

By Senator Clary

7-366A-02

1 A bill to be entitled
2 An act relating to workplace regulation;
3 transferring the Division of Workers'
4 Compensation from the Department of Labor and
5 Employment Security to the Department of
6 Insurance; providing exceptions; transferring
7 various functions, powers, duties, personnel,
8 and assets relating to workers' compensation to
9 the Department of Education, the Agency for
10 Health Care Administration, the Department of
11 Management Services, and the Department of
12 Insurance; transferring certain rules to the
13 Agency for Health Care Administration; amending
14 s. 20.13, F.S.; providing for certain employees
15 of the division to be given hiring priority by
16 the Department of Insurance; providing pay and
17 employment guidelines for such employees;
18 creating the Division of Workers' Compensation
19 in the Department of Insurance; repealing s.
20 20.171, F.S., which creates the Department of
21 Labor and Employment Security; amending s.
22 20.50, F.S.; revising responsibilities of the
23 Agency for Workforce Innovation; replacing the
24 Office of Workforce Investment and
25 Accountability with the Office of Program
26 Support and Accountability and replacing the
27 Office of Workforce Information Services with
28 the Office of Agency Support Services; amending
29 s. 440.015, F.S.; designating state agencies to
30 administer the workers' compensation law;
31 providing an appropriation; amending s. 440.02,

1 F.S.; providing definitions; amending ss.
2 110.025, 440.021, 440.05, 440.09, 440.10,
3 440.102, 440.103, 440.105, 440.106, 440.107,
4 440.108, 440.125, 440.13, 440.134, 440.14,
5 440.15, 440.17, 440.185, 440.191, 440.192,
6 440.1925, 440.20, 440.207, 440.211, 440.24,
7 440.25, 440.271, 440.35, 440.38, 440.381,
8 440.385, 440.386, 440.40, 440.41, 440.42,
9 440.44, 440.49, 440.491, 440.50, 440.51,
10 440.52, 440.525, 440.572, 440.59, 440.591,
11 440.593, 443.012, 443.036, 447.02, 447.305,
12 450.012, 450.191, 450.28, 468.529, 626.88,
13 626.989, 627.0915, 627.914, F.S., to conform to
14 the transfers made by this act; providing for
15 the continuation of contracts and agreements;
16 amending s. 440.38, F.S.; transferring
17 operation of provisions requiring the securing
18 of payment of compensation by employers from
19 the Division of Workers' Compensation of the
20 Department of Labor and Employment Security to
21 the Florida Self-Insurer's Guaranty
22 Association, Incorporated, and the Department
23 of Insurance; revising and clarifying
24 requirements and procedures; providing powers
25 and duties of the association and the
26 departments; providing for allocation or
27 payment of state funds to the association for
28 certain purposes; providing rulemaking
29 authority; repealing s. 440.4416, F.S.,
30 relating to the Workers' Compensation Oversight
31 Board; amending s. 624.3161, F.S.; providing

1 for market conduct examinations with respect to
2 workers' compensation; providing legislative
3 intent; providing for a type two transfer of
4 the administration of child labor laws to the
5 Department of Business and Professional
6 Regulation; providing for a type two transfer
7 of certain functions of the Office of the
8 Secretary and the Office of Administrative
9 Services of the Department of Labor and
10 Employment Security relating to labor
11 organizations and migrant and farm labor
12 registration to the Department of Business and
13 Professional Regulation; providing for a type
14 two transfer of other workplace regulation
15 functions to the Department of Business and
16 Professional Regulation; providing
17 appropriations; amending s. 447.02, F.S.;
18 conforming the definition of the term
19 "department" to the transfer of the regulation
20 of labor organizations to the Department of
21 Business and Professional Regulation; amending
22 s. 450.012, F.S.; conforming the definition of
23 the term "department" to the transfer of the
24 regulation of child labor to the Department of
25 Business and Professional Regulation; amending
26 s. 450.191, F.S., relating to the duties of the
27 Executive Office of the Governor with respect
28 to migrant labor; conforming provisions to
29 changes made by the act; amending s. 450.28,
30 F.S.; conforming the definition of the term
31 "department" to the transfer of the regulation

1 of farm labor to the Department of Business and
2 Professional Regulation; creating ss. 633.801,
3 633.802, 633.803, 633.804, 633.805, 633.806,
4 633.807, 633.808, 633.810, 633.812, 633.813,
5 633.814, 633.815, 633.816, 633.817, 633.818,
6 633.819, 633.820, 633.823, 633.824, and
7 633.825, F.S., the "Florida Firefighter
8 Occupational Safety and Health Act"; providing
9 definitions; providing legislative intent;
10 authorizing the Division of State Fire Marshal
11 to adopt rules related to firefighter safety
12 inspections; requiring the division to conduct
13 a study; requiring firefighter employers to
14 provide safe employment conditions; authorizing
15 the division to adopt rules that prescribe
16 means for preventing accidents in places of
17 firefighter employment and establish standards
18 for construction, repair, and maintenance;
19 requiring the division to inspect places of
20 firefighter employment and to develop safety
21 and health programs for those firefighter
22 employers whose employees have a high frequency
23 or severity of work-related injuries; requiring
24 certain firefighter employers to establish
25 workplace safety committees and to maintain
26 certain records; providing penalties for
27 firefighter employers who violate provisions of
28 the act; providing exemptions; providing for
29 the source of funding of the division;
30 specifying firefighter employee rights and
31 responsibilities; providing penalties for

1 firefighter employers who make false statements
2 to the division or to an insurer; specifying
3 applicability to volunteer firefighters and
4 volunteer fire departments; authorizing the
5 division to adopt rules for assuring safe
6 working conditions for all firefighter
7 employees; amending s. 633.31, F.S.; changing
8 the name and membership of the Firefighters
9 Standards and Training Council; amending ss.
10 383.3362, 633.30, 633.32, F.S., to conform;
11 amending s. 633.33, F.S.; revising certain
12 powers of the council; providing effective
13 dates.

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

16
17 Section 1. (1) The Division of Workers' Compensation
18 of the Department of Labor and Employment Security is
19 transferred by a type two transfer, as defined in section
20 20.06(2), Florida Statutes, to the Department of Insurance,
21 except as otherwise provided in this section. The transfers to
22 the Department of Insurance shall include all resources, data,
23 records, property, and unexpended balances of appropriations,
24 allocations, or other funds. No personnel are transferred to
25 the Department of Insurance. The employees of the Department
26 of Labor and Employment Security's Division of Workers'
27 Compensation, Office of the Secretary, Office of
28 Administrative Services, and Office of General Counsel
29 employed by the Department of Labor and Employment Security as
30 of March 1, 2002, may be given hiring priority by the
31 Department of Insurance, and at least 300 of these employees

1 shall be offered employment by the Department of Insurance,
2 effective July 1, 2002. To the extent feasible, the positions
3 established by the Department of Insurance will be at pay
4 grades comparable to the positions established by the
5 Department of Labor and Employment Security based on the
6 classification code and specifications of the positions for
7 work to be performed at the Department of Insurance. Offers of
8 employment to the 300 employees must be tendered no later than
9 May 15, 2002. The Department of Labor and Employment Security
10 shall offer, and if accepted provide, job placement assistance
11 to those employees not offered employment by the Department of
12 Insurance. After July 1, 2002, such assistance, upon request,
13 shall be provided to these employees by the Agency for
14 Workforce Innovation. The Department of Insurance shall
15 establish the number of positions needed to administer the
16 provisions of chapter 440, Florida Statutes. The number of
17 positions needed that the department establishes may not
18 exceed the number of authorized positions and salary and
19 benefits that was authorized for the Division of Workers'
20 Compensation within the Department of Labor and Employment
21 Security prior to the transfer. Upon transfer of the Division
22 of Workers' Compensation, the number of required positions
23 shall be authorized within the agency. The Department of
24 Insurance is further authorized to reassign, reorganize, or
25 otherwise transfer positions to appropriate administrative
26 subdivisions within the department and to establish such
27 regional offices as are necessary to properly enforce and
28 administer its responsibilities under the Florida Insurance
29 Code and chapter 440, Florida Statutes. The department may
30 also enter into contracts with public or private entities to
31

1 administer its duties and responsibilities associated with the
2 transfer of the Division of Workers' Compensation.

3 (2) Effective July 1, 2002, a number of full-time
4 equivalent positions, established in the General
5 Appropriations Act, from the Division of Workers' Compensation
6 of the Department of Labor and Employment Security and the
7 records, property, and unexpended balances of appropriations,
8 allocations, and other funds related to oversight of medical
9 services in workers' compensation provider relations, dispute
10 and complaint resolution, program evaluation, and data
11 management are transferred by a type two transfer, as defined
12 in section 20.06(2), Florida Statutes, from the Department of
13 Labor and Employment Security to the Agency for Health Care
14 Administration. However, the claims review functions and
15 three-member panel shall not be so transferred and shall be
16 retained by the Department of Insurance.

17 (3) All statutory powers, duties, functions, rules,
18 records, personnel, property, and unexpended balances of
19 appropriations, allocations, and other funds of the Division
20 of Workers' Compensation, Office of Medical Services and
21 Rehabilitation, related to reemployment, training and
22 education, obligations to rehire, and preferred worker
23 requirements, consisting of a number of full-time equivalent
24 positions established in the General Appropriations Act, are
25 transferred by a type two transfer, as defined in section
26 20.06(2), Florida Statutes, from the Department of Labor and
27 Employment Security to the Department of Education.

28 (4) Except as provided in this section, the records,
29 property, and unexpended balances of appropriations,
30 allocations, and other funds and resources of the Office of
31 the Secretary and the Office of Administrative Services of the

1 Department of Labor and Employment Security which support the
2 activities and functions of the Division of Workers'
3 Compensation are transferred by a type two transfer as defined
4 in section 20.06(2), Florida Statutes, to the Department of
5 Insurance.

6 (5) All the records, property, and unexpended balances
7 of appropriations, allocations, and other funds and resources
8 of the Office of the Secretary and the Office of
9 Administrative Services of the Department of Labor and
10 Employment Security which support the activities and functions
11 transferred under subsections (7) and (8) to the Department of
12 Education are transferred by a type two transfer as defined in
13 section 20.06(2), Florida Statutes, to the Department of
14 Education.

15 (6) The records, property, and unexpended balances of
16 appropriations, allocations, and other funds and resources of
17 the Office of the Secretary and the Office of Administrative
18 Services of the Department of Labor and Employment Security
19 which support the activities and functions transferred under
20 subsection (2) to the Agency for Health Care Administration
21 are transferred by a type two transfer as defined in section
22 20.06(2), Florida Statutes, to the Agency for Health Care
23 Administration.

24 (7) Effective July 1, 2002, all powers, duties,
25 functions, rules, records, personnel, property, and unexpended
26 balances of appropriations, allocations, and other funds of
27 the Unemployment Appeals Commission relating to the
28 commission's specified authority, powers, duties, and
29 responsibilities are transferred by a type two transfer, as
30 defined in section 20.06(2), Florida Statutes, to the Agency
31 for Workforce Innovation.

1 (8) Effective July 1, 2002, the Office of Information
2 Systems is transferred by a type two transfer, as defined in
3 section 20.06(2), Florida Statutes, from the Department of
4 Labor and Employment Security to the State Technology Office.
5 Upon completion of this transfer, the State Technology Office
6 and the Department of Insurance shall enter into discussions
7 to determine whether it would be technologically feasible and
8 cost effective to separate the Workers' Compensation
9 Integrated System from its current mainframe platform and
10 transfer ownership of this system to the Department of
11 Insurance. If the Department of Insurance ultimately
12 determines that it is technologically feasible and cost
13 effective to transfer ownership of the Workers' Compensation
14 Integrated System from the State Technology Office to the
15 Department of Insurance, the State Technology Office and the
16 Department of Insurance shall jointly develop and implement a
17 plan to transfer this system to the Department of Insurance.

18 (9)(a) Effective July 1, 2002, the records, property,
19 and unexpended balances of appropriations, allocations, and
20 other funds and resources of the Office of the Secretary and
21 the Office of Administrative Services of the Department of
22 Labor and Employment Security which support the activities and
23 functions transferred under subsection (7) to the Agency for
24 Workforce Innovation are transferred as provided in section
25 20.06(2), Florida Statutes, to the Agency for Workforce
26 Innovation.

27 (b) Effective July 1, 2002, the records, property, and
28 unexpended balances of appropriations, allocations, and other
29 funds and resources of the Office of the Secretary and the
30 Office of Administrative Services of the Department of Labor
31 and Employment Security which support the activities and

1 functions transferred under subsection (8) to the State
2 Technology Office are transferred as provided in section
3 20.06(2), Florida Statutes, to the State Technology Office.

4 (10) This act does not affect the validity of any
5 judicial or administrative proceeding involving the Department
6 of Labor and Employment Security which is pending as of the
7 effective date of any transfer under this act. The successor
8 department, agency, or entity responsible for the program,
9 activity, or function relative to the proceeding shall be
10 substituted, as of the effective date of the applicable
11 transfer under this act, for the Department of Labor and
12 Employment Security as a party in interest in any such
13 proceedings.

14 (11) Effective July 1, 2002, a number of full-time
15 equivalent positions, established in the General
16 Appropriations Act, from the Division of Workers' Compensation
17 of the Department of Labor and Employment Security, and the
18 powers, duties, functions, rules, records, personnel,
19 property, and unexpended balances of appropriations,
20 allocations, and other funds related to the administration of
21 child labor laws under chapter 450, Florida Statutes, are
22 transferred by a type two transfer, as defined in section
23 20.06(2), Florida Statutes, from the Department of Labor and
24 Employment Security to the Department of Business and
25 Professional Regulation.

26 (12) Effective July 1, 2002, a number of full-time
27 equivalent positions, established in the General
28 Appropriations Act, from the Compliance and Enforcement
29 Program in the Office of the Secretary and Administrative
30 Services, and the powers, duties, functions, rules, records,
31 personnel, property, and unexpended balances of

1 appropriations, allocations, and other funds of the Office of
2 the Secretary and Administrative Services of the Department of
3 Labor and Employment Security related to the regulation of
4 labor organizations under chapter 447, Florida Statutes, and
5 the administration of migrant labor and farm labor laws under
6 chapter 450, Florida Statutes, are transferred by a type two
7 transfer, as defined in section 20.06(2), Florida Statutes,
8 from the Department of Labor and Employment Security to the
9 Department of Business and Professional Regulation.

10 (13) Effective July 1, 2002, any other powers, duties,
11 functions, rules, records, property, and unexpended balances
12 of appropriations, allocations, and other funds of the
13 Department of Labor and Employment Security not otherwise
14 transferred by this act, relating to workplace regulation and
15 enforcement, including, but not limited to, those under
16 chapter 448, Florida Statutes, are transferred by a type two
17 transfer, as defined in section 20.06(2), Florida Statutes,
18 from the Department of Labor and Employment Security to the
19 Department of Business and Professional Regulation.

20 (14) Effective July 1, 2002, the records, property,
21 and unexpended balances of appropriations, allocations, and
22 other funds and resources of the Office of the Secretary and
23 Administrative Services of the Department of Labor and
24 Employment Security which support the activities and functions
25 transferred under subsections (17), (18), and (19) to the
26 Department of Business and Professional Regulation are
27 transferred as provided in section 20.06(2), Florida Statutes,
28 to the Department of Business and Professional Regulation.

29 (15) Notwithstanding any other provision of law, any
30 binding contract or interagency agreement existing on or
31 before October 1, 2002, between the Department of Labor and

1 Employment Security, or an entity or agent of the department,
2 and any other agency, entity, or person shall continue as a
3 binding contract or agreement for the remainder of the term of
4 such contract or agreement with the successor department,
5 agency, or entity responsible for the program, activity, or
6 functions relative to the contract or agreement.

7 (16) All rules adopted by the Department of Labor and
8 Employment Security and the authority for such rules relating
9 to the regulation of workers' compensation medical services
10 are transferred to the Agency for Health Care Administration.

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

13 20.13 Department of Insurance.--There is created a
14 Department of Insurance.

15 (2) The following divisions of the Department of
16 Insurance are established:

17 (k) Division of Workers' Compensation.

18 Section 3. Section 20.171, Florida Statutes, is
19 repealed.

20 Section 4. Subsection (2) of section 20.50, Florida
21 Statutes, is amended to read:

22 20.50 Agency for Workforce Innovation.--There is
23 created the Agency for Workforce Innovation within the
24 Department of Management Services. The agency shall be a
25 separate budget entity, and the director of the agency shall
26 be the agency head for all purposes. The agency shall not be
27 subject to control, supervision, or direction by the
28 Department of Management Services in any manner, including,
29 but not limited to, personnel, purchasing, transactions
30 involving real or personal property, and budgetary matters.

31

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

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

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

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

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

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

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

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

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

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

31

1 3. Information systems that support school readiness
2 services.

3 Section 5. Paragraph (m) of subsection (2) of section
4 110.205, Florida Statutes, is amended to read:

5 110.205 Career service; exemptions.--

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

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

1 accordance with the rules established for the Selected Exempt
2 Service.

3 Section 6. Section 440.015, Florida Statutes, is
4 amended to read:

5 440.015 Legislative intent.--It is the intent of the
6 Legislature that the Workers' Compensation Law be interpreted
7 so as to assure the quick and efficient delivery of disability
8 and medical benefits to an injured worker and to facilitate
9 the worker's return to gainful reemployment at a reasonable
10 cost to the employer. It is the specific intent of the
11 Legislature that workers' compensation cases shall be decided
12 on their merits. The workers' compensation system in Florida
13 is based on a mutual renunciation of common-law rights and
14 defenses by employers and employees alike. In addition, it is
15 the intent of the Legislature that the facts in a workers'
16 compensation case are not to be interpreted liberally in favor
17 of either the rights of the injured worker or the rights of
18 the employer. Additionally, the Legislature hereby declares
19 that disputes concerning the facts in workers' compensation
20 cases are not to be given a broad liberal construction in
21 favor of the employee on the one hand or of the employer on
22 the other hand, and the laws pertaining to workers'
23 compensation are to be construed in accordance with the basic
24 principles of statutory construction and not liberally in
25 favor of either employee or employer. It is the intent of the
26 Legislature to ensure the prompt delivery of benefits to the
27 injured worker. Therefore, an efficient and self-executing
28 system must be created which is not an economic or
29 administrative burden. The Division of Workers' Compensation
30 of the Department of Insurance, the Department of Education,
31 and the Agency for Health Care Administration shall administer

1 the Workers' Compensation Law in a manner that ~~which~~
2 facilitates the self-execution of the system and the process
3 of ensuring a prompt and cost-effective delivery of payments.

4 Section 7. Subsections (11), (13), and (14) of section
5 440.02, Florida Statutes, are amended, and subsection (40) is
6 added to that section, to read:

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

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

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

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

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

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

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

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

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

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

27 (d) "Employee" does not include:

28 1. An independent contractor, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (40) "Agency" means the Agency for Health Care
22 Administration.

23 Section 8. Section 440.021, Florida Statutes, is
24 amended to read:

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

1 institutes action to collect a penalty or interest which may
2 be due pursuant to this chapter, the penalty or interest shall
3 be assessed without hearing, and the party against which such
4 penalty or interest is assessed shall be given written notice
5 of such assessment and shall have the right to protest within
6 20 days of such notice. Upon receipt of a timely notice of
7 protest and after such investigation as may be necessary, the
8 department ~~division~~ shall, if it agrees with such protest,
9 notify the protesting party that the assessment has been
10 revoked. If the department ~~division~~ does not agree with the
11 protest, it shall refer the matter to the judge of
12 compensation claims for determination pursuant to s.
13 440.25(2)-(5). Such action of the department ~~division~~ is
14 exempt from the provisions of chapter 120.

15 Section 9. Section 440.05, Florida Statutes, is
16 amended to read:

17 440.05 Election of exemption; revocation of election;
18 notice; certification.--

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

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

29 (3) Each sole proprietor, partner, or officer of a
30 corporation who is actively engaged in the construction
31 industry and who elects an exemption from this chapter or who,

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

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

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

1 felony of the third degree." Each person filing a notice of
2 election to be exempt shall personally sign the notice and
3 attest that he or she has reviewed, understands, and
4 acknowledges the foregoing notice.

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

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

1 At least 60 days prior to the expiration date of a
2 construction industry certificate of exemption issued after
3 December 1, 1998, the department ~~division~~ shall send notice of
4 the expiration date and an application for renewal to the
5 certificateholder at the address on the certificate.

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

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

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

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

28 Section 10. Paragraph (d) of subsection (7) of section
29 440.09, Florida Statutes, is amended to read:

30 440.09 Coverage.--

31 (7)

1 (d) The department ~~division~~ shall provide by rule for
2 the authorization and regulation of drug-testing policies,
3 procedures, and methods. Testing of injured employees shall
4 not commence until such rules are adopted.

5 Section 11. Paragraphs (f) and (g) of subsection (1)
6 of section 440.10, Florida Statutes, are amended to read:

7 440.10 Liability for compensation.--

8 (1)

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

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

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

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

26
27 A sole proprietor, partner, or officer of a corporation who
28 elects exemption from this chapter by filing a certificate of
29 election under s. 440.05 may not recover benefits or
30 compensation under this chapter. An independent contractor
31 who provides the general contractor with both an affidavit

1 stating that he or she meets the requirements of s.
2 440.02(14)(d) and a certificate of exemption is not an
3 employee under s. 440.02(14)(c) and may not recover benefits
4 under this chapter. For purposes of determining the
5 appropriate premium for workers' compensation coverage,
6 carriers may not consider any person who meets the
7 requirements of this paragraph to be an employee.

8 Section 12. Subsection (2), paragraph (a) of
9 subsection (3), and paragraph (g) of subsection (7) of section
10 440.102, Florida Statutes, are amended to read:

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

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

31

1 627.0915 must be reported annually by the insurer to the
2 department division.

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

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

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

9 a. The types of drug testing an employee or job
10 applicant may be required to submit to, including
11 reasonable-suspicion drug testing or drug testing conducted on
12 any other basis.

13 b. The actions the employer may take against an
14 employee or job applicant on the basis of a positive confirmed
15 drug test result.

16 2. A statement advising the employee or job applicant
17 of the existence of this section.

18 3. A general statement concerning confidentiality.

19 4. Procedures for employees and job applicants to
20 confidentially report to a medical review officer the use of
21 prescription or nonprescription medications to a medical
22 review officer both before and after being tested.

23 5. A list of the most common medications, by brand
24 name or common name, as applicable, as well as by chemical
25 name, which may alter or affect a drug test. A list of such
26 medications as developed by the Agency for Health Care
27 Administration shall be available to employers through the
28 Division of Workers' Compensation ~~of the Department of Labor~~
29 ~~and Employment Security~~.

30 6. The consequences of refusing to submit to a drug
31 test.

1 7. A representative sampling of names, addresses, and
2 telephone numbers of employee assistance programs and local
3 drug rehabilitation programs.

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

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

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

21 11. A statement regarding any applicable collective
22 bargaining agreement or contract and the right to appeal to
23 the Public Employees Relations Commission or applicable court.

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

28 (7) EMPLOYER PROTECTION.--

29 (g) This section does not prohibit an employer from
30 conducting medical screening or other tests required,
31 permitted, or not disallowed by any statute, rule, or

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

19 Section 13. Section 440.103, Florida Statutes, is
20 amended to read:

21 440.103 Building permits; identification of minimum
22 premium policy.--Except as otherwise provided in this chapter,
23 every employer shall, as a condition to receiving a building
24 permit, show proof that it has secured compensation for its
25 employees under this chapter as provided in ss. 440.10 and
26 440.38. Such proof of compensation must be evidenced by a
27 certificate of coverage issued by the carrier, a valid
28 exemption certificate approved by the division or the
29 department, or a copy of the employer's authority to
30 self-insure and shall be presented each time the employer
31 applies for a building permit. As provided in s. 627.413(5),

1 each certificate of coverage must show, on its face, whether
2 or not coverage is secured under the minimum premium
3 provisions of rules adopted by rating organizations licensed
4 by the Department of Insurance. The words "minimum premium
5 policy" or equivalent language shall be typed, printed,
6 stamped, or legibly handwritten.

7 Section 14. Paragraph (a) of subsection (2) of section
8 440.105, Florida Statutes, is amended to read:

9 440.105 Prohibited activities; reports; penalties;
10 limitations.--

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

14 (a) It shall be unlawful for any employer to
15 knowingly:

16 1. Coerce or attempt to coerce, as a precondition to
17 employment or otherwise, an employee to obtain a certificate
18 of election of exemption pursuant to s. 440.05.

19 2. Discharge or refuse to hire an employee or job
20 applicant because the employee or applicant has filed a claim
21 for benefits under this chapter.

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

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

30 Section 15. Subsections (3) and (4) of section
31 440.106, Florida Statutes, are amended to read:

1 440.106 Civil remedies; administrative penalties.--

2 (3) Whenever any group or individual self-insurer,
3 carrier, rating bureau, or agent or other representative of
4 any carrier or rating bureau is determined to have violated s.
5 440.105, the department ~~of Insurance~~ may revoke or suspend the
6 authority or certification of any group or individual
7 self-insurer, carrier, agent, or broker.

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

12 Section 16. Section 440.107, Florida Statutes, is
13 amended to read:

14 440.107 Department ~~Division~~ powers to enforce employer
15 compliance with coverage requirements.--

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

24 (2) The department ~~division~~ and its authorized
25 representatives may enter and inspect any place of business at
26 any reasonable time for the limited purpose of investigating
27 compliance with workers' compensation coverage requirements
28 under this chapter. Each employer shall keep true and accurate
29 business records that contain such information as the
30 department ~~division~~ prescribes by rule. The business records
31 must contain information necessary for the department ~~division~~

1 to determine compliance with workers' compensation coverage
2 requirements and must be maintained within this state by the
3 business, in such a manner as to be accessible within a
4 reasonable time upon request by the department ~~division~~. The
5 business records must be open to inspection and be available
6 for copying by the department ~~division~~ at any reasonable time
7 and place and as often as necessary. The department ~~division~~
8 may require from any employer any sworn or unsworn reports,
9 pertaining to persons employed by that employer, deemed
10 necessary for the effective administration of the workers'
11 compensation coverage requirements.

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

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

30 (5) Whenever the department ~~division~~ determines that
31 an employer who is required to secure the payment to his or

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

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

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

30 (a) Twice the amount the employer would have paid
31 during periods it illegally failed to secure payment of

1 compensation in the preceding 3-year period based on the
2 employer's payroll during the preceding 3-year period; or

3 (b) One thousand dollars, whichever is greater.
4

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

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

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

1 of such employer, or against a subsequent attaching creditor,
2 unless, with respect to real estate of the employer, a notice
3 of the lien is recorded in the public records of the county
4 where the real estate is located, and with respect to personal
5 property of the employer, the notice is recorded with the
6 Secretary of State.

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

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

24 Section 17. Subsection (1) of section 440.108, Florida
25 Statutes, is amended to read:

26 440.108 Investigatory records relating to workers'
27 compensation employer compliance; confidentiality.--

28 (1) All investigatory records of the department
29 ~~Division of Workers' Compensation~~ made or received pursuant to
30 s. 440.107 and any records necessary to complete an
31 investigation are confidential and exempt from the provisions

1 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
2 until the investigation is completed or ceases to be active.
3 For purposes of this section, an investigation is considered
4 "active" while such investigation is being conducted by the
5 department ~~division~~ with a reasonable, good-faith ~~good faith~~
6 belief that it may lead to the filing of administrative,
7 civil, or criminal proceedings. An investigation does not
8 cease to be active if the agency is proceeding with reasonable
9 dispatch and there is a good-faith ~~good faith~~ belief that
10 action may be initiated by the agency or other administrative
11 or law enforcement agency. After an investigation is completed
12 or ceases to be active, records relating to the investigation
13 remain confidential and exempt from the provisions of s.
14 119.07(1) and s. 24(a), Art. I of the State Constitution if
15 disclosure would:

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

25 Section 18. Section 440.125, Florida Statutes, is
26 amended to read:

27 440.125 Medical records and reports; identifying
28 information in employee medical bills; confidentiality.--

- 29 (1) Any medical records and medical reports of an
30 injured employee and any information identifying an injured
31 employee in medical bills which are provided to the

1 department, agency, or Department of Education ~~Division of~~
2 ~~Workers' Compensation of the Department of Labor and~~
3 ~~Employment Security~~ pursuant to s. 440.13 are confidential and
4 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
5 I of the State Constitution, except as otherwise provided by
6 this chapter.

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

22 (3) The department may share any confidential and
23 exempt information received pursuant to s. 440.13 with the
24 Agency for Health Care Administration in furtherance of the
25 agency's official duties under ss. 440.13 and 440.134. The
26 agency shall maintain the confidential and exempt status of
27 the information.

28 Section 19. Section 440.13, Florida Statutes, is
29 amended to read:

30 440.13 Medical services and supplies; penalty for
31 violations; limitations.--

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

2 (a) "Alternate medical care" means a change in
3 treatment or health care provider.

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

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

16 (d) "Catastrophic injury" means an injury as defined
17 in s. 440.02.

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

31

1 (r) "Physician" or "doctor" means a physician licensed
2 under chapter 458, an osteopathic physician licensed under
3 chapter 459, a chiropractic physician licensed under chapter
4 460, a podiatric physician licensed under chapter 461, an
5 optometrist licensed under chapter 463, or a dentist licensed
6 under chapter 466, each of whom must be certified by the
7 agency ~~division~~ as a health care provider.

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

11 (t) "Utilization control" means a systematic process
12 of implementing measures that assure overall management and
13 cost containment of services delivered.

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

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

27 (a) Subject to the limitations specified elsewhere in
28 this chapter, the employer shall furnish to the employee such
29 medically necessary remedial treatment, care, and attendance
30 for such period as the nature of the injury or the process of
31 recovery may require, including medicines, medical supplies,

1 durable medical equipment, orthoses, prostheses, and other
2 medically necessary apparatus. Remedial treatment, care, and
3 attendance, including work-hardening programs or
4 pain-management programs accredited by the Commission on
5 Accreditation of Rehabilitation Facilities or Joint Commission
6 on the Accreditation of Health Organizations or
7 pain-management programs affiliated with medical schools,
8 shall be considered as covered treatment only when such care
9 is given based on a referral by a physician as defined in this
10 chapter. Each facility shall maintain outcome data, including
11 work status at discharges, total program charges, total number
12 of visits, and length of stay. ~~The department shall utilize~~
13 ~~such data and report to the President of the Senate and the~~
14 ~~Speaker of the House of Representatives regarding the efficacy~~
15 ~~and cost-effectiveness of such program, no later than October~~
16 ~~1, 1994.~~ Medically necessary treatment, care, and attendance
17 does not include chiropractic services in excess of 18
18 treatments or rendered 8 weeks beyond the date of the initial
19 chiropractic treatment, whichever comes first, unless the
20 carrier authorizes additional treatment or the employee is
21 catastrophically injured.

22 (b) The employer shall provide appropriate
23 professional or nonprofessional attendant care performed only
24 at the direction and control of a physician when such care is
25 medically necessary. The value of nonprofessional attendant
26 care provided by a family member must be determined as
27 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. A family member or a combination of family members
5 providing nonprofessional attendant care under this paragraph
6 may not be compensated for more than a total of 12 hours per
7 day.

8 (c) If the employer fails to provide treatment or care
9 required by this section after request by the injured
10 employee, the employee may obtain such treatment at the
11 expense of the employer, if the treatment is compensable and
12 medically necessary. There must be a specific request for the
13 treatment, and the employer or carrier must be given a
14 reasonable time period within which to provide the treatment
15 or care. However, the employee is not entitled to recover any
16 amount personally expended for the treatment or service unless
17 he or she has requested the employer to furnish that treatment
18 or service and the employer has failed, refused, or neglected
19 to do so within a reasonable time or unless the nature of the
20 injury requires such treatment, nursing, and services and the
21 employer or his or her superintendent or foreman, having
22 knowledge of the injury, has neglected to provide the
23 treatment or service.

24 (d) The carrier has the right to transfer the care of
25 an injured employee from the attending health care provider if
26 an independent medical examination determines that the
27 employee is not making appropriate progress in recuperation.

28 (e) Except in emergency situations and for treatment
29 rendered by a managed care arrangement, after any initial
30 examination and diagnosis by a physician providing remedial
31 treatment, care, and attendance, and before a proposed course

1 of medical treatment begins, each insurer shall review, in
2 accordance with the requirements of this chapter, the proposed
3 course of treatment, to determine whether such treatment would
4 be recognized as reasonably prudent. The review must be in
5 accordance with all applicable workers' compensation practice
6 parameters. The insurer must accept any such proposed course
7 of treatment unless the insurer notifies the physician of its
8 specific objections to the proposed course of treatment by the
9 close of the tenth business day after notification by the
10 physician, or a supervised designee of the physician, of the
11 proposed course of treatment.

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

18 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

26 (b) A health care provider who renders emergency care
27 must notify the carrier by the close of the third business day
28 after it has rendered such care. If the emergency care results
29 in admission of the employee to a health care facility, the
30 health care provider must notify the carrier by telephone
31 within 24 hours after initial treatment. Emergency care is not

1 compensable under this chapter unless the injury requiring
2 emergency care arose as a result of a work-related accident.
3 Pursuant to chapter 395, all licensed physicians and health
4 care providers in this state shall be required to make their
5 services available for emergency treatment of any employee
6 eligible for workers' compensation benefits. To refuse to make
7 such treatment available is cause for revocation of a license.

8 (c) A health care provider may not refer the employee
9 to another health care provider, diagnostic facility, therapy
10 center, or other facility without prior authorization from the
11 carrier, except when emergency care is rendered. Any referral
12 must be to a health care provider that has been certified by
13 the agency division, unless the referral is for emergency
14 treatment.

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

24 (e) Carriers shall adopt procedures for receiving,
25 reviewing, documenting, and responding to requests for
26 authorization. Such procedures shall be for a health care
27 provider certified under this section.

28 (f) By accepting payment under this chapter for
29 treatment rendered to an injured employee, a health care
30 provider consents to the jurisdiction of the agency division
31 as set forth in subsection (11) and to the submission of all

1 records and other information concerning such treatment to the
2 agency ~~division~~ in connection with a reimbursement dispute,
3 audit, or review as provided by this section. The health care
4 provider must further agree to comply with any decision of the
5 agency ~~division~~ rendered under this section.

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

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

12 (i) Notwithstanding paragraph (d), a claim for
13 specialist consultations, surgical operations,
14 physiotherapeutic or occupational therapy procedures, X-ray
15 examinations, or special diagnostic laboratory tests that cost
16 more than \$1,000 and other specialty services that the agency
17 ~~division~~ identifies by rule is not valid and reimbursable
18 unless the services have been expressly authorized by the
19 carrier, or unless the carrier has failed to respond within 10
20 days to a written request for authorization, or unless
21 emergency care is required. The insurer shall not refuse to
22 authorize such consultation or procedure unless the health
23 care provider or facility is not authorized or certified or
24 unless an expert medical advisor has determined that the
25 consultation or procedure is not medically necessary or
26 otherwise compensable under this chapter. Authorization of a
27 treatment plan does not constitute express authorization for
28 purposes of this section, except to the extent the carrier
29 provides otherwise in its authorization procedures. This
30 paragraph does not limit the carrier's obligation to identify
31 and disallow overutilization or billing errors.

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

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

16 (a) Any health care provider providing necessary
17 remedial treatment, care, or attendance to any injured worker
18 shall submit treatment reports to the carrier in a format
19 prescribed by the department in consultation with the agency
20 ~~division~~. A claim for medical or surgical treatment is not
21 valid or enforceable against such employer or employee,
22 unless, by the close of the third business day following the
23 first treatment, the physician providing the treatment
24 furnishes to the employer or carrier a preliminary notice of
25 the injury and treatment on forms prescribed by the department
26 in consultation with the agency ~~division~~ and, within 15 days
27 thereafter, furnishes to the employer or carrier a complete
28 report, and subsequent thereto furnishes progress reports, if
29 requested by the employer or insurance carrier, at intervals
30 of not less than 3 weeks apart or at less frequent intervals
31 if requested on forms prescribed by the department ~~division~~.

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

18 (c) It is the policy for the administration of the
19 workers' compensation system that there be reasonable access
20 to medical information by all parties to facilitate the
21 self-executing features of the law. Notwithstanding the
22 limitations in s. 456.057 and subject to the limitations in s.
23 381.004, upon the request of the employer, the carrier, an
24 authorized qualified rehabilitation provider, or the attorney
25 for the employer or carrier, the medical records of an injured
26 employee must be furnished to those persons and the medical
27 condition of the injured employee must be discussed with those
28 persons, if the records and the discussions are restricted to
29 conditions relating to the workplace injury. Any such
30 discussions may be held before or after the filing of a claim
31 without the knowledge, consent, or presence of any other party

1 or his or her agent or representative. A health care provider
2 who willfully refuses to provide medical records or to discuss
3 the medical condition of the injured employee, after a
4 reasonable request is made for such information pursuant to
5 this subsection, shall be subject by the agency ~~division~~ to
6 one or more of the penalties set forth in paragraph (8)(b).

7 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

8 (a) In any dispute concerning overutilization, medical
9 benefits, compensability, or disability under this chapter,
10 the carrier or the employee may select an independent medical
11 examiner. The examiner may be a health care provider treating
12 or providing other care to the employee. An independent
13 medical examiner may not render an opinion outside his or her
14 area of expertise, as demonstrated by licensure and applicable
15 practice parameters.

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

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

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

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

27 4. The parties agree to an alternate examiner.

28
29 Any party may request, or a judge of compensation claims may
30 require, designation of an agency ~~a division~~ medical advisor
31 as an independent medical examiner. The opinion of the

1 advisors acting as examiners shall not be afforded the
2 presumption set forth in paragraph (9)(c).

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

12 (d) If the employee fails to appear for the
13 independent medical examination without good cause and fails
14 to advise the physician at least 24 hours before the scheduled
15 date for the examination that he or she cannot appear, the
16 employee is barred from recovering compensation for any period
17 during which he or she has refused to submit to such
18 examination. Further, the employee shall reimburse the carrier
19 50 percent of the physician's cancellation or no-show fee
20 unless the carrier that schedules the examination fails to
21 timely provide to the employee a written confirmation of the
22 date of the examination pursuant to paragraph (c) which
23 includes an explanation of why he or she failed to appear. The
24 employee may appeal to a judge of compensation claims for
25 reimbursement when the carrier withholds payment in excess of
26 the authority granted by this section.

27 (e) No medical opinion other than the opinion of a
28 medical advisor appointed by the judge of compensation claims
29 or agency division, an independent medical examiner, or an
30 authorized treating provider is admissible in proceedings
31 before the judges of compensation claims.

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

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

19 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

20 (a) Any health care provider, carrier, or employer who
21 elects to contest the disallowance or adjustment of payment by
22 a carrier under subsection (6) must, within 30 days after
23 receipt of notice of disallowance or adjustment of payment,
24 petition the agency division to resolve the dispute. The
25 petitioner must serve a copy of the petition on the carrier
26 and on all affected parties by certified mail. The petition
27 must be accompanied by all documents and records that support
28 the allegations contained in the petition. Failure of a
29 petitioner to submit such documentation to the agency division
30 results in dismissal of the petition.

31

1 (b) The carrier must submit to the agency division
2 within 10 days after receipt of the petition all documentation
3 substantiating the carrier's disallowance or adjustment.
4 Failure of the carrier to submit the requested documentation
5 to the agency division within 10 days constitutes a waiver of
6 all objections to the petition.

7 (c) Within 60 days after receipt of all documentation,
8 the agency division must provide to the petitioner, the
9 carrier, and the affected parties a written determination of
10 whether the carrier properly adjusted or disallowed payment.
11 The agency division must be guided by standards and policies
12 set forth in this chapter, including all applicable
13 reimbursement schedules, in rendering its determination.

14 (d) If the agency division finds an improper
15 disallowance or improper adjustment of payment by an insurer,
16 the insurer shall reimburse the health care provider,
17 facility, insurer, or employer within 30 days, subject to the
18 penalties provided in this subsection.

19 (e) The agency division shall adopt rules to carry out
20 this subsection. The rules may include provisions for
21 consolidating petitions filed by a petitioner and expanding
22 the timetable for rendering a determination upon a
23 consolidated petition.

24 (f) Any carrier that engages in a pattern or practice
25 of arbitrarily or unreasonably disallowing or reducing
26 payments to health care providers may be subject to one or
27 more of the following penalties imposed by the agency
28 division:

29 1. Repayment of the appropriate amount to the health
30 care provider.

31

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

4 3. Award of the health care provider's costs,
5 including a reasonable attorney's fee, for prosecuting the
6 petition.

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

8 (a) Carriers must report to the agency ~~division~~ all
9 instances of overutilization including, but not limited to,
10 all instances in which the carrier disallows or adjusts
11 payment. The agency ~~division~~ shall determine whether a pattern
12 or practice of overutilization exists.

13 (b) If the agency ~~division~~ determines that a health
14 care provider has engaged in a pattern or practice of
15 overutilization or a violation of this chapter or rules
16 adopted by the agency ~~division~~, it may impose one or more of
17 the following penalties:

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

20 2. Deauthorization of care under review;

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

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

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

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

30 (9) EXPERT MEDICAL ADVISORS.--

31

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

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

29 (c) If there is disagreement in the opinions of the
30 health care providers, if two health care providers disagree
31 on medical evidence supporting the employee's complaints or

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

16 (d) The expert medical advisor must complete his or
17 her evaluation and issue his or her report to the agency
18 ~~division~~ or to the judge of compensation claims within 45 days
19 after receipt of all medical records. The expert medical
20 advisor must furnish a copy of the report to the carrier and
21 to the employee.

22 (e) An expert medical advisor is not liable under any
23 theory of recovery for evaluations performed under this
24 section without a showing of fraud or malice. The protections
25 of s. 766.101 apply to any officer, employee, or agent of the
26 agency ~~division~~ and to any officer, employee, or agent of any
27 entity with which the agency ~~division~~ has contracted under
28 this subsection.

29 (f) If the agency ~~division~~ or a judge of compensation
30 claims determines that the services of a certified expert
31 medical advisor are required to resolve a dispute under this

1 section, the carrier must compensate the advisor for his or
2 her time in accordance with a schedule adopted by the agency
3 ~~division~~. The agency division may assess a penalty not to
4 exceed \$500 against any carrier that fails to timely
5 compensate an advisor in accordance with this section.

6 (10) WITNESS FEES.--Any health care provider who gives
7 a deposition shall be allowed a witness fee. The amount
8 charged by the witness may not exceed \$200 per hour. An expert
9 witness who has never provided direct professional services to
10 a party but has merely reviewed medical records and provided
11 an expert opinion or has provided only direct professional
12 services that were unrelated to the workers' compensation case
13 may not be allowed a witness fee in excess of \$200 per day.

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

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

1 payments to the carrier. The agency ~~division~~ may assess a
2 penalty not to exceed \$500 for each overpayment that is not
3 refunded within 30 days after notification of overpayment by
4 the agency ~~division~~ or carrier.

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

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

28 (d) The following agency ~~division~~ actions do not
29 constitute agency action subject to review under ss. 120.569
30 and 120.57 and do not constitute actions subject to s. 120.56:
31 referral by the entity responsible for utilization review; a

1 decision by the agency ~~division~~ to refer a matter to a peer
2 review committee; establishment by a health care provider or
3 entity of procedures by which a peer review committee reviews
4 the rendering of health care services; and the review
5 proceedings, report, and recommendation of the peer review
6 committee.

7 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
8 REIMBURSEMENT ALLOWANCES.--

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

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

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

26 (c) Reimbursement for all fees and other charges for
27 such treatment, care, and attendance, including treatment,
28 care, and attendance provided by any hospital or other health
29 care provider, ambulatory surgical center, work-hardening
30 program, or pain program, must not exceed the amounts provided
31 by the uniform schedule of maximum reimbursement allowances as

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

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

24 2. The impact upon cost to employers for providing a
25 level of reimbursement for treatment, care, and attendance
26 which will ensure the availability of treatment, care, and
27 attendance required by injured workers;

28 3. The financial impact of the reimbursement
29 allowances upon health care providers and health care
30 facilities, including trauma centers as defined in s.
31 395.4001, and its effect upon their ability to make available

1 to injured workers such medically necessary remedial
2 treatment, care, and attendance. The uniform schedule of
3 maximum reimbursement allowances must be reasonable, must
4 promote health care cost containment and efficiency with
5 respect to the workers' compensation health care delivery
6 system, and must be sufficient to ensure availability of such
7 medically necessary remedial treatment, care, and attendance
8 to injured workers; and

9 4. The most recent average maximum allowable rate of
10 increase for hospitals determined by the Health Care Board
11 under chapter 408.

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

18 (a) Engaged in professional or other misconduct or
19 incompetency in connection with medical services rendered
20 under this chapter;

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

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

29 (d) Solicited, or employed another to solicit for
30 himself or herself or itself or for another, professional
31

1 treatment, examination, or care of an injured employee in
2 connection with any claim under this chapter;

3 (e) Refused to appear before, or to answer upon
4 request of, the agency division or any duly authorized officer
5 of the state, any legal question, or to produce any relevant
6 book or paper concerning his or her conduct under any
7 authorization granted to him or her under this chapter;

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

10 (g) Engaged in a pattern of practice of
11 overutilization or a violation of this chapter or rules
12 adopted by the agency division.

13 (14) PAYMENT OF MEDICAL FEES.--

14 (a) Except for emergency care treatment, fees for
15 medical services are payable only to a health care provider
16 certified and authorized to render remedial treatment, care,
17 or attendance under this chapter. A health care provider may
18 not collect or receive a fee from an injured employee within
19 this state, except as otherwise provided by this chapter. Such
20 providers have recourse against the employer or carrier for
21 payment for services rendered in accordance with this chapter.

22 (b) Fees charged for remedial treatment, care, and
23 attendance may not exceed the applicable fee schedules adopted
24 under this chapter.

25 (c) Notwithstanding any other provision of this
26 chapter, following overall maximum medical improvement from an
27 injury compensable under this chapter, the employee is
28 obligated to pay a copayment of \$10 per visit for medical
29 services. The copayment shall not apply to emergency care
30 provided to the employee.

31 (15) PRACTICE PARAMETERS.--

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

17 (b) The guidelines may be initially based on
18 guidelines prepared by nationally recognized health care
19 institutions and professional organizations but should be
20 tailored to meet the workers' compensation goal of returning
21 employees to full employment as quickly as medically possible,
22 taking into consideration outcomes data collected from managed
23 care providers and any other inpatient and outpatient
24 facilities serving workers' compensation claimants.

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

30 (d) Practice parameters developed under this section
31 must be used by carriers and the agency ~~division~~ in evaluating

1 the appropriateness and overutilization of medical services
2 provided to injured employees.

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

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

7 (23) The agency shall immediately notify the
8 Department of Insurance ~~and the Department of Labor and~~
9 ~~Employment Security~~ whenever it issues an administrative
10 complaint or an order or otherwise initiates legal proceedings
11 resulting in, or which may result in, suspension or revocation
12 of an insurer's authorization.

13 Section 21. Subsection (3) of section 440.14, Florida
14 Statutes, is amended to read:

15 440.14 Determination of pay.--

16 (3) The department ~~division~~ shall establish by rule a
17 form that contains ~~which shall contain~~ a simplified checklist
18 of those items that ~~which~~ may be included as "wage" for
19 determining the average weekly wage.

20 Section 22. Section 440.15, Florida Statutes, is
21 amended to read:

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

25 (1) PERMANENT TOTAL DISABILITY.--

26 (a) In case of total disability adjudged to be
27 permanent, $66 \frac{2}{3}$ percent of the average weekly wages shall
28 be paid to the employee during the continuance of such total
29 disability.

30 (b) Only a catastrophic injury as defined in s. 440.02
31 shall, in the absence of conclusive proof of a substantial

1 earning capacity, constitute permanent total disability. Only
2 claimants with catastrophic injuries are eligible for
3 permanent total benefits. In no other case may permanent total
4 disability be awarded.

5 (c) In cases of permanent total disability resulting
6 from injuries that occurred prior to July 1, 1955, such
7 payments shall not be made in excess of 700 weeks.

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

19 (e)1. The employer's or carrier's right to conduct
20 vocational evaluations or testing pursuant to s. 440.491
21 continues even after the employee has been accepted or
22 adjudicated as entitled to compensation under this chapter.
23 This right includes, but is not limited to, instances in which
24 such evaluations or tests are recommended by a treating
25 physician or independent medical-examination physician,
26 instances warranted by a change in the employee's medical
27 condition, or instances in which the employee appears to be
28 making appropriate progress in recuperation. This right may
29 not be exercised more than once every calendar year.

30 2. The carrier must confirm the scheduling of the
31 vocational evaluation or testing in writing, and must notify

1 employee's counsel, if any, at least 7 days before the date on
2 which vocational evaluation or testing is scheduled to occur.

3 3. Pursuant to an order of the judge of compensation
4 claims, the employer or carrier may withhold payment of
5 benefits for permanent total disability or supplements for any
6 period during which the employee willfully fails or refuses to
7 appear without good cause for the scheduled vocational
8 evaluation or testing.

9 (f)1. If permanent total disability results from
10 injuries that occurred subsequent to June 30, 1955, and for
11 which the liability of the employer for compensation has not
12 been discharged under s. 440.20(11), the injured employee
13 shall receive additional weekly compensation benefits equal to
14 5 percent of her or his weekly compensation rate, as
15 established pursuant to the law in effect on the date of her
16 or his injury, multiplied by the number of calendar years
17 since the date of injury. The weekly compensation payable and
18 the additional benefits payable under this paragraph, when
19 combined, may not exceed the maximum weekly compensation rate
20 in effect at the time of payment as determined pursuant to s.
21 440.12(2). Entitlement to these supplemental payments shall
22 cease at age 62 if the employee is eligible for social
23 security benefits under 42 U.S.C. ss. 402 and 423, whether or
24 not the employee has applied for such benefits. These
25 supplemental benefits shall be paid by the division out of the
26 Workers' Compensation Administration Trust Fund when the
27 injury occurred subsequent to June 30, 1955, and before July
28 1, 1984. These supplemental benefits shall be paid by the
29 employer when the injury occurred on or after July 1, 1984.
30 Supplemental benefits are not payable for any period prior to
31 October 1, 1974.

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

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

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

28 (2) TEMPORARY TOTAL DISABILITY.--

29 (a) In case of disability total in character but
30 temporary in quality, 66 2/3 percent of the average weekly
31 wages shall be paid to the employee during the continuance

1 | thereof, not to exceed 104 weeks except as provided in this
2 | subsection, s. 440.12(1), and s. 440.14(3). Once the employee
3 | reaches the maximum number of weeks allowed, or the employee
4 | reaches the date of maximum medical improvement, whichever
5 | occurs earlier, temporary disability benefits shall cease and
6 | the injured worker's permanent impairment shall be determined.

7 | (b) Notwithstanding the provisions of paragraph (a),
8 | an employee who has sustained the loss of an arm, leg, hand,
9 | or foot, has been rendered a paraplegic, paraparetic,
10 | quadriplegic, or quadriparetic, or has lost the sight of both
11 | eyes shall be paid temporary total disability of 80 percent of
12 | her or his average weekly wage. The increased temporary total
13 | disability compensation provided for in this paragraph must
14 | not extend beyond 6 months from the date of the accident. The
15 | compensation provided by this paragraph is not subject to the
16 | limits provided in s. 440.12(2), but instead is subject to a
17 | maximum weekly compensation rate of \$700. If, at the
18 | conclusion of this period of increased temporary total
19 | disability compensation, the employee is still temporarily
20 | totally disabled, the employee shall continue to receive
21 | temporary total disability compensation as set forth in
22 | paragraphs (a) and (c). The period of time the employee has
23 | received this increased compensation will be counted as part
24 | of, and not in addition to, the maximum periods of time for
25 | which the employee is entitled to compensation under paragraph
26 | (a) but not paragraph (c).

27 | (c) Temporary total disability benefits paid pursuant
28 | to this subsection shall include such period as may be
29 | reasonably necessary for training in the use of artificial
30 | members and appliances, and shall include such period as the
31 | employee may be receiving training and education under a

1 program pursuant to s. 440.491. Notwithstanding s. 440.02(9),
2 the date of maximum medical improvement for purposes of
3 paragraph (3)(b) shall be no earlier than the last day for
4 which such temporary disability benefits are paid.

5 (d) The department ~~division~~ shall, by rule, provide
6 for the periodic reporting to the department ~~division~~,
7 employer, or carrier of all earned income, including income
8 from social security, by the injured employee who is entitled
9 to or claiming benefits for temporary total disability. The
10 employer or carrier is not required to make any payment of
11 benefits for temporary total disability for any period during
12 which the employee willfully fails or refuses to report upon
13 request by the employer or carrier in the manner prescribed by
14 the rules. The rule must require the claimant to personally
15 sign the claim form and attest that she or he has reviewed,
16 understands, and acknowledges the foregoing.

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

18 (a) Impairment benefits.--

19 1. Once the employee has reached the date of maximum
20 medical improvement, impairment benefits are due and payable
21 within 20 days after the carrier has knowledge of the
22 impairment.

23 2. The three-member panel, in cooperation with the
24 department ~~division~~, shall establish and use a uniform
25 permanent impairment rating schedule. This schedule must be
26 based on medically or scientifically demonstrable findings as
27 well as the systems and criteria set forth in the American
28 Medical Association's Guides to the Evaluation of Permanent
29 Impairment; the Snellen Charts, published by American Medical
30 Association Committee for Eye Injuries; and the Minnesota
31 Department of Labor and Industry Disability Schedules. The

1 schedule should be based upon objective findings. The schedule
2 shall be more comprehensive than the AMA Guides to the
3 Evaluation of Permanent Impairment and shall expand the areas
4 already addressed and address additional areas not currently
5 contained in the guides. On August 1, 1979, and pending the
6 adoption, by rule, of a permanent schedule, Guides to the
7 Evaluation of Permanent Impairment, copyright 1977, 1971,
8 1988, by the American Medical Association, shall be the
9 temporary schedule and shall be used for the purposes hereof.
10 For injuries after July 1, 1990, pending the adoption by
11 department ~~division~~ rule of a uniform disability rating
12 schedule, the Minnesota Department of Labor and Industry
13 Disability Schedule shall be used unless that schedule does
14 not address an injury. In such case, the Guides to the
15 Evaluation of Permanent Impairment by the American Medical
16 Association shall be used. Determination of permanent
17 impairment under this schedule must be made by a physician
18 licensed under chapter 458, a doctor of osteopathic medicine
19 licensed under chapters 458 and 459, a chiropractic physician
20 licensed under chapter 460, a podiatric physician licensed
21 under chapter 461, an optometrist licensed under chapter 463,
22 or a dentist licensed under chapter 466, as appropriate
23 considering the nature of the injury. No other persons are
24 authorized to render opinions regarding the existence of or
25 the extent of permanent impairment.

26 3. All impairment income benefits shall be based on an
27 impairment rating using the impairment schedule referred to in
28 subparagraph 2. Impairment income benefits are paid weekly at
29 the rate of 50 percent of the employee's average weekly
30 temporary total disability benefit not to exceed the maximum
31 weekly benefit under s. 440.12. An employee's entitlement to

1 impairment income benefits begins the day after the employee
2 reaches maximum medical improvement or the expiration of
3 temporary benefits, whichever occurs earlier, and continues
4 until the earlier of:
5 a. The expiration of a period computed at the rate of
6 3 weeks for each percentage point of impairment; or
7 b. The death of the employee.
8 4. After the employee has been certified by a doctor
9 as having reached maximum medical improvement or 6 weeks
10 before the expiration of temporary benefits, whichever occurs
11 earlier, the certifying doctor shall evaluate the condition of
12 the employee and assign an impairment rating, using the
13 impairment schedule referred to in subparagraph 2.
14 Compensation is not payable for the mental, psychological, or
15 emotional injury arising out of depression from being out of
16 work. If the certification and evaluation are performed by a
17 doctor other than the employee's treating doctor, the
18 certification and evaluation must be submitted to the treating
19 doctor, and the treating doctor must indicate agreement or
20 disagreement with the certification and evaluation. The
21 certifying doctor shall issue a written report to the
22 department division, the employee, and the carrier certifying
23 that maximum medical improvement has been reached, stating the
24 impairment rating, and providing any other information
25 required by the department by rule division. If the employee
26 has not been certified as having reached maximum medical
27 improvement before the expiration of 102 weeks after the date
28 temporary total disability benefits begin to accrue, the
29 carrier shall notify the treating doctor of the requirements
30 of this section.
31

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

3 6. The department ~~division~~ may by rule specify forms
4 and procedures governing the method of payment of wage loss
5 and impairment benefits for dates of accidents before January
6 1, 1994, and for dates of accidents on or after January 1,
7 1994.

8 (b) Supplemental benefits.--

9 1. All supplemental benefits must be paid in
10 accordance with this subsection. An employee is entitled to
11 supplemental benefits as provided in this paragraph as of the
12 expiration of the impairment period, if:

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

16 b. The employee has not returned to work or has
17 returned to work earning less than 80 percent of the
18 employee's average weekly wage as a direct result of the
19 employee's impairment; and

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

22 2. If an employee is not entitled to supplemental
23 benefits at the time of payment of the final weekly impairment
24 income benefit because the employee is earning at least 80
25 percent of the employee's average weekly wage, the employee
26 may become entitled to supplemental benefits at any time
27 within 1 year after the impairment income benefit period ends
28 if:

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

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

3 c. The employee's decrease in earnings is a direct
4 result of the employee's impairment from the compensable
5 injury.

6 3. If an employee earns wages that are at least 80
7 percent of the employee's average weekly wage for a period of
8 at least 90 days during which the employee is receiving
9 supplemental benefits, the employee ceases to be entitled to
10 supplemental benefits for the filing period. Supplemental
11 benefits that have been terminated shall be reinstated when
12 the employee satisfies the conditions enumerated in
13 subparagraph 2. and files the statement required under
14 subparagraph 5. Notwithstanding any other provision, if an
15 employee is not entitled to supplemental benefits for 12
16 consecutive months, the employee ceases to be entitled to any
17 additional income benefits for the compensable injury. If the
18 employee is discharged within 12 months after losing
19 entitlement under this subsection, benefits may be reinstated
20 if the employee was discharged at that time with the intent to
21 deprive the employee of supplemental benefits.

22 ~~4. During the period that impairment income benefits~~
23 ~~or supplemental income benefits are being paid, the carrier~~
24 ~~has the affirmative duty to determine at least annually~~
25 ~~whether any extended unemployment or underemployment is a~~
26 ~~direct result of the employee's impairment. To accomplish this~~
27 ~~purpose, the division may require periodic reports from the~~
28 ~~employee and the carrier, and it may, at the carrier's~~
29 ~~expense, require any physical or other examinations,~~
30 ~~vocational assessments, or other tests or diagnoses necessary~~
31 ~~to verify that the carrier is performing its duty. Not more~~

1 ~~than once in each 12 calendar months, the employee and the~~
2 ~~carrier may each request that the division review the status~~
3 ~~of the employee and determine whether the carrier has~~
4 ~~performed its duty with respect to whether the employee's~~
5 ~~unemployment or underemployment is a direct result of~~
6 ~~impairment from the compensable injury.~~

7 4.5. After the initial determination of supplemental
8 benefits, the employee must file a statement with the carrier
9 stating that the employee has earned less than 80 percent of
10 the employee's average weekly wage as a direct result of the
11 employee's impairment, stating the amount of wages the
12 employee earned in the filing period, and stating that the
13 employee has in good faith sought employment commensurate with
14 the employee's ability to work. The statement must be filed
15 quarterly on a form and in the manner prescribed by the
16 department division. The department division may modify the
17 filing period as appropriate to an individual case. Failure to
18 file a statement relieves the carrier of liability for
19 supplemental benefits for the period during which a statement
20 is not filed.

21 5.6. The carrier shall begin payment of supplemental
22 benefits not later than the seventh day after the expiration
23 date of the impairment income benefit period and shall
24 continue to timely pay those benefits. The carrier may request
25 a mediation conference for the purpose of contesting the
26 employee's entitlement to or the amount of supplemental income
27 benefits.

28 6.7. Supplemental benefits are calculated quarterly
29 and paid monthly. For purposes of calculating supplemental
30 benefits, 80 percent of the employee's average weekly wage and
31 the average wages the employee has earned per week are

1 compared quarterly. For purposes of this paragraph, if the
2 employee is offered a bona fide position of employment that
3 the employee is capable of performing, given the physical
4 condition of the employee and the geographic accessibility of
5 the position, the employee's weekly wages are considered
6 equivalent to the weekly wages for the position offered to the
7 employee.

8 ~~7.8.~~ Supplemental benefits are payable at the rate of
9 80 percent of the difference between 80 percent of the
10 employee's average weekly wage determined pursuant to s.
11 440.14 and the weekly wages the employee has earned during the
12 reporting period, not to exceed the maximum weekly income
13 benefit under s. 440.12.

14 ~~8.9.~~ The department ~~division~~ may by rule define terms
15 that are necessary for the administration of this section and
16 forms and procedures governing the method of payment of
17 supplemental benefits for dates of accidents before January 1,
18 1994, and for dates of accidents on or after January 1, 1994.

19 (c) Duration of temporary impairment and supplemental
20 income benefits.--The employee's eligibility for temporary
21 benefits, impairment income benefits, and supplemental
22 benefits terminates on the expiration of 401 weeks after the
23 date of injury.

24 (4) TEMPORARY PARTIAL DISABILITY.--

25 (a) In case of temporary partial disability,
26 compensation shall be equal to 80 percent of the difference
27 between 80 percent of the employee's average weekly wage and
28 the salary, wages, and other remuneration the employee is able
29 to earn, as compared weekly; however, the weekly benefits may
30 not exceed an amount equal to 66 2/3 percent of the
31 employee's average weekly wage at the time of injury. In order

1 to simplify the comparison of the preinjury average weekly
2 wage with the salary, wages, and other remuneration the
3 employee is able to earn, the department ~~division~~ may by rule
4 provide for the modification of the weekly comparison so as to
5 coincide as closely as possible with the injured worker's pay
6 periods. The amount determined to be the salary, wages, and
7 other remuneration the employee is able to earn shall in no
8 case be less than the sum actually being earned by the
9 employee, including earnings from sheltered employment.

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

20 (5) SUBSEQUENT INJURY.--

21 (a) The fact that an employee has suffered previous
22 disability, impairment, anomaly, or disease, or received
23 compensation therefor, shall not preclude her or him from
24 benefits for a subsequent aggravation or acceleration of the
25 preexisting condition nor preclude benefits for death
26 resulting therefrom, except that no benefits shall be payable
27 if the employee, at the time of entering into the employment
28 of the employer by whom the benefits would otherwise be
29 payable, falsely represents herself or himself in writing as
30 not having previously been disabled or compensated because of
31 such previous disability, impairment, anomaly, or disease and

1 | the employer detrimentally relies on the misrepresentation.
2 | Compensation for temporary disability, medical benefits, and
3 | wage-loss benefits shall not be subject to apportionment.

4 | (b) If a compensable permanent impairment, or any
5 | portion thereof, is a result of aggravation or acceleration of
6 | a preexisting condition, or is the result of merger with a
7 | preexisting impairment, an employee eligible to receive
8 | impairment benefits under paragraph (3)(a) shall receive such
9 | benefits for the total impairment found to result, excluding
10 | the degree of impairment existing at the time of the subject
11 | accident or injury or which would have existed by the time of
12 | the impairment rating without the intervention of the
13 | compensable accident or injury. The degree of permanent
14 | impairment attributable to the accident or injury shall be
15 | compensated in accordance with paragraph (3)(a). As used in
16 | this paragraph, "merger" means the combining of a preexisting
17 | permanent impairment with a subsequent compensable permanent
18 | impairment which, when the effects of both are considered
19 | together, result in a permanent impairment rating which is
20 | greater than the sum of the two permanent impairment ratings
21 | when each impairment is considered individually.

22 | (6) OBLIGATION TO REHIRE.--If the employer has not in
23 | good faith made available to the employee, within a 100-mile
24 | radius of the employee's residence, work appropriate to the
25 | employee's physical limitations within 30 days after the
26 | carrier notifies the employer of maximum medical improvement
27 | and the employee's physical limitations, the employer shall
28 | pay to the department division for deposit into the Workers'
29 | Compensation Administration Trust Fund a fine of \$250 for
30 | every \$5,000 of the employer's workers' compensation premium
31 | or payroll, not to exceed \$2,000 per violation, as the

1 department ~~division~~ requires by rule. The employer is not
2 subject to this subsection if the employee is receiving
3 permanent total disability benefits or if the employer has 50
4 or fewer employees.

5 (7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
6 employee refuses employment suitable to the capacity thereof,
7 offered to or procured therefor, such employee shall not be
8 entitled to any compensation at any time during the
9 continuance of such refusal unless at any time in the opinion
10 of the judge of compensation claims such refusal is
11 justifiable.

12 (8) EMPLOYEE LEAVES EMPLOYMENT.--If an injured
13 employee, when receiving compensation for temporary partial
14 disability, leaves the employment of the employer by whom she
15 or he was employed at the time of the accident for which such
16 compensation is being paid, the employee shall, upon securing
17 employment elsewhere, give to such former employer an
18 affidavit in writing containing the name of her or his new
19 employer, the place of employment, and the amount of wages
20 being received at such new employment; and, until she or he
21 gives such affidavit, the compensation for temporary partial
22 disability will cease. The employer by whom such employee was
23 employed at the time of the accident for which such
24 compensation is being paid may also at any time demand of such
25 employee an additional affidavit in writing containing the
26 name of her or his employer, the place of her or his
27 employment, and the amount of wages she or he is receiving;
28 and if the employee, upon such demand, fails or refuses to
29 make and furnish such affidavit, her or his right to
30 compensation for temporary partial disability shall cease
31 until such affidavit is made and furnished.

1 (9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case
2 an employee becomes an inmate of a public institution, then no
3 compensation shall be payable unless she or he has dependent
4 upon her or him for support a person or persons defined as
5 dependents elsewhere in this chapter, whose dependency shall
6 be determined as if the employee were deceased and to whom
7 compensation would be paid in case of death; and such
8 compensation as is due such employee shall be paid such
9 dependents during the time she or he remains such inmate.

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

13 (a) Weekly compensation benefits payable under this
14 chapter for disability resulting from injuries to an employee
15 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
16 be reduced to an amount whereby the sum of such compensation
17 benefits payable under this chapter and such total benefits
18 otherwise payable for such period to the employee and her or
19 his dependents, had such employee not been entitled to
20 benefits under this chapter, under 42 U.S.C. ss. 402 and 423,
21 does not exceed 80 percent of the employee's average weekly
22 wage. However, this provision shall not operate to reduce an
23 injured worker's benefits under this chapter to a greater
24 extent than such benefits would have otherwise been reduced
25 under 42 U.S.C. s. 424(a). This reduction of compensation
26 benefits is not applicable to any compensation benefits
27 payable for any week subsequent to the week in which the
28 injured worker reaches the age of 62 years.

29 (b) If the provisions of 42 U.S.C. s. 424(a) are
30 amended to provide for a reduction or increase of the
31 percentage of average current earnings that the sum of

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

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

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

6 (d) If compensation benefits are reduced pursuant to
7 this subsection, the minimum compensation provisions of s.
8 440.12(2) do not apply.

9 (11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
10 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
11 COMPENSATION.--

12 (a) No compensation benefits shall be payable for
13 temporary total disability or permanent total disability under
14 this chapter for any week in which the injured employee has
15 received, or is receiving, unemployment compensation benefits.

16 (b) If an employee is entitled to temporary partial
17 benefits pursuant to subsection (4) and unemployment
18 compensation benefits, such unemployment compensation benefits
19 shall be primary and the temporary partial benefits shall be
20 supplemental only, the sum of the two benefits not to exceed
21 the amount of temporary partial benefits which would otherwise
22 be payable.

23 (12) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
24 OFFICERS.--Any law enforcement officer as defined in s.
25 943.10(1), (2), or (3) who, while acting within the course of
26 employment as provided by s. 440.091, is maliciously or
27 intentionally injured and who thereby sustains a job-connected
28 disability compensable under this chapter shall be carried in
29 full-pay status rather than being required to use sick,
30 annual, or other leave. Full-pay status shall be granted only
31 after submission to the employing agency's head of a medical

1 report which gives a current diagnosis of the employee's
2 recovery and ability to return to work. ~~In no case shall~~ The
3 employee's salary and workers' compensation benefits may not
4 exceed the amount of the employee's regular salary
5 requirements.

6 (13) REPAYMENT.--If an employee has received a sum as
7 an indemnity benefit under any classification or category of
8 benefit under this chapter to which she or he is not entitled,
9 the employee is liable to repay that sum to the employer or
10 the carrier or to have that sum deducted from future benefits,
11 regardless of the classification of benefits, payable to the
12 employee under this chapter; however, a partial payment of the
13 total repayment may not exceed 20 percent of the amount of the
14 biweekly payment.

15 Section 23. Section 440.17, Florida Statutes, is
16 amended to read:

17 440.17 Guardian for minor or incompetent.--Prior to
18 the filing of a claim, the department ~~division~~, and after the
19 filing of a claim, a judge of compensation claims, may require
20 the appointment by a court of competent jurisdiction, for any
21 person who is mentally incompetent or a minor, of a guardian
22 or other representative to receive compensation payable to
23 such person under this chapter and to exercise the powers
24 granted to or to perform the duties required of such person
25 under this chapter; however, the judge of compensation claims,
26 in the judge of compensation claims' discretion, may designate
27 in the compensation award a person to whom payment of
28 compensation may be paid for a minor or incompetent, in which
29 event payment to such designated person shall discharge all
30 liability for such compensation.

31

1 Section 24. Section 440.185, Florida Statutes, is
2 amended to read:

3 440.185 Notice of injury or death; reports; penalties
4 for violations.--

5 (1) An employee who suffers an injury arising out of
6 and in the course of employment shall advise his or her
7 employer of the injury within 30 days after the date of or
8 initial manifestation of the injury. Failure to so advise the
9 employer shall bar a petition under this chapter unless:

10 (a) The employer or the employer's agent had actual
11 knowledge of the injury;

12 (b) The cause of the injury could not be identified
13 without a medical opinion and the employee advised the
14 employer within 30 days after obtaining a medical opinion
15 indicating that the injury arose out of and in the course of
16 employment;

17 (c) The employer did not put its employees on notice
18 of the requirements of this section by posting notice pursuant
19 to s. 440.055; or

20 (d) Exceptional circumstances, outside the scope of
21 paragraph (a) or paragraph (b) justify such failure.

22
23 In the event of death arising out of and in the course of
24 employment, the requirements of this subsection shall be
25 satisfied by the employee's agent or estate. Documents
26 prepared by counsel in connection with litigation, including
27 but not limited to notices of appearance, petitions, motions,
28 or complaints, shall not constitute notice for purposes of
29 this section.

30 (2) Within 7 days after actual knowledge of injury or
31 death, the employer shall report such injury or death to its

1 carrier, in a format prescribed by the department division,
2 and shall provide a copy of such report to the employee or the
3 employee's estate. The report of injury shall contain the
4 following information:

- 5 (a) The name, address, and business of the employer;
6 (b) The name, social security number, street, mailing
7 address, telephone number, and occupation of the employee;
8 (c) The cause and nature of the injury or death;
9 (d) The year, month, day, and hour when, and the
10 particular locality where, the injury or death occurred; and
11 (e) Such other information as the department requires
12 ~~division may require~~.

13

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

25 (3) In addition to the requirements of subsection (2),
26 the employer shall notify the department division within 24
27 hours by telephone or telegraph of any injury resulting in
28 death. However, this special notice shall not be required
29 when death results subsequent to the submission to the
30 department division of a previous report of the injury
31 pursuant to subsection (2).

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

22 (5) Additional reports with respect to such injury and
23 of the condition of such employee, including copies of medical
24 reports, funeral expenses, and wage statements, shall be filed
25 by the employer or carrier to the department ~~division~~ at such
26 times and in such manner as the department ~~division~~ may
27 prescribe by rule. In carrying out ~~its~~ responsibilities under
28 this chapter, the department and agency ~~division~~ may by rule
29 provide for the obtaining of any medical records relating to
30 medical treatment provided pursuant to this chapter,
31 notwithstanding the provisions of ss. 90.503 and 395.3025(4).

1 (6) In the absence of a stipulation by the parties,
2 reports provided for in subsection (2), subsection (4), or
3 subsection (5) shall not be evidence of any fact stated in
4 such report in any proceeding relating thereto, except for
5 medical reports which, if otherwise qualified, may be admitted
6 at the discretion of the judge of compensation claims.

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

23 (8) When a claimant, employer, or carrier has the
24 right, or is required, to mail a report or notice with
25 required copies within the times prescribed in subsection (2),
26 subsection (4), or subsection (5), such mailing will be
27 completed and in compliance with this section if it is
28 postmarked and mailed prepaid to the appropriate recipient
29 prior to the expiration of the time periods prescribed in this
30 section.

31

1 (9) Any employer or carrier who fails or refuses to
2 timely send any form, report, or notice required by this
3 section shall be subject to a civil penalty not to exceed \$500
4 for each such failure or refusal. However, any employer who
5 fails to notify the carrier of the injury on the prescribed
6 form or by letter within the 7 days required in subsection (2)
7 shall be liable for the civil penalty, which shall be paid by
8 the employer and not the carrier. Failure by the employer to
9 meet its obligations under subsection (2) shall not relieve
10 the carrier from liability for the civil penalty if it fails
11 to comply with subsections (4) and (5).

12 (10) The department ~~division~~ may by rule prescribe
13 forms and procedures governing the submission of the change in
14 claims administration report and the risk class code and
15 standard industry code report for all lost time and denied
16 lost-time cases. The department ~~division~~ may by rule define
17 terms that are necessary for the effective administration of
18 this section.

19 (11) Any information in a report of injury or illness
20 filed pursuant to this section that would identify an ill or
21 injured employee is confidential and exempt from the
22 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
23 Constitution. This subsection is subject to the Open
24 Government Sunset Review Act of 1995 in accordance with s.
25 119.15, and shall stand repealed on October 2, 2003, unless
26 reviewed and saved from repeal through reenactment by the
27 Legislature.

28 Section 25. Subsection (1) of section 440.191, Florida
29 Statutes, is amended to read:

30 440.191 Employee Assistance and Ombudsman Office.--
31

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

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

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

28 Section 26. Subsection (1) of section 440.192, Florida
29 Statutes, is amended to read:

30 440.192 Procedure for resolving benefit disputes.--
31

1 (1) Subject to s. 440.191, any employee who has not
2 received a benefit to which the employee believes she or he is
3 entitled under this chapter shall file by certified mail, or
4 by electronic means approved by the Deputy Chief Judge, with
5 the Office of the Judges of Compensation Claims a petition for
6 benefits which meets the requirements of this section. The
7 department ~~division~~ shall inform employees of the location of
8 the Office of the Judges of Compensation Claims for purposes
9 of filing a petition for benefits. The employee shall also
10 serve copies of the petition for benefits by certified mail,
11 or by electronic means approved by the Deputy Chief Judge,
12 upon the employer and the employer's carrier. The Deputy Chief
13 Judge shall refer the petitions to the judges of compensation
14 claims.

15 Section 27. Subsections (1), (3), and (4) of section
16 440.1925, Florida Statutes, are amended to read:

17 440.1925 Procedure for resolving maximum medical
18 improvement or permanent impairment disputes.--

19 (1) Notwithstanding the limitations on carrier
20 independent medical examinations in s. 440.13, an employee or
21 carrier who wishes to obtain an opinion other than the opinion
22 of the treating physician or an agency ~~a division~~ advisor on
23 the issue of permanent impairment may obtain one independent
24 medical examination, except that the employee or carrier who
25 selects the treating physician is not entitled to obtain an
26 alternate opinion on the issue of permanent impairment, unless
27 the parties otherwise agree. This section and s. 440.13(2) do
28 not permit an employee or a carrier to obtain an additional
29 medical opinion on the issue of permanent impairment by
30 requesting an alternate treating physician pursuant to s.
31 440.13.

1 (3) Disputes shall be resolved under this section
2 when:

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

6 (b) The independent medical examiner's opinion on the
7 date of the employee's maximum medical improvement and degree
8 or permanent impairment differs from the opinion of the
9 employee's treating physician on either of those issues, or
10 from the opinion of the expert medical advisor appointed by
11 the agency ~~division~~ on the degree of permanent impairment; or

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

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

20 Section 28. Subsections (3), (6), (8), (9), (10),
21 (11), (12), (15), (16), and (17) of section 440.20, Florida
22 Statutes, are amended to read:

23 440.20 Time for payment of compensation; penalties for
24 late payment.--

25 (3) Upon making payment, or upon suspension or
26 cessation of payment for any reason, the carrier shall
27 immediately notify the department ~~division~~ that it has
28 commenced, suspended, or ceased payment of compensation. The
29 department ~~division~~ may require such notification in any
30 format and manner it deems necessary to obtain accurate and
31 timely reporting.

1 (6) If any installment of compensation for death or
2 dependency benefits, disability, permanent impairment, or wage
3 loss payable without an award is not paid within 7 days after
4 it becomes due, as provided in subsection (2), subsection (3),
5 or subsection (4), there shall be added to such unpaid
6 installment a punitive penalty of an amount equal to 20
7 percent of the unpaid installment or \$5, which shall be paid
8 at the same time as, but in addition to, such installment of
9 compensation, unless notice is filed under subsection (4) or
10 unless such nonpayment results from conditions over which the
11 employer or carrier had no control. When any installment of
12 compensation payable without an award has not been paid within
13 7 days after it became due and the claimant concludes the
14 prosecution of the claim before a judge of compensation claims
15 without having specifically claimed additional compensation in
16 the nature of a penalty under this section, the claimant will
17 be deemed to have acknowledged that, owing to conditions over
18 which the employer or carrier had no control, such installment
19 could not be paid within the period prescribed for payment and
20 to have waived the right to claim such penalty. However,
21 during the course of a hearing, the judge of compensation
22 claims shall on her or his own motion raise the question of
23 whether such penalty should be awarded or excused. The
24 department ~~division~~ may assess without a hearing the punitive
25 penalty against either the employer or the insurance carrier,
26 depending upon who was at fault in causing the delay. The
27 insurance policy cannot provide that this sum will be paid by
28 the carrier if the department ~~division~~ or the judge of
29 compensation claims determines that the punitive penalty
30 should be made by the employer rather than the carrier. Any
31 additional installment of compensation paid by the carrier

1 pursuant to this section shall be paid directly to the
2 employee by check or, if authorized by the employee, by direct
3 deposit into the employee's account at a financial
4 institution. As used in this subsection, the term "financial
5 institution" means a financial institution as defined in s.
6 655.005(1)(h).

7 (8) In addition to any other penalties provided by
8 this chapter for late payment, if any installment of
9 compensation is not paid when it becomes due, the employer,
10 carrier, or servicing agent shall pay interest thereon at the
11 rate of 12 percent per year from the date the installment
12 becomes due until it is paid, whether such installment is
13 payable without an order or under the terms of an order. The
14 interest payment shall be the greater of the amount of
15 interest due or \$5.

16 (a) Within 30 days after final payment of compensation
17 has been made, the employer, carrier, or servicing agent shall
18 send to the department ~~division~~ a notice, in accordance with a
19 format and manner ~~form~~ prescribed by the department ~~division~~,
20 stating that such final payment has been made and stating the
21 total amount of compensation paid, the name of the employee
22 and of any other person to whom compensation has been paid,
23 the date of the injury or death, and the date to which
24 compensation has been paid.

25 (b) If the employer, carrier, or servicing agent fails
26 to so notify the department ~~division~~ within such time, the
27 department ~~division~~ shall assess against such employer,
28 carrier, or servicing agent a civil penalty in an amount not
29 over \$100.

30 (c) In order to ensure carrier compliance under this
31 chapter and the insurance code, the department ~~division~~ shall

1 | monitor the performance of carriers by conducting market
2 | conduct examinations, as provided in s. 624.3161, and
3 | conducting investigations as provided in s. 624.317. The
4 | department division shall impose penalties on ~~establish by~~
5 | ~~rule minimum performance standards for carriers to ensure that~~
6 | ~~a minimum of 90 percent of all compensation benefits are~~
7 | ~~timely paid. The division shall fine a carrier as provided in~~
8 | ~~s. 440.13(11)(b) up to \$50 for each late payment of~~
9 | ~~compensation pursuant to s. 624.4211 that is below the minimum~~
10 | ~~90 percent performance standard.~~ This paragraph does not
11 | affect the imposition of any penalties or interest due to the
12 | claimant. If a carrier contracts with a servicing agent to
13 | fulfill its administrative responsibilities under this
14 | chapter, the payment practices of the servicing agent are
15 | deemed the payment practices of the carrier for the purpose of
16 | assessing penalties against the carrier.

17 | (9) The department division may upon its own
18 | initiative at any time in a case in which payments are being
19 | made without an award investigate same and shall, in any case
20 | in which the right to compensation is controverted, or in
21 | which payments of compensation have been stopped or suspended,
22 | upon receipt of notice from any person entitled to
23 | compensation or from the employer that the right to
24 | compensation is controverted or that payments of compensation
25 | have been stopped or suspended, make such investigations,
26 | cause such medical examination to be made, or hold such
27 | hearings, and take such further action as it considers will
28 | properly protect the rights of all parties.

29 | (10) Whenever the department division deems it
30 | advisable, it may require any employer to make a deposit with
31 | the Treasurer to secure the prompt and convenient payments of

1 such compensation; and payments therefrom upon any awards
2 shall be made upon order of the department ~~division~~ or judge
3 of compensation claims.

4 (11)(a) When a claimant is not represented by counsel,
5 upon joint petition of all interested parties, a lump-sum
6 payment in exchange for the employer's or carrier's release
7 from liability for future medical expenses, as well as future
8 payments of compensation expenses and any other benefits
9 provided under this chapter, shall be allowed at any time in
10 any case in which the employer or carrier has filed a written
11 notice of denial within 120 days after the employer receives
12 notice of the injury, and the judge of compensation claims at
13 a hearing to consider the settlement proposal finds a
14 justiciable controversy as to legal or medical compensability
15 of the claimed injury or the alleged accident. The employer
16 or carrier may not pay any attorney's fees on behalf of the
17 claimant for any settlement under this section unless
18 expressly authorized elsewhere in this chapter. Upon the joint
19 petition of all interested parties and after giving due
20 consideration to the interests of all interested parties, the
21 judge of compensation claims may enter a compensation order
22 approving and authorizing the discharge of the liability of
23 the employer for compensation and remedial treatment, care,
24 and attendance, as well as rehabilitation expenses, by the
25 payment of a lump sum. Such a compensation order so entered
26 upon joint petition of all interested parties is not subject
27 to modification or review under s. 440.28. If the settlement
28 proposal together with supporting evidence is not approved by
29 the judge of compensation claims, it shall be considered void.
30 Upon approval of a lump-sum settlement under this subsection,
31 the judge of compensation claims shall send a report to the

1 Chief Judge of the amount of the settlement and a statement of
2 the nature of the controversy. The Chief Judge shall keep a
3 record of all such reports filed by each judge of compensation
4 claims and shall submit to the Legislature a summary of all
5 such reports filed under this subsection annually by September
6 15.

7 (b) When a claimant is not represented by counsel,
8 upon joint petition of all interested parties, a lump-sum
9 payment in exchange for the employer's or carrier's release
10 from liability for future medical expenses, as well as future
11 payments of compensation and rehabilitation expenses, and any
12 other benefits provided under this chapter, may be allowed at
13 any time in any case after the injured employee has attained
14 maximum medical improvement. An employer or carrier may not
15 pay any attorney's fees on behalf of the claimant for any
16 settlement, unless expressly authorized elsewhere in this
17 chapter. A compensation order so entered upon joint petition
18 of all interested parties shall not be subject to modification
19 or review under s. 440.28. However, a judge of compensation
20 claims is not required to approve any award for lump-sum
21 payment when it is determined by the judge of compensation
22 claims that the payment being made is in excess of the value
23 of benefits the claimant would be entitled to under this
24 chapter. The judge of compensation claims shall make or cause
25 to be made such investigations as she or he considers
26 necessary, in each case in which the parties have stipulated
27 that a proposed final settlement of liability of the employer
28 for compensation shall not be subject to modification or
29 review under s. 440.28, to determine whether such final
30 disposition will definitely aid the rehabilitation of the
31 injured worker or otherwise is clearly for the best interests

1 of the person entitled to compensation and, in her or his
2 discretion, may have an investigation made by the Department
3 of Education Rehabilitation Section of the Division of
4 ~~Workers' Compensation~~. The joint petition and the report of
5 any investigation so made will be deemed a part of the
6 proceeding. An employer shall have the right to appear at any
7 hearing pursuant to this subsection which relates to the
8 discharge of such employer's liability and to present
9 testimony at such hearing. The carrier shall provide
10 reasonable notice to the employer of the time and date of any
11 such hearing and inform the employer of her or his rights to
12 appear and testify. The probability of the death of the
13 injured employee or other person entitled to compensation
14 before the expiration of the period during which such person
15 is entitled to compensation shall, in the absence of special
16 circumstances making such course improper, be determined in
17 accordance with the most recent United States Life Tables
18 published by the National Office of Vital Statistics of the
19 United States Department of Health and Human Services. The
20 probability of the happening of any other contingency
21 affecting the amount or duration of the compensation, except
22 the possibility of the remarriage of a surviving spouse, shall
23 be disregarded. As a condition of approving a lump-sum payment
24 to a surviving spouse, the judge of compensation claims, in
25 the judge of compensation claims' discretion, may require
26 security which will ensure that, in the event of the
27 remarriage of such surviving spouse, any unaccrued future
28 payments so paid may be recovered or recouped by the employer
29 or carrier. Such applications shall be considered and
30 determined in accordance with s. 440.25.

31

1 (c) Notwithstanding s. 440.21(2), when a claimant is
2 represented by counsel, the claimant may waive all rights to
3 any and all benefits under this chapter by entering into a
4 settlement agreement releasing the employer and the carrier
5 from liability for workers' compensation benefits in exchange
6 for a lump-sum payment to the claimant. The settlement
7 agreement requires approval by the judge of compensation
8 claims only as to the attorney's fees paid to the claimant's
9 attorney by the claimant. The parties need not submit any
10 information or documentation in support of the settlement,
11 except as needed to justify the amount of the attorney's fees.
12 Neither the employer nor the carrier is responsible for any
13 attorney's fees relating to the settlement and release of
14 claims under this section. Payment of the lump-sum settlement
15 amount must be made within 14 days after the date the judge of
16 compensation claims mails the order approving the attorney's
17 fees. Any order entered by a judge of compensation claims
18 approving the attorney's fees as set out in the settlement
19 under this subsection is not considered to be an award and is
20 not subject to modification or review. The judge of
21 compensation claims shall report these settlements to the
22 Deputy Chief Judge in accordance with the requirements set
23 forth in paragraphs (a) and (b). Settlements entered into
24 under this subsection are valid and apply to all dates of
25 accident.

26 (d)1. With respect to any lump-sum settlement under
27 this subsection, a judge of compensation claims must consider
28 at the time of the settlement, whether the settlement
29 allocation provides for the appropriate recovery of child
30 support arrearages.

31

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

6 (e) This section applies to all claims that the
7 parties have not previously settled, regardless of the date of
8 accident.

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

15 (b) When the claimant has reached maximum recovery and
16 returned to her or his former or equivalent employment with no
17 substantial reduction in wages, such approval of a reasonable
18 advance payment of a part of the compensation payable to the
19 claimant may be given informally by letter by a judge of
20 compensation claims, ~~by the division director, or by the~~
21 department ~~administrator of claims of the division.~~

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

26 1. An advance payment of compensation not in excess of
27 \$2,000 may be approved informally by letter, without hearing,
28 by any judge of compensation claims or the Chief Judge.

29 2. An advance payment of compensation not in excess of
30 \$2,000 may be ordered by any judge of compensation claims
31 after giving the interested parties an opportunity for a

1 hearing thereon pursuant to not less than 10 days' notice by
2 mail, unless such notice is waived, and after giving due
3 consideration to the interests of the person entitled thereto.
4 When the parties have stipulated to an advance payment of
5 compensation not in excess of \$2,000, such advance may be
6 approved by an order of a judge of compensation claims, with
7 or without hearing, or informally by letter by any such judge
8 of compensation claims, or by the department ~~division~~
9 ~~director~~, if such advance is found to be for the best
10 interests of the person entitled thereto.

11 3. When the parties have stipulated to an advance
12 payment in excess of \$2,000, subject to the approval of the
13 department ~~division~~, such payment may be approved by a judge
14 of compensation claims by order if the judge finds that such
15 advance payment is for the best interests of the person
16 entitled thereto and is reasonable under the circumstances of
17 the particular case. The judge of compensation claims shall
18 make or cause to be made such investigations as she or he
19 considers necessary concerning the stipulation and, in her or
20 his discretion, may have an investigation of the matter made
21 by the Department of Education ~~Rehabilitation Section of the~~
22 ~~division~~. The stipulation and the report of any investigation
23 shall be deemed a part of the record of the proceedings.

24 (d) When an application for an advance payment in
25 excess of \$2,000 is opposed by the employer or carrier, it
26 shall be heard by a judge of compensation claims after giving
27 the interested parties not less than 10 days' notice of such
28 hearing by mail, unless such notice is waived. In her or his
29 discretion, the judge of compensation claims may have an
30 investigation of the matter made by the Department of
31 Education ~~Rehabilitation Section of the division~~, in which

1 event the report and recommendation of that section will be
2 deemed a part of the record of the proceedings. If the judge
3 of compensation claims finds that such advance payment is for
4 the best interests of the person entitled to compensation,
5 will not materially prejudice the rights of the employer and
6 carrier, and is reasonable under the circumstances of the
7 case, she or he may order the same paid. However, in no event
8 may any such advance payment under this paragraph be granted
9 in excess of \$7,500 or 26 weeks of benefits in any 48-month
10 period, whichever is greater, from the date of the last
11 advance payment.

12 (15)(a) The department ~~division~~ shall examine on an
13 ongoing basis claims files in accordance with ss. 624.3161 and
14 624.310(5) in order to identify questionable claims-handling
15 techniques, questionable patterns or practices of claims, or a
16 pattern of repeated unreasonably controverted claims by
17 employers, carriers, and ~~self-insurers, health care providers,~~
18 ~~health care facilities, training and education providers, or~~
19 ~~any others~~ providing services to employees pursuant to this
20 chapter ~~and may certify its findings to the Department of~~
21 insurance. If the department finds such questionable
22 techniques, patterns, or repeated unreasonably controverted
23 claims as constitute a general business practice of a carrier,
24 ~~in the judgment of the division shall be certified in its~~
25 ~~findings by the division to the Department of Insurance or~~
26 ~~such other appropriate licensing agency. Such certification by~~
27 ~~the division is exempt from the provisions of chapter 120.~~
28 ~~Upon receipt of any such certification, the department of~~
29 ~~insurance~~ shall take appropriate action so as to bring such
30 general business practices to a halt pursuant to s.
31 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.

1 The department ~~division~~ may initiate investigations of
2 questionable techniques, patterns, practices, or repeated
3 unreasonably controverted claims. The department ~~division~~ may
4 by rule establish penalties for violations forms and
5 procedures for corrective action plans and for auditing
6 carriers.

7 (b) As to any examination, investigation, or hearing
8 being conducted under this chapter, the Treasurer or his or
9 ~~her Secretary of Labor and Employment Security or the~~
10 ~~secretary's~~ designee:

11 1. May administer oaths, examine and cross-examine
12 witnesses, receive oral and documentary evidence; and

13 2. Shall have the power to subpoena witnesses, compel
14 their attendance and testimony, and require by subpoena the
15 production of books, papers, records, files, correspondence,
16 documents, or other evidence which is relevant to the inquiry.

17 (c) If any person refuses to comply with any such
18 subpoena or to testify as to any matter concerning which she
19 or he may be lawfully interrogated, the Circuit Court of Leon
20 County or of the county wherein such examination,
21 investigation, or hearing is being conducted, or of the county
22 wherein such person resides, may, on the application of the
23 department, issue an order requiring such person to comply
24 with the subpoena and to testify.

25 (d) Subpoenas shall be served, and proof of such
26 service made, in the same manner as if issued by a circuit
27 court. Witness fees, costs, and reasonable travel expenses, if
28 claimed, shall be allowed the same as for testimony in a
29 circuit court.

30 (e) ~~The division shall publish annually a report which~~
31 ~~indicates the promptness of first payment of compensation~~

1 ~~records of each carrier or self-insurer so as to focus~~
2 ~~attention on those carriers or self-insurers with poor payment~~
3 ~~records for the preceding year. A copy of such report shall be~~
4 ~~certified to~~ The department of Insurance which shall take
5 appropriate steps so as to cause such poor carrier payment
6 practices to halt pursuant to s. 440.38(3)(a). In addition,
7 the department ~~division~~ shall take appropriate action so as to
8 halt such poor payment practices of self-insurers. "Poor
9 payment practice" means a practice of late payment sufficient
10 to constitute a general business practice.

11 (f) The department ~~division~~ shall promulgate rules
12 providing guidelines to carriers, self-insurers, and employers
13 to indicate behavior that may be construed as questionable
14 claims-handling techniques, questionable patterns of claims,
15 repeated unreasonably controverted claims, or poor payment
16 practices.

17 (16) A ~~No~~ penalty assessed under this section may not
18 be recouped by any carrier or self-insurer in the rate base,
19 the premium, or any rate filing. ~~In the case of carriers, The~~
20 Department of Insurance shall enforce this subsection; ~~and in~~
21 ~~the case of self-insurers, the division shall enforce this~~
22 ~~subsection.~~

23 (17) The department ~~division~~ may by rule establish
24 audit procedures and set standards for the Automated Carrier
25 Performance System.

26 Section 29. Subsections (1) and (2) of section
27 440.207, Florida Statutes, are amended to read:

28 440.207 Workers' compensation system guide.--

29 (1) The department ~~Division of Workers' Compensation~~
30 ~~of the Department of Labor and Employment Security~~ shall
31 educate all persons providing or receiving benefits pursuant

1 to this chapter as to their rights and responsibilities under
2 this chapter.

3 (2) The department ~~division~~ shall publish an
4 understandable guide to the workers' compensation system which
5 shall contain an explanation of benefits provided; services
6 provided by the Employee Assistance and Ombudsman Office;
7 procedures regarding mediation, the hearing process, and civil
8 and criminal penalties; relevant rules of the department
9 ~~division~~; and such other information as the department
10 ~~division~~ believes will inform employees, employers, carriers,
11 and those providing services pursuant to this chapter of their
12 rights and responsibilities under this chapter and the rules
13 of the department ~~division~~. For the purposes of this
14 subsection, a guide is understandable if the text of the guide
15 is written at a level of readability not exceeding the eighth
16 grade level, as determined by a recognized readability test.

17 Section 30. Subsection (1) of section 440.211, Florida
18 Statutes, is amended to read:

19 440.211 Authorization of collective bargaining
20 agreement.--

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

28 (a) An alternative dispute resolution system to
29 supplement, modify, or replace the provisions of this chapter
30 which may include, but is not limited to, conciliation,
31

1 mediation, and arbitration. Arbitration held pursuant to this
2 section shall be binding on the parties.

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

6 (c) The use of a limited list of physicians to conduct
7 independent medical examinations which the parties may agree
8 shall be the exclusive source of independent medical examiners
9 pursuant to this chapter.

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

12 (e) A vocational rehabilitation or retraining program.

13 Section 31. Subsections (1), (2), and (3) of section
14 440.24, Florida Statutes, are amended to read:

15 440.24 Enforcement of compensation orders;
16 penalties.--

17 (1) In case of default by the employer or carrier in
18 the payment of compensation due under any compensation order
19 of a judge of compensation claims or other failure by the
20 employer or carrier to comply with such order within 10 days
21 after the order becomes final, any circuit court of this state
22 within the jurisdiction of which the employer or carrier
23 resides or transacts business shall, upon application by the
24 department ~~division~~ or any beneficiary under such order, have
25 jurisdiction to issue a rule nisi directing such employer or
26 carrier to show cause why a writ of execution, or such other
27 process as may be necessary to enforce the terms of such
28 order, shall not be issued, and, unless such cause is shown,
29 the court shall have jurisdiction to issue a writ of execution
30 or such other process or final order as may be necessary to
31

1 enforce the terms of such order of the judge of compensation
2 claims.

3 (2) In any case where the employer is insured and the
4 carrier fails to comply with any compensation order of a judge
5 of compensation claims or court within 10 days after such
6 order becomes final, the department ~~the division shall notify~~
7 ~~the Department of Insurance of such failure, and the~~
8 ~~Department of Insurance~~ shall thereupon suspend the license of
9 such carrier to do an insurance business in this state, until
10 such carrier has complied with such order.

11 (3) In any case where the employer is a self-insurer
12 and fails to comply with any compensation order of a judge of
13 compensation claims or court within 10 days after such order
14 becomes final, the department ~~division~~ may suspend or revoke
15 any authorization previously given to the employer to become a
16 self-insurer, and the department ~~division~~ may sell such of the
17 securities deposited by such self-insurer with the department
18 ~~division~~ as may be necessary to satisfy such order.

19 Section 32. Subsections (5) and (7) of section 440.25,
20 Florida Statutes, are amended to read:

21 440.25 Procedures for mediation and hearings.--

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

27 (b) An appellant may be relieved of any necessary
28 filing fee by filing a verified petition of indigency for
29 approval as provided in s. 57.081(1) and may be relieved in
30 whole or in part from the costs for preparation of the record
31 on appeal if, within 15 days after the date notice of the

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

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

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

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

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

13 Section 33. Section 440.271, Florida Statutes, is
14 amended to read:

15 440.271 Appeal of order of judge of compensation
16 claims.--Review of any order of a judge of compensation claims
17 entered pursuant to this chapter shall be by appeal to the
18 District Court of Appeal, First District. Appeals shall be
19 filed in accordance with rules of procedure prescribed by the
20 Supreme Court for review of such orders. The department
21 ~~division~~ shall be given notice of any proceedings pertaining
22 to s. 440.25, regarding indigency, or s. 440.49, regarding the
23 Special Disability Trust Fund, and shall have the right to
24 intervene in any proceedings.

25 Section 34. Section 440.35, Florida Statutes, is
26 amended to read:

27 440.35 Record of injury or death.--Every employer
28 shall keep a record in respect of any injury to an employee.
29 Such record shall contain such information of disability or
30 death in respect of such injury as the department ~~division~~ may
31 by regulation require, and shall be available to inspection by

1 the department ~~division~~ or by any state authority at such time
2 and under such conditions as the department ~~division~~ may by
3 regulation prescribe.

4 Section 35. Subsections (1), (2), and (3), of section
5 440.38, Florida Statutes, are amended to read:

6 440.38 Security for compensation; insurance carriers
7 and self-insurers.--

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

10 (a) By insuring and keeping insured the payment of
11 such compensation with any stock company or mutual company or
12 association or exchange, authorized to do business in the
13 state;

14 (b) By furnishing satisfactory proof to the Florida
15 Self-Insurers Guaranty Association, Incorporated, created in
16 s. 440.385, that it has the financial strength necessary to
17 assure timely payment of all current and future claims
18 ~~division of its financial ability to pay such compensation~~
19 individually and on behalf of its subsidiary and affiliated
20 companies with employees in this state and receiving an
21 authorization from the Department of Insurance ~~division~~ to pay
22 such compensation directly. The association shall review the
23 financial strength of applicants for membership, current
24 members, and former members and make recommendations to the
25 department regarding their qualifications to self-insure in
26 accordance with this act and ss. 440.385 and 440.386. The
27 department shall consult with the association on any
28 recommendation before taking action.~~the following provisions:~~

29 1. The association ~~division~~ may recommend that the
30 Department of Insurance require an employer to deposit with
31 the association ~~division~~ a qualifying security deposit. The

1 association division shall recommend ~~determine~~ the type and
2 amount of the qualifying security deposit and shall prescribe
3 conditions for the qualifying security deposit, which shall
4 include authorization for the association division to call the
5 qualifying security deposit in the case of default to pay
6 compensation awards and related expenses of the association.
7 ~~In addition, the division shall require,~~As a condition to
8 authorization to self-insure, the employer shall provide proof
9 that the employer has provided for competent personnel with
10 whom to deliver benefits and to provide a safe working
11 environment. ~~Further,~~The employer division shall also
12 provide evidence of ~~require such employer to carry~~ reinsurance
13 at levels that will ensure the financial strength and
14 actuarial soundness of such employer in accordance with rules
15 adopted promulgated by the Department of Insurance division.
16 The Department of Insurance division may by rule require that,
17 in the event of an individual self-insurer's insolvency, such
18 qualifying security deposits and reinsurance policies are
19 payable to the ~~Florida Self-Insurers Guaranty~~ association,
20 ~~incorporated, created pursuant to s. 440.385.~~ Any employer
21 securing compensation in accordance with the provisions of
22 this paragraph shall be known as a self-insurer and shall be
23 classed as a carrier of her or his own insurance. All such
24 employers shall, if requested, provide the association an
25 actuarial report signed by a member of the American Academy of
26 Actuaries providing an opinion of the appropriate present
27 value of the reserves for current and future compensation
28 claims. If any member or former member of the association
29 refuses to timely provide such a report, the association may
30 obtain an order from a circuit court requiring the member to
31 produce such a report and ordering such other relief as the

1 court determines appropriate. The association is entitled to
2 recover all reasonable costs and attorney's fees in such
3 proceedings.

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

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

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

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

28 a. Surety bonds, in a form and containing such terms
29 as prescribed by the association ~~division~~, issued by a
30 corporation surety authorized to transact surety business by
31 the Department of Insurance, and whose policyholders' and

1 financial ratings, as reported in A.M. Best's Insurance
2 Reports, Property-Liability, are not less than "A" and "V",
3 respectively.

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

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

31

1 (c) By entering into a contract with a public utility
2 under an approved utility-provided self-insurance program as
3 set forth in s. 624.46225 in effect as of July 1, 1983. The
4 Department of Insurance ~~division~~ shall adopt rules to
5 implement this paragraph;

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

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

1 or a preferred provider organization. The premium for such
2 24-hour health insurance policy shall be paid entirely by the
3 employer. The 24-hour health insurance policy may use
4 deductibles and coinsurance provisions that require the
5 employee to pay a portion of the actual medical care received
6 by the employee. If an employer obtains a 24-hour health
7 insurance policy or self-insured plan to secure payment of
8 compensation as to medical benefits, the employer must also
9 obtain an insurance policy or policies that provide indemnity
10 benefits as follows:

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

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

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

21 4. Policies providing coverage under this subsection
22 must use prescribed and acceptable underwriting standards,
23 forms, and policies approved by the Department of Insurance.
24 If any insurance policy that provides coverage under this
25 section is canceled, terminated, or nonrenewed for any reason,
26 the cancellation, termination, or nonrenewal is ineffective
27 until the self-insured employer or insurance carrier or
28 carriers notify ~~the division and~~ the Department of Insurance
29 of the cancellation, termination, or nonrenewal, and until the
30 Department of Insurance division has actually received the
31 notification. The Department of Insurance ~~division~~ must be

1 notified of replacement coverage under a workers' compensation
2 and employer's liability insurance policy or plan by the
3 employer prior to the effective date of the cancellation,
4 termination, or nonrenewal; or

5 (f) By entering into a contract with an individual
6 self-insurer under an approved individual
7 self-insurer-provided self-insurance program as set forth in
8 s. 624.46225. The Department of Insurance ~~division~~ may adopt
9 rules to administer this subsection.

10 (2)(a) The Department of Insurance ~~division~~ shall
11 adopt rules by which businesses may become qualified to
12 provide underwriting claims-adjusting, loss control, and
13 safety engineering services to self-insurers.

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

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

26 ~~(a)(b)~~ The Department of Insurance ~~division~~ shall
27 suspend or revoke any authorization to a self-insurer for
28 failure to comply with this act or for good cause, as defined
29 by rule of the department ~~division~~. No suspension or
30 revocation shall affect the liability of any self-insurer
31 already incurred.

1 **(b)**~~(c)~~ Violation of s. 440.381 by a self-insurance
2 fund shall result in the imposition of a fine not to exceed
3 \$1,000 per audit if the self-insurance fund fails to act on
4 said audits by correcting errors in employee classification or
5 accepted applications for coverage where it knew employee
6 classifications were incorrect. Such fines shall be levied by
7 the Department of Insurance ~~division~~ and deposited into the
8 Workers' Compensation Administration Trust Fund.

9 Section 36. Subsections (3) and (7) of section
10 440.381, Florida Statutes, are amended to read:

11 440.381 Application for coverage; reporting payroll;
12 payroll audit procedures; penalties.--

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

1 audit rules must include, but need not be limited to, the use
2 of state and federal reports of employee income, payroll and
3 other accounting records, certificates of insurance maintained
4 by subcontractors, and duties of employees.

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

29 Section 37. Section 440.385, Florida Statutes, is
30 amended to read:

31

1 440.385 Florida Self-Insurers Guaranty Association,
2 Incorporated.--

3 (1) CREATION OF ASSOCIATION.--

4 (a) There is created a nonprofit corporation to be
5 known as the "Florida Self-Insurers Guaranty Association,
6 Incorporated," hereinafter referred to as "the association."
7 Upon incorporation of the association, all individual
8 self-insurers as defined in ss. 440.02(23)(a) and
9 440.38(1)(b), other than individual self-insurers which are
10 public utilities or governmental entities, shall be members of
11 the association as a condition of their authority to
12 individually self-insure in this state. The association shall
13 perform its functions under a plan of operation as established
14 and approved under subsection (5) and shall exercise its
15 powers and duties through a board of directors as established
16 under subsection (2). The association ~~corporation~~ shall have
17 those powers granted or permitted associations ~~corporations~~
18 not for profit, as provided in chapter 617. The activities of
19 the association are subject to review by the Department of
20 Insurance. The Department of Insurance has oversight
21 responsibility as set forth in this act. The association is
22 specifically authorized to enter into agreements with the
23 State of Florida to perform specified services.

24 (b) A member may voluntarily withdraw from the
25 association when the member voluntarily terminates the
26 self-insurance privilege and pays all assessments due to the
27 date of such termination. However, the withdrawing member
28 shall continue to be bound by the provisions of this section
29 relating to the period of his or her membership and any claims
30 charged pursuant thereto. The withdrawing member who is a
31 member on or after January 1, 1991, shall also be required to

1 provide to the association ~~division~~ upon withdrawal, and at
2 12-month intervals thereafter, satisfactory proof, including,
3 if requested by the association, a report of known and
4 potential claims certified by a member of the American Academy
5 of Actuaries, that it continues to meet the standards of s.
6 440.38(1)(b)1. in relation to claims incurred while the
7 withdrawing member exercised the privilege of self-insurance.
8 Such reporting shall continue until the withdrawing member
9 demonstrates to the association ~~satisfies the division~~ that
10 there is no remaining value to claims incurred while the
11 withdrawing member was self-insured. If a withdrawing member
12 fails or refuses to timely provide an actuarial report to the
13 association, the association may obtain an order from a
14 circuit court requiring the member to produce such a report
15 and ordering such other relief as the court determines
16 appropriate. The association is entitled to recover all
17 reasonable costs and attorney's fees expended in such
18 proceedings. If during this reporting period the withdrawing
19 member fails to meet the standards of s. 440.38(1)(b)1., the
20 withdrawing member who is a member on or after January 1,
21 1991, shall thereupon, and at 6-month intervals thereafter,
22 provide to the ~~division and the~~ association the certified
23 opinion of an independent actuary who is a member of the
24 American Academy Society of Actuaries of the actuarial present
25 value of the determined and estimated future compensation
26 payments of the member for claims incurred while the member
27 was a self-insurer, using a discount rate of 4 percent. With
28 each such opinion, the withdrawing member shall deposit with
29 the association ~~division~~ security in an amount equal to the
30 value certified by the actuary and of a type that is
31 acceptable for qualifying security deposits under s.

1 440.38(1)(b). The withdrawing member shall continue to
2 provide such opinions and to provide such security until such
3 time as the latest opinion shows no remaining value of claims.
4 The association has a cause of action against a withdrawing
5 member, and against any successor of a withdrawing member, who
6 fails to timely provide the required opinion or who fails to
7 maintain the required deposit with the division. The
8 association shall be entitled to recover a judgment in the
9 amount of the actuarial present value of the determined and
10 estimated future compensation payments of the withdrawing
11 member for claims incurred during the time that the
12 withdrawing member exercised the privilege of self-insurance,
13 together with reasonable attorney's fees. The association is
14 also entitled to recover reasonable attorney's fees in any
15 action to compel production of any actuarial report required
16 by this statute. For purposes of this section, the successor
17 of a withdrawing member means any person, business entity, or
18 group of persons or business entities, which holds or acquires
19 legal or beneficial title to the majority of the assets or the
20 majority of the shares of the withdrawing member.

21 (2) BOARD OF DIRECTORS.--The board of directors of the
22 association shall consist of nine persons and shall be
23 organized as established in the plan of operation. All board
24 members shall be experienced in self-insurance in this state.
25 As of December 31, 2003, six members of the board shall be
26 individual self-insurers in this state. The board members who
27 are individual self-insurers shall be officers or full-time
28 employees of the self-insured company they represent. If the
29 individual self-insurer board member's company voluntarily
30 withdraws such member's privilege to self-insure, the board
31 member may complete the remaining term of his or her

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

23 (3) POWERS AND DUTIES.--

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

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

18 (b) The association may:

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

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

23 3. Sue or be sued.

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

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

28 6. Review all applicants for membership in the
29 association to determine whether the applicant is qualified
30 for membership under the law. The association shall recommend
31 to the Department of Insurance that the application be

1 accepted or rejected based on the criteria set forth in s.
2 440.38(1)(b). The department shall approve or disapprove the
3 application.~~Prior to a final determination by the Division of~~
4 ~~Workers' Compensation as to whether or not to approve any~~
5 ~~applicant for membership in the association, the association~~
6 ~~may issue opinions to the division concerning any applicant,~~
7 ~~which opinions shall be considered by the division prior to~~
8 ~~any final determination.~~

9 7. Collect and review financial information from
10 employers and make recommendations to the Department of
11 Insurance regarding the appropriate security deposit and
12 reinsurance amounts necessary for an employer to demonstrate
13 that it has the financial strength necessary to assure the
14 timely payment of all current and future claims. The
15 association may audit and examine an employer to verify the
16 financial strength of its current and former members. If the
17 association determines that a current or former self-insured
18 employer does not have the financial strength necessary to
19 assure the timely payment of all current and estimated future
20 claims, the association may recommend to the department that
21 the department:

22 a. Revoke the employer's self-insurance privilege.

23 b. Require the employer to provide a certified opinion
24 of an independent actuary who is a member of the American
25 Academy of Actuaries as to the actuarial present value of the
26 employer's estimated current and future compensation payments,
27 using a 4-percent discount rate.

28 c. Require an increase in the employer's security
29 deposit in an amount determined by the association to be
30 necessary to assure payment of compensation claims. The
31 department shall act on such recommendations. The association

1 has a cause of action against an employer, and against any
2 successor of an employer, who fails to provide an additional
3 security deposit required by the department. The association
4 shall recover a judgment in the amount of the requested
5 additional security deposit together with reasonable
6 attorney's fees. For the purposes of this section, the
7 successor of an employer is any person, business entity, or
8 group of persons or business entities that holds or acquires
9 legal or beneficial title to the majority of the assets or the
10 majority of the shares of the employer.

11 8.7. Charge fees to any member of the association to
12 cover the actual costs of examining the financial and safety
13 conditions of that member.

14 9.8. Charge an applicant for membership in the
15 association a fee sufficient to cover the actual costs of
16 examining the financial condition of the applicant.

17 10. Implement any and all procedures necessary to
18 ensure compliance with regulatory actions taken by the
19 department.

20 (c)1. To the extent necessary to secure funds for the
21 payment of covered claims and also to pay the reasonable costs
22 to administer them, the association, subject to approval by
23 the Department of Insurance Labor and Employment Security,
24 upon certification of the board of directors, shall levy
25 assessments based on the annual written normal premium each
26 employer would have paid had the employer not been
27 self-insured. Every assessment shall be made as a uniform
28 percentage of the figure applicable to all individual
29 self-insurers, provided that the assessment levied against any
30 self-insurer in any one year shall not exceed 1 percent of the
31 annual written normal premium during the calendar year

1 preceding the date of the assessment. Assessments shall be
2 remitted to and administered by the board of directors in the
3 manner specified by the approved plan. Each employer so
4 assessed shall have at least 30 days' written notice as to the
5 date the assessment is due and payable. The association shall
6 levy assessments against any newly admitted member of the
7 association so that the basis of contribution of any newly
8 admitted member is the same as previously admitted members,
9 provision for which shall be contained in the plan of
10 operation.

11 2. If, in any one year, funds available from such
12 assessments, together with funds previously raised, are not
13 sufficient to make all the payments or reimbursements then
14 owing, the funds available shall be prorated, and the unpaid
15 portion shall be paid as soon thereafter as sufficient
16 additional funds become available.

17 3. Funds may be allocated or paid from the Workers'
18 Compensation Administration Trust Fund to contract with the
19 association to perform services required by law. However, no
20 state funds of any kind shall be allocated or paid to the
21 association or any of its accounts for payment of covered
22 claims or related expenses except those state funds accruing
23 to the association by and through the assignment of rights of
24 an insolvent employer. The department may not levy any
25 assessment on the Florida Self-Insurance Guaranty Association.

26 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
27 operation ~~or the adoption of rules by the Department of Labor~~
28 ~~and Employment Security pursuant to subsection (5)~~, there
29 shall be created an Insolvency Fund to be managed by the
30 association.

31

1 (a) The Insolvency Fund is created for purposes of
2 meeting the obligations of insolvent members incurred while
3 members of the association and after the exhaustion of any
4 security deposit bond, as required under this chapter.
5 However, if such security deposit bond, ~~surety~~, or reinsurance
6 policy is payable to the Florida Self-Insurers Guaranty
7 Association, the association shall commence to provide
8 benefits out of the Insolvency Fund and be reimbursed from the
9 security deposit bond, ~~surety~~, or reinsurance policy. The
10 method of operation of the Insolvency Fund shall be defined in
11 the plan of operation as provided in subsection (5).

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

14 (c) The department may offer certain amendments to the
15 plan of operation to the board of directors of the association
16 for purposes of assuring the ongoing financial soundness of
17 the Insolvency Fund and its ability to meet the obligations of
18 this section.

19 ~~(d) The department actuary may make certain~~
20 ~~recommendations to improve the orderly payment of claims.~~

21 (5) PLAN OF OPERATION.--The association shall operate
22 pursuant to a plan of operation approved by the board of
23 directors. The plan of operation in effect on March 1, 2002,
24 and approved by the Department of Labor and Employment
25 Security shall remain in effect. However, any amendments to
26 the plan shall not become effective until approved by the
27 Department of Insurance.~~By September 15, 1982, the board of~~
28 ~~directors shall submit to the Department of Labor and~~
29 ~~Employment Security a proposed plan of operation for the~~
30 ~~administration of the association and the Insolvency Fund.~~

31

1 (a) The purpose of the plan of operation shall be to
2 provide the association and the board of directors with the
3 authority and responsibility to establish the necessary
4 programs and to take the necessary actions to protect against
5 the insolvency of a member of the association. In addition,
6 the plan shall provide that the members of the association
7 shall be responsible for maintaining an adequate Insolvency
8 Fund to meet the obligations of insolvent members provided for
9 under this act and shall authorize the board of directors to
10 contract and employ those persons with the necessary expertise
11 to carry out this stated purpose. By January 1, 2003, the
12 board of directors shall submit to the Department of Insurance
13 a proposed plan of operation for the administration of the
14 association. The Department of Insurance shall approve the
15 plan by order, consistent with this act. The Department of
16 Insurance shall approve any amendments to the plan, by order
17 consistent with this act, and determined appropriate to carry
18 out the duties and responsibilities of the association.

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

28 (b)(c) All member employers shall comply with the plan
29 of operation.

30 (c)(d) The plan of operation shall:
31

- 1 1. Establish the procedures whereby all the powers and
2 duties of the association under subsection (3) will be
3 performed.
- 4 2. Establish procedures for handling assets of the
5 association.
- 6 3. Establish the amount and method of reimbursing
7 members of the board of directors under subsection (2).
- 8 4. Establish procedures by which claims may be filed
9 with the association and establish acceptable forms of proof
10 of covered claims. Notice of claims to the receiver or
11 liquidator of the insolvent employer shall be deemed notice to
12 the association or its agent, and a list of such claims shall
13 be submitted periodically to the association or similar
14 organization in another state by the receiver or liquidator.
- 15 5. Establish regular places and times for meetings of
16 the board of directors.
- 17 6. Establish procedures for records to be kept of all
18 financial transactions of the association and its agents and
19 the board of directors.
- 20 7. Provide that any member employer aggrieved by any
21 final action or decision of the association may appeal to the
22 department within 30 days after the action or decision.
- 23 8. Establish the procedures whereby recommendations of
24 candidates for the board of directors shall be submitted to
25 the department.
- 26 9. Contain additional provisions necessary or proper
27 for the execution of the powers and duties of the association.
- 28 (d)~~(e)~~ The plan of operation may provide that any or
29 all of the powers and duties of the association, except those
30 specified under subparagraphs (c)1.~~(d)1.~~ and 2., be delegated
31 to a corporation, association, or other organization which

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

12 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE LABOR
13 AND EMPLOYMENT SECURITY.--

14 (a) The department shall ~~review~~ review recommendations of
15 the association concerning whether current or former
16 self-insured employers or members of the association have the
17 financial strength necessary to ensure the timely payment of
18 all current and estimated future claims. If the association
19 determines an employer does not have the financial strength
20 necessary to ensure the timely payment of all current and
21 future claims and recommends action pursuant to paragraph
22 (3)(b), the Department of Insurance may take such action as
23 necessary to order the employer to comply with the
24 recommendation.

25 ~~1. Notify the association of the existence of an~~
26 ~~insolvent employer not later than 3 days after it receives~~
27 ~~notice of the determination of insolvency.~~

28 ~~2. Upon request of the board of directors, provide the~~
29 ~~association with a statement of the annual normal premiums of~~
30 ~~each member employer.~~

31 (b) The department may:

- 1 1. Contract with the association for services, which
2 may include, but need not be limited to:
- 3 a. Processing applications for self-insurance.
4 b. Collecting and reviewing financial statements and
5 loss reserve information from individual self-insurers.
6 c. Collecting and maintaining files for original
7 security deposit documents and reinsurance policies from
8 individual self-insurers and, if necessary, perfect security
9 interests in security deposits.
- 10 d. Processing compliance documentation for individual
11 self-insurers and providing same to the Department of
12 Insurance.
- 13 e. Collecting all data necessary to calculate an
14 annual premium for all individual self-insurers, including
15 individual self-insurers that are public utilities or
16 governmental entities, and providing such calculated annual
17 premium to the Department of Insurance for assessment
18 purposes.
- 19 f. Inspecting and auditing annually, if necessary, the
20 payroll and other records of each individual self-insurer,
21 including individual self-insurers that are public utilities
22 or governmental entities, in order to determine the wages paid
23 by each individual self-insurer, the premium such individual
24 self-insurer would have to pay if insured, and all payments of
25 compensation made by such individual self-insurer during each
26 prior period with the results of such audit provided to the
27 Department of Insurance. For the purposes of this section,
28 the payroll records of each individual self-insurer shall be
29 open to inspection and audit by the association, the
30 department, or their authorized representative, during regular
31 business hours.

1 g. Providing legal representation to implement the
2 administration and audit of individual self-insurers and
3 making recommendations regarding prosecution of any
4 administrative or legal proceedings necessitated by the
5 department's regulation of the individual self-insurers.

6 2. Contract with an attorney or attorneys recommended
7 by the association for representation of the department in any
8 administrative or legal proceedings necessitated by the
9 recommended regulation of the individual self-insurers.

10 3. Direct the association to require from each
11 individual self-insurer, at such time and in accordance with
12 such regulations as the department prescribes, reports in
13 respect to wages paid, the amount of premiums such individual
14 self-insurer would have to pay if insured, and all payments of
15 compensation made by such individual self-insurer during each
16 prior period and determine the amounts paid by each individual
17 self-insurer and the amounts paid by all individual
18 self-insurers during such period. For the purposes of this
19 section, the payroll records of each individual self-insurer
20 shall be open, during regular business hours, to annual
21 inspection and audit by the association, the department, or
22 their authorized representative, and, if any audit of such
23 records of an individual self-insurer discloses a deficiency
24 in the amount reported to the association or in the amounts
25 paid to the Department of Insurance by an individual
26 self-insurer for its assessment for the Workers' Compensation
27 Administration Trust Fund, the Department of Insurance or the
28 association may assess the cost of such audit against the
29 individual self-insurer.

30 ~~4.1.~~ Require that the association notify the member
31 employers and any other interested parties of the

1 determination of insolvency and of their rights under this
2 section. Such notification shall be by mail at the last known
3 address thereof when available; but, if sufficient information
4 for notification by mail is not available, notice by
5 publication in a newspaper of general circulation shall be
6 sufficient.

7 5.2. Suspend or revoke the authority of any member
8 employer failing to pay an assessment when due or failing to
9 comply with the plan of operation to self-insure in this
10 state. As an alternative, the department may levy a fine on
11 any member employer failing to pay an assessment when due.
12 Such fine shall not exceed 5 percent of the unpaid assessment
13 per month, except that no fine shall be less than \$100 per
14 month.

15 ~~3. Revoke the designation of any servicing facility if~~
16 ~~the department finds that claims are being handled~~
17 ~~unsatisfactorily.~~

18 (7) EFFECT OF PAID CLAIMS.--

19 (a) Any person who recovers from the association under
20 this section shall be deemed to have assigned his or her
21 rights to the association to the extent of such recovery.
22 Every claimant seeking the protection of this section shall
23 cooperate with the association to the same extent as such
24 person would have been required to cooperate with the
25 insolvent member. The association shall have no cause of
26 action against the employee of the insolvent member for any
27 sums the association has paid out, except such causes of
28 action as the insolvent member would have had if such sums had
29 been paid by the insolvent member. In the case of an
30 insolvent member operating on a plan with assessment
31 liability, payments of claims by the association shall not

1 operate to reduce the liability of the insolvent member to the
2 receiver, liquidator, or statutory successor for unpaid
3 assessments.

4 (b) The receiver, liquidator, or statutory successor
5 of an insolvent member shall be bound by settlements of
6 covered claims by the association or a similar organization in
7 another state. The court having jurisdiction shall grant such
8 claims priority against the assets of the insolvent member
9 equal to that to which the claimant would have been entitled
10 in the absence of this section. The expense of the association
11 or similar organization in handling claims shall be accorded
12 the same priority as the expenses of the liquidator.

13 (c) The association shall file periodically with the
14 receiver or liquidator of the insolvent member statements of
15 the covered claims paid by the association and estimates of
16 anticipated claims on the association, which shall preserve
17 the rights of the association against the assets of the
18 insolvent member.

19 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid
20 in the detection and prevention of employer insolvencies, +

21 ~~(a)~~ upon determination by majority vote that any
22 member employer may be insolvent or in a financial condition
23 hazardous to the employees thereof or to the public, it shall
24 be the duty of the board of directors to notify the Department
25 of Insurance Labor and Employment Security of any information
26 indicating such condition.

27 ~~(b) The board of directors may, upon majority vote,~~
28 ~~request that the department determine the condition of any~~
29 ~~member employer which the board in good faith believes may no~~
30 ~~longer be qualified to be a member of the association. Within~~
31 ~~30 days of the receipt of such request or, for good cause~~

1 ~~shown, within a reasonable time thereafter, the department~~
2 ~~shall make such determination and shall forthwith advise the~~
3 ~~board of its findings. Each request for a determination shall~~
4 ~~be kept on file by the department, but the request shall not~~
5 ~~be open to public inspection prior to the release of the~~
6 ~~determination to the public.~~

7 ~~(c) It shall also be the duty of the department to~~
8 ~~report to the board of directors when it has reasonable cause~~
9 ~~to believe that a member employer may be in such a financial~~
10 ~~condition as to be no longer qualified to be a member of the~~
11 ~~association.~~

12 ~~(d) The board of directors may, upon majority vote,~~
13 ~~make reports and recommendations to the department upon any~~
14 ~~matter which is germane to the solvency, liquidation,~~
15 ~~rehabilitation, or conservation of any member employer. Such~~
16 ~~reports and recommendations shall not be considered public~~
17 ~~documents.~~

18 ~~(e) The board of directors may, upon majority vote,~~
19 ~~make recommendations to the department for the detection and~~
20 ~~prevention of employer insolvencies.~~

21 ~~(f) The board of directors shall, at the conclusion of~~
22 ~~any member's insolvency in which the association was obligated~~
23 ~~to pay covered claims, prepare a report on the history and~~
24 ~~cause of such insolvency, based on the information available~~
25 ~~to the association, and shall submit such report to the~~
26 ~~department.~~

27 (9) EXAMINATION OF THE ASSOCIATION.--The association
28 shall be subject to examination and regulation by the
29 Department of Insurance Labor and Employment Security. No
30 later than March 30 of each year, the board of directors shall
31

1 submit an audited ~~a~~ financial statement ~~report~~ for the
2 preceding calendar year in a form approved by the department.

3 (10) IMMUNITY.--There shall be no liability on the
4 part of, and no cause of action of any nature shall arise
5 against, any member employer, the association or its agents or
6 employees, the board of directors, or the Department of
7 Insurance ~~Labor and Employment Security~~ or its representatives
8 for any action taken by them in the performance of their
9 powers and duties under this section.

10 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
11 JUDGMENTS.--All proceedings in which an insolvent employer is
12 a party, or is obligated to defend a party, in any court or
13 before any quasi-judicial body or administrative board in this
14 state shall be stayed for up to 6 months, or for such
15 additional period from the date the employer becomes an
16 insolvent member, as is deemed necessary by a court of
17 competent jurisdiction to permit proper defense by the
18 association of all pending causes of action as to any covered
19 claims arising from a judgment under any decision, verdict, or
20 finding based on the default of the insolvent member. The
21 association, either on its own behalf or on behalf of the
22 insolvent member, may apply to have such judgment, order,
23 decision, verdict, or finding set aside by the same court or
24 administrator that made such judgment, order, decision,
25 verdict, or finding and shall be permitted to defend against
26 such claim on the merits. If requested by the association,
27 the stay of proceedings may be shortened or waived.

28 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
29 any other provision of this chapter, a covered claim, as
30 defined herein, with respect to which settlement is not
31 effected and pursuant to which suit is not instituted against

1 the insured of an insolvent member or the association within 1
2 year after the deadline for filing claims with the receiver of
3 the insolvent member, or any extension of the deadline, shall
4 thenceforth be barred as a claim against the association.

5 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
6 by a member by refund, dividend, or otherwise from the
7 association shall be payable within 30 days of receipt to the
8 Department of Revenue for deposit with the Treasurer to the
9 credit of the General Revenue Fund. All provisions of chapter
10 220 relating to penalties and interest on delinquent corporate
11 income tax payments apply to payments due under this
12 subsection.

13 Section 38. Subsections (2), (3), and (4) of section
14 440.386, Florida Statutes, are amended to read:

15 440.386 Individual self-insurers' insolvency;
16 conservation; liquidation.--

17 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
18 Department of Insurance or the Florida Self-Insurers Guaranty
19 Association, Incorporated, may commence a delinquency ~~any such~~
20 proceeding by application to the court for an order directing
21 the individual self-insurer to show cause why the department
22 or the association should not have the relief prayed for. ~~The~~
23 ~~Florida Self-Insurers Guaranty Association, Incorporated, may~~
24 ~~petition the department to commence such proceedings, and upon~~
25 ~~receipt of such petition, the department shall commence such~~
26 ~~proceeding.~~ On the return of such order to show cause, and
27 after a full hearing, the court shall either deny the
28 application or grant the application, together with such other
29 relief as the nature of the case and the interests of the
30 claimants, creditors, stockholders, members, subscribers, or
31 public may require. The Department of Insurance and the

1 association shall give to each other Florida Self-Insurers
2 ~~Guaranty Association, Incorporated, shall be given~~ reasonable
3 written notice ~~by the department~~ of all hearings that ~~which~~
4 pertain to an adjudication of insolvency of a member
5 individual self-insurer.

6 (3) GROUNDS FOR LIQUIDATION.--The Department of
7 Insurance or the association may apply to the court for an
8 order appointing a receiver and directing the receiver to
9 liquidate the business of a domestic individual self-insurer
10 if such individual self-insurer is insolvent. ~~Florida~~
11 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
12 ~~the department to apply to the court for such order. Upon~~
13 ~~receipt of such petition, the department shall apply to the~~
14 ~~court for such order.~~

15 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
16 SELF-INSURERS.--

17 (a) The Department of Insurance or the association may
18 apply to the court for an order appointing a receiver or
19 ancillary receiver, and directing the receiver to conserve the
20 assets within this state, of a foreign individual self-insurer
21 if such individual self-insurer is insolvent. ~~Florida~~
22 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
23 ~~the department to apply for such order, and, upon receipt of~~
24 ~~such petition, the department shall apply to the court for~~
25 ~~such order.~~

26 (b) An order to conserve the assets of an individual
27 self-insurer shall require the receiver forthwith to take
28 possession of the property of the receiver within the state
29 and to conserve it, subject to the further direction of the
30 court.

31

1 Section 39. Section 440.40, Florida Statutes, is
2 amended to read:

3 440.40 Compensation notice.--Every employer who has
4 secured compensation under the provisions of this chapter
5 shall keep posted in a conspicuous place or places in and
6 about her or his place or places of business typewritten or
7 printed notices, in accordance with a form prescribed by the
8 department ~~division~~, stating that such employer has secured
9 the payment of compensation in accordance with the provisions
10 of this chapter. Such notices shall contain the name and
11 address of the carrier, if any, with whom the employer has
12 secured payment of compensation and the date of the expiration
13 of the policy. The department ~~division~~ may by rule prescribe
14 the form of the notices and require carriers to provide the
15 notices to policyholders.

16 Section 40. Section 440.41, Florida Statutes, is
17 amended to read:

18 440.41 Substitution of carrier for employer.--In any
19 case where the employer is not a self-insurer, in order that
20 the liability for compensation imposed by this chapter may be
21 most effectively discharged by the employer, and in order that
22 the administration of this chapter in respect of such
23 liability may be facilitated, the department ~~division~~ shall by
24 regulation provide for the discharge, by the carrier for such
25 employer, of such obligations and duties of the employer in
26 respect of such liability, imposed by this chapter upon the
27 employer, as it considers proper in order to effectuate the
28 provisions of this chapter. For such purposes:

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

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

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

9 Section 41. Subsection (3) of section 440.42, Florida
10 Statutes, is amended to read:

11 440.42 Insurance policies; liability.--

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

31

1 Section 42. Section 440.44, Florida Statutes, is
2 amended to read:

3 440.44 Workers' compensation; staff organization.--

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

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

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

31

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

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

24 (6) SEAL.--The division and the Office of the Judges
25 of Compensation Claims shall have seals ~~a seal~~ upon which
26 shall be inscribed the words "State of Florida Department of
27 Insurance--Seal" and "Division of Administrative
28 Hearings--Seal," respectively.

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

1 The Division of Administrative Hearings is expressly
2 authorized to provide by regulation for and to destroy
3 obsolete records of the Office of the Judges of Compensation
4 Claims.

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

13 Section 43. Section 440.4416, Florida Statutes, is
14 repealed.

15 Section 44. Subsections (1), (2), (7), (8), (9), (10),
16 and (11) of section 440.49, Florida Statutes, are amended to
17 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 In addition to the definitions contained in this subsection,
25 the department ~~division~~ may by rule prescribe definitions that
26 are necessary for the effective administration of this
27 section.

28 (7) REIMBURSEMENT OF EMPLOYER.--

29 (a) The right to reimbursement as provided in this
30 section is barred unless written notice of claim of the right
31 to such reimbursement is filed by the employer or carrier

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

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

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

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

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

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

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

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

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

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

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

12 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

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

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

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

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

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

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

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

1 required by s. 215.20. The fees provided in this paragraph
2 shall not be imposed upon any insurer which is in receivership
3 with the Department of Insurance.

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

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

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

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

24 Section 45. Section 440.491, Florida Statutes, is
25 amended to read:

26 440.491 Reemployment of injured workers;
27 rehabilitation.--

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

29 (a) "Carrier" means group self-insurance funds or
30 individual self-insureds authorized under this chapter and
31

1 commercial funds or insurance entities authorized to write
2 workers' compensation insurance under chapter 624.

3 (b) "Medical care coordination" includes, but is not
4 limited to, coordinating physical rehabilitation services such
5 as medical, psychiatric, or therapeutic treatment for the
6 injured employee, providing health training to the employee
7 and family, and monitoring the employee's recovery. The
8 purposes of medical care coordination are to minimize the
9 disability and recovery period without jeopardizing medical
10 stability, to assure that proper medical treatment and other
11 restorative services are timely provided in a logical
12 sequence, and to contain medical costs.

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

20 (d) "Reemployment assessment" means a written
21 assessment performed by a qualified rehabilitation provider
22 which provides a comprehensive review of the medical
23 diagnosis, treatment, and prognosis; includes conferences with
24 the employer, physician, and claimant; and recommends a
25 cost-effective physical and vocational rehabilitation plan to
26 assist the employee in returning to suitable gainful
27 employment.

28 (e) "Reemployment services" means services that
29 include, but are not limited to, vocational counseling,
30 job-seeking skills training, ergonomic job analysis,
31 transferable skills analysis, selective job placement, labor

1 market surveys, and arranging other services such as education
2 or training, vocational and on-the-job, which may be needed by
3 the employee to secure suitable gainful employment.

4 (f) "Reemployment status review" means a review to
5 determine whether an injured employee is at risk of not
6 returning to work.

7 (g) "Suitable gainful employment" means employment or
8 self-employment that is reasonably attainable in light of the
9 employee's age, education, work history, transferable skills,
10 previous occupation, and injury, and which offers an
11 opportunity to restore the individual as soon as practicable
12 and as nearly as possible to his or her average weekly
13 earnings at the time of injury.

14 (h) "Vocational evaluation" means a review of the
15 employee's physical and intellectual capabilities, his or her
16 aptitudes and achievements, and his or her work-related
17 behaviors to identify the most cost-effective means toward the
18 employee's return to suitable gainful employment.

19 (2) INTENT.--It is the intent of this section to
20 implement a systematic review by carriers of the factors that
21 are predictive of longer-term disability and to encourage the
22 provision of medical care coordination and reemployment
23 services that are necessary to assist the employee in
24 returning to work as soon as is medically feasible.

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

26 (a) When an employee who has suffered an injury
27 compensable under this chapter is unemployed 60 days after the
28 date of injury and is receiving benefits for temporary total
29 disability, temporary partial disability, or wage loss, and
30 has not yet been provided medical care coordination and
31 reemployment services voluntarily by the carrier, the carrier

1 must determine whether the employee is likely to return to
2 work and must report its determination to the Department of
3 Education ~~division~~. The carrier must thereafter determine the
4 reemployment status of the employee at 90-day intervals as
5 long as the employee remains unemployed, is not receiving
6 medical care coordination or reemployment services, and is
7 receiving the benefits specified in this subsection.

8 (b) If medical care coordination or reemployment
9 services are voluntarily undertaken within 60 days of the date
10 of injury, such services may continue to be provided as agreed
11 by the employee and the carrier.

12 (4) REEMPLOYMENT ASSESSMENTS.--

13 (a) The carrier may require the employee to receive a
14 reemployment assessment as it considers appropriate. However,
15 the carrier is encouraged to obtain a reemployment assessment
16 if:

17 1. The carrier determines that the employee is at risk
18 of remaining unemployed.

19 2. The case involves catastrophic or serious injury.

20 (b) The carrier shall authorize only a qualified
21 rehabilitation provider to provide the reemployment
22 assessment. The rehabilitation provider shall conduct its
23 assessment and issue a report to the carrier, the employee,
24 and the Department of Education ~~division~~ within 30 days after
25 the time such assessment is complete.

26 (c) If the rehabilitation provider recommends that the
27 employee receive medical care coordination or reemployment
28 services, the carrier shall advise the employee of the
29 recommendation and determine whether the employee wishes to
30 receive such services. The employee shall have 15 days after
31 the date of receipt of the recommendation in which to agree to

1 accept such services. If the employee elects to receive
2 services, the carrier may refer the employee to a
3 rehabilitation provider for such coordination or services
4 within 15 days of receipt of the assessment report or notice
5 of the employee's election, whichever is later.

6 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
7 SERVICES.--

8 (a) Once the carrier has assigned a case to a
9 qualified rehabilitation provider for medical care
10 coordination or reemployment services, the provider shall
11 develop a reemployment plan and submit the plan to the carrier
12 and the employee for approval.

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

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

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

9 (d) If medical care coordination or reemployment
10 services have not been undertaken as prescribed in paragraph
11 (3)(b), a qualified rehabilitation service provider, facility,
12 or agency that performs a reemployment assessment shall not
13 provide medical care coordination or reemployment services for
14 the employees it assesses.

15 (6) TRAINING AND EDUCATION.--

16 (a) Upon referral of an injured employee by the
17 carrier, or upon the request of an injured employee, the
18 Department of Education ~~division~~ shall conduct a training and
19 education screening to determine whether it should refer the
20 employee for a vocational evaluation and, if appropriate,
21 approve training and education or other vocational services
22 for the employee. The Department of Education ~~division~~ may not
23 approve formal training and education programs unless it
24 determines, after consideration of the reemployment
25 assessment, pertinent reemployment status reviews or reports,
26 and such other relevant factors as it prescribes by rule, that
27 the reemployment plan is likely to result in return to
28 suitable gainful employment. The Department of Education
29 ~~division~~ is authorized to expend moneys from the Workers'
30 Compensation Administration Trust Fund, established by s.
31 440.50, to secure appropriate training and education or other

1 vocational services when necessary to satisfy the
2 recommendation of a vocational evaluator. The Department of
3 Education ~~division~~ shall establish training and education
4 standards pertaining to employee eligibility, course curricula
5 and duration, and associated costs.

6 (b) When it appears that an employee who has attained
7 maximum medical improvement requires training and education to
8 obtain suitable gainful employment, the employer shall pay the
9 employee additional temporary total compensation while the
10 employee receives such training and education for a period not
11 to exceed 26 weeks, which period may be extended for an
12 additional 26 weeks or less, if such extended period is
13 determined to be necessary and proper by a judge of
14 compensation claims. However, a carrier or employer is not
15 precluded from voluntarily paying additional temporary total
16 disability compensation beyond that period. If an employee
17 requires temporary residence at or near a facility or an
18 institution providing training and education which is located
19 more than 50 miles away from the employee's customary
20 residence, the reasonable cost of board, lodging, or travel
21 must be borne by the Department of Insurance ~~division~~ from the
22 Workers' Compensation Administration Trust Fund established by
23 s. 440.50. An employee who refuses to accept training and
24 education that is recommended by the vocational evaluator and
25 considered necessary by the Department of Education ~~division~~
26 is subject to a 50-percent reduction in weekly compensation
27 benefits, including wage-loss benefits, as determined under s.
28 440.15(3)(b).

29 (7) PROVIDER QUALIFICATIONS.--

30 (a) The Department of Education ~~division~~ shall
31 investigate and maintain a directory of each qualified public

1 and private rehabilitation provider, facility, and agency, and
2 shall establish by rule the minimum qualifications,
3 credentials, and requirements that each rehabilitation service
4 provider, facility, and agency must satisfy to be eligible for
5 listing in the directory. These minimum qualifications and
6 credentials must be based on those generally accepted within
7 the service specialty for which the provider, facility, or
8 agency is approved.

9 (b) The Department of Education ~~division~~ shall impose
10 a biennial application fee of \$25 for each listing in the
11 directory, and all such fees must be deposited in the Workers'
12 Compensation Administration Trust Fund.

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

25 (d) A qualified rehabilitation service provider,
26 facility, or agency may not be authorized by an employer, a
27 carrier, or the Department of Education ~~division~~ to provide
28 any services, including expert testimony, under this section
29 in this state unless the provider, facility, or agency is
30 listed or has been approved for listing in the directory. This
31

1 restriction does not apply to services provided outside this
2 state under this section.

3 (e) The Department of Education ~~division~~, after
4 consultation with representatives of employees, employers,
5 carriers, rehabilitation providers, and qualified training and
6 education providers, shall adopt rules governing professional
7 practices and standards.

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

12 (9) PERMANENT DISABILITY.--The judge of compensation
13 claims may not adjudicate an injured employee as permanently
14 and totally disabled until or unless the carrier is given the
15 opportunity to provide a reemployment assessment.

16 Section 46. Section 440.50, Florida Statutes, is
17 amended to read:

18 440.50 Workers' Compensation Administration Trust
19 Fund.--

20 (1)(a) There is established in the State Treasury a
21 special fund to be known as the "Workers' Compensation
22 Administration Trust Fund" for the purpose of providing for
23 the payment of all expenses in respect to the administration
24 of this chapter, including the vocational rehabilitation of
25 injured employees as provided in s. 440.49 and the payments
26 due under s. 440.15(1)(f), the funding of the fixed
27 administrative expenses of the plan, and the funding of the
28 Bureau of Workers' Compensation Fraud within the Department of
29 Insurance. Such fund shall be administered by the department
30 ~~division~~.

31

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

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

10 (3) The Treasurer shall deposit any moneys paid into
11 such fund into such depository banks as the department
12 ~~division~~ may designate and is authorized to invest any portion
13 of the fund which, in the opinion of the department ~~division~~,
14 is not needed for current requirements, in the same manner and
15 subject to all the provisions of the law with respect to the
16 deposit of state funds by such Treasurer. All interest earned
17 by such portion of the fund as may be invested by the
18 Treasurer shall be collected by him or her and placed to the
19 credit of such fund.

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

23 Section 47. Section 440.51, Florida Statutes, is
24 amended to read:

25 440.51 Expenses of administration.--

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

29 (a) The department ~~division~~ shall, by July 1 of each
30 year, notify carriers and self-insurers of the assessment
31 rate, which shall be based on the anticipated expenses of the

1 administration of this chapter for the next calendar year.
2 Such assessment rate shall take effect January 1 of the next
3 calendar year and shall be included in workers' compensation
4 rate filings approved by the Department of Insurance which
5 become effective on or after January 1 of the next calendar
6 year. Assessments shall become due and be paid quarterly.

7 (b) The total expenses of administration shall be
8 prorated among the carriers writing compensation insurance in
9 the state and self-insurers. The net premiums collected by
10 carriers and the amount of premiums calculated by the
11 department ~~division~~ for self-insured employers are the basis
12 for computing the amount to be assessed. When reporting
13 deductible policy premium for purposes of computing
14 assessments levied after July 1, 2001, full policy premium
15 value must be reported prior to application of deductible
16 discounts or credits. This amount may be assessed as a
17 specific amount or as a percentage of net premiums payable as
18 the department ~~division~~ may direct, provided such amount so
19 assessed shall not exceed 2.75 percent, beginning January 1,
20 2001, except during the interim period from July 1, 2000,
21 through December 31, 2000, such assessments shall not exceed 4
22 percent of such net premiums. The carriers may elect to make
23 the payments required under s. 440.15(1)(f) rather than having
24 these payments made by the department ~~division~~. In that
25 event, such payments will be credited to the carriers, and the
26 amount due by the carrier under this section will be reduced
27 accordingly.

28 (2) The department ~~division~~ shall provide by
29 regulation for the collection of the amounts assessed against
30 each carrier. Such amounts shall be paid within 30 days from
31 the date that notice is served upon such carrier. If such

1 amounts are not paid within such period, there may be assessed
2 for each 30 days the amount so assessed remains unpaid, a
3 civil penalty equal to 10 percent of the amount so unpaid,
4 which shall be collected at the same time and a part of the
5 amount assessed. For those carriers who excluded ceded
6 reinsurance premiums from their assessments prior to January
7 1, 2000, the department ~~division~~ shall not recover any past
8 underpayments of assessments related to ceded reinsurance
9 premiums prior to January 1, 2001, against such carriers.

10 (3) If any carrier fails to pay the amounts assessed
11 against him or her under the provisions of this section within
12 60 days from the time such notice is served upon him or her,
13 the Department of Insurance ~~upon being advised by the division~~
14 may suspend or revoke the authorization to insure compensation
15 in accordance with the procedure in s. 440.38(3)(a). The
16 department ~~division~~ may permit a carrier to remit any
17 underpayment of assessments for assessments levied after
18 January 1, 2001.

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

21 (5) Any amount so assessed against and paid by an
22 insurance carrier, self-insurer authorized pursuant to s.
23 624.4621, or commercial self-insurance fund authorized under
24 ss. 624.460-624.488 shall be allowed as a deduction against
25 the amount of any other tax levied by the state upon the
26 premiums, assessments, or deposits for workers' compensation
27 insurance on contracts or policies of said insurance carrier,
28 self-insurer, or commercial self-insurance fund. Any insurance
29 carrier claiming such a deduction against the amount of any
30 such tax shall not be required to pay any additional
31 retaliatory tax levied pursuant to s. 624.5091 as a result of

1 claiming such deduction. Because deductions under this
2 subsection are available to insurance carriers, s. 624.5091
3 does not limit such deductions in any manner.

4 (6)(a) The department ~~division~~ may require from each
5 carrier, at such time and in accordance with such regulations
6 as the department ~~division~~ may prescribe, reports in respect
7 to all gross earned premiums and of all payments of
8 compensation made by such carrier during each prior period,
9 and may determine the amounts paid by each carrier and the
10 amounts paid by all carriers during such period.

11 (b) The Department of Insurance may require from each
12 self-insurer, at such time and in accordance with such
13 regulations as the Department of Insurance prescribes, reports
14 in respect to wages paid, the amount of premiums such
15 self-insurer would have to pay if insured, and all payments of
16 compensation made by such self-insurer during each prior
17 period, and may determine the amounts paid by each
18 self-insurer and the amounts paid by all self-insurers during
19 such period. For the purposes of this section, the payroll
20 records of each self-insurer shall be open to annual
21 inspection and audit by the Department of Insurance or its
22 authorized representative, during regular business hours; and
23 if any audit of such records of a self-insurer discloses a
24 deficiency in the amounts reported to the Department of
25 Insurance or in the amounts paid to the Department of
26 Insurance by a self-insurer pursuant to this section, the
27 Department of Insurance may assess the cost of such audit
28 against the self-insurer.

29 (7) The department ~~division~~ shall keep accumulated
30 cost records of all injuries occurring within the state coming
31 within the purview of this chapter on a policy and

1 calendar-year basis. For the purpose of this chapter, the
2 term a "calendar year" means ~~is defined as~~ the year in which
3 the injury is reported to the department division; the term
4 "policy year" means ~~is defined as~~ that calendar year in which
5 the policy becomes effective, and the losses under such policy
6 are ~~shall be~~ chargeable against the policy year so defined.

7 (8) The department division shall assign an account
8 number to each employer under this chapter and an account
9 number to each insurance carrier authorized to write workers'
10 compensation insurance in the state; and it shall be the duty
11 of the department division under the account number so
12 assigned to keep the cost experience of each carrier and the
13 cost experience of each employer under the account number so
14 assigned by calendar and policy year, as above defined.

15 (9) In addition to the above, it shall be the duty of
16 the department division to keep the accident experience, as
17 classified by the department division, by industry as follows:

- 18 (a) Cause of the injury;
19 (b) Nature of the injury; and
20 (c) Type of disability.

21 (10) In every case where the duration of disability
22 exceeds 30 days, the carrier shall establish a sufficient
23 reserve to pay all benefits to which the injured employee, or
24 in case of death, his or her dependents, may be entitled to
25 under the law. In establishing the reserve, consideration
26 shall be given to the nature of the injury, the probable
27 period of disability, and the estimated cost of medical
28 benefits.

29 (11) The department division shall furnish to any
30 employer or carrier, upon request, its individual experience.
31 ~~The division shall furnish to the Department of Insurance,~~

1 ~~upon request, the Florida experience as developed under~~
2 ~~accident year or calendar year.~~

3 (12) In addition to any other penalties provided by
4 this law, the failure to submit any report or other
5 information required by this law shall be just cause to
6 suspend the right of a self-insurer to operate as such, ~~or,~~
7 ~~upon certification by the division to the Department of~~
8 ~~Insurance that a carrier has failed or refused to furnish such~~
9 ~~reports,~~ shall be just cause for the Department of Insurance
10 to suspend or revoke the license of such carrier.

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

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

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

19 (14) Before July 1 in each year, the plan shall notify
20 the department ~~division~~ of the amount of the plan's gross
21 written premiums for the preceding calendar year. Whenever the
22 plan's gross written premiums reported to the department
23 ~~division~~ are less than \$30 million, the department ~~division~~
24 shall transfer to the plan, subject to appropriation by the
25 Legislature, an amount not to exceed the plan's fixed
26 administrative expenses for the preceding calendar year.

27 Section 48. Section 440.52, Florida Statutes, is
28 amended to read:

29 440.52 Registration of insurance carriers; notice of
30 cancellation or expiration of policy; suspension or revocation
31 of authority.--

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

6 (1)~~(2)~~ A carrier or self-insurance fund that receives
7 notice pursuant to s. 440.05 shall notify the contractor of
8 the cancellation or expiration of the insurance.

9 (2)~~(3)~~ If the department ~~division~~ finds, after due
10 notice and a hearing at which the insurance carrier is
11 entitled to be heard in person or by counsel and present
12 evidence, that the insurance carrier has repeatedly failed to
13 comply with its obligations under this chapter, the department
14 ~~division~~ may ~~request the Department of Insurance to~~ suspend or
15 revoke the authorization of such insurance carrier to write
16 workers' compensation insurance ~~under this chapter~~. Such
17 suspension or revocation does ~~shall~~ not affect the liability
18 of any such insurance carrier under policies in force prior to
19 the suspension or revocation.

20 (3)~~(4)~~ In addition to the penalties prescribed in
21 subsection(2)~~(3)~~, violation of s. 440.381 by an insurance
22 carrier shall result in the imposition of a fine not to exceed
23 \$1,000 per audit, if the insurance carrier fails to act on
24 said audits by correcting errors in employee classification or
25 accepted applications for coverage where it knew employee
26 classifications were incorrect. Such fines shall be levied by
27 the Department of Insurance and deposited into the Insurance
28 Commissioner's Regulatory Trust Fund.

29 Section 49. Section 440.525, Florida Statutes, is
30 amended to read:

31

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

12 Section 50. Section 440.572, Florida Statutes, is
13 amended to read:

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

27 Section 51. Section 440.59, Florida Statutes, is
28 amended to read:

29 440.59 Reporting requirements.--

30 (1) The department shall annually prepare a report of
31 the administration of this chapter for the preceding calendar

1 year, including a detailed statement of the receipts of and
2 expenditures from the fund established in s. 440.50 and a
3 statement of the causes of the accidents leading to the
4 injuries for which the awards were made, together with such
5 recommendations as the department considers advisable. On or
6 before September 15 of each year, the department shall submit
7 a copy of the report to the Governor, the President of the
8 Senate, the Speaker of the House of Representatives, the
9 Democratic and Republican Leaders of the Senate and the House
10 of Representatives, and the chairs of the legislative
11 committees having jurisdiction over workers' compensation.

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

30 (3) The department ~~division~~ shall prepare an annual
31 report for all claims for which the employee lost more than 7

1 days from work and shall submit a copy of the report to the
2 Governor, the President of the Senate, the Speaker of the
3 House of Representatives, the Democratic and Republican
4 Leaders of the Senate and the House of Representatives, and
5 the chairs of the legislative committees having jurisdiction
6 over workers' compensation, on or before September 15 of each
7 year. The annual report shall include information, data, and
8 statistics that the department considers relevant ~~a status~~
9 ~~report on all cases involving work-related injuries in the~~
10 ~~previous 10 years. The annual report shall include, but not be~~
11 ~~limited to, the number of open and closed cases, the number of~~
12 ~~cases receiving various types of benefits, and the cash and~~
13 ~~medical benefits paid between the date of injury and the~~
14 ~~evaluation date in each case.~~

15 Section 52. Section 440.591, Florida Statutes, is
16 amended to read:

17 440.591 Administrative procedure; rulemaking
18 authority.--The department, the agency, and the Department of
19 Education have the ~~division has~~ authority to adopt rules
20 pursuant to ss. 120.536(1) and 120.54 to implement the
21 provisions of this chapter conferring duties upon those
22 agencies it.

23 Section 53. Section 440.593, Florida Statutes, is
24 amended to read:

25 440.593 Electronic reporting.--

26 (1) The department ~~division~~ may establish an
27 electronic reporting system requiring or authorizing an
28 employer or carrier to submit required forms, reports, or
29 other information electronically rather than by other means.
30 The department ~~division~~ may establish different deadlines for
31 submitting forms, reports, or information to the department

1 ~~division~~, or to its authorized agent, via the electronic
2 reporting system than are otherwise required when reporting
3 information by other means.

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

11 (3) The department ~~division~~ may revoke the
12 certification of any carrier or vendor determined by the
13 department ~~division~~ to be in noncompliance with performance
14 standards prescribed by rule for electronic submissions.

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

18 (5) The department ~~division~~ is authorized to adopt
19 rules to administer this section.

20 Section 54. Effective July 1, 2002, section 633.801,
21 Florida Statutes, is created to read:

22 633.801 Short title.--Sections 633.801 through 633.825
23 may be cited as the "Florida Firefighter Occupational Safety
24 and Health Act."

25 Section 55. Effective July 1, 2002, section 633.802,
26 Florida Statutes, is created to read:

27 633.802 Definitions.--As used in ss. 633.801-633.825,
28 unless the context clearly indicates otherwise, the term:

29 (1) "Department" means the Department of Insurance.

30 (2) "Division" means the Division of State Fire
31 Marshal of the Department of Insurance.

1 (3) "Firefighter employee" means any person engaged in
2 any employment, public or private, as a firefighter under any
3 appointment or contract of hire or apprenticeship, express or
4 implied, oral or written, whether lawfully or unlawfully
5 employed, and responding to or assisting with fire and medical
6 emergencies whether or not the firefighter is on duty, except
7 those appointed under s. 590.02(1)(d).

8 (4) "Firefighter employer" means the state and all
9 political subdivisions thereof, all public and quasi-public
10 corporations therein, and any person carrying on any
11 employment thereof, which employs firefighters or which uses
12 volunteer firefighters, except those appointed under s.
13 590.02(1)(d).

14 (5) "Firefighter employment" or "employment" means any
15 service performed by a firefighter employee for the
16 firefighter employer.

17 (6) "Place of firefighter employment" or "place of
18 employment" means the physical location at which the
19 firefighter is employed.

20 Section 56. Effective July 1, 2002, section 633.803,
21 Florida Statutes, is created to read:

22 633.803 Legislative intent.--It is the intent of the
23 Legislature to enhance firefighter occupational safety and
24 health in this state through the implementation and
25 maintenance of policies, procedures, practices, rules, and
26 standards that reduce the incidence of firefighter employee
27 accidents, firefighter occupational diseases, and firefighter
28 fatalities compensable under chapter 440 or otherwise. The
29 Legislature further intends that the division develop a means
30 by which it can identify individual firefighter employers with
31 a high frequency or severity of work-related injuries, conduct

1 safety inspections of those firefighter employers, and assist
2 those firefighter employers in the development and
3 implementation of firefighter employee safety and health
4 programs. In addition, it is the intent of the Legislature
5 that the division administer the provisions of ss.
6 633.801-633.825; provide assistance to firefighter employers,
7 firefighter employees, and insurers; and enforce the policies,
8 rules, and standards set forth in ss. 633.801-633.825.

9 Section 57. Effective July 1, 2002, section 633.804,
10 Florida Statutes, is created to read:

11 633.804 Safety inspections, consultations; rules.--The
12 division shall adopt rules governing the manner, means, and
13 frequency of firefighter employer and firefighter employee
14 safety inspections and consultations by all insurers and
15 self-insurers.

16 Section 58. Effective July 1, 2002, section 633.805,
17 Florida Statutes, is created to read:

18 633.805 Division to make study of firefighter
19 occupational diseases, etc.--The division shall make a
20 continuous study of firefighter occupational diseases and the
21 ways and means for their control and prevention and shall make
22 and enforce necessary regulations for such control. For this
23 purpose, the division is authorized to cooperate with
24 firefighter employers, firefighter employees, and insurers and
25 with the Department of Health.

26 Section 59. Effective July 1, 2002, section 633.806,
27 Florida Statutes, is created to read:

28 633.806 Investigations by the division; refusal to
29 admit; penalty.--

30 (1) The division shall make studies and investigations
31 with respect to safety provisions and the causes of

1 firefighter injuries in places of firefighter employment, and
2 shall make to the Legislature and firefighter employers and
3 insurers such recommendations as it considers proper as to the
4 best means of preventing firefighter injuries. In making such
5 studies and investigations, the division may:

6 (a) Cooperate with any agency of the United States
7 charged with the duty of enforcing any law securing safety
8 against injury in any place of firefighter employment covered
9 by ss. 633.801-633.825, or any agency or department of the
10 state engaged in enforcing any law to assure safety for
11 firefighter employees.

12 (b) Allow any such agency or department to have access
13 to the records of the division.

14 (2) The division may adopt procedures by rule for
15 conducting investigations of firefighter employers under ss.
16 633.801-633.825.

17 Section 60. Effective July 1, 2002, section 633.807,
18 Florida Statutes, is created to read:

19 633.807 Safety; firefighter employer
20 responsibilities.--Every firefighter employer shall furnish to
21 firefighters employment that is safe for the firefighter
22 employees, furnish and use safety devices and safeguards,
23 adopt and use methods and processes reasonably adequate to
24 render such an employment and place of employment safe, and do
25 every other thing reasonably necessary to protect the lives,
26 health, and safety of such firefighter employees. As used in
27 this section, the terms "safe" and "safety" as applied to any
28 employment or place of firefighter employment mean such
29 freedom from danger as is reasonably necessary for the
30 protection of the lives, health, and safety of firefighter
31 employees, including conditions and methods of sanitation and

1 hygiene. Safety devices and safeguards required to be
2 furnished by the firefighter employer by this section or by
3 the division under authority of this section do not include
4 personal apparel and protective devices that replace personal
5 apparel normally worn by firefighter employees during regular
6 working hours.

7 Section 61. Effective July 1, 2002, section 633.808,
8 Florida Statutes, is created to read:

9 633.808 Division authority.--The division shall:

10 (1) Investigate and prescribe by rule what safety
11 devices, safeguards, or other means of protection must be
12 adopted for the prevention of accidents in every place of
13 firefighter employment or at any fire scene; determine what
14 suitable devices, safeguards, or other means of protection for
15 the prevention of occupational diseases must be adopted or
16 followed in any or all such places of firefighter employment
17 or at any fire scene; and adopt reasonable rules for the
18 prevention of accidents, for the safety, protection, and
19 security of firefighters engaged in interior firefighting, and
20 for the prevention of occupational diseases.

21 (2) Ascertain, fix, and order such reasonable
22 standards and rules for the construction, repair, and
23 maintenance of places of firefighter employment as will render
24 them safe. Such rules and standards must be adopted in
25 accordance with chapter 120.

26 (3) Assist firefighter employers in the development
27 and implementation of firefighter employee safety training
28 programs by contracting with professional safety
29 organizations.

30 (4) Adopt rules prescribing recordkeeping
31 responsibilities for firefighter employers, which may include

1 rules for maintaining a log and summary of occupational
2 injuries, diseases, and illnesses and for producing on request
3 a notice of injury and firefighter employee accident
4 investigation records, and rules prescribing a retention
5 schedule for such records.

6 Section 62. Effective July 1, 2002, section 633.810,
7 Florida Statutes, is created to read:

8 633.810 Firefighter employers whose firefighter
9 employees have a high frequency or severity of work-related
10 injuries.--The division shall develop a means by which it can
11 identify individual firefighter employers whose firefighter
12 employees have a high frequency or severity of work-related
13 injuries. The division shall carry out safety inspections of
14 the facilities and operations of these firefighter employers
15 in order to assist them in reducing the frequency and severity
16 of work-related injuries. The division shall develop safety
17 and health programs for those firefighter employers. Insurers
18 shall distribute these safety and health programs to the
19 firefighter employers so identified by the division. Those
20 firefighter employers identified by the division as having a
21 high frequency or severity of work-related injuries shall
22 implement a division-developed safety and health program. The
23 division shall carry out safety inspections of those
24 firefighter employers to ensure compliance with the safety and
25 health program and to assist those firefighter employers in
26 reducing the number of work-related injuries. The division may
27 not assess penalties as the result of such inspections, except
28 as provided by s. 633.813. Copies of any report made as the
29 result of such an inspection must be provided to the
30 firefighter employer and its insurer. Firefighter employers
31 may submit their own safety and health programs to the

1 division for approval in lieu of using the division-developed
2 safety and health program. The division must promptly review
3 each program that is submitted by an employer and must approve
4 or disapprove it. Upon approval by the division, the program
5 must be implemented by the firefighter employer. If the
6 program is not approved or if a program is not submitted, the
7 firefighter employer must implement the division-developed
8 program. The division shall adopt rules setting forth the
9 criteria for safety and health programs, as such rules relate
10 to this section.

11 Section 63. Effective July 1, 2002, section 633.812,
12 Florida Statutes, is created to read:

13 633.812 Workplace safety committees and safety
14 coordinators.--

15 (1) In order to promote health and safety in places of
16 firefighter employment in this state:

17 (a) Each firefighter employer of 20 or more
18 firefighter employees shall establish and administer a
19 workplace safety committee in accordance with rules adopted
20 under this section.

21 (b) Each firefighter employer of fewer than 20
22 firefighter employees which is identified by the division as
23 having a high frequency or severity of work-related injuries
24 shall establish and administer a workplace safety committee or
25 designate a workplace safety coordinator who shall establish
26 and administer workplace safety activities in accordance with
27 rules adopted under this section.

28 (2) The division shall adopt rules:

29 (a) Prescribing the membership of the workplace safety
30 committees so as to ensure an equal number of firefighter
31 employee representatives, who are volunteers or are elected by

1 their peers, and of firefighter employer representatives and
2 specifying the frequency of meetings.

3 (b) Requiring firefighter employers to make adequate
4 records of each meeting and to file and maintain the records
5 subject to inspection by the division.

6 (c) Prescribing the duties and functions of the
7 workplace safety committee and workplace safety coordinator,
8 which include, but are not limited to:

9 1. Establishing procedures for workplace safety
10 inspections by the committee.

11 2. Establishing procedures investigating all workplace
12 accidents, safety-related incidents, illnesses, and deaths.

13 3. Evaluating accident-prevention and
14 illness-prevention programs.

15 4. Prescribing guidelines for the training of
16 workplace safety committee members.

17 (3) The composition, selection, and function of
18 workplace safety committees shall be a mandatory topic of
19 negotiations with any certified collective bargaining agent
20 for firefighter employers that operate under a collective
21 bargaining agreement. Firefighter employers that operate under
22 a collective bargaining agreement that contains provisions
23 regulating the formation and operation of workplace safety
24 committees which meet or exceed the minimum requirements
25 contained in this section, or that otherwise have existing
26 workplace safety committees that meet or exceed the minimum
27 requirements established by this section, are in compliance
28 with this section.

29 (4) Firefighter employees must be compensated at their
30 regular hourly wages while engaged in workplace safety
31

1 committee or workplace safety coordinator training, meetings,
2 or other duties prescribed under this section.

3 Section 64. Effective July 1, 2002, section 633.813,
4 Florida Statutes, is created to read:

5 633.813 Firefighter employer penalties.--If any
6 firefighter employer violates or fails or refuses to comply
7 with ss. 633.801-633.825, any rule adopted by the division in
8 accordance with chapter 120 for the prevention of injuries,
9 accidents, or occupational diseases, or any lawful order of
10 the division in connection with ss. 633.801-633.825, or fails
11 or refuses to furnish or adopt any safety device, safeguard,
12 or other means of protection prescribed by the division under
13 ss. 633.801-633.825 for the prevention of accidents or
14 occupational diseases, the division may assess against the
15 firefighter employer a civil penalty of not less than \$100 nor
16 more than \$5,000 for each day the violation, failure, or
17 refusal continues after the firefighter employer has been
18 given notice thereof in writing. The total penalty for each
19 violation may not exceed \$50,000. The division shall adopt
20 rules requiring penalties commensurate with the frequency or
21 severity, or both, of safety violations. A hearing must be
22 held in the county where the violation, failure, or refusal is
23 alleged to have occurred unless otherwise agreed to by the
24 firefighter employer and authorized by the division. All
25 penalties assessed and collected under this section shall be
26 deposited in the Insurance Commissioner's Regulatory Trust
27 Fund.

28 Section 65. Effective July 1, 2002, section 633.814,
29 Florida Statutes, is created to read:

30 633.814 Division cooperation with Federal Government;
31 exemption from division requirements.--

1 (1) The division shall cooperate with the Federal
2 Government so as to avoid duplicate inspections yet assure
3 safe places of firefighter employment for the residents of
4 this state.

5 (2) Except as provided in this section, a private
6 firefighter employer is not subject to the requirements of the
7 division if:

8 (a) The private firefighter employer is subject to the
9 federal regulations stated in 29 C.F.R. ss. 1910 and 1926;

10 (b) The private firefighter employer has adopted and
11 implemented a written safety program that conforms to the
12 requirements of 29 C.F.R. ss. 1910 and 1926;

13 (c) A private firefighter employer that has 20 or more
14 full-time firefighter employees includes provisions for a
15 workplace safety committee in its safety program. The
16 workplace safety committee must include firefighter employee
17 representation and must meet at least once each calendar
18 quarter. The private firefighter employer must make adequate
19 records of each meeting and maintain the records subject to
20 inspections conducted under subsection (3). The workplace
21 safety committee shall, if appropriate, make recommendations
22 regarding improvements to the safety program and corrections
23 of hazards affecting workplace safety; and

24 (d) The private firefighter employer provides the
25 division with a written statement that certifies compliance
26 with this subsection.

27 (3) The division may enter at any reasonable time any
28 place of firefighter employment for the purpose of verifying
29 the accuracy of the written certification required under
30 paragraph (2)(d). If the division determines that the
31 firefighter employer has not complied with subsection (2), the

1 firefighter employer is subject to the rules of the division
2 until the firefighter employer complies with subsection (2)
3 and recertifies that fact to the division.

4 (4) This section does not restrict the division from
5 performing any duties pursuant to a written contract between
6 the division and the federal Occupational Safety and Health
7 Administration (OSHA).

8 Section 66. Effective July 1, 2002, section 633.815,
9 Florida Statutes, is created to read:

10 633.815 Failure to implement a safety and health
11 program; cancellations.--If a firefighter employer that is
12 found by the division to have a high frequency or severity of
13 work-related injuries fails to implement a safety and health
14 program, the insurer or self-insurer's fund that is providing
15 coverage for the firefighter employer may cancel the contract
16 for insurance with the firefighter employer. In the
17 alternative, the insurer or fund may terminate any discount or
18 deviation granted to the firefighter employer for the
19 remainder of the term of the policy. If the contract is
20 canceled or the discount or deviation is terminated, the
21 insurer must make such reports as are required by law.

22 Section 67. Effective July 1, 2002, section 633.816,
23 Florida Statutes, is created to read:

24 633.816 Expenses of administration.--The amounts that
25 are needed to administer ss. 633.801-633.825 shall be
26 disbursed from the Insurance Commissioner's Regulatory Trust
27 Fund.

28 Section 68. Effective July 1, 2002, section 633.817,
29 Florida Statutes, is created to read:

30 633.817 Refusal to admit; penalty.--The division and
31 its authorized representatives may enter and inspect any place

1 of firefighter employment at any reasonable time for the
2 purpose of investigating compliance with ss. 633.801-633.825
3 and conducting inspections for the proper enforcement of ss.
4 633.801-633.825. A firefighter employer who refuses to admit
5 any member of the division or its authorized representative to
6 any place of employment or to allow investigation and
7 inspection under this section commits a misdemeanor of the
8 second degree, punishable as provided in s. 775.082 or s.
9 775.083.

10 Section 69. Effective July 1, 2002, section 633.818,
11 Florida Statutes, is created to read:

12 633.818 Firefighter employee rights and
13 responsibilities.--

14 (1) Each firefighter employee of a firefighter
15 employer covered under ss. 633.801-633.825 shall comply with
16 rules adopted by the division and with reasonable workplace
17 safety and health standards, rules, policies, procedures, and
18 work practices established by the firefighter employer and the
19 workplace safety committee. A firefighter employee who
20 knowingly fails to comply with this subsection may be
21 disciplined or discharged by the firefighter employer.

22 (2) A firefighter employer may not discharge, threaten
23 to discharge, cause to be discharged, intimidate, coerce,
24 otherwise discipline, or in any manner discriminate against a
25 firefighter employee for any of the following reasons:

26 (a) The firefighter employee has testified or is about
27 to testify, on her or his own behalf or on behalf of others,
28 in any proceeding instituted under ss. 633.801-633.825;

29 (b) The firefighter employee has exercised any other
30 right afforded under ss. 633.801-633.825; or

31

1 (c) The firefighter employee is engaged in activities
2 relating to the workplace safety committee.

3 (3) Neither pay, position, seniority, nor other
4 benefit may be lost for exercising any right under, or for
5 seeking compliance with any requirement of, ss.
6 633.801-633.825.

7 Section 70. Effective July 1, 2002, section 633.819,
8 Florida Statutes, is created to read:

9 633.819 Compliance.--Failure of a firefighter employer
10 or an insurer to comply with ss. 633.801-633.825 or with any
11 rules adopted thereunder constitutes grounds for the division
12 to seek remedies, including injunctive relief, for
13 noncompliance by making appropriate filings with the circuit
14 court.

15 Section 71. Effective July 1, 2002, section 633.820,
16 Florida Statutes, is created to read:

17 633.820 False statements to insurers.--A firefighter
18 employer who knowingly and willfully falsifies or conceals a
19 material fact, makes a false, fictitious, or fraudulent
20 statement or representation, or makes or uses any false
21 document knowing the document to contain any false,
22 fictitious, or fraudulent entry or statement to an insurer of
23 workers' compensation insurance under ss. 633.801-633.825
24 commits a misdemeanor of the second degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 Section 72. Effective July 1, 2002, section 633.823,
27 Florida Statutes, is created to read:

28 633.823 Matters within jurisdiction of the division;
29 false, fictitious, or fraudulent acts, statements, and
30 representations prohibited; penalty; statute of
31 limitations.--A person may not, in any matter within the

1 jurisdiction of the division, knowingly and willfully falsify
2 or conceal a material fact; make any false, fictitious, or
3 fraudulent statement or representation; or make or use any
4 false document, knowing the same to contain any false,
5 fictitious, or fraudulent statement or entry. A person who
6 violates this section commits a misdemeanor of the second
7 degree, punishable as provided in s. 775.082 or s. 775.083.
8 The statute of limitations for prosecution of an act committed
9 in violation of this section is 5 years after the date the act
10 was committed or, if not discovered within 30 days after the
11 act was committed, 5 years after the date the act was
12 discovered.

13 Section 73. Effective July 1, 2002, section 633.824,
14 Florida Statutes, is created to read:

15 633.824 Volunteer firefighters; volunteer fire
16 departments.--Sections 633.803-633.825 apply to volunteer
17 firefighters and volunteer fire departments.

18 Section 74. Effective July 1, 2002, section 633.825,
19 Florida Statutes, is created to read:

20 633.825 Workplace safety.--

21 (1) The division shall assist in making places of
22 firefighter employment safer places to work and decreasing the
23 frequency and severity of work-related injuries.

24 (2) The division shall adopt rules for the purpose of
25 assuring safe working conditions for all firefighter employees
26 by authorizing the enforcement of effective standards,
27 assisting and encouraging firefighter employers to maintain
28 safe working conditions, and providing for education and
29 training in the field of safety. Specifically, the division
30 may by rule adopt all or any part of subparts C through T and
31 subpart Z of 29 C.F.R. part 1910 as revised April 8, 1998; the

1 National Fire Protection Association, Inc., Standard 1500,
2 paragraph 5-7 (Personal Alert Safety System) (1992 edition);
3 and ANSI A 10.4-1990.

4 (3) With respect to 29 C.F.R. s. 1910.134(g)(4), the
5 two individuals located outside the immediately dangerous to
6 life and health atmosphere may be assigned to an additional
7 rule, such as incident commander, pumper operator, engineer,
8 or driver, so long as the individual is able to immediately
9 perform assistance or rescue activities without jeopardizing
10 the safety or health of any firefighter working at an

11 incident. Also with respect to 29 C.F.R. s. 1910.134(g)(4):

12 (a) Each county, municipality, or special district
13 shall implement such a provision by April 1, 2003, except as
14 provided in paragraph (b).

15 (b) If any county, municipality, or special district
16 is unable to implement such a provision by April 1, 2003,
17 without adding additional personnel to its firefighting staff
18 or expending significant additional funds, the county,
19 municipality, or special district shall have an additional 6
20 months within which to implement such a provision. Such a
21 county, municipality, or special district shall notify the
22 division that the 6-month extension to implement such a
23 provision is in effect in the county, municipality, or special
24 district within 30 days after its decision to extend the time
25 for an additional 6 months. The decision to extend the time
26 for implementation must be made before April 1, 2003.

27 (c) If, after an extension is granted under paragraph
28 (b), the county, municipality, or special district, after
29 having worked with and cooperated fully with the division and
30 the Firefighters Employment, Standards, and Training Council,
31 is still unable to implement such a provision without adding

1 additional personnel to its firefighting staff or expending
2 significant additional funds, the county, municipality, or
3 special district is exempt from the requirements of 29 C.F.R.
4 s. 1910.134(g)(4). Nevertheless, each year thereafter, the
5 division shall determine if each such county, municipality, or
6 special district could implement such a provision without
7 adding additional personnel to its firefighting staff or
8 expending significant additional funds. The division shall
9 require any county, municipality, or special district that
10 could implement such a provision without adding additional
11 personnel to its firefighting staff or expending significant
12 additional funds to do so. Such a requirement by the division
13 under this paragraph constitutes final agency action subject
14 to chapter 120.

15 (4) The provisions of chapter 440 which pertain to
16 workplace safety are applicable to the division.

17 (5) The division may adopt any rule necessary to
18 implement, interpret, and make specific the provisions of this
19 section; however, the division may not adopt by rule any other
20 standard or standards of the Occupational Safety and Health
21 Administration or the National Fire Protection Association
22 without specific legislative authority.

23 Section 75. Paragraph (c) of subsection (3) of section
24 383.3362, Florida Statutes, is amended to read:

25 383.3362 Sudden Infant Death Syndrome.--

26 (3) TRAINING.--

27 (c) The Department of Health, in consultation with the
28 Emergency Medical Services Advisory Council, the Firefighters
29 Employment, Standards, and Training Council, and the Criminal
30 Justice Standards and Training Commission, shall develop and
31 adopt, by rule, curriculum that, at a minimum, includes

1 training in the nature of SIDS, standard procedures to be
2 followed by law enforcement agencies in investigating cases
3 involving sudden deaths of infants, and training in responding
4 appropriately to the parents or caretakers who have requested
5 assistance.

6 Section 76. Subsection (4) of section 633.30, Florida
7 Statutes, is amended to read:

8 633.30 Standards for firefighting; definitions.--As
9 used in this chapter:

10 (4) "Council" means the Firefighters Employment,
11 Standards,and Training Council.

12 Section 77. Effective July 1, 2002, section 633.31,
13 Florida Statutes, is amended to read:

14 633.31 Firefighters Employment,Standards,and
15 Training Council.--

16 (1) There is created within the Department of
17 Insurance a Firefighters Employment,Standards,and Training
18 Council of 13 ~~nine~~ members appointed by the State Fire
19 Marshal. Two members shall be fire chiefs, who shall be
20 appointed by the Florida Fire Chiefs Association;two members
21 shall be firefighters who are not officers, who shall be
22 appointed by the Florida Professional Firefighters'
23 Association;two members shall be firefighter officers who are
24 not fire chiefs, who shall be appointed by the State Fire
25 Marshal; one member who shall be appointed by the Florida
26 League of Cities; one member who shall be appointed by the
27 Florida Association of Counties; one member who shall be
28 appointed by the Florida Association of Special Districts; one
29 member who shall be appointed by the Florida Fire Marshal's
30 Association; one member who shall be appointed by the State
31 Fire Marshal;and one member who is ~~shall be~~ a director or

1 instructor of a state-certified firefighting training
2 facility, who shall be appointed by the State Fire Marshal. To
3 be eligible for appointment as a fire chief member,
4 firefighter officer member, firefighter member, or a director
5 or instructor of a state-certified firefighting facility, a
6 person shall have had at least 4 years' experience in the
7 firefighting profession. The remaining member, who shall be
8 appointed by the State Fire Marshal, may not be a member or
9 representative ~~two members shall not be members~~ of the
10 firefighting profession or of any local government. Members
11 shall serve only as long as they continue to meet the criteria
12 under which they were appointed, or unless a member has failed
13 to appear at three consecutive and properly noticed meetings
14 unless excused by the chair.

15 (2) ~~Initially, the State Fire Marshal shall appoint~~
16 ~~three members for terms of 4 years, two members for terms of 3~~
17 ~~years, two members for terms of 2 years, and two members for~~
18 ~~terms of 1 year. Thereafter, Members shall be appointed for~~
19 4-year terms and in no event shall a member serve more than
20 two consecutive terms. Any vacancy shall be filled in the
21 manner of the original appointment for the remaining time of
22 the term.

23 (3) The State Fire Marshal, in making her or his
24 appointments, shall take into consideration representation by
25 geography, population, and other relevant factors, in order
26 that the membership on the council will be apportioned to give
27 representation to the state at large rather than to a
28 particular area.

29 (4) Membership on the council does ~~shall~~ not
30 disqualify a member from holding any other public office or
31

1 being employed by a public entity, except that a no member of
2 the Legislature may not shall serve on the council.

3 Section 78. Subsection (4) of section 633.32, Florida
4 Statutes, is amended to read:

5 633.32 Organization; meetings; quorum; compensation;
6 seal.--

7 (4) The council may adopt a seal for its use
8 containing the words "Firefighters Employment, Standards, and
9 Training Council."

10 Section 79. Subsections (4) and (5) of section 633.33,
11 Florida Statutes, are amended to read:

12 633.33 Special powers; firefighter training.--The
13 council shall have special powers in connection with the
14 employment and training of firefighters to:

15 (4) Consult and cooperate with any employing agency,
16 university, college, community college, the Florida State Fire
17 College, or other educational institution concerning the
18 employment and safety of firefighters, including, but not
19 limited to, the safety of firefighters while at the scene of a
20 fire and at the scene of any incident related to emergency
21 services to which a firefighter responds, development of
22 firefighter training schools and programs of courses of
23 instruction, including, but not limited to, education and
24 training in the areas of fire science, fire technology, fire
25 administration, and all allied and supporting fields.

26 (5) Make or support studies on any aspect of
27 firefighting employment, education, and training or
28 recruitment.

29 Section 80. Subsections (1), (4), and (5) of section
30 443.012, Florida Statutes, are amended to read:

31 443.012 Unemployment Appeals Commission.--

1 (1) There is created within the Agency for Workforce
2 Innovation ~~Department of Labor and Employment Security~~ an
3 Unemployment Appeals Commission, hereinafter referred to as
4 the "commission." The commission shall consist of a chair and
5 two other members to be appointed by the Governor, subject to
6 confirmation by the Senate. Not more than one appointee must
7 be a person who, on account of previous vocation, employment,
8 or affiliation, is classified as a representative of
9 employers; and not more than one such appointee must be a
10 person who, on account of previous vocation, employment, or
11 affiliation, is classified as a representative of employees.

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

15 (b) The chair shall have the authority to appoint a
16 general counsel and such other personnel as may be necessary
17 to carry out the duties and responsibilities of the
18 commission.

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

25 (d) The remaining members shall be paid a stipend of
26 \$100 for each day they are engaged in the work of the
27 commission. The chair and other members shall also be
28 reimbursed for travel expenses, as provided in s. 112.061.

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

1 (4) The property, personnel, and appropriations
2 relating to the specified authority, powers, duties, and
3 responsibilities of the commission shall be provided to the
4 commission by the Agency for Workforce Innovation ~~Department~~
5 ~~of Labor and Employment Security~~.

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

10 Section 81. Subsection (12) of section 443.036,
11 Florida Statutes, is amended to read:

12 443.036 Definitions.--As used in this chapter, unless
13 the context clearly requires otherwise:

14 (12) COMMISSION.--"Commission" means the Unemployment
15 Appeals Commission ~~of the Department of Labor and Employment~~
16 ~~Security~~.

17 Section 82. Subsection (3) of section 447.02, Florida
18 Statutes, is amended to read:

19 447.02 Definitions.--The following terms, when used in
20 this chapter, shall have the meanings ascribed to them in this
21 section:

22 (3) The term "department" means the Department of
23 Business and Professional Regulation ~~Labor and Employment~~
24 ~~Security~~.

25 Section 83. Subsection (4) of section 447.305, Florida
26 Statutes, is amended to read:

27 447.305 Registration of employee organization.--

28 (4) Notification of registrations and renewals of
29 registration shall be furnished at regular intervals by the
30 commission to the Department of Business and Professional
31 Regulation ~~Labor and Employment Security~~.

1 Section 84. Subsection (4) of section 450.012, Florida
2 Statutes, is amended to read:

3 450.012 Definitions.--For the purpose of this chapter,
4 the word, phrase, or term:

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

7 Section 85. Subsection (1) of section 450.191, Florida
8 Statutes, is amended to read:

9 450.191 Executive Office of the Governor; powers and
10 duties.--

11 (1) The Executive Office of the Governor is authorized
12 and directed to:

13 (a) Advise and consult with employers of migrant
14 workers as to the ways and means of improving living
15 conditions of seasonal workers;

16 (b) Cooperate with the Department of Health in
17 establishing minimum standards of preventive and curative
18 health and of housing and sanitation in migrant labor camps
19 and in making surveys to determine the adequacy of preventive
20 and curative health services available to occupants of migrant
21 labor camps;

22 (c) Provide coordination for the enforcement of ss.
23 381.008-381.0088;

24 (d) Cooperate with the other departments of government
25 in coordinating all applicable labor laws, including, but not
26 limited to, those relating to private employment agencies,
27 child labor, wage payments, wage claims, and crew leaders;

28 (e) Cooperate with the Department of Education to
29 provide educational facilities for the children of migrant
30 laborers;

31

1 (f) Cooperate with the Department of Highway Safety
2 and Motor Vehicles to establish minimum standards for the
3 transporting of migrant laborers;

4 (g) Cooperate with the Department of Agriculture and
5 Consumer Services to conduct an education program for
6 employers of migrant laborers pertaining to the standards,
7 methods, and objectives of the office;

8 (h) Cooperate with the Department of Children and
9 Family Services in coordinating all public assistance programs
10 as they may apply to migrant laborers;

11 (i) Coordinate all federal, state, and local programs
12 pertaining to migrant laborers; and

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

18 Section 86. Subsection (2) of section 450.28, Florida
19 Statutes, is amended to read:

20 450.28 Definitions.--

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

23 Section 87. Subsection (3) of section 468.529, Florida
24 Statutes, is amended to read:

25 468.529 Licensee's insurance; employment tax; benefit
26 plans.--

27 (3) A licensed employee leasing company shall within
28 30 days of initiation or termination notify its workers'
29 compensation insurance carrier, the Department of Insurance
30 ~~Division of Workers' Compensation~~, and the Division of
31 Unemployment Compensation of the Department of Revenue ~~Labor~~

1 ~~and Employment Security~~ of both the initiation or the
2 termination of the company's relationship with any client
3 company.

4 Section 88. Subsections (1) and (5) of section
5 624.3161, Florida Statutes, are amended to read:

6 624.3161 Market conduct examinations.--

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

17 (5) Such examinations shall also be subject to the
18 applicable provisions of ss. 624.318, 624.319, 624.321, and
19 624.322 and chapter 440.

20 Section 89. Paragraph (m) of subsection (1) of section
21 626.88, Florida Statutes, is amended to read:

22 626.88 Definitions of "administrator" and "insurer".--

23 (1) For the purposes of this part, an "administrator"
24 is any person who directly or indirectly solicits or effects
25 coverage of, collects charges or premiums from, or adjusts or
26 settles claims on residents of this state in connection with
27 authorized commercial self-insurance funds or with insured or
28 self-insured programs which provide life or health insurance
29 coverage or coverage of any other expenses described in s.
30 624.33(1), other than any of the following persons:

31

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

5 Section 90. Subsection (9) of section 626.989, Florida
6 Statutes, is amended to read:

7 626.989 Investigation by department or Division of
8 Insurance Fraud; compliance; immunity; confidential
9 information; reports to division; division investigator's
10 power of arrest.--

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

25 Section 91. Section 627.0915, Florida Statutes, is
26 amended to read:

27 627.0915 Rate filings; workers' compensation,
28 drug-free workplace, and safe employers.--The Department of
29 Insurance shall approve rating plans for workers' compensation
30 insurance that give specific identifiable consideration in the
31 setting of rates to employers that either implement a

1 drug-free workplace program pursuant to rules adopted by the
2 ~~Division of Workers' Compensation of the department of Labor~~
3 ~~and Employment Security~~ or implement a safety program pursuant
4 to provisions of the rating plan or implement both a drug-free
5 workplace program and a safety program. The plans must be
6 actuarially sound and must state the savings anticipated to
7 result from such drug-testing and safety programs.

8 Section 92. Subsection (3) of section 627.914, Florida
9 Statutes, is amended to read:

10 627.914 Reports of information by workers'
11 compensation insurers required.--

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

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

19 (b) A statistical or rating organization may be used
20 by individual self-insurers for the purposes of reporting the
21 data required by this section and calculating experience
22 ratings.

23 Section 93. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 invalidity does not affect other provisions or applications of
26 the act which can be given effect without the invalid
27 provision or application, and to this end the provisions of
28 this act are severable.

29 Section 94. Unless otherwise expressly provided for in
30 this act, this act shall take effect July 1, 2002.

31

SENATE SUMMARY

Pertains to workplace regulation. Transfers the Division of Workers' Compensation from the Department of Labor and Employment Security to the Department of Insurance. Transfers various functions, powers, duties, personnel, and assets relating to workers' compensation to various departments. Provides for certain employees of the division to be given hiring priority by the Department of Insurance. Provides pay and employment guidelines for such employees. Repeals s. 20.171, F.S., which creates the Department of Labor and Employment Security. Revises structure and responsibilities of the Agency for Workforce Innovation. Designates state agencies to administer the workers' compensation law. Provides an appropriation. Provides definitions. Provides for the continuation of contracts and agreements. Transfers the operation of provisions requiring the securing of payment of compensation by employers from the Division of Workers' Compensation to the Florida Self-insurer's Guaranty Association, Inc., and the Department of Insurance. Revises requirements and procedures. Provides powers and duties of the association and the departments. Provides for the allocation or payment of state funds to the association for certain purposes. Provides rulemaking authority. Repeals s. 440.4416, F.S., relating to the Workers' Compensation Oversight Board. Provides for market conduct examinations with respect to workers' compensation. Provides legislative intent. Provides for a transfer of the administration of child labor laws to the Department of Business and Professional Regulation. Provides for a transfer of certain functions of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security relating to labor organizations and migrant and farm labor registration to the Department of Business and Professional Regulation. Provides for a transfer of other workplace regulation functions to the Department of Business and Professional Regulation. Conforms definitions and terminology to these changes. Revises the duties of the Executive Office of the Governor with respect to migrant labor. Creates the "Florida Firefighter Occupational Safety and Health Act." Changes the name and membership of the Firefighters Standards and Training Council. Revises certain powers of the council.