

By the Committee on Banking and Insurance; and Senator Clary

311-2147A-02

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

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

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

1 to changes made by the act; amending s. 440.24,  
2 F.S.; providing for the sale of securities on  
3 deposit to satisfy a compensation order;  
4 amending ss. 440.25, 440.271, F.S., relating to  
5 mediation, hearings, and appeals; conforming  
6 provisions to changes made by the act; amending  
7 ss. 440.345, 440.35, F.S., relating to the  
8 reporting of attorney's fees and employer  
9 records of injury or death; conforming  
10 provisions to changes made by the act; amending  
11 ss. 440.38, 440.381, 440.385, F.S., relating to  
12 security for compensation by insurance carriers  
13 and self-insurers, audits of payroll and  
14 classifications, and the creation, board of  
15 directors, powers and duties, insolvency fund,  
16 and plan of operation for the Florida  
17 Self-Insurance Guaranty Association; conforming  
18 provisions to reflect the transfer of the  
19 Division of Workers' Compensation; amending ss.  
20 440.40, 440.41, 440.42, F.S., relating to  
21 employers posting notice of compensation,  
22 substitution of carriers for employers with  
23 respect to notice and the effect of an order,  
24 and expiration of insurance policies, to  
25 conform; amending s. 440.44, F.S., relating to  
26 the administration of the Workers' Compensation  
27 Law; conforming provisions to reflect the  
28 transfer of the Division of Workers'  
29 Compensation; amending s. 440.45, F.S.,  
30 relating to the Office of the Judges of  
31 Compensation Claims; clarifying the

1           responsibilities of the director of the  
2           Division of Administrative Hearings as agency  
3           head of the Office of the Judges of  
4           Compensation Claims; amending s. 440.49, F.S.,  
5           relating to the Special Disability Trust Fund;  
6           conforming provisions to reflect the transfer  
7           of the Division of Workers' Compensation;  
8           reassigning responsibility for a report on the  
9           Special Disability Trust Fund to the Department  
10          of Insurance; amending s. 440.491, F.S.,  
11          relating to the reemployment of injured  
12          workers; conforming provisions to the transfer  
13          of rehabilitation and reemployment services to  
14          the Department of Education; amending ss.  
15          440.50, 440.51, 440.52, F.S., relating to the  
16          Workers' Compensation Administration Trust  
17          Fund, expenses of administration, and certain  
18          responsibilities of insurance carriers;  
19          conforming references to reflect the transfer  
20          of the Division of Workers' Compensation;  
21          amending s. 440.525, F.S., relating to the  
22          examination of carriers; conforming agency  
23          references to the transfer of programs from the  
24          Department of Labor and Employment Security to  
25          the Department of Insurance; amending s.  
26          440.572, F.S., to conform; amending s. 440.59,  
27          F.S., relating to division reporting  
28          requirements; eliminating unnecessary reporting  
29          requirements; amending ss. 440.591, 440.593,  
30          F.S., relating to authorization to self-insure,  
31          reporting requirements, and rulemaking

1 authority; conforming provisions to changes  
2 made by the act; amending s. 443.012, F.S.;  
3 providing for the Unemployment Appeals  
4 Commission to be created within the Agency for  
5 Workforce Innovation rather than the Department  
6 of Labor and Employment Security; conforming  
7 provisions; amending s. 443.036, F.S.;  
8 conforming the definition of "commission" to  
9 the transfer of the Unemployment Appeals  
10 Commission to the Agency for Workforce  
11 Innovation; amending s. 447.02, F.S.;  
12 conforming the definition of "department" to  
13 the transfer of the regulation of labor  
14 organizations to the Department of Business and  
15 Professional Regulation; amending s. 447.305,  
16 F.S.; providing that notification of  
17 registrations and renewals of registration  
18 shall be furnished to the Department of  
19 Business and Professional Regulation, to  
20 conform; amending s. 450.012, F.S.; conforming  
21 the definition of "department" to the transfer  
22 of the regulation of child labor to the  
23 Department of Business and Professional  
24 Regulation; amending s. 450.191, F.S., relating  
25 to the duties of the Executive Office of the  
26 Governor with respect to migrant labor;  
27 conforming provisions to changes made by the  
28 act; amending s. 450.28, F.S.; conforming the  
29 definition of "department" to the transfer of  
30 the regulation of farm labor to the Department  
31 of Business and Professional Regulation;

1           amending s. 624.3161, F.S., relating to  
2           insurance market conduct examinations;  
3           conforming provisions to changes made by the  
4           act; amending s. 626.88, F.S., relating to  
5           self-insurance definitions; conforming  
6           provisions to changes made by the act; amending  
7           s. 626.989, F.S., relating to Division of  
8           Insurance Fraud reporting requirements;  
9           conforming provisions to changes made by the  
10          act and establishing reporting deadlines;  
11          amending s. 627.0915, F.S.; conforming  
12          departmental references to changes made by the  
13          act; amending s. 627.914, F.S., relating to  
14          reporting requirements by self-insurers;  
15          conforming provisions to changes made by the  
16          act; repealing s. 20.171, F.S., relating to the  
17          establishment and the authority and  
18          organizational structure of the Department of  
19          Labor and Employment Security; repealing s.  
20          440.4416, F.S., relating to the Workers'  
21          Compensation Oversight Board; providing for  
22          severability; providing effective dates.

23

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

25

26           Section 1. (1) All powers, duties, functions, rules,  
27 records, personnel, property, and unexpended balances of  
28 appropriations, allocations, and other funds of the Division  
29 of Workers' Compensation are transferred by a type two  
30 transfer, as defined in section 20.06(2), Florida Statutes,  
31 from the Department of Labor and Employment Security to the

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



1 the Division of Workers' Compensation within the Department of  
2 Labor and Employment Security prior to the transfer. The  
3 Department of Insurance is further authorized to reassign,  
4 reorganize, reclassify, or otherwise transfer positions to  
5 appropriate administrative subdivisions within the department  
6 and to establish such regional offices as are necessary to  
7 properly enforce and administer its responsibilities under the  
8 Florida Insurance Code and chapter 440, Florida Statutes. The  
9 department may also enter into contracts with public or  
10 private entities to administer its duties and responsibilities  
11 associated with the transfer of the Division of Workers'  
12 Compensation.

13 (2) All powers, duties, functions, rules, records,  
14 personnel, property, and unexpended balances of  
15 appropriations, allocations, and other funds of the Office of  
16 the Secretary and the Office of Administrative Services of the  
17 Department of Labor and Employment Security related to the  
18 regulation of labor organizations under chapter 447, Florida  
19 Statutes, and the administration of migrant labor and farm  
20 labor laws under chapter 450, Florida Statutes, are  
21 transferred by a type two transfer, as defined in section  
22 20.06(2), Florida Statutes, from the Department of Labor and  
23 Employment Security to the Department of Business and  
24 Professional Regulation.

25 (3) Any other powers, duties, functions, rules,  
26 records, property, and unexpended balances of appropriations,  
27 allocations, and other funds of the Department of Labor and  
28 Employment Security not otherwise transferred by this act  
29 relating to workplace regulation and enforcement, including,  
30 but not limited to, those under chapter 448, Florida Statutes,  
31 are transferred by a type two transfer, as defined in section

1 20.06(2), Florida Statutes, from the Department of Labor and  
2 Employment Security to the Department of Business and  
3 Professional Regulation. The Department of Business and  
4 Professional Regulation is authorized to reassign, reorganize,  
5 reclassify, or otherwise transfer positions to appropriate  
6 administrative subdivisions within the department to  
7 accomplish its workplace regulation responsibilities.

8 (4) All powers, duties, functions, rules, records,  
9 personnel, property, and unexpended balances of  
10 appropriations, allocations, and other funds of the  
11 Unemployment Appeals Commission relating to the commission's  
12 specified authority, powers, duties, and responsibilities are  
13 transferred by a type two transfer, as defined in section  
14 20.06(2), Florida Statutes, to the Agency for Workforce  
15 Innovation.

16 (5) The Office of Information Systems is transferred  
17 by a type two transfer, as defined in s. 20.06(2), Florida  
18 Statutes, from the Department of Labor and Employment Security  
19 to the State Technology Office. Upon completion of this  
20 transfer, the State Technology Office and the Department of  
21 Insurance shall enter into discussions to determine whether it  
22 would be technologically feasible and cost effective to  
23 separate the workers' compensation related systems and  
24 transfer ownership of these systems to the Department of  
25 Insurance. If the Department of Insurance determines that it  
26 would be technologically feasible and cost effective to  
27 transfer ownership of the workers' compensation related  
28 systems from the State Technology Office to the Department of  
29 Insurance, the Department of Insurance shall submit a transfer  
30 plan and budget amendment requesting the transfer of these  
31

1 systems. The transfer plan and budget amendment must be  
2 approved by the Legislative Budget Commission.

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

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

19 (c) The records, property, and unexpended balances of  
20 appropriations, allocations, and other funds and resources of  
21 the Office of the Secretary and the Office of Administrative  
22 Services of the Department of Labor and Employment Security  
23 which support the activities and functions transferred under  
24 subsection (1) to the Department of Education are transferred  
25 as provided in section 20.06(2), Florida Statutes, to the  
26 Department of Education.

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

1 subsections (1), (2), and (3) to the Department of Business  
2 and Professional Regulation are transferred as provided in  
3 section 20.06(2), Florida Statutes, to the Department of  
4 Business and Professional Regulation.

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

13 (f) The records, property, and unexpended balances of  
14 appropriations, allocations, and other funds and resources of  
15 the Office of the Secretary and the Office of Administrative  
16 Services of the Department of Labor and Employment Security  
17 which support the activities and functions transferred under  
18 subsection (5) to the State Technology Office are transferred  
19 as provided in section 20.06(2), Florida Statutes, to the  
20 State Technology Office.

21 (7) The Department of Management Services shall become  
22 the custodian of any property of the Department of Labor and  
23 Employment Security which is not otherwise transferred for the  
24 purposes of chapter 273, Florida Statutes. The Department of  
25 Management Services is authorized to permit the use of such  
26 property by organizations as necessary to implement the  
27 provisions of this act.

28 (8) Any binding contract or interagency agreement  
29 existing on or before July 1, 2002, between the Department of  
30 Labor and Employment Security, or an entity or agent of the  
31 department, and any other agency, entity, or person shall

1 continue as a binding contract or agreement for the remainder  
2 of the term of such contract or agreement with the successor  
3 department, agency, or entity responsible for the program,  
4 activity, or functions relative to the contract or agreement.

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

15 (10) So that the farm labor, child labor, and  
16 workplace regulation programs may be fully integrated into the  
17 mission of the Department of Business and Professional  
18 Regulation in an effective manner, notwithstanding the  
19 provisions of sections 216.292 and 216.351, Florida Statutes,  
20 upon this act becoming a law the Department of Business and  
21 Professional Regulation is authorized to transfer resources  
22 between services and make revisions to the authorized budget  
23 as necessary to reengineer business processes for the purpose  
24 of reducing costs and increasing program efficiencies. These  
25 actions are subject to the review and approval provisions in  
26 section 216.172, Florida Statutes.

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

29 20.13 Department of Insurance.--There is created a  
30 Department of Insurance.

31

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

3           (k) Division of Workers' Compensation.

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

6           20.50 Agency for Workforce Innovation.--There is  
7 created the Agency for Workforce Innovation within the  
8 Department of Management Services. The agency shall be a  
9 separate budget entity, and the director of the agency shall  
10 be the agency head for all purposes. The agency shall not be  
11 subject to control, supervision, or direction by the  
12 Department of Management Services in any manner, including,  
13 but not limited to, personnel, purchasing, transactions  
14 involving real or personal property, and budgetary matters.

15           (2) The Agency for Workforce Innovation shall be the  
16 designated administrative agency for receipt of federal  
17 workforce development grants and other federal funds, and  
18 shall carry out the duties and responsibilities assigned by  
19 the Governor under each federal grant assigned to the agency.  
20 The agency shall be a separate budget entity and shall expend  
21 each revenue source as provided by federal and state law and  
22 as provided in plans developed by and agreements with  
23 Workforce Florida, Inc. The agency shall prepare and submit as  
24 a separate budget entity a unified budget request for  
25 workforce development, in accordance with chapter 216 for, and  
26 in conjunction with, Workforce Florida, Inc., and its board.  
27 The head of the agency is the director of Workforce  
28 Innovation, who shall be appointed by the Governor.  
29 Accountability and reporting functions of the agency shall be  
30 administered by the director or his or her designee. Included  
31 in these functions are budget management, financial

1 management, audit, performance management standards and  
2 controls, assessing outcomes of service delivery, and  
3 financial administration of workforce programs pursuant to s.  
4 445.004(5) and (9). Within the agency's overall organizational  
5 structure, the agency shall include the following offices  
6 which shall have the specified responsibilities:

7 (a) The Office of Workforce Services shall administer  
8 ~~state merit system program staff within the~~ unemployment  
9 compensation program, the Rapid Response program, the Work  
10 Opportunity Tax Credit program, the Alien Labor Certification  
11 program, and any other programs that are delivered directly by  
12 agency staff rather than through the one-stop workforce  
13 ~~service delivery system, pursuant to policies of Workforce~~  
14 ~~Florida, Inc. The office shall be responsible for delivering~~  
15 ~~services through the one-stop delivery system and for ensuring~~  
16 ~~that participants in welfare transition programs receive case~~  
17 ~~management services, diversion assistance, support services,~~  
18 ~~including subsidized child care and transportation services,~~  
19 ~~Medicaid services, and transition assistance to enable them to~~  
20 ~~succeed in the workforce.~~ The office shall be directed by the  
21 Deputy Director for Workforce Services, who shall be appointed  
22 by and serve at the pleasure of the director.

23 (b) The Office of Program Support ~~Workforce Investment~~  
24 and Accountability shall administer state merit system program  
25 staff within the workforce service delivery system, pursuant  
26 to policies of Workforce Florida, Inc. The office shall be  
27 responsible for delivering services through the one-stop  
28 delivery system and for ensuring that participants in welfare  
29 transition programs receive case management services,  
30 diversion assistance, support services, including subsidized  
31 child care and transportation services, Medicaid services, and

1 transition assistance to enable them to succeed in the  
2 workforce. The office shall also be responsible for program  
3 quality assurance, grants and contract management procurement,  
4 contracting, financial management, accounting, audits, and  
5 reporting verification. The office shall be directed by the  
6 Deputy Director for Program Support Workforce Investment and  
7 Accountability, who shall be appointed by and serve at the  
8 pleasure of the director. The office shall be responsible  
9 for:

10 ~~1. Establishing standards and controls for reporting~~  
11 ~~budgeting, expenditure, and performance information for~~  
12 ~~assessing outcomes, service delivery, and financial~~  
13 ~~administration of workforce programs pursuant to s. 445.004(5)~~  
14 ~~and (9).~~

15 ~~1.2.~~ Establishing monitoring, quality assurance, and  
16 quality improvement systems that routinely assess the quality  
17 and effectiveness of contracted programs and services.

18 ~~2.3.~~ Annual review of each regional workforce board  
19 and administrative entity to ensure adequate systems of  
20 reporting and control are in place, and monitoring, quality  
21 assurance, and quality improvement activities are conducted  
22 routinely, and corrective action is taken to eliminate  
23 deficiencies.

24 (c) The Office of Agency Support Workforce Information  
25 Services shall be responsible for procurement, human resource  
26 services, and information services including delivering  
27 ~~deliver~~ information on labor markets, employment, occupations,  
28 and performance, and shall implement and maintain information  
29 systems that are required for the effective operation of the  
30 one-stop delivery system and the school readiness services  
31 system, including, but not limited to, those systems described



1 in s. 445.009. The office will be under the direction of the  
2 Deputy Director for Agency Support ~~Workforce Information~~  
3 Services, who shall be appointed by and serve at the pleasure  
4 of the director. The office shall be responsible for  
5 establishing:

6 1. Information systems and controls that report  
7 reliable, timely and accurate fiscal and performance data for  
8 assessing outcomes, service delivery, and financial  
9 administration of workforce programs pursuant to s. 445.004(5)  
10 and (9).

11 2. Information systems that support service  
12 integration and case management by providing for case tracking  
13 for participants in welfare transition programs.

14 3. Information systems that support school readiness  
15 services.

16 (d) The Unemployment Appeals Commission, authorized by  
17 s. 443.012, shall not be subject to the control, supervision,  
18 or direction by the Agency for Workforce Innovation in the  
19 performance of its powers and duties but shall receive any and  
20 all support and assistance from the agency that may be  
21 required for the performance of its duties.

22 (3) The Agency for Workforce Innovation shall serve as  
23 the designated agency for purposes of each federal workforce  
24 development grant assigned to it for administration. The  
25 agency shall carry out the duties assigned to it by the  
26 Governor, under the terms and conditions of each grant. The  
27 agency shall have the level of authority and autonomy  
28 necessary to be the designated recipient of each federal grant  
29 assigned to it, and shall disperse such grants pursuant to the  
30 plans and policies of Workforce Florida, Inc. The director  
31 may, upon delegation from the Governor and pursuant to

1 agreement with Workforce Florida, Inc., sign contracts,  
2 grants, and other instruments as necessary to execute  
3 functions assigned to the agency. Notwithstanding other  
4 provisions of law, the following federal grants and other  
5 funds are assigned for administration to the Agency for  
6 Workforce Innovation:

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

11 (b) Programs authorized under the Wagner-Peyser Act of  
12 1933, as amended, 29 U.S.C. ss. 49 et seq.

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

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

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

22 (f) Employment and training activities carried out  
23 under the Community Services Block Grant Act, 42 U.S.C. ss.  
24 9901 et seq.

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

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

1 (i) Programs authorized under the National and  
2 Community Service Act of 1990, 42 U.S.C. ss. 12501 et seq.,  
3 and the Service-America programs, the National Service Trust  
4 programs, the Civilian Community Corps, the Corporation for  
5 National and Community Service, the American Conservation and  
6 Youth Service Corps, and the Points of Light Foundation  
7 programs, if such programs are awarded to the state.

8 (j) The Unemployment Compensation program provided  
9 pursuant to chapter 443.

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

13 Section 4. Paragraph (m) of subsection (2) of section  
14 110.205, Florida Statutes, is amended to read:

15 110.205 Career service; exemptions.--

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

18 (m) All assistant division director, deputy division  
19 director, and bureau chief positions in any department, and  
20 those positions determined by the department to have  
21 managerial responsibilities comparable to such positions,  
22 which positions include, but are not limited to, positions in  
23 the Department of Health, the Department of Children and  
24 Family Services, and the Department of Corrections that are  
25 assigned primary duties of serving as the superintendent or  
26 assistant superintendent, or warden or assistant warden, of an  
27 institution; positions in the Department of Corrections that  
28 are assigned primary duties of serving as the circuit  
29 administrator or deputy circuit administrator; positions in  
30 the Department of Transportation that are assigned primary  
31 duties of serving as regional toll managers and managers of

1 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions  
2 in the Department of Environmental Protection that are  
3 assigned the duty of an Environmental Administrator or program  
4 administrator; ~~those positions described in s. 20.171 as~~  
5 ~~included in the Senior Management Service~~ and positions in  
6 the Department of Health that are assigned the duties of  
7 Environmental Administrator, Assistant County Health  
8 Department Director, and County Health Department Financial  
9 Administrator. Unless otherwise fixed by law, the department  
10 shall set the salary and benefits of these positions in  
11 accordance with the rules established for the Selected Exempt  
12 Service.

13 Section 5. Paragraph (h) of subsection (2) of section  
14 112.19, Florida Statutes, is amended to read:

15 112.19 Law enforcement, correctional, and correctional  
16 probation officers; death benefits.--

17 (2)

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

1 subsequently dies, the employer shall continue to pay the  
2 entire health insurance premium for the surviving spouse until  
3 remarried, and for the dependent children, under the  
4 conditions outlined in this paragraph. However:

5 a. Health insurance benefits payable from any other  
6 source shall reduce benefits payable under this section.

7 b. It is unlawful for a person to willfully and  
8 knowingly make, or cause to be made, or to assist, conspire  
9 with, or urge another to make, or cause to be made, any false,  
10 fraudulent, or misleading oral or written statement to obtain  
11 health insurance coverage as provided under this paragraph. A  
12 person who violates this sub-subparagraph commits a  
13 misdemeanor of the first degree, punishable as provided in s.  
14 775.082 or s. 775.083.

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

26 2. In order for the officer, spouse, and dependent  
27 children to be eligible for such insurance coverage, the  
28 injury must have occurred as the result of the officer's  
29 response to fresh pursuit, the officer's response to what is  
30 reasonably believed to be an emergency, or an unlawful act  
31 perpetrated by another. Except as otherwise provided herein,

1 nothing in this paragraph shall be construed to limit health  
2 insurance coverage for which the officer, spouse, or dependent  
3 children may otherwise be eligible, except that a person who  
4 qualifies under this section shall not be eligible for the  
5 health insurance subsidy provided under chapter 121, chapter  
6 175, or chapter 185.

7 Section 6. Paragraph (g) of subsection (2) of section  
8 112.191, Florida Statutes, is amended to read:

9 112.191 Firefighters; death benefits.--

10 (2)

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

28 a. Health insurance benefits payable from any other  
29 source shall reduce benefits payable under this section.

30 b. It is unlawful for a person to willfully and  
31 knowingly make, or cause to be made, or to assist, conspire

1 with, or urge another to make, or cause to be made, any false,  
2 fraudulent, or misleading oral or written statement to obtain  
3 health insurance coverage as provided under this paragraph. A  
4 person who violates this sub-subparagraph commits a  
5 misdemeanor of the first degree, punishable as provided in s.  
6 775.082 or s. 775.083.

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

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

29  
30 Notwithstanding any provision of this section to the contrary,  
31 the death benefits provided in paragraphs (b), (c), and (f)

1 shall also be applicable and paid in cases where a firefighter  
2 received bodily injury prior to July 1, 1993, and subsequently  
3 died on or after July 1, 1993, as a result of such  
4 in-line-of-duty injury.

5 Section 7. Section 121.125, Florida Statutes, is  
6 amended to read:

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

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

30 122.03 Contributions; participants; prior service  
31 credit.--



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

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

23           238.06 Membership application, creditable service, and  
24 time for making contributions.--

25           (10) A member of the retirement system created by this  
26 chapter who has been eligible or becomes eligible to receive  
27 workers' compensation payments for an injury or illness  
28 occurring during his or her employment while a member of any  
29 state retirement system shall, upon his or her return to  
30 active employment with a covered employer for 1 calendar month  
31 or upon his or her approval for disability retirement in

1 accordance with s. 238.07, receive full retirement credit for  
2 the period prior to such return to active employment or  
3 disability retirement for which the workers' compensation  
4 payments were received. However, no member may receive  
5 retirement credit for any such period occurring after the  
6 earlier of the date of maximum medical improvement ~~has been~~  
7 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date  
8 termination has occurred as defined in s. 121.021(39). The  
9 employer of record at the time of the worker's compensation  
10 injury or illness shall make the required employee and  
11 employer retirement contributions based on the member's rate  
12 of monthly compensation immediately

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

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

1 the other hand, and the laws pertaining to workers'  
2 compensation are to be construed in accordance with the basic  
3 principles of statutory construction and not liberally in  
4 favor of either employee or employer. It is the intent of the  
5 Legislature to ensure the prompt delivery of benefits to the  
6 injured worker. Therefore, an efficient and self-executing  
7 system must be created which is not an economic or  
8 administrative burden. The department, agency, the Department  
9 of Education, and the Division of Administrative Hearings  
10 ~~Division of Workers' Compensation~~ shall administer the  
11 Workers' Compensation Law in a manner which facilitates the  
12 self-execution of the system and the process of ensuring a  
13 prompt and cost-effective delivery of payments.

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

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

22 (3) "Agency" means the Agency for Health Care  
23 Administration.

24 (12)~~(11)~~ "Department" means the Department of  
25 Insurance ~~Labor and Employment Security.~~

26 (14)~~(13)~~ "Division" means the Division of Workers'  
27 Compensation of the Department of Insurance ~~Labor and~~  
28 ~~Employment Security.~~

29 (15)~~(14)~~(a) "Employee" means any person engaged in any  
30 employment under any appointment or contract of hire or  
31 apprenticeship, express or implied, oral or written, whether

1 lawfully or unlawfully employed, and includes, but is not  
2 limited to, aliens and minors.

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

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

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

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

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

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

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

10 (d) "Employee" does not include:

11 1. An independent contractor, if:

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

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

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

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

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

31

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

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

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

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

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

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

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

28 4. An owner-operator of a motor vehicle who transports  
29 property under a written contract with a motor carrier which  
30 evidences a relationship by which the owner-operator assumes  
31 the responsibility of an employer for the performance of the

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

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

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

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

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

28 b. Volunteers participating in federal programs  
29 established under Pub. L. No. 93-113.

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

1           8. A sole proprietor or officer of a corporation who  
2 actively engages in the construction industry, and a partner  
3 in a partnership that is actively engaged in the construction  
4 industry, who elects to be exempt from the provisions of this  
5 chapter. Such sole proprietor, officer, or partner is not an  
6 employee for any reason until the notice of revocation of  
7 election filed pursuant to s. 440.05 is effective.

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

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

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



1 employed by a district school board who serves as a sports  
2 official as required by the employing school board or who  
3 serves as a sports official as part of his or her  
4 responsibilities during normal school hours.

5 Section 12. Section 440.021, Florida Statutes, is  
6 amended to read:

7 440.021 Exemption of workers' compensation from  
8 chapter 120.--Workers' compensation adjudications by judges of  
9 compensation claims are exempt from chapter 120, and no judge  
10 of compensation claims shall be considered an agency or a part  
11 thereof. Communications of the result of investigations by the  
12 department division pursuant to s. 440.185(4) are exempt from  
13 chapter 120. In all instances in which the department division  
14 institutes action to collect a penalty or interest which may  
15 be due pursuant to this chapter, the penalty or interest shall  
16 be assessed without hearing, and the party against which such  
17 penalty or interest is assessed shall be given written notice  
18 of such assessment and shall have the right to protest within  
19 20 days of such notice. Upon receipt of a timely notice of  
20 protest and after such investigation as may be necessary, the  
21 department division shall, if it agrees with such protest,  
22 notify the protesting party that the assessment has been  
23 revoked. If the department division does not agree with the  
24 protest, it shall refer the matter to the judge of  
25 compensation claims for determination pursuant to s.  
26 440.25(2)-(5). Such action of the department division is  
27 exempt from the provisions of chapter 120.

28 Section 13. Section 440.05, Florida Statutes, is  
29 amended to read:

30 440.05 Election of exemption; revocation of election;  
31 notice; certification.--

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

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

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

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

1 exemption. Upon filing a notice of revocation of election, a  
2 sole proprietor, partner, or officer who is a subcontractor  
3 must notify her or his contractor. Upon revocation of a  
4 certificate of election of exemption by the department  
5 ~~division~~, the department ~~division~~ shall notify the workers'  
6 compensation carriers identified in the request for exemption.

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

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

29 (6) A construction industry certificate of election to  
30 be exempt which is issued in accordance with this section  
31 shall be valid for 2 years after the effective date stated

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

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

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

28 (b) The funds collected by the department ~~division~~  
29 shall be used to administer this section, to audit the  
30 businesses that pay the fee for compliance with any  
31

1 requirements of this chapter, and to enforce compliance with  
2 the provisions of this chapter.

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

11 Section 14. Paragraph (d) of subsection (7) of section  
12 440.09, Florida Statutes, is amended to read:

13 440.09 Coverage.--

14 (7)

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

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

21 440.10 Liability for compensation.--

22 (1)

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

31

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

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

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

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

23 Section 16. Subsection (2), paragraph (a) of  
24 subsection (3), and paragraph (g) of subsection (7) of section  
25 440.102, Florida Statutes, are amended to read:

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

30 (2) DRUG TESTING.--An employer may test an employee or  
31 job applicant for any drug described in paragraph (1)(c). In

1 order to qualify as having established a drug-free workplace  
2 program which affords an employer the ability to qualify for  
3 the discounts provided under s. 627.0915 and deny medical and  
4 indemnity benefits, under this chapter all drug testing  
5 conducted by employers shall be in conformity with the  
6 standards and procedures established in this section and all  
7 applicable rules adopted pursuant to this section. However, an  
8 employer does not have a legal duty under this section to  
9 request an employee or job applicant to undergo drug testing.  
10 If an employer fails to maintain a drug-free workplace program  
11 in accordance with the standards and procedures established in  
12 this section and in applicable rules, the employer shall not  
13 be eligible for discounts under s. 627.0915. All employers  
14 qualifying for and receiving discounts provided under s.  
15 627.0915 must be reported annually by the insurer to the  
16 department ~~division~~.

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

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

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

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

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

31



- 1           2. A statement advising the employee or job applicant  
2 of the existence of this section.
- 3           3. A general statement concerning confidentiality.
- 4           4. Procedures for employees and job applicants to  
5 confidentially report to a medical review officer the use of  
6 prescription or nonprescription medications to a medical  
7 review officer both before and after being tested.
- 8           5. A list of the most common medications, by brand  
9 name or common name, as applicable, as well as by chemical  
10 name, which may alter or affect a drug test. A list of such  
11 medications as developed by the Agency for Health Care  
12 Administration shall be available to employers through the  
13 ~~Division of Workers' Compensation of the department of Labor~~  
14 ~~and Employment Security.~~
- 15           6. The consequences of refusing to submit to a drug  
16 test.
- 17           7. A representative sampling of names, addresses, and  
18 telephone numbers of employee assistance programs and local  
19 drug rehabilitation programs.
- 20           8. A statement that an employee or job applicant who  
21 receives a positive confirmed test result may contest or  
22 explain the result to the medical review officer within 5  
23 working days after receiving written notification of the test  
24 result; that if an employee's or job applicant's explanation  
25 or challenge is unsatisfactory to the medical review officer,  
26 the medical review officer shall report a positive test result  
27 back to the employer; and that a person may contest the drug  
28 test result pursuant to law or to rules adopted by the Agency  
29 for Health Care Administration.
- 30           9. A statement informing the employee or job applicant  
31 of his or her responsibility to notify the laboratory of any

1 administrative or civil action brought pursuant to this  
2 section.

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

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

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

13 (7) EMPLOYER PROTECTION.--

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

1 testing must be specified in a collective bargaining agreement  
2 as negotiated by the appropriate certified bargaining agent  
3 before such testing is implemented.

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

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

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

26 440.104 Competitive bidder; civil actions.--

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

1 winning bidder knew or should have known that he or she was in  
2 violation of s. 440.10, s. 440.105, or s. 440.38 while  
3 performing the work under the contract.

4 Section 19. Paragraph (a) of subsection (2) of section  
5 440.105, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

27 Section 20. Subsections (3) and (4) of section  
28 440.106, Florida Statutes, are amended to read:

29 440.106 Civil remedies; administrative penalties.--

30 (3) Whenever any group or individual self-insurer,  
31 carrier, rating bureau, or agent or other representative of

1 any carrier or rating bureau is determined to have violated s.  
2 440.105, the department ~~of Insurance~~ may revoke or suspend the  
3 authority or certification of any group or individual  
4 self-insurer, carrier, agent, or broker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 where the real estate is located, and with respect to personal  
2 property of the employer, the notice is recorded with the  
3 Secretary of State.

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

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

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

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

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

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

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

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

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

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

1 at the time of the injury exceed \$20 per week, compensation  
2 shall not exceed an amount per week which is:

3 (a) Equal to 100 percent of the statewide average  
4 weekly wage, determined as hereinafter provided for the year  
5 in which the injury occurred; however, the increase to 100  
6 percent from 66 2/3 percent of the statewide average weekly  
7 wage shall apply only to injuries occurring on or after August  
8 1, 1979; and

9 (b) Adjusted to the nearest dollar.

10

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

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

25 440.125 Medical records and reports; identifying  
26 information in employee medical bills; confidentiality.--

27 (1) Any medical records and medical reports of an  
28 injured employee and any information identifying an injured  
29 employee in medical bills which are provided to the  
30 department, Division of Workers' Compensation of the  
31 ~~Department of Labor and Employment Security pursuant to s.~~

1 440.13 are confidential and exempt from the provisions of s.  
2 119.07(1) and s. 24(a), Art. I of the State Constitution,  
3 except as otherwise provided by this chapter. The department  
4 may share any such confidential and exempt records, reports,  
5 or information received pursuant to s. 440.13 with the Agency  
6 for Health Care Administration and the Department of Education  
7 in furtherance of their official duties under ss. 440.13 and  
8 440.134. The agency and the department shall maintain the  
9 confidential and exempt status of such records, reports, and  
10 information received.

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

25 Section 25. Subsections (1), (3), (4), (5), (6), (7),  
26 (8), (9), (11), (12), (13), and (15) of section 440.13,  
27 Florida Statutes, are amended to read:

28 440.13 Medical services and supplies; penalty for  
29 violations; limitations.--

30 (1) DEFINITIONS.--As used in this section, the term:  
31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

31



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

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

4           4. The parties agree to an alternate examiner.

5  
6 Any party may request, or a judge of compensation claims may  
7 require, designation of an agency ~~a division~~ medical advisor  
8 as an independent medical examiner. The opinion of the  
9 advisors acting as examiners shall not be afforded the  
10 presumption set forth in paragraph (9)(c).

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

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

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

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

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

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

27 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

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

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

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

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

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

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

31



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

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

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

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

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

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

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

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

27 2. Deauthorization of care under review;

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

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

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

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

6           (9) EXPERT MEDICAL ADVISORS.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 3. The financial impact of the reimbursement  
26 allowances upon health care providers and health care  
27 facilities, including trauma centers as defined in s.  
28 395.4001, and its effect upon their ability to make available  
29 to injured workers such medically necessary remedial  
30 treatment, care, and attendance. The uniform schedule of  
31 maximum reimbursement allowances must be reasonable, must



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

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

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

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

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

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

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

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

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

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

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

9 (15) PRACTICE PARAMETERS.--

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

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

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

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

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

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

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

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

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

24 440.14 Determination of pay.--

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

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

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

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

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

12 (1) PERMANENT TOTAL DISABILITY.--

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

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

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

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

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

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

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

12           (2) TEMPORARY TOTAL DISABILITY.--

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

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

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

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

4 (a) Impairment benefits.--

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

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

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

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

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

24           b. The death of the employee.

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

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



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

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

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

24         (b) Supplemental benefits.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (4) TEMPORARY PARTIAL DISABILITY.--

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

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

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

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

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

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

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

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

30  
31

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

31

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

4           440.191 Employee Assistance and Ombudsman Office.--

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

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

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

1 (2)

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

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

17 440.192 Procedure for resolving benefit disputes.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) In order to ensure carrier compliance under this  
13 chapter and provisions of the Florida Insurance Code, the  
14 department division shall monitor the performance of carriers  
15 by conducting market conduct examinations, as provided in s.  
16 624.3161, and conducting investigations, as provided in s.  
17 624.317. The department division shall establish by rule  
18 minimum performance standards for carriers to ensure that a  
19 minimum of 90 percent of all compensation benefits are timely  
20 paid. The department division shall fine a carrier as provided  
21 in s. 440.13(11)(b) up to \$250~~\$50~~ for each late payment of  
22 compensation. If the department finds patterns or practices of  
23 untimely payment, the department shall impose penalties as  
24 provided pursuant to s. 624.4211 that is below the minimum 90  
25 percent performance standard. This paragraph does not affect  
26 the imposition of any penalties or interest due to the  
27 claimant. If a carrier contracts with a servicing agent to  
28 fulfill its administrative responsibilities under this  
29 chapter, the payment practices of the servicing agent are  
30 deemed the payment practices of the carrier for the purpose of  
31 assessing penalties against the carrier.



1           (9) The department ~~division~~ may upon its own  
2 initiative at any time in a case in which payments are being  
3 made without an award investigate same and shall, in any case  
4 in which the right to compensation is controverted, or in  
5 which payments of compensation have been stopped or suspended,  
6 upon receipt of notice from any person entitled to  
7 compensation or from the employer that the right to  
8 compensation is controverted or that payments of compensation  
9 have been stopped or suspended, make such investigations,  
10 cause such medical examination to be made, or hold such  
11 hearings, and take such further action as it considers will  
12 properly protect the rights of all parties.

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

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

1 claimant for any settlement under this section unless  
2 expressly authorized elsewhere in this chapter. Upon the joint  
3 petition of all interested parties and after giving due  
4 consideration to the interests of all interested parties, the  
5 judge of compensation claims may enter a compensation order  
6 approving and authorizing the discharge of the liability of  
7 the employer for compensation and remedial treatment, care,  
8 and attendance, as well as rehabilitation expenses, by the  
9 payment of a lump sum. Such a compensation order so entered  
10 upon joint petition of all interested parties is not subject  
11 to modification or review under s. 440.28. If the settlement  
12 proposal together with supporting evidence is not approved by  
13 the judge of compensation claims, it shall be considered void.  
14 Upon approval of a lump-sum settlement under this subsection,  
15 the judge of compensation claims shall send a report to the  
16 Chief Judge of the amount of the settlement and a statement of  
17 the nature of the controversy. The Chief Judge shall keep a  
18 record of all such reports filed by each judge of compensation  
19 claims and shall submit to the Legislature a summary of all  
20 such reports filed under this subsection annually by September  
21 15.

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

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

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

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

1 under this subsection is not considered to be an award and is  
2 not subject to modification or review. The judge of  
3 compensation claims shall report these settlements to the  
4 Deputy Chief Judge in accordance with the requirements set  
5 forth in paragraphs (a) and (b). Settlements entered into  
6 under this subsection are valid and apply to all dates of  
7 accident.

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

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

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

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

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

1 compensation claims ~~or~~ by the department ~~division director~~,  
2 ~~or by the administrator of claims of the division.~~

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

7 1. An advance payment of compensation not in excess of  
8 \$2,000 may be approved informally by letter, without hearing,  
9 by any judge of compensation claims or the Chief Judge.

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

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

1 his discretion, may have an investigation of the matter made  
2 ~~by the Rehabilitation Section of the division.~~ The stipulation  
3 and the report of any investigation shall be deemed a part of  
4 the record of the proceedings.

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

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

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

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

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

28 (c) If any person refuses to comply with any such  
29 subpoena or to testify as to any matter concerning which she  
30 or he may be lawfully interrogated, the Circuit Court of Leon  
31 County or of the county wherein such examination,



1 investigation, or hearing is being conducted, or of the county  
2 wherein such person resides, may, on the application of the  
3 department, issue an order requiring such person to comply  
4 with the subpoena and to testify.

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

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

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

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

1 Department of Insurance shall enforce this subsection; ~~and in~~  
2 ~~the case of self-insurers, the division shall enforce this~~  
3 ~~subsection.~~

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

7 Section 34. Subsections (1) and (2) of section  
8 440.207, Florida Statutes, are amended to read:

9 440.207 Workers' compensation system guide.--

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

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

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

31

1           440.211 Authorization of collective bargaining  
2 agreement.--

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

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

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

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

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

24           (e) A vocational rehabilitation or retraining program.

25           Section 36. Subsections (1), (2), and (3) of section  
26 440.24, Florida Statutes, are amended to read:

27           440.24 Enforcement of compensation orders;  
28 penalties.--

29           (1) In case of default by the employer or carrier in  
30 the payment of compensation due under any compensation order  
31 of a judge of compensation claims or other failure by the

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

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

22 (3) In any case where the employer is a self-insurer  
23 and fails to comply with any compensation order of a judge of  
24 compensation claims or court within 10 days after such order  
25 becomes final, the department ~~division~~ may suspend or revoke  
26 any authorization previously given to the employer to become a  
27 self-insurer, and the department ~~division~~ may sell such of the  
28 securities deposited by such self-insurer with the department  
29 ~~division~~ as may be necessary to satisfy such order.

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

1           440.25 Procedures for mediation and hearings.--  
2           (5)(a) Procedures with respect to appeals from orders  
3 of judges of compensation claims shall be governed by rules  
4 adopted by the Supreme Court. Such an order shall become final  
5 30 days after mailing of copies of such order to the parties,  
6 unless appealed pursuant to such rules.  
7           (b) An appellant may be relieved of any necessary  
8 filing fee by filing a verified petition of indigency for  
9 approval as provided in s. 57.081(1) and may be relieved in  
10 whole or in part from the costs for preparation of the record  
11 on appeal if, within 15 days after the date notice of the  
12 estimated costs for the preparation is served, the appellant  
13 files with the judge of compensation claims a copy of the  
14 designation of the record on appeal, and a verified petition  
15 to be relieved of costs. A verified petition filed prior to  
16 the date of service of the notice of the estimated costs shall  
17 be deemed not timely filed. The verified petition relating to  
18 record costs shall contain a sworn statement that the  
19 appellant is insolvent and a complete, detailed, and sworn  
20 financial affidavit showing all the appellant's assets,  
21 liabilities, and income. Failure to state in the affidavit all  
22 assets and income, including marital assets and income, shall  
23 be grounds for denying the petition with prejudice. The Office  
24 of the Judges of Compensation Claims shall adopt rules as may  
25 be required pursuant to this subsection, including forms for  
26 use in all petitions brought under this subsection. The  
27 appellant's attorney, or the appellant if she or he is not  
28 represented by an attorney, shall include as a part of the  
29 verified petition relating to record costs an affidavit or  
30 affirmation that, in her or his opinion, the notice of appeal  
31 was filed in good faith and that there is a probable basis for

1 the District Court of Appeal, First District, to find  
2 reversible error, and shall state with particularity the  
3 specific legal and factual grounds for the opinion. Failure to  
4 so affirm shall be grounds for denying the petition. A copy of  
5 the verified petition relating to record costs shall be served  
6 upon all interested parties. The judge of compensation claims  
7 shall promptly conduct a hearing on the verified petition  
8 relating to record costs, giving at least 15 days' notice to  
9 the appellant, the department ~~division~~, and all other  
10 interested parties, all of whom shall be parties to the  
11 proceedings. The judge of compensation claims may enter an  
12 order without such hearing if no objection is filed by an  
13 interested party within 20 days from the service date of the  
14 verified petition relating to record costs. Such proceedings  
15 shall be conducted in accordance with the provisions of this  
16 section and with the workers' compensation rules of procedure,  
17 to the extent applicable. In the event an insolvency petition  
18 is granted, the judge of compensation claims shall direct the  
19 department ~~division~~ to pay record costs and filing fees from  
20 the Workers' Compensation Administration Trust Fund pending  
21 final disposition of the costs of appeal. The department  
22 ~~division~~ may transcribe or arrange for the transcription of  
23 the record in any proceeding for which it is ordered to pay  
24 the cost of the record.

25 (c) As a condition of filing a notice of appeal to the  
26 District Court of Appeal, First District, an employer who has  
27 not secured the payment of compensation under this chapter in  
28 compliance with s. 440.38 shall file with the notice of appeal  
29 a good and sufficient bond, as provided in s. 59.13,  
30 conditioned to pay the amount of the demand and any interest  
31 and costs payable under the terms of the order if the appeal

1 is dismissed, or if the District Court of Appeal, First  
2 District, affirms the award in any amount. Upon the failure of  
3 such employer to file such bond with the judge of compensation  
4 claims or the District Court of Appeal, First District, along  
5 with the notice of appeal, the District Court of Appeal, First  
6 District, shall dismiss the notice of appeal.

7 (7) An injured employee claiming or entitled to  
8 compensation shall submit to such physical examination by a  
9 certified expert medical advisor approved by the agency  
10 ~~division~~ or the judge of compensation claims as the agency  
11 ~~division~~ or the judge of compensation claims may require. The  
12 place or places shall be reasonably convenient for the  
13 employee. Such physician or physicians as the employee,  
14 employer, or carrier may select and pay for may participate in  
15 an examination if the employee, employer, or carrier so  
16 requests. Proceedings shall be suspended and no compensation  
17 shall be payable for any period during which the employee may  
18 refuse to submit to examination. Any interested party shall  
19 have the right in any case of death to require an autopsy, the  
20 cost thereof to be borne by the party requesting it; and the  
21 judge of compensation claims shall have authority to order and  
22 require an autopsy and may, in her or his discretion, withhold  
23 her or his findings and award until an autopsy is held.

24 Section 38. Section 440.271, Florida Statutes, is  
25 amended to read:

26 440.271 Appeal of order of judge of compensation  
27 claims.--Review of any order of a judge of compensation claims  
28 entered pursuant to this chapter shall be by appeal to the  
29 District Court of Appeal, First District. Appeals shall be  
30 filed in accordance with rules of procedure prescribed by the  
31 Supreme Court for review of such orders. The department

1 ~~division~~ shall be given notice of any proceedings pertaining  
2 to s. 440.25, regarding indigency, or s. 440.49, regarding the  
3 Special Disability Trust Fund, and shall have the right to  
4 intervene in any proceedings.

5 Section 39. Section 440.345, Florida Statutes, is  
6 amended to read:

7 440.345 Reporting of attorney's fees.--All fees paid  
8 to attorneys for services rendered under this chapter shall be  
9 reported to the Office of the Judges of Compensation Claims as  
10 the Division of Administrative Hearings ~~Office of the Judges~~  
11 ~~of Compensation Claims~~ requires by rule. ~~The Office of the~~  
12 ~~Judges of Compensation Claims shall annually summarize such~~  
13 ~~data in a report to the Workers' Compensation Oversight Board.~~

14 Section 40. Section 440.35, Florida Statutes, is  
15 amended to read:

16 440.35 Record of injury or death.--Every employer  
17 shall keep a record in respect of any injury to an employee.  
18 Such record shall contain such information of disability or  
19 death in respect of such injury as the department ~~division~~ may  
20 by regulation require, and shall be available to inspection by  
21 the department ~~division~~ or by any state authority at such time  
22 and under such conditions as the department ~~division~~ may by  
23 regulation prescribe.

24 Section 41. Subsections (1), (2), and (3) of section  
25 440.38, Florida Statutes, are amended to read:

26 440.38 Security for compensation; insurance carriers  
27 and self-insurers.--

28 (1) Every employer shall secure the payment of  
29 compensation under this chapter:

30 (a) By insuring and keeping insured the payment of  
31 such compensation with any stock company or mutual company or



1 association or exchange, authorized to do business in the  
2 state;

3 (b) By furnishing satisfactory proof to the department  
4 ~~division~~ of its financial ability to pay such compensation  
5 individually and on behalf of its subsidiary and affiliated  
6 companies with employees in this state and receiving an  
7 authorization from the department ~~division~~ to pay such  
8 compensation directly in accordance with the following  
9 provisions:

10 1. The department ~~division~~ may require an employer to  
11 deposit with the department ~~division~~ a qualifying security  
12 deposit. The department ~~division~~ shall determine the type and  
13 amount of the qualifying security deposit and shall prescribe  
14 conditions for the qualifying security deposit, which shall  
15 include authorization for the department ~~division~~ to call the  
16 qualifying security deposit in the case of default. In  
17 addition, the department ~~division~~ shall require, as a  
18 condition to authorization to self-insure, proof that the  
19 employer has provided for competent personnel with whom to  
20 deliver benefits and to provide a safe working environment.  
21 Further, the department ~~division~~ shall require such employer  
22 to carry reinsurance at levels that will ensure the actuarial  
23 soundness of such employer in accordance with rules adopted  
24 ~~promulgated~~ by the department ~~division~~. The department  
25 ~~division~~ may by rule require that, in the event of an  
26 individual self-insurer's insolvency, such qualifying security  
27 deposits and reinsurance policies are payable to the Florida  
28 Self-Insurers Guaranty Association, Incorporated, created  
29 pursuant to s. 440.385. Any employer securing compensation in  
30 accordance with the provisions of this paragraph shall be  
31

1 known as a self-insurer and shall be classed as a carrier of  
2 her or his own insurance.

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

25           3. Upon the suspension or revocation of the employer's  
26 authorization to self-insure, the employer shall provide to  
27 the department ~~division~~ and to the Florida Self-Insurers  
28 Guaranty Association, Incorporated, created pursuant to s.  
29 440.385 the certified opinion of an independent actuary who is  
30 a member of the American Academy ~~Society~~ of Actuaries of the  
31 actuarial present value of the determined and estimated future

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

22 4. A qualifying security deposit shall consist, at the  
23 option of the employer, of:

24 a. Surety bonds, in a form and containing such terms  
25 as prescribed by the department ~~division~~, issued by a  
26 corporation surety authorized to transact surety business by  
27 the Department of Insurance, and whose policyholders' and  
28 financial ratings, as reported in A.M. Best's Insurance  
29 Reports, Property-Liability, are not less than "A" and "V",  
30 respectively.

31

1           b. Irrevocable letters of credit in favor of the  
2 department ~~division~~ issued by financial institutions located  
3 within this state, the deposits of which are insured through  
4 the Federal Deposit Insurance Corporation.

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

27           (c) By entering into a contract with a public utility  
28 under an approved utility-provided self-insurance program as  
29 set forth in s. 624.46225 in effect as of July 1, 1983. The  
30 department ~~division~~ shall adopt rules to implement this  
31 paragraph;

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

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

1 by the employee. If an employer obtains a 24-hour health  
2 insurance policy or self-insured plan to secure payment of  
3 compensation as to medical benefits, the employer must also  
4 obtain an insurance policy or policies that provide indemnity  
5 benefits as follows:

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

9           2. If indemnity benefits are provided for both  
10 occupational-related and nonoccupational-related disability,  
11 such benefits must be comparable to those required by this  
12 chapter, except that they must be based on 60 percent of the  
13 average weekly wages.

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

16           4. Policies providing coverage under this subsection  
17 must use prescribed and acceptable underwriting standards,  
18 forms, and policies approved by the Department of Insurance.  
19 If any insurance policy that provides coverage under this  
20 section is canceled, terminated, or nonrenewed for any reason,  
21 the cancellation, termination, or nonrenewal is ineffective  
22 until the self-insured employer or insurance carrier or  
23 carriers notify the division and the Department of Insurance  
24 of the cancellation, termination, or nonrenewal, and until the  
25 department ~~division~~ has actually received the notification.  
26 The division must be notified of replacement coverage under a  
27 workers' compensation and employer's liability insurance  
28 policy or plan by the employer prior to the effective date of  
29 the cancellation, termination, or nonrenewal; or

30           (f) By entering into a contract with an individual  
31 self-insurer under an approved individual

1 self-insurer-provided self-insurance program as set forth in  
2 s. 624.46225. The department ~~division~~ may adopt rules to  
3 administer this subsection.

4 (2)(a) The department ~~division~~ shall adopt rules by  
5 which businesses may become qualified to provide underwriting  
6 claims-adjusting, loss control, and safety engineering  
7 services to self-insurers.

8 (b) The department ~~division~~ shall adopt rules  
9 requiring self-insurers to file any reports necessary to  
10 fulfill the requirements of this chapter. Any self-insurer  
11 who fails to file any report as prescribed by the rules  
12 adopted by the department ~~division~~ shall be subject to a civil  
13 penalty not to exceed \$100 for each such failure.

14 (3)(a) The license of any stock company or mutual  
15 company or association or exchange authorized to do insurance  
16 business in the state shall for good cause, ~~upon~~  
17 ~~recommendation of the division,~~ be suspended or revoked by the  
18 Department of Insurance. No suspension or revocation shall  
19 affect the liability of any carrier already incurred.

20 (b) The department ~~division~~ shall suspend or revoke  
21 any authorization to a self-insurer for good cause, as defined  
22 by rule of the department ~~division~~. No suspension or  
23 revocation shall affect the liability of any self-insurer  
24 already incurred.

25 (c) Violation of s. 440.381 by a self-insurance fund  
26 shall result in the imposition of a fine not to exceed \$1,000  
27 per audit if the self-insurance fund fails to act on said  
28 audits by correcting errors in employee classification or  
29 accepted applications for coverage where it knew employee  
30 classifications were incorrect. Such fines shall be levied by  
31

1 the department ~~division~~ and deposited into the Workers'  
2 Compensation Administration Trust Fund.

3 Section 42. Subsections (3) and (7) of section  
4 440.381, Florida Statutes, are amended to read:

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

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

30 (7) If an employee suffering a compensable injury was  
31 not reported as earning wages on the last quarterly earnings



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

23 Section 43. Subsections (1), (2), (3), (4), (5), (6),  
24 (8), (9), and (10) of section 440.385, Florida Statutes, are  
25 amended to read:

26 440.385 Florida Self-Insurers Guaranty Association,  
27 Incorporated.--

28 (1) CREATION OF ASSOCIATION.--

29 (a) There is created a nonprofit corporation to be  
30 known as the "Florida Self-Insurers Guaranty Association,  
31 Incorporated," hereinafter referred to as "the association."

1 Upon incorporation of the association, all individual  
2 self-insurers as defined in ss. 440.02(23)(a) and  
3 440.38(1)(b), other than individual self-insurers which are  
4 public utilities or governmental entities, shall be members of  
5 the association as a condition of their authority to  
6 individually self-insure in this state. The association shall  
7 perform its functions under a plan of operation as established  
8 and approved under subsection (5) and shall exercise its  
9 powers and duties through a board of directors as established  
10 under subsection (2). The corporation shall have those powers  
11 granted or permitted corporations not for profit, as provided  
12 in chapter 617.

13 (b) A member may voluntarily withdraw from the  
14 association when the member voluntarily terminates the  
15 self-insurance privilege and pays all assessments due to the  
16 date of such termination. However, the withdrawing member  
17 shall continue to be bound by the provisions of this section  
18 relating to the period of his or her membership and any claims  
19 charged pursuant thereto. The withdrawing member who is a  
20 member on or after January 1, 1991, shall also be required to  
21 provide to the department ~~division~~ upon withdrawal, and at  
22 12-month intervals thereafter, satisfactory proof that it  
23 continues to meet the standards of s. 440.38(1)(b)1. in  
24 relation to claims incurred while the withdrawing member  
25 exercised the privilege of self-insurance. Such reporting  
26 shall continue until the withdrawing member satisfies the  
27 department ~~division~~ that there is no remaining value to claims  
28 incurred while the withdrawing member was self-insured. If  
29 during this reporting period the withdrawing member fails to  
30 meet the standards of s. 440.38(1)(b)1., the withdrawing  
31 member who is a member on or after January 1, 1991, shall

1 thereupon, and at 6-month intervals thereafter, provide to the  
2 department ~~division~~ and the association the certified opinion  
3 of an independent actuary who is a member of the American  
4 Academy ~~Society~~ of Actuaries of the actuarial present value of  
5 the determined and estimated future compensation payments of  
6 the member for claims incurred while the member was a  
7 self-insurer, using a discount rate of 4 percent. With each  
8 such opinion, the withdrawing member shall deposit with the  
9 department ~~division~~ security in an amount equal to the value  
10 certified by the actuary and of a type that is acceptable for  
11 qualifying security deposits under s. 440.38(1)(b). The  
12 withdrawing member shall continue to provide such opinions and  
13 to provide such security until such time as the latest opinion  
14 shows no remaining value of claims. The association has a  
15 cause of action against a withdrawing member, and against any  
16 successor of a withdrawing member, who fails to timely provide  
17 the required opinion or who fails to maintain the required  
18 deposit with the department ~~division~~. The association shall  
19 be entitled to recover a judgment in the amount of the  
20 actuarial present value of the determined and estimated future  
21 compensation payments of the withdrawing member for claims  
22 incurred during the time that the withdrawing member exercised  
23 the privilege of self-insurance, together with reasonable  
24 attorney's fees. For purposes of this section, the successor  
25 of a withdrawing member means any person, business entity, or  
26 group of persons or business entities, which holds or acquires  
27 legal or beneficial title to the majority of the assets or the  
28 majority of the shares of the withdrawing member.

29 (2) BOARD OF DIRECTORS.--The board of directors of the  
30 association shall consist of nine persons and shall be  
31 organized as established in the plan of operation. ~~With~~

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

22 (3) POWERS AND DUTIES.--

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

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

16 (b) The association may:

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

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

21 3. Sue or be sued.

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

24 5. Purchase such reinsurance as is determined  
25 necessary pursuant to the plan of operation.

26 6. Review all applicants for membership in the  
27 association. Prior to a final determination by the department  
28 ~~Division of Workers' Compensation~~ as to whether or not to  
29 approve any applicant for membership in the association, the  
30 association may issue opinions to the department ~~division~~

31

1 concerning any applicant, which opinions shall be considered  
2 by the department ~~division~~ prior to any final determination.

3 7. Charge fees to any member of the association to  
4 cover the actual costs of examining the financial and safety  
5 conditions of that member.

6 8. Charge an applicant for membership in the  
7 association a fee sufficient to cover the actual costs of  
8 examining the financial condition of the applicant.

9 (c)1. To the extent necessary to secure funds for the  
10 payment of covered claims and also to pay the reasonable costs  
11 to administer them, the department ~~of Labor and Employment~~  
12 ~~Security~~, upon certification of the board of directors, shall  
13 levy assessments based on the annual normal premium each  
14 employer would have paid had the employer not been  
15 self-insured. Every assessment shall be made as a uniform  
16 percentage of the figure applicable to all individual  
17 self-insurers, provided that the assessment levied against any  
18 self-insurer in any one year shall not exceed 1 percent of the  
19 annual normal premium during the calendar year preceding the  
20 date of the assessment. Assessments shall be remitted to and  
21 administered by the board of directors in the manner specified  
22 by the approved plan. Each employer so assessed shall have at  
23 least 30 days' written notice as to the date the assessment is  
24 due and payable. The association shall levy assessments  
25 against any newly admitted member of the association so that  
26 the basis of contribution of any newly admitted member is the  
27 same as previously admitted members, provision for which shall  
28 be contained in the plan of operation.

29 2. If, in any one year, funds available from such  
30 assessments, together with funds previously raised, are not  
31 sufficient to make all the payments or reimbursements then

1 owing, the funds available shall be prorated, and the unpaid  
2 portion shall be paid as soon thereafter as sufficient  
3 additional funds become available.

4           3. No state funds of any kind shall be allocated or  
5 paid to the association or any of its accounts except those  
6 state funds accruing to the association by and through the  
7 assignment of rights of an insolvent employer.

8           (4) INSOLVENCY FUND.--Upon the adoption of a plan of  
9 operation or the adoption of rules by the department ~~of Labor~~  
10 ~~and Employment Security~~ pursuant to subsection (5), there  
11 shall be created an Insolvency Fund to be managed by the  
12 association.

13           (a) The Insolvency Fund is created for purposes of  
14 meeting the obligations of insolvent members incurred while  
15 members of the association and after the exhaustion of any  
16 bond, as required under this chapter. However, if such bond,  
17 surety, or reinsurance policy is payable to the Florida  
18 Self-Insurers Guaranty Association, the association shall  
19 commence to provide benefits out of the Insolvency Fund and be  
20 reimbursed from the bond, surety, or reinsurance policy. The  
21 method of operation of the Insolvency Fund shall be defined in  
22 the plan of operation as provided in subsection (5).

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

25           (c) The department may offer certain amendments to the  
26 plan of operation to the board of directors of the association  
27 for purposes of assuring the ongoing financial soundness of  
28 the Insolvency Fund and its ability to meet the obligations of  
29 this section.

30           (d) The department actuary may make certain  
31 recommendations to improve the orderly payment of claims.

1           (5) PLAN OF OPERATION.--The association shall operate  
2 pursuant to a plan of operation approved by the board of  
3 directors. The plan of operation in effect on June 30, 2002,  
4 and approved by the Department of Labor and Employment  
5 Security shall remain in effect until it is subsequently  
6 revised by amendments approved by the Department of Insurance.  
7 ~~By September 15, 1982, the board of directors shall submit to~~  
8 ~~the Department of Labor and Employment Security a proposed~~  
9 ~~plan of operation for the administration of the association~~  
10 ~~and the Insolvency Fund.~~

11           (a) The purpose of the plan of operation shall be to  
12 provide the association and the board of directors with the  
13 authority and responsibility to establish the necessary  
14 programs and to take the necessary actions to protect against  
15 the insolvency of a member of the association. In addition,  
16 the plan shall provide that the members of the association  
17 shall be responsible for maintaining an adequate Insolvency  
18 Fund to meet the obligations of insolvent members provided for  
19 under this act and shall authorize the board of directors to  
20 contract and employ those persons with the necessary expertise  
21 to carry out this stated purpose.

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

31



1           **(b)**~~(c)~~ All member employers shall comply with the plan  
2 of operation.

3           **(c)**~~(d)~~ The plan of operation shall:

4           1. Establish the procedures whereby all the powers and  
5 duties of the association under subsection (3) will be  
6 performed.

7           2. Establish procedures for handling assets of the  
8 association.

9           3. Establish the amount and method of reimbursing  
10 members of the board of directors under subsection (2).

11           4. Establish procedures by which claims may be filed  
12 with the association and establish acceptable forms of proof  
13 of covered claims. Notice of claims to the receiver or  
14 liquidator of the insolvent employer shall be deemed notice to  
15 the association or its agent, and a list of such claims shall  
16 be submitted periodically to the association or similar  
17 organization in another state by the receiver or liquidator.

18           5. Establish regular places and times for meetings of  
19 the board of directors.

20           6. Establish procedures for records to be kept of all  
21 financial transactions of the association and its agents and  
22 the board of directors.

23           7. Provide that any member employer aggrieved by any  
24 final action or decision of the association may appeal to the  
25 department within 30 days after the action or decision.

26           8. Establish the procedures whereby recommendations of  
27 candidates for the board of directors shall be submitted to  
28 the department.

29           9. Contain additional provisions necessary or proper  
30 for the execution of the powers and duties of the association.

31

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

16            (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~  
17 ~~AND EMPLOYMENT SECURITY~~.--

18            (a) The department shall:

19            1. Notify the association of the existence of an  
20 insolvent employer not later than 3 days after it receives  
21 notice of the determination of insolvency.

22            2. Upon request of the board of directors, provide the  
23 association with a statement of the annual normal premiums of  
24 each member employer.

25            (b) The department may:

26            1. Require that the association notify the member  
27 employers and any other interested parties of the  
28 determination of insolvency and of their rights under this  
29 section. Such notification shall be by mail at the last known  
30 address thereof when available; but, if sufficient information  
31 for notification by mail is not available, notice by

1 publication in a newspaper of general circulation shall be  
2 sufficient.

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

11           3. Revoke the designation of any servicing facility if  
12 the department finds that claims are being handled  
13 unsatisfactorily.

14           (8) PREVENTION OF INSOLVENCIES.--To aid in the  
15 detection and prevention of employer insolvencies:

16           (a) Upon determination by majority vote that any  
17 member employer may be insolvent or in a financial condition  
18 hazardous to the employees thereof or to the public, it shall  
19 be the duty of the board of directors to notify the department  
20 ~~of Labor and Employment Security~~ of any information indicating  
21 such condition.

22           (b) The board of directors may, upon majority vote,  
23 request that the department determine the condition of any  
24 member employer which the board in good faith believes may no  
25 longer be qualified to be a member of the association. Within  
26 30 days of the receipt of such request or, for good cause  
27 shown, within a reasonable time thereafter, the department  
28 shall make such determination and shall forthwith advise the  
29 board of its findings. Each request for a determination shall  
30 be kept on file by the department, but the request shall not

31

1 be open to public inspection prior to the release of the  
2 determination to the public.

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

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

14 (e) The board of directors may, upon majority vote,  
15 make recommendations to the department for the detection and  
16 prevention of employer insolvencies.

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

23 (9) EXAMINATION OF THE ASSOCIATION.--The association  
24 shall be subject to examination and regulation by the  
25 department of ~~Labor and Employment Security~~. No later than  
26 March 30 of each year, the board of directors shall submit a  
27 financial report for the preceding calendar year in a form  
28 approved by the department.

29 (10) IMMUNITY.--There shall be no liability on the  
30 part of, and no cause of action of any nature shall arise  
31 against, any member employer, the association or its agents or

1 employees, the board of directors, or the department ~~of Labor~~  
2 ~~and Employment Security~~ or its representatives for any action  
3 taken by them in the performance of their powers and duties  
4 under this section.

5 Section 44. Section 440.40, Florida Statutes, is  
6 amended to read:

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

20 Section 45. Section 440.41, Florida Statutes, is  
21 amended to read:

22 440.41 Substitution of carrier for employer.--In any  
23 case where the employer is not a self-insurer, in order that  
24 the liability for compensation imposed by this chapter may be  
25 most effectively discharged by the employer, and in order that  
26 the administration of this chapter in respect of such  
27 liability may be facilitated, the department ~~division~~ shall by  
28 regulation provide for the discharge, by the carrier for such  
29 employer, of such obligations and duties of the employer in  
30 respect of such liability, imposed by this chapter upon the  
31

1 employer, as it considers proper in order to effectuate the  
2 provisions of this chapter. For such purposes:

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

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

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

14 Section 46. Subsection (3) of section 440.42, Florida  
15 Statutes, is amended to read:

16 440.42 Insurance policies; liability.--

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

1 prescribes by rule. The department ~~division~~ may by rule  
2 prescribe the content of the notice of retroactive  
3 cancellation and specify the time, place, and manner in which  
4 the notice of cancellation is to be served.

5 Section 47. Section 440.44, Florida Statutes, is  
6 amended to read:

7 440.44 Workers' compensation; staff organization.--

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

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

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

1 by the department, the agency, the Department of Education,  
2 ~~division~~ or the director of the Division of Administrative  
3 Hearings.

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

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

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



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

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

16           Section 48. Subsection (1) of section 440.45, Florida  
17 Statutes, is amended to read:

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

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

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

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

20 Section 49. Subsections (1), (2), (7), (8), (9), (10),  
21 and (11) of section 440.49, Florida Statutes, are amended to  
22 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

5 (7) REIMBURSEMENT OF EMPLOYER.--

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

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

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

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

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

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

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

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

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

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

20           (9) SPECIAL DISABILITY TRUST FUND.--

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



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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

31

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

3 Section 50. Paragraphs (b) through (h) of subsection  
4 (1) of section 440.491, Florida Statutes, are redesignated as  
5 paragraphs (c) through (i), respectively, a new paragraph (b)  
6 is added to said subsection, and paragraph (c) of subsection  
7 (1), paragraph (a) of subsection (3), paragraph (b) of  
8 subsection (4), paragraphs (b) and (c) of subsection (5), and  
9 subsections (6), (7), and (8) of said section are amended, to  
10 read:

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

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

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

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

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

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

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

5 (4) REEMPLOYMENT ASSESSMENTS.--

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

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

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

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

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

10 (6) TRAINING AND EDUCATION.--

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

31

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

24           (7) PROVIDER QUALIFICATIONS.--

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



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

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

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

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

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

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

5           Section 51. Section 440.50, Florida Statutes, is  
6 amended to read:

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

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

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

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

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

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

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

11 Section 52. Section 440.51, Florida Statutes, is  
12 amended to read:

13 440.51 Expenses of administration.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Cause of the injury;

7 (b) Nature of the injury; and

8 (c) Type of disability.

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

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

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

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

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

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

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

16 Section 53. Subsections (1) and (3) of section 440.52,  
17 Florida Statutes, are amended to read:

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

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

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



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

7           Section 54. Section 440.525, Florida Statutes, is  
8 amended to read:

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

20           Section 55. Section 440.572, Florida Statutes, is  
21 amended to read:

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

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

4 Section 56. Section 440.59, Florida Statutes, is  
5 amended to read:

6 440.59 Reporting requirements.--

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

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

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

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

20 Section 57. Section 440.591, Florida Statutes, is  
21 amended to read:

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

27 Section 58. Section 440.593, Florida Statutes, is  
28 amended to read:

29 440.593 Electronic reporting.--

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

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

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

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

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

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

24 Section 59. Subsections (1), (4), and (5) of section  
25 443.012, Florida Statutes, are amended to read:

26 443.012 Unemployment Appeals Commission.--

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

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

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

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

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

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

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

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

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

5           Section 60. Subsection (12) of section 443.036,  
6 Florida Statutes, is amended to read:

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

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

12           Section 61. Subsection (3) of section 447.02, Florida  
13 Statutes, is amended to read:

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

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

20           Section 62. Subsection (4) of section 447.305, Florida  
21 Statutes, is amended to read:

22           447.305 Registration of employee organization.--

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

27           Section 63. Subsection (4) of section 450.012, Florida  
28 Statutes, is amended to read:

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

31

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

3           Section 64. Paragraph (j) of subsection (1) of section  
4 450.191, Florida Statutes, is amended to read:

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

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

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

14           Section 65. Subsection (2) of section 450.28, Florida  
15 Statutes, is amended to read:

16           450.28 Definitions.--

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

19           Section 66. Subsections (1) and (5) of section  
20 624.3161, Florida Statutes, are amended to read:

21           624.3161 Market conduct examinations.--

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

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

4           Section 67. Paragraph (m) of subsection (1) of section  
5 626.88, Florida Statutes, is amended to read:

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

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

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

19           Section 68. Subsection (9) of section 626.989, Florida  
20 Statutes, is amended to read:

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

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



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

8 Section 69. Section 627.0915, Florida Statutes, is  
9 amended to read:

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

23 Section 70. Subsection (3) of section 627.914, Florida  
24 Statutes, is amended to read:

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

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

31

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

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

8           Section 71. Sections 20.171 and 440.4416, Florida  
9 Statutes, are repealed.

10           Section 72. If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 invalidity does not affect other provisions or applications of  
13 the act which can be given effect without the invalid  
14 provision or application, and to this end the provisions of  
15 this act are severable.

16           Section 73. Except as otherwise provided in this act,  
17 this act shall take effect July 1, 2002.

18  
19                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20   COMMITTEE SUBSTITUTE FOR  
21   Senate Bill 2340

22 This committee substitute makes the following changes:

- 23 1. Eliminates the provision which would require the  
24 Department of Banking and Finance, in conjunction with  
25 the Attorney General, to settle all claims of the  
26 Department of Labor and Employment Security;
- 27 2. Revises the compliance and penalty provisions for  
28 carriers that do not pay medical bills in a timely  
29 manner by eliminating the 90 percent compliance standard  
30 and a fine based on the prior years' administrative  
31 trust fund assessment, and instead, subjecting carriers  
to the provisions of the Insurance Code.