

By the Council for Competitive Commerce and Committee on Insurance and Representatives Waters, Simmons, Negron, Berfield, Brown, Clarke, Ross, McGriff, Kallinger, Fields, Melvin, Baker and Lee

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; revising definitions;
4 prohibiting exempt individuals from doing
5 construction work on commercial job sites;
6 amending s. 440.05, F.S.; requiring employers
7 to maintain business records as specified by
8 rules of the Division of Workers' Compensation,
9 relating to exemptions from coverage; revising
10 requirements for election of exemption from
11 coverage; requiring that a corporate officer
12 claiming an exemption from ch. 440, F.S., be
13 listed with the Department of State; requiring
14 the Division of Workers' Compensation of the
15 Department of Labor and Employment Security to
16 issue a stop-work order upon failure to produce
17 certain documents; amending s. 440.06, F.S.;
18 clarifying certain limitations imposed on an
19 employer who fails to secure compensation;
20 creating s. 440.078, F.S.; providing for
21 limitation on construction industry business
22 activities; providing penalties; amending s.
23 440.09, F.S.; requiring compensation for
24 accidental compensable injuries; amending s.
25 440.091, F.S.; specifying circumstances under
26 which firefighters, emergency medical
27 technicians, and paramedics are considered to
28 be acting within the scope of their employment
29 so as to qualify for workers' compensation
30 benefits; characterizing certain activities of
31 certain officers as arising out of and in the

1 course of employment for compensability
2 purposes and providing circumstances under
3 which certain officers may continue in full-pay
4 status when injured; amending s. 440.092, F.S.;
5 deleting a provision relating to the going and
6 coming rule applicable to certain law
7 enforcement officers that is transferred by the
8 amendment to s. 440.091, F.S.; providing a
9 declaration of important state interest;
10 amending s. 440.10, F.S.; revising certain
11 limitations on an employer's liability for
12 compensation; providing for rules; amending s.
13 440.103, F.S.; specifying requirements for
14 certificates of insurance that must be shown to
15 receive a building permit; amending s. 440.107,
16 F.S.; providing for penalties to be imposed
17 against an employer for certain
18 misrepresentations made to a carrier; providing
19 for the issuance of a stop-work order;
20 providing for rules; requiring that the
21 division notify the Department of Business and
22 Professional Regulation upon the failure of
23 certain employers to secure payment of workers'
24 compensation; amending s. 440.11, F.S.;
25 revising provisions relating to employer
26 liability to provide an exemption in the case
27 of intentional misconduct by an employer;
28 amending s. 440.13, F.S.; requiring that costs
29 for an independent medical examination be
30 determined under ch. 440, F.S.; requiring the
31 carrier to give the employee the opportunity to

1 change physicians under certain circumstances
2 and limitations; revising the effect of an
3 independent medical examination; limiting the
4 admissibility of certain medical opinions;
5 revising the limitation on medical fees;
6 providing an exception to certain recourse for
7 payment for services rendered; amending s.
8 440.134, F.S.; providing for discontinuance of
9 medical care under a managed care plan
10 regardless of the date of an accident; amending
11 s. 440.14, F.S.; revising the computation of
12 the average weekly wage of an employee for the
13 purposes of determining benefits; amending s.
14 440.15, F.S.; revising the criteria for
15 permanent total disability; revising the
16 compensation rate for impairment income
17 benefits; deleting a provision relating to
18 full-pay status for certain law enforcement
19 officers that is transferred by the amendment
20 to s. 440.091, F.S., and providing a reference
21 thereto; amending s. 440.191, F.S.; authorizing
22 the Employee Assistance and Ombudsman Office to
23 initiate contact with an injured employee to
24 discuss rights and responsibilities; revising
25 other duties of the office; amending s.
26 440.192, F.S.; revising the procedures for
27 resolving benefit disputes and filing petitions
28 for benefits; specifying information that must
29 be included in a petition for benefits;
30 requiring that a claim be raised by petition
31 for purposes of adjudication; amending s.

1 440.20, F.S.; limiting amount of attorney's
2 fees in cases determining lump-sum settlements;
3 amending s. 440.25, F.S.; revising procedures
4 for mediation and hearings; extending the time
5 for ordering and holding mediation conferences;
6 providing requirements for granting a
7 continuance; providing for mediation conducted
8 by mediators other than from the Office of the
9 Judges of Compensation Claims; requiring that
10 the parties complete pretrial stipulations
11 before concluding mediation; extending the time
12 for holding final hearings; providing for
13 waiver of any benefit not raised at the final
14 hearing; providing for an expedited
15 determination of pay; requiring that certain
16 claims be resolved through an expedited
17 process; providing for dismissal for lack of
18 prosecution; limiting the payment of interest
19 and the attachment of attorney's fees; amending
20 s. 440.271, F.S.; requiring appellate mediation
21 and providing procedures therefor; amending s.
22 440.29, F.S.; requiring opinions of independent
23 medical examiners to be received into evidence
24 under certain conditions; amending s. 440.34,
25 F.S.; revising the limit on the amount of
26 attorney's fees that may be approved by a judge
27 of compensation claims and eliminating factors
28 that the judge must consider; applying such
29 limits to any agreement related to benefits
30 under ch. 440, F.S.; amending s. 440.345, F.S.;
31 revising requirements for the reporting of

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

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

1 Section 1. Subsection (1), paragraphs (b) and (d) of
2 subsection (14), and subsection (37) of section 440.02,
3 Florida Statutes, are amended, and subsections (40), (41), and
4 (42) are added to said section, to read:

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

8 (1) "Accident" means only an unexpected or unusual
9 event or result that happens suddenly. A mental or nervous
10 injury due to stress, fright, or excitement only, or
11 disability or death due to the accidental acceleration or
12 aggravation of a venereal disease or of a disease due to the
13 habitual use of alcohol or controlled substances or narcotic
14 drugs, or a disease that manifests itself in the fear of or
15 dislike for an individual because of the individual's race,
16 color, religion, sex, national origin, age, or handicap is not
17 an injury by accident arising out of the employment. If a
18 preexisting disease or anomaly is accelerated or aggravated by
19 an accident arising out of and in the course of employment,
20 only acceleration of death or acceleration or aggravation of
21 the preexisting condition reasonably attributable to the
22 accident is compensable, with respect to death or permanent
23 impairment. An injury or exposure caused by exposure to a
24 toxic substance is not an injury by accident arising out of
25 the employment unless there is clear and convincing evidence
26 establishing that exposure to the specific substance involved,
27 at the levels at which the employee was exposed, can cause the
28 injury or disease sustained by the employee.

29 (14)

30 (b) "Employee" includes any person who is an officer
31 of a corporation and who performs services for remuneration

1 for such corporation within this state, whether or not such
2 services are continuous.

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

6 2. As to officers of a corporation who are actively
7 engaged in the construction industry, no more than three
8 officers may elect to be exempt from this chapter by filing
9 written notice of the election with the division as provided
10 in s. 440.05. However, a corporate officer of a corporation
11 actively engaged in the construction industry may not elect to
12 be exempt, and any exemption obtained by such an officer is
13 not applicable, with respect to any commercial construction
14 job site estimated to be valued at \$250,000 or greater.

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

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

22 (d) "Employee" does not include:

23 1. An independent contractor, if:

24 a. The independent contractor maintains a separate
25 business with his or her own work facility, truck, equipment,
26 materials, or similar accommodations;

27 b. The independent contractor holds or has applied for
28 a federal employer identification number, unless the
29 independent contractor is a sole proprietor who is not
30 required to obtain a federal employer identification number
31 under state or federal requirements;

1 c. The independent contractor performs or agrees to
2 perform specific services or work for specific amounts of
3 money and controls the means of performing the services or
4 work;

5 d. The independent contractor incurs the principal
6 expenses related to the service or work that he or she
7 performs or agrees to perform;

8 e. The independent contractor is responsible for the
9 satisfactory completion of work or services that he or she
10 performs or agrees to perform and is or could be held liable
11 for a failure to complete the work or services;

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

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

17 h. The independent contractor has continuing or
18 recurring business liabilities or obligations; and

19 i. The success or failure of the independent
20 contractor's business depends on the relationship of business
21 receipts to expenditures.

22
23 However, the determination as to whether an individual
24 included in the Standard Industrial Classification Manual of
25 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
26 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
27 2448, or 2449, or a newspaper delivery person, is an
28 independent contractor is governed not by the criteria in this
29 paragraph but by common-law principles, giving due
30 consideration to the business activity of the individual.
31 Notwithstanding the provisions of this paragraph or any other

1 provision of this chapter, with respect to any commercial
2 construction job site estimated to be valued at \$250,000 or
3 greater, a person who is actively engaged in the construction
4 industry is not an independent contractor and is either an
5 employer or an employee who may not be exempt from the
6 coverage requirements of this chapter.

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

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

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

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

29 6. A volunteer, except a volunteer worker for the
30 state or a county, municipality, or other governmental entity.
31 A person who does not receive monetary remuneration for

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

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

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

23 12. Notwithstanding the provisions of subparagraph 1.,
24 the term "employee" includes a sole proprietor or partner
25 actively engaged in the construction industry with respect to
26 any commercial construction job site estimated to be valued at
27 \$250,000 or greater. Any such employee may not elect to be
28 exempt, and any exemption obtained is not applicable, with
29 respect to work performed at such a commercial job site.

30 13. For the purposes of a nurse registry, as defined
31 in s. 400.462(15) and licensed pursuant to s. 400.506, a

1 registered nurse or licensed practical nurse, licensed under
2 chapter 464, or a certified nursing assistant, home health
3 aide, companion, or homemaker, as they are defined in s.
4 400.462.
5 (37) "Catastrophic injury" means a permanent
6 impairment constituted by:
7 (a) Spinal cord injury involving severe paralysis of
8 an arm, a leg, or the trunk;
9 (b) Amputation of an arm, a hand, a foot, or a leg
10 involving the effective loss of use of that appendage;
11 (c) Severe brain or closed-head injury as evidenced
12 by:
13 1. Severe sensory or motor disturbances;
14 2. Severe communication disturbances;
15 3. Severe complex integrated disturbances of cerebral
16 function;
17 4. Severe episodic neurological disorders; or
18 5. Other severe brain and closed-head injury
19 conditions at least as severe in nature as any condition
20 provided in subparagraphs 1.-4.;
21 (d) Second-degree or third-degree burns of 25 percent
22 or more of the total body surface or third-degree burns of 5
23 percent or more to the face and hands; or
24 (e) Total or industrial blindness; ~~or~~
25 ~~(f) Any other injury that would otherwise qualify~~
26 ~~under this chapter of a nature and severity that would qualify~~
27 ~~an employee to receive disability income benefits under Title~~
28 ~~II or supplemental security income benefits under Title XVI of~~
29 ~~the federal Social Security Act as the Social Security Act~~
30 ~~existed on July 1, 1992, without regard to any time~~
31 ~~limitations provided under that act.~~

1 (40) "Specificity" means information provided on the
2 petition for benefits sufficient to put the employer or
3 carrier on notice of the exact statutory classification and
4 outstanding time period of benefits being requested, including
5 a detailed explanation of any benefits received that should be
6 increased, decreased, changed, or otherwise modified. For
7 purposes of petitions for medical benefits only, "specificity"
8 means the specific reason the benefit is being requested, the
9 benefit is medically necessary, and the current treatment, if
10 any, is not sufficient.

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

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

23 Section 2. Subsections (10), (11), (12), and (13) are
24 added to section 440.05, Florida Statutes, to read:

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

27 (10) Each employer conducting business in this state
28 shall maintain business records as specified by the division
29 by rule, which rules must include the provision that any
30 corporation with exempt officers and any partnership with
31 exempt partners must maintain written statements of those

1 exempted persons affirmatively acknowledging each such
2 individual's exempt status.

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

9 (a) For sole proprietors, a copy of Federal Income Tax
10 Form 1040 and its accompanying Schedule C.

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

14
15 The sole proprietor or partner in question shall produce, upon
16 request by the division, a copy of those documents together
17 with a statement by the sole proprietor that the tax records
18 provided are true and accurate copies of what the sole
19 proprietor or partner has filed with the federal Internal
20 Revenue Service. The statement must be signed under oath by
21 the sole proprietor or partner in question and must be
22 notarized. The division shall issue a stop-work order under s.
23 440.107(5) to any sole proprietor or partner who fails or
24 refuses to produce a copy of the tax records and affidavit
25 required under this paragraph to the division within 3
26 business days after the request is made.

27 (12) For those sole proprietors or partners that have
28 not been in business long enough to provide the information
29 required of an established business, the division shall
30 require such sole proprietor or partner to provide copies of
31 the most recent filed Federal Income Tax Form 1040. The

1 division shall establish by rule such other criteria to show
2 that the sole proprietor or partner intends to engage in a
3 legitimate enterprise within the construction industry and is
4 not otherwise attempting to evade the requirements of this
5 act. The division shall establish by rule the form and format
6 of financial information required to be submitted by such
7 employers.

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

26 Section 3. Section 440.06, Florida Statutes, is
27 amended to read:

28 440.06 Failure to secure compensation; effect.--Every
29 employer who fails to secure the payment of compensation as
30 provided in s. 440.10 by failing to meet the requirements of
31 ~~under this chapter as provided in s. 440.38~~ may not, in any

1 suit brought against him or her by an employee subject to this
2 chapter to recover damages for injury or death, defend such a
3 suit on the grounds that the injury was caused by the
4 negligence of a fellow servant, that the employee assumed the
5 risk of his or her employment, or that the injury was due to
6 the comparative negligence of the employee.

7 Section 4. Section 440.078, Florida Statutes, is
8 created to read:

9 440.078 Limitation on construction industry business
10 activities; penalties.--

11 (1) Notwithstanding any other provision of this
12 chapter and with respect to persons and entities actively
13 engaged in the construction industry, under no circumstances
14 may a corporation, partnership, sole proprietorship, or
15 independent contractor that fails to maintain coverage or is
16 otherwise without coverage required by this chapter enter into
17 a contract, subcontract, or other business relationship, for
18 the purposes of construction, with another corporation,
19 partnership, sole proprietorship, or independent contractor
20 that fails to maintain coverage or is otherwise without
21 coverage required by this chapter.

22 (2) Any sole proprietor or partner of a business
23 actively engaged in the construction industry who violates
24 subsection (1) shall immediately forfeit any election of
25 exclusion or election of exemption available under this
26 chapter and shall be prohibited from electing or receiving an
27 exclusion or exemption from the requirements of this chapter
28 for a period of 5 years from the date of the prohibited
29 action. Any person under this section who violates subsection
30 (1) and who has no election of exclusion or election of
31 exemption or who is an independent contractor commits a

1 misdemeanor of the second degree, punishable as provided by s.
2 775.082 or s. 775.083.

3 (3) Any corporate officer of a corporation actively
4 engaged in the construction industry that violates subsection
5 (1) shall immediately forfeit any election of exclusion or
6 election of exemption available under this chapter and shall
7 be prohibited from electing or receiving an exclusion or
8 exemption from the requirements of this chapter for a period
9 of 5 years after the date of the prohibited action.

10 Section 5. Subsection (1) of section 440.09, Florida
11 Statutes, is amended to read:

12 440.09 Coverage.--

13 (1) The employer shall pay compensation or furnish
14 benefits required by this chapter if the employee suffers an
15 accidental, compensable injury or death arising out of work
16 performed in the course and the scope of employment. The
17 injury, its occupational cause, and any resulting
18 manifestations or disability shall be established to a
19 reasonable degree of medical certainty and by objective
20 medical findings. Mental or nervous injuries occurring as a
21 manifestation of an injury compensable under this section
22 shall be demonstrated by clear and convincing evidence. In a
23 case involving occupational disease or repetitive exposure,
24 both causation and sufficient exposure to support causation
25 must be proven by a preponderance of the evidence.

26 (a) This chapter does not require any compensation or
27 benefits for any subsequent injury the employee suffers as a
28 result of an original injury arising out of and in the course
29 of employment unless the original injury is the major
30 contributing cause of the subsequent injury. The work-related
31 accident must be more than 50-percent responsible for the

1 injury and subsequent disability or need for treatment in
2 order for the accident to be a major contributing cause.

3 (b) If an injury arising out of and in the course of
4 employment combines with a preexisting disease or condition to
5 cause or prolong disability or need for treatment, the
6 employer must pay compensation or benefits required by this
7 chapter only to the extent that the injury arising out of and
8 in the course of employment is and remains more than
9 50-percent responsible for ~~the major contributing cause of the~~
10 disability or need for treatment.

11 (c) Death resulting from an operation by a surgeon
12 furnished by the employer for the cure of hernia as required
13 in s. 440.15(6) shall for the purpose of this chapter be
14 considered to be a death resulting from the accident causing
15 the hernia.

16 (d) If an accident happens while the employee is
17 employed elsewhere than in this state, which would entitle the
18 employee or his or her dependents to compensation if it had
19 happened in this state, the employee or his or her dependents
20 are entitled to compensation if the contract of employment was
21 made in this state, or the employment was principally
22 localized in this state. However, if an employee receives
23 compensation or damages under the laws of any other state, the
24 total compensation for the injury may not be greater than is
25 provided in this chapter.

26 Section 6. Section 440.091, Florida Statutes, is
27 amended to read:

28 440.091 Law enforcement officer, firefighter,
29 emergency medical technician, or paramedic; when acting within
30 the course of employment.--

31 (1) If an employee:

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

7 (b)~~(2)~~ Was discharging that primary responsibility
8 within the state in a place and under circumstances reasonably
9 consistent with that primary responsibility; and

10 (c)~~(3)~~ Was not engaged in services for which he or she
11 was paid by a private employer, and the employee and his or
12 her public employer had no agreement providing for workers'
13 compensation coverage for that private employment,[†]

14
15 the employee is considered ~~shall be deemed~~ to have been acting
16 within the course of employment. The term "employee" as used
17 in this subsection ~~section~~ includes all certified supervisory
18 and command personnel whose duties include, in whole or in
19 part, responsibilities for the supervision, training,
20 guidance, and management of full-time law enforcement
21 officers, part-time law enforcement officers, or auxiliary law
22 enforcement officers but does not include support personnel
23 employed by the employing agency.

24 (2) If a firefighter as defined in s. 112.191(1)(b) is
25 engaged in extinguishing a fire, or protecting and saving life
26 or property due to a fire in this state in an emergency, and
27 such activities would be considered to be within the course of
28 his or her employment as a firefighter and covered by the
29 employer's workers' compensation coverage except for the fact
30 that the firefighter was off duty or that the location of the
31 fire was outside the employer's jurisdiction or area of

1 responsibility, such activities are considered to be within
2 the course of employment. This subsection does not apply if
3 the firefighter is performing activities for which he or she
4 is paid by another employer or contractor.

5 (3) If an emergency medical technician or paramedic
6 certified under chapter 401 is providing basic life support or
7 advanced life support service, as defined in s. 401.23, in an
8 emergency situation in this state, and such activities would
9 be considered to be within the course of his or her employment
10 as an emergency medical technician or paramedic and covered by
11 the employer's workers' compensation coverage except for the
12 fact that the location of the emergency was outside of the
13 employer's jurisdiction or area of responsibility, such
14 activities are considered to be within the course of
15 employment. The provisions of this subsection do not apply if
16 the emergency medical technician or paramedic is performing
17 activities for which he or she is paid by another employer or
18 contractor.

19 (4) Notwithstanding s. 440.092(2), an injury to a law
20 enforcement officer as defined in s. 943.10(1) during the
21 officer's work period or while going to or coming from work in
22 an official law enforcement vehicle shall be presumed to be an
23 injury arising out of and in the course of employment unless
24 the injury occurred during a distinct deviation for a
25 nonessential personal errand. If, however, the employer's
26 policy or the collective bargaining agreement that applies to
27 the officer permits such deviations for nonessential errands,
28 the injury shall be presumed to arise out of and in the course
29 of employment.

30 (5) Any law enforcement officer as defined in s.
31 943.10(1), (2), or (3) who, while acting within the course of

1 employment as provided by subsection (1), is maliciously or
2 intentionally injured and who thereby sustains a job-connected
3 disability compensable under this chapter shall be carried in
4 full-pay status rather than being required to use sick,
5 annual, or other leave. Full-pay status shall be granted only
6 after submission of a medical report to the employing agency's
7 head which gives a current diagnosis of the employee's
8 recovery and ability to return to work. In no case shall the
9 employee's salary and workers' compensation benefits exceed
10 the amount of the employee's regular salary requirements.

11 Section 7. Subsection (2) of section 440.092, Florida
12 Statutes, is amended to read:

13 440.092 Special requirements for compensability;
14 deviation from employment; subsequent intervening accidents.--

15 (2) GOING OR COMING.--Except as provided in s.
16 440.091(4),an injury suffered while going to or coming from
17 work is not an injury arising out of and in the course of
18 employment whether or not the employer provided transportation
19 if such means of transportation was available for the
20 exclusive personal use by the employee, unless the employee
21 was engaged in a special errand or mission for the employer.
22 ~~For the purposes of this subsection and notwithstanding any~~
23 ~~other provisions of law to the contrary, an injury to a law~~
24 ~~enforcement officer as defined in s. 943.10(1), during the~~
25 ~~officer's work period or while going to or coming from work in~~
26 ~~an official law enforcement vehicle, shall be presumed to be~~
27 ~~an injury arising out of and in the course of employment~~
28 ~~unless the injury occurred during a distinct deviation for a~~
29 ~~nonessential personal errand. If, however, the employer's~~
30 ~~policy or the collective bargaining agreement that applies to~~
31 ~~the officer permits such deviations for nonessential errands,~~

1 ~~the injury shall be presumed to arise out of and in the course~~
2 ~~of employment.~~

3 Section 8. It is declared by the Legislature that
4 firefighters perform state and municipal functions, that it is
5 their duty to protect life and property at their own risk and
6 peril, and that their activities are vital to the public
7 safety. Therefore, the Legislature declares that it fulfills
8 an important state interest to provide workers' compensation
9 coverage to firefighters while they are engaged in
10 extinguishing a fire, protecting and saving life or property
11 due to a fire in this state while off duty, or engaging in
12 such activities at a fire located outside the employer's
13 jurisdiction or area of responsibility. It is further
14 declared by the Legislature that emergency medical technicians
15 and paramedics perform municipal and state functions, that it
16 is their duty to protect and preserve life at their own risk
17 and peril, and that their activities are vital to the public
18 health, safety, and welfare. Therefore, the Legislature
19 declares that it fulfills an important state interest to
20 provide workers' compensation coverage to emergency medical
21 technicians and paramedics while they are engaged in basic
22 life support and advanced life support services due to an
23 emergency in this state that is outside of their employer's
24 jurisdiction or area of responsibility. Pursuant to Section
25 18, Article VII of the State Constitution, the Legislature
26 determines and declares that the provisions of this act
27 fulfill an important state interest.

28 Section 9. Paragraphs (a) and (f) of subsection (1) of
29 section 440.10, Florida Statutes, are amended to read:

30 440.10 Liability for compensation.--

31

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

12 (f) If an employer ~~willfully~~ fails to secure
13 compensation as required by this chapter, the division may
14 assess against the employer a penalty not to exceed \$5,000 for
15 each employee of that employer who is classified by the
16 employer as an independent contractor but who is found by the
17 division to not meet the criteria for an independent
18 contractor that are set forth in s. 440.02. The division shall
19 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
20 the provisions of this paragraph.

21
22 A sole proprietor, partner, or officer of a corporation who
23 elects exemption from this chapter by filing a certificate of
24 election under s. 440.05 may not recover benefits or
25 compensation under this chapter. An independent contractor
26 who provides the general contractor with both an affidavit
27 stating that he or she meets the requirements of s.
28 440.02(14)(d) and a certificate of exemption is not an
29 employee under s. 440.02(14)(c) and may not recover benefits
30 under this chapter. For purposes of determining the
31 appropriate premium for workers' compensation coverage,

1 carriers may not consider any person who meets the
2 requirements of this paragraph to be an employee.

3 Section 10. 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 insurance coverage issued by the carrier, a
12 valid exemption certificate approved by the division, or a
13 copy of the employer's authority to self-insure and shall be
14 presented each time the employer applies for a building
15 permit. Each certificate of insurance shall indicate the
16 states in which the coverage applies.As provided in s.
17 627.413(5), each certificate of insurance coverage must show,
18 on its face, whether or not coverage is secured under the
19 minimum premium provisions of rules adopted by rating
20 organizations licensed by the Department of Insurance. The
21 words "minimum premium policy" or equivalent language shall be
22 typed, printed, stamped, or legibly handwritten.

23 Section 11. Subsections (5) and (7) of section
24 440.107, Florida Statutes, are amended, and subsection (12) is
25 added to said section, to read:

26 440.107 Division powers to enforce employer compliance
27 with coverage requirements.--

28 (5) Whenever the division determines that an employer
29 who is required to secure the payment to his or her employees
30 of the compensation provided for by this chapter has failed to
31 do so or that an employer has misrepresented to a carrier the

1 size or classification of the employer's payroll, such failure
2 or intentional misrepresentation shall be deemed an immediate
3 serious danger to public health, safety, or welfare sufficient
4 to justify service by the division of a stop-work order on the
5 employer, requiring the cessation of all business operations
6 at the place of employment or job site. If the division makes
7 such a determination, the division shall issue a stop-work
8 order within 72 hours.The order shall take effect upon the
9 date of service upon the employer, unless the employer
10 provides evidence satisfactory to the division of having
11 secured any necessary insurance or self-insurance and pays a
12 civil penalty to the division, to be deposited by the division
13 into the Workers' Compensation Administration Trust Fund, in
14 the amount of \$100 per day for each day the employer was not
15 in compliance with this chapter.

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

21 (a) An amount equal to at least the amount the
22 employer would have paid or up to twice the amount the
23 employer would have paid during periods it illegally failed to
24 secure payment of compensation in the preceding 3-year period
25 based on the employer's payroll during the preceding 3-year
26 period; or

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

28
29 Any penalty assessed under this subsection is due within 30
30 days after the date on which the employer is notified, except
31 that, if the division has posted a stop-work order or obtained

1 injunctive relief against the employer, payment is due, in
2 addition to those conditions set forth in this section, as a
3 condition to relief from a stop-work order or an injunction.
4 Interest shall accrue on amounts not paid when due at the rate
5 of 1 percent per month. The division shall adopt rules
6 pursuant to ss. 120.536(1) and 120.54 to implement the
7 provisions of this subsection.

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

14 Section 12. Subsection (1) of section 440.11, Florida
15 Statutes, is amended to read:

16 440.11 Exclusiveness of liability.--

17 (1) Except if an employer acts with the intent to
18 cause injury or death,the liability of an employer prescribed
19 in s. 440.10 shall be exclusive and in place of all other
20 liability, including any vicarious liability,of such employer
21 to any third-party tortfeasor and to the employee, the legal
22 representative thereof, husband or wife, parents, dependents,
23 next of kin, and anyone otherwise entitled to recover damages
24 from such employer at law or in admiralty on account of such
25 injury or death, except that if an employer fails to secure
26 payment of compensation in accordance with s. 440.38 ~~as~~
27 ~~required by this chapter,~~ an injured employee, or the legal
28 representative thereof in case death results from the injury,
29 may elect to claim compensation under this chapter or to
30 maintain an action at law or in admiralty for damages on
31 account of such injury or death. In such action the defendant

1 may not plead as a defense that the injury was caused by
2 negligence of a fellow employee, that the employee assumed the
3 risk of the employment, or that the injury was due to the
4 comparative negligence of the employee. The same immunities
5 from liability enjoyed by an employer shall extend as well to
6 each employee of the employer when such employee is acting in
7 furtherance of the employer's business and the injured
8 employee is entitled to receive benefits under this chapter.
9 Such fellow-employee immunities shall not be applicable to an
10 employee who acts, with respect to a fellow employee, with
11 willful and wanton disregard or unprovoked physical aggression
12 or with gross negligence when such acts result in injury or
13 death or such acts proximately cause such injury or death, nor
14 shall such immunities be applicable to employees of the same
15 employer when each is operating in the furtherance of the
16 employer's business but they are assigned primarily to
17 unrelated works within private or public employment. The same
18 immunity provisions enjoyed by an employer shall also apply to
19 any sole proprietor, partner, corporate officer or director,
20 supervisor, or other person who in the course and scope of his
21 or her duties acts in a managerial or policymaking capacity
22 and the conduct that ~~which~~ caused the alleged injury arose
23 within the course and scope of said managerial or policymaking
24 duties and was not a violation of a law, whether or not a
25 violation was charged, for which the maximum penalty which may
26 be imposed does not exceed 60 days' imprisonment as set forth
27 in s. 775.082. The immunity from liability provided in this
28 subsection extends to county governments with respect to
29 employees of county constitutional officers whose offices are
30 funded by the board of county commissioners. "Intent" includes
31 only those actions or conduct of the employer where the

1 employer actually intended that the consequences of its
2 actions or conduct would be injury or death. Proof of intent
3 includes only evidence of a deliberate and knowing intent to
4 harm. If an employee recovers damages from an employer by
5 judgment or settlement under this subsection, the workers'
6 compensation carrier for the employer or the employer, if
7 self-insured, shall have an offset against any workers'
8 compensation benefits to which the employee would be entitled
9 under this chapter and a lien against recovery for any
10 benefits paid prior to the recovery pursuant to this chapter
11 after deduction for attorney's fees and costs expended by the
12 employee in prosecuting the claim against the employer.

13 Section 13. Paragraph (j) of subsection (1),
14 paragraphs (a), (b), (c), (e), and (f) of subsection (5), and
15 paragraph (b) of subsection (14) of section 440.13, Florida
16 Statutes, are amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

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

20 (j) "Independent medical examiner" means a physician
21 selected by either an employee or a carrier to render one or
22 more independent medical examinations in connection with a
23 dispute arising under this chapter. Notwithstanding rules
24 adopted by the division, costs for independent medical
25 examinations shall be governed by this chapter.

26 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

27 (a) In any dispute concerning overutilization, medical
28 benefits, compensability, or disability under this chapter,
29 the carrier or the employee may select an independent medical
30 examiner. If the parties agree, the examiner may be a health
31 care provider treating or providing other care to the

1 employee. An independent medical examiner may not render an
2 opinion outside his or her area of expertise, as demonstrated
3 by licensure and applicable practice parameters. Upon the
4 written request of the employee, the carrier shall pay the
5 cost of only one independent medical examination per accident.
6 The cost of an additional independent medical examination,
7 including the costs of an independent medical examiner's
8 deposition, shall be borne by the party requesting the
9 additional independent medical examination. Only the costs of
10 independent medical examinations and the costs of depositions
11 expressly relied upon by the judge of compensation claims to
12 award benefits in the final compensation order are taxable
13 costs under s. 440.34(3).

14 ~~(b) Each party is bound by his or her selection of an~~
15 ~~independent medical examiner and is entitled to an alternate~~
16 ~~examiner only if:~~

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

20 ~~2. The examiner ceases to practice in the specialty~~
21 ~~relevant to the employee's condition;~~

22 ~~3. The examiner is unavailable due to injury, death,~~
23 ~~or relocation outside a reasonably accessible geographic area;~~
24 ~~or~~

25 ~~4. The parties agree to an alternate examiner.~~

26

27 Any party may request, or a judge of compensation claims may
28 require, designation of a division medical advisor as an
29 independent medical examiner. The opinion of the advisors
30 acting as examiners shall not be afforded the presumption set
31 forth in paragraph (9)(c).

1 (c) The carrier may, at its election, contact the
2 claimant directly to schedule a reasonable time for an
3 independent medical examination. The carrier must confirm the
4 scheduling agreement in writing within 5 days and notify
5 claimant's counsel, if any, at least 7 days before the date
6 upon which the independent medical examination is scheduled to
7 occur. An attorney representing a claimant is not authorized
8 to schedule the self-insured employer's or the carrier's
9 independent medical evaluations under this subsection.

10 (e) No medical opinion other than the opinion of a
11 medical advisor appointed by the judge of compensation claims
12 or division, an independent medical examiner, or an authorized
13 treating provider is admissible in proceedings before the
14 judges of compensation claims. The employee and the carrier
15 may each submit into evidence, and the judge of compensation
16 claims shall admit, the medical opinion of not more than one
17 qualified independent medical examiner per specialty. In cases
18 involving occupational disease or repetitive trauma, medical
19 opinions are not admissible unless based on reliable
20 scientific principles sufficiently established to have gained
21 general acceptance in the pertinent area of specialty.

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

26 (14) PAYMENT OF MEDICAL FEES.--

27 (b) Fees charged for remedial treatment, care, and
28 attendance may not exceed the applicable fee schedules adopted
29 under this chapter, except as provided pursuant to a contract
30 entered into between an employer or carrier and a certified
31

1 health care provider or health care facility for the payment
2 of medical services for covered expenses.

3 Section 14. Paragraph (a) of subsection (2) of section
4 440.134, Florida Statutes, is amended to read:

5 440.134 Workers' compensation managed care
6 arrangement.--

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

20 Section 15. Paragraph (a) of subsection (1) of section
21 440.14, Florida Statutes, is amended to read:

22 440.14 Determination of pay.--

23 (1) Except as otherwise provided in this chapter, the
24 average weekly wages of the injured employee on the date of
25 the accident, rather than on the date of disability ~~at the~~
26 ~~time of the injury~~ shall be taken as the basis upon which to
27 compute compensation and shall be determined, subject to the
28 limitations of s. 440.12(2), as follows:

29 (a) If the injured employee has worked in the
30 employment in which she or he was working at the time of the
31 injury, whether for the same or another employer, during

1 substantially the whole of 13 weeks immediately preceding the
2 injury, her or his average weekly wage shall be one-thirteenth
3 of the total amount of wages actually earned in such
4 employment during the 13 weeks. As used in this paragraph,
5 the term "substantially the whole of 13 weeks" means an actual
6 ~~shall be deemed to mean and refer to a constructive~~ period of
7 13 weeks as a whole, which shall be defined as the 13 complete
8 weeks before the date of the accident, excluding the week the
9 injury occurs. ~~a consecutive period of 91 days, and~~ The term
10 "during substantially the whole of 13 weeks" means ~~shall be~~
11 ~~deemed to mean~~ during not less than 90 percent of the total
12 customary ~~full-time~~ hours of employment within such period
13 considered as a whole. Raises received during the
14 aforementioned 13-week period are only to be factored into the
15 average weekly wage from the actual date the raise became
16 effective.

17 Section 16. Paragraphs (b) and (f) of subsection (1),
18 paragraph (a) of subsection (3), and subsection (12) of
19 section 440.15, Florida Statutes, are amended to read:

20 440.15 Compensation for disability.--Compensation for
21 disability shall be paid to the employee, subject to the
22 limits provided in s. 440.12(2), as follows:

23 (1) PERMANENT TOTAL DISABILITY.--

24 (b) Any compensable injury eligible for permanent
25 total disability benefits must be of a nature and severity
26 that prevents the employee from being able to perform at least
27 sedentary employment. If the employee is engaged in or is
28 capable of being engaged in at least sedentary employment, he
29 or she is not entitled to permanent total disability benefits.
30 The burden is on the employee to establish that he or she is
31 unable to perform even sedentary work if such work is

1 available within a 50-mile radius of the employee's residence
2 or such greater distance as the judge determines to be
3 reasonable under the circumstances. Such benefits shall be
4 payable until the employee reaches the age of 72.
5 Notwithstanding any age limit, if the accident occurred on or
6 after the employee reaches the age of 65, benefits shall be
7 payable during the continuance of permanent total disability,
8 not to exceed 7 years following the determination of permanent
9 total disability. In addition, ~~Only~~ a catastrophic injury as
10 defined in s. 440.02 shall, in the absence of conclusive proof
11 of a substantial earning capacity, constitute permanent total
12 disability. ~~Only claimants with catastrophic injuries are~~
13 ~~eligible for permanent total benefits.~~In no other case may
14 permanent total disability benefits be awarded.

15 (f)1. If permanent total disability results from
16 injuries that occurred subsequent to June 30, 1955, and for
17 which the liability of the employer for compensation has not
18 been discharged under s. 440.20(11), the injured employee
19 shall receive additional weekly compensation benefits equal to
20 5 percent of her or his weekly compensation rate, as
21 established pursuant to the law in effect on the date of her
22 or his injury, multiplied by the number of calendar years
23 since the date of injury. The weekly compensation payable and
24 the additional benefits payable under this paragraph, when
25 combined, may not exceed the maximum weekly compensation rate
26 in effect at the time of payment as determined pursuant to s.
27 440.12(2). Entitlement to these supplemental payments shall
28 not be paid or payable after ~~cease~~ at age 62 if the employee
29 ~~is eligible for social security benefits under 42 U.S.C. ss.~~
30 ~~402 and 423~~, whether or not the employee has applied for or is
31 ineligible to apply for social security benefits under 42

1 U.S.C. s. 402 or s. 423 ~~such benefits~~. These supplemental
2 benefits shall be paid by the division out of the Workers'
3 Compensation Administration Trust Fund when the injury
4 occurred subsequent to June 30, 1955, and before July 1, 1984.
5 These supplemental benefits shall be paid by the employer when
6 the injury occurred on or after July 1, 1984. Supplemental
7 benefits are not payable for any period prior to October 1,
8 1974.

9 2.a. The division shall provide by rule for the
10 periodic reporting to the division of all earnings of any
11 nature and social security income by the injured employee
12 entitled to or claiming additional compensation under
13 subparagraph 1. Neither the division nor the employer or
14 carrier shall make any payment of those additional benefits
15 provided by subparagraph 1. for any period during which the
16 employee willfully fails or refuses to report upon request by
17 the division in the manner prescribed by such rules.

18 b. The division shall provide by rule for the periodic
19 reporting to the employer or carrier of all earnings of any
20 nature and social security income by the injured employee
21 entitled to or claiming benefits for permanent total
22 disability. The employer or carrier is not required to make
23 any payment of benefits for permanent total disability for any
24 period during which the employee willfully fails or refuses to
25 report upon request by the employer or carrier in the manner
26 prescribed by such rules or if any employee who is receiving
27 permanent total disability benefits refuses to apply for or
28 cooperate with the employer or carrier in applying for social
29 security benefits.

30 3. When an injured employee receives a full or partial
31 lump-sum advance of the employee's permanent total disability

1 compensation benefits, the employee's benefits under this
2 paragraph shall be computed on the employee's weekly
3 compensation rate as reduced by the lump-sum advance.

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

5 (a) Impairment benefits.--

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

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

1 In such case, the Guides to the Evaluation of Permanent
2 Impairment by the American Medical Association shall be used.
3 Determination of permanent impairment under this schedule must
4 be made by a physician licensed under chapter 458, a doctor of
5 osteopathic medicine licensed under chapters 458 and 459, a
6 chiropractic physician licensed under chapter 460, a podiatric
7 physician licensed under chapter 461, an optometrist licensed
8 under chapter 463, or a dentist licensed under chapter 466, as
9 appropriate considering the nature of the injury. No other
10 persons are authorized to render opinions regarding the
11 existence of or the extent of permanent 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 biweekly
15 ~~weekly~~ at a the rate equal to 100 ~~of 50~~ percent of the
16 employee's compensation rate, ~~average weekly temporary total~~
17 ~~disability benefit~~ not to exceed the maximum weekly benefit
18 under s. 440.12. An employee's entitlement to impairment
19 income benefits begins the day after the employee reaches
20 maximum medical improvement or the expiration of temporary
21 benefits, whichever occurs earlier, and continues until the
22 earlier of:

23 a. The expiration of a period computed at the rate of
24 3 weeks for each percentage point of impairment; or

25 b. The death of the employee.

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

1 Compensation is not payable for the mental, psychological, or
2 emotional injury arising out of depression from being out of
3 work. If the certification and evaluation are performed by a
4 doctor other than the employee's treating doctor, the
5 certification and evaluation must be submitted to the treating
6 doctor, and the treating doctor must indicate agreement or
7 disagreement with the certification and evaluation. The
8 certifying doctor shall issue a written report to the
9 division, the employee, and the carrier certifying that
10 maximum medical improvement has been reached, stating the
11 impairment rating, and providing any other information
12 required by the division. If the employee has not been
13 certified as having reached maximum medical improvement before
14 the expiration of 102 weeks after the date temporary total
15 disability benefits begin to accrue, the carrier shall notify
16 the treating doctor of the requirements 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 division may by rule specify forms and
20 procedures governing the method of payment of wage loss and
21 impairment benefits for dates of accidents before January 1,
22 1994, and for dates of accidents on or after January 1, 1994.

23 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
24 OFFICERS.--Law enforcement officers as defined in s.
25 943.10(1), (2), or (3) shall be paid in accordance with s.
26 440.091(5).~~Any law enforcement officer as defined in s.~~
27 ~~943.10(1), (2), or (3) who, while acting within the course of~~
28 ~~employment as provided by s. 440.091, is maliciously or~~
29 ~~intentionally injured and who thereby sustains a job-connected~~
30 ~~disability compensable under this chapter shall be carried in~~
31 ~~full-pay status rather than being required to use sick,~~

1 ~~annual, or other leave. Full pay status shall be granted only~~
2 ~~after submission to the employing agency's head of a medical~~
3 ~~report which gives a current diagnosis of the employee's~~
4 ~~recovery and ability to return to work. In no case shall the~~
5 ~~employee's salary and workers' compensation benefits exceed~~
6 ~~the amount of the employee's regular salary requirements.~~

7 Section 17. Section 440.191, Florida Statutes, is
8 amended to read:

9 440.191 Employee Assistance and Ombudsman Office.--

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

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

31

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

12 ~~(2)(a) An employee may not file a petition requesting~~
13 ~~any benefit under this chapter unless the employee has~~
14 ~~exhausted the procedures for informal dispute resolution under~~
15 ~~this section.~~

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

27 (b)(c) The office may compel parties to attend
28 conferences in person or by telephone in an attempt to resolve
29 disputes quickly and in the most efficient manner possible.
30 Settlement agreements resulting from such conferences must be
31

1 submitted to the Office of the Judges of Compensation Claims
2 for approval.

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

16 Section 18. Subsections (2), (5), and (8) of section
17 440.192, Florida Statutes, are amended, and a new subsection
18 (9) is added to said section, to read:

19 440.192 Procedure for resolving benefit disputes.--

20 (2) Upon receipt of a petition, the Office of the
21 Judges of Compensation Claims or the judge of compensation
22 claims may ~~shall review each petition and shall~~ dismiss each
23 petition or any portion of such a petition, upon the judge's
24 own motion or upon the motion of any party, which ~~that~~ does
25 not on its face specifically identify or itemize the
26 following:

27 (a) Name, address, telephone number, and social
28 security number of the employee.

29 (b) Name, address, and telephone number of the
30 employer.

31

1 (c) A detailed description of the injury and cause of
2 the injury, including the location of the occurrence and the
3 date or dates of the accident.

4 (d) A detailed description of the employee's job, work
5 responsibilities, and work the employee was performing when
6 the injury occurred.

7 (e) The time period for which compensation and the
8 specific classification of compensation were not timely
9 provided.

10 (f) Date of maximum medical improvement, character of
11 disability, and specific statement of all benefits or
12 compensation that the employee is seeking.

13 (g) All specific travel costs to which the employee
14 believes she or he is entitled, including dates of travel and
15 purpose of travel, means of transportation, and mileage and
16 including the date the request for mileage was filed with the
17 carrier and a copy of the request filed with the carrier.

18 (h) Specific listing of all medical charges alleged
19 unpaid, including the name and address of the medical
20 provider, the amounts due, and the specific dates of
21 treatment.

22 (i) The type or nature of treatment care or attendance
23 sought and the justification for such treatment. If the
24 employee is under the care of a physician for the injury
25 identified in paragraph (c), a copy of the physician's
26 request, authorization, or recommendation for treatment, care,
27 or attendant care must accompany the petition.

28 (j) Specific explanation of any other disputed issue
29 that a judge of compensation claims will be called to rule
30 upon.

31

1 (k) Any other information and documentation the Deputy
2 Chief Judge may require by rule.

3
4 The dismissal of any petition or portion of such a petition
5 under this section is without prejudice and does not require a
6 hearing.

7 (5) All motions to dismiss must state with
8 particularity the basis for the motion. The judge of
9 compensation claims shall enter an order upon such motions
10 without hearing, unless good cause for hearing is shown. When
11 any petition or portion of a petition is dismissed for lack of
12 specificity under this subsection, the claimant must file
13 within ~~be allowed~~ 20 days after the date of the order of
14 dismissal in which to file an amended petition. Any grounds
15 for dismissal for lack of specificity under this section which
16 are not asserted within 60 ~~30~~ days after receipt of the
17 petition for benefits are thereby waived.

18 (8) Within 30 ~~14~~ days after receipt of a petition for
19 benefits by certified mail, the carrier must either pay the
20 requested benefits without prejudice to its right to deny
21 within 120 days after ~~from~~ receipt of the petition or file a
22 response to petition with the Office of the Judges of
23 Compensation Claims. The carrier must list all benefits
24 requested but not paid and explain its justification for
25 nonpayment in the response to petition. A carrier that does
26 not deny compensability in accordance with s. 440.20(4) is
27 deemed to have accepted the employee's injuries as
28 compensable, unless it can establish material facts relevant
29 to the issue of compensability that could not have been
30 discovered through reasonable investigation within the 120-day
31

1 period. The carrier shall provide copies of the response to
2 the filing party, employer, and claimant by certified mail.

3 (9) Unless stipulated in writing by the parties, only
4 claims that have been properly raised by a petition for
5 benefits and have undergone mediation may be considered for
6 adjudication by a judge of compensation claims.

7 Section 19. Paragraph (c) of subsection (11) of
8 section 440.20, Florida Statutes, is amended to read:

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

11 (11)

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 judge of compensation claims
21 shall not approve settlement proposals, including any
22 stipulations or agreements between the parties or between a
23 claimant and his or her attorney related to the settlement
24 proposal, which provide for attorney's fees in excess of the
25 amount permitted in s. 440.34.The parties need not submit any
26 information or documentation in support of the settlement,
27 except as needed to justify the amount of the attorney's fees.
28 Neither the employer nor the carrier is responsible for any
29 attorney's fees relating to the settlement and release of
30 claims under this section. Payment of the lump-sum settlement
31 amount must be made within 14 days after the date the judge of

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

11 Section 20. Subsections (1), (3), and (4) of section
12 440.25, Florida Statutes, are amended to read:

13 440.25 Procedures for mediation and hearings.--

14 (1) Within 90 ~~21~~ days after a petition for benefits is
15 filed under s. 440.192, a mediation conference concerning such
16 petition shall be held. Within 40 ~~7~~ days after such petition
17 is filed, the judge of compensation claims shall notify the
18 interested parties by order that a mediation conference
19 concerning such petition will be held unless the parties have
20 notified the Office of the Judges of Compensation Claims that
21 a mediation has been held. Such order notice shall give the
22 date by which, time, and location of the mediation conference
23 must be held. Such order notice may be served personally upon
24 the interested parties or may be sent to the interested
25 parties by mail. Continuances may be granted only if the
26 requesting party demonstrates to the judge of compensation
27 claims that the reason for requesting the continuance arises
28 from circumstances beyond the party's control. Any order
29 granting a continuance must set forth the date of the
30 rescheduled mediation conference. A mediation conference may
31 not be used solely for the purpose of mediating attorney's

1 fees.The claimant or the adjuster of the employer or carrier
2 may, at the mediator's discretion, attend the mediation
3 conference by telephone or, if agreed to by the parties, other
4 electronic means.

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

28 (b)1. Unless the parties conduct a private mediation
29 under subparagraph 2., mediation shall be conducted by a
30 mediator selected by the Director of the Division of
31 Administrative Hearings from among the mediators ~~shall select~~

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

17 2. In the event the parties agree or in the event no
18 mediators as provided under subparagraph 1. are available to
19 conduct the required mediation within the period specified in
20 this section, the parties shall hold a mediation conference at
21 the carrier's expense within the 90-day period set for
22 mediation. The mediation conference shall be conducted by a
23 mediator who is a member in good standing of The Florida Bar
24 with not less than 5 years' experience in the practice of law
25 in this state and who is certified under s. 44.106. If the
26 parties do not agree upon a mediator within 10 days after the
27 date of the order, the claimant shall notify the judge of
28 compensation claims in writing and the judge of compensation
29 claims shall appoint a mediator under this subparagraph within
30 7 days.In the event both parties agree, the results of the
31 mediation conference shall be binding and neither party shall

1 have a right to appeal the results. In the event either party
2 refuses to agree to the results of the mediation conference,
3 the results of the mediation conference as well as the
4 testimony, witnesses, and evidence presented at the conference
5 shall not be admissible at any subsequent proceeding on the
6 claim. The mediator shall not be called in to testify or give
7 deposition to resolve any claim for any hearing before the
8 judge of compensation claims. The employer may be represented
9 by an attorney at the mediation conference if the employee is
10 also represented by an attorney at the mediation conference.

11 (c) The parties shall make a good faith effort to
12 complete the pretrial stipulations before the conclusion of
13 the mediation conference if the claims, except for attorney's
14 fees and costs, have not been settled and if any claims in any
15 filed petition remain unresolved. The judge of compensation
16 claims may sanction a party or both parties for failure to
17 complete the pretrial stipulations before the conclusion of
18 the mediation conference.

19 (4)(a) If the parties fail to submit written pretrial
20 stipulations at the mediation conference, ~~on the 10th day~~
21 ~~following commencement of mediation, the questions in dispute~~
22 ~~have not been resolved,~~ the judge of compensation claims shall
23 order hold a pretrial hearing to occur within 14 days after
24 the date of mediation ordered by the judge of compensation
25 claims. The judge of compensation claims shall give the
26 interested parties at least 7 days' advance notice of the
27 pretrial hearing by mail. At the pretrial hearing, the judge
28 of compensation claims shall, subject to paragraph (b), set a
29 date for the final hearing that allows the parties at least 60
30 ~~30~~ days to conduct discovery unless the parties consent to an
31 earlier hearing date.

1 (b) The final hearing must be held and concluded
2 within 90 ~~45~~ days after the mediation conference is held
3 ~~pretrial hearing~~. Continuances may be granted only if the
4 requesting party demonstrates to the judge of compensation
5 claims that the reason for requesting the continuance arises
6 from circumstances beyond the party's control. Any order
7 granting a continuance must set forth the date and time of the
8 rescheduled hearing. If a judge of compensation claims grants
9 two or more continuances to a requesting party, the judge of
10 compensation claims shall report such continuances to the
11 Deputy Chief Judge.The written consent of the claimant must
12 be obtained before any request from a claimant's attorney is
13 granted for an additional continuance after the initial
14 continuance has been granted.

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

18 (d) The final hearing shall be held within 210 days
19 after receipt of the petition for benefits in the county where
20 the injury occurred, if the injury occurred in this state,
21 unless otherwise agreed to between the parties and authorized
22 by the judge of compensation claims in the county where the
23 injury occurred. If the injury occurred outside ~~without~~ the
24 state and is one for which compensation is payable under this
25 chapter, then the final hearing ~~above referred to~~ may be held
26 in the county of the employer's residence or place of
27 business, or in any other county of the state that ~~which~~ will,
28 in the discretion of the Deputy Chief Judge, be the most
29 convenient for a hearing. The final hearing shall be conducted
30 by a judge of compensation claims, who shall, within 30 days
31 after final hearing or closure of the hearing record, unless

1 otherwise agreed by the parties, enter a final order on the
2 merits of the disputed issues. The judge of compensation
3 claims may enter an abbreviated final order in cases in which
4 compensability is not disputed. Either party may request
5 separate findings of fact and conclusions of law. At the final
6 ~~such~~ hearing, the claimant and employer may each present
7 evidence in respect of the claims presented by the petition
8 for benefits ~~such claim~~ and may be represented by any attorney
9 authorized in writing for such purpose. When there is a
10 conflict in the medical evidence submitted at the hearing, the
11 provisions of s. 440.13 shall apply. The report or testimony
12 of the expert medical advisor shall be made a part of the
13 record of the proceeding and shall be given the same
14 consideration by the judge of compensation claims as is
15 accorded other medical evidence submitted in the proceeding;
16 and all costs incurred in connection with such examination and
17 testimony may be assessed as costs in the proceeding, subject
18 to the provisions of s. 440.13. No judge of compensation
19 claims may make a finding of a degree of permanent impairment
20 that is greater than the greatest permanent impairment rating
21 given the claimant by any examining or treating physician,
22 except upon stipulation of the parties. Any benefit due but
23 not raised at the final hearing which was ripe, due, or owing
24 at the time of the final hearing is waived.

25 (e) The order making an award or rejecting the claim,
26 referred to in this chapter as a "compensation order," shall
27 set forth the findings of ultimate facts and the mandate; and
28 the order need not include any other reason or justification
29 for such mandate. The compensation order shall be filed in the
30 Office of the Judges of Compensation Claims at Tallahassee. A
31 copy of such compensation order shall be sent by mail to the

1 parties and attorneys of record at the last known address of
2 each, with the date of mailing noted thereon.

3 (f) Each judge of compensation claims is required to
4 submit a special report to the Deputy Chief Judge in each
5 contested workers' compensation case in which the case is not
6 determined within 30 days of final hearing or closure of the
7 hearing record. Said form shall be provided by the director of
8 the Division of Administrative Hearings and shall contain the
9 names of the judge of compensation claims and of the attorneys
10 involved and a brief explanation by the judge of compensation
11 claims as to the reason for such a delay in issuing a final
12 order.

13 (g) Notwithstanding any other provision of this
14 section, the judge of compensation claims may require the
15 appearance of the parties and counsel before her or him
16 without written notice for an emergency conference where there
17 is a bona fide emergency involving the health, safety, or
18 welfare of an employee. An emergency conference under this
19 section may result in the entry of an order or the rendering
20 of an adjudication by the judge of compensation claims.

21 (h) To expedite dispute resolution and to enhance the
22 self-executing features of the Workers' Compensation Law, the
23 Deputy Chief Judge shall make provision by rule or order for
24 the resolution of appropriate motions by judges of
25 compensation claims without oral hearing upon submission of
26 brief written statements in support and opposition, and for
27 expedited discovery and docketing. Unless the judge of
28 compensation claims orders a hearing under paragraph (i),
29 claims related to the determination of pay under s. 440.14
30 shall be resolved under this paragraph.

31

1 (i) To further expedite dispute resolution and to
2 enhance the self-executing features of the system, those
3 petitions filed in accordance with s. 440.192 that involve a
4 claim for benefits of \$5,000 or less shall, in the absence of
5 compelling evidence to the contrary, be presumed to be
6 appropriate for expedited resolution under this paragraph; and
7 any other claim filed in accordance with s. 440.192, upon the
8 written agreement of both parties and application by either
9 party, may similarly be resolved under this paragraph. Claims
10 in a petition for medical benefits only of \$5,000 or less or
11 for medical mileage reimbursement shall, in the absence of
12 compelling evidence to the contrary, be resolved through the
13 expedited dispute resolution process under this paragraph. For
14 purposes of expedited resolution pursuant to this paragraph,
15 the Deputy Chief Judge shall make provision by rule or order
16 for expedited and limited discovery and expedited docketing in
17 such cases. At least 15 days prior to hearing, the parties
18 shall exchange and file with the judge of compensation claims
19 a pretrial outline of all issues, defenses, and witnesses on a
20 form adopted by the Deputy Chief Judge; provided, in no event
21 shall such hearing be held without 15 days' written notice to
22 all parties. No pretrial hearing shall be held. The judge of
23 compensation claims shall limit all argument and presentation
24 of evidence at the hearing to a maximum of 30 minutes, and
25 such hearings shall not exceed 30 minutes in length. Neither
26 party shall be required to be represented by counsel. The
27 employer or carrier may be represented by an adjuster or other
28 qualified representative. The employer or carrier and any
29 witness may appear at such hearing by telephone. The rules of
30 evidence shall be liberally construed in favor of allowing
31 introduction of evidence.

1 (j) A judge of compensation claims, either upon the
2 motion of a party or its own motion, may dismiss a petition
3 for lack of prosecution if no petitions, responses, motions,
4 orders, requests for hearings, or notices of deposition have
5 been filed for a period of 12 months, unless good cause is
6 shown. Dismissals for lack of prosecution are without
7 prejudice and do not require a hearing.

8 (k) Regardless of the date benefits were initially
9 requested, attorney's fees do not attach under this subsection
10 until 30 days after the date the carrier or employer, if
11 self-insured, receives the petition.

12 Section 21. Effective July 1, 2002, section 440.271,
13 Florida Statutes, is amended to read:

14 440.271 Appeal of order of judge of compensation
15 claims.--

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

25 (2) The parties shall hold a mediation conference at
26 the carrier's expense within 60 days after the filing of the
27 notice of appeal of a final order from a judge of compensation
28 claims. The mediation conference shall be conducted by a
29 mediator with experience in appellate mediation or who is
30 certified under s. 44.106. The appellate proceeding and the
31

1 preparation of the record shall be stayed until the completion
2 of the mediation conference required by this section.

3 (3) The parties and their counsel may, at the
4 mediator's discretion, attend the mediation conference by
5 telephone or, if agreed to by the parties, other electronic
6 means. A continuance may be granted only if the requesting
7 party demonstrates to the judge that the reason for the
8 continuance arises from circumstances beyond the party's
9 control. Any continuance must set forth the date of the
10 rescheduled mediation conference, and must be rescheduled to
11 be completed within 90 days after the filing of the notice of
12 appeal. Mediation conferences under this section may not be
13 used solely for the purpose of mediating attorney's fees.

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

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

5 (5) If the issues which are the subject of the appeal
6 are not resolved by the parties, the appellant shall notify
7 the judge of compensation claims that the appeal needs to
8 proceed forward and the record on appeal needs to be prepared.

9 Section 22. Subsection (4) of section 440.29, Florida
10 Statutes, is amended to read:

11 440.29 Procedure before the judge of compensation
12 claims.--

13 (4) All medical reports of authorized treating health
14 care providers or independent medical examiners whose medical
15 opinion is submitted under s. 440.13(5)(e)relating to the
16 claimant and subject accident shall be received into evidence
17 by the judge of compensation claims upon proper motion.

18 However, such records must be served on the opposing party at
19 least 30 days before the final hearing. This section does not
20 limit any right of further discovery, including, but not
21 limited to, depositions.

22 Section 23. Subsections (1) and (3) of section 440.34,
23 Florida Statutes, are amended, and subsection (7) is added to
24 said section, to read:

25 440.34 Attorney's fees; costs.--

26 (1) A fee, gratuity, or other consideration may not be
27 paid for services rendered for a claimant in connection with
28 any proceedings arising under this chapter, unless approved as
29 reasonable by the judge of compensation claims or court having
30 jurisdiction over such proceedings. Except as provided by this
31 subsection, any attorney's fee approved by a judge of

1 compensation claims for services rendered to a claimant shall
2 ~~be must~~ equal to 25 ~~20~~ percent of the first \$10,000~~\$5,000~~ of
3 the amount of the benefits secured, 20 ~~15~~ percent of the next
4 \$10,000~~\$5,000~~ of the amount of the benefits secured, 15 ~~10~~
5 percent of the remaining amount of the benefits secured ~~to be~~
6 ~~provided during the first 10 years after the date the claim is~~
7 ~~filed, and 5 percent of the benefits secured after 10 years.~~
8 The judge of compensation claims shall not approve a
9 compensation order, a joint stipulation for a lump-sum
10 settlement, a stipulation or agreement between a claimant and
11 his or her attorney, or any other agreement related to
12 benefits under this chapter that provides for an attorney's
13 fee in excess of the amount permitted by this section.
14 ~~However, the judge of compensation claims shall consider the~~
15 ~~following factors in each case and may increase or decrease~~
16 ~~the attorney's fee if, in her or his judgment, the~~
17 ~~circumstances of the particular case warrant such action:~~
18 ~~(a) The time and labor required, the novelty and~~
19 ~~difficulty of the questions involved, and the skill requisite~~
20 ~~to perform the legal service properly.~~
21 ~~(b) The fee customarily charged in the locality for~~
22 ~~similar legal services.~~
23 ~~(c) The amount involved in the controversy and the~~
24 ~~benefits resulting to the claimant.~~
25 ~~(d) The time limitation imposed by the claimant or the~~
26 ~~circumstances.~~
27 ~~(e) The experience, reputation, and ability of the~~
28 ~~lawyer or lawyers performing services.~~
29 ~~(f) The contingency or certainty of a fee.~~
30 (3) If any party ~~the claimant~~ should prevail in any
31 proceedings before a judge of compensation claims or court,

1 there shall be taxed against the nonprevailing party ~~employer~~
2 the reasonable costs of such proceedings, not to include ~~the~~
3 attorney's fees ~~of the claimant~~. A claimant shall be
4 responsible for the payment of her or his own attorney's fees,
5 except that a claimant shall be entitled to recover a
6 reasonable attorney's fee from a carrier or employer:
7 (a) Against whom she or he successfully asserts a
8 petition claim for medical benefits only, if the claimant has
9 not filed or is not entitled to file at such time a claim for
10 disability, permanent impairment, wage-loss, or death
11 benefits, arising out of the same accident; ~~or~~
12 (b) In any case in which the employer or carrier files
13 a response to petition denying benefits with the Office of the
14 Judges of Compensation Claims and the injured person has
15 employed an attorney in the successful prosecution of the
16 petition claim; ~~or~~
17 (c) In a proceeding in which a carrier or employer
18 denies that an accident injury occurred for which compensation
19 benefits are payable, and the claimant prevails on the issue
20 of compensability; or
21 (d) In cases where the claimant successfully prevails
22 in proceedings filed under s. 440.24 or s. 440.28.
23
24 Regardless of the date benefits were initially requested,
25 attorney's fees shall not attach under this subsection until
26 30 days after the date the carrier or employer, if
27 self-insured, receives the petition.~~In applying the factors~~
28 ~~set forth in subsection (1) to cases arising under paragraphs~~
29 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
30 ~~only consider only such benefits and the time reasonably spent~~
31

1 ~~in obtaining them as were secured for the claimant within the~~
2 ~~scope of paragraphs (a), (b), (c), and (d).~~

3 (7) As to any settlement under s. 440.20(11)(c), the
4 judge of compensation claims may approve an attorney's fee not
5 to exceed 15 percent of the settlement amount.

6 Section 24. Section 440.345, Florida Statutes, is
7 amended to read:

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

15 Section 25. Subsections (2), (3), and (6) of section
16 440.381, Florida Statutes, are amended to read:

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

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

1 (3) The Department of Insurance and the Department of
2 Labor and Employment Security shall establish by rule minimum
3 requirements for audits of payroll and classifications in
4 order to ensure that the appropriate premium is charged for
5 workers' compensation coverage. The rules shall ensure that
6 audits performed by both carriers and employers are adequate
7 to provide that all sources of payments to employees,
8 subcontractors, and independent contractors have been reviewed
9 and that the accuracy of classification of employees has been
10 verified. The rules shall provide that employers in all
11 classes other than the construction class be audited not less
12 frequently than biennially and may provide for more frequent
13 audits of employers in specified classifications based on
14 factors such as amount of premium, type of business, loss
15 ratios, or other relevant factors. In no event shall employers
16 in the construction class, generating more than the amount of
17 premium required to be experience rated, be audited less than
18 annually. The annual audits required for construction classes
19 shall consist of physical onsite audits. Failure by the
20 carrier to comply with these auditing requirements shall be a
21 violation of the Insurance Code, as provided in s. 624.4211,
22 and shall result in a fine of at least \$1,000 for each
23 instance of noncompliance. Payroll verification audit rules
24 must include, but need not be limited to, the use of state and
25 federal reports of employee income, payroll and other
26 accounting records, certificates of insurance maintained by
27 subcontractors, and duties of employees. At the completion of
28 an audit, the employer or officer of the corporation and the
29 auditor must print and sign their names on the audit document
30 and provide proof of identification to the audit document.
31

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

12 Section 26. Section 440.40, Florida Statutes, is
13 amended to read:

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

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

28 (2) A notice stating: "Anti-Fraud Reward
29 Program: Rewards of up to \$25,000 may be paid to persons
30 providing information to the Department of Insurance leading
31 to the arrest and conviction of persons committing insurance

1 fraud, including employers who illegally fail to obtain
2 workers' compensation coverage. Persons may report suspected
3 fraud to the department at (phone number). A person is not
4 subject to civil liability for furnishing such information if
5 such person acts without malice, fraud, or bad faith."

6 Section 27. Paragraph (a) of subsection (1) of section
7 440.45, Florida Statutes, is amended to read:

8 440.45 Office of the Judges of Compensation Claims.--

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

1 to, personnel, purchasing, budgetary matters, or property
2 transactions. The operating budget of the Office of the Judges
3 of Compensation Claims shall be paid out of the Workers'
4 Compensation Administration Trust Fund established in s.
5 440.50.

6 Section 28. Section 489.114, Florida Statutes, is
7 amended to read:

8 489.114 Evidence of workers' compensation
9 coverage.--Except as provided in s. 489.115(5)(d), any person,
10 business organization, or qualifying agent engaged in the
11 business of contracting in this state and certified or
12 registered under this part shall, as a condition precedent to
13 the issuance or renewal of a certificate, registration, or
14 certificate of authority of the contractor, provide to the
15 Construction Industry Licensing Board, as provided by board
16 rule, evidence of workers' compensation coverage pursuant to
17 chapter 440. In the event that the Division of Workers'
18 Compensation of the Department of Labor and Employment
19 Security receives notice of the cancellation of a policy of
20 workers' compensation insurance insuring a person or entity
21 governed by this section, the Division of Workers'
22 Compensation shall certify and identify all persons or
23 entities by certification or registration license number to
24 the department after verification is made by the Division of
25 Workers' Compensation that ~~such cancellation has occurred or~~
26 ~~that~~ persons or entities governed by this section are no
27 longer covered by workers' compensation insurance. Such
28 certification and verification by the Division of Workers'
29 Compensation may ~~shall~~ result ~~solely~~ from records furnished to
30 the Division of Workers' Compensation by the persons or
31 entities governed by this section or an investigation

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

12 Section 29. Section 489.510, Florida Statutes, is
13 amended to read:

14 489.510 Evidence of workers' compensation
15 coverage.--Except as provided in s. 489.515(3)(b), any person,
16 business organization, or qualifying agent engaged in the
17 business of contracting in this state and certified or
18 registered under this part shall, as a condition precedent to
19 the issuance or renewal of a certificate or registration of
20 the contractor, provide to the Electrical Contractors'
21 Licensing Board, as provided by board rule, evidence of
22 workers' compensation coverage pursuant to chapter 440. In
23 the event that the Division of Workers' Compensation of the
24 Department of Labor and Employment Security receives notice of
25 the cancellation of a policy of workers' compensation
26 insurance insuring a person or entity governed by this
27 section, the Division of Workers' Compensation shall certify
28 and identify all persons or entities by certification or
29 registration license number to the department after
30 verification is made by the Division of Workers' Compensation
31 that ~~such cancellation has occurred or that persons or~~

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

17 Section 30. Subsection (2) of section 626.9892,
18 Florida Statutes, is amended to read:

19 626.9892 Anti-Fraud Reward Program; reporting of
20 insurance fraud.--

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

27 Section 31. The amendment to s. 440.271, Florida
28 Statutes, shall apply to all appeals filed on or after July 1,
29 2002.

30 Section 32. The Department of Insurance, in
31 consultation with the board of governors of the joint

1 underwriting association authorized under s. 627.311, Florida
2 Statutes, shall conduct a study to evaluate the availability
3 and affordability of workers' compensation insurance coverage
4 for persons engaged primarily in the construction industry.
5 The scope of the study shall include a review of workers'
6 compensation insurance currently provided or required in other
7 states and possible alternative coverages. The department
8 shall submit a report with recommendations to the President of
9 the Senate and the Speaker of the House of Representatives on
10 or before February 1, 2003.

11 Section 33. The amendments to ss. 440.02 and 440.15,
12 Florida Statutes, in this act shall not be construed to affect
13 any determination of disability under s. 112.18, s. 112.181,
14 or s. 112.19, Florida Statutes.

15 Section 34. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 invalidity shall not affect other provisions or applications
18 of the act which can be given effect without the invalid
19 provision or application, and to this end the provisions of
20 this act are declared severable.

21 Section 35. Except as otherwise provided herein, this
22 act shall take effect January 1, 2003.
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