9 self-execution of the system and the process of ensuring a
 10 prompt and cost-effective delivery of payments.

11 Section 11. Subsections (3) through (39) of section
 12 440.02, Florida Statutes, are renumbered as subsections (4)
 13 through (40), respectively, a new subsection (3) is added to
 14 that section, and present subsections (11), (13), and (14) of
 15 said section are amended, to read:

16 440.02 Definitions.--When used in this chapter, unless
 17 the context clearly requires otherwise, the following terms
 18 shall have the following meanings:

19 (3) "Agency" means the Agency for Health Care
 20 Administration.

21 (12)~~(11)~~ "Department" means the Department of
 22 Insurance ~~Labor and Employment Security.~~

23 (14)~~(13)~~ "Division" means the Division of Workers'
 24 Compensation of the Department of Insurance ~~Labor and~~
 25 ~~Employment Security.~~

26 (15)~~(14)~~(a) "Employee" means any person engaged in any
 27 employment under any appointment or contract of hire or
 28 apprenticeship, express or implied, oral or written, whether
 29 lawfully or unlawfully employed, and includes, but is not
 30 limited to, aliens and minors.

31

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

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

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

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

17
18 Services are presumed to have been rendered to the corporation
19 if the officer is compensated by other than dividends upon
20 shares of stock of the corporation which the officer owns.

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

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

8 (d) "Employee" does not include:

9 1. An independent contractor, if:

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

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

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

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

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

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

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

3 h. The independent contractor has continuing or
4 recurring business liabilities or obligations; and

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

8
9 However, the determination as to whether an individual
10 included in the Standard Industrial Classification Manual of
11 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
12 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
13 2448, or 2449, or a newspaper delivery person, is an
14 independent contractor is governed not by the criteria in this
15 paragraph but by common-law principles, giving due
16 consideration to the business activity of the individual.

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

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

25 4. An owner-operator of a motor vehicle who transports
26 property under a written contract with a motor carrier which
27 evidences a relationship by which the owner-operator assumes
28 the responsibility of an employer for the performance of the
29 contract, if the owner-operator is required to furnish the
30 necessary motor vehicle equipment and all costs incidental to
31 the performance of the contract, including, but not limited

1 to, fuel, taxes, licenses, repairs, and hired help; and the
2 owner-operator is paid a commission for transportation service
3 and is not paid by the hour or on some other time-measured
4 basis.

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

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

10 A person who does not receive monetary remuneration for
11 services is presumed to be a volunteer unless there is
12 substantial evidence that a valuable consideration was
13 intended by both employer and employee. For purposes of this
14 chapter, the term "volunteer" includes, but is not limited to:

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

25 b. Volunteers participating in federal programs
26 established under Pub. L. No. 93-113.

27 7. Any officer of a corporation who elects to be
28 exempt from this chapter.

29 8. A sole proprietor or officer of a corporation who
30 actively engages in the construction industry, and a partner
31 in a partnership that is actively engaged in the construction

1 industry, who elects to be exempt from the provisions of this
2 chapter. Such sole proprietor, officer, or partner is not an
3 employee for any reason until the notice of revocation of
4 election filed pursuant to s. 440.05 is effective.

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

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

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

1 serves as a sports official as part of his or her
2 responsibilities during normal school hours.

3 Section 12. Section 440.021, Florida Statutes, is
4 amended to read:

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

26 Section 13. Section 440.05, Florida Statutes, is
27 amended to read:

28 440.05 Election of exemption; revocation of election;
29 notice; certification.--

30 (1) Each corporate officer who elects not to accept
31 the provisions of this chapter or who, after electing such

1 exemption, revokes that exemption shall mail to the department
2 ~~division~~ in Tallahassee notice to such effect in accordance
3 with a form to be prescribed by the department ~~division~~.

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

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

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

1 must notify her or his contractor. Upon revocation of a
2 certificate of election of exemption by the department
3 division, the department ~~division~~ shall notify the workers'
4 compensation carriers identified in the request for exemption.

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

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

27 (6) A construction industry certificate of election to
28 be exempt which is issued in accordance with this section
29 shall be valid for 2 years after the effective date stated
30 thereon. Both the effective date and the expiration date must
31 be listed on the face of the certificate by the department

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

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

22 (8)(a) The department ~~division~~ must assess a fee of
23 \$50 with each request for a construction industry certificate
24 of election to be exempt or renewal of election to be exempt
25 under this section.

26 (b) The funds collected by the department ~~division~~
27 shall be used to administer this section, to audit the
28 businesses that pay the fee for compliance with any
29 requirements of this chapter, and to enforce compliance with
30 the provisions of this chapter.

31

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

9 Section 14. Paragraph (d) of subsection (7) of section
10 440.09, Florida Statutes, is amended to read:

11 440.09 Coverage.--

12 (7)

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

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

19 440.10 Liability for compensation.--

20 (1)

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

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

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

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

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

21 Section 16. Subsection (2), paragraph (a) of
22 subsection (3), and paragraph (g) of subsection (7) of section
23 440.102, Florida Statutes, are amended to read:

24 440.102 Drug-free workplace program requirements.--The
25 following provisions apply to a drug-free workplace program
26 implemented pursuant to law or to rules adopted by the Agency
27 for Health Care Administration:

28 (2) DRUG TESTING.--An employer may test an employee or
29 job applicant for any drug described in paragraph (1)(c). In
30 order to qualify as having established a drug-free workplace
31 program which affords an employer the ability to qualify for

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

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

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

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

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

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

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

31 3. A general statement concerning confidentiality.

1 4. Procedures for employees and job applicants to
2 confidentially report to a medical review officer the use of
3 prescription or nonprescription medications to a medical
4 review officer both before and after being tested.

5 5. A list of the most common medications, by brand
6 name or common name, as applicable, as well as by chemical
7 name, which may alter or affect a drug test. A list of such
8 medications as developed by the Agency for Health Care
9 Administration shall be available to employers through the
10 ~~Division of Workers' Compensation of the department of Labor~~
11 ~~and Employment Security.~~

12 6. The consequences of refusing to submit to a drug
13 test.

14 7. A representative sampling of names, addresses, and
15 telephone numbers of employee assistance programs and local
16 drug rehabilitation programs.

17 8. A statement that an employee or job applicant who
18 receives a positive confirmed test result may contest or
19 explain the result to the medical review officer within 5
20 working days after receiving written notification of the test
21 result; that if an employee's or job applicant's explanation
22 or challenge is unsatisfactory to the medical review officer,
23 the medical review officer shall report a positive test result
24 back to the employer; and that a person may contest the drug
25 test result pursuant to law or to rules adopted by the Agency
26 for Health Care Administration.

27 9. A statement informing the employee or job applicant
28 of his or her responsibility to notify the laboratory of any
29 administrative or civil action brought pursuant to this
30 section.

31

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

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

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

11 (7) EMPLOYER PROTECTION.--

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

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

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

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

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

25 440.104 Competitive bidder; civil actions.--

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

1 violation of s. 440.10, s. 440.105, or s. 440.38 while
2 performing the work under the contract.

3 Section 19. Paragraph (a) of subsection (2) of section
4 440.105, Florida Statutes, is amended to read:

5 440.105 Prohibited activities; reports; penalties;
6 limitations.--

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

10 (a) It shall be unlawful for any employer to
11 knowingly:

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

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

18 3. Discharge, discipline, or take any other adverse
19 personnel action against any employee for disclosing
20 information to the department ~~division~~ or any law enforcement
21 agency relating to any violation or suspected violation of any
22 of the provisions of this chapter or rules promulgated
23 hereunder.

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

26 Section 20. Subsections (3) and (4) of section
27 440.106, Florida Statutes, are amended to read:

28 440.106 Civil remedies; administrative penalties.--

29 (3) Whenever any group or individual self-insurer,
30 carrier, rating bureau, or agent or other representative of
31 any carrier or rating bureau is determined to have violated s.

1 440.105, the department ~~of Insurance~~ may revoke or suspend the
2 authority or certification of any group or individual
3 self-insurer, carrier, agent, or broker.

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

8 Section 21. Section 440.107, Florida Statutes, is
9 amended to read:

10 440.107 Department ~~Division~~ powers to enforce employer
11 compliance with coverage requirements.--

12 (1) The Legislature finds that the failure of an
13 employer to comply with the workers' compensation coverage
14 requirements under this chapter poses an immediate danger to
15 public health, safety, and welfare. The Legislature authorizes
16 the department ~~division~~ to secure employer compliance with the
17 workers' compensation coverage requirements and authorizes the
18 department ~~division~~ to conduct investigations for the purpose
19 of ensuring employer compliance.

20 (2) The department ~~division~~ and its authorized
21 representatives may enter and inspect any place of business at
22 any reasonable time for the limited purpose of investigating
23 compliance with workers' compensation coverage requirements
24 under this chapter. Each employer shall keep true and accurate
25 business records that contain such information as the
26 department ~~division~~ prescribes by rule. The business records
27 must contain information necessary for the department ~~division~~
28 to determine compliance with workers' compensation coverage
29 requirements and must be maintained within this state by the
30 business, in such a manner as to be accessible within a
31 reasonable time upon request by the department ~~division~~. The

1 business records must be open to inspection and be available
2 for copying by the department ~~division~~ at any reasonable time
3 and place and as often as necessary. The department ~~division~~
4 may require from any employer any sworn or unsworn reports,
5 pertaining to persons employed by that employer, deemed
6 necessary for the effective administration of the workers'
7 compensation coverage requirements.

8 (3) In discharging its duties, the department ~~division~~
9 may administer oaths and affirmations, certify to official
10 acts, issue subpoenas to compel the attendance of witnesses
11 and the production of books, papers, correspondence,
12 memoranda, and other records deemed necessary by the
13 department ~~division~~ as evidence in order to ensure proper
14 compliance with the coverage provisions of this chapter.

15 (4) If a person has refused to obey a subpoena to
16 appear before the department ~~division~~ or its authorized
17 representative and produce evidence requested by the
18 department ~~division~~ or to give testimony about the matter that
19 is under investigation, a court has jurisdiction to issue an
20 order requiring compliance with the subpoena if the court has
21 jurisdiction in the geographical area where the inquiry is
22 being carried on or in the area where the person who has
23 refused the subpoena is found, resides, or transacts business.
24 Failure to obey such a court order may be punished by the
25 court as contempt.

26 (5) Whenever the department ~~division~~ determines that
27 an employer who is required to secure the payment to his or
28 her employees of the compensation provided for by this chapter
29 has failed to do so, such failure shall be deemed an immediate
30 serious danger to public health, safety, or welfare sufficient
31 to justify service by the department ~~division~~ of a stop-work

1 order on the employer, requiring the cessation of all business
2 operations at the place of employment or job site. The order
3 shall take effect upon the date of service upon the employer,
4 unless the employer provides evidence satisfactory to the
5 department ~~division~~ of having secured any necessary insurance
6 or self-insurance and pays a civil penalty to the department
7 ~~division~~, to be deposited by the department ~~division~~ into the
8 Workers' Compensation Administration Trust Fund, in the amount
9 of \$100 per day for each day the employer was not in
10 compliance with this chapter.

11 (6) The department ~~division~~ may file a complaint in
12 the circuit court in and for Leon County to enjoin any
13 employer, who has failed to secure compensation as required by
14 this chapter, from employing individuals and from conducting
15 business until the employer presents evidence satisfactory to
16 the department ~~division~~ of having secured payment for
17 compensation and pays a civil penalty to the department
18 ~~division~~, to be deposited by the department ~~division~~ into the
19 Workers' Compensation Administration Trust Fund, in the amount
20 of \$100 per day for each day the employer was not in
21 compliance with this chapter.

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

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

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

31

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

9 (8) The department ~~division~~ may bring an action in
10 circuit court to recover penalties assessed under this
11 section, including any interest owed to the department
12 ~~division~~ pursuant to this section. In any action brought by
13 the department ~~division~~ pursuant to this section in which it
14 prevails, the circuit court shall award costs, including the
15 reasonable costs of investigation and a reasonable attorney's
16 fee.

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

1 property of the employer, the notice is recorded with the
2 Secretary of State.

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

9 (11) Actions by the department ~~division~~ under this
10 section must be contested as provided in chapter 120. All
11 civil penalties assessed by the department ~~division~~ must be
12 paid into the Workers' Compensation Administration Trust Fund.
13 The department ~~division~~ shall return any sums previously paid,
14 upon conclusion of an action, if the department ~~division~~ fails
15 to prevail and if so directed by an order of court or an
16 administrative hearing officer. The requirements of this
17 subsection may be met by posting a bond in an amount equal to
18 twice the penalty and in a form approved by the department
19 ~~division~~.

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

22 440.108 Investigatory records relating to workers'
23 compensation employer compliance; confidentiality.--

24 (1) All investigatory records of the department
25 ~~Division of Workers' Compensation~~ made or received pursuant to
26 s. 440.107 and any records necessary to complete an
27 investigation are confidential and exempt from the provisions
28 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
29 until the investigation is completed or ceases to be active.
30 For purposes of this section, an investigation is considered
31 "active" while such investigation is being conducted by the

1 department ~~division~~ with a reasonable, good faith belief that
2 it may lead to the filing of administrative, civil, or
3 criminal proceedings. An investigation does not cease to be
4 active if the agency is proceeding with reasonable dispatch
5 and there is a good faith belief that action may be initiated
6 by the agency or other administrative or law enforcement
7 agency. After an investigation is completed or ceases to be
8 active, records relating to the investigation remain
9 confidential and exempt from the provisions of s. 119.07(1)
10 and s. 24(a), Art. I of the State Constitution if disclosure
11 would:

- 12 (a) Jeopardize the integrity of another active
13 investigation;
14 (b) Reveal a trade secret, as defined in s. 688.002;
15 (c) Reveal business or personal financial information;
16 (d) Reveal the identity of a confidential source;
17 (e) Defame or cause unwarranted damage to the good
18 name or reputation of an individual or jeopardize the safety
19 of an individual; or
20 (f) Reveal investigative techniques or procedures.

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

23 440.12 Time for commencement and limits on weekly rate
24 of compensation.--

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

1 (a) Equal to 100 percent of the statewide average
2 weekly wage, determined as hereinafter provided for the year
3 in which the injury occurred; however, the increase to 100
4 percent from 66 2/3 percent of the statewide average weekly
5 wage shall apply only to injuries occurring on or after August
6 1, 1979; and

7 (b) Adjusted to the nearest dollar.
8

9 For the purpose of this subsection, the "statewide average
10 weekly wage" means the average weekly wage paid by employers
11 subject to the Florida Unemployment Compensation Law as
12 reported to the Agency for Workforce Innovation ~~department~~ for
13 the four calendar quarters ending each June 30, which average
14 weekly wage shall be determined by the Agency for Workforce
15 Innovation ~~department~~ on or before November 30 of each year
16 and shall be used in determining the maximum weekly
17 compensation rate with respect to injuries occurring in the
18 calendar year immediately following. The statewide average
19 weekly wage determined by the Agency for Workforce Innovation
20 ~~department~~ shall be reported annually to the Legislature.

21 Section 24. Section 440.125, Florida Statutes, is
22 amended to read:

23 440.125 Medical records and reports; identifying
24 information in employee medical bills; confidentiality.--

25 ~~(1)~~ Any medical records and medical reports of an
26 injured employee and any information identifying an injured
27 employee in medical bills which are provided to the
28 department, ~~Division of Workers' Compensation of the~~
29 ~~Department of Labor and Employment Security~~ pursuant to s.
30 440.13 are confidential and exempt from the provisions of s.
31 119.07(1) and s. 24(a), Art. I of the State Constitution,

1 except as otherwise provided by this chapter. The department
 2 may share any such confidential and exempt records, reports,
 3 or information received pursuant to s. 440.13 with the Agency
 4 for Health Care Administration and the Department of Education
 5 in furtherance of their official duties under ss. 440.13 and
 6 440.134. The agency and the department shall maintain the
 7 confidential and exempt status of such records, reports, and
 8 information received.

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

23 Section 25. Subsections (1), (3), (4), (5), (6), (7),
 24 (8), (9), (11), (12), (13), and (15) of section 440.13,
 25 Florida Statutes, are amended to read:

26 440.13 Medical services and supplies; penalty for
 27 violations; limitations.--

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

29 (a) "Alternate medical care" means a change in
 30 treatment or health care provider.

31

1 (b) "Attendant care" means care rendered by trained
2 professional attendants which is beyond the scope of household
3 duties. Family members may provide nonprofessional attendant
4 care, but may not be compensated under this chapter for care
5 that falls within the scope of household duties and other
6 services normally and gratuitously provided by family members.
7 "Family member" means a spouse, father, mother, brother,
8 sister, child, grandchild, father-in-law, mother-in-law, aunt,
9 or uncle.

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

13 (d) "Catastrophic injury" means an injury as defined
14 in s. 440.02.

15 (e) "Certified health care provider" means a health
16 care provider who has been certified by the agency ~~division~~ or
17 who has entered an agreement with a licensed managed care
18 organization to provide treatment to injured workers under
19 this section. Certification of such health care provider must
20 include documentation that the health care provider has read
21 and is familiar with the portions of the statute, impairment
22 guides, and rules which govern the provision of remedial
23 treatment, care, and attendance.

24 (f) "Compensable" means a determination by a carrier
25 or judge of compensation claims that a condition suffered by
26 an employee results from an injury arising out of and in the
27 course of employment.

28 (g) "Emergency services and care" means emergency
29 services and care as defined in s. 395.002.
30
31

1 (h) "Health care facility" means any hospital licensed
2 under chapter 395 and any health care institution licensed
3 under chapter 400.

4 (i) "Health care provider" means a physician or any
5 recognized practitioner who provides skilled services pursuant
6 to a prescription or under the supervision or direction of a
7 physician and who has been certified by the agency ~~division~~ as
8 a health care provider. The term "health care provider"
9 includes a health care facility.

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

14 (k) "Independent medical examination" means an
15 objective evaluation of the injured employee's medical
16 condition, including, but not limited to, impairment or work
17 status, performed by a physician or an expert medical advisor
18 at the request of a party, a judge of compensation claims, or
19 the agency ~~division~~ to assist in the resolution of a dispute
20 arising under this chapter.

21 (l) "Instance of overutilization" means a specific
22 inappropriate service or level of service provided to an
23 injured employee.

24 (m) "Medically necessary" means any medical service or
25 medical supply which is used to identify or treat an illness
26 or injury, is appropriate to the patient's diagnosis and
27 status of recovery, and is consistent with the location of
28 service, the level of care provided, and applicable practice
29 parameters. The service should be widely accepted among
30 practicing health care providers, based on scientific
31 criteria, and determined to be reasonably safe. The service

1 must not be of an experimental, investigative, or research
2 nature, except in those instances in which prior approval of
3 the Agency for Health Care Administration has been obtained.
4 The Agency for Health Care Administration shall adopt rules
5 providing for such approval on a case-by-case basis when the
6 service or supply is shown to have significant benefits to the
7 recovery and well-being of the patient.

8 (n) "Medicine" means a drug prescribed by an
9 authorized health care provider and includes only generic
10 drugs or single-source patented drugs for which there is no
11 generic equivalent, unless the authorized health care provider
12 writes or states that the brand-name drug as defined in s.
13 465.025 is medically necessary, or is a drug appearing on the
14 schedule of drugs created pursuant to s. 465.025(6), or is
15 available at a cost lower than its generic equivalent.

16 (o) "Palliative care" means noncurative medical
17 services that mitigate the conditions, effects, or pain of an
18 injury.

19 (p) "Pattern or practice of overutilization" means
20 repetition of instances of overutilization within a specific
21 medical case or multiple cases by a single health care
22 provider.

23 (q) "Peer review" means an evaluation by two or more
24 physicians licensed under the same authority and with the same
25 or similar specialty as the physician under review, of the
26 appropriateness, quality, and cost of health care and health
27 services provided to a patient, based on medically accepted
28 standards.

29 (r) "Physician" or "doctor" means a physician licensed
30 under chapter 458, an osteopathic physician licensed under
31 chapter 459, a chiropractic physician licensed under chapter

1 460, a podiatric physician licensed under chapter 461, an
2 optometrist licensed under chapter 463, or a dentist licensed
3 under chapter 466, each of whom must be certified by the
4 agency division as a health care provider.

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

8 (t) "Utilization control" means a systematic process
9 of implementing measures that assure overall management and
10 cost containment of services delivered.

11 (u) "Utilization review" means the evaluation of the
12 appropriateness of both the level and the quality of health
13 care and health services provided to a patient, including, but
14 not limited to, evaluation of the appropriateness of
15 treatment, hospitalization, or office visits based on
16 medically accepted standards. Such evaluation must be
17 accomplished by means of a system that identifies the
18 utilization of medical services based on medically accepted
19 standards as established by medical consultants with
20 qualifications similar to those providing the care under
21 review, and that refers patterns and practices of
22 overutilization to the agency division.

23 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

24 (a) As a condition to eligibility for payment under
25 this chapter, a health care provider who renders services must
26 be a certified health care provider and must receive
27 authorization from the carrier before providing treatment.
28 This paragraph does not apply to emergency care. The agency
29 division shall adopt rules to implement the certification of
30 health care providers.

31

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

14 (c) A health care provider may not refer the employee
15 to another health care provider, diagnostic facility, therapy
16 center, or other facility without prior authorization from the
17 carrier, except when emergency care is rendered. Any referral
18 must be to a health care provider that has been certified by
19 the agency ~~division~~, unless the referral is for emergency
20 treatment.

21 (d) A carrier must respond, by telephone or in
22 writing, to a request for authorization by the close of the
23 third business day after receipt of the request. A carrier who
24 fails to respond to a written request for authorization for
25 referral for medical treatment by the close of the third
26 business day after receipt of the request consents to the
27 medical necessity for such treatment. All such requests must
28 be made to the carrier. Notice to the carrier does not include
29 notice to the employer.

30 (e) Carriers shall adopt procedures for receiving,
31 reviewing, documenting, and responding to requests for

1 authorization. Such procedures shall be for a health care
2 provider certified under this section.

3 (f) By accepting payment under this chapter for
4 treatment rendered to an injured employee, a health care
5 provider consents to the jurisdiction of the agency ~~division~~
6 as set forth in subsection (11) and to the submission of all
7 records and other information concerning such treatment to the
8 agency ~~division~~ in connection with a reimbursement dispute,
9 audit, or review as provided by this section. The health care
10 provider must further agree to comply with any decision of the
11 agency ~~division~~ rendered under this section.

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

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

18 (i) Notwithstanding paragraph (d), a claim for
19 specialist consultations, surgical operations,
20 physiotherapeutic or occupational therapy procedures, X-ray
21 examinations, or special diagnostic laboratory tests that cost
22 more than \$1,000 and other specialty services that the agency
23 ~~division~~ identifies by rule is not valid and reimbursable
24 unless the services have been expressly authorized by the
25 carrier, or unless the carrier has failed to respond within 10
26 days to a written request for authorization, or unless
27 emergency care is required. The insurer shall not refuse to
28 authorize such consultation or procedure unless the health
29 care provider or facility is not authorized or certified or
30 unless an expert medical advisor has determined that the
31 consultation or procedure is not medically necessary or

1 otherwise compensable under this chapter. Authorization of a
2 treatment plan does not constitute express authorization for
3 purposes of this section, except to the extent the carrier
4 provides otherwise in its authorization procedures. This
5 paragraph does not limit the carrier's obligation to identify
6 and disallow overutilization or billing errors.

7 (j) Notwithstanding anything in this chapter to the
8 contrary, a sick or injured employee shall be entitled, at all
9 times, to free, full, and absolute choice in the selection of
10 the pharmacy or pharmacist dispensing and filling
11 prescriptions for medicines required under this chapter. It is
12 expressly forbidden for the agency division, an employer, or a
13 carrier, or any agent or representative of the agency
14 ~~division~~, an employer, or a carrier to select the pharmacy or
15 pharmacist which the sick or injured employee must use;
16 condition coverage or payment on the basis of the pharmacy or
17 pharmacist utilized; or to otherwise interfere in the
18 selection by the sick or injured employee of a pharmacy or
19 pharmacist.

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

22 (a) Any health care provider providing necessary
23 remedial treatment, care, or attendance to any injured worker
24 shall submit treatment reports to the carrier in a format
25 prescribed by the department in consultation with the agency
26 ~~division~~. A claim for medical or surgical treatment is not
27 valid or enforceable against such employer or employee,
28 unless, by the close of the third business day following the
29 first treatment, the physician providing the treatment
30 furnishes to the employer or carrier a preliminary notice of
31 the injury and treatment on forms prescribed by the department

1 in consultation with the agency ~~division~~ and, within 15 days
2 thereafter, furnishes to the employer or carrier a complete
3 report, and subsequent thereto furnishes progress reports, if
4 requested by the employer or insurance carrier, at intervals
5 of not less than 3 weeks apart or at less frequent intervals
6 if requested on forms prescribed by the department in
7 consultation with the agency ~~division~~.

8 (b) Upon the request of the department or agency
9 ~~Division of Workers' Compensation~~, each medical report or bill
10 obtained or received by the employer, the carrier, or the
11 injured employee, or the attorney for the employer, carrier,
12 or injured employee, with respect to the remedial treatment,
13 care, and attendance of the injured employee, including any
14 report of an examination, diagnosis, or disability evaluation,
15 must be filed with the department or agency ~~Division of~~
16 ~~Workers' Compensation~~ pursuant to rules adopted by the
17 department in consultation with the agency ~~division~~. The
18 health care provider shall also furnish to the injured
19 employee or to his or her attorney, on demand, a copy of his
20 or her office chart, records, and reports, and may charge the
21 injured employee an amount authorized by the department
22 ~~division~~ for the copies. Each such health care provider shall
23 provide to the agency or department ~~division~~ information about
24 the remedial treatment, care, and attendance which the agency
25 or department ~~division~~ reasonably requests.

26 (c) It is the policy for the administration of the
27 workers' compensation system that there be reasonable access
28 to medical information by all parties to facilitate the
29 self-executing features of the law. Notwithstanding the
30 limitations in s. 456.057 and subject to the limitations in s.
31 381.004, upon the request of the employer, the carrier, an

1 authorized qualified rehabilitation provider, or the attorney
2 for the employer or carrier, the medical records of an injured
3 employee must be furnished to those persons and the medical
4 condition of the injured employee must be discussed with those
5 persons, if the records and the discussions are restricted to
6 conditions relating to the workplace injury. Any such
7 discussions may be held before or after the filing of a claim
8 without the knowledge, consent, or presence of any other party
9 or his or her agent or representative. A health care provider
10 who willfully refuses to provide medical records or to discuss
11 the medical condition of the injured employee, after a
12 reasonable request is made for such information pursuant to
13 this subsection, shall be subject by the agency ~~division~~ to
14 one or more of the penalties set forth in paragraph (8)(b).

15 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

16 (a) In any dispute concerning overutilization, medical
17 benefits, compensability, or disability under this chapter,
18 the carrier or the employee may select an independent medical
19 examiner. The examiner may be a health care provider treating
20 or providing other care to the employee. An independent
21 medical examiner may not render an opinion outside his or her
22 area of expertise, as demonstrated by licensure and applicable
23 practice parameters.

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

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

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

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

4 4. The parties agree to an alternate examiner.
5

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

11 (c) The carrier may, at its election, contact the
12 claimant directly to schedule a reasonable time for an
13 independent medical examination. The carrier must confirm the
14 scheduling agreement in writing within 5 days and notify
15 claimant's counsel, if any, at least 7 days before the date
16 upon which the independent medical examination is scheduled to
17 occur. An attorney representing a claimant is not authorized
18 to schedule independent medical evaluations under this
19 subsection.

20 (d) If the employee fails to appear for the
21 independent medical examination without good cause and fails
22 to advise the physician at least 24 hours before the scheduled
23 date for the examination that he or she cannot appear, the
24 employee is barred from recovering compensation for any period
25 during which he or she has refused to submit to such
26 examination. Further, the employee shall reimburse the carrier
27 50 percent of the physician's cancellation or no-show fee
28 unless the carrier that schedules the examination fails to
29 timely provide to the employee a written confirmation of the
30 date of the examination pursuant to paragraph (c) which
31 includes an explanation of why he or she failed to appear. The

1 employee may appeal to a judge of compensation claims for
2 reimbursement when the carrier withholds payment in excess of
3 the authority granted by this section.

4 (e) No medical opinion other than the opinion of a
5 medical advisor appointed by the judge of compensation claims
6 or agency division, an independent medical examiner, or an
7 authorized treating provider is admissible in proceedings
8 before the judges of compensation claims.

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

13 (6) UTILIZATION REVIEW.--Carriers shall review all
14 bills, invoices, and other claims for payment submitted by
15 health care providers in order to identify overutilization and
16 billing errors, and may hire peer review consultants or
17 conduct independent medical evaluations. Such consultants,
18 including peer review organizations, are immune from liability
19 in the execution of their functions under this subsection to
20 the extent provided in s. 766.101. If a carrier finds that
21 overutilization of medical services or a billing error has
22 occurred, it must disallow or adjust payment for such services
23 or error without order of a judge of compensation claims or
24 the agency division, if the carrier, in making its
25 determination, has complied with this section and rules
26 adopted by the agency division.

27 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

28 (a) Any health care provider, carrier, or employer who
29 elects to contest the disallowance or adjustment of payment by
30 a carrier under subsection (6) must, within 30 days after
31 receipt of notice of disallowance or adjustment of payment,

1 petition the agency ~~division~~ to resolve the dispute. The
2 petitioner must serve a copy of the petition on the carrier
3 and on all affected parties by certified mail. The petition
4 must be accompanied by all documents and records that support
5 the allegations contained in the petition. Failure of a
6 petitioner to submit such documentation to the agency ~~division~~
7 results in dismissal of the petition.

8 (b) The carrier must submit to the agency ~~division~~
9 within 10 days after receipt of the petition all documentation
10 substantiating the carrier's disallowance or adjustment.
11 Failure of the carrier to submit the requested documentation
12 to the agency ~~division~~ within 10 days constitutes a waiver of
13 all objections to the petition.

14 (c) Within 60 days after receipt of all documentation,
15 the agency ~~division~~ must provide to the petitioner, the
16 carrier, and the affected parties a written determination of
17 whether the carrier properly adjusted or disallowed payment.
18 The agency ~~division~~ must be guided by standards and policies
19 set forth in this chapter, including all applicable
20 reimbursement schedules, in rendering its determination.

21 (d) If the agency ~~division~~ finds an improper
22 disallowance or improper adjustment of payment by an insurer,
23 the insurer shall reimburse the health care provider,
24 facility, insurer, or employer within 30 days, subject to the
25 penalties provided in this subsection.

26 (e) The agency ~~division~~ shall adopt rules to carry out
27 this subsection. The rules may include provisions for
28 consolidating petitions filed by a petitioner and expanding
29 the timetable for rendering a determination upon a
30 consolidated petition.

31

1 (f) Any carrier that engages in a pattern or practice
2 of arbitrarily or unreasonably disallowing or reducing
3 payments to health care providers may be subject to one or
4 more of the following penalties imposed by the agency
5 ~~division~~:

6 1. Repayment of the appropriate amount to the health
7 care provider.

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

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

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

15 (a) Carriers must report to the agency ~~division~~ all
16 instances of overutilization including, but not limited to,
17 all instances in which the carrier disallows or adjusts
18 payment. The agency ~~division~~ shall determine whether a pattern
19 or practice of overutilization exists.

20 (b) If the agency ~~division~~ determines that a health
21 care provider has engaged in a pattern or practice of
22 overutilization or a violation of this chapter or rules
23 adopted by the agency ~~division~~, it may impose one or more of
24 the following penalties:

25 1. An order of the agency ~~division~~ barring the
26 provider from payment under this chapter;

27 2. Deauthorization of care under review;

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

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

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

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

6 (9) EXPERT MEDICAL ADVISORS.--

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

21 (b) The agency ~~division~~ shall contract with or employ
22 expert medical advisors to provide peer review or medical
23 consultation to the agency ~~division~~ or to a judge of
24 compensation claims in connection with resolving disputes
25 relating to reimbursement, differing opinions of health care
26 providers, and health care and physician services rendered
27 under this chapter. Expert medical advisors contracting with
28 the agency ~~division~~ shall, as a term of such contract, agree
29 to provide consultation or services in accordance with the
30 timetables set forth in this chapter and to abide by rules
31 adopted by the agency ~~division~~, including, but not limited to,

1 rules pertaining to procedures for review of the services
2 rendered by health care providers and preparation of reports
3 and recommendations for submission to the agency division.

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

22 (d) The expert medical advisor must complete his or
23 her evaluation and issue his or her report to the agency
24 ~~division~~ or to the judge of compensation claims within 45 days
25 after receipt of all medical records. The expert medical
26 advisor must furnish a copy of the report to the carrier and
27 to the employee.

28 (e) An expert medical advisor is not liable under any
29 theory of recovery for evaluations performed under this
30 section without a showing of fraud or malice. The protections
31 of s. 766.101 apply to any officer, employee, or agent of the

1 agency division and to any officer, employee, or agent of any
2 entity with which the agency division has contracted under
3 this subsection.

4 (f) If the agency division or a judge of compensation
5 claims determines that the services of a certified expert
6 medical advisor are required to resolve a dispute under this
7 section, the carrier must compensate the advisor for his or
8 her time in accordance with a schedule adopted by the agency
9 division. The agency division may assess a penalty not to
10 exceed \$500 against any carrier that fails to timely
11 compensate an advisor in accordance with this section.

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

14 (a) The Agency for Health Care Administration Division
15 of Workers' Compensation of the Department of Labor and
16 Employment Security may investigate health care providers to
17 determine whether providers are complying with this chapter
18 and with rules adopted by the agency division, whether the
19 providers are engaging in overutilization, and whether
20 providers are engaging in improper billing practices. If the
21 agency division finds that a health care provider has
22 improperly billed, overutilized, or failed to comply with
23 agency division rules or the requirements of this chapter it
24 must notify the provider of its findings and may determine
25 that the health care provider may not receive payment from the
26 carrier or may impose penalties as set forth in subsection (8)
27 or other sections of this chapter. If the health care provider
28 has received payment from a carrier for services that were
29 improperly billed or for overutilization, it must return those
30 payments to the carrier. The agency division may assess a
31 penalty not to exceed \$500 for each overpayment that is not

1 refunded within 30 days after notification of overpayment by
2 the agency ~~division~~ or carrier.

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

21 (c) The agency ~~division~~ has exclusive jurisdiction to
22 decide any matters concerning reimbursement, to resolve any
23 overutilization dispute under subsection (7), and to decide
24 any question concerning overutilization under subsection (8),
25 which question or dispute arises after January 1, 1994.

26 (d) The following agency ~~division~~ actions do not
27 constitute agency action subject to review under ss. 120.569
28 and 120.57 and do not constitute actions subject to s. 120.56:
29 referral by the entity responsible for utilization review; a
30 decision by the agency ~~division~~ to refer a matter to a peer
31 review committee; establishment by a health care provider or

1 entity of procedures by which a peer review committee reviews
 2 the rendering of health care services; and the review
 3 proceedings, report, and recommendation of the peer review
 4 committee.

5 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 6 REIMBURSEMENT ALLOWANCES.--

7 (a) A three-member panel is created, consisting of the
 8 Insurance Commissioner, or the Insurance Commissioner's
 9 designee, and two members to be appointed by the Governor,
 10 subject to confirmation by the Senate, one member who, on
 11 account of present or previous vocation, employment, or
 12 affiliation, shall be classified as a representative of
 13 employers, the other member who, on account of previous
 14 vocation, employment, or affiliation, shall be classified as a
 15 representative of employees. The panel shall determine
 16 statewide schedules of maximum reimbursement allowances for
 17 medically necessary treatment, care, and attendance provided
 18 by physicians, hospitals, ambulatory surgical centers,
 19 work-hardening programs, pain programs, and durable medical
 20 equipment. The maximum reimbursement allowances for inpatient
 21 hospital care shall be based on a schedule of per diem rates,
 22 to be approved by the three-member panel no later than March
 23 1, 1994, to be used in conjunction with a precertification
 24 manual as determined by the agency ~~division~~. All compensable
 25 charges for hospital outpatient care shall be reimbursed at 75
 26 percent of usual and customary charges. Until the three-member
 27 panel approves a schedule of per diem rates for inpatient
 28 hospital care and it becomes effective, all compensable
 29 charges for hospital inpatient care must be reimbursed at 75
 30 percent of their usual and customary charges. Annually, the
 31 three-member panel shall adopt schedules of maximum

1 reimbursement allowances for physicians, hospital inpatient
2 care, hospital outpatient care, ambulatory surgical centers,
3 work-hardening programs, and pain programs. However, the
4 maximum percentage of increase in the individual reimbursement
5 allowance may not exceed the percentage of increase in the
6 Consumer Price Index for the previous year. An individual
7 physician, hospital, ambulatory surgical center, pain program,
8 or work-hardening program shall be reimbursed either the usual
9 and customary charge for treatment, care, and attendance, the
10 agreed-upon contract price, or the maximum reimbursement
11 allowance in the appropriate schedule, whichever is less.

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

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

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

- 18 1. The levels of reimbursement for similar treatment,
19 care, and attendance made by other health care programs or
20 third-party providers;
- 21 2. The impact upon cost to employers for providing a
22 level of reimbursement for treatment, care, and attendance
23 which will ensure the availability of treatment, care, and
24 attendance required by injured workers;
- 25 3. The financial impact of the reimbursement
26 allowances upon health care providers and health care
27 facilities, including trauma centers as defined in s.
28 395.4001, and its effect upon their ability to make available
29 to injured workers such medically necessary remedial
30 treatment, care, and attendance. The uniform schedule of
31 maximum reimbursement allowances must be reasonable, must

1 promote health care cost containment and efficiency with
2 respect to the workers' compensation health care delivery
3 system, and must be sufficient to ensure availability of such
4 medically necessary remedial treatment, care, and attendance
5 to injured workers; and

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

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

15 (a) Engaged in professional or other misconduct or
16 incompetency in connection with medical services rendered
17 under this chapter;

18 (b) Exceeded the limits of his or her or its
19 professional competence in rendering medical care under this
20 chapter, or to have made materially false statements regarding
21 his or her or its qualifications in his or her application;

22 (c) Failed to transmit copies of medical reports to
23 the employer or carrier, or failed to submit full and truthful
24 medical reports of all his or her or its findings to the
25 employer or carrier as required under this chapter;

26 (d) Solicited, or employed another to solicit for
27 himself or herself or itself or for another, professional
28 treatment, examination, or care of an injured employee in
29 connection with any claim under this chapter;

30 (e) Refused to appear before, or to answer upon
31 request of, the agency ~~division~~ or any duly authorized officer

1 of the state, any legal question, or to produce any relevant
2 book or paper concerning his or her conduct under any
3 authorization granted to him or her under this chapter;

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

6 (g) Engaged in a pattern of practice of
7 overutilization or a violation of this chapter or rules
8 adopted by the agency ~~division~~.

9 (15) PRACTICE PARAMETERS.--

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

26 (b) The guidelines may be initially based on
27 guidelines prepared by nationally recognized health care
28 institutions and professional organizations but should be
29 tailored to meet the workers' compensation goal of returning
30 employees to full employment as quickly as medically possible,
31 taking into consideration outcomes data collected from managed

1 care providers and any other inpatient and outpatient
2 facilities serving workers' compensation claimants.

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

8 (d) Practice parameters developed under this section
9 must be used by carriers and the agency ~~division~~ in evaluating
10 the appropriateness and overutilization of medical services
11 provided to injured employees.

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

14 440.134 Workers' compensation managed care
15 arrangement.--

16 (23) The agency shall immediately notify the
17 ~~department of Insurance and the Department of Labor and~~
18 ~~Employment Security~~ whenever it issues an administrative
19 complaint or an order or otherwise initiates legal proceedings
20 resulting in, or which may result in, suspension or revocation
21 of an insurer's authorization.

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

24 440.14 Determination of pay.--

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

29 (4) Upon termination of the employee or upon
30 termination of the payment of fringe benefits of any employee
31 who is collecting indemnity benefits pursuant to s. 440.15(2)

1 or (3)(b), the employer shall within 7 days of such
2 termination file a corrected 13-week wage statement reflecting
3 the wages paid and the fringe benefits that had been paid to
4 the injured employee, as provided ~~defined~~ in s. 440.02(27).

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

9 440.15 Compensation for disability.--Compensation for
10 disability shall be paid to the employee, subject to the
11 limits provided in s. 440.12(2), as follows:

12 (1) PERMANENT TOTAL DISABILITY.--

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

24 (f)1. If permanent total disability results from
25 injuries that occurred subsequent to June 30, 1955, and for
26 which the liability of the employer for compensation has not
27 been discharged under s. 440.20(11), the injured employee
28 shall receive additional weekly compensation benefits equal to
29 5 percent of her or his weekly compensation rate, as
30 established pursuant to the law in effect on the date of her
31 or his injury, multiplied by the number of calendar years

1 since the date of injury. The weekly compensation payable and
2 the additional benefits payable under this paragraph, when
3 combined, may not exceed the maximum weekly compensation rate
4 in effect at the time of payment as determined pursuant to s.
5 440.12(2). Entitlement to these supplemental payments shall
6 cease at age 62 if the employee is eligible for social
7 security benefits under 42 U.S.C. ss. 402 and 423, whether or
8 not the employee has applied for such benefits. These
9 supplemental benefits shall be paid by the department ~~division~~
10 out of the Workers' Compensation Administration Trust Fund
11 when the injury occurred subsequent to June 30, 1955, and
12 before July 1, 1984. These supplemental benefits shall be paid
13 by the employer when the injury occurred on or after July 1,
14 1984. Supplemental benefits are not payable for any period
15 prior to October 1, 1974.

16 2.a. The department ~~division~~ shall provide by rule for
17 the periodic reporting to the department ~~division~~ of all
18 earnings of any nature and social security income by the
19 injured employee entitled to or claiming additional
20 compensation under subparagraph 1. Neither the department
21 ~~division~~ nor the employer or carrier shall make any payment of
22 those additional benefits provided by subparagraph 1. for any
23 period during which the employee willfully fails or refuses to
24 report upon request by the department ~~division~~ in the manner
25 prescribed by such rules.

26 b. The department ~~division~~ shall provide by rule for
27 the periodic reporting to the employer or carrier of all
28 earnings of any nature and social security income by the
29 injured employee entitled to or claiming benefits for
30 permanent total disability. The employer or carrier is not
31 required to make any payment of benefits for permanent total

1 disability for any period during which the employee willfully
2 fails or refuses to report upon request by the employer or
3 carrier in the manner prescribed by such rules or if any
4 employee who is receiving permanent total disability benefits
5 refuses to apply for or cooperate with the employer or carrier
6 in applying for social security benefits.

7 3. When an injured employee receives a full or partial
8 lump-sum advance of the employee's permanent total disability
9 compensation benefits, the employee's benefits under this
10 paragraph shall be computed on the employee's weekly
11 compensation rate as reduced by the lump-sum advance.

12 (2) TEMPORARY TOTAL DISABILITY.--

13 (c) Temporary total disability benefits paid pursuant
14 to this subsection shall include such period as may be
15 reasonably necessary for training in the use of artificial
16 members and appliances, and shall include such period as the
17 employee may be receiving training and education under a
18 program pursuant to s. 440.491. Notwithstanding s. 440.02(9),
19 the date of maximum medical improvement for purposes of
20 paragraph (3)(b) shall be no earlier than the last day for
21 which such temporary disability benefits are paid.

22 (d) The department ~~division~~ shall, by rule, provide
23 for the periodic reporting to the department ~~division~~,
24 employer, or carrier of all earned income, including income
25 from social security, by the injured employee who is entitled
26 to or claiming benefits for temporary total disability. The
27 employer or carrier is not required to make any payment of
28 benefits for temporary total disability for any period during
29 which the employee willfully fails or refuses to report upon
30 request by the employer or carrier in the manner prescribed by
31 the rules. The rule must require the claimant to personally

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

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

4 (a) Impairment benefits.--

5 1. Once the employee has reached the date of maximum
6 medical improvement, impairment benefits are due and payable
7 within 20 days after the carrier has knowledge of the
8 impairment.

9 2. The three-member panel, in cooperation with the
10 department ~~division~~, shall establish and use a uniform
11 permanent impairment rating schedule. This schedule must be
12 based on medically or scientifically demonstrable findings as
13 well as the systems and criteria set forth in the American
14 Medical Association's Guides to the Evaluation of Permanent
15 Impairment; the Snellen Charts, published by American Medical
16 Association Committee for Eye Injuries; and the Minnesota
17 Department of Labor and Industry Disability Schedules. The
18 schedule should be based upon objective findings. The schedule
19 shall be more comprehensive than the AMA Guides to the
20 Evaluation of Permanent Impairment and shall expand the areas
21 already addressed and address additional areas not currently
22 contained in the guides. On August 1, 1979, and pending the
23 adoption, by rule, of a permanent schedule, Guides to the
24 Evaluation of Permanent Impairment, copyright 1977, 1971,
25 1988, by the American Medical Association, shall be the
26 temporary schedule and shall be used for the purposes hereof.
27 For injuries after July 1, 1990, pending the adoption by
28 ~~division~~ rule of a uniform disability rating agency schedule,
29 the Minnesota Department of Labor and Industry Disability
30 Schedule shall be used unless that schedule does not address
31 an injury. In such case, the Guides to the Evaluation of

1 Permanent Impairment by the American Medical Association shall
2 be used. Determination of permanent impairment under this
3 schedule must be made by a physician licensed under chapter
4 458, a doctor of osteopathic medicine licensed under chapters
5 458 and 459, a chiropractic physician licensed under chapter
6 460, a podiatric physician licensed under chapter 461, an
7 optometrist licensed under chapter 463, or a dentist licensed
8 under chapter 466, as appropriate considering the nature of
9 the injury. No other persons are authorized to render opinions
10 regarding the existence of or the extent of permanent
11 impairment.

12 3. All impairment income benefits shall be based on an
13 impairment rating using the impairment schedule referred to in
14 subparagraph 2. Impairment income benefits are paid weekly at
15 the rate of 50 percent of the employee's average weekly
16 temporary total disability benefit not to exceed the maximum
17 weekly benefit under s. 440.12. An employee's entitlement to
18 impairment income benefits begins the day after the employee
19 reaches maximum medical improvement or the expiration of
20 temporary benefits, whichever occurs earlier, and continues
21 until the earlier of:

22 a. The expiration of a period computed at the rate of
23 3 weeks for each percentage point of impairment; or

24 b. The death of the employee.

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

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

1 emotional injury arising out of depression from being out of
 2 work. If the certification and evaluation are performed by a
 3 doctor other than the employee's treating doctor, the
 4 certification and evaluation must be submitted to the treating
 5 doctor, and the treating doctor must indicate agreement or
 6 disagreement with the certification and evaluation. The
 7 certifying doctor shall issue a written report to the
 8 department ~~division~~, the employee, and the carrier certifying
 9 that maximum medical improvement has been reached, stating the
 10 impairment rating, and providing any other information
 11 required by the department by rule ~~division~~. If the employee
 12 has not been certified as having reached maximum medical
 13 improvement before the expiration of 102 weeks after the date
 14 temporary total disability benefits begin to accrue, the
 15 carrier shall notify the treating doctor of the requirements
 16 of this section.

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

19 6. The department ~~division~~ may by rule specify forms
 20 and procedures governing the method of payment of wage loss
 21 and impairment benefits for dates of accidents before January
 22 1, 1994, and for dates of accidents on or after January 1,
 23 1994.

24 (b) Supplemental benefits.--

25 1. All supplemental benefits must be paid in
 26 accordance with this subsection. An employee is entitled to
 27 supplemental benefits as provided in this paragraph as of the
 28 expiration of the impairment period, if:

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

1 b. The employee has not returned to work or has
2 returned to work earning less than 80 percent of the
3 employee's average weekly wage as a direct result of the
4 employee's impairment; and

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

7 2. If an employee is not entitled to supplemental
8 benefits at the time of payment of the final weekly impairment
9 income benefit because the employee is earning at least 80
10 percent of the employee's average weekly wage, the employee
11 may become entitled to supplemental benefits at any time
12 within 1 year after the impairment income benefit period ends
13 if:

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

17 b. The employee meets the other requirements of
18 subparagraph 1.; and

19 c. The employee's decrease in earnings is a direct
20 result of the employee's impairment from the compensable
21 injury.

22 3. If an employee earns wages that are at least 80
23 percent of the employee's average weekly wage for a period of
24 at least 90 days during which the employee is receiving
25 supplemental benefits, the employee ceases to be entitled to
26 supplemental benefits for the filing period. Supplemental
27 benefits that have been terminated shall be reinstated when
28 the employee satisfies the conditions enumerated in
29 subparagraph 2. and files the statement required under
30 subparagraph 5. Notwithstanding any other provision, if an
31 employee is not entitled to supplemental benefits for 12

1 consecutive months, the employee ceases to be entitled to any
2 additional income benefits for the compensable injury. If the
3 employee is discharged within 12 months after losing
4 entitlement under this subsection, benefits may be reinstated
5 if the employee was discharged at that time with the intent to
6 deprive the employee of supplemental benefits.

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

23 4.5. After the initial determination of supplemental
24 benefits, the employee must file a statement with the carrier
25 stating that the employee has earned less than 80 percent of
26 the employee's average weekly wage as a direct result of the
27 employee's impairment, stating the amount of wages the
28 employee earned in the filing period, and stating that the
29 employee has in good faith sought employment commensurate with
30 the employee's ability to work. The statement must be filed
31 quarterly on a form and in the manner prescribed by the

1 ~~department division~~. The department ~~division~~ may modify the
 2 filing period as appropriate to an individual case. Failure to
 3 file a statement relieves the carrier of liability for
 4 supplemental benefits for the period during which a statement
 5 is not filed.

6 ~~5.6.~~ The carrier shall begin payment of supplemental
 7 benefits not later than the seventh day after the expiration
 8 date of the impairment income benefit period and shall
 9 continue to timely pay those benefits. The carrier may request
 10 a mediation conference for the purpose of contesting the
 11 employee's entitlement to or the amount of supplemental income
 12 benefits.

13 ~~6.7.~~ Supplemental benefits are calculated quarterly
 14 and paid monthly. For purposes of calculating supplemental
 15 benefits, 80 percent of the employee's average weekly wage and
 16 the average wages the employee has earned per week are
 17 compared quarterly. For purposes of this paragraph, if the
 18 employee is offered a bona fide position of employment that
 19 the employee is capable of performing, given the physical
 20 condition of the employee and the geographic accessibility of
 21 the position, the employee's weekly wages are considered
 22 equivalent to the weekly wages for the position offered to the
 23 employee.

24 ~~7.8.~~ Supplemental benefits are payable at the rate of
 25 80 percent of the difference between 80 percent of the
 26 employee's average weekly wage determined pursuant to s.
 27 440.14 and the weekly wages the employee has earned during the
 28 reporting period, not to exceed the maximum weekly income
 29 benefit under s. 440.12.

30 ~~8.9.~~ The department ~~division~~ may by rule define terms
 31 that are necessary for the administration of this section and

1 forms and procedures governing the method of payment of
2 supplemental benefits for dates of accidents before January 1,
3 1994, and for dates of accidents on or after January 1, 1994.

4 (c) Duration of temporary impairment and supplemental
5 income benefits.--The employee's eligibility for temporary
6 benefits, impairment income benefits, and supplemental
7 benefits terminates on the expiration of 401 weeks after the
8 date of injury.

9 (4) TEMPORARY PARTIAL DISABILITY.--

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

26 (b) Such benefits shall be paid during the continuance
27 of such disability, not to exceed a period of 104 weeks, as
28 provided by this subsection and subsection (2). Once the
29 injured employee reaches the maximum number of weeks,
30 temporary disability benefits cease and the injured worker's
31 permanent impairment must be determined. The department

1 ~~division~~ may by rule specify forms and procedures governing
2 the method of payment of temporary disability benefits for
3 dates of accidents before January 1, 1994, and for dates of
4 accidents on or after January 1, 1994.

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

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

22 (b) If the provisions of 42 U.S.C. s. 424(a) are
23 amended to provide for a reduction or increase of the
24 percentage of average current earnings that the sum of
25 compensation benefits payable under this chapter and the
26 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
27 the amount of the reduction of benefits provided in this
28 subsection shall be reduced or increased accordingly. The
29 department ~~division~~ may by rule specify forms and procedures
30 governing the method for calculating and administering the
31 offset of benefits payable under this chapter and benefits

1 payable under 42 U.S.C. ss. 402 and 423. The department
2 ~~division~~ shall have first priority in taking any available
3 social security offsets on dates of accidents occurring before
4 July 1, 1984.

5 (c) No disability compensation benefits payable for
6 any week, including those benefits provided by paragraph
7 (1)(f), shall be reduced pursuant to this subsection until the
8 Social Security Administration determines the amount otherwise
9 payable to the employee under 42 U.S.C. ss. 402 and 423 and
10 the employee has begun receiving such social security benefit
11 payments. The employee shall, upon demand by the department
12 ~~division~~, the employer, or the carrier, authorize the Social
13 Security Administration to release disability information
14 relating to her or him and authorize the Division of
15 Unemployment Compensation to release unemployment compensation
16 information relating to her or him, in accordance with rules
17 to be adopted ~~promulgated~~ by the department ~~division~~
18 prescribing the procedure and manner for requesting the
19 authorization and for compliance by the employee. Neither the
20 department ~~division~~ nor the employer or carrier shall make any
21 payment of benefits for total disability or those additional
22 benefits provided by paragraph (1)(f) for any period during
23 which the employee willfully fails or refuses to authorize the
24 release of information in the manner and within the time
25 prescribed by such rules. The authority for release of
26 disability information granted by an employee under this
27 paragraph shall be effective for a period not to exceed 12
28 months, such authority to be renewable as the department
29 ~~division~~ may prescribe by rule.

30
31

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

4 440.185 Notice of injury or death; reports; penalties
5 for violations.--

6 (2) Within 7 days after actual knowledge of injury or
7 death, the employer shall report such injury or death to its
8 carrier, in a format prescribed by the department division,
9 and shall provide a copy of such report to the employee or the
10 employee's estate. The report of injury shall contain the
11 following information:

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

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

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

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

18 (e) Such other information as the department division
19 may require.

20
21 The carrier shall, within 14 days after the employer's receipt
22 of the form reporting the injury, file the information
23 required by this subsection with the department division ~~in~~
24 ~~Tallahassee~~. However, the department division may by rule
25 provide for a different reporting system for those types of
26 injuries which it determines should be reported in a different
27 manner and for those cases which involve minor injuries
28 requiring professional medical attention in which the employee
29 does not lose more than 7 days of work as a result of the
30 injury and is able to return to the job immediately after
31 treatment and resume regular work.

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

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

29 (5) Additional reports with respect to such injury and
30 of the condition of such employee, including copies of medical
31 reports, funeral expenses, and wage statements, shall be filed

1 by the employer or carrier to the department ~~division~~ at such
2 times and in such manner as the department ~~division~~ may
3 prescribe by rule. In carrying out its responsibilities under
4 this chapter, the department or agency ~~division~~ may by rule
5 provide for the obtaining of any medical records relating to
6 medical treatment provided pursuant to this chapter,
7 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

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

24 (10) The department ~~division~~ may by rule prescribe
25 forms and procedures governing the submission of the change in
26 claims administration report and the risk class code and
27 standard industry code report for all lost time and denied
28 lost-time cases. The department ~~division~~ may by rule define
29 terms that are necessary for the effective administration of
30 this section.

31

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

4 440.191 Employee Assistance and Ombudsman Office.--

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

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

26 (c) The Employee Assistance and Ombudsman Office,
27 ~~Division of Workers' Compensation,~~ shall be a resource
28 available to all employees who participate in the workers'
29 compensation system and shall take all steps necessary to
30 educate and disseminate information to employees and
31 employers.

1 (2)

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

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

17 440.192 Procedure for resolving benefit disputes.--

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

1 Section 32. Subsections (1), (3), and (4) of section
2 440.1925, Florida Statutes, are amended to read:

3 440.1925 Procedure for resolving maximum medical
4 improvement or permanent impairment disputes.--

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

18 (3) Disputes shall be resolved under this section
19 when:

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

23 (b) The independent medical examiner's opinion on the
24 date of the employee's maximum medical improvement and degree
25 or permanent impairment differs from the opinion of the
26 employee's treating physician on either of those issues, or
27 from the opinion of the expert medical advisor appointed by
28 the agency ~~division~~ on the degree of permanent impairment; or

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

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

6 Section 33. Subsections (3), (6), (8), (9), (10),
7 (11), (12), (15), (16), and (17) of section 440.20, Florida
8 Statutes, are amended to read:

9 440.20 Time for payment of compensation; penalties for
10 late payment.--

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

18 (6) If any installment of compensation for death or
19 dependency benefits, disability, permanent impairment, or wage
20 loss payable without an award is not paid within 7 days after
21 it becomes due, as provided in subsection (2), subsection (3),
22 or subsection (4), there shall be added to such unpaid
23 installment a punitive penalty of an amount equal to 20
24 percent of the unpaid installment or \$5, which shall be paid
25 at the same time as, but in addition to, such installment of
26 compensation, unless notice is filed under subsection (4) or
27 unless such nonpayment results from conditions over which the
28 employer or carrier had no control. When any installment of
29 compensation payable without an award has not been paid within
30 7 days after it became due and the claimant concludes the
31 prosecution of the claim before a judge of compensation claims

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

20 (8) In addition to any other penalties provided by
21 this chapter for late payment, if any installment of
22 compensation is not paid when it becomes due, the employer,
23 carrier, or servicing agent shall pay interest thereon at the
24 rate of 12 percent per year from the date the installment
25 becomes due until it is paid, whether such installment is
26 payable without an order or under the terms of an order. The
27 interest payment shall be the greater of the amount of
28 interest due or \$5.

29 (a) Within 30 days after final payment of compensation
30 has been made, the employer, carrier, or servicing agent shall
31 send to the department ~~division~~ a notice, in accordance with a

1 format and manner form prescribed by the department division,
2 stating that such final payment has been made and stating the
3 total amount of compensation paid, the name of the employee
4 and of any other person to whom compensation has been paid,
5 the date of the injury or death, and the date to which
6 compensation has been paid.

7 (b) If the employer, carrier, or servicing agent fails
8 to so notify the department division within such time, the
9 department division shall assess against such employer,
10 carrier, or servicing agent a civil penalty in an amount not
11 over \$100.

12 (c) In order to ensure carrier compliance under this
13 chapter and provisions of the Florida Insurance Code, the
14 department division shall monitor the performance of carriers
15 by conducting market conduct examinations, as provided in s.
16 624.3161, and conducting investigations, as provided in s.
17 624.317. The department division shall establish by rule
18 minimum performance standards for carriers to ensure that a
19 minimum of 90 percent of all compensation benefits are timely
20 paid. The department division shall fine a carrier as provided
21 in s. 440.13(11)(b) up to \$50 for each late payment of
22 compensation that is below the minimum 90 percent performance
23 standard. This paragraph does not affect the imposition of
24 any penalties or interest due to the claimant. If a carrier
25 contracts with a servicing agent to fulfill its administrative
26 responsibilities under this chapter, the payment practices of
27 the servicing agent are deemed the payment practices of the
28 carrier for the purpose of assessing penalties against the
29 carrier.

30 (9) The department division may upon its own
31 initiative at any time in a case in which payments are being

1 made without an award investigate same and shall, in any case
2 in which the right to compensation is controverted, or in
3 which payments of compensation have been stopped or suspended,
4 upon receipt of notice from any person entitled to
5 compensation or from the employer that the right to
6 compensation is controverted or that payments of compensation
7 have been stopped or suspended, make such investigations,
8 cause such medical examination to be made, or hold such
9 hearings, and take such further action as it considers will
10 properly protect the rights of all parties.

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

17 (11)(a) When a claimant is not represented by counsel,
18 upon joint petition of all interested parties, a lump-sum
19 payment in exchange for the employer's or carrier's release
20 from liability for future medical expenses, as well as future
21 payments of compensation expenses and any other benefits
22 provided under this chapter, shall be allowed at any time in
23 any case in which the employer or carrier has filed a written
24 notice of denial within 120 days after the employer receives
25 notice of the injury, and the judge of compensation claims at
26 a hearing to consider the settlement proposal finds a
27 justiciable controversy as to legal or medical compensability
28 of the claimed injury or the alleged accident. The employer
29 or carrier may not pay any attorney's fees on behalf of the
30 claimant for any settlement under this section unless
31 expressly authorized elsewhere in this chapter. Upon the joint

1 petition of all interested parties and after giving due
2 consideration to the interests of all interested parties, the
3 judge of compensation claims may enter a compensation order
4 approving and authorizing the discharge of the liability of
5 the employer for compensation and remedial treatment, care,
6 and attendance, as well as rehabilitation expenses, by the
7 payment of a lump sum. Such a compensation order so entered
8 upon joint petition of all interested parties is not subject
9 to modification or review under s. 440.28. If the settlement
10 proposal together with supporting evidence is not approved by
11 the judge of compensation claims, it shall be considered void.
12 Upon approval of a lump-sum settlement under this subsection,
13 the judge of compensation claims shall send a report to the
14 Chief Judge of the amount of the settlement and a statement of
15 the nature of the controversy. The Chief Judge shall keep a
16 record of all such reports filed by each judge of compensation
17 claims and shall submit to the Legislature a summary of all
18 such reports filed under this subsection annually by September
19 15.

20 (b) When a claimant is not represented by counsel,
21 upon joint petition of all interested parties, a lump-sum
22 payment in exchange for the employer's or carrier's release
23 from liability for future medical expenses, as well as future
24 payments of compensation and rehabilitation expenses, and any
25 other benefits provided under this chapter, may be allowed at
26 any time in any case after the injured employee has attained
27 maximum medical improvement. An employer or carrier may not
28 pay any attorney's fees on behalf of the claimant for any
29 settlement, unless expressly authorized elsewhere in this
30 chapter. A compensation order so entered upon joint petition
31 of all interested parties shall not be subject to modification

1 or review under s. 440.28. However, a judge of compensation
2 claims is not required to approve any award for lump-sum
3 payment when it is determined by the judge of compensation
4 claims that the payment being made is in excess of the value
5 of benefits the claimant would be entitled to under this
6 chapter. The judge of compensation claims shall make or cause
7 to be made such investigations as she or he considers
8 necessary, in each case in which the parties have stipulated
9 that a proposed final settlement of liability of the employer
10 for compensation shall not be subject to modification or
11 review under s. 440.28, to determine whether such final
12 disposition will definitely aid the rehabilitation of the
13 injured worker or otherwise is clearly for the best interests
14 of the person entitled to compensation and, in her or his
15 discretion, may have an investigation made ~~by the~~
16 ~~Rehabilitation Section of the Division of Workers'~~
17 ~~Compensation~~. The joint petition and the report of any
18 investigation so made will be deemed a part of the proceeding.
19 An employer shall have the right to appear at any hearing
20 pursuant to this subsection which relates to the discharge of
21 such employer's liability and to present testimony at such
22 hearing. The carrier shall provide reasonable notice to the
23 employer of the time and date of any such hearing and inform
24 the employer of her or his rights to appear and testify. The
25 probability of the death of the injured employee or other
26 person entitled to compensation before the expiration of the
27 period during which such person is entitled to compensation
28 shall, in the absence of special circumstances making such
29 course improper, be determined in accordance with the most
30 recent United States Life Tables published by the National
31 Office of Vital Statistics of the United States Department of

1 Health and Human Services. The probability of the happening of
2 any other contingency affecting the amount or duration of the
3 compensation, except the possibility of the remarriage of a
4 surviving spouse, shall be disregarded. As a condition of
5 approving a lump-sum payment to a surviving spouse, the judge
6 of compensation claims, in the judge of compensation claims'
7 discretion, may require security which will ensure that, in
8 the event of the remarriage of such surviving spouse, any
9 unaccrued future payments so paid may be recovered or recouped
10 by the employer or carrier. Such applications shall be
11 considered and determined in accordance with s. 440.25.

12 (c) Notwithstanding s. 440.21(2), when a claimant is
13 represented by counsel, the claimant may waive all rights to
14 any and all benefits under this chapter by entering into a
15 settlement agreement releasing the employer and the carrier
16 from liability for workers' compensation benefits in exchange
17 for a lump-sum payment to the claimant. The settlement
18 agreement requires approval by the judge of compensation
19 claims only as to the attorney's fees paid to the claimant's
20 attorney by the claimant. The parties need not submit any
21 information or documentation in support of the settlement,
22 except as needed to justify the amount of the attorney's fees.
23 Neither the employer nor the carrier is responsible for any
24 attorney's fees relating to the settlement and release of
25 claims under this section. Payment of the lump-sum settlement
26 amount must be made within 14 days after the date the judge of
27 compensation claims mails the order approving the attorney's
28 fees. Any order entered by a judge of compensation claims
29 approving the attorney's fees as set out in the settlement
30 under this subsection is not considered to be an award and is
31 not subject to modification or review. The judge of

1 compensation claims shall report these settlements to the
2 Deputy Chief Judge in accordance with the requirements set
3 forth in paragraphs (a) and (b). Settlements entered into
4 under this subsection are valid and apply to all dates of
5 accident.

6 (d)1. With respect to any lump-sum settlement under
7 this subsection, a judge of compensation claims must consider
8 at the time of the settlement, whether the settlement
9 allocation provides for the appropriate recovery of child
10 support arrearages.

11 2. When reviewing any settlement of lump-sum payment
12 pursuant to this subsection, judges of compensation claims
13 shall consider the interests of the worker and the worker's
14 family when approving the settlement, which must consider and
15 provide for appropriate recovery of past due support.

16 (e) This section applies to all claims that the
17 parties have not previously settled, regardless of the date of
18 accident.

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

25 (b) When the claimant has reached maximum recovery and
26 returned to her or his former or equivalent employment with no
27 substantial reduction in wages, such approval of a reasonable
28 advance payment of a part of the compensation payable to the
29 claimant may be given informally by letter by a judge of
30 compensation claims or, by the department ~~division~~ ~~director~~,
31 ~~or by the administrator of claims of the division.~~

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

5 1. An advance payment of compensation not in excess of
6 \$2,000 may be approved informally by letter, without hearing,
7 by any judge of compensation claims or the Chief Judge.

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

21 3. When the parties have stipulated to an advance
22 payment in excess of \$2,000, subject to the approval of the
23 department division, such payment may be approved by a judge
24 of compensation claims by order if the judge finds that such
25 advance payment is for the best interests of the person
26 entitled thereto and is reasonable under the circumstances of
27 the particular case. The judge of compensation claims shall
28 make or cause to be made such investigations as she or he
29 considers necessary concerning the stipulation and, in her or
30 his discretion, may have an investigation of the matter made
31 ~~by the Rehabilitation Section of the division~~. The stipulation

1 and the report of any investigation shall be deemed a part of
2 the record of the proceedings.

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

21 (15)(a) The department ~~division~~ shall examine on an
22 ongoing basis claims files in accordance with s. 624.3161 and
23 may impose fines pursuant to s. 624.310(5) and this chapter in
24 order to identify questionable claims-handling techniques,
25 questionable patterns or practices of claims, or a pattern of
26 repeated unreasonably controverted claims by ~~employers,~~
27 carriers, as defined in s. 440.02, self-insurers, health care
28 providers, health care facilities, training and education
29 providers, or any others providing services to employees
30 pursuant to this chapter ~~and may certify its findings to the~~
31 ~~Department of Insurance.~~ If the department finds such

1 questionable techniques, patterns, or repeated unreasonably
2 controverted claims as constitute a general business practice
3 of a carrier, as defined in s. 440.02 ~~in the judgment of the~~
4 ~~division shall be certified in its findings by the division to~~
5 ~~the Department of Insurance or such other appropriate~~
6 ~~licensing agency. Such certification by the division is exempt~~
7 ~~from the provisions of chapter 120. Upon receipt of any such~~
8 ~~certification, the department of Insurance shall take~~
9 appropriate action so as to bring such general business
10 practices to a halt pursuant to s. 440.38(3)(a) or may impose
11 penalties pursuant to s. 624.4211. The department division may
12 initiate investigations of questionable techniques, patterns,
13 practices, or repeated unreasonably controverted claims. The
14 department division may by rule establish forms and procedures
15 for corrective action plans and for auditing carriers.

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

- 20 1. May administer oaths, examine and cross-examine
21 witnesses, receive oral and documentary evidence; and
- 22 2. Shall have the power to subpoena witnesses, compel
23 their attendance and testimony, and require by subpoena the
24 production of books, papers, records, files, correspondence,
25 documents, or other evidence which is relevant to the inquiry.

26 (c) If any person refuses to comply with any such
27 subpoena or to testify as to any matter concerning which she
28 or he may be lawfully interrogated, the Circuit Court of Leon
29 County or of the county wherein such examination,
30 investigation, or hearing is being conducted, or of the county
31 wherein such person resides, may, on the application of the

1 department, issue an order requiring such person to comply
2 with the subpoena and to testify.

3 (d) Subpoenas shall be served, and proof of such
4 service made, in the same manner as if issued by a circuit
5 court. Witness fees, costs, and reasonable travel expenses, if
6 claimed, shall be allowed the same as for testimony in a
7 circuit court.

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

21 (f) The department ~~division~~ shall promulgate rules
22 providing guidelines to carriers, as defined in s. 440.02,
23 self-insurers, and employers to indicate behavior that may be
24 construed as questionable claims-handling techniques,
25 questionable patterns of claims, repeated unreasonably
26 controverted claims, or poor payment practices.

27 (16) No penalty assessed under this section may be
28 recouped by any carrier or self-insurer in the rate base, the
29 premium, or any rate filing. ~~In the case of carriers, The~~
30 Department of Insurance shall enforce this subsection; ~~and in~~
31

1 ~~the case of self-insurers, the division shall enforce this~~
2 ~~subsection.~~

3 (17) The department ~~division~~ may by rule establish
4 audit procedures and set standards for the Automated Carrier
5 Performance System.

6 Section 34. Subsections (1) and (2) of section
7 440.207, Florida Statutes, are amended to read:

8 440.207 Workers' compensation system guide.--

9 (1) The department ~~Division of Workers' Compensation~~
10 ~~of the Department of Labor and Employment Security~~ shall
11 educate all persons providing or receiving benefits pursuant
12 to this chapter as to their rights and responsibilities under
13 this chapter.

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

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

30 440.211 Authorization of collective bargaining
31 agreement.--

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

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

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

16 (c) The use of a limited list of physicians to conduct
17 independent medical examinations which the parties may agree
18 shall be the exclusive source of independent medical examiners
19 pursuant to this chapter.

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

22 (e) A vocational rehabilitation or retraining program.

23 Section 36. Subsections (1) and (2) of section 440.24,
24 Florida Statutes, are amended to read:

25 440.24 Enforcement of compensation orders;
26 penalties.--

27 (1) In case of default by the employer or carrier in
28 the payment of compensation due under any compensation order
29 of a judge of compensation claims or other failure by the
30 employer or carrier to comply with such order within 10 days
31 after the order becomes final, any circuit court of this state

1 within the jurisdiction of which the employer or carrier
2 resides or transacts business shall, upon application by the
3 department ~~division~~ or any beneficiary under such order, have
4 jurisdiction to issue a rule nisi directing such employer or
5 carrier to show cause why a writ of execution, or such other
6 process as may be necessary to enforce the terms of such
7 order, shall not be issued, and, unless such cause is shown,
8 the court shall have jurisdiction to issue a writ of execution
9 or such other process or final order as may be necessary to
10 enforce the terms of such order of the judge of compensation
11 claims.

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

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

22 440.25 Procedures for mediation and hearings.--

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

28 (b) An appellant may be relieved of any necessary
29 filing fee by filing a verified petition of indigency for
30 approval as provided in s. 57.081(1) and may be relieved in
31 whole or in part from the costs for preparation of the record

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

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

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

28 (7) An injured employee claiming or entitled to
29 compensation shall submit to such physical examination by a
30 certified expert medical advisor approved by the agency
31 ~~division~~ or the judge of compensation claims as the agency

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

14 Section 38. Section 440.271, Florida Statutes, is
 15 amended to read:

16 440.271 Appeal of order of judge of compensation
 17 claims.--Review of any order of a judge of compensation claims
 18 entered pursuant to this chapter shall be by appeal to the
 19 District Court of Appeal, First District. Appeals shall be
 20 filed in accordance with rules of procedure prescribed by the
 21 Supreme Court for review of such orders. The department
 22 ~~division~~ shall be given notice of any proceedings pertaining
 23 to s. 440.25, regarding indigency, or s. 440.49, regarding the
 24 Special Disability Trust Fund, and shall have the right to
 25 intervene in any proceedings.

26 Section 39. Section 440.345, Florida Statutes, is
 27 amended to read:

28 440.345 Reporting of attorney's fees.--All fees paid
 29 to attorneys for services rendered under this chapter shall be
 30 reported to the Office of the Judges of Compensation Claims as
 31 the Division of Administrative Hearings ~~Office of the Judges~~

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

4 Section 40. Section 440.35, Florida Statutes, is
5 amended to read:

6 440.35 Record of injury or death.--Every employer
7 shall keep a record in respect of any injury to an employee.
8 Such record shall contain such information of disability or
9 death in respect of such injury as the department ~~division~~ may
10 by regulation require, and shall be available to inspection by
11 the department ~~division~~ or by any state authority at such time
12 and under such conditions as the department ~~division~~ may by
13 regulation prescribe.

14 Section 41. Subsections (3) and (7) of section
15 440.381, Florida Statutes, are amended to read:

16 440.381 Application for coverage; reporting payroll;
17 payroll audit procedures; penalties.--

18 (3) ~~The department of Insurance and the Department of~~
19 ~~Labor and Employment Security~~ shall establish by rule minimum
20 requirements for audits of payroll and classifications in
21 order to ensure that the appropriate premium is charged for
22 workers' compensation coverage. The rules shall ensure that
23 audits performed by both carriers and employers are adequate
24 to provide that all sources of payments to employees,
25 subcontractors, and independent contractors have been reviewed
26 and that the accuracy of classification of employees has been
27 verified. The rules shall provide that employers in all
28 classes other than the construction class be audited not less
29 frequently than biennially and may provide for more frequent
30 audits of employers in specified classifications based on
31 factors such as amount of premium, type of business, loss

1 ratios, or other relevant factors. In no event shall employers
2 in the construction class, generating more than the amount of
3 premium required to be experience rated, be audited less than
4 annually. The annual audits required for construction classes
5 shall consist of physical onsite audits. Payroll verification
6 audit rules must include, but need not be limited to, the use
7 of state and federal reports of employee income, payroll and
8 other accounting records, certificates of insurance maintained
9 by subcontractors, and duties of employees.

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

1 insurer shall be entitled to a reasonable attorney's fee if it
2 recovers any portion of the benefits paid in such action.

3 Section 42. Section 440.40, Florida Statutes, is
4 amended to read:

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

18 Section 43. Section 440.41, Florida Statutes, is
19 amended to read:

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

31

1 (1) Notice to or knowledge of an employer of the
2 occurrence of the injury shall be notice to or knowledge of
3 the carrier.

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

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

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

14 440.42 Insurance policies; liability.--

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

1 cancellation and specify the time, place, and manner in which
2 the notice of cancellation is to be served.

3 Section 45. Section 440.44, Florida Statutes, is
4 amended to read:

5 440.44 Workers' compensation; staff organization.--

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

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

19 (3) EXPENDITURES.--The department, the agency, the
20 Department of Education,~~division~~ and the director of the
21 Division of Administrative Hearings shall make such
22 expenditures, including expenditures for personal services and
23 rent at the seat of government and elsewhere, for law books;
24 for telephone services and WATS lines; for books of reference,
25 periodicals, equipment, and supplies; and for printing and
26 binding as may be necessary in the administration of this
27 chapter. All expenditures in the administration of this
28 chapter shall be allowed and paid as provided in s. 440.50
29 upon the presentation of itemized vouchers therefor approved
30 by the department, the agency, the Department of Education,
31

1 ~~division~~ or the director of the Division of Administrative
 2 Hearings.

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

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

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

31

1 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
2 ~~division~~ is expressly authorized to provide by regulation for
3 and to destroy obsolete records of the department division.
4 The Division of Administrative Hearings is expressly
5 authorized to provide by regulation for and to destroy
6 obsolete records of the Office of the Judges of Compensation
7 Claims.

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

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

18 440.45 Office of the Judges of Compensation Claims.--

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

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

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

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

23 440.49 Limitation of liability for subsequent injury
24 through Special Disability Trust Fund.--

25 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
26 for workers with disabilities to achieve employment or to
27 become reemployed following an injury, and it is the desire of
28 the Legislature to facilitate the return of these workers to
29 the workplace, it is the purpose of this section to encourage
30 the employment, reemployment, and accommodation of the
31 physically disabled by reducing an employer's insurance

1 premium for reemploying an injured worker, to decrease
2 litigation between carriers on apportionment issues, and to
3 protect employers from excess liability for compensation and
4 medical expense when an injury to a physically disabled worker
5 merges with, aggravates, or accelerates her or his preexisting
6 permanent physical impairment to cause either a greater
7 disability or permanent impairment, or an increase in
8 expenditures for temporary compensation or medical benefits
9 than would have resulted from the injury alone. The department
10 ~~division~~ or the administrator shall inform all employers of
11 the existence and function of the fund and shall interpret
12 eligibility requirements liberally. However, this subsection
13 shall not be construed to create or provide any benefits for
14 injured employees or their dependents not otherwise provided
15 by this chapter. The entitlement of an injured employee or her
16 or his dependents to compensation under this chapter shall be
17 determined without regard to this subsection, the provisions
18 of which shall be considered only in determining whether an
19 employer or carrier who has paid compensation under this
20 chapter is entitled to reimbursement from the Special
21 Disability Trust Fund.

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

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

25 (b) "Preferred worker" means a worker who, because of
26 a permanent impairment resulting from a compensable injury or
27 occupational disease, is unable to return to the worker's
28 regular employment.

29 (c) "Merger" describes or means that:
30
31

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

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

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

20 4. Death would not have been accelerated if the
21 permanent physical impairment had not existed.

22 (d) "Excess permanent compensation" means that
23 compensation for permanent impairment, or permanent total
24 disability or death benefits, for which the employer or
25 carrier is otherwise entitled to reimbursement from the
26 Special Disability Trust Fund.

27 (e) "Administrator" means the entity selected by the
28 department ~~division~~ to review, allow, deny, compromise,
29 controvert, and litigate claims of the Special Disability
30 Trust Fund.

31

1 In addition to the definitions contained in this subsection,
2 the department ~~division~~ may by rule prescribe definitions that
3 are necessary for the effective administration of this
4 section.

5 (7) REIMBURSEMENT OF EMPLOYER.--

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

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

26 (c) A proof of claim must be filed on each notice of
27 claim on file as of June 30, 1997, within 1 year after July 1,
28 1997, or the right to reimbursement of the claim shall be
29 barred. A notice of claim on file on or before June 30, 1997,
30 may be withdrawn and refiled if, at the time refiled, the
31 notice of claim remains within the limitation period specified

1 in paragraph (a). Such refiling shall not toll, extend, or
2 otherwise alter in any way the limitation period applicable to
3 the withdrawn and subsequently refiled notice of claim. Each
4 proof of claim filed shall be accompanied by a proof-of-claim
5 fee as provided in paragraph (9)(d). The Special Disability
6 Trust Fund shall, within 120 days after receipt of the proof
7 of claim, serve notice of the acceptance of the claim for
8 reimbursement. This paragraph shall apply to all claims
9 notwithstanding the provisions of subsection (12).

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

22 (e) For dates of accident on or after January 1, 1994,
23 the Special Disability Trust Fund shall, within 120 days of
24 receipt of notice that a carrier has been required to pay, and
25 has paid over \$10,000 in benefits, serve notice of the
26 acceptance of the claim for reimbursement. Failure of the
27 Special Disability Trust Fund to serve notice of acceptance
28 shall give rise to the right to request a hearing on the claim
29 for reimbursement. If the Special Disability Trust Fund
30 through its representative denies or controverts the claim,
31 the right to such reimbursement shall be barred unless an

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

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

1 (g) The department ~~division~~ may by rule require
2 specific forms and procedures for the administration and
3 processing of claims made through the Special Disability Trust
4 Fund.

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

20 (9) SPECIAL DISABILITY TRUST FUND.--

21 (a) There is established in the State Treasury a
22 special fund to be known as the "Special Disability Trust
23 Fund," which shall be available only for the purposes stated
24 in this section; and the assets thereof may not at any time be
25 appropriated or diverted to any other use or purpose. The
26 Treasurer shall be the custodian of such fund, and all moneys
27 and securities in such fund shall be held in trust by such
28 Treasurer and shall not be the money or property of the state.
29 The Treasurer is authorized to disburse moneys from such fund
30 only when approved by the department ~~division~~ or corporation
31 and upon the order of the Comptroller. The Treasurer shall

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

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

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

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

29 b. Two times the disbursements of the most recent
30 calendar year.

31

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

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

26 4. The Treasurer is authorized to receive and credit
27 to such Special Disability Trust Fund any sum or sums that may
28 at any time be contributed to the state by the United States
29 under any Act of Congress, or otherwise, to which the state
30 may be or become entitled by reason of any payments made out
31 of such fund.

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

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

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

28 (10) DEPARTMENT ~~DIVISION~~ ADMINISTRATION OF FUND;
 29 CLAIMS; EXPENSES.--The department ~~division~~ or administrator
 30 shall administer the Special Disability Trust Fund with
 31 authority to allow, deny, compromise, controvert, and litigate

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

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

1 ~~division~~ or administrator shall fund reimbursements as
2 provided in subsection (9) for this purpose.

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

11 440.491 Reemployment of injured workers;
12 rehabilitation.--

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

14 **(b) "Department" means the Department of Education.**

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

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

23 (a) When an employee who has suffered an injury
24 compensable under this chapter is unemployed 60 days after the
25 date of injury and is receiving benefits for temporary total
26 disability, temporary partial disability, or wage loss, and
27 has not yet been provided medical care coordination and
28 reemployment services voluntarily by the carrier, the carrier
29 must determine whether the employee is likely to return to
30 work and must report its determination to the department
31 ~~division~~. The carrier must thereafter determine the

1 reemployment status of the employee at 90-day intervals as
2 long as the employee remains unemployed, is not receiving
3 medical care coordination or reemployment services, and is
4 receiving the benefits specified in this subsection.

5 (4) REEMPLOYMENT ASSESSMENTS.--

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

12 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
13 SERVICES.--

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

27 (c) A carrier may voluntarily provide medical care
28 coordination or reemployment services to the employee at
29 intervals more frequent than those required in this section.
30 For the purpose of monitoring reemployment, the carrier or the
31 rehabilitation provider shall report to the department

1 ~~division~~, in the manner prescribed by the department division,
2 the date of reemployment and wages of the employee. The
3 carrier shall report its voluntary service activity to the
4 department division as required by rule. Voluntary services
5 offered by the carrier for any of the following injuries must
6 be considered benefits for purposes of ratemaking: traumatic
7 brain injury; spinal cord injury; amputation, including loss
8 of an eye or eyes; burns of 5 percent or greater of the total
9 body surface.

10 (6) TRAINING AND EDUCATION.--

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

31

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

24 (7) PROVIDER QUALIFICATIONS.--

25 (a) The department ~~division~~ shall investigate and
26 maintain a directory of each qualified public and private
27 rehabilitation provider, facility, and agency, and shall
28 establish by rule the minimum qualifications, credentials, and
29 requirements that each rehabilitation service provider,
30 facility, and agency must satisfy to be eligible for listing
31 in the directory. These minimum qualifications and credentials

1 must be based on those generally accepted within the service
2 specialty for which the provider, facility, or agency is
3 approved.

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

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

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

27 (e) The department ~~division~~, after consultation with
28 representatives of employees, employers, carriers,
29 rehabilitation providers, and qualified training and education
30 providers, shall adopt rules governing professional practices
31 and standards.

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

5 Section 49. Section 440.50, Florida Statutes, is
6 amended to read:

7 440.50 Workers' Compensation Administration Trust
8 Fund.--

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

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

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

29 (3) The Treasurer shall deposit any moneys paid into
30 such fund into such depository banks as the department
31 ~~division~~ may designate and is authorized to invest any portion

1 of the fund which, in the opinion of the department ~~division~~,
2 is not needed for current requirements, in the same manner and
3 subject to all the provisions of the law with respect to the
4 deposit of state funds by such Treasurer. All interest earned
5 by such portion of the fund as may be invested by the
6 Treasurer shall be collected by him or her and placed to the
7 credit of such fund.

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

11 Section 50. Section 440.51, Florida Statutes, is
12 amended to read:

13 440.51 Expenses of administration.--

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

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

26 (b) The total expenses of administration shall be
27 prorated among the carriers writing compensation insurance in
28 the state and self-insurers. The net premiums collected by
29 carriers and the amount of premiums calculated by the
30 department ~~division~~ for self-insured employers are the basis
31 for computing the amount to be assessed. When reporting

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

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

29 (3) If any carrier fails to pay the amounts assessed
30 against him or her under the provisions of this section within
31 60 days from the time such notice is served upon him or her,

1 the department ~~of Insurance upon being advised by the division~~
2 may suspend or revoke the authorization to insure compensation
3 in accordance with the procedure in s. 440.38(3)(a). The
4 department ~~division~~ may permit a carrier to remit any
5 underpayment of assessments for assessments levied after
6 January 1, 2001.

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

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

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

30 (b) The Department of Insurance may require from each
31 self-insurer, at such time and in accordance with such

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

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

26 (8) The department ~~division~~ shall assign an account
27 number to each employer under this chapter and an account
28 number to each insurance carrier authorized to write workers'
29 compensation insurance in the state; and it shall be the duty
30 of the department ~~division~~ under the account number so
31 assigned to keep the cost experience of each carrier and the

1 cost experience of each employer under the account number so
2 assigned by calendar and policy year, as above defined.

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

6 (a) Cause of the injury;

7 (b) Nature of the injury; and

8 (c) Type of disability.

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

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

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

30 (13) As used in s. 440.50 and this section, the term:
31

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

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

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

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

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

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

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

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

7 Section 52. Section 440.525, Florida Statutes, is
8 amended to read:

9 440.525 Examination of carriers.--~~Beginning July 1,~~
10 ~~1994, The Division of Workers' Compensation of the department~~
11 ~~of Labor and Employment Security may examine each carrier as~~
12 ~~often as is warranted to ensure that carriers are fulfilling~~
13 ~~their obligations under the law, and shall examine each~~
14 ~~carrier not less frequently than once every 3 years. The~~
15 ~~examination must cover the preceding 3 fiscal years of the~~
16 ~~carrier's operations and must commence within 12 months after~~
17 ~~the end of the most recent fiscal year being covered by the~~
18 ~~examination.~~The examination may cover any period of the
19 carrier's operations since the last previous examination.

20 Section 53. Section 440.572, Florida Statutes, is
21 amended to read:

22 440.572 Authorization for individual self-insurer to
23 provide coverage.--An individual self-insurer having a net
24 worth of not less than \$250 million as authorized by s.
25 440.38(1)(f) may assume by contract the liabilities under this
26 chapter of contractors and subcontractors, or each of them,
27 employed by or on behalf of such individual self-insurer when
28 performing work on or adjacent to property owned or used by
29 the individual self-insurer by the department division. The
30 net worth of the individual self-insurer shall include the
31 assets of the self-insurer's parent company and its

1 subsidiaries, sister companies, affiliated companies, and
2 other related entities, located within the geographic
3 boundaries of the state.

4 Section 54. Section 440.59, Florida Statutes, is
5 amended to read:

6 440.59 Reporting requirements.--

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

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

1 ~~body part affected, type and duration of indemnity benefits~~
2 ~~paid, permanent impairment rating, medical benefits identified~~
3 ~~by type of health care provider, and type and cost of any~~
4 ~~rehabilitation benefits provided.~~

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

20 Section 55. Section 440.591, Florida Statutes, is
21 amended to read:

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

27 Section 56. Section 440.593, Florida Statutes, is
28 amended to read:

29 440.593 Electronic reporting.--

30 (1) The department ~~division~~ may establish an
31 electronic reporting system requiring or authorizing an

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

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

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

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

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

24 Section 57. Subsections (1), (4), and (5) of section
25 443.012, Florida Statutes, are amended to read:

26 443.012 Unemployment Appeals Commission.--

27 (1) There is created within the Agency for Workforce
28 Innovation ~~Department of Labor and Employment Security~~ an
29 Unemployment Appeals Commission, hereinafter referred to as
30 the "commission." The commission shall consist of a chair and
31 two other members to be appointed by the Governor, subject to

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

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

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

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

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

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

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

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

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

7 443.036 Definitions.--As used in this chapter, unless
8 the context clearly requires otherwise:

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

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

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

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

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

22 447.305 Registration of employee organization.--

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

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

29 450.012 Definitions.--For the purpose of this chapter,
30 the word, phrase, or term:

31

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

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

5 450.191 Executive Office of the Governor; powers and
6 duties.--

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

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

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

16 450.28 Definitions.--

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

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

21 624.3161 Market conduct examinations.--

22 (1) As often as it deems necessary, the department
23 shall examine each licensed rating organization, each advisory
24 organization, each group, association, carrier, as defined in
25 s. 440.02, or other organization of insurers which engages in
26 joint underwriting or joint reinsurance, and each authorized
27 insurer transacting in this state any class of insurance to
28 which the provisions of chapter 627 are applicable. The
29 examination shall be for the purpose of ascertaining
30 compliance by the person examined with the applicable
31 provisions of chapters 440, 624, 626, 627, and 635.

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

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

6 626.88 Definitions of "administrator" and "insurer".--

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

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

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

21 626.989 Investigation by department or Division of
22 Insurance Fraud; compliance; immunity; confidential
23 information; reports to division; division investigator's
24 power of arrest.--

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

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

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

10 627.0915 Rate filings; workers' compensation,
11 drug-free workplace, and safe employers.--The Department of
12 Insurance shall approve rating plans for workers' compensation
13 insurance that give specific identifiable consideration in the
14 setting of rates to employers that either implement a
15 drug-free workplace program pursuant to rules adopted by the
16 ~~Division of Workers' Compensation of the~~ Department of
17 Insurance ~~Labor and Employment Security~~ or implement a safety
18 program pursuant to provisions of the rating plan or implement
19 both a drug-free workplace program and a safety program. The
20 plans must be actuarially sound and must state the savings
21 anticipated to result from such drug-testing and safety
22 programs.

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

25 627.914 Reports of information by workers'
26 compensation insurers required.--

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

31

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

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

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

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

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