

By the Committee on Banking and Insurance; and Senator Latvala

311-2307-02

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.02, F.S.; redefining the terms  
4           "employee" and "independent contractor";  
5           prohibiting exemptions from coverage for  
6           commercial construction job sites; defining the  
7           terms "commercial building" and "residential  
8           building"; amending s. 440.05, F.S.; requiring  
9           employers to maintain business records  
10          specified by rules of the Division of Workers'  
11          Compensation, relative to exemptions from  
12          coverage; revising requirements for election of  
13          exemptions for coverage; amending s. 440.10,  
14          F.S.; providing penalties for employers who  
15          fail to secure compensation; amending s.  
16          440.103, F.S.; specifying requirements for  
17          certificates of insurance that must be shown to  
18          receive a building permit; amending s. 440.107,  
19          F.S.; requiring and authorizing the division to  
20          issue stop-work orders and to impose certain  
21          penalties against employers who fail to secure  
22          compensation; requiring the division to notify  
23          the Department of Business and Professional  
24          Regulation; amending s. 440.191, F.S.; revising  
25          duties of the Employee Assistance and Ombudsman  
26          Office; removing a requirement that an employee  
27          exhaust certain dispute-resolution procedures  
28          before filing a petition requesting benefits;  
29          amending s. 440.25, F.S.; revising procedures  
30          for mediation and hearings; extending the time  
31          for ordering and holding mediation conferences;

1 providing requirements for granting a  
2 continuance; providing for mediation conducted  
3 by mediators other than from the Office of the  
4 Judges of Compensation Claims; requiring that  
5 the parties complete pretrial stipulations  
6 before concluding mediation; extending the time  
7 for holding final hearings; providing for  
8 waiver of any benefit not raised at the final  
9 hearing; providing for an expedited  
10 determination of pay; requiring that certain  
11 claims be resolved through an expedited  
12 process; providing for dismissal for lack of  
13 prosecution; limiting the payment of interest  
14 and the attachment of attorney's fees; amending  
15 s. 440.271, F.S.; requiring appellate mediation  
16 and providing procedures therefor; amending s.  
17 440.381, F.S.; requiring that the application  
18 for workers' compensation coverage contain a  
19 sworn statement by the agent; providing a  
20 penalty for carriers that fail to comply with  
21 audit requirements; revising requirements for  
22 audits; amending s. 440.40, F.S.; requiring  
23 employers to post a notice related to the  
24 anti-fraud reward program; amending s. 440.45,  
25 F.S., relating to the Office of the Judges of  
26 Compensation Claims; clarifying the  
27 responsibilities of the director of the  
28 Division of Administrative Hearings as agency  
29 head of the Office of the Judges of  
30 Compensation Claims; amending ss. 489.114 and  
31 489.510, F.S.; revising provisions governing

1 the verification by the division of coverage of  
2 persons engaged in the business of contracting;  
3 specifying an administrative fine for  
4 contractors who are in noncompliance with  
5 chapter 440, F.S., to be paid to the Department  
6 of Business and Professional Regulation;  
7 amending s. 626.9892, F.S.; revising the  
8 criteria for the anti-fraud program; requiring  
9 the Department of Insurance to conduct a study  
10 related to workers' compensation for persons  
11 engaged in the construction industry; providing  
12 effective dates.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

16 Section 1. Paragraphs (b), (c), and (d) of subsection  
17 (14) of section 440.02, Florida Statutes, are amended, and  
18 subsections (40) and (41) are added to that section, to read:

19 440.02 Definitions.--When used in this chapter, unless  
20 the context clearly requires otherwise, the following terms  
21 shall have the following meanings:

22 (14)

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

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

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

1 officers may elect to be exempt from this chapter by filing  
2 written notice of the election with the division as provided  
3 in s. 440.05. However, a corporate officer of a corporation  
4 actively engaged in the construction industry may not elect to  
5 be exempt, and any exemption obtained by such an officer is  
6 not applicable, with respect to any commercial construction  
7 job site estimated to be valued at \$250,000 or greater.

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

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

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

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1 employee unless he or she meets all of the conditions set  
2 forth in subparagraph (d)1.

3 2. Notwithstanding the provisions of subparagraph 1.,  
4 the term "employee" includes a sole proprietor or partner  
5 actively engaged in the construction industry with respect to  
6 any commercial construction job site estimated to be valued at  
7 \$250,000 or greater. Any such employee may not elect to be  
8 exempt, and any exemption obtained is not applicable, with  
9 respect to work performed at such a commercial job site.

10 (d) "Employee" does not include:

11 1. An independent contractor, if:

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

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

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

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

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

31

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

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

6           h. The independent contractor has continuing or  
7 recurring business liabilities or obligations; and

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

11  
12 However, the determination as to whether an individual  
13 included in the Standard Industrial Classification Manual of  
14 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
15 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
16 2448, or 2449, or a newspaper delivery person, is an  
17 independent contractor is governed not by the criteria in this  
18 paragraph but by common-law principles, giving due  
19 consideration to the business activity of the individual.  
20 Notwithstanding the provisions of this paragraph or any other  
21 provision of this chapter, with respect to any commercial  
22 construction job site estimated to be valued at \$250,000 or  
23 greater, a person who is actively engaged in the construction  
24 industry is not an independent contractor and is either an  
25 employer or an employee who may not be exempt from the  
26 coverage requirements of this chapter.

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

30           3. Bands, orchestras, and musical and theatrical  
31 performers, including disk jockeys, performing in licensed

1 premises as defined in chapter 562, if a written contract  
2 evidencing an independent contractor relationship is entered  
3 into before the commencement of such entertainment.

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

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

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

25           a. Persons who serve in private nonprofit agencies and  
26 who receive no compensation other than expenses in an amount  
27 less than or equivalent to the standard mileage and per diem  
28 expenses provided to salaried employees in the same agency or,  
29 if such agency does not have salaried employees who receive  
30 mileage and per diem, then such volunteers who receive no  
31 compensation other than expenses in an amount less than or

1 equivalent to the customary mileage and per diem paid to  
2 salaried workers in the community as determined by the  
3 division; and

4           b. Volunteers participating in federal programs  
5 established under Pub. L. No. 93-113.

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

8           8. A sole proprietor or officer of a corporation who  
9 actively engages in the construction industry, and a partner  
10 in a partnership that is actively engaged in the construction  
11 industry, who elects to be exempt from the provisions of this  
12 chapter. Such sole proprietor, officer, or partner is not an  
13 employee for any reason until the notice of revocation of  
14 election filed pursuant to s. 440.05 is effective.

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

21           10. A taxicab, limousine, or other passenger  
22 vehicle-for-hire driver who operates said vehicles pursuant to  
23 a written agreement with a company which provides any  
24 dispatch, marketing, insurance, communications, or other  
25 services under which the driver and any fees or charges paid  
26 by the driver to the company for such services are not  
27 conditioned upon, or expressed as a proportion of, fare  
28 revenues.

29           11. A person who performs services as a sports  
30 official for an entity sponsoring an interscholastic sports  
31 event or for a public entity or private, nonprofit



1 organization that sponsors an amateur sports event. For  
2 purposes of this subparagraph, such a person is an independent  
3 contractor. For purposes of this subparagraph, the term  
4 "sports official" means any person who is a neutral  
5 participant in a sports event, including, but not limited to,  
6 umpires, referees, judges, linespersons, scorekeepers, or  
7 timekeepers. This subparagraph does not apply to any person  
8 employed by a district school board who serves as a sports  
9 official as required by the employing school board or who  
10 serves as a sports official as part of his or her  
11 responsibilities during normal school hours.

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

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

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

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

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

1 exempt partners must maintain written statements of those  
2 exempted persons affirmatively acknowledging each such  
3 individual's exempt status.

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

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

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

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

28 (12) For those sole proprietors or partners that have  
29 not been in business long enough to provide the information  
30 required of an established business, the division shall  
31 require such sole proprietor or partner to provide copies of

1 the most recently filed Federal Income Tax Form 1040. The  
2 division shall establish by rule such other criteria to show  
3 that the sole proprietor or partner intends to engage in a  
4 legitimate enterprise within the construction industry and is  
5 not otherwise attempting to evade the requirements of this  
6 section. The division shall establish by rule the form and  
7 format of financial information required to be submitted by  
8 such employers.

9 (13) Any corporate officer claiming an exemption under  
10 this section must be listed on the records of this state's  
11 Secretary of State, Division of Corporations, as a corporate  
12 officer. If the person who claims an exemption as a corporate  
13 officer is not so listed on the records of the Secretary of  
14 State, the individual must provide to the division, upon  
15 request by the division, a notarized affidavit stating that  
16 the individual is a bona fide officer of the corporation and  
17 stating the date his or her appointment or election as a  
18 corporate officer became or will become effective. The  
19 statement must be signed under oath by both the officer and  
20 the president or chief operating officer of the corporation  
21 and must be notarized. The division shall issue a stop-work  
22 order under s. 440.107(1) to any corporation who employs a  
23 person who claims to be exempt as a corporate officer but who  
24 fails or refuses to produce the documents required under this  
25 subsection to the division within 3 business days after the  
26 request is made.

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

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

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

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

30 2. If a contractor or third-party payor becomes liable  
31 for the payment of compensation to the employee of a

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

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

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

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

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

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

31

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

13 Section 4. Section 440.13, Florida Statutes, is  
14 amended to read:

15 440.103 Building permits; identification of minimum  
16 premium policy.--Except as otherwise provided in this chapter,  
17 every employer shall, as a condition to receiving a building  
18 permit, show proof that it has secured compensation for its  
19 employees under this chapter as provided in ss. 440.10 and  
20 440.38. Such proof of compensation must be evidenced by a  
21 certificate of insurance coverage issued by the carrier, a  
22 valid exemption certificate approved by the division, or a  
23 copy of the employer's authority to self-insure and shall be  
24 presented each time the employer applies for a building  
25 permit. Each certificate of insurance shall indicate the sites  
26 for which coverage applies.As provided in s. 627.413(5), each  
27 certificate of insurance coverage must show, on its face,  
28 whether or not coverage is secured under the minimum premium  
29 provisions of rules adopted by rating organizations licensed  
30 by the Department of Insurance. The words "minimum premium  
31

1 policy" or equivalent language shall be typed, printed,  
2 stamped, or legibly handwritten.

3 Section 5. Subsections (5) and (7) of section 440.107,  
4 Florida Statutes, are amended, and subsection (12) is added to  
5 that section to read:

6 440.107 Division powers to enforce employer compliance  
7 with coverage requirements.--

8 (5) Whenever the division determines that an employer  
9 who is required to secure the payment to his or her employees  
10 of the compensation provided for by this chapter has failed to  
11 do so, such failure shall be deemed an immediate serious  
12 danger to public health, safety, or welfare sufficient to  
13 justify service by the division of a stop-work order on the  
14 employer, requiring the cessation of all business operations  
15 at the place of employment or job site. If the division makes  
16 such a determination, the division shall issue a stop-work  
17 order within 72 hours.The order shall take effect upon the  
18 date of service upon the employer, unless the employer  
19 provides evidence satisfactory to the division of having  
20 secured any necessary insurance or self-insurance and pays a  
21 civil penalty to the division, to be deposited by the division  
22 into the Workers' Compensation Administration Trust Fund, in  
23 the amount of \$100 per day for each day the employer was not  
24 in compliance with this chapter.

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

30 (a) An amount equal to at least the amount that the  
31 employer would have paid or up to twice the amount the

1 employer would have paid during periods it illegally failed to  
2 secure payment of compensation in the preceding 3-year period  
3 based on the employer's payroll during the preceding 3-year  
4 period; or

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

6  
7 Any penalty assessed under this subsection is due within 30  
8 days after the date on which the employer is notified, except  
9 that, if the division has posted a stop-work order or obtained  
10 injunctive relief against the employer, payment is due, in  
11 addition to those conditions set forth in this section, as a  
12 condition to relief from a stop-work order or an injunction.  
13 Interest shall accrue on amounts not paid when due at the rate  
14 of 1 percent per month. The division shall adopt rules to  
15 administer this section.

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

22 Section 6. Section 440.191, Florida Statutes, is  
23 amended to read:

24 440.191 Employee Assistance and Ombudsman Office.--

25 (1)(a) In order to effect the self-executing features  
26 of the Workers' Compensation Law, this chapter shall be  
27 construed to permit injured employees and employers or the  
28 employer's carrier to resolve disagreements without undue  
29 expense, costly litigation, or delay in the provisions of  
30 benefits. It is the duty of all who participate in the  
31 workers' compensation system, including, but not limited to,



1 carriers, service providers, health care providers, attorneys,  
2 employers, managed care arrangements, and employees, to  
3 attempt to resolve disagreements in good faith and to  
4 cooperate with the division's efforts to resolve disagreements  
5 between the parties. The division may by rule prescribe  
6 definitions that are necessary for the effective  
7 administration of this section.

8 (b) An Employee Assistance and Ombudsman Office is  
9 created within the Division of Workers' Compensation to inform  
10 and assist injured workers, employers, carriers, ~~and~~ health  
11 care providers, and managed care arrangements in fulfilling  
12 their responsibilities under this chapter. The division may by  
13 rule specify forms and procedures for administering ~~requests~~  
14 ~~for assistance provided by~~ this section.

15 (c) The Employee Assistance and Ombudsman Office,  
16 Division of Workers' Compensation, shall be a resource  
17 available to all employees who participate in the workers'  
18 compensation system and shall take all steps necessary to  
19 educate and disseminate information to employees and  
20 employers. Upon receiving a notice of injury or death, the  
21 Employee Assistance and Ombudsman Office may initiate contact  
22 with the injured employee or employee's representative to  
23 discuss rights and responsibilities of the employee under this  
24 chapter and the services available through the Employee  
25 Assistance and Ombudsman Office.

26 ~~(2)(a) An employee may not file a petition requesting~~  
27 ~~any benefit under this chapter unless the employee has~~  
28 ~~exhausted the procedures for informal dispute resolution under~~  
29 ~~this section.~~

30 ~~(a)(b)~~ If at any time the employer or its carrier  
31 fails to provide benefits to which the employee believes she

1 or he is entitled, the employee shall contact the office to  
2 request assistance in resolving the dispute. The office may  
3 review a petition for benefits filed under s. 440.192 ~~shall~~  
4 ~~investigate the dispute~~ and may ~~shall~~ attempt to facilitate an  
5 agreement between the employee and the employer or carrier.  
6 The employee, the employer, and the carrier shall cooperate  
7 with the office and shall timely provide the office with any  
8 documents or other information that it may require in  
9 connection with its efforts under this section.

10 (b)(c) ~~(e)~~ The office may compel parties to attend  
11 conferences in person or by telephone in an attempt to resolve  
12 disputes quickly and in the most efficient manner possible.  
13 Settlement agreements resulting from such conferences must be  
14 submitted to the Office of the Judges of Compensation Claims  
15 for approval.

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

30 Section 7. 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, 2003, 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 8. Effective July 1, 2002, section 440.271,  
7 Florida Statutes, is amended to read:

8 440.271 Appeal of order of judge of compensation  
9 claims.--

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

19 (2) The parties shall hold a mediation conference at  
20 the carrier's expense within 60 days after the filing of the  
21 notice of appeal of a final order from a judge of compensation  
22 claims. The mediation conference shall be conducted by a  
23 mediator with experience in appellate mediation or who is  
24 certified under s. 44.106. The appellate proceeding and the  
25 preparation of the record shall be stayed until the completion  
26 of the mediation conference required by this section.

27 (3) The parties and their counsel may, at the  
28 mediator's discretion, attend the mediation conference by  
29 telephone or, if agreed to by the parties, other electronic  
30 means. A continuance may be granted only if the requesting  
31 party demonstrates to the judge that the reason for the

1 continuance arises from circumstances beyond the party's  
2 control. Any continuance must set forth the date of the  
3 rescheduled mediation conference, and must be rescheduled to  
4 be completed within 90 days after the filing of the notice of  
5 appeal. Mediation conferences under this section may not be  
6 used solely for the purpose of mediating attorney's fees.

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

29 (5) If the issues which are the subject of the appeal  
30 are not resolved by the parties, the appellant shall notify  
31

1 the judge of compensation claims that the appeal needs to  
2 proceed forward and the record on appeal needs to be prepared.

3 Section 9. Subsections (2), (3), and (6) of section  
4 440.381, Florida Statutes, are amended to read:

5 440.381 Application for coverage; reporting payroll;  
6 payroll audit procedures; penalties.--

7 (2) The application must contain a statement that the  
8 filing of an application containing false, misleading, or  
9 incomplete information with the purpose of avoiding or  
10 reducing the amount of premiums for workers' compensation  
11 coverage is a felony of the third degree, punishable as  
12 provided in s. 775.082, s. 775.083, or s. 775.084. The  
13 application must contain a sworn statement by the employer  
14 attesting to the accuracy of the information submitted and  
15 acknowledging the provisions of former s. 440.37(4). The  
16 application must contain a sworn statement by the agent  
17 attesting that the agent explained to the employer or officer  
18 the classification codes that are used for premium  
19 calculations.

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

1 audits of employers in specified classifications based on  
2 factors such as amount of premium, type of business, loss  
3 ratios, or other relevant factors. In no event shall employers  
4 in the construction class, generating more than the amount of  
5 premium required to be experience rated, be audited less than  
6 annually. The annual audits required for construction classes  
7 shall consist of physical onsite audits. Failure by the  
8 carrier to comply with these auditing requirements shall be a  
9 violation of the Insurance Code, as provided in s. 624.4211,  
10 and shall result in a fine of at least \$1,000 for each  
11 instance of noncompliance. Payroll verification audit rules  
12 must include, but need not be limited to, the use of state and  
13 federal reports of employee income, payroll and other  
14 accounting records, certificates of insurance maintained by  
15 subcontractors, and duties of employees. At the completion of  
16 an audit, the employer or officer of the corporation and the  
17 auditor must print and sign their names on the audit document  
18 and attach proof of identification to the audit document.

19 (6) If an employer ~~intentionally~~ understates or  
20 conceals payroll, or misrepresents or conceals employee duties  
21 so as to avoid proper classification for premium calculations,  
22 or misrepresents or conceals information pertinent to the  
23 computation and application of an experience rating  
24 modification factor, the employer, or the employer's agent or  
25 attorney, shall pay to the insurance carrier a penalty of 10  
26 times the amount of the difference in premium paid and the  
27 amount the employer should have paid and reasonable attorney's  
28 fees. The penalty may be enforced in the circuit courts of  
29 this state.

30 Section 10. Section 440.40, Florida Statutes, is  
31 amended to read:

1           440.40 Compensation notice.--Every employer who has  
2 secured compensation under the provisions of this chapter  
3 shall keep posted in a conspicuous place or places in and  
4 about her or his place or places of business typewritten or  
5 printed notices, in accordance with a form prescribed by the  
6 division, the following:

7           (1) A notice stating that such employer has secured  
8 the payment of compensation in accordance with the provisions  
9 of this chapter. Such notices shall contain the name and  
10 address of the carrier, if any, with whom the employer has  
11 secured payment of compensation and the date of the expiration  
12 of the policy. The division may by rule prescribe the form of  
13 the notices and require carriers to provide the notices to  
14 policyholders.

15           (2) A notice stating: "Anti-Fraud Reward  
16 Program.--Rewards of up to \$25,000 may be paid to persons  
17 providing information to the Department of Insurance leading  
18 to the arrest and conviction of persons committing insurance  
19 fraud, including employers who illegally fail to obtain  
20 workers' compensation coverage. Persons may report suspected  
21 fraud to the department at...(Phone No.)... A person is not  
22 subject to civil liability for furnishing such information, if  
23 such person acts without malice, fraud, or bad faith."

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

26           440.45 Office of the Judges of Compensation Claims.--

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

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

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

28 Section 12. Section 489.114, Florida Statutes, is  
29 amended to read:

30 489.114 Evidence of workers' compensation  
31 coverage.--Except as provided in s. 489.115(5)(d), any person,



1 business organization, or qualifying agent engaged in the  
2 business of contracting in this state and certified or  
3 registered under this part shall, as a condition precedent to  
4 the issuance or renewal of a certificate, registration, or  
5 certificate of authority of the contractor, provide to the  
6 Construction Industry Licensing Board, as provided by board  
7 rule, evidence of workers' compensation coverage pursuant to  
8 chapter 440. In the event that the Division of Workers'  
9 Compensation of the Department of Labor and Employment  
10 Security receives notice of the cancellation of a policy of  
11 workers' compensation insurance insuring a person or entity  
12 governed by this section, the Division of Workers'  
13 Compensation shall certify and identify all persons or  
14 entities by certification or registration license number to  
15 the department after verification is made by the Division of  
16 Workers' Compensation that ~~such cancellation has occurred or~~  
17 ~~that~~ persons or entities governed by this section are no  
18 longer covered by workers' compensation insurance. Such  
19 certification and verification by the Division of Workers'  
20 Compensation may ~~shall~~ result ~~solely~~ from records furnished to  
21 the Division of Workers' Compensation by the persons or  
22 entities governed by this section or an investigation  
23 completed by the Division of Workers' Compensation. The  
24 department shall notify the persons or entities governed by  
25 this section who have been determined to be in noncompliance  
26 with chapter 440, and the persons or entities notified shall  
27 provide certification of compliance with chapter 440 to the  
28 department and pay an administrative fine in the amount of  
29 \$500 ~~as provided by rule.~~ The failure to maintain workers'  
30 compensation coverage as required by law shall be grounds for  
31 the board to revoke, suspend, or deny the issuance or renewal

1 of a certificate, registration, or certificate of authority of  
2 the contractor under the provisions of s. 489.129.

3 Section 13. Section 489.510, Florida Statutes, is  
4 amended to read:

5 489.510 Evidence of workers' compensation  
6 coverage.--Except as provided in s. 489.515(3)(b), any person,  
7 business organization, or qualifying agent engaged in the  
8 business of contracting in this state and certified or  
9 registered under this part shall, as a condition precedent to  
10 the issuance or renewal of a certificate or registration of  
11 the contractor, provide to the Electrical Contractors'  
12 Licensing Board, as provided by board rule, evidence of  
13 workers' compensation coverage pursuant to chapter 440. In  
14 the event that the Division of Workers' Compensation of the  
15 Department of Labor and Employment Security receives notice of  
16 the cancellation of a policy of workers' compensation  
17 insurance insuring a person or entity governed by this  
18 section, the Division of Workers' Compensation shall certify  
19 and identify all persons or entities by certification or  
20 registration license number to the department after  
21 verification is made by the Division of Workers' Compensation  
22 that ~~such cancellation has occurred or that~~ persons or  
23 entities governed by this section are no longer covered by  
24 workers' compensation insurance. Such certification and  
25 verification by the Division of Workers' Compensation may  
26 ~~shall~~ result ~~solely~~ from records furnished to the Division of  
27 Workers' Compensation by the persons or entities governed by  
28 this section or an investigation completed by the Division of  
29 Workers' Compensation. The department shall notify the persons  
30 or entities governed by this section who have been determined  
31 to be in noncompliance with chapter 440, and the persons or

1 entities notified shall provide certification of compliance  
2 with chapter 440 to the department and pay an administrative  
3 fine in the amount of \$500 ~~as provided by rule~~. The failure  
4 to maintain workers' compensation coverage as required by law  
5 shall be grounds for the board to revoke, suspend, or deny the  
6 issuance or renewal of a certificate or registration of the  
7 contractor under the provisions of s. 489.533.

8 Section 14. Subsection (2) of section 626.9892,  
9 Florida Statutes, is amended to read:

10 626.9892 Anti-Fraud Reward Program; reporting of  
11 insurance fraud.--

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

18 Section 15. The Department of Insurance, in  
19 consultation with the board of governors of the joint  
20 underwriting association authorized under s. 627.311, Florida  
21 Statutes, shall conduct a study to evaluate the availability  
22 and affordability of workers' compensation insurance coverage  
23 for persons engaged primarily in the construction industry.  
24 The scope of the study shall include a review of workers'  
25 compensation insurance currently provided or required in other  
26 states and possible alternative coverages. The department  
27 shall submit a report with recommendations to the President of  
28 the Senate and the Speaker of the House of Representatives on  
29 or before February 1, 2003.

30 Section 16. Except as otherwise expressly provided in  
31 this act, this act shall take effect October 1, 2002.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 2304

4 The committee substitute provides the following changes:

- 5 1. Establishes mandatory appellate mediation. Parties would  
6 be required to hold a mediation conference, at the  
7 carrier's expense, within 60 days after the filing of  
the notice of appeal of a final order of a judge of  
compensation claims.
- 8 2. Revises the exemption criteria for businesses primarily  
9 engaged in the construction industry by eliminating  
10 exemptions for persons engaged in commercial  
11 construction. For any commercial construction job-site  
12 estimated to be valued at \$250,000 or greater, a person  
13 who is actively engaged in the construction industry  
would not be considered an independent contractor and  
would be either an employer or employee and would not be  
exempt from the coverage requirements of ch. 440, F.S.  
Exemptions would continue to be available to persons  
primarily engaged in residential construction.
- 14 3. Provides greater enforcement tools for the Division of  
15 Workers' Compensation. The division would be required to  
16 issue a stop-work order within 72 hours of making a  
17 determination that a person failed to secure  
18 compensation coverage, as required by law. The division  
19 would be required, rather than allowed, to assess a  
penalty in the amount of the premium evaded or up to  
twice the amount of the premium evaded, or \$1,000,  
whichever is greater, against employers that failed to  
secure compensation, as required by ch. 440, F.S.
- 20 4. Revises reward eligibility requirements for the  
21 Anti-Fraud Reward Program of the Department of Insurance  
in order to encourage greater participation in the  
22 program. The department would be authorized to provide a  
23 reward of up to \$25,000 to persons providing information to  
the department which leads to the arrest and conviction  
24 of persons committing insurance fraud. An employer would  
be required to post a notice informing employees of the  
25 Anti-Fraud Reward Program, for information leading to  
the arrest and conviction of persons committing  
insurance fraud, including employers who illegally fail  
to obtain workers' compensation coverage.
- 26 5. Revises disclosures on the insurance application form  
27 and revises auditing provisions for carriers. If an  
28 insurance carrier fails to comply with current auditing  
29 requirements, including mandatory annual audits for  
30 construction employers above a certain premium, the  
31 carrier would be considered in violation of the  
Insurance Code and subject to a mandatory fine of at  
least \$1,000 for each instance of noncompliance. The  
committee substitute also requires that an application  
for coverage contain a sworn statement from the agent  
attesting that the agent explained to the employer or  
officer the classification codes that are used.

1 6. Eliminates provisions relating to attorney's fees,  
2 medical fees, benefits, exclusive remedy, and the  
3 Workers' Compensation Joint Underwriting Association.  
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