

By Senator Latvala

19-1706C-02

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; redefining the term
4 "accident" to provide that an injury caused by
5 exposure to a toxic substance requires clear
6 and convincing evidence that such exposure can
7 cause the injury sustained; redefining the
8 terms "construction industry," "employee,"
9 "employer," "employment," and "catastrophic
10 injury"; defining the term "specificity";
11 amending s. 440.05, F.S.; requiring that a
12 corporate officer claiming an exemption from
13 ch. 440, F.S., be listed with the Division of
14 Corporations; requiring that the Division of
15 Workers' Compensation of the Department of
16 Labor and Employment Security issue a stop-work
17 order upon failure to produce such records or
18 maintain such listing; amending s. 440.06,
19 F.S.; clarifying certain limitations imposed on
20 an employer who fails to secure compensation;
21 amending s. 440.09, F.S.; specifying the level
22 of proof required in cases involving
23 occupational disease or repetitive exposure;
24 specifying the percentage of responsibility
25 required in order for a work-related accident
26 to be a major contributing cause of an injury
27 or disability; amending s. 440.10, F.S.;
28 revising certain limitations on an employer's
29 liability for compensation; amending s.
30 440.107, F.S.; providing for a penalty to be
31 imposed against an employer for certain

1 misrepresentations made to a carrier; F.S.;

2 requiring that the division notify the

3 Department of Business and Professional

4 Regulation upon the failure of certain

5 employers to secure payment of workers'

6 compensation; amending s. 440.11, F.S.;

7 clarifying provisions specifying that an

8 employer is exclusively liable for certain

9 injuries or death; requiring proof of intent to

10 cause injury or death; requiring that any

11 judgment or settlement for damages be offset

12 against workers' compensation benefits;

13 amending s. 440.13, F.S.; requiring that costs

14 for an independent medical examination be

15 determined under ch. 440, F.S.; providing

16 requirements for certain medical services or

17 supplies; requiring the Agency for Health Care

18 Administration to provide for certain practice

19 parameters; requiring that attendant care be

20 prescribed in writing; providing for

21 determining the value of that care; eliminating

22 provisions authorizing a sick or injured

23 employee to choose a pharmacy or pharmacist;

24 providing certain limitations on independent

25 medical examinations; providing requirements

26 for medical opinions admitted into evidence by

27 a judge of compensation claims; providing an

28 exception to certain limitations on fees;

29 requiring that the Agency for Health Care

30 Administration adopt practice parameters by

31 rule; specifying additional procedures to be

1 included; requiring that the agency report to
2 the Legislature on its progress in adopting and
3 reviewing practice parameters; amending s.
4 440.134, F.S.; requiring that an injured worker
5 be notified of the outcome of a grievance;
6 redefining the term "grievance" to specify that
7 a written complaint is required; providing for
8 discontinuance of medical care under a managed
9 care plan regardless of the date of an
10 accident; requiring that an insurer grant or
11 deny a request for medical care within a
12 specified period; requiring notice of a
13 worker's right to file a grievance; amending s.
14 440.14, F.S.; revising requirements for
15 determining pay for an injured employee under
16 ch. 440, F.S.; amending s. 440.15, F.S.;
17 limiting the period during which benefits may
18 be paid for permanent total disability;
19 revising requirements for paying benefits for
20 impairment; limiting the payment of benefits
21 for psychiatric impairment; prohibiting the
22 payment of benefits for preexisting mental
23 conditions or for certain chronic pain;
24 amending s. 440.151, F.S.; providing a standard
25 of proof for paying compensation for disability
26 or death resulting from tuberculosis or certain
27 occupational diseases; amending s. 440.191,
28 F.S.; revising duties of the Employee
29 Assistance and Ombudsman Office; removing a
30 requirement that an employee exhaust certain
31 dispute-resolution procedures before filing a

1 petition requesting benefits; amending s.
2 440.192, F.S.; revising procedures for
3 resolving a benefit dispute; extending the
4 period during which a carrier must file for
5 dismissal or file a response to a petition with
6 the Office of the Judges of Compensation
7 Claims; requiring that a claim be raised by
8 petition for purposes of adjudication; amending
9 s. 440.20, F.S.; providing that the employer or
10 carrier does not have a duty to investigate
11 arrearages in child support for purposes of a
12 settlement allocation; amending s. 440.25,
13 F.S.; revising procedures for mediation and
14 hearings; extending the time for ordering and
15 holding mediation conferences; providing
16 requirements for granting a continuance;
17 providing for mediation conducted by mediators
18 other than from the Office of the Judges of
19 Compensation Claims; requiring that the parties
20 complete pretrial stipulations before
21 concluding mediation; extending the time for
22 holding final hearings; providing for waiver of
23 any benefit not raised at the final hearing;
24 providing for an expedited determination of
25 pay; requiring that certain claims be resolved
26 through an expedited process; providing for
27 dismissal for lack of prosecution; limiting the
28 payment of interest and the attachment of
29 attorney's fees; amending s. 440.271, F.S.;
30 providing for an order of a judge of
31 compensation claims to be appealed to the

1 Workers' Compensation Appeals Commission and in
2 any district court of appeal; amending s.
3 440.29, F.S.; authorizing the report of
4 independent medical examiners to be entered
5 into evidence; amending s. 440.34, F.S.;
6 revising the formula for calculating attorney's
7 fees; revising provisions authorizing
8 additional attorney's fees; amending s. 440.39,
9 F.S.; providing for an employer to subrogate
10 the rights of an employee on an uninsured or
11 underinsured motorist policy; providing that
12 the employer or carrier has no duty to preserve
13 evidence pertaining to certain third-party
14 actions; amending s. 440.51, F.S.; increasing
15 the limit on fixed administrative expenses of
16 the workers' compensation joint underwriting
17 plan; providing that the transfer of certain
18 moneys into the plan by the division is not
19 subject to legislative appropriation; amending
20 ss. 489.114, 489.510, F.S.; requiring that
21 certain businesses in noncompliance with ch.
22 440, F.S., pay an administrative fine of a
23 specified amount; amending s. 627.311, F.S.,
24 relating to joint underwriters and joint
25 reinsurers; prohibiting an insurer from
26 providing workers' compensation and employer's
27 liability to an affiliated person of a person
28 delinquent in such premium payments,
29 assessments, or penalties; defining the term
30 "affiliated person of another person";
31 providing that a joint underwriting plan is

1 exempt from certain assessments; providing for
2 funding plan deficits through certain
3 assessments; providing an assessment procedure;
4 creating the Workers' Compensation Appeals
5 Commission within the Department of Management
6 Services; requiring that the Governor appoint
7 judges to the commission from nominations
8 submitted by the statewide nominating
9 commission; providing for associate justices;
10 providing for salaries and benefits; providing
11 for the commission to review by appeal orders
12 of judges of compensation claims under ch. 440,
13 F.S.; providing powers, duties, and functions;
14 requiring the commission to appoint a clerk;
15 providing for filing fees; providing for the
16 practice and procedure before the commission to
17 be governed by rules of the Supreme Court,
18 except to the extent such rules conflict with
19 ch. 440, F.S.; repealing ss. 440.34, 440.45(3),
20 440.4416, F.S., relating to attorney's fees and
21 costs, the Office of the Judges of Compensation
22 Claims, and the Workers' Compensation Oversight
23 Board; providing for severability; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsections (1), (7), (14), (15), (16), and
29 (37) of section 440.02, Florida Statutes, are amended, and
30 subsection (40) is added to that section, to read:

31

1 440.02 Definitions.--When used in this chapter, unless
2 the context clearly requires otherwise, the following terms
3 shall have the following meanings:

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

25 (7) "Construction industry" means any business that
26 carries out for-profit activities involving ~~the carrying out~~
27 ~~of~~ any building, clearing, filling, excavation, or substantial
28 improvement in the size or use of any structure or the
29 appearance of any land. ~~When appropriate to the context,~~
30 ~~"construction" refers to the act of construction or the result~~
31 ~~of construction.~~ However, "construction" does ~~shall~~ not mean a

1 ~~homeowner's landowner's~~ act of construction or the result of a
2 construction upon his or her own premises, provided such
3 premises are not intended to be sold, or resold, or leased by
4 the owner within 1 year after the commencement of the
5 construction. The division may by rule establish standard
6 industrial classification codes and definitions that meet the
7 criteria of the definition of the term "construction industry"
8 as set forth in this subsection.

9 (14)(a) "Employee" means any person who receives
10 remuneration from an employer for the performance of any work
11 or service or the provision of any goods or supplies, whether
12 by engaged in any employment under any appointment or contract
13 for of hire or apprenticeship, express or implied, oral or
14 written, whether lawfully or unlawfully employed, and
15 includes, but is not limited to, aliens and minors.

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

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

23 2. As to officers of a corporation who are actively
24 engaged in the construction industry, no more than three
25 officers who own at least 10 percent of such corporation or of
26 any group of affiliated corporations may elect to be exempt
27 from this chapter by filing written notice of the election
28 with the division as provided in s. 440.05.

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

1
2 Services are presumed to have been rendered to the corporation
3 if the officer is compensated by other than dividends upon
4 shares of stock of the corporation which the officer owns. The
5 term "affiliated" means and includes one or more corporations
6 or entities, any one of which is a corporation actively
7 engaged in the construction industry, under the same or
8 substantially the same control of a group of business entities
9 that are connected or associated so that one entity controls
10 or has the power to control each of the other business
11 entities. The term "affiliated" includes the officers,
12 directors, executives, shareholders active in management,
13 employees, and agents of the affiliated corporation. The
14 ownership by one business entity of a controlling interest in
15 another business entity or a pooling of equipment or income
16 among business entities is prima facie evidence that one
17 business is affiliated with another.

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

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

8 (d) "Employee" does not include:

9 1. An independent contractor working or performing
10 services in the construction industry, if:

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

14 ~~b. the independent contractor holds or has applied for~~
15 ~~a federal employer identification number, if required to do so~~
16 ~~by any federal, state, or local statute, rule, or ordinance,~~
17 ~~unless the independent contractor is a sole proprietor who is~~
18 ~~not required to obtain a federal employer identification~~
19 ~~number under state or federal requirements.~~

20 2. A sole proprietor who actively engages in the
21 construction industry or a partner or partnership that
22 actively engages in the construction industry.

23 ~~c. The independent contractor performs or agrees to~~
24 ~~perform specific services or work for specific amounts of~~
25 ~~money and controls the means of performing the services or~~
26 ~~work;~~

27 ~~d. The independent contractor incurs the principal~~
28 ~~expenses related to the service or work that he or she~~
29 ~~performs or agrees to perform;~~

30 ~~e. The independent contractor is responsible for the~~
31 ~~satisfactory completion of work or services that he or she~~

1 ~~performs or agrees to perform and is or could be held liable~~
2 ~~for a failure to complete the work or services;~~

3 ~~f. The independent contractor receives compensation~~
4 ~~for work or services performed for a commission or on a~~
5 ~~per-job or competitive-bid basis and not on any other basis;~~

6 ~~g. The independent contractor may realize a profit or~~
7 ~~suffer a loss in connection with performing work or services;~~

8 ~~h. The independent contractor has continuing or~~
9 ~~recurring business liabilities or obligations; and~~

10 ~~i. The success or failure of the independent~~
11 ~~contractor's business depends on the relationship of business~~
12 ~~receipts to expenditures.~~

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

22 ~~3.2.~~ A real estate salesperson or agent, if that
23 person agrees, in writing, to perform for remuneration solely
24 by way of commission.

25 ~~4.3.~~ Bands, orchestras, and musical and theatrical
26 performers, including disk jockeys, performing in licensed
27 premises as defined in chapter 562, if a written contract
28 evidencing an independent contractor relationship is entered
29 into before the commencement of such entertainment.

30 ~~5.4.~~ An owner-operator of a motor vehicle who
31 transports property under a written contract with a motor

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

10 6.5. A person whose employment is both casual and not
11 in the course of the trade, business, profession, or
12 occupation of the employer.

13 7.6. A volunteer, except a volunteer worker for the
14 state or a county, municipality, or other governmental entity.
15 A person who does not receive monetary remuneration for
16 services is presumed to be a volunteer unless there is
17 substantial evidence that a valuable consideration was
18 intended by both employer and employee. For purposes of this
19 chapter, the term "volunteer" includes, but is not limited to:

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

30 b. Volunteers participating in federal programs
31 established under Pub. L. No. 93-113.

- 1 8. Domestic servants in private homes.
- 2 9. Agricultural labor performed on a farm in the
3 employ of a bona fide farmer, or association of farmers, that
4 employs 5 or fewer regular employees and that employs fewer
5 than 12 other employees at one time for seasonal agricultural
6 labor that is completed in less than 30 days, provided such
7 seasonal employment does not exceed 45 days in the same
8 calendar year. The term "farm" includes stock, dairy, poultry,
9 fruit, fur-bearing animals, fish, and truck farms, ranches,
10 nurseries, and orchards. The term "agricultural labor"
11 includes field foremen, timekeepers, checkers, and other farm
12 labor supervisory personnel.
- 13 10. Professional athletes, such as professional
14 boxers, wrestlers, baseball, football, basketball, hockey,
15 polo, tennis, jai alai, and similar players, and motorsports
16 teams competing in a motor racing event as defined in s.
17 549.08.
- 18 11. Persons performing labor under a sentence of a
19 court to perform community services as provided in s. 316.193.
- 20 ~~7. Any officer of a corporation who elects to be~~
21 ~~exempt from this chapter.~~
- 22 ~~8. A sole proprietor or officer of a corporation who~~
23 ~~actively engages in the construction industry, and a partner~~
24 ~~in a partnership that is actively engaged in the construction~~
25 ~~industry, who elects to be exempt from the provisions of this~~
26 ~~chapter. Such sole proprietor, officer, or partner is not an~~
27 ~~employee for any reason until the notice of revocation of~~
28 ~~election filed pursuant to s. 440.05 is effective.~~
- 29 ~~12.9.~~ An exercise rider who does not work for a single
30 horse farm or breeder, and who is compensated for riding on a
31 case-by-case basis, provided a written contract is entered

1 into prior to the commencement of such activity which
2 evidences that an employee/employer relationship does not
3 exist.

4 13.10. A taxicab, limousine, or other passenger
5 vehicle-for-hire driver who operates said vehicles pursuant to
6 a written agreement with a company which provides any
7 dispatch, marketing, insurance, communications, or other
8 services under which the driver and any fees or charges paid
9 by the driver to the company for such services are not
10 conditioned upon, or expressed as a proportion of, fare
11 revenues.

12 14.11. A person who performs services as a sports
13 official for an entity sponsoring an interscholastic sports
14 event or for a public entity or private, nonprofit
15 organization that sponsors an amateur sports event. For
16 purposes of this subparagraph, such a person is an independent
17 contractor. For purposes of this subparagraph, the term
18 "sports official" means any person who is a neutral
19 participant in a sports event, including, but not limited to,
20 umpires, referees, judges, linespersons, scorekeepers, or
21 timekeepers. This subparagraph does not apply to any person
22 employed by a district school board who serves as a sports
23 official as required by the employing school board or who
24 serves as a sports official as part of his or her
25 responsibilities during normal school hours.

26 (15) "Employer" means the state and all political
27 subdivisions thereof, all public and quasi-public corporations
28 therein, every person carrying on any employment, and the
29 legal representative of a deceased person or the receiver or
30 trustees of any person. If the employer is a corporation,
31 parties in actual control of the corporation, including, but

1 not limited to, the president, officers who exercise broad
2 corporate powers, directors, and all shareholders who directly
3 or indirectly own a controlling interest in the corporation,
4 are considered the employer for the purposes of ss. 440.105
5 and 440.106. However, a landowner is not the employer of a
6 person hired by the landowner to carry out construction upon
7 the landowner's premises if those premises are not intended
8 for immediate sale or resale.

9 (16)(a) "Employment," subject to the other provisions
10 of this chapter, means any service performed by an employee
11 for the person employing him or her.

12 (b) "Employment" includes:

13 1. Employment by the state and all political
14 subdivisions thereof and all public and quasi-public
15 corporations therein, including officers elected at the polls.

16 2. All private employments in which four or more
17 employees are employed by the same employer or, with respect
18 to the construction industry, all private employment in which
19 one or more employees are employed by the same employer.

20 3. Volunteer firefighters responding to or assisting
21 with fire or medical emergencies whether or not the
22 firefighters are on duty.

23 ~~(c) "Employment" does not include service performed by~~
24 ~~or as:~~

25 1. ~~Domestic servants in private homes.~~

26 2. ~~Agricultural labor performed on a farm in the~~
27 ~~employ of a bona fide farmer, or association of farmers, that~~
28 ~~employs 5 or fewer regular employees and that employs fewer~~
29 ~~than 12 other employees at one time for seasonal agricultural~~
30 ~~labor that is completed in less than 30 days, provided such~~
31 ~~seasonal employment does not exceed 45 days in the same~~

1 ~~calendar year. The term "farm" includes stock, dairy, poultry,~~
2 ~~fruit, fur-bearing animals, fish, and truck farms, ranches,~~
3 ~~nurseries, and orchards. The term "agricultural labor"~~
4 ~~includes field foremen, timekeepers, checkers, and other farm~~
5 ~~labor supervisory personnel.~~

6 ~~3. Professional athletes, such as professional boxers,~~
7 ~~wrestlers, baseball, football, basketball, hockey, polo,~~
8 ~~tennis, jai alai, and similar players, and motorsports teams~~
9 ~~competing in a motor racing event as defined in s. 549.08.~~

10 ~~4. Labor under a sentence of a court to perform~~
11 ~~community services as provided in s. 316.193.~~

12 ~~5. State prisoners or county inmates, except those~~
13 ~~performing services for private employers or those enumerated~~
14 ~~in s. 948.03(8)(a).~~

15 (37) "Catastrophic injury" means a permanent
16 impairment constituted by:

17 (a) Spinal cord injury involving severe paralysis of
18 an arm, a leg, or the trunk;

19 (b) Amputation of an arm, a hand, a foot, or a leg
20 involving the effective loss of use of that appendage;

21 (c) Severe brain or closed-head injury as evidenced
22 by:

23 1. Severe sensory or motor disturbances;

24 2. Severe communication disturbances;

25 3. Severe complex integrated disturbances of cerebral
26 function;

27 4. Severe episodic neurological disorders; or

28 5. Other severe brain and closed-head injury
29 conditions at least as severe in nature as any condition
30 provided in subparagraphs 1.-4.;

31

1 (d) Second-degree or third-degree burns of 25 percent
2 or more of the total body surface or third-degree burns of 5
3 percent or more to the face and hands; or

4 (e) Total or industrial blindness, ~~or~~

5 ~~(f) Any other injury that would otherwise qualify~~
6 ~~under this chapter of a nature and severity that would qualify~~
7 ~~an employee to receive disability income benefits under Title~~
8 ~~II or supplemental security income benefits under Title XVI of~~
9 ~~the federal Social Security Act as the Social Security Act~~
10 ~~existed on July 1, 1992, without regard to any time~~
11 ~~limitations provided under that act.~~

12 (40) "Specificity" means information provided on the
13 petition for benefits which is sufficient to put the employer
14 or carrier on notice of the exact statutory classification and
15 outstanding time period of benefits being requested, including
16 a detailed explanation of any benefits received that should be
17 increased, decreased, changed, or otherwise modified. If the
18 petition for benefits is for medical benefits, the term means
19 the specific details as to why the benefit is being requested,
20 why the benefit is medically necessary, and why current
21 treatment, if any, is not sufficient.

22 Section 2. Subsection (10), is added to section
23 440.05, Florida Statutes, to read:

24 440.05 Election of exemption; revocation of election;
25 notice; certification.--

26 (10)(a) Any corporate officer claiming an exemption
27 under this section must be listed on the records of this
28 state's Secretary of State, Division of Corporations, as a
29 corporate officer. If the person who claims an exemption as a
30 corporate officer is not so listed on the records of the
31 Secretary of State, the individual must provide to the

1 division, upon request by the division, a notarized affidavit
2 stating that the individual is a bona fide officer of the
3 corporation and stating the date his or her appointment or
4 election as a corporate officer became or will become
5 effective. The statement must be signed under oath by both the
6 officer in question and the president or chief operating
7 officer of the corporation and must be notarized. The division
8 shall issue a stop-work order under s. 440.107(1) to any
9 person who claims to be exempt as a corporate officer but who
10 fails or refuses to produce the documents required under this
11 subsection to the division within 3 business days after the
12 request is made or who fails to otherwise secure the insurance
13 of workers' compensation benefits for himself or herself if
14 required under this chapter to do so.

15 (b) A corporate officer of a business entity is not
16 eligible for an exemption from this chapter if the business
17 entity has not been in operation long enough to have filed its
18 first annual federal income tax return with the Internal
19 Revenue Service or to have been required by the Internal
20 Revenue Service to file such return.

21 (c) An exemption from the requirements of this chapter
22 applies only to the person claiming the exemption and only for
23 the entity that is the subject of the federal income tax
24 reports filed by the person claiming the exemption. A separate
25 exemption is required for each corporation from which an
26 individual receives any remuneration for labor, services, or
27 products.

28 Section 3. Section 440.06, Florida Statutes, is
29 amended to read:

30 440.06 Failure to secure compensation; effect.--Every
31 employer who fails to secure the payment of compensation as

1 provided in s. 440.10 by failing to meet the requirements of
2 ~~under this chapter as provided in s. 440.38~~ may not, in any
3 suit brought against him or her by an employee subject to this
4 chapter to recover damages for injury or death, defend such a
5 suit on the grounds that the injury was caused by the
6 negligence of a fellow servant, that the employee assumed the
7 risk of his or her employment, or that the injury was due to
8 the comparative negligence of the employee.

9 Section 4. Subsection (1) of section 440.09, Florida
10 Statutes, is amended to read:

11 440.09 Coverage.--

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

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

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 to be more than
9 50-percent responsible for the accident and therefore remains
10 the major contributing cause of the disability or need for
11 treatment.

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

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

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

29 440.10 Liability for compensation.--

30 (1)(a) Every employer coming within the provisions of
31 this chapter, including any brought within the chapter by

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

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

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

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

31

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

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

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

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

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

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

1
2 ~~A sole proprietor, partner, or officer of a corporation who~~
3 ~~elects exemption from this chapter by filing a certificate of~~
4 ~~election under s. 440.05 may not recover benefits or~~
5 ~~compensation under this chapter. An independent contractor~~
6 ~~who provides the general contractor with both an affidavit~~
7 ~~stating that he or she meets the requirements of s.~~
8 ~~440.02(14)(d) and a certificate of exemption is not an~~
9 ~~employee under s. 440.02(14)(c) and may not recover benefits~~
10 ~~under this chapter. For purposes of determining the~~
11 ~~appropriate premium for workers' compensation coverage,~~
12 ~~carriers may not consider any person who meets the~~
13 ~~requirements of this paragraph to be an employee.~~

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

17 440.107 Division powers to enforce employer compliance
18 with coverage requirements.--

19 (5) Whenever the division determines that an employer
20 who is required to secure the payment to his or her employees
21 of the compensation provided for by this chapter has failed to
22 do so or that an employer has misrepresented to a carrier the
23 size or classification of the employer's payroll, such failure
24 or intentional misrepresentation shall be deemed an immediate
25 serious danger to public health, safety, or welfare sufficient
26 to justify service by the division of a stop-work order on the
27 employer, requiring the cessation of all business operations
28 at the place of employment or job site. The order shall take
29 effect upon the date of service upon the employer, unless the
30 employer provides evidence satisfactory to the division of
31 having secured any necessary insurance or self-insurance and

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

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

11 Section 7. Subsection (1) of section 440.11, Florida
12 Statutes, is amended to read:

13 440.11 Exclusiveness of liability.--

14 (1) Except if an employer acts with the intent to
15 cause injury or death,the liability of an employer prescribed
16 in s. 440.10 shall be exclusive and in place of all other
17 liability, including any vicarious liability,of such employer
18 to any third-party tortfeasor and to the employee, the legal
19 representative thereof, husband or wife, parents, dependents,
20 next of kin, and anyone otherwise entitled to recover damages
21 from such employer at law or in admiralty on account of such
22 injury or death, except that if an employer fails to secure
23 payment of compensation in accordance with s. 440.38 ~~as~~
24 ~~required by this chapter,~~ an injured employee, or the legal
25 representative thereof in case death results from the injury,
26 may elect to claim compensation under this chapter or to
27 maintain an action at law or in admiralty for damages on
28 account of such injury or death. In such action the defendant
29 may not plead as a defense that the injury was caused by
30 negligence of a fellow employee, that the employee assumed the
31 risk of the employment, or that the injury was due to the

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

1 harm. If an employee recovers damages from an employer by
2 judgement or settlement under this subsection, the workers'
3 compensation carrier for the employer or the employer, if
4 self-insured, shall have an offset against any workers'
5 compensation benefits to which the employee would be entitled
6 under this chapter and a lien against recovery for any
7 benefits paid prior to the recovery pursuant to this chapter
8 after deduction for attorneys fees and costs expended by the
9 employee in prosecuting the claim against the employer.

10 Section 8. Paragraphs (j) and (m) of subsection (1),
11 paragraphs (b) and (f) of subsection (2), paragraphs (d) and
12 (j) of subsection (3), paragraphs (a), (b), (c), and (e) of
13 subsection (5), subsection (12), paragraphs (b) and (c) of
14 subsection (14), and subsection (15) of section 440.13,
15 Florida Statutes, are amended to read:

16 440.13 Medical services and supplies; penalty for
17 violations; limitations.--

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

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

25 (m) "Medical necessity ~~Medically necessary~~" means any
26 medical service or medical supply that ~~which~~ is used to
27 identify or treat an illness or injury, is appropriate to the
28 patient's diagnosis and status of recovery, is recommended in
29 writing by an authorized treating physician to the
30 self-insured employer or carrier, and is consistent with the
31 location of service, the level of care provided, and

1 applicable practice parameters. The service should be widely
2 accepted among practicing health care providers, based on
3 scientific criteria, and determined to be reasonably safe. The
4 delivery of medical services or supplies shall be at the most
5 reasonable cost as is consistent with sound medical practice.
6 The service must not be of an experimental, investigative, or
7 research nature, except in those instances in which prior
8 approval of the Agency for Health Care Administration has been
9 obtained. The Agency for Health Care Administration shall
10 adopt rules providing for such approval on a case-by-case
11 basis when the service or supply is shown to have significant
12 benefits to the recovery and well-being of the patient. The
13 Agency for Health Care Administration must ensure that
14 applicable practice parameters are established for physician
15 medical services, including, but not limited to, pain
16 management and psychiatric treatment.

17 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

18 (b) The employer shall provide appropriate
19 professional or nonprofessional attendant care performed only
20 at the direction and control of a physician when such care is
21 medically necessary. The physician must prescribe such care in
22 writing. The employer or carrier is not responsible for such
23 care until the time that the prescription for attendant care
24 is received by the self-insured employer or carrier from the
25 authorized treating physician.The value of nonprofessional
26 attendant care provided by a family member must be determined
27 as follows:

28 1. If the family member is not employed, the per-hour
29 value equals the federal minimum hourly wage.

30 2. If the family member is employed and elects to
31 leave that employment to provide attendant or custodial care,

1 the per-hour value of that care equals the per-hour value of
2 the family member's former employment, not to exceed the
3 per-hour value of such care available in the community at
4 large.

5 3. If the family member remains employed while
6 providing attendant or custodial care, the per-hour value of
7 that care equals the per-hour value of the family member's
8 employment, not to exceed the per-hour value of such care
9 available in the community at large.

10 4. A family member or a combination of family members
11 providing nonprofessional attendant care under this paragraph
12 may not be compensated for more than a total of 12 hours per
13 day.

14 (f) Upon the written request of the employee, the
15 carrier shall give the employee the opportunity for one change
16 of physician during the course of treatment for any one
17 accident. The employee shall be entitled to select another
18 such physician from among not fewer than three
19 carrier-authorized physicians who are not professionally
20 affiliated.

21 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

1 (3)
2 ~~(j) Notwithstanding anything in this chapter to the~~
3 ~~contrary, a sick or injured employee shall be entitled, at all~~
4 ~~times, to free, full, and absolute choice in the selection of~~
5 ~~the pharmacy or pharmacist dispensing and filling~~
6 ~~prescriptions for medicines required under this chapter. It is~~
7 ~~expressly forbidden for the division, an employer, or a~~
8 ~~carrier, or any agent or representative of the division, an~~
9 ~~employer, or a carrier to select the pharmacy or pharmacist~~
10 ~~which the sick or injured employee must use; condition~~
11 ~~coverage or payment on the basis of the pharmacy or pharmacist~~
12 ~~utilized; or to otherwise interfere in the selection by the~~
13 ~~sick or injured employee of a pharmacy or pharmacist.~~

14 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

15 (a) In any dispute concerning overutilization, medical
16 benefits, compensability, or disability under this chapter,
17 the carrier or the employee may select an independent medical
18 examiner. If the parties agree, the examiner may be a health
19 care provider treating or providing other care to the
20 employee. An independent medical examiner may not render an
21 opinion outside his or her area of expertise, as demonstrated
22 by licensure and applicable practice parameters. Upon the
23 written request of the employee, the carrier shall pay the
24 cost of only one independent medical examination per accident,
25 which may not exceed \$650. The cost of an additional
26 independent medical examination, including the costs of an
27 independent medical examiner's deposition, shall be borne by
28 the party requesting the additional independent medical
29 examination. Only the costs of independent medical
30 examinations and the costs of depositions expressly relied
31 upon by the judge of compensation claims to award benefits in

1 the final compensation order are taxable costs under s.
2 440.34(3).

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

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

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

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

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

15
16 Any party may request, or a judge of compensation claims may
17 require, designation of a division medical advisor as an
18 independent medical examiner. The opinion of the advisors
19 acting as examiners shall not be afforded the presumption set
20 forth in paragraph (9)(c).

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

30 (e) No medical opinion other than the opinion of a
31 medical advisor appointed by the judge of compensation claims

1 or division, an independent medical examiner, or an authorized
2 treating provider is admissible in proceedings before the
3 judges of compensation claims. The employee and the carrier
4 may each submit into evidence, and the judge of compensation
5 claims shall admit, the medical opinion of not more than one
6 qualified independent medical examiner per specialty. In cases
7 involving occupational disease or repetitive trauma, medical
8 opinions are not admissible unless based on reliable
9 scientific principles sufficiently established to have gained
10 general acceptance in the pertinent area of specialty.

11 (12) ~~CREATION OF THREE-MEMBER PANEL~~ GUIDES OF MAXIMUM
12 REIMBURSEMENT ALLOWANCES.--

13 (a) The most current American Medical Association
14 Procedural Terminology codes, with associated modified
15 relative values, as published by the Centers for Medicare and
16 Medicaid shall be adopted and updated annually within 45 days
17 after the Centers for Medicare and Medicaid notices the annual
18 update in the Federal Register. The reimbursement allowances
19 for medically necessary treatment, care, and attendance for
20 health care providers may not be less than 125 percent of the
21 applicable Medicare reimbursement allowance for nonsurgical
22 codes and 150 percent of the applicable Medicare reimbursement
23 allowance for surgical codes for such services in the locality
24 in which the treatment is received. The initial fee schedule
25 shall be based upon the conversion factor for 2001. The fee
26 schedule shall change annually at the time of the annual
27 Medicare upgrade. Increases or decreases shall be equal to the
28 National Medical Price Index. For services not covered by
29 Medicare reimbursement allowances, maximum reimbursement
30 allowances shall be set by the median Florida 75th percentile,
31 as determined by Medicode annually. National relative values

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

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

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

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

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

15 1. ~~The levels of reimbursement for similar treatment,~~
16 ~~care, and attendance made by other health care programs or~~
17 ~~third-party providers;~~

18 2. ~~The impact upon cost to employers for providing a~~
19 ~~level of reimbursement for treatment, care, and attendance~~
20 ~~which will ensure the availability of treatment, care, and~~
21 ~~attendance required by injured workers;~~

22 3. ~~The financial impact of the reimbursement~~
23 ~~allowances upon health care providers and health care~~
24 ~~facilities, including trauma centers as defined in s.~~
25 ~~395.4001, and its effect upon their ability to make available~~
26 ~~to injured workers such medically necessary remedial~~
27 ~~treatment, care, and attendance. The uniform schedule of~~
28 ~~maximum reimbursement allowances must be reasonable, must~~
29 ~~promote health care cost containment and efficiency with~~
30 ~~respect to the workers' compensation health care delivery~~
31 ~~system, and must be sufficient to ensure availability of such~~

1 ~~medically necessary remedial treatment, care, and attendance~~
2 ~~to injured workers; and~~

3 ~~4. The most recent average maximum allowable rate of~~
4 ~~increase for hospitals determined by the Health Care Board~~
5 ~~under chapter 408.~~

6 (14) PAYMENT OF MEDICAL FEES.--

7 ~~(b) Fees charged for remedial treatment, care, and~~
8 ~~attendance may not exceed the applicable fee schedules adopted~~
9 ~~under this chapter.~~

10 ~~(b)(c)~~ Notwithstanding any other provision of this
11 chapter, following overall maximum medical improvement from an
12 injury compensable under this chapter, the employee is
13 obligated to pay a copayment of \$10 per visit for medical
14 services. The copayment shall not apply to emergency care
15 provided to the employee.

16 (15) PRACTICE PARAMETERS.--

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

31

1 lower-back injuries, pain management, and psychiatry must be
2 developed by December 31, 2002 ~~1994~~.

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

11 (c) Procedures must be instituted which provide for
12 the periodic review and revision of practice parameters based
13 on the latest outcomes data, research findings, technological
14 advancements, and clinical experiences, at least once every 2
15 ~~3~~ years.

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

20 (e) By February 1, 2003, the Agency for Health Care
21 Administration shall provide a written report to the President
22 of the Senate and the Speaker of the House of Representatives
23 of the agency's progress in developing or adopting practice
24 parameters in accordance with this section. The agency shall
25 also provide a written report on February 1 every 2 years
26 thereafter to the President of the Senate and the Speaker of
27 the House of Representatives concerning its periodic review
28 and revision of such practice parameters.

29 Section 9. Paragraph (d) of subsection (1), paragraph
30 (a) of subsection (2), and paragraphs (c) and (d) of
31

1 subsection (15) of section 440.134, Florida Statutes, are
2 amended to read:

3 440.134 Workers' compensation managed care
4 arrangement.--

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

6 (d) "Grievance" means a written complaint filed by the
7 injured worker pursuant to the requirements of the managed
8 care arrangement expressing dissatisfaction with the insurer's
9 workers' compensation managed care arrangement's refusal to
10 provide medical care provided by an insurer's workers'
11 compensation managed care arrangement health care providers,
12 expressed in writing by an injured worker.

13 (2)(a) The self-insured employer or carrier may,
14 subject to the terms and limitations specified elsewhere in
15 this section and chapter, furnish to the employee solely
16 through managed care arrangements such medically necessary
17 remedial treatment, care, and attendance for such period as
18 the nature of the injury or the process of recovery requires.
19 For any self-insured employer or carrier who elects to be
20 exempt from managed care under a managed care plan, the
21 discontinuance of any mandatory requirement for providing
22 medical care under a managed care plan shall be without regard
23 to the date of the accident, notwithstanding any other
24 provision in law or rule.

25 (15)

26 (c) At the time the workers' compensation managed care
27 arrangement is implemented, the insurer must provide detailed
28 information to workers and health care providers describing
29 how a grievance may be registered with the insurer. Within 20
30 days after the date the written request for medical care is
31 received by the insurer or by the insurer's workers'

1 compensation managed care arrangement, whichever date is
2 earlier, the insurer shall grant or deny the request. If the
3 insurer denies the request, the insurer shall notify the
4 injured worker in writing of his or her right to file a
5 grievance. Until the time a grievance is filed and resolved
6 under this subsection, the judge of compensation claims does
7 not have jurisdiction over any medical issues that are subject
8 to the managed care arrangement.

9 (d) Grievances must be considered in a timely manner
10 and must be transmitted to appropriate decisionmakers who have
11 the authority to fully investigate the issue and take
12 corrective action. If the insurer or the insurer's workers'
13 compensation managed care arrangement fails to notify the
14 injured worker of the outcome of the grievance in writing
15 within 30 days after the date of receiving the grievance, the
16 grievance is presumed to be resolved against the injured
17 worker and the grievance procedures are exhausted for purposes
18 of s. 440.192(3).

19 Section 10. Paragraph (a) of subsection (1) of section
20 440.14, Florida Statutes, is amended to read:

21 440.14 Determination of pay.--

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

27 (a) If the injured employee has worked in the
28 employment in which she or he was working at the time of the
29 injury, whether for the same or another employer, during
30 substantially the whole of 13 weeks immediately preceding the
31 injury, her or his average weekly wage shall be one-thirteenth

1 of the total amount of wages earned in such employment during
2 the 13 weeks. As used in this paragraph, the term
3 "substantially the whole of 13 weeks" means an actual ~~shall be~~
4 ~~deemed to mean and refer to a constructive~~ period of 13 weeks
5 as a whole, which is ~~shall be~~ defined as the 13 complete weeks
6 before the date of the injury, excluding the week during which
7 the injury occurred. ~~a consecutive period of 91 days, and~~ The
8 term "during substantially the whole of 13 weeks" shall be
9 deemed to mean during not less than 90 percent of the total
10 customary ~~full-time~~ hours of employment within such period
11 considered as a whole.

12 Section 11. Paragraphs (b) and (f) of subsection (1)
13 and subsection (3) of section 440.15, Florida Statutes, are
14 amended to read:

15 440.15 Compensation for disability.--Compensation for
16 disability shall be paid to the employee, subject to the
17 limits provided in s. 440.12(2), as follows:

18 (1) PERMANENT TOTAL DISABILITY.--

19 (b) In the absence of conclusive proof of a
20 substantial earning capacity, only a catastrophic injury as
21 defined in s. 440.02 (34)(a)-(e), is presumed to constitute
22 permanent total disability. Compensation may not be paid under
23 paragraph (a) if the employee is engaged in, or is physically
24 capable of engaging in any work comparable to his or her
25 previous employment. The burden is on the employee to
26 establish that he or she is unable to engage in work,
27 including part-time work, as a result of the industrial
28 accident, if such work is available within a 50 mile radius of
29 the employee's residence, or such distance that the judge
30 determines to be reasonable under the circumstances. Benefits
31 are payable until the employee reaches his 72nd birthdate.

1 Notwithstanding any age limits, if the accident occurred on or
2 after the employee's 65th birthday, benefits are payable
3 during the continuance of permanent total disability, which
4 may not exceed 7 years following the determination of
5 permanent total disability. Only A catastrophic injury as
6 defined in s. 440.02 shall, in the absence of conclusive proof
7 of a substantial earning capacity, constitute permanent total
8 disability. ~~Only claimants with catastrophic injuries are~~
9 ~~eligible for permanent total benefits.~~In no other case may
10 permanent total disability be awarded.

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

1 1, 1984. These supplemental benefits shall be paid by the
2 employer when the injury occurred on or after July 1, 1984.
3 Supplemental benefits are not payable for any period prior to
4 October 1, 1974.

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

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

26 3. When an injured employee receives a full or partial
27 lump-sum advance of the employee's permanent total disability
28 compensation benefits, the employee's benefits under this
29 paragraph shall be computed on the employee's weekly
30 compensation rate as reduced by the lump-sum advance.

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

1 (a) Impairment benefits.--

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

6 2. The three-member panel, in cooperation with the
7 division, shall establish and use a uniform permanent
8 impairment rating schedule. This schedule must be based on
9 medically or scientifically demonstrable findings as well as
10 the systems and criteria set forth in the American Medical
11 Association's Guides to the Evaluation of Permanent
12 Impairment; the Snellen Charts, published by American Medical
13 Association Committee for Eye Injuries; and the Minnesota
14 Department of Labor and Industry Disability Schedules. The
15 schedule should be based upon objective findings. The schedule
16 shall be more comprehensive than the AMA Guides to the
17 Evaluation of Permanent Impairment and shall expand the areas
18 already addressed and address additional areas not currently
19 contained in the guides. On August 1, 1979, and pending the
20 adoption, by rule, of a permanent schedule, Guides to the
21 Evaluation of Permanent Impairment, copyright 1977, 1971,
22 1988, by the American Medical Association, shall be the
23 temporary schedule and shall be used for the purposes hereof.
24 For injuries after July 1, 1990, pending the adoption by
25 division rule of a uniform disability rating schedule, the
26 Minnesota Department of Labor and Industry Disability Schedule
27 shall be used unless that schedule does not address an injury.
28 In such case, the Guides to the Evaluation of Permanent
29 Impairment by the American Medical Association shall be used.
30 Determination of permanent impairment under this schedule must
31 be made by a physician licensed under chapter 458, a doctor of

1 osteopathic medicine licensed under chapters 458 and 459, a
2 chiropractic physician licensed under chapter 460, a podiatric
3 physician licensed under chapter 461, an optometrist licensed
4 under chapter 463, or a dentist licensed under chapter 466, as
5 appropriate considering the nature of the injury. No other
6 persons are authorized to render opinions regarding the
7 existence of or the extent of permanent impairment.

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

19 a. The expiration of a period computed at the rate of
20 3 weeks for each percentage point of impairment; or

21 b. The death of the employee.

22
23 Impairment benefits as defined by this subsection are only
24 payable for impairment ratings for physical impairments.
25 Impairment benefits for permanent psychiatric impairment are
26 limited to the payment of impairment benefits, as calculated
27 under this subparagraph, for a 1-percent permanent psychiatric
28 impairment resulting from the work injury.

29 4. After the employee has been certified by a doctor
30 as having reached maximum medical improvement or 6 weeks
31 before the expiration of temporary benefits, whichever occurs

1 earlier, the certifying doctor shall evaluate the condition of
2 the employee and assign an impairment rating, using the
3 impairment schedule referred to in subparagraph 2.
4 Compensation is not payable for the mental, psychological, or
5 emotional injury arising out of depression from being out of
6 work; for preexisting mental, psychological, or emotional
7 conditions; or for chronic pain that cannot be substantiated
8 by objective medical findings. If the certification and
9 evaluation are performed by a doctor other than the employee's
10 treating doctor, the certification and evaluation must be
11 submitted to the treating doctor, and the treating doctor must
12 indicate agreement or disagreement with the certification and
13 evaluation. The certifying doctor shall issue a written report
14 to the division, the employee, and the carrier certifying that
15 maximum medical improvement has been reached, stating the
16 impairment rating, and providing any other information
17 required by the division. If the employee has not been
18 certified as having reached maximum medical improvement before
19 the expiration of 102 weeks after the date temporary total
20 disability benefits begin to accrue, the carrier shall notify
21 the treating doctor of the requirements of this section.

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

24 6. The division may by rule specify forms and
25 procedures governing the method of payment of wage loss and
26 impairment benefits for dates of accidents before January 1,
27 1994, and for dates of accidents on or after January 1, 1994.

28 (b) Supplemental benefits.--

29 1. All supplemental benefits must be paid in
30 accordance with this subsection. An employee is entitled to

31

1 supplemental benefits as provided in this paragraph as of the
2 expiration of the impairment period, if:

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

6 b. The employee has not returned to work or has
7 returned to work earning less than 80 percent of the
8 employee's average weekly wage as a direct result of the
9 employee's impairment; and

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

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

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

22 b. The employee meets the other requirements of
23 subparagraph 1.; and

24 c. The employee's decrease in earnings is a direct
25 result of the employee's impairment from the compensable
26 injury.

27 3. If an employee earns wages that are at least 80
28 percent of the employee's average weekly wage for a period of
29 at least 90 days during which the employee is receiving
30 supplemental benefits, the employee ceases to be entitled to
31 supplemental benefits for the filing period. Supplemental

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

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

28 5. After the initial determination of supplemental
29 benefits, the employee must file a statement with the carrier
30 stating that the employee has earned less than 80 percent of
31 the employee's average weekly wage as a direct result of the

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

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

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

28 8. Supplemental benefits are payable at the rate of 80
29 percent of the difference between 80 percent of the employee's
30 average weekly wage determined pursuant to s. 440.14 and the
31 weekly wages the employee has earned during the reporting

1 period, not to exceed the maximum weekly income benefit under
2 s. 440.12.

3 9. The division may by rule define terms that are
4 necessary for the administration of this section and forms and
5 procedures governing the method of payment of supplemental
6 benefits for dates of accidents before January 1, 1994, and
7 for dates of accidents on or after January 1, 1994.

8 (c) Duration of temporary impairment and supplemental
9 income benefits.--The employee's eligibility for temporary
10 benefits, impairment income benefits, and supplemental
11 benefits terminates on the expiration of 401 weeks after the
12 date of injury.

13 Section 12. Paragraph (e) of subsection (1) and
14 subsection (2) of section 440.151, Florida Statutes, are
15 amended to read:

16 440.151 Occupational diseases.--

17 (1)

18 (e) No compensation shall be payable for disability or
19 death resulting from tuberculosis arising out of and in the
20 course of employment by the Department of Health at a state
21 tuberculosis hospital, or aggravated by such employment, when
22 the employee had suffered from said disease at any time prior
23 to the commencement of such employment. Both causation and
24 sufficient exposure to support causation must be proven by
25 clear and convincing evidence.

26 (2) Whenever used in this section the term
27 "occupational disease" shall be construed to mean only a
28 disease which is due to causes and conditions which are
29 characteristic of and peculiar to a particular trade,
30 occupation, process, or employment, and to exclude all
31 ordinary diseases of life to which the general public is

1 exposed, unless the incidence of the disease is substantially
2 higher in the particular trade, occupation, process, or
3 employment than for the general public."Occupational disease"
4 does not mean a disease for which there are no epidemiological
5 studies showing that exposure to the specific substance
6 involved, at the levels to which the employee was exposed, can
7 cause the precise disease sustained by the employee.

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

10 440.191 Employee Assistance and Ombudsman Office.--

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

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

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 may initiate contact
8 with the injured employee or employee's representative to
9 discuss rights and responsibilities of the employee under this
10 chapter and the services available through the Employee
11 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 a petition for benefits filed under s. 440.192 shall
21 ~~investigate the dispute~~ and may ~~shall~~ attempt to facilitate an
22 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 may
7 ~~shall~~, at the employee's request, assist the employee in
8 drafting a petition for benefits and explain the procedures
9 for filing petitions. ~~The division may by rule determine the~~
10 ~~method used to calculate the 30-day period.~~The Employee
11 Assistance and Ombudsman Office may not represent employees
12 before the judges of compensation claims. An employer or
13 carrier may not pay any attorneys' fees on behalf of the
14 employee for services rendered or costs incurred in connection
15 with this section, unless expressly authorized elsewhere in
16 this chapter.

17 Section 14. Section 440.192, Florida Statutes, is
18 amended to read:

19 440.192 Procedure for resolving benefit disputes.--

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

1 ~~and~~ the employer's carrier, and the Office of the Judges of
2 Compensation Claims. The Deputy Chief Judge shall refer the
3 petitions to the presiding judges of compensation claims.

4 (2) Upon receipt of a petition, the Office of the
5 Judges of Compensation Claims or the judge of compensation
6 claims may ~~shall review each petition and shall~~ dismiss each
7 petition or any portion of such a petition, upon the judge's
8 own motion or upon the motion of any party, which ~~that~~ does
9 not on its face specifically identify or itemize the
10 following:

11 (a) Name, address, telephone number, and social
12 security number of the employee.

13 (b) Name, address, and telephone number of the
14 employer.

15 (c) A detailed description of the injury and cause of
16 the injury, including the location of the occurrence and the
17 date or dates of the accident.

18 (d) A detailed description of the employee's job, work
19 responsibilities, and work the employee was performing when
20 the injury occurred.

21 (e) The time period for which compensation and the
22 specific classification of compensation were not timely
23 provided.

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

27 (g) All specific travel costs to which the employee
28 believes she or he is entitled, including dates of travel and
29 purpose of travel, means of transportation, and mileage and
30 including the date the request for mileage was filed with the
31 carrier and a copy of the request filed with the carrier.

1 (h) Specific listing of all medical charges alleged
2 unpaid, including the name and address of the medical
3 provider, the amounts due, and the specific dates of
4 treatment.

5 (i) The type or nature of treatment care or attendance
6 sought and the justification for such treatment. If the
7 employee is under the care of a physician for the injury
8 identified under paragraph (c), a copy of the physician's
9 request, authorization, or recommendation for treatment, care,
10 or attendance must accompany the petition.

11 (j) Specific explanation of any other disputed issue
12 that a judge of compensation claims will be called to rule
13 upon.

14 (k) Any other information or documentation the Deputy
15 Chief Judge requires by rule.

16
17 The dismissal of any petition or portion of such a petition
18 under this section is without prejudice and does not require a
19 hearing.

20 (3) A petition for benefits may contain a claim for
21 past benefits and continuing benefits in any benefit category,
22 but is limited to those in default and ripe, due, and owing on
23 the date the petition is filed. If the employer has elected to
24 satisfy its obligation to provide medical treatment, care, and
25 attendance through a managed care arrangement designated under
26 this chapter, the employee must exhaust all managed care
27 grievance procedures before filing a petition for benefits
28 under this section.

29 (4) The petition must include a certification by the
30 claimant or, if the claimant is represented by counsel, the
31 claimant's attorney, stating that the claimant, or attorney if

1 the claimant is represented by counsel, has made a good faith
2 effort to resolve the dispute and that the claimant or
3 attorney was unable to resolve the dispute with the carrier.

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

15 (6) If the claimant is not represented by counsel, the
16 Office of the Judges of Compensation Claims may request the
17 Employee Assistance and Ombudsman Office to assist the
18 claimant in filing a petition that meets the requirements of
19 this section.

20 (7) Notwithstanding the provisions of s. 440.34, a
21 judge of compensation claims may not award attorney's fees
22 payable by the carrier for services expended or costs incurred
23 prior to the filing of a petition that does not meet the
24 requirements of this section.

25 (8) Within 30 ~~14~~ days after receipt of a petition for
26 benefits by certified mail, the carrier must either pay the
27 requested benefits without prejudice to its right to deny
28 within 120 days after ~~from~~ receipt of the petition or file a
29 response to petition with the Office of the Judges of
30 Compensation Claims. The carrier must list all benefits
31 requested but not paid and explain its justification for

1 nonpayment in the response to petition. A carrier that does
2 not deny compensability in accordance with s. 440.20(4) is
3 deemed to have accepted the employee's injuries as
4 compensable, unless it can establish material facts relevant
5 to the issue of compensability that could not have been
6 discovered through reasonable investigation within the 120-day
7 period. The carrier shall provide copies of the response to
8 the filing party, employer, and claimant by certified mail.

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

13 Section 15. Paragraph (d) of subsection (11) of
14 section 440.20, Florida Statutes, is amended to read:

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

17 (11)

18 (d)1. With respect to any lump-sum settlement under
19 this subsection, a judge of compensation claims must consider
20 at the time of the settlement, whether the settlement
21 allocation provides for the appropriate recovery of child
22 support arrearages. The employer and the carrier do not have a
23 duty to investigate or collect information regarding
24 child-support arrearages.

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

30 Section 16. Subsections (1), (3), and (4) of section
31 440.25, Florida Statutes, are amended to read:

1 440.25 Procedures for mediation and hearings.--
2 (1) Within 90 ~~21~~ days after a petition for benefits is
3 filed under s. 440.192, a mediation conference concerning such
4 petition shall be held. Within 40 ~~7~~ days after such petition
5 is filed, the judge of compensation claims shall notify the
6 interested parties by order that a mediation conference
7 concerning such petition will be held unless the parties have
8 notified the Office of the Judges of Compensation Claims that
9 a mediation has been held. Such order must ~~notice shall~~ give
10 the date by which, ~~time, and location of~~ the mediation
11 conference must be held. Such order ~~notice~~ may be served
12 personally upon the interested parties or may be sent to the
13 interested parties by mail. The claimant or the adjuster of
14 the employer or carrier may, at the mediator's discretion,
15 attend the mediation conference by telephone or, if agreed to
16 by the parties, other electronic means. A continuance may be
17 granted if the requesting party demonstrates to the judge of
18 compensation claims that the reason for requesting the
19 continuance arises from circumstances beyond the party's
20 control. Any order granting a continuance must set forth the
21 date of the rescheduled mediation conference. A mediation
22 conference may not be used solely for the purpose of mediating
23 attorney's fees.

24 (3)(a) Such mediation conference shall be conducted
25 informally and does not require the use of formal rules of
26 evidence or procedure. Any information from the files,
27 reports, case summaries, mediator's notes, or other
28 communications or materials, oral or written, relating to a
29 mediation conference under this section obtained by any person
30 performing mediation duties is privileged and confidential and
31 may not be disclosed without the written consent of all

1 parties to the conference. Any research or evaluation effort
2 directed at assessing the mediation program activities or
3 performance must protect the confidentiality of such
4 information. Each party to a mediation conference has a
5 privilege during and after the conference to refuse to
6 disclose and to prevent another from disclosing communications
7 made during the conference whether or not the contested issues
8 are successfully resolved. This subsection and paragraphs
9 (4)(a) and (b) shall not be construed to prevent or inhibit
10 the discovery or admissibility of any information that is
11 otherwise subject to discovery or that is admissible under
12 applicable law or rule of procedure, except that any conduct
13 or statements made during a mediation conference or in
14 negotiations concerning the conference are inadmissible in any
15 proceeding under this chapter.

16 1. Unless the parties conduct a private mediation
17 under subparagraph 2., mediation shall be conducted by a
18 mediator selected by the Director of the Division of
19 Administrative Hearings from among mediators ~~shall select a~~
20 ~~mediator. The mediator shall be~~ employed on a full-time basis
21 by the Office of the Judges of Compensation Claims. A mediator
22 must be a member of The Florida Bar for at least 5 years and
23 must complete a mediation training program approved by the
24 Director of the Division of Administrative Hearings. Adjunct
25 mediators may be employed by the Office of the Judges of
26 Compensation Claims on an as-needed basis and shall be
27 selected from a list prepared by the Director of the Division
28 of Administrative Hearings. An adjunct mediator must be
29 independent of all parties participating in the mediation
30 conference. An adjunct mediator must be a member of The
31 Florida Bar for at least 5 years and must complete a mediation

1 training program approved by the Director of the Division of
2 Administrative Hearings. An adjunct mediator shall have
3 access to the office, equipment, and supplies of the judge of
4 compensation claims in each district.

5 2. With respect to any mediation occurring on or after
6 January 1, 2002, if the parties agree or if mediators are not
7 available under subparagraph 1. to conduct the required
8 mediation within the period specified in this section, the
9 parties shall hold a mediation conference at the carrier's
10 expense within the 90-day period set for mediation. The
11 mediation conference shall be conducted by a mediator
12 certified under s. 44.106. If the parties do not agree upon a
13 mediator within 10 days after the date of the order, the
14 claimant shall notify the judge in writing and the judge shall
15 appoint a mediator under this subparagraph within 7 days.In
16 the event both parties agree, the results of the mediation
17 conference shall be binding and neither party shall have a
18 right to appeal the results. In the event either party refuses
19 to agree to the results of the mediation conference, the
20 results of the mediation conference as well as the testimony,
21 witnesses, and evidence presented at the conference shall not
22 be admissible at any subsequent proceeding on the claim. The
23 mediator shall not be called in to testify or give deposition
24 to resolve any claim for any hearing before the judge of
25 compensation claims. The employer may be represented by an
26 attorney at the mediation conference if the employee is also
27 represented by an attorney at the mediation conference.

28 (c) The parties shall complete the pretrial
29 stipulations before the conclusion of the mediation conference
30 if the claims, except for attorney's fees and costs, have not
31 been settled and if any claims in any filed petition remain

1 unresolved. The judge of compensation claims may impose
2 sanctions against a party or both parties for failing to
3 complete the pretrial stipulations before the conclusion of
4 the mediation conference.

5 (4)(a) If the parties fail to agree upon written
6 submission of pretrial stipulations at the mediation
7 conference, on the 10th day following commencement of
8 mediation, the questions in dispute have not been resolved,
9 the judge of compensation claims shall order ~~hold~~ a pretrial
10 hearing to occur within 14 days after the date of mediation
11 ordered by the judge of compensation claims. The judge of
12 compensation claims shall give the interested parties at least
13 7 days' advance notice of the pretrial hearing by mail. At the
14 pretrial hearing, the judge of compensation claims shall,
15 subject to paragraph (b), set a date for the final hearing
16 that allows the parties at least 60 ~~30~~ days to conduct
17 discovery unless the parties consent to an earlier hearing
18 date.

19 (b) The final hearing must be held and concluded
20 within 90 ~~45~~ days after the mediation conference is held
21 ~~pretrial hearing~~. Continuances may be granted only if the
22 requesting party demonstrates to the judge of compensation
23 claims that the reason for requesting the continuance arises
24 from circumstances beyond the party's control. The written
25 consent of the claimant must be obtained before any request
26 from a claimant's attorney is granted for an additional
27 continuance after the initial continuance has been granted.
28 Any order granting a continuance must set forth the date and
29 time of the rescheduled hearing. A continuance may be granted
30 only if the requesting party demonstrates to the judge of
31 compensation claims that the reason for requesting the

1 continuance arises from circumstances beyond the control of
2 the parties. The judge of compensation claims shall report any
3 grant of two or more continuances to the Deputy Chief Judge.

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

7 (d) The final hearing shall be held within 210 days
8 after receipt of the petition for benefits in the county where
9 the injury occurred, if the injury occurred in this state,
10 unless otherwise agreed to between the parties and authorized
11 by the judge of compensation claims in the county where the
12 injury occurred. If the injury occurred outside ~~without~~ the
13 state and is one for which compensation is payable under this
14 chapter, then the final hearing ~~above referred to~~ may be held
15 in the county of the employer's residence or place of
16 business, or in any other county of the state that ~~which~~ will,
17 in the discretion of the Deputy Chief Judge, be the most
18 convenient for a hearing. The final hearing shall be conducted
19 by a judge of compensation claims, who shall, within 30 days
20 after final hearing or closure of the hearing record, unless
21 otherwise agreed by the parties, enter a final order on the
22 merits of the disputed issues. The judge of compensation
23 claims may enter an abbreviated final order in cases in which
24 compensability is not disputed. Either party may request
25 separate findings of fact and conclusions of law. At the final
26 ~~such~~ hearing, the claimant and employer may each present
27 evidence with in respect to the claims presented by the
28 petition for benefits ~~of such claim~~ and may be represented by
29 any attorney authorized in writing for such purpose. When
30 there is a conflict in the medical evidence submitted at the
31 hearing, the provisions of s. 440.13 shall apply. The report

1 or testimony of the expert medical advisor shall be made a
2 part of the record of the proceeding and shall be given the
3 same consideration by the judge of compensation claims as is
4 accorded other medical evidence submitted in the proceeding;
5 and all costs incurred in connection with such examination and
6 testimony may be assessed as costs in the proceeding, subject
7 to the provisions of s. 440.13. No judge of compensation
8 claims may make a finding of a degree of permanent impairment
9 that is greater than the greatest permanent impairment rating
10 given the claimant by any examining or treating physician,
11 except upon stipulation of the parties. Any benefit due but
12 not raised at the final hearing which was ripe, due, or owing
13 at the time of the final hearing is waived.

14 (e) The order making an award or rejecting the claim,
15 referred to in this chapter as a "compensation order," shall
16 set forth the findings of ultimate facts and the mandate; and
17 the order need not include any other reason or justification
18 for such mandate. The compensation order shall be filed in the
19 Office of the Judges of Compensation Claims at Tallahassee. A
20 copy of such compensation order shall be sent by mail to the
21 parties and attorneys of record at the last known address of
22 each, with the date of mailing noted thereon.

23 (f) Each judge of compensation claims is required to
24 submit a special report to the Deputy Chief Judge in each
25 contested workers' compensation case in which the case is not
26 determined within 30 days of final hearing or closure of the
27 hearing record. Said form shall be provided by the director of
28 the Division of Administrative Hearings and shall contain the
29 names of the judge of compensation claims and of the attorneys
30 involved and a brief explanation by the judge of compensation
31

1 claims as to the reason for such a delay in issuing a final
2 order.

3 (g) Notwithstanding any other provision of this
4 section, the judge of compensation claims may require the
5 appearance of the parties and counsel before her or him
6 without written notice for an emergency conference where there
7 is a bona fide emergency involving the health, safety, or
8 welfare of an employee. An emergency conference under this
9 section may result in the entry of an order or the rendering
10 of an adjudication by the judge of compensation claims.

11 (h) To expedite dispute resolution and to enhance the
12 self-executing features of the Workers' Compensation Law, the
13 Deputy Chief Judge shall make provision by rule or order for
14 the resolution of appropriate motions by judges of
15 compensation claims without oral hearing upon submission of
16 brief written statements in support and opposition, and for
17 expedited discovery and docketing. Unless the judge of
18 compensation claims, for good cause, orders a hearing under
19 paragraph (i), each claim in a petition relating to the
20 determination of pay under s. 440.14 shall be resolved under
21 this paragraph without oral hearing.

22 (i) To further expedite dispute resolution and to
23 enhance the self-executing features of the system, those
24 petitions filed in accordance with s. 440.192 that involve a
25 claim for benefits of \$5,000 or less shall, in the absence of
26 compelling evidence to the contrary, be presumed to be
27 appropriate for expedited resolution under this paragraph; and
28 any other claim filed in accordance with s. 440.192, upon the
29 written agreement of both parties and application by either
30 party, may similarly be resolved under this paragraph. A claim
31 in a petition or \$5,000 or less for medical benefits only or a

1 petition for reimbursement for mileage for medical purposes
2 shall, in the absence of compelling evidence to the contrary,
3 be resolved through the expedited dispute-resolution process
4 provided in this paragraph.For purposes of expedited
5 resolution pursuant to this paragraph, the Deputy Chief Judge
6 shall make provision by rule or order for expedited and
7 limited discovery and expedited docketing in such cases. At
8 least 15 days prior to hearing, the parties shall exchange and
9 file with the judge of compensation claims a pretrial outline
10 of all issues, defenses, and witnesses on a form adopted by
11 the Deputy Chief Judge; provided, in no event shall such
12 hearing be held without 15 days' written notice to all
13 parties. No pretrial hearing shall be held. The judge of
14 compensation claims shall limit all argument and presentation
15 of evidence at the hearing to a maximum of 30 minutes, and
16 such hearings shall not exceed 30 minutes in length. Neither
17 party shall be required to be represented by counsel. The
18 employer or carrier may be represented by an adjuster or other
19 qualified representative. The employer or carrier and any
20 witness may appear at such hearing by telephone. The rules of
21 evidence shall be liberally construed in favor of allowing
22 introduction of evidence.

23 (j) A judge of compensation claims may, upon the
24 motion of a party or the judge's own motion, dismiss a
25 petition for lack of prosecution if a petition, response,
26 motion, order, request for hearing, or notice of deposition
27 has not been filed during the previous 12 months unless good
28 cause is shown. A dismissal for lack of prosecution is without
29 prejudice and does not require a hearing.

30 (k) A judge of compensation claims may not award
31 interest on unpaid medical bills and the amount of such bills

1 may not be used to calculate the amount of interest awarded.
2 Regardless of the date benefits were initially requested,
3 attorney's fees do not attach under this subsection until 30
4 days after the date the carrier or self-insured employer
5 receives the petition.

6 Section 17. Section 440.271, Florida Statutes, is
7 amended to read:

8 440.271 Appeal of order of judge of compensation
9 claims.--Review of any order of a judge of compensation claims
10 entered pursuant to this chapter shall be by appeal to the
11 Workers' Compensation Appeals Commission. An order of the
12 commission may be appealed to any district court of appeal,
13 ~~First District.~~ Appeals shall be filed in accordance with
14 rules of procedure prescribed by the Supreme Court for review
15 of such orders. The division shall be given notice of any
16 proceedings pertaining to s. 440.25, regarding indigency, or
17 s. 440.49, regarding the Special Disability Trust Fund, and
18 shall have the right to intervene in any proceedings.

19 Section 18. Subsection (4) of section 440.29, Florida
20 Statutes, is amended to read:

21 440.29 Procedure before the judge of compensation
22 claims.--

23 (4) All medical reports of authorized treating health
24 care providers or independent medical examiners whose medical
25 opinion is submitted under s. 440.13(5)(e) which concern
26 ~~relating to~~ the claimant and subject accident shall be
27 received into evidence by the judge of compensation claims
28 upon proper motion. However, such records must be served on
29 the opposing party at least 30 days before the final hearing.
30 This section does not limit any right of further discovery,
31 including, but not limited to, depositions.

1 Section 19. Subsections (1) and (3) of section 440.34,
2 Florida Statutes, are amended to read:

3 440.34 Attorney's fees; costs.--

4 (1) A fee, gratuity, or other consideration may not be
5 paid for services rendered for a claimant in connection with
6 any proceedings arising under this chapter, unless approved as
7 reasonable by the judge of compensation claims or court having
8 jurisdiction over such proceedings. Except as provided by this
9 subsection, any attorney's fee approved by a judge of
10 compensation claims for services rendered to a claimant must
11 equal to 25 ~~20~~ percent of the first \$5,000 of the amount of
12 the benefits secured, 20 ~~15~~ percent of the next \$5,000 of the
13 amount of the benefits secured, 15 ~~10~~ percent of the remaining
14 amount of the benefits secured to be provided during the first
15 10 years after the date the claim is filed, and 10 ~~5~~ percent
16 of the benefits secured after 10 years. With respect to a
17 petition for medical benefits ~~However~~, the judge of
18 compensation claims ~~shall consider the following factors in~~
19 ~~each case and may approve increase or decrease~~ the attorney's
20 fee, which may not exceed \$2,500 per accident based on a
21 reasonable hourly rate, if the judge of compensation claims
22 expressly finds that the attorney's fee, based on benefits
23 secured, fails to fairly compensate the attorney and if, in
24 ~~her or his judgment~~, the circumstances of the particular case
25 warrant such action. In proceedings under paragraph (3)(c),
26 the judge of compensation claims may approve an attorney's
27 fee, which may not exceed \$2,500, based on a reasonable hourly
28 rate, if the judge of compensation claims expressly finds that
29 the attorney's fee, based on benefits secured, fails to fairly
30 compensate the attorney and the circumstances of the
31 particular case warrant such action. The judge of compensation

1 claims shall not approve a compensation order, a joint
2 stipulation for a lump-sum settlement, a stipulation or
3 agreement between a claimant and his or her attorney, or any
4 other agreement related to benefits under this chapter which
5 provides for an attorney's fee in excess of the amount
6 permitted under this section.†

7 ~~(a) The time and labor required, the novelty and~~
8 ~~difficulty of the questions involved, and the skill requisite~~
9 ~~to perform the legal service properly.~~

10 ~~(b) The fee customarily charged in the locality for~~
11 ~~similar legal services.~~

12 ~~(c) The amount involved in the controversy and the~~
13 ~~benefits resulting to the claimant.~~

14 ~~(d) The time limitation imposed by the claimant or the~~
15 ~~circumstances.~~

16 ~~(e) The experience, reputation, and ability of the~~
17 ~~lawyer or lawyers performing services.~~

18 ~~(f) The contingency or certainty of a fee.~~

19 (3) If the claimant should prevail in any proceedings
20 before a judge of compensation claims or court, there shall be
21 taxed against the employer the reasonable costs of such
22 proceedings, not to include the attorney's fees of the
23 claimant. A claimant shall be responsible for the payment of
24 her or his own attorney's fees, except that a claimant shall
25 be entitled to recover a reasonable attorney's fee from a
26 carrier or employer:

27 (a) Against whom she or he successfully asserts a
28 petition claim for medical benefits only, if the claimant has
29 not filed or is not entitled to file at such time a claim for
30 disability, permanent impairment, wage-loss, or death
31 benefits, arising out of the same accident; or

1 (b) In any case in which the employer or carrier files
2 a response to petition denying benefits with the Office of the
3 Judges of Compensation Claims and the injured person has
4 employed an attorney in the successful prosecution of the
5 petition claim; or

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

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

12
13 Regardless of the date benefits were initially requested,
14 attorney's fees may not attach under this subsection until 30
15 days following the date the carrier or employer, if
16 self-insured, received the petition and benefits were denied.
17 ~~In applying the factors set forth in subsection (1) to cases~~
18 ~~arising under paragraphs (a), (b), (c), and (d), the judge of~~
19 ~~compensation claims must only consider only such benefits and~~
20 ~~the time reasonably spent in obtaining them as were secured~~
21 ~~for the claimant within the scope of paragraphs (a), (b), (c),~~
22 ~~and (d).~~

23 Section 20. Subsection (2) of section 440.39, Florida
24 Statutes, is amended, and subsection (8) is added to that
25 section, to read:

26 440.39 Compensation for injuries when third persons
27 are liable.--

28 (2)(a) If the employee or his or her dependents accept
29 compensation or other benefits under this law or begin
30 proceedings therefor, the employer or, in the event the
31 employer is insured against liability hereunder, the insurer

1 shall be subrogated to the rights of the employee or his or
2 her dependents against such third-party tortfeasor, to the
3 extent of the amount of compensation benefits paid or to be
4 paid as provided by subsection (3). If the injured employee
5 or his or her dependents recovers from a third-party
6 tortfeasor by judgment or settlement, either before or after
7 the filing of suit, before the employee has accepted
8 compensation or other benefits under this chapter or before
9 the employee has filed a written claim for compensation
10 benefits, the amount recovered from the tortfeasor shall be
11 set off against any compensation benefits other than for
12 remedial care, treatment and attendance as well as
13 rehabilitative services payable under this chapter. The
14 amount of such offset shall be reduced by the amount of all
15 court costs expended in the prosecution of the third-party
16 suit or claim, including reasonable attorney fees for the
17 plaintiff's attorney. In no event shall the setoff provided in
18 this section in lieu of payment of compensation benefits
19 diminish the period for filing a claim for benefits as
20 provided in s. 440.19.

21 (b) If the employer is insured against liability under
22 its workers' compensation carrier, the employer may subrogate
23 the rights of the employee on an employer's uninsured or
24 underinsured motorist coverage under a commercial auto policy
25 to the extent of the amount of compensation benefits paid or
26 to be paid as provided by this section.

27 (8) This section does not impose a duty on the
28 employer or the carrier to preserve evidence pertaining to
29 third-party actions arising out of an industrial accident.

30 Section 21. Subsections (13) and (14) of section
31 440.51, Florida Statutes, are amended to read:

1 440.51 Expenses of administration.--

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

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

5 (b) "Fixed administrative expenses" means the expenses
6 of the plan, not to exceed \$1.5 million~~\$750,000~~, which are
7 directly related to the plan's administration but which do not
8 vary in direct relationship to the amount of premium written
9 by the plan and which do not include loss adjustment premiums.

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

18 Section 22. Section 489.114, Florida Statutes, is
19 amended to read:

20 489.114 Evidence of workers' compensation
21 coverage.--Except as provided in s. 489.115(5)(d), any person,
22 business organization, or qualifying agent engaged in the
23 business of contracting in this state and certified or
24 registered under this part shall, as a condition precedent to
25 the issuance or renewal of a certificate, registration, or
26 certificate of authority of the contractor, provide to the
27 Construction Industry Licensing Board, as provided by board
28 rule, evidence of workers' compensation coverage pursuant to
29 chapter 440. In the event that the Division of Workers'
30 Compensation of the Department of Labor and Employment
31 Security receives notice of the cancellation of a policy of

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

24 Section 23. Section 489.510, Florida Statutes, is
25 amended to read:

26 489.510 Evidence of workers' compensation
27 coverage.--Except as provided in s. 489.515(3)(b), any person,
28 business organization, or qualifying agent engaged in the
29 business of contracting in this state and certified or
30 registered under this part shall, as a condition precedent to
31 the issuance or renewal of a certificate or registration of

1 the contractor, provide to the Electrical Contractors'
2 Licensing Board, as provided by board rule, evidence of
3 workers' compensation coverage pursuant to chapter 440. In
4 the event that the Division of Workers' Compensation of the
5 Department of Labor and Employment Security receives notice of
6 the cancellation of a policy of workers' compensation
7 insurance insuring a person or entity governed by this
8 section, the Division of Workers' Compensation shall certify
9 and identify all persons or entities by certification or
10 registration license number to the department after
11 verification is made by the Division of Workers' Compensation
12 ~~that such cancellation has occurred or that~~ persons or
13 entities governed by this section are no longer covered by
14 workers' compensation insurance. Such certification and
15 verification by the Division of Workers' Compensation may
16 ~~shall~~ result ~~solely~~ from records furnished to the Division of
17 Workers' Compensation by the persons or entities governed by
18 this section or an investigation completed by the division.
19 The department shall notify the persons or entities governed
20 by this section who have been determined to be in
21 noncompliance with chapter 440, and the persons or entities
22 notified shall provide certification of compliance with
23 chapter 440 to the department and pay an administrative fine
24 in the amount of \$500,as provided by rule. The failure to
25 maintain workers' compensation coverage as required by law
26 shall be grounds for the board to revoke, suspend, or deny the
27 issuance or renewal of a certificate or registration of the
28 contractor under the provisions of s. 489.533.

29 Section 24. Paragraph (q) of subsection (4) of section
30 627.311, Florida Statutes, is amended and paragraphs (r), (s),
31 (t), (u), and (v) are added to that subsection, to read:

1 627.311 Joint underwriters and joint reinsurers.--
2 (4)
3 (q) No insurer shall provide workers' compensation and
4 employer's liability insurance to any person who is delinquent
5 in the payment of premiums, assessments, penalties, or
6 surcharges owed to the plan or to any person who is an
7 affiliated person of a person who is delinquent in paying
8 premiums, assessments, penalties, or surcharges owed to the
9 plan. As used in this paragraph the term "affiliated person of
10 another person" means:
11 1. The spouse of such other person;
12 2. Any person who directly or indirectly owns or
13 controls, or holds with the power to vote, 10 percent or more
14 of the outstanding voting securities of such other person;
15 3. Any person who directly or indirectly owns 10
16 percent or more of the outstanding voting securities that are
17 directly or indirectly owned, controlled, or held with the
18 power to vote by such other person;
19 4. Any person or group of persons who directly or
20 indirectly control, are controlled by, or are under common
21 control with such other person;
22 5. Any person who directly or indirectly acquires all
23 or substantially all of the assets of such other person;
24 6. Any officer, director, trustee, partner, owner,
25 manager, joint venturer, or employee of such other person or a
26 person performing duties similar to persons in such positions;
27 or
28 7. Any person who has an officer, director, trustee,
29 partner, or joint venturer in common with such other person.
30 (r) The plan is exempt from the provisions of ss.
31 440.49(9)(b), 440.51(1)-(12), and 624.509.

1 (s) For the purpose of funding plan deficits, the
2 board of governors may assess subplan "C" insureds to whom the
3 plan has issued assessable policies. Any such assessment shall
4 be based upon a reasonable actuarial estimate of the amount of
5 the deficit, taking into account the amount needed to fund at
6 actuarially sound levels medical and indemnity reserves and
7 reserves for incurred but not reported claims, and allowing
8 for general administrative expenses, the cost of levying and
9 collecting the assessment, estimated uncollectible
10 assessments, and allocated and unallocated loss-adjustment
11 expenses.

12 (t) Each subplan "C" insured's proportionate share of
13 the total assessment shall be computed by applying to the
14 premium earned on the insured's policy or policies during the
15 period to be covered by the assessment the ratio of the total
16 deficit to the total premiums earned during such period upon
17 all policies subject to the assessment. If one or more subplan
18 "C" insureds fail to pay an assessment, the other subplan "C"
19 insureds are liable on a proportionate basis for additional
20 assessments to fund the deficit. The plan may compromise and
21 settle individual assessment claims without affecting the
22 validity of or amounts due on assessments levied against other
23 insureds. The plan may also offer and accept discounted
24 payments for assessments that are promptly paid. The plan may
25 offset the amount of any unpaid assessment against unearned
26 premiums that are otherwise due to an insured. The plan shall
27 institute legal action when reasonably necessary to collect
28 the assessment from any insured who fails to pay an assessment
29 when due.

1 (u) The venue of a proceeding to enforce or collect an
2 assessment or to contest the validity or amount of an
3 assessment is in the Circuit Court of Leon County.

4 (v) If the board of governors finds that a deficit
5 exists for any period and that an assessment is necessary, it
6 shall certify to the department the need for an assessment. No
7 sooner than 30 days after the date of such certification, the
8 board of governors shall notify in writing each insured who is
9 to be assessed that an assessment is being levied against the
10 insured and informing the insured of the amount of the
11 assessment, the period for which the assessment is being
12 levied, and the date by which payment of the assessment is
13 due, which may not be sooner than 30 days or later than 120
14 days after the date on which notice of the assessment is
15 mailed to the insured.

16 Section 25. Workers' Compensation Appeals
17 Commission.--

18 (1)(a)1. There is created within the Department of
19 Management Services a Workers' Compensation Appeals Commission
20 consisting of a presiding judge and four other judges,
21 appointed by the Governor after October 1, 2002, but before
22 May 15, 2003, and serving full time. Each appointee shall have
23 the qualifications required by law for judges of the District
24 Courts of Appeal. In addition to such qualifications, the
25 judges of the Workers' Compensation Appeals Commission shall
26 be substantially experienced in the field of workers'
27 compensation.

28 2. Initially, the Governor shall appoint two judges
29 for terms of 4 years, two judges for terms of 3 years, and one
30 judge for a term of 2 years. Thereafter, each full-time judge
31

1 shall be appointed for a term of 4 years, but during the term
2 of office may be removed by the Governor for cause.

3 3. The initial appointment process, retention process,
4 and filling of vacancies of unexpired terms for the judges
5 shall be pursuant to nominations by the statewide nominating
6 commission appointed under section 440.45(2)(b), Florida
7 Statutes. The statewide nominating commission shall submit a
8 list to the Governor by August 1, 2002, of 15 candidates for
9 the five initial appointments from which list the Governor
10 shall appoint the judges of the commission.

11 4. Prior to the expiration of the term of office of a
12 judge, the conduct of the judge shall be reviewed by the
13 statewide nominating commission. A report of the statewide
14 nominating commission regarding retention shall be furnished
15 to the Governor no later than 6 months prior to the expiration
16 of the term of the judge. If the statewide nominating
17 commission issues a favorable report, the Governor shall
18 reappoint the judge. However, if the statewide nominating
19 commission issues an unfavorable report, the statewide
20 nominating commission shall issue a report to the Governor
21 which includes a list of three candidates for appointment. If
22 a vacancy occurs during an unexpired term of a judge on the
23 Workers' Compensation Appeals Commission, the statewide
24 nominating commission shall issue a report to the Governor
25 which includes a list of three candidates for appointment.

26 5. Judges of the Workers' Compensation Appeals
27 Commission are subject to the jurisdiction of the Judicial
28 Qualifications Commission during their term of office.

29 (b) The presiding judge may, by order filed with the
30 commission and approved by the Governor, appoint an associate
31 judge to serve as a temporary judge of the commission. Such

1 appointment may be made only of a currently commissioned judge
2 of compensation claims. The appointment shall be for a period
3 of time that does not cause an undue burden on the caseload in
4 the judge's jurisdiction. Each associate judge shall receive
5 no additional pay during the appointment except for expenses
6 incurred in the performance of the additional duties.

7 (c) Total salaries and benefits of judges of the
8 commission are to be paid from the Workers' Compensation
9 Administration Trust Fund established under section 440.50,
10 Florida Statutes. Notwithstanding any other law, commission
11 judges shall be paid a salary equal to that paid by law to
12 judges of District Courts of Appeal.

13 (2)(a) The commission is vested with all authority,
14 powers, duties, and responsibilities relating to review of
15 orders of judges of compensation claims in workers'
16 compensation proceedings under chapter 440, Florida Statutes.
17 The commission shall review by appeal final orders of the
18 judges of compensation claims entered pursuant to chapter 440,
19 Florida Statutes. The First District Court of Appeal shall
20 retain jurisdiction over all workers' compensation proceedings
21 pending before the court on October 1, 2002. The commission
22 may hold sessions and conduct hearings at any place within the
23 state. Three judges shall consider each case and a decision
24 requires the concurrence of two judges. Any judge may request
25 an en banc hearing for review of a final order of a judge of
26 compensation claims.

27 (b) The commission is not an agency for purposes of
28 chapter 120, Florida Statutes.

29 (c) The property, personnel, and appropriations
30 related to the commission's specified authority, powers,
31

1 duties, and responsibilities shall be provided to the
2 commission by the Department of Management Services.

3 (3) The commission shall make such expenditures,
4 including expenditures for personnel services and rent at the
5 seat of government and elsewhere, for law books, reference
6 materials, periodicals, furniture, equipment, and supplies,
7 and for printing and binding, as necessary in exercising its
8 authority and powers and carrying out its duties and
9 responsibilities. All such expenditures of the commission
10 shall be allowed and paid as provided in section 440.50,
11 Florida Statutes, upon the presentation of itemized vouchers
12 for such expenditures, approved by the presiding judge.

13 (4) The commission may charge, in its discretion, for
14 publications, subscriptions, and copies of records and
15 documents. Such fees shall be deposited into the Workers'
16 Compensation Administration Trust Fund.

17 (5)(a) The presiding judge shall exercise
18 administrative supervision over the Workers' Compensation
19 Appeals Commission and over the judges and other officers of
20 the commission.

21 (b) The presiding judge of the Workers' Compensation
22 Appeals Commission may:

- 23 1. Assign judges to hear appeals from final orders of
24 judges of compensation claims.
- 25 2. Hire and assign clerks and staff.
- 26 3. Regulate use of courtrooms.
- 27 4. Supervise dockets and calendars.
- 28 5. Do everything necessary to promote the prompt and
29 efficient administration of justice in the courts over which
30 he or she presides.

31

1 (c) The presiding judge shall be selected by a
2 majority of the judges for a term of 2 years. The presiding
3 judge may succeed himself or herself for successive terms.

4 (d) The presiding judge may employ an executive
5 assistant who shall perform duties as directed by the
6 presiding judge. In addition, each judge may have research
7 assistants or law clerks.

8 (6)(a) The commission shall maintain and keep open
9 during reasonable business hours a clerk's office, located in
10 the Capitol or some other suitable building in Leon County,
11 for the transaction of commission business. All books, papers,
12 records, files, and the seal of the commission shall be kept
13 at such office. The office shall be furnished and equipped by
14 the commission.

15 (b) The Workers' Compensation Appeals Commission shall
16 appoint a clerk who shall hold office at the pleasure of the
17 commission. Before discharging the duties of the clerk, the
18 clerk shall give bond in the sum of \$5,000, payable to the
19 Governor of the state, to be approved by a majority of the
20 members of the commission and conditioned upon the faithful
21 discharge of the duties of the clerk's office, which bond must
22 be filed in the office of the Secretary of State.

23 (c) The clerk shall be paid an annual salary to be
24 determined in accordance with section 25.382, Florida
25 Statutes.

26 (d) The clerk may employ deputies and clerical
27 assistants as necessary. The number and compensation of such
28 deputies and assistants shall be as approved by the commission
29 and paid from the annual appropriation for the Workers'
30 Compensation Appeals Commission from the Workers' Compensation
31 Administration Trust Fund.

1 (e) The clerk, upon the filing of a certified copy of
2 a notice of appeal or petition, shall charge and collect a
3 filing fee of \$250 for each case docketed and shall charge and
4 collect for copying, certifying, or furnishing opinions,
5 records, papers, or other instruments, and for other services
6 the same service charges as provided in section 28.24, Florida
7 Statutes. The state or an agency of the state, when appearing
8 as appellant or petitioner, is exempt from the filing fee.

9 (f) The clerk of the Workers' Compensation Appeals
10 Commission shall prepare a statement of all fees collected
11 each month, in duplicate, and shall remit one copy of such
12 statement, together with all fees collected by the clerk, to
13 the Comptroller who shall deposit such fees into the Workers'
14 Compensation Administration Trust Fund.

15 (7) The commission shall have a seal for
16 authentication of orders, awards, and proceedings and upon
17 which shall be inscribed the words "State of Florida Workers'
18 Compensation Appeals Commission--Seal", and the seal shall be
19 judicially noticed.

20 (8) The commission may destroy obsolete records of the
21 commission.

22 (9) Judges of the Workers' Compensation Appeals
23 Commission shall be reimbursed for travel expenses as provided
24 in section 112.061, Florida Statutes.

25 (10) Practice and procedure before the commission and
26 of judges of compensation claims shall be governed by rules
27 adopted by the Supreme Court, except to the extent such rules
28 conflict with chapter 440, Florida Statutes.

29 Section 26. Section 440.4416, Florida Statutes, as
30 amended by section 33 of chapter 2001-43 and section 67 of
31 chapter 2001-62, Laws of Florida, are repealed.

1 Section 27. If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the act which can be given effect without the invalid
5 provision or application, and to this end the provisions of
6 this act are severable.

7 Section 28. This act shall take effect October 1,
8 2002.

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11 SENATE SUMMARY

12 Revises various provisions of ch. 440, F.S., the Workers'
13 Compensation Law. Requires that an injury caused by
14 exposure to a toxic substance be proven by clear and
15 convincing evidence. Requires that employers maintain
16 certain records and produce such records or be subject to
17 a stop-work order issued by the Division of Workers'
18 Compensation. Requires that the cause of certain
19 occupational diseases or repetitive injuries be proven by
20 clear and convincing evidence. Authorizes an employer or
21 carrier to claim an offset in workers' compensation paid
22 against certain judgments or settlements for damages.
23 Requires that the Agency for Health Care Administration
24 adopt by rule practice parameters. Provides for
25 determining the value of attendant care. Revises
26 procedures for filing and the handling of grievances.
27 Limits the period for payment for permanent total
28 disability. Revises the duties of the Employee Assistance
29 and Ombudsman Office. Revises procedures for mediations
30 and hearings. Requires that certain claims be resolved
31 through an expedited process. Revises the procedures for
 calculating attorney's fees and costs. Revises the
 funding of joint underwriting plans for workers'
 compensation. Creates the Workers' Compensation Appeals
 Commission within the Department of Management Services.
 Repeals provisions establishing the Office of the Judges
 of Compensation Claims and the Workers' Compensation
 Oversight Board. (See bill for details.)