

By Representative Melvin

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           creating s. 440.475, F.S.; creating the Office  
4           of Workers' Compensation Administration;  
5           requiring the Department of Management Services  
6           to provide administrative support; providing  
7           for the operating budget of the office;  
8           establishing the executive director as head of  
9           the office and providing duties thereof;  
10          providing for the appointment of mediators;  
11          providing for rules and procedures; creating a  
12          Penalty Assessment Section within the office;  
13          establishing a penalty administrator as head of  
14          the section; providing for penalties and fines  
15          and for protests thereof; amending s. 440.02,  
16          F.S.; revising definitions; amending s.  
17          440.021, F.S.; revising provisions relating to  
18          exemption of workers' compensation from ch.  
19          120, F.S.; requiring assessment of penalties  
20          and interest by written order and providing for  
21          right to protest such assessment; providing for  
22          appeal; amending s. 440.191, F.S.; renaming the  
23          Employee Assistance and Ombudsman Office as the  
24          Employee Assistance and Ombudsman Section  
25          within the Office of Workers' Compensation  
26          Administration; conforming references; amending  
27          s. 440.20, F.S.; revising provisions relating  
28          to penalties for late payment; requiring the  
29          office to establish carrier and claims handler  
30          performance standards and monitor and audit  
31          their performance; providing penalties;

1 amending s. 440.52, F.S.; requiring specified  
2 insurance carriers to be licensed by the  
3 office; providing for a fee; providing for  
4 rules; providing penalties; conforming  
5 language; amending s. 440.525, F.S.;  
6 authorizing the office to monitor and audit  
7 carriers and claims handlers; providing  
8 definitions; providing for rules; transferring  
9 the Division of Workers' Compensation of the  
10 Department of Labor and Employment Security to  
11 the Office of Workers' Compensation  
12 Administration; amending ss. 440.015, 440.05,  
13 440.09, 440.10 440.102, 440.1025, 440.103,  
14 440.104, 440.105, 440.106, 440.107, 440.108,  
15 440.12, 440.125, 440.13, 440.134, 440.135,  
16 440.14, 440.15, 440.17, 440.185, 440.192,  
17 440.1925, 440.207, 440.211, 440.24, 440.25,  
18 440.271, 440.35, 440.38, 440.381, 440.385,  
19 440.386, 440.40, 440.41, 440.42, 440.44,  
20 440.4416, 440.47, 440.49, 440.491, 440.50,  
21 440.51, 440.572, 440.59, 440.591, 440.593,  
22 440.60, 20.171, 112.19, 112.191, 121.125,  
23 122.03, 238.06, 468.529, 489.114, 489.510,  
24 553.88, 626.88, 626.989, 627.0915, and 627.914,  
25 F.S.; conforming language and cross references;  
26 providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Section 440.475, Florida Statutes, is  
31 created to read:

1           440.475 Office of Workers' Compensation  
2 Administration.--  
3           (1)(a) There is created the Office of Workers'  
4 Compensation Administration. The office shall be a separate  
5 budget entity, and the head of the Office of Workers'  
6 Compensation Administration shall be the executive director,  
7 who shall be appointed by and serve at the pleasure of the  
8 Governor. The Department of Management Services shall provide  
9 administrative support and service to the office to the extent  
10 requested by the executive director but shall not direct,  
11 supervise, or control the Office of Workers' Compensation  
12 Administration, including, but not limited to, personnel,  
13 purchasing, budgetary matters, or property transactions. The  
14 operating budget of the Office of Workers' Compensation shall  
15 be paid out of the Workers' Compensation Administration Trust  
16 Fund established in s. 440.50.  
17           (b) The duties of the executive director shall include  
18 workers' compensation management and implementation of policy  
19 as set forth in this chapter. The executive director may  
20 employ, subject to state rules and procedures, such personnel  
21 as may be authorized and necessary to carry out the duties of  
22 the office.  
23           (c) The executive director shall appoint qualified  
24 persons to act as mediators in any dispute pending before the  
25 office in which a request for assistance is filed under s.  
26 440.191 and shall establish rules and procedures for mediation  
27 and binding mediation on all requests for assistance filed  
28 with the office. The office and the Office of the Judges of  
29 Compensation Claims shall jointly establish rules and  
30 procedures for mediation, binding mediation, and hearings  
31

1 before judges of compensation claims or on any petition for  
2 benefits filed under s. 440.192.

3 (2) There is created within the office a Penalty  
4 Assessment Section. The head of the Penalty Assessment Section  
5 shall be the penalty administrator, who shall report directly  
6 to the executive director. The penalty administrator shall  
7 assess all penalties and fines imposed under chapter 440 and  
8 shall enter the appropriate orders assessing the penalties or  
9 fines without a hearing. The subject of the order shall have  
10 20 days after the date of the order to file a formal written  
11 protest of the penalty or fine. If the penalty administrator  
12 finds the protest valid, he or she shall enter an order  
13 revoking the penalty or fine. If the penalty administrator  
14 finds the protest invalid, he or she shall enter an order  
15 denying the protest.

16 Section 2. Section 440.015, Florida Statutes, is  
17 amended to read:

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

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

16 Section 3. Section 440.02, Florida Statutes, is  
17 amended to read:

18 440.02 Definitions.--When used in this chapter, unless  
19 the context clearly requires otherwise, the following terms  
20 shall have the following meanings:

21 (1) "Accident" means only an unexpected or unusual  
22 event or result that happens suddenly. A mental or nervous  
23 injury due to stress, fright, or excitement only, or  
24 disability or death due to the accidental acceleration or  
25 aggravation of a venereal disease or of a disease due to the  
26 habitual use of alcohol or controlled substances or narcotic  
27 drugs, or a disease that manifests itself in the fear of or  
28 dislike for an individual because of the individual's race,  
29 color, religion, sex, national origin, age, or handicap is not  
30 an injury by accident arising out of the employment. If a  
31 preexisting disease or anomaly is accelerated or aggravated by

1 an accident arising out of and in the course of employment,  
2 only acceleration of death or acceleration or aggravation of  
3 the preexisting condition reasonably attributable to the  
4 accident is compensable, with respect to death or permanent  
5 impairment.

6 (2) "Adoption" or "adopted" means legal adoption prior  
7 to the time of the injury.

8 (3)~~(35)~~ "Arising out of" pertains to occupational  
9 causation. An accidental injury or death arises out of  
10 employment if work performed in the course and scope of  
11 employment is the major contributing cause of the injury or  
12 death.

13 (4)~~(3)~~ "Carrier" means any person or fund authorized  
14 under s. 440.38 to insure under this chapter and includes a  
15 self-insurer, and a commercial self-insurance fund authorized  
16 under s. 624.462.

17 (5)~~(4)~~ "Casual" as used in this section refers only to  
18 employments for work that is anticipated to be completed in 10  
19 working days or less, without regard to the number of persons  
20 employed, and at a total labor cost of less than \$500.

21 (6)~~(37)~~ "Catastrophic injury" means a permanent  
22 impairment constituted by:

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

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

27 (c) Severe brain or closed-head injury as evidenced  
28 by:

- 29 1. Severe sensory or motor disturbances;  
30 2. Severe communication disturbances;

31

1           3. Severe complex integrated disturbances of cerebral  
2 function;

3           4. Severe episodic neurological disorders; or

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

7           (d) Second-degree or third-degree burns of 25 percent  
8 or more of the total body surface or third-degree burns of 5  
9 percent or more to the face and hands;

10           (e) Total or industrial blindness; or

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

18           ~~(7)~~(5) "Child" includes a posthumous child, a child  
19 legally adopted prior to the injury of the employee, and a  
20 stepchild or acknowledged child born out of wedlock dependent  
21 upon the deceased, but does not include married children  
22 unless wholly dependent on the employee. "Grandchild" means a  
23 child as above defined of a child as above defined. "Brother"  
24 and "sister" include stepbrothers and stepsisters, half  
25 brothers and half sisters, and brothers and sisters by  
26 adoption, but does not include married brothers or married  
27 sisters unless wholly dependent on the employee. "Child,"  
28 "grandchild," "brother," and "sister" include only persons who  
29 at the time of the death of the deceased employees are under  
30 18 years of age, or under 22 years of age if a full-time  
31 student in an accredited educational institution.

1       (8) "Claims handler" means any entity that agrees to  
2 adjust workers' compensation claims on behalf of another  
3 entity.

4       (9)~~(6)~~ "Compensation" means the money allowance  
5 payable to an employee or to his or her dependents as provided  
6 for in this chapter.

7       (10)~~(29)~~ "Construction design professional" means an  
8 architect, professional engineer, landscape architect, or  
9 surveyor and mapper, or any corporation, professional or  
10 general, that has a certificate to practice in the  
11 construction design field from the Department of Business and  
12 Professional Regulation.

13       (11)~~(7)~~ "Construction industry" means for-profit  
14 activities involving the carrying out of any building,  
15 clearing, filling, excavation, or substantial improvement in  
16 the size or use of any structure or the appearance of any  
17 land. When appropriate to the context, "construction" refers  
18 to the act of construction or the result of construction.  
19 However, "construction" shall not mean a landowner's act of  
20 construction or the result of a construction upon his or her  
21 own premises, provided such premises are not intended to be  
22 sold or resold.

23       (12)~~(8)~~ "Corporate officer" or "officer of a  
24 corporation" means any person who fills an office provided for  
25 in the corporate charter or articles of incorporation filed  
26 with the Division of Corporations of the Department of State  
27 or as permitted or required by chapter 607.

28       (13)~~(9)~~ "Date of maximum medical improvement" means  
29 the date after which further recovery from, or lasting  
30 improvement to, an injury or disease can no longer reasonably  
31 be anticipated, based upon reasonable medical probability.

1           (14)~~(10)~~ "Death" as a basis for a right to  
2 compensation means only death resulting from an injury.  
3           ~~(11) "Department" means the Department of Labor and~~  
4 ~~Employment Security.~~  
5           (15)~~(12)~~ "Disability" means incapacity because of the  
6 injury to earn in the same or any other employment the wages  
7 which the employee was receiving at the time of the injury.  
8           (16)~~(31)~~ "Domestic individual self-insurer" means an  
9 individual self-insurer:  
10           (a) Which is a corporation formed under the laws of  
11 this state;  
12           (b) Who is an individual who is a resident of this  
13 state or whose primary place of business is located in this  
14 state; or  
15           (c) Which is a partnership whose principals are  
16 residents of this state or whose primary place of business is  
17 located in this state.  
18           ~~(13) "Division" means the Division of Workers'~~  
19 ~~Compensation of the Department of Labor and Employment~~  
20 ~~Security.~~  
21           (17)~~(14)~~(a) "Employee" means any person engaged in any  
22 employment under any appointment or contract of hire or  
23 apprenticeship, express or implied, oral or written, whether  
24 lawfully or unlawfully employed, and includes, but is not  
25 limited to, aliens and minors.  
26           (b) "Employee" includes any person who is an officer  
27 of a corporation and who performs services for remuneration  
28 for such corporation within this state, whether or not such  
29 services are continuous.  
30  
31

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

4           2. As to officers of a corporation who are actively  
5 engaged in the construction industry, no more than three  
6 officers may elect to be exempt from this chapter by filing  
7 written notice of the election with the office ~~division~~ as  
8 provided in s. 440.05.

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

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

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

1 For purposes of this chapter, an independent contractor is an  
2 employee unless he or she meets all of the conditions set  
3 forth in subparagraph (d)1.  
4 (d) "Employee" does not include:  
5 1. An independent contractor, if:  
6 a. The independent contractor maintains a separate  
7 business with his or her own work facility, truck, equipment,  
8 materials, or similar accommodations;  
9 b. The independent contractor holds or has applied for  
10 a federal employer identification number, unless the  
11 independent contractor is a sole proprietor who is not  
12 required to obtain a federal employer identification number  
13 under state or federal requirements;  
14 c. The independent contractor performs or agrees to  
15 perform specific services or work for specific amounts of  
16 money and controls the means of performing the services or  
17 work;  
18 d. The independent contractor incurs the principal  
19 expenses related to the service or work that he or she  
20 performs or agrees to perform;  
21 e. The independent contractor is responsible for the  
22 satisfactory completion of work or services that he or she  
23 performs or agrees to perform and is or could be held liable  
24 for a failure to complete the work or services;  
25 f. The independent contractor receives compensation  
26 for work or services performed for a commission or on a  
27 per-job or competitive-bid basis and not on any other basis;  
28 g. The independent contractor may realize a profit or  
29 suffer a loss in connection with performing work or services;  
30 h. The independent contractor has continuing or  
31 recurring business liabilities or obligations; and

1           i. The success or failure of the independent  
2 contractor's business depends on the relationship of business  
3 receipts to expenditures.

4  
5 However, the determination as to whether an individual  
6 included in the Standard Industrial Classification Manual of  
7 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
8 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
9 2448, or 2449, or a newspaper delivery person, is an  
10 independent contractor is governed not by the criteria in this  
11 paragraph but by common-law principles, giving due  
12 consideration to the business activity of the individual.

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

16           3. Bands, orchestras, and musical and theatrical  
17 performers, including disk jockeys, performing in licensed  
18 premises as defined in chapter 562, if a written contract  
19 evidencing an independent contractor relationship is entered  
20 into before the commencement of such entertainment.

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

1           5. A person whose employment is both casual and not in  
2 the course of the trade, business, profession, or occupation  
3 of the employer.

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

11           a. Persons who serve in private nonprofit agencies and  
12 who receive no compensation other than expenses in an amount  
13 less than or equivalent to the standard mileage and per diem  
14 expenses provided to salaried employees in the same agency or,  
15 if such agency does not have salaried employees who receive  
16 mileage and per diem, then such volunteers who receive no  
17 compensation other than expenses in an amount less than or  
18 equivalent to the customary mileage and per diem paid to  
19 salaried workers in the community as determined by the office  
20 division; and

21           b. Volunteers participating in federal programs  
22 established under Pub. L. No. 93-113.

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

25           8. A sole proprietor or officer of a corporation who  
26 actively engages in the construction industry, and a partner  
27 in a partnership that is actively engaged in the construction  
28 industry, who elects to be exempt from the provisions of this  
29 chapter. Such sole proprietor, officer, or partner is not an  
30 employee for any reason until the notice of revocation of  
31 election filed pursuant to s. 440.05 is effective.

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

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

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

29           (18)~~(15)~~ "Employer" means the state and all political  
30 subdivisions thereof, all public and quasi-public corporations  
31 therein, every person carrying on any employment, and the

1 legal representative of a deceased person or the receiver or  
2 trustees of any person. If the employer is a corporation,  
3 parties in actual control of the corporation, including, but  
4 not limited to, the president, officers who exercise broad  
5 corporate powers, directors, and all shareholders who directly  
6 or indirectly own a controlling interest in the corporation,  
7 are considered the employer for the purposes of ss. 440.105  
8 and 440.106.

9 (19)~~(16)~~(a) "Employment," subject to the other  
10 provisions of this chapter, means any service performed by an  
11 employee for the person employing him or her.

12 (b) "Employment" includes:

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

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

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

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

25 1. Domestic servants in private homes.

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

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

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

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

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

15 (20)~~(32)~~ "Foreign individual self-insurer" means an  
16 individual self-insurer:

17 (a) Which is a corporation formed under the laws of  
18 any state, district, territory, or commonwealth of the United  
19 States other than this state;

20 (b) Who is an individual who is not a resident of this  
21 state and whose primary place of business is not located in  
22 this state; or

23 (c) Which is a partnership whose principals are not  
24 residents of this state and whose primary place of business is  
25 not located in this state.

26 (21)~~(30)~~ "Individual self-insurer" means any employer  
27 who has secured payment of compensation pursuant to s.  
28 440.38(1)(b) as an individual self-insurer.

29 (22)~~(18)~~ "Injury" means personal injury or death by  
30 accident arising out of and in the course of employment, and  
31 such diseases or infection as naturally or unavoidably result

1 from such injury. Damage to dentures, eyeglasses, prosthetic  
2 devices, and artificial limbs may be included in this  
3 definition only when the damage is shown to be part of, or in  
4 conjunction with, an accident. This damage must specifically  
5 occur as the result of an accident in the normal course of  
6 employment.

7 (23)~~(34)~~ "Insolvency" or "insolvent" means:

8 (a) With respect to an individual self-insurer:

9 1. That all assets of the individual self-insurer, if  
10 made immediately available, would not be sufficient to meet  
11 all the individual self-insurer's liabilities;

12 2. That the individual self-insurer is unable to pay  
13 its debts as they become due in the usual course of business;

14 3. That the individual self-insurer has substantially  
15 ceased or suspended the payment of compensation to its  
16 employees as required in this chapter; or

17 4. That the individual self-insurer has sought  
18 protection under the United States Bankruptcy Code or has been  
19 brought under the jurisdiction of a court of bankruptcy as a  
20 debtor pursuant to the United States Bankruptcy Code.

21 (b) With respect to an employee claiming insolvency  
22 pursuant to s. 440.25(5), a person is insolvent who:

23 1. Has ceased to pay his or her debts in the ordinary  
24 course of business and cannot pay his or her debts as they  
25 become due; or

26 2. Has been adjudicated insolvent pursuant to the  
27 federal bankruptcy law.

28 (24)~~(33)~~ "Insolvent member" means an individual  
29 self-insurer which is a member of the Florida Self-Insurers  
30 Guaranty Association, Incorporated, or which was a member and  
31 has withdrawn pursuant to s. 440.385(1)(b), and which has been

1 found insolvent, as defined in subparagraph~~(23)~~~~(34)~~(a)1.,  
2 subparagraph~~(23)~~~~(34)~~(a)2., or subparagraph~~(23)~~~~(34)~~(a)3., by  
3 a court of competent jurisdiction in this or any other state,  
4 or meets the definition of subparagraph~~(23)~~~~(34)~~(a)4.

5 (25)~~(38)~~ "Insurer" means a group self-insurers' fund  
6 authorized by s. 624.4621, an individual self-insurer  
7 authorized by s. 440.38, a commercial self-insurance fund  
8 authorized by s. 624.462, an assessable mutual insurer  
9 authorized by s. 628.6011, and an insurer licensed to write  
10 workers' compensation and employer's liability insurance in  
11 this state. The term "carrier," as used in this chapter, means  
12 an insurer as defined in this subsection.

13 (26)~~(17)~~ "Misconduct" includes, but is not limited to,  
14 the following, which shall not be construed in pari materia  
15 with each other:

16 (a) Conduct evincing such willful or wanton disregard  
17 of an employer's interests as is found in deliberate violation  
18 or disregard of standards of behavior which the employer has  
19 the right to expect of the employee; or

20 (b) Carelessness or negligence of such a degree or  
21 recurrence as to manifest culpability, wrongful intent, or  
22 evil design, or to show an intentional and substantial  
23 disregard of an employer's interests or of the employee's  
24 duties and obligations to the employer.

25 (27) "Office" means the Office of Workers'  
26 Compensation Administration.

27 (28)~~(19)~~ "Parent" includes stepparents and parents by  
28 adoption, parents-in-law, and any persons who for more than 3  
29 years prior to the death of the deceased employee stood in the  
30 place of a parent to him or her and were dependent on the  
31 injured employee.

1        (29)~~(20)~~ "Partner" means any person who is a member of  
2 a partnership that is formed by two or more persons to carry  
3 on as coowners of a business with the understanding that there  
4 will be a proportional sharing of the profits and losses  
5 between them. For the purposes of this chapter, a partner is a  
6 person who participates fully in the management of the  
7 partnership and who is personally liable for its debts.

8        (30)~~(21)~~ "Permanent impairment" means any anatomic or  
9 functional abnormality or loss determined as a percentage of  
10 the body as a whole, existing after the date of maximum  
11 medical improvement, which results from the injury.

12        (31)~~(22)~~ "Person" means individual, partnership,  
13 association, or corporation, including any public service  
14 corporation.

15        (32)~~(23)~~ "Self-insurer" means:

16            (a) Any employer who has secured payment of  
17 compensation pursuant to s. 440.38(1)(b) or (6) as an  
18 individual self-insurer;

19            (b) Any employer who has secured payment of  
20 compensation through a group self-insurance fund under s.  
21 624.4621;

22            (c) Any group self-insurance fund established under s.  
23 624.4621;

24            (d) A public utility as defined in s. 364.02 or s.  
25 366.02 that has assumed by contract the liabilities of  
26 contractors or subcontractors pursuant to s. 624.46225; or

27            (e) Any local government self-insurance fund  
28 established under s. 624.4622.

29        (33)~~(36)~~ "Soft-tissue injury" means an injury that  
30 produces damage to the soft tissues, rather than to the  
31 skeletal tissues or soft organs.

1           (34)~~(24)~~ "Sole proprietor" means a natural person who  
2 owns a form of business in which that person owns all the  
3 assets of the business and is solely liable for all the debts  
4 of the business.

5           (35)~~(25)~~ "Spouse" includes only a spouse substantially  
6 dependent for financial support upon the decedent and living  
7 with the decedent at the time of the decedent's injury and  
8 death, or substantially dependent upon the decedent for  
9 financial support and living apart at that time for  
10 justifiable cause.

11           (36)~~(39)~~ "Statement," for the purposes of ss. 440.105  
12 and 440.106, includes, but is not limited to, any notice,  
13 representation, statement, proof of injury, bill for services,  
14 diagnosis, prescription, hospital or doctor record, X ray,  
15 test result, or other evidence of loss, injury, or expense.

16           (37)~~(26)~~ "Time of injury" means the time of the  
17 occurrence of the accident resulting in the injury.

18           (38)~~(27)~~ "Wages" means the money rate at which the  
19 service rendered is recompensed under the contract of hiring  
20 in force at the time of the injury and includes only the wages  
21 earned and reported for federal income tax purposes on the job  
22 where the employee is injured and any other concurrent  
23 employment where he or she is also subject to workers'  
24 compensation coverage and benefits, together with the  
25 reasonable value of housing furnished to the employee by the  
26 employer which is the permanent year-round residence of the  
27 employee, and gratuities to the extent reported to the  
28 employer in writing as taxable income received in the course  
29 of employment from others than the employer and employer  
30 contributions for health insurance for the employee or the  
31 employee's dependents. However, housing furnished to migrant

1 workers shall be included in wages unless provided after the  
2 time of injury. In employment in which an employee receives  
3 consideration for housing, the reasonable value of such  
4 housing compensation shall be the actual cost to the employer  
5 or based upon the Fair Market Rent Survey promulgated pursuant  
6 to s. 8 of the Housing and Urban Development Act of 1974,  
7 whichever is less. However, if employer contributions for  
8 housing or health insurance are continued after the time of  
9 the injury, the contributions are not "wages" for the purpose  
10 of calculating an employee's average weekly wage.

11 (39)~~(28)~~ "Weekly compensation rate" means and refers  
12 to the amount of compensation payable for a period of 7  
13 consecutive days, including any Saturdays, Sundays, holidays,  
14 and other nonworking days which fall within such period of 7  
15 consecutive days. When Saturdays, Sundays, holidays, or other  
16 nonworking days immediately follow the first 7 days of  
17 disability or occur at the end of a period of disability as  
18 the last day or days of such period, such nonworking days  
19 constitute a part of the period of disability with respect to  
20 which compensation is payable.

21 Section 4. Section 440.021, Florida Statutes, is  
22 amended to read:

23 440.021 Exemption of workers' compensation from  
24 chapter 120.--Workers' compensation adjudications by judges of  
25 compensation claims are exempt from chapter 120, and no judge  
26 of compensation claims shall be considered an agency or a part  
27 thereof. Communications of the result of investigations by the  
28 office ~~division~~ pursuant to s. 440.185(4) are exempt from  
29 chapter 120. The penalties and interest set forth in ss.  
30 440.13, 440.185, 440.20, 440.38, 440.51, and 440.52 shall be  
31 assessed by a written order of the office and shall be ordered

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

20 Section 5. Section 440.05, Florida Statutes, is  
21 amended to read:

22 440.05 Election of exemption; revocation of election;  
23 notice; certification.--

24 (1) Each corporate officer who elects not to accept  
25 the provisions of this chapter or who, after electing such  
26 exemption, revokes that exemption shall mail to the office  
27 division in Tallahassee notice to such effect in accordance  
28 with a form to be prescribed by the office division.

29 (2) Each sole proprietor or partner who elects to be  
30 included in the definition of "employee" or who, after such  
31 election, revokes that election must mail to the office

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

1 officers and partnerships provided in s. 440.02, and must  
2 certify that any employees of the sole proprietor, partner, or  
3 officer electing an exemption are covered by workers'  
4 compensation insurance. Upon receipt of the notice of the  
5 election to be exempt, receipt of all application fees, and a  
6 determination by the office ~~division~~ that the notice meets the  
7 requirements of this subsection, the office ~~division~~ shall  
8 issue a certification of the election to the sole proprietor,  
9 partner, or officer, unless the office ~~division~~ determines  
10 that the information contained in the notice is invalid. The  
11 office ~~division~~ shall revoke a certificate of election to be  
12 exempt from coverage upon a determination by the office  
13 ~~division~~ that the person does not meet the requirements for  
14 exemption or that the information contained in the notice of  
15 election to be exempt is invalid. The certificate of election  
16 must list the names of the sole proprietorship, partnership,  
17 or corporation listed in the request for exemption. A new  
18 certificate of election must be obtained each time the person  
19 is employed by a new sole proprietorship, partnership, or  
20 corporation that is not listed on the certificate of election.  
21 A copy of the certificate of election must be sent to each  
22 workers' compensation carrier identified in the request for  
23 exemption. Upon filing a notice of revocation of election, a  
24 sole proprietor, partner, or officer who is a subcontractor  
25 must notify her or his contractor. Upon revocation of a  
26 certificate of election of exemption by the office ~~division~~,  
27 the office ~~division~~ shall notify the workers' compensation  
28 carriers identified in the request for exemption.

29 (4) The notice of election to be exempt from the  
30 provisions of this chapter must contain a notice that clearly  
31 states in substance the following: "Any person who, knowingly

1 and with intent to injure, defraud, or deceive the office  
2 ~~division~~ or any employer or employee, insurance company, or  
3 purposes program, files a notice of election to be exempt  
4 containing any false or misleading information is guilty of a  
5 felony of the third degree." Each person filing a notice of  
6 election to be exempt shall personally sign the notice and  
7 attest that he or she has reviewed, understands, and  
8 acknowledges the foregoing notice.

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

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

1 be revoked before its expiration by the sole proprietor,  
2 partner, or officer for whom it was issued or by the office  
3 ~~division~~ for the reasons stated in this section. At least 60  
4 days prior to the expiration date of a construction industry  
5 certificate of exemption issued after December 1, 1998, the  
6 office ~~division~~ shall send notice of the expiration date and  
7 an application for renewal to the certificateholder at the  
8 address on the certificate.

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

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

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

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

30  
31

1           Section 6. Subsection (5) and paragraph (d) of  
2 subsection (7) of section 440.09, Florida Statutes, are  
3 amended to read:

4           440.09 Coverage.--

5           (5) If injury is caused by the knowing refusal of the  
6 employee to use a safety appliance or observe a safety rule  
7 required by statute or lawfully adopted by the office  
8 ~~division~~, and brought prior to the accident to the employee's  
9 knowledge, or if injury is caused by the knowing refusal of  
10 the employee to use a safety appliance provided by the  
11 employer, the compensation as provided in this chapter shall  
12 be reduced 25 percent.

13           (7)

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

18           Section 7. Subsection (1) of section 440.10, Florida  
19 Statutes, is amended to read:

20           440.10 Liability for compensation.--

21           (1)(a) Every employer coming within the provisions of  
22 this chapter, including any brought within the chapter by  
23 waiver of exclusion or of exemption, shall be liable for, and  
24 shall secure, the payment to his or her employees, or any  
25 physician, surgeon, or pharmacist providing services under the  
26 provisions of s. 440.13, of the compensation payable under ss.  
27 440.13, 440.15, and 440.16. Any contractor or subcontractor  
28 who engages in any public or private construction in the state  
29 shall secure and maintain compensation for his or her  
30 employees under this chapter as provided in s. 440.38.

31

1           (b) In case a contractor sublets any part or parts of  
2 his or her contract work to a subcontractor or subcontractors,  
3 all of the employees of such contractor and subcontractor or  
4 subcontractors engaged on such contract work shall be deemed  
5 to be employed in one and the same business or establishment;  
6 and the contractor shall be liable for, and shall secure, the  
7 payment of compensation to all such employees, except to  
8 employees of a subcontractor who has secured such payment.

9           (c) A contractor may require a subcontractor to  
10 provide evidence of workers' compensation insurance or a copy  
11 of his or her certificate of election. A subcontractor  
12 electing to be exempt as a sole proprietor, partner, or  
13 officer of a corporation shall provide a copy of his or her  
14 certificate of election to the contractor.

15           (d)1. If a contractor becomes liable for the payment  
16 of compensation to the employees of a subcontractor who has  
17 failed to secure such payment in violation of s. 440.38, the  
18 contractor or other third-party payor shall be entitled to  
19 recover from the subcontractor all benefits paid or payable  
20 plus interest unless the contractor and subcontractor have  
21 agreed in writing that the contractor will provide coverage.

22           2. If a contractor or third-party payor becomes liable  
23 for the payment of compensation to the employee of a  
24 subcontractor who is actively engaged in the construction  
25 industry and has elected to be exempt from the provisions of  
26 this chapter, but whose election is invalid, the contractor or  
27 third-party payor may recover from the claimant, partnership,  
28 or corporation all benefits paid or payable plus interest,  
29 unless the contractor and the subcontractor have agreed in  
30 writing that the contractor will provide coverage.

31

1 (e) A subcontractor is not liable for the payment of  
2 compensation to the employees of another subcontractor on such  
3 contract work and is not protected by the  
4 exclusiveness-of-liability provisions of s. 440.11 from action  
5 at law or in admiralty on account of injury of such employee  
6 of another subcontractor.

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

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

16 1. The independent contractor provides the general  
17 contractor with an affidavit stating that he or she meets all  
18 the requirements of s. 440.02(17)(~~14~~)(d); and

19 2. The independent contractor provides the general  
20 contractor with a valid certificate of workers' compensation  
21 insurance or a valid certificate of exemption issued by the  
22 office division.

23  
24 A sole proprietor, partner, or officer of a corporation who  
25 elects exemption from this chapter by filing a certificate of  
26 election under s. 440.05 may not recover benefits or  
27 compensation under this chapter. An independent contractor  
28 who provides the general contractor with both an affidavit  
29 stating that he or she meets the requirements of s.  
30 440.02(17)(~~14~~)(d) and a certificate of exemption is not an  
31 employee under s. 440.02(17)(~~14~~)(c) and may not recover

1 benefits under this chapter. For purposes of determining the  
2 appropriate premium for workers' compensation coverage,  
3 carriers may not consider any person who meets the  
4 requirements of this paragraph to be an employee.

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

8 440.102 Drug-free workplace program requirements.--The  
9 following provisions apply to a drug-free workplace program  
10 implemented pursuant to law or to rules adopted by the Agency  
11 for Health Care Administration:

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

30 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--  
31

- 1 (a) One time only, prior to testing, an employer shall  
2 give all employees and job applicants for employment a written  
3 policy statement which contains:
- 4 1. A general statement of the employer's policy on  
5 employee drug use, which must identify:
- 6 a. The types of drug testing an employee or job  
7 applicant may be required to submit to, including  
8 reasonable-suspicion drug testing or drug testing conducted on  
9 any other basis.
- 10 b. The actions the employer may take against an  
11 employee or job applicant on the basis of a positive confirmed  
12 drug test result.
- 13 2. A statement advising the employee or job applicant  
14 of the existence of this section.
- 15 3. A general statement concerning confidentiality.
- 16 4. Procedures for employees and job applicants to  
17 confidentially report to a medical review officer the use of  
18 prescription or nonprescription medications to a medical  
19 review officer both before and after being tested.
- 20 5. A list of the most common medications, by brand  
21 name or common name, as applicable, as well as by chemical  
22 name, which may alter or affect a drug test. A list of such  
23 medications as developed by the Agency for Health Care  
24 Administration shall be available to employers through the  
25 Office ~~Division~~ of Workers' Compensation Administration ~~of the~~  
26 ~~Department of Labor and Employment Security~~.
- 27 6. The consequences of refusing to submit to a drug  
28 test.
- 29 7. A representative sampling of names, addresses, and  
30 telephone numbers of employee assistance programs and local  
31 drug rehabilitation programs.

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

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

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

18           11. A statement regarding any applicable collective  
19 bargaining agreement or contract and the right to appeal to  
20 the Public Employees Relations Commission or applicable court.

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

25           (7) EMPLOYER PROTECTION.--

26           (g) This section does not prohibit an employer from  
27 conducting medical screening or other tests required,  
28 permitted, or not disallowed by any statute, rule, or  
29 regulation for the purpose of monitoring exposure of employees  
30 to toxic or other unhealthy substances in the workplace or in  
31 the performance of job responsibilities. Such screening or

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

17 Section 9. Section 440.1025, Florida Statutes, is  
18 amended to read:

19 440.1025 Consideration of public employer workplace  
20 safety program in rate-setting; program requirements;  
21 rulemaking.--For a public employer to be eligible for receipt  
22 of specific identifiable consideration under s. 627.0915 for a  
23 workplace safety program in the setting of rates, the public  
24 employer must have a workplace safety program. At a minimum,  
25 the program must include a written safety policy and safety  
26 rules, and make provision for safety inspections, preventative  
27 maintenance, safety training, first-aid, accident  
28 investigation, and necessary recordkeeping. For purposes of  
29 this section, "public employer" means any agency within state,  
30 county, or municipal government employing individuals for  
31 salary, wages, or other remuneration. The office division may

1 promulgate rules for insurers to utilize in determining public  
2 employer compliance with the requirements of this section.

3 Section 10. Section 440.103, Florida Statutes, is  
4 amended to read:

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

22 Section 11. Subsection (1) of section 440.104, Florida  
23 Statutes, is amended to read:

24 440.104 Competitive bidder; civil actions.--

25 (1) Any person engaged in the construction industry,  
26 as provided in s. 440.02(11)~~(7)~~, who loses a competitive bid  
27 for a contract shall have a cause of action for damages  
28 against the person awarded the contract for which the bid was  
29 made, if the person making the losing bid establishes that the  
30 winning bidder knew or should have known that he or she was in  
31

1 violation of s. 440.10, s. 440.105, or s. 440.38 while  
2 performing the work under the contract.

3 Section 12. Paragraph (a) of subsection (2) of section  
4 440.105, Florida Statutes, is amended to read:

5 440.105 Prohibited activities; reports; penalties;  
6 limitations.--

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

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

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

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

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

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

26 Section 13. Subsection (4) of section 440.106, Florida  
27 Statutes, is amended to read:

28 440.106 Civil remedies; administrative penalties.--

29 (4) The office ~~division~~ shall report any contractor  
30 determined in violation of requirements of this chapter to the  
31 appropriate state licensing board for disciplinary action.

1           Section 14. Section 440.107, Florida Statutes, is  
2 amended to read:

3           440.107 Division powers to enforce employer compliance  
4 with coverage requirements.--

5           (1) The Legislature finds that the failure of an  
6 employer to comply with the workers' compensation coverage  
7 requirements under this chapter poses an immediate danger to  
8 public health, safety, and welfare. The Legislature authorizes  
9 the office division to secure employer compliance with the  
10 workers' compensation coverage requirements and authorizes the  
11 office division to conduct investigations for the purpose of  
12 ensuring employer compliance.

13           (2) The office division and its authorized  
14 representatives may enter and inspect any place of business at  
15 any reasonable time for the limited purpose of investigating  
16 compliance with workers' compensation coverage requirements  
17 under this chapter. Each employer shall keep true and accurate  
18 business records that contain such information as the office  
19 division prescribes by rule. The business records must contain  
20 information necessary for the office division to determine  
21 compliance with workers' compensation coverage requirements  
22 and must be maintained within this state by the business, in  
23 such a manner as to be accessible within a reasonable time  
24 upon request by the office division. The business records must  
25 be open to inspection and be available for copying by the  
26 office division at any reasonable time and place and as often  
27 as necessary. The office division may require from any  
28 employer any sworn or unsworn reports, pertaining to persons  
29 employed by that employer, deemed necessary for the effective  
30 administration of the workers' compensation coverage  
31 requirements.

1           (3) In discharging its duties, the office ~~division~~ may  
2 administer oaths and affirmations, certify to official acts,  
3 issue subpoenas to compel the attendance of witnesses and the  
4 production of books, papers, correspondence, memoranda, and  
5 other records deemed necessary by the office ~~division~~ as  
6 evidence in order to ensure proper compliance with the  
7 coverage provisions of this chapter.

8           (4) If a person has refused to obey a subpoena to  
9 appear before the office ~~division~~ or its authorized  
10 representative and produce evidence requested by the office  
11 ~~division~~ or to give testimony about the matter that is under  
12 investigation, a court has jurisdiction to issue an order  
13 requiring compliance with the subpoena if the court has  
14 jurisdiction in the geographical area where the inquiry is  
15 being carried on or in the area where the person who has  
16 refused the subpoena is found, resides, or transacts business.  
17 Failure to obey such a court order may be punished by the  
18 court as contempt.

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

1 Workers' Compensation Administration Trust Fund, in the amount  
2 of \$100 per day for each day the employer was not in  
3 compliance with this chapter.

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

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

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

23       (b) One thousand dollars, whichever is greater.  
24

25 Any penalty assessed under this subsection is due within 30  
26 days after the date on which the employer is notified, except  
27 that, if the office ~~division~~ has posted a stop-work order or  
28 obtained injunctive relief against the employer, payment is  
29 due, in addition to those conditions set forth in this  
30 section, as a condition to relief from a stop-work order or an  
31

1 injunction. Interest shall accrue on amounts not paid when due  
2 at the rate of 1 percent per month.

3 (8) The office ~~division~~ may bring an action in circuit  
4 court to recover penalties assessed under this section,  
5 including any interest owed to the office ~~division~~ pursuant to  
6 this section. In any action brought by the office ~~division~~  
7 pursuant to this section in which it prevails, the circuit  
8 court shall award costs, including the reasonable costs of  
9 investigation and a reasonable attorney's fee.

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

27 (10) Any law enforcement agency in the state may, at  
28 the request of the office ~~division~~, render any assistance  
29 necessary to carry out the provisions of this section,  
30 including, but not limited to, preventing any employee or  
31

1 other person from remaining at a place of employment or job  
2 site after a stop-work order or injunction has taken effect.

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

14 Section 15. Subsection (1) of section 440.108, Florida  
15 Statutes, is amended to read:

16 440.108 Investigatory records relating to workers'  
17 compensation employer compliance; confidentiality.--

18 (1) All investigatory records of the Office ~~Division~~  
19 of Workers' Compensation Administration made or received  
20 pursuant to s. 440.107 and any records necessary to complete  
21 an investigation are confidential and exempt from the  
22 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
23 Constitution until the investigation is completed or ceases to  
24 be active. For purposes of this section, an investigation is  
25 considered "active" while such investigation is being  
26 conducted by the office ~~division~~ with a reasonable, good faith  
27 belief that it may lead to the filing of administrative,  
28 civil, or criminal proceedings. An investigation does not  
29 cease to be active if the agency is proceeding with reasonable  
30 dispatch and there is a good faith belief that action may be  
31 initiated by the agency or other administrative or law

1 enforcement agency. After an investigation is completed or  
2 ceases to be active, records relating to the investigation  
3 remain confidential and exempt from the provisions of s.  
4 119.07(1) and s. 24(a), Art. I of the State Constitution if  
5 disclosure would:

- 6 (a) Jeopardize the integrity of another active  
7 investigation;
- 8 (b) Reveal a trade secret, as defined in s. 688.002;
- 9 (c) Reveal business or personal financial information;
- 10 (d) Reveal the identity of a confidential source;
- 11 (e) Defame or cause unwarranted damage to the good  
12 name or reputation of an individual or jeopardize the safety  
13 of an individual; or
- 14 (f) Reveal investigative techniques or procedures.

15 Section 16. Subsection (2) of section 440.12, Florida  
16 Statutes, is amended to read:

17 440.12 Time for commencement and limits on weekly rate  
18 of compensation.--

19 (2) Compensation for disability resulting from  
20 injuries which occur after December 31, 1974, shall not be  
21 less than \$20 per week. However, if the employee's wages at  
22 the time of injury are less than \$20 per week, he or she shall  
23 receive his or her full weekly wages. If the employee's wages  
24 at the time of the injury exceed \$20 per week, compensation  
25 shall not exceed an amount per week which is:

- 26 (a) Equal to 100 percent of the statewide average  
27 weekly wage, determined as hereinafter provided for the year  
28 in which the injury occurred; however, the increase to 100  
29 percent from 66 2/3 percent of the statewide average weekly  
30 wage shall apply only to injuries occurring on or after August  
31 1, 1979; and

1 (b) Adjusted to the nearest dollar.

2  
3 For the purpose of this subsection, the "statewide average  
4 weekly wage" means the average weekly wage paid by employers  
5 subject to the Florida Unemployment Compensation Law as  
6 reported to the office ~~department~~ for the four calendar  
7 quarters ending each June 30, which average weekly wage shall  
8 be determined by the office ~~department~~ on or before November  
9 30 of each year and shall be used in determining the maximum  
10 weekly compensation rate with respect to injuries occurring in  
11 the calendar year immediately following. The statewide average  
12 weekly wage determined by the office ~~department~~ shall be  
13 reported annually to the Legislature.

14 Section 17. Section 440.125, Florida Statutes, is  
15 amended to read:

16 440.125 Medical records and reports; identifying  
17 information in employee medical bills; confidentiality.--

18 (1) Any medical records and medical reports of an  
19 injured employee and any information identifying an injured  
20 employee in medical bills which are provided to the Office  
21 ~~Division~~ of Workers' Compensation Administration ~~of the~~  
22 ~~Department of Labor and Employment Security~~ pursuant to s.  
23 440.13 are confidential and exempt from the provisions of s.  
24 119.07(1) and s. 24(a), Art. I of the State Constitution,  
25 except as otherwise provided by this chapter.

26 (2) The Legislature finds that it is a public  
27 necessity that an injured employee's medical records and  
28 medical reports and information identifying the employee in  
29 medical bills held by the Office ~~Division~~ of Workers'  
30 Compensation Administration pursuant to s. 440.13 be  
31 confidential and exempt from the public records law. Public

1 access to such information is an invasion of the injured  
2 employee's right to privacy in that personal, sensitive  
3 information would be revealed, and public knowledge of such  
4 information could lead to discrimination against the employee  
5 by coworkers and others. Additionally, there is little utility  
6 in providing public access to such information in that the  
7 effectiveness and efficiency of the workers' compensation  
8 program can be otherwise adequately monitored and evaluated.

9 Section 18. Section 440.13, Florida Statutes, is  
10 amended to read:

11 440.13 Medical services and supplies; penalty for  
12 violations; limitations.--

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

14 (a) "Alternate medical care" means a change in  
15 treatment or health care provider.

16 (b) "Attendant care" means care rendered by trained  
17 professional attendants which is beyond the scope of household  
18 duties. Family members may provide nonprofessional attendant  
19 care, but may not be compensated under this chapter for care  
20 that falls within the scope of household duties and other  
21 services normally and gratuitously provided by family members.  
22 "Family member" means a spouse, father, mother, brother,  
23 sister, child, grandchild, father-in-law, mother-in-law, aunt,  
24 or uncle.

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

28 (d) "Catastrophic injury" means an injury as defined  
29 in s. 440.02.

30 (e) "Certified health care provider" means a health  
31 care provider who has been certified by the office ~~division~~ or

1 who has entered an agreement with a licensed managed care  
2 organization to provide treatment to injured workers under  
3 this section. Certification of such health care provider must  
4 include documentation that the health care provider has read  
5 and is familiar with the portions of the statute, impairment  
6 guides, and rules which govern the provision of remedial  
7 treatment, care, and attendance.

8 (f) "Compensable" means a determination by a carrier  
9 or judge of compensation claims that a condition suffered by  
10 an employee results from an injury arising out of and in the  
11 course of employment.

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

14 (h) "Health care facility" means any hospital licensed  
15 under chapter 395 and any health care institution licensed  
16 under chapter 400.

17 (i) "Health care provider" means a physician or any  
18 recognized practitioner who provides skilled services pursuant  
19 to a prescription or under the supervision or direction of a  
20 physician and who has been certified by the office ~~division~~ as  
21 a health care provider. The term "health care provider"  
22 includes a health care facility.

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

27 (k) "Independent medical examination" means an  
28 objective evaluation of the injured employee's medical  
29 condition, including, but not limited to, impairment or work  
30 status, performed by a physician or an expert medical advisor  
31 at the request of a party, a judge of compensation claims, or

1 the office ~~division~~ to assist in the resolution of a dispute  
2 arising under this chapter.

3 (l) "Instance of overutilization" means a specific  
4 inappropriate service or level of service provided to an  
5 injured employee.

6 (m) "Medically necessary" means any medical service or  
7 medical supply which is used to identify or treat an illness  
8 or injury, is appropriate to the patient's diagnosis and  
9 status of recovery, and is consistent with the location of  
10 service, the level of care provided, and applicable practice  
11 parameters. The service should be widely accepted among  
12 practicing health care providers, based on scientific  
13 criteria, and determined to be reasonably safe. The service  
14 must not be of an experimental, investigative, or research  
15 nature, except in those instances in which prior approval of  
16 the Agency for Health Care Administration has been obtained.  
17 The Agency for Health Care Administration shall adopt rules  
18 providing for such approval on a case-by-case basis when the  
19 service or supply is shown to have significant benefits to the  
20 recovery and well-being of the patient.

21 (n) "Medicine" means a drug prescribed by an  
22 authorized health care provider and includes only generic  
23 drugs or single-source patented drugs for which there is no  
24 generic equivalent, unless the authorized health care provider  
25 writes or states that the brand-name drug as defined in s.  
26 465.025 is medically necessary, or is a drug appearing on the  
27 schedule of drugs created pursuant to s. 465.025(6), or is  
28 available at a cost lower than its generic equivalent.

29 (o) "Palliative care" means noncurative medical  
30 services that mitigate the conditions, effects, or pain of an  
31 injury.

1 (p) "Pattern or practice of overutilization" means  
2 repetition of instances of overutilization within a specific  
3 medical case or multiple cases by a single health care  
4 provider.

5 (q) "Peer review" means an evaluation by two or more  
6 physicians licensed under the same authority and with the same  
7 or similar specialty as the physician under review, of the  
8 appropriateness, quality, and cost of health care and health  
9 services provided to a patient, based on medically accepted  
10 standards.

11 (r) "Physician" or "doctor" means a physician licensed  
12 under chapter 458, an osteopathic physician licensed under  
13 chapter 459, a chiropractic physician licensed under chapter  
14 460, a podiatric physician licensed under chapter 461, an  
15 optometrist licensed under chapter 463, or a dentist licensed  
16 under chapter 466, each of whom must be certified by the  
17 office division as a health care provider.

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

21 (t) "Utilization control" means a systematic process  
22 of implementing measures that assure overall management and  
23 cost containment of services delivered.

24 (u) "Utilization review" means the evaluation of the  
25 appropriateness of both the level and the quality of health  
26 care and health services provided to a patient, including, but  
27 not limited to, evaluation of the appropriateness of  
28 treatment, hospitalization, or office visits based on  
29 medically accepted standards. Such evaluation must be  
30 accomplished by means of a system that identifies the  
31 utilization of medical services based on medically accepted

1 standards as established by medical consultants with  
2 qualifications similar to those providing the care under  
3 review, and that refers patterns and practices of  
4 overutilization to the office ~~division~~.

5 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--  
6 (a) Subject to the limitations specified elsewhere in  
7 this chapter, the employer shall furnish to the employee such  
8 medically necessary remedial treatment, care, and attendance  
9 for such period as the nature of the injury or the process of  
10 recovery may require, including medicines, medical supplies,  
11 durable medical equipment, orthoses, prostheses, and other  
12 medically necessary apparatus. Remedial treatment, care, and  
13 attendance, including work-hardening programs or  
14 pain-management programs accredited by the Commission on  
15 Accreditation of Rehabilitation Facilities or Joint Commission  
16 on the Accreditation of Health Organizations or  
17 pain-management programs affiliated with medical schools,  
18 shall be considered as covered treatment only when such care  
19 is given based on a referral by a physician as defined in this  
20 chapter. Each facility shall maintain outcome data, including  
21 work status at discharges, total program charges, total number  
22 of visits, and length of stay. The office ~~department~~ shall  
23 utilize such data and report to the President of the Senate  
24 and the Speaker of the House of Representatives regarding the  
25 efficacy and cost-effectiveness of such program, no later than  
26 October 1, 1994. Medically necessary treatment, care, and  
27 attendance does not include chiropractic services in excess of  
28 18 treatments or rendered 8 weeks beyond the date of the  
29 initial chiropractic treatment, whichever comes first, unless  
30 the carrier authorizes additional treatment or the employee is  
31 catastrophically injured.

1           (b) The employer shall provide appropriate  
2 professional or nonprofessional attendant care performed only  
3 at the direction and control of a physician when such care is  
4 medically necessary. The value of nonprofessional attendant  
5 care provided by a family member must be determined as  
6 follows:

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

9           2. If the family member is employed and elects to  
10 leave that employment to provide attendant or custodial care,  
11 the per-hour value of that care equals the per-hour value of  
12 the family member's former employment, not to exceed the  
13 per-hour value of such care available in the community at  
14 large. A family member or a combination of family members  
15 providing nonprofessional attendant care under this paragraph  
16 may not be compensated for more than a total of 12 hours per  
17 day.

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

1 knowledge of the injury, has neglected to provide the  
2 treatment or service.

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

7 (e) Except in emergency situations and for treatment  
8 rendered by a managed care arrangement, after any initial  
9 examination and diagnosis by a physician providing remedial  
10 treatment, care, and attendance, and before a proposed course  
11 of medical treatment begins, each insurer shall review, in  
12 accordance with the requirements of this chapter, the proposed  
13 course of treatment, to determine whether such treatment would  
14 be recognized as reasonably prudent. The review must be in  
15 accordance with all applicable workers' compensation practice  
16 parameters. The insurer must accept any such proposed course  
17 of treatment unless the insurer notifies the physician of its  
18 specific objections to the proposed course of treatment by the  
19 close of the tenth business day after notification by the  
20 physician, or a supervised designee of the physician, of the  
21 proposed course of treatment.

22 (f) Upon the written request of the employee, the  
23 carrier shall give the employee the opportunity for one change  
24 of physician during the course of treatment for any one  
25 accident. The employee shall be entitled to select another  
26 physician from among not fewer than three carrier-authorized  
27 physicians who are not professionally affiliated.

28 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

29 (a) As a condition to eligibility for payment under  
30 this chapter, a health care provider who renders services must  
31 be a certified health care provider and must receive

1 authorization from the carrier before providing treatment.  
2 This paragraph does not apply to emergency care. The office  
3 ~~division~~ shall adopt rules to implement the certification of  
4 health care providers.

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

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

25 (d) A carrier must respond, by telephone or in  
26 writing, to a request for authorization by the close of the  
27 third business day after receipt of the request. A carrier who  
28 fails to respond to a written request for authorization for  
29 referral for medical treatment by the close of the third  
30 business day after receipt of the request consents to the  
31 medical necessity for such treatment. All such requests must

1 be made to the carrier. Notice to the carrier does not include  
2 notice to the employer.

3 (e) Carriers shall adopt procedures for receiving,  
4 reviewing, documenting, and responding to requests for  
5 authorization. Such procedures shall be for a health care  
6 provider certified under this section.

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

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

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

22 (i) Notwithstanding paragraph (d), a claim for  
23 specialist consultations, surgical operations,  
24 physiotherapeutic or occupational therapy procedures, X-ray  
25 examinations, or special diagnostic laboratory tests that cost  
26 more than \$1,000 and other specialty services that the office  
27 ~~division~~ identifies by rule is not valid and reimbursable  
28 unless the services have been expressly authorized by the  
29 carrier, or unless the carrier has failed to respond within 10  
30 days to a written request for authorization, or unless  
31 emergency care is required. The insurer shall not refuse to

1 authorize such consultation or procedure unless the health  
2 care provider or facility is not authorized or certified or  
3 unless an expert medical advisor has determined that the  
4 consultation or procedure is not medically necessary or  
5 otherwise compensable under this chapter. Authorization of a  
6 treatment plan does not constitute express authorization for  
7 purposes of this section, except to the extent the carrier  
8 provides otherwise in its authorization procedures. This  
9 paragraph does not limit the carrier's obligation to identify  
10 and disallow overutilization or billing errors.

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

24 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH OFFICE  
25 ~~DIVISION~~.--

26 (a) Any health care provider providing necessary  
27 remedial treatment, care, or attendance to any injured worker  
28 shall submit treatment reports to the carrier in a format  
29 prescribed by the office division. A claim for medical or  
30 surgical treatment is not valid or enforceable against such  
31 employer or employee, unless, by the close of the third

1 business day following the first treatment, the physician  
2 providing the treatment furnishes to the employer or carrier a  
3 preliminary notice of the injury and treatment on forms  
4 prescribed by the office division and, within 15 days  
5 thereafter, furnishes to the employer or carrier a complete  
6 report, and subsequent thereto furnishes progress reports, if  
7 requested by the employer or insurance carrier, at intervals  
8 of not less than 3 weeks apart or at less frequent intervals  
9 if requested on forms prescribed by the office division.

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

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

1 381.004, upon the request of the employer, the carrier, an  
2 authorized qualified rehabilitation provider, or the attorney  
3 for the employer or carrier, the medical records of an injured  
4 employee must be furnished to those persons and the medical  
5 condition of the injured employee must be discussed with those  
6 persons, if the records and the discussions are restricted to  
7 conditions relating to the workplace injury. Any such  
8 discussions may be held before or after the filing of a claim  
9 without the knowledge, consent, or presence of any other party  
10 or his or her agent or representative. A health care provider  
11 who willfully refuses to provide medical records or to discuss  
12 the medical condition of the injured employee, after a  
13 reasonable request is made for such information pursuant to  
14 this subsection, shall be subject by the office ~~division~~ to  
15 one or more of the penalties set forth in paragraph (8)(b).

16 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

31

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

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

6           4. The parties agree to an alternate examiner.  
7

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

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

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

1 date of the examination pursuant to paragraph (c) which  
2 includes an explanation of why he or she failed to appear. The  
3 employee may appeal to a judge of compensation claims for  
4 reimbursement when the carrier withholds payment in excess of  
5 the authority granted by this section.

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

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

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

29 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

30 (a) Any health care provider, carrier, or employer who  
31 elects to contest the disallowance or adjustment of payment by

1 a carrier under subsection (6) must, within 30 days after  
2 receipt of notice of disallowance or adjustment of payment,  
3 petition the office ~~division~~ to resolve the dispute. The  
4 petitioner must serve a copy of the petition on the carrier  
5 and on all affected parties by certified mail. The petition  
6 must be accompanied by all documents and records that support  
7 the allegations contained in the petition. Failure of a  
8 petitioner to submit such documentation to the office ~~division~~  
9 results in dismissal of the petition.

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

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

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

28 (e) The office ~~division~~ shall adopt rules to carry out  
29 this subsection. The rules may include provisions for  
30 consolidating petitions filed by a petitioner and expanding  
31

1 the timetable for rendering a determination upon a  
2 consolidated petition.

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

8 1. Repayment of the appropriate amount to the health  
9 care provider.

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

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

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

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

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

27 1. An order of the office ~~division~~ barring the  
28 provider from payment under this chapter;

29 2. Deauthorization of care under review;

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

31

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

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

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

9           (9) EXPERT MEDICAL ADVISORS.--

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

24          (b) The office ~~division~~ shall contract with or employ  
25 expert medical advisors to provide peer review or medical  
26 consultation to the office ~~division~~ or to a judge of  
27 compensation claims in connection with resolving disputes  
28 relating to reimbursement, differing opinions of health care  
29 providers, and health care and physician services rendered  
30 under this chapter. Expert medical advisors contracting with  
31 the office ~~division~~ shall, as a term of such contract, agree

1 to provide consultation or services in accordance with the  
2 timetables set forth in this chapter and to abide by rules  
3 adopted by the office ~~division~~, including, but not limited to,  
4 rules pertaining to procedures for review of the services  
5 rendered by health care providers and preparation of reports  
6 and recommendations for submission to the office ~~division~~.

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

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

31

1 (e) An expert medical advisor is not liable under any  
2 theory of recovery for evaluations performed under this  
3 section without a showing of fraud or malice. The protections  
4 of s. 766.101 apply to any officer, employee, or agent of the  
5 office division and to any officer, employee, or agent of any  
6 entity with which the office division has contracted under  
7 this subsection.

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

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

24 (11) AUDITS BY OFFICE DIVISION; JURISDICTION.--

25 (a) The Office Division of Workers' Compensation  
26 ~~Administration of the Department of Labor and Employment~~  
27 ~~Security~~ may investigate health care providers to determine  
28 whether providers are complying with this chapter and with  
29 rules adopted by the office division, whether the providers  
30 are engaging in overutilization, and whether providers are  
31 engaging in improper billing practices. If the office division

1 finds that a health care provider has improperly billed,  
2 overutilized, or failed to comply with office ~~division~~ rules  
3 or the requirements of this chapter it must notify the  
4 provider of its findings and may determine that the health  
5 care provider may not receive payment from the carrier or may  
6 impose penalties as set forth in subsection (8) or other  
7 sections of this chapter. If the health care provider has  
8 received payment from a carrier for services that were  
9 improperly billed or for overutilization, it must return those  
10 payments to the carrier. The office ~~division~~ may assess a  
11 penalty not to exceed \$500 for each overpayment that is not  
12 refunded within 30 days after notification of overpayment by  
13 the office ~~division~~ or carrier.

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

31

1           (c) The office ~~division~~ has exclusive jurisdiction to  
2 decide any matters concerning reimbursement, to resolve any  
3 overutilization dispute under subsection (7), and to decide  
4 any question concerning overutilization under subsection (8),  
5 which question or dispute arises after January 1, 1994.

6           (d) The following office ~~division~~ actions do not  
7 constitute agency action subject to review under ss. 120.569  
8 and 120.57 and do not constitute actions subject to s. 120.56:  
9 referral by the entity responsible for utilization review; a  
10 decision by the office ~~division~~ to refer a matter to a peer  
11 review committee; establishment by a health care provider or  
12 entity of procedures by which a peer review committee reviews  
13 the rendering of health care services; and the review  
14 proceedings, report, and recommendation of the peer review  
15 committee.

16           (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
17 REIMBURSEMENT ALLOWANCES.--

18           (a) A three-member panel is created, consisting of the  
19 Insurance Commissioner, or the Insurance Commissioner's  
20 designee, and two members to be appointed by the Governor,  
21 subject to confirmation by the Senate, one member who, on  
22 account of present or previous vocation, employment, or  
23 affiliation, shall be classified as a representative of  
24 employers, the other member who, on account of previous  
25 vocation, employment, or affiliation, shall be classified as a  
26 representative of employees. The panel shall determine  
27 statewide schedules of maximum reimbursement allowances for  
28 medically necessary treatment, care, and attendance provided  
29 by physicians, hospitals, ambulatory surgical centers,  
30 work-hardening programs, pain programs, and durable medical  
31 equipment. The maximum reimbursement allowances for inpatient

1 hospital care shall be based on a schedule of per diem rates,  
2 to be approved by the three-member panel no later than March  
3 1, 1994, to be used in conjunction with a precertification  
4 manual as determined by the office ~~division~~. All compensable  
5 charges for hospital outpatient care shall be reimbursed at 75  
6 percent of usual and customary charges. Until the three-member  
7 panel approves a schedule of per diem rates for inpatient  
8 hospital care and it becomes effective, all compensable  
9 charges for hospital inpatient care must be reimbursed at 75  
10 percent of their usual and customary charges. Annually, the  
11 three-member panel shall adopt schedules of maximum  
12 reimbursement allowances for physicians, hospital inpatient  
13 care, hospital outpatient care, ambulatory surgical centers,  
14 work-hardening programs, and pain programs. However, the  
15 maximum percentage of increase in the individual reimbursement  
16 allowance may not exceed the percentage of increase in the  
17 Consumer Price Index for the previous year. An individual  
18 physician, hospital, ambulatory surgical center, pain program,  
19 or work-hardening program shall be reimbursed either the usual  
20 and customary charge for treatment, care, and attendance, the  
21 agreed-upon contract price, or the maximum reimbursement  
22 allowance in the appropriate schedule, whichever is less.

23 (b) As to reimbursement for a prescription medication,  
24 the reimbursement amount for a prescription shall be the  
25 average wholesale price times 1.2 plus \$4.18 for the  
26 dispensing fee, except where the carrier has contracted for a  
27 lower amount. Fees for pharmaceuticals and pharmaceutical  
28 services shall be reimbursable at the applicable fee schedule  
29 amount. Where the employer or carrier has contracted for such  
30 services and the employee elects to obtain them through a  
31 provider not a party to the contract, the carrier shall

1 reimburse at the schedule, negotiated, or contract price,  
2 whichever is lower.

3 (c) Reimbursement for all fees and other charges for  
4 such treatment, care, and attendance, including treatment,  
5 care, and attendance provided by any hospital or other health  
6 care provider, ambulatory surgical center, work-hardening  
7 program, or pain program, must not exceed the amounts provided  
8 by the uniform schedule of maximum reimbursement allowances as  
9 determined by the panel or as otherwise provided in this  
10 section. This subsection also applies to independent medical  
11 examinations performed by health care providers under this  
12 chapter. Until the three-member panel approves a uniform  
13 schedule of maximum reimbursement allowances and it becomes  
14 effective, all compensable charges for treatment, care, and  
15 attendance provided by physicians, ambulatory surgical  
16 centers, work-hardening programs, or pain programs shall be  
17 reimbursed at the lowest maximum reimbursement allowance  
18 across all 1992 schedules of maximum reimbursement allowances  
19 for the services provided regardless of the place of service.  
20 In determining the uniform schedule, the panel shall first  
21 approve the data which it finds representative of prevailing  
22 charges in the state for similar treatment, care, and  
23 attendance of injured persons. Each health care provider,  
24 health care facility, ambulatory surgical center,  
25 work-hardening program, or pain program receiving workers'  
26 compensation payments shall maintain records verifying their  
27 usual charges. In establishing the uniform schedule of maximum  
28 reimbursement allowances, the panel must consider:

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

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

5           3. The financial impact of the reimbursement  
6 allowances upon health care providers and health care  
7 facilities, including trauma centers as defined in s.  
8 395.4001, and its effect upon their ability to make available  
9 to injured workers such medically necessary remedial  
10 treatment, care, and attendance. The uniform schedule of  
11 maximum reimbursement allowances must be reasonable, must  
12 promote health care cost containment and efficiency with  
13 respect to the workers' compensation health care delivery  
14 system, and must be sufficient to ensure availability of such  
15 medically necessary remedial treatment, care, and attendance  
16 to injured workers; and

17           4. The most recent average maximum allowable rate of  
18 increase for hospitals determined by the Health Care Board  
19 under chapter 408.

20           (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE  
21 AUTHORIZED TO RENDER MEDICAL CARE.--The office ~~division~~ shall  
22 remove from the list of physicians or facilities authorized to  
23 provide remedial treatment, care, and attendance under this  
24 chapter the name of any physician or facility found after  
25 reasonable investigation to have:

26           (a) Engaged in professional or other misconduct or  
27 incompetency in connection with medical services rendered  
28 under this chapter;

29           (b) Exceeded the limits of his or her or its  
30 professional competence in rendering medical care under this  
31

1 chapter, or to have made materially false statements regarding  
2 his or her or its qualifications in his or her application;  
3 (c) Failed to transmit copies of medical reports to  
4 the employer or carrier, or failed to submit full and truthful  
5 medical reports of all his or her or its findings to the  
6 employer or carrier as required under this chapter;  
7 (d) Solicited, or employed another to solicit for  
8 himself or herself or itself or for another, professional  
9 treatment, examination, or care of an injured employee in  
10 connection with any claim under this chapter;  
11 (e) Refused to appear before, or to answer upon  
12 request of, the office ~~division~~ or any duly authorized officer  
13 of the state, any legal question, or to produce any relevant  
14 book or paper concerning his or her conduct under any  
15 authorization granted to him or her under this chapter;  
16 (f) Self-referred in violation of this chapter or  
17 other laws of this state; or  
18 (g) Engaged in a pattern of practice of  
19 overutilization or a violation of this chapter or rules  
20 adopted by the office ~~division~~.  
21 (14) PAYMENT OF MEDICAL FEES.--  
22 (a) Except for emergency care treatment, fees for  
23 medical services are payable only to a health care provider  
24 certified and authorized to render remedial treatment, care,  
25 or attendance under this chapter. A health care provider may  
26 not collect or receive a fee from an injured employee within  
27 this state, except as otherwise provided by this chapter. Such  
28 providers have recourse against the employer or carrier for  
29 payment for services rendered in accordance with this chapter.  
30  
31

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

4 (c) Notwithstanding any other provision of this  
5 chapter, following overall maximum medical improvement from an  
6 injury compensable under this chapter, the employee is  
7 obligated to pay a copayment of \$10 per visit for medical  
8 services. The copayment shall not apply to emergency care  
9 provided to the employee.

10 (15) PRACTICE PARAMETERS.--

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

12 Section 19. 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 Office of Workers'  
18 Compensation Administration ~~Department of Labor and Employment~~  
19 ~~Security~~ whenever it issues an administrative complaint or an  
20 order or otherwise initiates legal proceedings resulting in,  
21 or which may result in, suspension or revocation of an  
22 insurer's authorization.

23 Section 20. Subsections (1) and (2) of section  
24 440.135, Florida Statutes, are amended to read:

25 440.135 Pilot programs for medical and remedial care  
26 in workers' compensation.--

27 (1) It is the intent of the Legislature to determine  
28 whether the costs of the workers' compensation system can be  
29 effectively contained by monitoring more closely the medical,  
30 hospital, and remedial care required by s. 440.13, while  
31 providing injured workers with more prompt and effective care

1 and earlier restoration of earning capacity without diminution  
2 of the quality of such care. It is the further intent of the  
3 Legislature to determine whether the total cost to an employer  
4 that provides a policy or plan of health insurance and a  
5 separate policy or plan of workers' compensation and  
6 employer's liability insurance for its employees can be  
7 reduced by combining both coverages under a policy or plan  
8 that provides 24-hour health insurance coverage as set forth  
9 in this section. Therefore, the Legislature authorizes the  
10 establishment of one or more pilot programs to be administered  
11 by the Department of Insurance after consulting with the  
12 office ~~division~~. Each pilot program shall terminate 2 years  
13 after the first date of operation of the program, unless  
14 extended by act of the Legislature. In order to evaluate the  
15 feasibility of implementing these pilot programs, the  
16 Department of Insurance shall consult with the office ~~division~~  
17 regarding:

18 (a) Establishing alternate delivery systems using a  
19 health maintenance organization model, which includes  
20 physician fees, competitive bidding, or capitation models.

21 (b) Controlling and enhancing the selection of  
22 providers of medical, hospital, and remedial care and using  
23 the peer review and utilization review procedures in s.  
24 440.13(1) to control the utilization of care by physicians  
25 providing treatment pursuant to s. 440.13(2)(a).

26 (c) Establishing, by agreement, appropriate fees for  
27 medical, hospital, and remedial care pursuant to this chapter.

28 (d) Promoting effective and timely utilization of  
29 medical, hospital, and remedial care by injured workers.

30  
31

1           (e) Coordinating the duration of payment of disability  
2 benefits with determination made by qualified participating  
3 providers of medical, hospital, or remedial care.

4           (f) Initiating one or more pilot programs under which  
5 participating employers would provide a 24-hour health  
6 insurance policy to their employees under a single insurance  
7 policy or self-insured plan. The policy or plan must provide a  
8 level of health insurance benefits which meets criteria  
9 established by the Department of Insurance but which provides  
10 medical benefits for at least occupational injuries and  
11 illnesses comparable to those required by this chapter and  
12 which may use deductibles and coinsurance provisions that  
13 require the employee to pay a portion of the actual medical  
14 care received by the employee, notwithstanding any other  
15 provisions of this chapter. The policy or plan may also  
16 provide indemnity benefits as specified in s. 440.38(1)(e).  
17 The employer shall pay the entire premium for the 24-hour  
18 health insurance policy or self-insured plan other than the  
19 portion of the premium which relates to dependent coverage.

20           (g) Other methods of monitoring reduced costs within  
21 the workers' compensation system while maintaining quality  
22 care.

23           (2) The Department of Insurance, after consulting with  
24 the office ~~division~~, may, without a bidding process, negotiate  
25 and enter into such contracts as may be necessary or  
26 appropriate in its judgment to implement the pilot program.

27           Section 21. Subsections (3) and (4) and paragraph (b)  
28 of subsection (5) of section 440.14, Florida Statutes, are  
29 amended to read:

30           440.14 Determination of pay.--

31

1           (3) The office ~~division~~ shall establish by rule a form  
2 which shall contain a simplified checklist of those items  
3 which may be included as "wage" for determining the average  
4 weekly wage.

5           (4) Upon termination of the employee or upon  
6 termination of the payment of fringe benefits of any employee  
7 who is collecting indemnity benefits pursuant to s. 440.15(2)  
8 or (3)(b), the employer shall within 7 days of such  
9 termination file a corrected 13-week wage statement reflecting  
10 the wages paid and the fringe benefits that had been paid to  
11 the injured employee as defined in s. 440.02(38)~~(27)~~.

12           (5)

13           (b) The employee waives any entitlement to interest,  
14 penalties, and attorney's fees during the period in which the  
15 employee has not provided information concerning the loss of  
16 earnings from concurrent employment. Carriers are not subject  
17 to penalties by the office ~~division~~ under s. 440.20(8)(b) and  
18 (c) for unpaid compensation related to concurrent employment  
19 during the period in which the employee has not provided  
20 information concerning the loss of earnings from concurrent  
21 employment.

22           Section 22. Paragraphs (d) and (f) of subsection (1),  
23 paragraphs (c) and (d) of subsection (2), paragraphs (a) and  
24 (b) of subsection (3), subsections (4) and (6), and paragraphs  
25 (b) and (c) of subsection (10) of section 440.15, Florida  
26 Statutes, are amended to read:

27           440.15 Compensation for disability.--Compensation for  
28 disability shall be paid to the employee, subject to the  
29 limits provided in s. 440.12(2), as follows:

30           (1) PERMANENT TOTAL DISABILITY.--

31

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

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

1 employer when the injury occurred on or after July 1, 1984.  
2 Supplemental benefits are not payable for any period prior to  
3 October 1, 1974.

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

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

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

30       (2) TEMPORARY TOTAL DISABILITY.--

31

1           (c) Temporary total disability benefits paid pursuant  
2 to this subsection shall include such period as may be  
3 reasonably necessary for training in the use of artificial  
4 members and appliances, and shall include such period as the  
5 employee may be receiving training and education under a  
6 program pursuant to s. 440.491. Notwithstanding s.  
7 440.02(13)(9), the date of maximum medical improvement for  
8 purposes of paragraph (3)(b) shall be no earlier than the last  
9 day for which such temporary disability benefits are paid.

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

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

23           (a) Impairment benefits.--

24           1. Once the employee has reached the date of maximum  
25 medical improvement, impairment benefits are due and payable  
26 within 20 days after the carrier has knowledge of the  
27 impairment.

28           2. The three-member panel, in cooperation with the  
29 office division, shall establish and use a uniform permanent  
30 impairment rating schedule. This schedule must be based on  
31 medically or scientifically demonstrable findings as well as

1 the systems and criteria set forth in the American Medical  
2 Association's Guides to the Evaluation of Permanent  
3 Impairment; the Snellen Charts, published by American Medical  
4 Association Committee for Eye Injuries; and the Minnesota  
5 Department of Labor and Industry Disability Schedules. The  
6 schedule should be based upon objective findings. The schedule  
7 shall be more comprehensive than the AMA Guides to the  
8 Evaluation of Permanent Impairment and shall expand the areas  
9 already addressed and address additional areas not currently  
10 contained in the guides. On August 1, 1979, and pending the  
11 adoption, by rule, of a permanent schedule, Guides to the  
12 Evaluation of Permanent Impairment, copyright 1977, 1971,  
13 1988, by the American Medical Association, shall be the  
14 temporary schedule and shall be used for the purposes hereof.  
15 For injuries after July 1, 1990, pending the adoption by  
16 office division ~~rule~~ of a uniform disability rating schedule,  
17 the Minnesota Department of Labor and Industry Disability  
18 Schedule shall be used unless that schedule does not address  
19 an injury. In such case, the Guides to the Evaluation of  
20 Permanent Impairment by the American Medical Association shall  
21 be used. Determination of permanent impairment under this  
22 schedule must be made by a physician licensed under chapter  
23 458, a doctor of osteopathic medicine licensed under chapters  
24 458 and 459, a chiropractic physician licensed under chapter  
25 460, a podiatric physician licensed under chapter 461, an  
26 optometrist licensed under chapter 463, or a dentist licensed  
27 under chapter 466, as appropriate considering the nature of  
28 the injury. No other persons are authorized to render opinions  
29 regarding the existence of or the extent of permanent  
30 impairment.  
31

1           3. All impairment income benefits shall be based on an  
2 impairment rating using the impairment schedule referred to in  
3 subparagraph 2. Impairment income benefits are paid weekly at  
4 the rate of 50 percent of the employee's average weekly  
5 temporary total disability benefit not to exceed the maximum  
6 weekly benefit under s. 440.12. An employee's entitlement to  
7 impairment income benefits begins the day after the employee  
8 reaches maximum medical improvement or the expiration of  
9 temporary benefits, whichever occurs earlier, and continues  
10 until the earlier of:

11           a. The expiration of a period computed at the rate of  
12 3 weeks for each percentage point of impairment; or

13           b. The death of the employee.

14           4. After the employee has been certified by a doctor  
15 as having reached maximum medical improvement or 6 weeks  
16 before the expiration of temporary benefits, whichever occurs  
17 earlier, the certifying doctor shall evaluate the condition of  
18 the employee and assign an impairment rating, using the  
19 impairment schedule referred to in subparagraph 2.

20 Compensation is not payable for the mental, psychological, or  
21 emotional injury arising out of depression from being out of  
22 work. If the certification and evaluation are performed by a  
23 doctor other than the employee's treating doctor, the  
24 certification and evaluation must be submitted to the treating  
25 doctor, and the treating doctor must indicate agreement or  
26 disagreement with the certification and evaluation. The  
27 certifying doctor shall issue a written report to the office  
28 ~~division~~, the employee, and the carrier certifying that  
29 maximum medical improvement has been reached, stating the  
30 impairment rating, and providing any other information  
31 required by the office division. If the employee has not been

1 certified as having reached maximum medical improvement before  
2 the expiration of 102 weeks after the date temporary total  
3 disability benefits begin to accrue, the carrier shall notify  
4 the treating doctor of the requirements of this section.

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

7 6. The office ~~division~~ may by rule specify forms and  
8 procedures governing the method of payment of wage loss and  
9 impairment benefits for dates of accidents before January 1,  
10 1994, and for dates of accidents on or after January 1, 1994.

11 (b) Supplemental benefits.--

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

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

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

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

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

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

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

6           c. The employee's decrease in earnings is a direct  
7 result of the employee's impairment from the compensable  
8 injury.

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

25           4. During the period that impairment income benefits  
26 or supplemental income benefits are being paid, the carrier  
27 has the affirmative duty to determine at least annually  
28 whether any extended unemployment or underemployment is a  
29 direct result of the employee's impairment. To accomplish this  
30 purpose, the office ~~division~~ may require periodic reports from  
31 the employee and the carrier, and it may, at the carrier's

1 expense, require any physical or other examinations,  
2 vocational assessments, or other tests or diagnoses necessary  
3 to verify that the carrier is performing its duty. Not more  
4 than once in each 12 calendar months, the employee and the  
5 carrier may each request that the office ~~division~~ review the  
6 status of the employee and determine whether the carrier has  
7 performed its duty with respect to whether the employee's  
8 unemployment or underemployment is a direct result of  
9 impairment from the compensable injury.

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

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

30           7. Supplemental benefits are calculated quarterly and  
31 paid monthly. For purposes of calculating supplemental

1 benefits, 80 percent of the employee's average weekly wage and  
2 the average wages the employee has earned per week are  
3 compared quarterly. For purposes of this paragraph, if the  
4 employee is offered a bona fide position of employment that  
5 the employee is capable of performing, given the physical  
6 condition of the employee and the geographic accessibility of  
7 the position, the employee's weekly wages are considered  
8 equivalent to the weekly wages for the position offered to the  
9 employee.

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

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

21 (4) TEMPORARY PARTIAL DISABILITY.--

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

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

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

17 (6) OBLIGATION TO REHIRE.--If the employer has not in  
18 good faith made available to the employee, within a 100-mile  
19 radius of the employee's residence, work appropriate to the  
20 employee's physical limitations within 30 days after the  
21 carrier notifies the employer of maximum medical improvement  
22 and the employee's physical limitations, the employer shall  
23 pay to the office ~~division~~ for deposit into the Workers'  
24 Compensation Administration Trust Fund a fine of \$250 for  
25 every \$5,000 of the employer's workers' compensation premium  
26 or payroll, not to exceed \$2,000 per violation, as the office  
27 ~~division~~ requires by rule. The employer is not subject to this  
28 subsection if the employee is receiving permanent total  
29 disability benefits or if the employer has 50 or fewer  
30 employees.

31

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

4           (b) If the provisions of 42 U.S.C. s. 424(a) are  
5 amended to provide for a reduction or increase of the  
6 percentage of average current earnings that the sum of  
7 compensation benefits payable under this chapter and the  
8 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,  
9 the amount of the reduction of benefits provided in this  
10 subsection shall be reduced or increased accordingly. The  
11 office ~~division~~ may by rule specify forms and procedures  
12 governing the method for calculating and administering the  
13 offset of benefits payable under this chapter and benefits  
14 payable under 42 U.S.C. ss. 402 and 423. The office ~~division~~  
15 shall have first priority in taking any available social  
16 security offsets on dates of accidents occurring before July  
17 1, 1984.

18           (c) No disability compensation benefits payable for  
19 any week, including those benefits provided by paragraph  
20 (1)(f), shall be reduced pursuant to this subsection until the  
21 Social Security Administration determines the amount otherwise  
22 payable to the employee under 42 U.S.C. ss. 402 and 423 and  
23 the employee has begun receiving such social security benefit  
24 payments. The employee shall, upon demand by the office  
25 ~~division~~, the employer, or the carrier, authorize the Social  
26 Security Administration to release disability information  
27 relating to her or him and authorize the Division of  
28 Unemployment Compensation to release unemployment compensation  
29 information relating to her or him, in accordance with rules  
30 to be promulgated by the office ~~division~~ prescribing the  
31 procedure and manner for requesting the authorization and for

1 compliance by the employee. Neither the office ~~division~~ nor  
2 the employer or carrier shall make any payment of benefits for  
3 total disability or those additional benefits provided by  
4 paragraph (1)(f) for any period during which the employee  
5 willfully fails or refuses to authorize the release of  
6 information in the manner and within the time prescribed by  
7 such rules. The authority for release of disability  
8 information granted by an employee under this paragraph shall  
9 be effective for a period not to exceed 12 months, such  
10 authority to be renewable as the office ~~division~~ may prescribe  
11 by rule.

12 Section 23. Section 440.17, Florida Statutes, is  
13 amended to read:

14 440.17 Guardian for minor or incompetent.--Prior to  
15 the filing of a claim, the office ~~division~~, and after the  
16 filing of a claim, a judge of compensation claims, may require  
17 the appointment by a court of competent jurisdiction, for any  
18 person who is mentally incompetent or a minor, of a guardian  
19 or other representative to receive compensation payable to  
20 such person under this chapter and to exercise the powers  
21 granted to or to perform the duties required of such person  
22 under this chapter; however, the judge of compensation claims,  
23 in the judge of compensation claims' discretion, may designate  
24 in the compensation award a person to whom payment of  
25 compensation may be paid for a minor or incompetent, in which  
26 event payment to such designated person shall discharge all  
27 liability for such compensation.

28 Section 24. Subsections (2), (3), (4), (5), (7), and  
29 (10) of section 440.185, Florida Statutes, are amended to  
30 read:

31

1           440.185 Notice of injury or death; reports; penalties  
2 for violations.--

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

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

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

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

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

15           (e) Such other information as the office ~~division~~ may  
16 require.

17

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

29           (3) In addition to the requirements of subsection (2),  
30 the employer shall notify the office ~~division~~ within 24 hours  
31 by telephone or telegraph of any injury resulting in death.

1 However, this special notice shall not be required when death  
2 results subsequent to the submission to the office ~~division~~ of  
3 a previous report of the injury pursuant to subsection (2).

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

25 (5) Additional reports with respect to such injury and  
26 of the condition of such employee, including copies of medical  
27 reports, funeral expenses, and wage statements, shall be filed  
28 by the employer or carrier to the office ~~division~~ at such  
29 times and in such manner as the office ~~division~~ may prescribe  
30 by rule. In carrying out its responsibilities under this  
31 chapter, the office ~~division~~ may by rule provide for the

1 obtaining of any medical records relating to medical treatment  
2 provided pursuant to this chapter, notwithstanding the  
3 provisions of ss. 90.503 and 395.3025(4).

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

19 (10) The office ~~division~~ may by rule prescribe forms  
20 and procedures governing the submission of the change in  
21 claims administration report and the risk class code and  
22 standard industry code report for all lost time and denied  
23 lost-time cases. The office ~~division~~ may by rule define terms  
24 that are necessary for the effective administration of this  
25 section.

26 Section 25. Section 440.191, Florida Statutes, is  
27 amended to read:

28 440.191 Employee Assistance and Ombudsman Section  
29 ~~Office~~.--

30 (1)(a) In order to effect the self-executing features  
31 of the Workers' Compensation Law, this chapter shall be

1 construed to permit injured employees and employers or the  
2 employer's carrier to resolve disagreements without undue  
3 expense, costly litigation, or delay in the provisions of  
4 benefits. It is the duty of all who participate in the  
5 workers' compensation system, including, but not limited to,  
6 carriers, service providers, health care providers, attorneys,  
7 employers, and employees, to attempt to resolve disagreements  
8 in good faith and to cooperate with the office's division's  
9 efforts to resolve disagreements between the parties. The  
10 office division may by rule prescribe definitions that are  
11 necessary for the effective administration of this section.

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

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

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

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

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

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

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

29 Section 26. Subsections (1) and (6) of section  
30 440.192, Florida Statutes, are amended to read:

31 440.192 Procedure for resolving benefit disputes.--

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

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

20           Section 27. Subsections (1) and (4) and paragraph (b)  
21 of subsection (3) of section 440.1925, Florida Statutes, are  
22 amended to read:

23           440.1925 Procedure for resolving maximum medical  
24 improvement or permanent impairment disputes.--

25           (1) Notwithstanding the limitations on carrier  
26 independent medical examinations in s. 440.13, an employee or  
27 carrier who wishes to obtain an opinion other than the opinion  
28 of the treating physician or an office ~~a division~~ advisor on  
29 the issue of permanent impairment may obtain one independent  
30 medical examination, except that the employee or carrier who  
31 selects the treating physician is not entitled to obtain an

1 alternate opinion on the issue of permanent impairment, unless  
2 the parties otherwise agree. This section and s. 440.13(2) do  
3 not permit an employee or a carrier to obtain an additional  
4 medical opinion on the issue of permanent impairment by  
5 requesting an alternate treating physician pursuant to s.  
6 440.13.

7 (3) Disputes shall be resolved under this section  
8 when:

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

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

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

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

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

31

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

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

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

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

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

29 (c) In order to ensure carrier and claims handler  
30 compliance under this chapter, the office ~~division~~ shall  
31 monitor and audit the performance of carriers and claims

1 handlers. The office division shall establish by rule minimum  
2 performance standards for carriers and claims handlers to  
3 ensure that a minimum of 90 percent of all compensation  
4 benefits are timely paid. The office division shall fine a  
5 carrier or claims handler ~~as provided in s. 440.13(11)(b)~~ up  
6 to \$50 for each late payment of compensation that is below the  
7 minimum 90 percent performance standard. This paragraph does  
8 not affect the imposition of any penalties or interest due to  
9 the claimant. ~~If~~ A carrier may contract ~~contracts~~ with a  
10 claims handler ~~servicing agent~~ to fulfill its administrative  
11 responsibilities under this chapter. The claims handler shall  
12 be responsible for its own actions and shall be penalized by  
13 the office for violations of this chapter, ~~the payment~~  
14 ~~practices of the servicing agent are deemed the payment~~  
15 ~~practices of the carrier for the purpose of assessing~~  
16 ~~penalties against the carrier.~~

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

28 (10) Whenever the office division deems it advisable,  
29 it may require any employer to make a deposit with the  
30 Treasurer to secure the prompt and convenient payments of such  
31 compensation; and payments therefrom upon any awards shall be

1 made upon order of the office ~~division~~ or judge of  
2 compensation claims.  
3 (11)  
4 (b) When a claimant is not represented by counsel,  
5 upon joint petition of all interested parties, a lump-sum  
6 payment in exchange for the employer's or carrier's release  
7 from liability for future medical expenses, as well as future  
8 payments of compensation and rehabilitation expenses, and any  
9 other benefits provided under this chapter, may be allowed at  
10 any time in any case after the injured employee has attained  
11 maximum medical improvement. An employer or carrier may not  
12 pay any attorney's fees on behalf of the claimant for any  
13 settlement, unless expressly authorized elsewhere in this  
14 chapter. A compensation order so entered upon joint petition  
15 of all interested parties shall not be subject to modification  
16 or review under s. 440.28. However, a judge of compensation  
17 claims is not required to approve any award for lump-sum  
18 payment when it is determined by the judge of compensation  
19 claims that the payment being made is in excess of the value  
20 of benefits the claimant would be entitled to under this  
21 chapter. The judge of compensation claims shall make or cause  
22 to be made such investigations as she or he considers  
23 necessary, in each case in which the parties have stipulated  
24 that a proposed final settlement of liability of the employer  
25 for compensation shall not be subject to modification or  
26 review under s. 440.28, to determine whether such final  
27 disposition will definitely aid the rehabilitation of the  
28 injured worker or otherwise is clearly for the best interests  
29 of the person entitled to compensation and, in her or his  
30 discretion, may have an investigation made by the  
31 Rehabilitation Section of the Office ~~Division~~ of Workers'

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

28 (12)(a) Liability of an employer for future payments  
29 of compensation may not be discharged by advance payment  
30 unless prior approval of a judge of compensation claims or the  
31 office division has been obtained as hereinafter provided. The

1 approval shall not constitute an adjudication of the  
2 claimant's percentage of disability.

3 (b) When the claimant has reached maximum recovery and  
4 returned to her or his former or equivalent employment with no  
5 substantial reduction in wages, such approval of a reasonable  
6 advance payment of a part of the compensation payable to the  
7 claimant may be given informally by letter by a judge of  
8 compensation claims ~~or, by the executive division director, or~~  
9 ~~by the administrator of claims of the office division.~~

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

14 1. An advance payment of compensation not in excess of  
15 \$2,000 may be approved informally by letter, without hearing,  
16 by any judge of compensation claims or the Chief Judge.

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

30 3. When the parties have stipulated to an advance  
31 payment in excess of \$2,000, subject to the approval of the

1 ~~office division~~, such payment may be approved by a judge of  
2 compensation claims by order if the judge finds that such  
3 advance payment is for the best interests of the person  
4 entitled thereto and is reasonable under the circumstances of  
5 the particular case. The judge of compensation claims shall  
6 make or cause to be made such investigations as she or he  
7 considers necessary concerning the stipulation and, in her or  
8 his discretion, may have an investigation of the matter made  
9 by the Rehabilitation Section of the ~~office division~~. The  
10 stipulation and the report of any investigation shall be  
11 deemed a part of the record of the proceedings.

12 (d) When an application for an advance payment in  
13 excess of \$2,000 is opposed by the employer or carrier, it  
14 shall be heard by a judge of compensation claims after giving  
15 the interested parties not less than 10 days' notice of such  
16 hearing by mail, unless such notice is waived. In her or his  
17 discretion, the judge of compensation claims may have an  
18 investigation of the matter made by the Rehabilitation Section  
19 of the ~~office division~~, in which event the report and  
20 recommendation of that section will be deemed a part of the  
21 record of the proceedings. If the judge of compensation claims  
22 finds that such advance payment is for the best interests of  
23 the person entitled to compensation, will not materially  
24 prejudice the rights of the employer and carrier, and is  
25 reasonable under the circumstances of the case, she or he may  
26 order the same paid. However, in no event may any such advance  
27 payment under this paragraph be granted in excess of \$7,500 or  
28 26 weeks of benefits in any 48-month period, whichever is  
29 greater, from the date of the last advance payment.

30 (15)(a) The ~~office division~~ shall examine on an  
31 ongoing basis claims files in order to identify questionable

1 claims-handling techniques, questionable patterns or practices  
2 of claims, or a pattern of repeated unreasonably controverted  
3 claims by employers, carriers, self-insurers, health care  
4 providers, health care facilities, training and education  
5 providers, or any others providing services to employees  
6 pursuant to this chapter and may certify its findings to the  
7 Department of Insurance. Such questionable techniques,  
8 patterns, or repeated unreasonably controverted claims as  
9 constitute a general business practice of a carrier in the  
10 judgment of the office division shall be certified in its  
11 findings by the office division to the Department of Insurance  
12 or such other appropriate licensing agency. Such certification  
13 by the office division is exempt from the provisions of  
14 chapter 120. Upon receipt of any such certification, the  
15 Department of Insurance shall take appropriate action so as to  
16 bring such general business practices to a halt pursuant to s.  
17 440.38(3)(a). The office division may initiate investigations  
18 of questionable techniques, patterns, practices, or repeated  
19 unreasonably controverted claims. The office division may by  
20 rule establish forms and procedures for corrective action  
21 plans and for auditing carriers.

22 (b) As to any examination, investigation, or hearing  
23 being conducted under this chapter, the executive director of  
24 the office or the executive director's ~~Secretary of Labor and~~  
25 ~~Employment Security or the secretary's~~ designee:

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

1           (c) If any person refuses to comply with any such  
2 subpoena or to testify as to any matter concerning which she  
3 or he may be lawfully interrogated, the Circuit Court of Leon  
4 County or of the county wherein such examination,  
5 investigation, or hearing is being conducted, or of the county  
6 wherein such person resides, may, on the application of the  
7 office ~~department~~, issue an order requiring such person to  
8 comply with the subpoena and to testify.

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

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

26           (f) The office ~~division~~ shall promulgate rules  
27 providing guidelines to carriers, self-insurers, and employers  
28 to indicate behavior that may be construed as questionable  
29 claims-handling techniques, questionable patterns of claims,  
30 repeated unreasonably controverted claims, or poor payment  
31 practices.

1           (16) No penalty assessed under this section may be  
2 recouped by any carrier or self-insurer in the rate base, the  
3 premium, or any rate filing. In the case of carriers, the  
4 Department of Insurance shall enforce this subsection; and in  
5 the case of self-insurers, the office division shall enforce  
6 this subsection.

7           (17) The office division may by rule establish audit  
8 procedures and set standards for the Automated Carrier  
9 Performance System.

10           Section 29. Subsections (1) and (2) of section  
11 440.207, Florida Statutes, are amended to read:

12           440.207 Workers' compensation system guide.--

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

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

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

3           440.211 Authorization of collective bargaining  
4 agreement.--

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

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

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

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

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

26           (e) A vocational rehabilitation or retraining program.

27           Section 31. Subsections (1), (2), and (3) of section  
28 440.24, Florida Statutes, are amended to read:

29           440.24 Enforcement of compensation orders;  
30 penalties.--

31

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

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

25           (3) In any case where the employer is a self-insurer  
26 and fails to comply with any compensation order of a judge of  
27 compensation claims or court within 10 days after such order  
28 becomes final, the office division may suspend or revoke any  
29 authorization previously given to the employer to become a  
30 self-insurer, and the office division may sell such of the  
31

1 securities deposited by such self-insurer with the office  
2 ~~division~~ as may be necessary to satisfy such order.

3 Section 32. Paragraph (b) of subsection (5) and  
4 subsection (7) of section 440.25, Florida Statutes, are  
5 amended to read:

6 440.25 Procedures for mediation and hearings.--

7 (5)

8 (b) An appellant may be relieved of any necessary  
9 filing fee by filing a verified petition of indigency for  
10 approval as provided in s. 57.081(1) and may be relieved in  
11 whole or in part from the costs for preparation of the record  
12 on appeal if, within 15 days after the date notice of the  
13 estimated costs for the preparation is served, the appellant  
14 files with the judge of compensation claims a copy of the  
15 designation of the record on appeal, and a verified petition  
16 to be relieved of costs. A verified petition filed prior to  
17 the date of service of the notice of the estimated costs shall  
18 be deemed not timely filed. The verified petition relating to  
19 record costs shall contain a sworn statement that the  
20 appellant is insolvent and a complete, detailed, and sworn  
21 financial affidavit showing all the appellant's assets,  
22 liabilities, and income. Failure to state in the affidavit all  
23 assets and income, including marital assets and income, shall  
24 be grounds for denying the petition with prejudice. The Office  
25 of the Judges of Compensation Claims shall adopt rules as may  
26 be required pursuant to this subsection, including forms for  
27 use in all petitions brought under this subsection. The  
28 appellant's attorney, or the appellant if she or he is not  
29 represented by an attorney, shall include as a part of the  
30 verified petition relating to record costs an affidavit or  
31 affirmation that, in her or his opinion, the notice of appeal

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

25 (7) An injured employee claiming or entitled to  
26 compensation shall submit to such physical examination by a  
27 certified expert medical advisor approved by the office  
28 ~~division~~ or the judge of compensation claims as the office  
29 ~~division~~ or the judge of compensation claims may require. The  
30 place or places shall be reasonably convenient for the  
31 employee. Such physician or physicians as the employee,

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

11 Section 33. Section 440.271, Florida Statutes, is  
12 amended to read:

13 440.271 Appeal of order of judge of compensation  
14 claims.--Review of any order of a judge of compensation claims  
15 entered pursuant to this chapter shall be by appeal to the  
16 District Court of Appeal, First District. Appeals shall be  
17 filed in accordance with rules of procedure prescribed by the  
18 Supreme Court for review of such orders. The office ~~division~~  
19 shall be given notice of any proceedings pertaining to s.  
20 440.25, regarding indigency, or s. 440.49, regarding the  
21 Special Disability Trust Fund, and shall have the right to  
22 intervene in any proceedings.

23 Section 34. Section 440.35, Florida Statutes, is  
24 amended to read:

25 440.35 Record of injury or death.--Every employer  
26 shall keep a record in respect of any injury to an employee.  
27 Such record shall contain such information of disability or  
28 death in respect of such injury as the office ~~division~~ may by  
29 regulation require, and shall be available to inspection by  
30 the office ~~division~~ or by any state authority at such time and  
31

1 under such conditions as the office ~~division~~ may by regulation  
2 prescribe.

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

5 440.38 Security for compensation; insurance carriers  
6 and self-insurers.--

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

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

13 (b) By furnishing satisfactory proof to the office  
14 ~~division~~ of its financial ability to pay such compensation  
15 individually and on behalf of its subsidiary and affiliated  
16 companies with employees in this state and receiving an  
17 authorization from the office ~~division~~ to pay such  
18 compensation directly in accordance with the following  
19 provisions:

20 1. The office ~~division~~ may require an employer to  
21 deposit with the office ~~division~~ a qualifying security  
22 deposit. The office ~~division~~ shall determine the type and  
23 amount of the qualifying security deposit and shall prescribe  
24 conditions for the qualifying security deposit, which shall  
25 include authorization for the office ~~division~~ to call the  
26 qualifying security deposit in the case of default. In  
27 addition, the office ~~division~~ shall require, as a condition to  
28 authorization to self-insure, proof that the employer has  
29 provided for competent personnel with whom to deliver benefits  
30 and to provide a safe working environment. Further, the  
31 office ~~division~~ shall require such employer to carry

1 reinsurance at levels that will ensure the actuarial soundness  
2 of such employer in accordance with rules promulgated by the  
3 office division. The office division may by rule require  
4 that, in the event of an individual self-insurer's insolvency,  
5 such qualifying security deposits and reinsurance policies are  
6 payable to the Florida Self-Insurers Guaranty Association,  
7 Incorporated, created pursuant to s. 440.385. Any employer  
8 securing compensation in accordance with the provisions of  
9 this paragraph shall be known as a self-insurer and shall be  
10 classed as a carrier of her or his own insurance.

11         2. If the employer fails to maintain the foregoing  
12 requirements, the office division shall revoke the employer's  
13 authority to self-insure, unless the employer provides to the  
14 office division the certified opinion of an independent  
15 actuary who is a member of the American Society of Actuaries  
16 as to the actuarial present value of the employer's determined  
17 and estimated future compensation payments based on cash  
18 reserves, using a 4-percent discount rate, and a qualifying  
19 security deposit equal to 1.5 times the value so certified.  
20 The employer shall thereafter annually provide such a  
21 certified opinion until such time as the employer meets the  
22 requirements of subparagraph 1. The qualifying security  
23 deposit shall be adjusted at the time of each such annual  
24 report. Upon the failure of the employer to timely provide  
25 such opinion or to timely provide a security deposit in an  
26 amount equal to 1.5 times the value certified in the latest  
27 opinion, the office division shall then revoke such employer's  
28 authorization to self-insure, and such failure shall be deemed  
29 to constitute an immediate serious danger to the public  
30 health, safety, or welfare sufficient to justify the summary  
31

1 suspension of the employer's authorization to self-insure  
2 pursuant to s. 120.68.

3 3. Upon the suspension or revocation of the employer's  
4 authorization to self-insure, the employer shall provide to  
5 the office ~~division~~ and to the Florida Self-Insurers Guaranty  
6 Association, Incorporated, created pursuant to s. 440.385 the  
7 certified opinion of an independent actuary who is a member of  
8 the American Society of Actuaries of the actuarial present  
9 value of the determined and estimated future compensation  
10 payments of the employer for claims incurred while the member  
11 exercised the privilege of self-insurance, using a discount  
12 rate of 4 percent. The employer shall provide such an opinion  
13 at 6-month intervals thereafter until such time as the latest  
14 opinion shows no remaining value of claims. With each such  
15 opinion, the employer shall deposit with the office ~~division~~ a  
16 qualifying security deposit in an amount equal to the value  
17 certified by the actuary. The association has a cause of  
18 action against an employer, and against any successor of the  
19 employer, who fails to timely provide such opinion or who  
20 fails to timely maintain the required security deposit with  
21 the office ~~division~~. The association shall recover a judgment  
22 in the amount of the actuarial present value of the determined  
23 and estimated future compensation payments of the employer for  
24 claims incurred while the employer exercised the privilege of  
25 self-insurance, together with attorney's fees. For purposes  
26 of this section, the successor of an employer means any  
27 person, business entity, or group of persons or business  
28 entities, which holds or acquires legal or beneficial title to  
29 the majority of the assets or the majority of the shares of  
30 the employer.  
31

1           4. A qualifying security deposit shall consist, at the  
2 option of the employer, of:

3           a. Surety bonds, in a form and containing such terms  
4 as prescribed by the office ~~division~~, issued by a corporation  
5 surety authorized to transact surety business by the  
6 Department of Insurance, and whose policyholders' and  
7 financial ratings, as reported in A.M. Best's Insurance  
8 Reports, Property-Liability, are not less than "A" and "V",  
9 respectively.

10           b. Irrevocable letters of credit in favor of the  
11 office ~~division~~ issued by financial institutions located  
12 within this state, the deposits of which are insured through  
13 the Federal Deposit Insurance Corporation.

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

1 amount of the qualifying security deposit required prior to  
2 authorizing an employer to self-insure and the amount of net  
3 worth required for an employer to qualify for authorization to  
4 self-insure;

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

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

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

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

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

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

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

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

1 Insurance of the cancellation, termination, or nonrenewal, and  
2 until the office ~~division~~ has actually received the  
3 notification. The office ~~division~~ must be notified of  
4 replacement coverage under a workers' compensation and  
5 employer's liability insurance policy or plan by the employer  
6 prior to the effective date of the cancellation, termination,  
7 or nonrenewal; or

8 (f) By entering into a contract with an individual  
9 self-insurer under an approved individual  
10 self-insurer-provided self-insurance program as set forth in  
11 s. 624.46225. The office ~~division~~ may adopt rules to  
12 administer this subsection.

13 (2)(a) The office ~~division~~ shall adopt rules by which  
14 businesses may become qualified to provide underwriting  
15 claims-adjusting, loss control, and safety engineering  
16 services to self-insurers.

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

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

29 (b) The office ~~division~~ shall suspend or revoke any  
30 authorization to a self-insurer for good cause, as defined by  
31

1 rule of the office ~~division~~. No suspension or revocation shall  
2 affect the liability of any self-insurer already incurred.

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

11 Section 36. Subsections (3) and (7) of section  
12 440.381, Florida Statutes, are amended to read:

13 440.381 Application for coverage; reporting payroll;  
14 payroll audit procedures; penalties.--

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

1 premium required to be experience rated, be audited less than  
2 annually. The annual audits required for construction classes  
3 shall consist of physical onsite audits. Payroll verification  
4 audit rules must include, but need not be limited to, the use  
5 of state and federal reports of employee income, payroll and  
6 other accounting records, certificates of insurance maintained  
7 by subcontractors, and duties of employees.

8 (7) If an employee suffering a compensable injury was  
9 not reported as earning wages on the last quarterly earnings  
10 report filed with the Division of Unemployment Compensation  
11 before the accident, the employer shall indemnify the carrier  
12 for all workers' compensation benefits paid to or on behalf of  
13 the employee unless the employer establishes that the employee  
14 was hired after the filing of the quarterly report, in which  
15 case the employer and employee shall attest to the fact that  
16 the employee was employed by the employer at the time of the  
17 injury. It shall be the responsibility of the Office ~~Division~~  
18 of Workers' Compensation Administration to collect all  
19 necessary data so as to enable it to notify the carrier of the  
20 name of an injured worker who was not reported as earning  
21 wages on the last quarterly earnings report. The office  
22 ~~division~~ is hereby authorized to release such records to the  
23 carrier which will enable the carrier to seek reimbursement as  
24 provided under this subsection. Failure of the employer to  
25 indemnify the insurer within 21 days after demand by the  
26 insurer shall constitute grounds for the insurer to  
27 immediately cancel coverage. Any action for indemnification  
28 brought by the carrier shall be cognizable in the circuit  
29 court having jurisdiction where the employer or carrier  
30 resides or transacts business. The insurer shall be entitled  
31

1 to a reasonable attorney's fee if it recovers any portion of  
2 the benefits paid in such action.

3 Section 37. Subsection (1), paragraphs (b) and (c) of  
4 subsection (3), and subsections (4), (5), (6), (8), (9), and  
5 (10) of section 440.385, Florida Statutes, are amended to  
6 read:

7 440.385 Florida Self-Insurers Guaranty Association,  
8 Incorporated.--

9 (1) CREATION OF ASSOCIATION.--

10 (a) There is created a nonprofit corporation to be  
11 known as the "Florida Self-Insurers Guaranty Association,  
12 Incorporated," hereinafter referred to as "the association."  
13 Upon incorporation of the association, all individual  
14 self-insurers as defined in ss. 440.02~~(32)~~(23)(a) and  
15 440.38(1)(b), other than individual self-insurers which are  
16 public utilities or governmental entities, shall be members of  
17 the association as a condition of their authority to  
18 individually self-insure in this state. The association shall  
19 perform its functions under a plan of operation as established  
20 and approved under subsection (5) and shall exercise its  
21 powers and duties through a board of directors as established  
22 under subsection (2). The corporation shall have those powers  
23 granted or permitted corporations not for profit, as provided  
24 in chapter 617.

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

1 member on or after January 1, 1991, shall also be required to  
2 provide to the office ~~division~~ upon withdrawal, and at  
3 12-month intervals thereafter, satisfactory proof that it  
4 continues to meet the standards of s. 440.38(1)(b)1. in  
5 relation to claims incurred while the withdrawing member  
6 exercised the privilege of self-insurance. Such reporting  
7 shall continue until the withdrawing member satisfies the  
8 office ~~division~~ that there is no remaining value to claims  
9 incurred while the withdrawing member was self-insured. If  
10 during this reporting period the withdrawing member fails to  
11 meet the standards of s. 440.38(1)(b)1., the withdrawing  
12 member who is a member on or after January 1, 1991, shall  
13 thereupon, and at 6-month intervals thereafter, provide to the  
14 office ~~division~~ and the association the certified opinion of  
15 an independent actuary who is a member of the American Society  
16 of Actuaries of the actuarial present value of the determined  
17 and estimated future compensation payments of the member for  
18 claims incurred while the member was a self-insurer, using a  
19 discount rate of 4 percent. With each such opinion, the  
20 withdrawing member shall deposit with the office ~~division~~  
21 security in an amount equal to the value certified by the  
22 actuary and of a type that is acceptable for qualifying  
23 security deposits under s. 440.38(1)(b). The withdrawing  
24 member shall continue to provide such opinions and to provide  
25 such security until such time as the latest opinion shows no  
26 remaining value of claims. The association has a cause of  
27 action against a withdrawing member, and against any successor  
28 of a withdrawing member, who fails to timely provide the  
29 required opinion or who fails to maintain the required deposit  
30 with the office ~~division~~. The association shall be entitled  
31 to recover a judgment in the amount of the actuarial present

1 value of the determined and estimated future compensation  
2 payments of the withdrawing member for claims incurred during  
3 the time that the withdrawing member exercised the privilege  
4 of self-insurance, together with reasonable attorney's fees.  
5 For purposes of this section, the successor of a withdrawing  
6 member means any person, business entity, or group of persons  
7 or business entities, which holds or acquires legal or  
8 beneficial title to the majority of the assets or the majority  
9 of the shares of the withdrawing member.

10 (3) POWERS AND DUTIES.--

11 (b) The association may:

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

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

16 3. Sue or be sued.

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

19 5. Purchase such reinsurance as is determined  
20 necessary pursuant to the plan of operation.

21 6. Review all applicants for membership in the  
22 association. Prior to a final determination by the office  
23 ~~Division of Workers' Compensation~~ as to whether or not to  
24 approve any applicant for membership in the association, the  
25 association may issue opinions to the office ~~division~~  
26 concerning any applicant, which opinions shall be considered  
27 by the office ~~division~~ prior to any final determination.

28 7. Charge fees to any member of the association to  
29 cover the actual costs of examining the financial and safety  
30 conditions of that member.

31

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

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

24           2. If, in any one year, funds available from such  
25 assessments, together with funds previously raised, are not  
26 sufficient to make all the payments or reimbursements then  
27 owing, the funds available shall be prorated, and the unpaid  
28 portion shall be paid as soon thereafter as sufficient  
29 additional funds become available.

30           3. No state funds of any kind shall be allocated or  
31 paid to the association or any of its accounts except those

1 state funds accruing to the association by and through the  
2 assignment of rights of an insolvent employer.

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

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

18 (b) The office ~~department~~ shall have the authority to  
19 audit the financial soundness of the Insolvency Fund annually.

20 (c) The office ~~department~~ may offer certain amendments  
21 to the plan of operation to the board of directors of the  
22 association for purposes of assuring the ongoing financial  
23 soundness of the Insolvency Fund and its ability to meet the  
24 obligations of this section.

25 (d) The office ~~department~~ actuary may make certain  
26 recommendations to improve the orderly payment of claims.

27 (5) PLAN OF OPERATION.--By September 15, 1982, the  
28 board of directors shall submit to the office ~~Department of~~  
29 ~~Labor and Employment Security~~ a proposed plan of operation for  
30 the administration of the association and the Insolvency Fund.

31

1           (a) The purpose of the plan of operation shall be to  
2 provide the association and the board of directors with the  
3 authority and responsibility to establish the necessary  
4 programs and to take the necessary actions to protect against  
5 the insolvency of a member of the association. In addition,  
6 the plan shall provide that the members of the association  
7 shall be responsible for maintaining an adequate Insolvency  
8 Fund to meet the obligations of insolvent members provided for  
9 under this act and shall authorize the board of directors to  
10 contract and employ those persons with the necessary expertise  
11 to carry out this stated purpose.

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

22           (c) All member employers shall comply with the plan of  
23 operation.

24           (d) The plan of operation shall:

25           1. Establish the procedures whereby all the powers and  
26 duties of the association under subsection (3) will be  
27 performed.

28           2. Establish procedures for handling assets of the  
29 association.

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

1           4. Establish procedures by which claims may be filed  
2 with the association and establish acceptable forms of proof  
3 of covered claims. Notice of claims to the receiver or  
4 liquidator of the insolvent employer shall be deemed notice to  
5 the association or its agent, and a list of such claims shall  
6 be submitted periodically to the association or similar  
7 organization in another state by the receiver or liquidator.

8           5. Establish regular places and times for meetings of  
9 the board of directors.

10          6. Establish procedures for records to be kept of all  
11 financial transactions of the association and its agents and  
12 the board of directors.

13          7. Provide that any member employer aggrieved by any  
14 final action or decision of the association may appeal to the  
15 office department within 30 days after the action or decision.

16          8. Establish the procedures whereby recommendations of  
17 candidates for the board of directors shall be submitted to  
18 the office department.

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

21           (e) The plan of operation may provide that any or all  
22 of the powers and duties of the association, except those  
23 specified under subparagraphs (d)1. and 2., be delegated to a  
24 corporation, association, or other organization which performs  
25 or will perform functions similar to those of this association  
26 or its equivalent in two or more states. Such a corporation,  
27 association, or organization shall be reimbursed as a  
28 servicing facility would be reimbursed and shall be paid for  
29 its performance of any other functions of the association. A  
30 delegation of powers or duties under this subsection shall  
31 take effect only with the approval of both the board of

1 directors and the office ~~department~~ and may be made only to a  
2 corporation, association, or organization which extends  
3 protection which is not substantially less favorable and  
4 effective than the protection provided by this section.

5 (6) POWERS AND DUTIES OF OFFICE OF WORKERS'  
6 COMPENSATION ADMINISTRATION ~~DEPARTMENT OF LABOR AND EMPLOYMENT~~  
7 ~~SECURITY~~.--

8 (a) The office ~~department~~ shall:

9 1. Notify the association of the existence of an  
10 insolvent employer not later than 3 days after it receives  
11 notice of the determination of insolvency.

12 2. Upon request of the board of directors, provide the  
13 association with a statement of the annual normal premiums of  
14 each member employer.

15 (b) The office ~~department~~ may:

16 1. Require that the association notify the member  
17 employers and any other interested parties of the  
18 determination of insolvency and of their rights under this  
19 section. Such notification shall be by mail at the last known  
20 address thereof when available; but, if sufficient information  
21 for notification by mail is not available, notice by  
22 publication in a newspaper of general circulation shall be  
23 sufficient.

24 2. Suspend or revoke the authority of any member  
25 employer failing to pay an assessment when due or failing to  
26 comply with the plan of operation to self-insure in this  
27 state. As an alternative, the office ~~department~~ may levy a  
28 fine on any member employer failing to pay an assessment when  
29 due. Such fine shall not exceed 5 percent of the unpaid  
30 assessment per month, except that no fine shall be less than  
31 \$100 per month.

1           3. Revoke the designation of any servicing facility if  
2 the office ~~department~~ finds that claims are being handled  
3 unsatisfactorily.

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

6           (a) Upon determination by majority vote that any  
7 member employer may be insolvent or in a financial condition  
8 hazardous to the employees thereof or to the public, it shall  
9 be the duty of the board of directors to notify the office  
10 ~~Department of Labor and Employment Security~~ of any information  
11 indicating such condition.

12           (b) The board of directors may, upon majority vote,  
13 request that the office ~~department~~ determine the condition of  
14 any member employer which the board in good faith believes may  
15 no longer be qualified to be a member of the association.  
16 Within 30 days of the receipt of such request or, for good  
17 cause shown, within a reasonable time thereafter, the office  
18 ~~department~~ shall make such determination and shall forthwith  
19 advise the board of its findings. Each request for a  
20 determination shall be kept on file by the office ~~department~~,  
21 but the request shall not be open to public inspection prior  
22 to the release of the determination to the public.

23           (c) It shall also be the duty of the office ~~department~~  
24 to report to the board of directors when it has reasonable  
25 cause to believe that a member employer may be in such a  
26 financial condition as to be no longer qualified to be a  
27 member of the association.

28           (d) The board of directors may, upon majority vote,  
29 make reports and recommendations to the office ~~department~~ upon  
30 any matter which is germane to the solvency, liquidation,  
31 rehabilitation, or conservation of any member employer. Such

1 reports and recommendations shall not be considered public  
2 documents.

3 (e) The board of directors may, upon majority vote,  
4 make recommendations to the office ~~department~~ for the  
5 detection and prevention of employer insolvencies.

6 (f) The board of directors shall, at the conclusion of  
7 any member's insolvency in which the association was obligated  
8 to pay covered claims, prepare a report on the history and  
9 cause of such insolvency, based on the information available  
10 to the association, and shall submit such report to the office  
11 ~~department~~.

12 (9) EXAMINATION OF THE ASSOCIATION.--The association  
13 shall be subject to examination and regulation by the office  
14 ~~Department of Labor and Employment Security~~. No later than  
15 March 30 of each year, the board of directors shall submit a  
16 financial report for the preceding calendar year in a form  
17 approved by the office ~~department~~.

18 (10) IMMUNITY.--There shall be no liability on the  
19 part of, and no cause of action of any nature shall arise  
20 against, any member employer, the association or its agents or  
21 employees, the board of directors, or the office ~~Department of~~  
22 ~~Labor and Employment Security~~ or its representatives for any  
23 action taken by them in the performance of their powers and  
24 duties under this section.

25 Section 38. Subsections (2) and (3) and paragraph (a)  
26 of subsection (4) of section 440.386, Florida Statutes, are  
27 amended to read:

28 440.386 Individual self-insurers' insolvency;  
29 conservation; liquidation.--

30 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
31 office ~~department~~ may commence any such proceeding by

1 application to the court for an order directing the individual  
2 self-insurer to show cause why the office ~~department~~ should  
3 not have the relief prayed for. The Florida Self-Insurers  
4 Guaranty Association, Incorporated, may petition the office  
5 ~~department~~ to commence such proceedings, and upon receipt of  
6 such petition, the office ~~department~~ shall commence such  
7 proceeding. On the return of such order to show cause, and  
8 after a full hearing, the court shall either deny the  
9 application or grant the application, together with such other  
10 relief as the nature of the case and the interests of the  
11 claimants, creditors, stockholders, members, subscribers, or  
12 public may require. The Florida Self-Insurers Guaranty  
13 Association, Incorporated, shall be given reasonable written  
14 notice by the office ~~department~~ of all hearings which pertain  
15 to an adjudication of insolvency of a member individual  
16 self-insurer.

17 (3) GROUNDS FOR LIQUIDATION.--The office ~~department~~  
18 may apply to the court for an order appointing a receiver and  
19 directing the receiver to liquidate the business of a domestic  
20 individual self-insurer if such individual self-insurer is  
21 insolvent. Florida Self-Insurers Guaranty Association,  
22 Incorporated, may petition the office ~~department~~ to apply to  
23 the court for such order. Upon receipt of such petition, the  
24 office ~~department~~ shall apply to the court for such order.

25 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL  
26 SELF-INSURERS.--

27 (a) The office ~~department~~ may apply to the court for  
28 an order appointing a receiver or ancillary receiver, and  
29 directing the receiver to conserve the assets within this  
30 state, of a foreign individual self-insurer if such individual  
31 self-insurer is insolvent. Florida Self-Insurers Guaranty

1 Association, Incorporated, may petition the office ~~department~~  
2 to apply for such order, and, upon receipt of such petition,  
3 the office ~~department~~ shall apply to the court for such order.

4 Section 39. Section 440.40, Florida Statutes, is  
5 amended to read:

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

19 Section 40. Section 440.41, Florida Statutes, is  
20 amended to read:

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

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

4           (2) Jurisdiction of the employer by the judges of  
5 compensation claims, the office division, or any court under  
6 this chapter shall be jurisdiction of the carrier.

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

12           Section 41. Subsections (2) and (3) of section 440.42,  
13 Florida Statutes, are amended to read:

14           440.42 Insurance policies; liability.--

15           (2) A workers' compensation insurance policy may  
16 require the employer to release certain employment and wage  
17 information maintained by the state pursuant to federal and  
18 state unemployment compensation laws except to the extent  
19 prohibited or limited under federal law. By entering into a  
20 workers' compensation insurance policy with such a provision,  
21 the employer consents to the release of the information. The  
22 insurance carrier requiring such consent shall safeguard the  
23 information and maintain its confidentiality. The carrier  
24 shall limit use of the information to verifying compliance  
25 with the terms of the workers' compensation insurance policy.  
26 The office department may charge a fee to cover the cost of  
27 disclosing the information.

28           (3) No contract or policy of insurance issued by a  
29 carrier under this chapter shall expire or be canceled until  
30 at least 30 days have elapsed after a notice of cancellation  
31 has been sent to the office division and to the employer in

1 accordance with the provisions of s. 440.185(7). However,  
2 when duplicate or dual coverage exists by reason of two  
3 different carriers having issued policies of insurance to the  
4 same employer securing the same liability, it shall be  
5 presumed that only that policy with the later effective date  
6 shall be in force and that the earlier policy terminated upon  
7 the effective date of the latter. In the event that both  
8 policies carry the same effective date, one of the policies  
9 may be canceled instanter upon filing a notice of cancellation  
10 with the office ~~division~~ and serving a copy thereof upon the  
11 employer in such manner as the office ~~division~~ prescribes by  
12 rule. The office ~~division~~ may by rule prescribe the content of  
13 the notice of retroactive cancellation and specify the time,  
14 place, and manner in which the notice of cancellation is to be  
15 served.

16 Section 42. Section 440.44, Florida Statutes, is  
17 amended to read:

18 440.44 Workers' compensation; staff organization.--

19 (1) INTERPRETATION OF LAW.--As a guide to the  
20 interpretation of this chapter, the Legislature takes due  
21 notice of federal social and labor acts and hereby creates an  
22 agency to administer such acts passed for the benefit of  
23 employees and employers in Florida industry, and desires to  
24 meet the requirements of such federal acts wherever not  
25 inconsistent with the Constitution and laws of Florida.

26 (2) INTENT.--It is the intent of the Legislature that  
27 the office ~~division~~ assume an active and forceful role in its  
28 administration of this act, so as to ensure that the system  
29 operates efficiently and with maximum benefit to both  
30 employers and employees.

31

1           (3) EXPENDITURES.--The office ~~division~~ and the  
2 director of the Division of Administrative Hearings shall make  
3 such expenditures, including expenditures for personal  
4 services and rent at the seat of government and elsewhere, for  
5 law books; for telephone services and WATS lines; for books of  
6 reference, periodicals, equipment, and supplies; and for  
7 printing and binding as may be necessary in the administration  
8 of this chapter. All expenditures in the administration of  
9 this chapter shall be allowed and paid as provided in s.  
10 440.50 upon the presentation of itemized vouchers therefor  
11 approved by the office ~~division~~ or the director of the  
12 Division of Administrative Hearings.

13           (4) MERIT SYSTEM PRINCIPLE OF PERSONNEL  
14 ADMINISTRATION.--Subject to the other provisions of this  
15 chapter, the office ~~division~~ is authorized to appoint, and  
16 prescribe the duties and powers of, bureau chiefs, attorneys,  
17 accountants, medical advisers, technical assistants,  
18 inspectors, claims examiners, and such other employees as may  
19 be necessary in the performance of its duties under this  
20 chapter.

21           (5) OFFICE.--The office ~~division~~ and the Deputy Chief  
22 Judge shall maintain and keep open during reasonable business  
23 hours an office, which shall be provided in the Capitol or  
24 some other suitable building in the City of Tallahassee, for  
25 the transaction of business under this chapter, at which  
26 office the official records and papers shall be kept. The  
27 office shall be furnished and equipped. The office ~~division~~,  
28 any judge of compensation claims, or the Deputy Chief Judge  
29 may hold sessions and conduct hearings at any place within the  
30 state. The Office of the Judges of Compensation Claims shall  
31

1 maintain the 17 district offices, 31 judges of compensation  
2 claims, and 31 mediators as they exist on June 30, 2001.

3 (6) SEAL.--The office ~~division~~ and the judges of  
4 compensation claims shall have a seal upon which shall be  
5 inscribed the words "State of Florida Department of  
6 Insurance--Seal" and "Division of Administrative  
7 Hearings--Seal," respectively.

8 (7) DESTRUCTION OF OBSOLETE RECORDS.--The office  
9 ~~division~~ is expressly authorized to provide by regulation for  
10 and to destroy obsolete records of the office ~~division~~. The  
11 Division of Administrative Hearings is expressly authorized to  
12 provide by regulation for and to destroy obsolete records of  
13 the Office of the Judges of Compensation Claims.

14 (8) PROCEDURE.--In the exercise of its duties and  
15 functions requiring administrative hearings, the office  
16 ~~division~~ shall proceed in accordance with the Administrative  
17 Procedure Act. The authority of the office ~~division~~ to issue  
18 orders resulting from administrative hearings as provided for  
19 in this chapter shall not infringe upon the jurisdiction of  
20 the judges of compensation claims.

21 Section 43. Subsection (1), paragraphs (b) and (d) of  
22 subsection (2), and paragraph (b) of subsection (3) of section  
23 440.4416, Florida Statutes, are amended to read:

24 440.4416 Workers' Compensation Oversight Board.--

25 (1) There is created within the Office of Workers'  
26 Compensation Administration ~~Department of Labor and Employment~~  
27 ~~Security~~ the Workers' Compensation Oversight Board. The board  
28 shall be composed of the following members, each of whom has  
29 knowledge of, or experience with, the workers' compensation  
30 system:

31

1 (a) Six members selected by the Governor, none of whom  
2 shall be a member of the Legislature at the time of  
3 appointment, consisting of the following:

- 4 1. Two representatives of employers.
- 5 2. Four representatives of employees, one of whom must  
6 be a representative of an employee's union whose members are  
7 covered by workers' compensation pursuant to this chapter.

8 (b) Three members selected by the President of the  
9 Senate, none of whom shall be members of the Legislature at  
10 the time of appointment, consisting of:

11 1. A representative of employers who employs at least  
12 10 employees in Florida for which workers' compensation  
13 coverage is provided pursuant to this chapter, and who is a  
14 licensed general contractor actively engaged in the  
15 construction industry in this state.

16 2. A representative of employers who employs fewer  
17 than 10 employees in Florida for which workers' compensation  
18 coverage is provided pursuant to this chapter.

19 3. A representative of employees.

20 (c) Three members selected by the Speaker of the House  
21 of Representatives, none of whom shall be members of the  
22 Legislature at the time of appointment, consisting of:

23 1. A representative of employers who employs fewer  
24 than 10 employees in Florida and who is a licensed general  
25 contractor actively engaged in the construction industry in  
26 this state for which workers' compensation coverage is  
27 provided pursuant to this chapter.

28 2. A representative of employers who employs at least  
29 10 employees in Florida for which workers' compensation  
30 coverage is provided pursuant to this chapter.

31 3. A representative of employees.

1           (d) Additionally, the Insurance Commissioner and the  
2 executive director of the Office of Workers' Compensation  
3 Administration ~~secretary of the Department of Labor and~~  
4 ~~Employment Security~~ shall be nonvoting ex officio members.

5           (e) Vacancies in the membership of the board shall be  
6 filled in the same manner as the original appointments. Except  
7 as to ex officio members of the board, three appointees of the  
8 Governor, two appointees of the President of the Senate, and  
9 two appointees of the Speaker of the House of Representatives  
10 shall serve for terms of 2 years, and the remaining appointees  
11 shall serve for terms of 4 years. Thereafter, all members  
12 shall serve for terms of 4 years; except that a vacancy shall  
13 be filled by appointment for the remainder of the term.

14           (f) Each member is accountable to the Governor for  
15 proper performance of his or her duties as a member of the  
16 board. The Governor may remove from office any member for  
17 malfeasance, misfeasance, neglect of duty, drunkenness,  
18 incompetence, permanent inability to perform official duties,  
19 or for pleading guilty or nolo contendere to, or having been  
20 adjudicated guilty of, a first degree misdemeanor or a felony.

21           (g) A vacancy shall occur upon failure of a member to  
22 attend four consecutive meetings of the board or 50 percent of  
23 the meetings of the board during a 12-month period, unless the  
24 board by majority votes to excuse the absence of such member.

25           (2) POWERS AND DUTIES; ORGANIZATION.--

26           (b) The board shall adopt bylaws, formulate workers'  
27 compensation legislation or amendments, review, advise, and  
28 appear before the Legislature in connection with legislation  
29 that impacts the workers' compensation system, advise the  
30 office division on policy, administrative and legislative  
31 issues, and appear before other state or federal agencies in

1 connection with matters impacting the workers' compensation  
2 system.

3 (d) The board shall hold such meetings during the year  
4 as it deems necessary, except that the chair, a quorum of the  
5 board, or the office ~~division~~ may call meetings. The board  
6 shall maintain transcripts of each meeting. Such transcripts  
7 shall be available to any interested person in accordance with  
8 chapter 119.

9 (3) EXECUTIVE DIRECTOR; EXPENSES.--

10 (b) In addition to per diem and travel expenses  
11 authorized by s. 112.061, board members shall receive  
12 compensation of \$50 for each full day allocable to business of  
13 the board. The board shall promulgate procedures defining  
14 "business" for purposes of receiving compensation. Such  
15 procedures shall require each member to maintain time records  
16 and submit such records to the executive director on a monthly  
17 basis. Failure to timely file such monthly record shall  
18 extinguish the member's entitlement to compensation for the  
19 subject period. Travel outside this state shall be approved by  
20 the executive director of the Office of Workers' Compensation  
21 Administration ~~secretary of the department~~. Expenses  
22 associated with the administration of this section shall be  
23 appropriated and paid for from the trust fund created by s.  
24 440.50.

25 Section 44. Section 440.47, Florida Statutes, is  
26 amended to read:

27 440.47 Travel expenses.--The Deputy Chief Judge,  
28 judges of compensation claims, and employees of the office  
29 ~~department~~ shall be reimbursed for travel expenses as provided  
30 in s. 112.061. Such expenses shall be sworn to by the person  
31 who incurred the same and shall be allowed and paid as

1 provided in s. 440.50 upon the presentation of vouchers  
2 therefor approved by the director of the Division of  
3 Administrative Hearings or the office ~~department~~, whichever is  
4 applicable.

5 Section 45. Subsections (1), (2), (8), (10), and (11),  
6 paragraphs (a), (e), (f), and (g) of subsection (7), and  
7 paragraphs (a), (b), and (e) of subsection (9) of section  
8 440.49, Florida Statutes, are amended to read:

9 440.49 Limitation of liability for subsequent injury  
10 through Special Disability Trust Fund.--

11 (1) LEGISLATIVE INTENT.--Whereas it is often difficult  
12 for workers with disabilities to achieve employment or to  
13 become reemployed following an injury, and it is the desire of  
14 the Legislature to facilitate the return of these workers to  
15 the workplace, it is the purpose of this section to encourage  
16 the employment, reemployment, and accommodation of the  
17 physically disabled by reducing an employer's insurance  
18 premium for reemploying an injured worker, to decrease  
19 litigation between carriers on apportionment issues, and to  
20 protect employers from excess liability for compensation and  
21 medical expense when an injury to a physically disabled worker  
22 merges with, aggravates, or accelerates her or his preexisting  
23 permanent physical impairment to cause either a greater  
24 disability or permanent impairment, or an increase in  
25 expenditures for temporary compensation or medical benefits  
26 than would have resulted from the injury alone. The office  
27 ~~division~~ or the administrator shall inform all employers of  
28 the existence and function of the fund and shall interpret  
29 eligibility requirements liberally. However, this subsection  
30 shall not be construed to create or provide any benefits for  
31 injured employees or their dependents not otherwise provided

1 by this chapter. The entitlement of an injured employee or her  
2 or his dependents to compensation under this chapter shall be  
3 determined without regard to this subsection, the provisions  
4 of which shall be considered only in determining whether an  
5 employer or carrier who has paid compensation under this  
6 chapter is entitled to reimbursement from the Special  
7 Disability Trust Fund.

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

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

11 (b) "Preferred worker" means a worker who, because of  
12 a permanent impairment resulting from a compensable injury or  
13 occupational disease, is unable to return to the worker's  
14 regular employment.

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

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

19 2. The permanent disability or permanent impairment  
20 resulting from the subsequent accident or occupational disease  
21 is materially and substantially greater than that which would  
22 have resulted had the permanent physical impairment not  
23 existed, and the employer has been required to pay, and has  
24 paid, permanent total disability or permanent impairment  
25 benefits for that materially and substantially greater  
26 disability;

27 3. The preexisting permanent physical impairment is  
28 aggravated or accelerated as a result of the subsequent injury  
29 or occupational disease, or the preexisting impairment has  
30 contributed, medically and circumstantially, to the need for  
31 temporary compensation, medical, or attendant care and the

1 employer has been required to pay, and has paid, temporary  
2 compensation, medical, or attendant care benefits for the  
3 aggravated preexisting permanent impairment; or

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

6 (d) "Excess permanent compensation" means that  
7 compensation for permanent impairment, or permanent total  
8 disability or death benefits, for which the employer or  
9 carrier is otherwise entitled to reimbursement from the  
10 Special Disability Trust Fund.

11 (e) "Administrator" means the entity selected by the  
12 office division to review, allow, deny, compromise,  
13 controvert, and litigate claims of the Special Disability  
14 Trust Fund.

15  
16 In addition to the definitions contained in this subsection,  
17 the office division may by rule prescribe definitions that are  
18 necessary for the effective administration of this section.

19 (7) REIMBURSEMENT OF EMPLOYER.--

20 (a) The right to reimbursement as provided in this  
21 section is barred unless written notice of claim of the right  
22 to such reimbursement is filed by the employer or carrier  
23 entitled to such reimbursement with the office division or  
24 administrator at Tallahassee within 2 years after the date the  
25 employee last reached maximum medical improvement, or within 2  
26 years after the date of the first payment of compensation for  
27 permanent total disability, wage loss, or death, whichever is  
28 later. The notice of claim must contain such information as  
29 the office division by rule requires or as established by the  
30 administrator; and the employer or carrier claiming  
31 reimbursement shall furnish such evidence in support of the

1 claim as the office ~~division~~ or administrator reasonably may  
2 require.

3 (e) For dates of accident on or after January 1, 1994,  
4 the Special Disability Trust Fund shall, within 120 days of  
5 receipt of notice that a carrier has been required to pay, and  
6 has paid over \$10,000 in benefits, serve notice of the  
7 acceptance of the claim for reimbursement. Failure of the  
8 Special Disability Trust Fund to serve notice of acceptance  
9 shall give rise to the right to request a hearing on the claim  
10 for reimbursement. If the Special Disability Trust Fund  
11 through its representative denies or controverts the claim,  
12 the right to such reimbursement shall be barred unless an  
13 application for a hearing thereon is filed with the office  
14 ~~division~~ or administrator at Tallahassee within 60 days after  
15 notice to the employer or carrier of such denial or  
16 controversion. When such application for a hearing is timely  
17 filed, the claim shall be heard and determined in accordance  
18 with the procedure prescribed in s. 440.25, to the extent that  
19 such procedure is applicable, and in accordance with the  
20 workers' compensation rules of procedure. In such proceeding  
21 on a claim for reimbursement, the Special Disability Trust  
22 Fund shall be made the party respondent, and no findings of  
23 fact made with respect to the claim of the injured employee or  
24 the dependents for compensation, including any finding made or  
25 order entered pursuant to s. 440.20(11), shall be res  
26 judicata. The Special Disability Trust Fund may not be joined  
27 or made a party to any controversy or dispute between an  
28 employee and the dependents and the employer or between two or  
29 more employers or carriers without the written consent of the  
30 fund.  
31

1           (f) When it has been determined that an employer or  
2 carrier is entitled to reimbursement in any amount, the  
3 employer or carrier shall be reimbursed annually from the  
4 Special Disability Trust Fund for the compensation and medical  
5 benefits paid by the employer or carrier for which the  
6 employer or carrier is entitled to reimbursement, upon filing  
7 request therefor and submitting evidence of such payment in  
8 accordance with rules prescribed by the office division, which  
9 rules may include parameters for annual audits. The Special  
10 Disability Trust Fund shall pay the approved reimbursement  
11 requests on a first-in, first-out basis reflecting the order  
12 in which the reimbursement requests were received.

13           (g) The office division may by rule require specific  
14 forms and procedures for the administration and processing of  
15 claims made through the Special Disability Trust Fund.

16           (8) PREFERRED WORKER PROGRAM.--The office division or  
17 administrator shall issue identity cards to preferred workers  
18 upon request by qualified employees and shall reimburse an  
19 employer, from the Special Disability Trust Fund, for the cost  
20 of workers' compensation premium related to the preferred  
21 workers payroll for up to 3 years of continuous employment  
22 upon satisfactory evidence of placement and issuance of  
23 payroll and classification records and upon the employee's  
24 certification of employment. The office division may by rule  
25 prescribe definitions, forms, and procedures for the  
26 administration of the preferred worker program. The office  
27 ~~division~~ may by rule prescribe the schedule for submission of  
28 forms for participation in the program.

29           (9) SPECIAL DISABILITY TRUST FUND.--

30           (a) There is established in the State Treasury a  
31 special fund to be known as the "Special Disability Trust

1 Fund," which shall be available only for the purposes stated  
2 in this section; and the assets thereof may not at any time be  
3 appropriated or diverted to any other use or purpose. The  
4 Treasurer shall be the custodian of such fund, and all moneys  
5 and securities in such fund shall be held in trust by such  
6 Treasurer and shall not be the money or property of the state.  
7 The Treasurer is authorized to disburse moneys from such fund  
8 only when approved by the office ~~division~~ or corporation and  
9 upon the order of the Comptroller. The Treasurer shall deposit  
10 any moneys paid into such fund into such depository banks as  
11 the office ~~division~~ may designate and is authorized to invest  
12 any portion of the fund which, in the opinion of the office  
13 ~~division~~, is not needed for current requirements, in the same  
14 manner and subject to all the provisions of the law with  
15 respect to the deposits of state funds by such Treasurer. All  
16 interest earned by such portion of the fund as may be invested  
17 by the Treasurer shall be collected by her or him and placed  
18 to the credit of such fund.

19 (b)1. The Special Disability Trust Fund shall be  
20 maintained by annual assessments upon the insurance companies  
21 writing compensation insurance in the state, the commercial  
22 self-insurers under ss. 624.462 and 624.4621, the assessable  
23 mutuals under s. 628.601, and the self-insurers under this  
24 chapter, which assessments shall become due and be paid  
25 quarterly at the same time and in addition to the assessments  
26 provided in s. 440.51. The office ~~division~~ shall estimate  
27 annually in advance the amount necessary for the  
28 administration of this subsection and the maintenance of this  
29 fund and shall make such assessment in the manner hereinafter  
30 provided.

31

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

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

8           b. Two times the disbursements of the most recent  
9 calendar year.

10

11 Such amount shall be prorated among the insurance companies  
12 writing compensation insurance in the state and the  
13 self-insurers. Provided however, for those carriers that have  
14 excluded ceded reinsurance premiums from their assessments on  
15 or before January 1, 2000, no assessments on ceded reinsurance  
16 premiums shall be paid by those carriers until such time as  
17 the office division advises each of those carriers of the  
18 impact that the inclusion of ceded reinsurance premiums has on  
19 their assessment. The office division may not recover any past  
20 underpayments of assessments levied against any carrier that  
21 on or before January 1, 2000, excluded ceded reinsurance  
22 premiums from their assessment prior to the point that the  
23 office division advises of the appropriate assessment that  
24 should have been paid.

25

26           3. The net premiums written by the companies for  
27 workers' compensation in this state and the net premium  
28 written applicable to the self-insurers in this state are the  
29 basis for computing the amount to be assessed as a percentage  
30 of net premiums. Such payments shall be made by each carrier  
31 and self-insurer to the office division for the Special

31

1 Disability Trust Fund in accordance with such regulations as  
2 the office ~~division~~ prescribes.

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

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

24 (10) OFFICE ~~DIVISION~~ ADMINISTRATION OF FUND; CLAIMS;  
25 EXPENSES.--The office ~~division~~ or administrator shall  
26 administer the Special Disability Trust Fund with authority to  
27 allow, deny, compromise, controvert, and litigate claims made  
28 against it and to designate an attorney to represent it in  
29 proceedings involving claims against the fund, including  
30 negotiation and consummation of settlements, hearings before  
31 judges of compensation claims, and judicial review. The office

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

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

28 Section 46. Paragraph (c) of subsection (1), paragraph  
29 (a) of subsection (3), paragraph (b) of subsection (4),  
30 paragraphs (b) and (c) of subsection (5), and subsections (6),  
31

1 (7), and (8) of section 440.491, Florida Statutes, are amended  
2 to read:

3 440.491 Reemployment of injured workers;  
4 rehabilitation.--

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

6 (c) "Qualified rehabilitation provider" means a  
7 rehabilitation nurse, rehabilitation counselor, vocational  
8 evaluator, rehabilitation facility, or agency approved by the  
9 office ~~division~~ as qualified to provide reemployment  
10 assessments, medical care coordination, reemployment services,  
11 or vocational evaluations under this chapter.

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

13 (a) When an employee who has suffered an injury  
14 compensable under this chapter is unemployed 60 days after the  
15 date of injury and is receiving benefits for temporary total  
16 disability, temporary partial disability, or wage loss, and  
17 has not yet been provided medical care coordination and  
18 reemployment services voluntarily by the carrier, the carrier  
19 must determine whether the employee is likely to return to  
20 work and must report its determination to the office ~~division~~.  
21 The carrier must thereafter determine the reemployment status  
22 of the employee at 90-day intervals as long as the employee  
23 remains unemployed, is not receiving medical care coordination  
24 or reemployment services, and is receiving the benefits  
25 specified in this subsection.

26 (4) REEMPLOYMENT ASSESSMENTS.--

27 (b) The carrier shall authorize only a qualified  
28 rehabilitation provider to provide the reemployment  
29 assessment. The rehabilitation provider shall conduct its  
30 assessment and issue a report to the carrier, the employee,  
31

1 and the office ~~division~~ within 30 days after the time such  
2 assessment is complete.

3 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT  
4 SERVICES.--

5 (b) If the rehabilitation provider concludes that  
6 training and education are necessary to return the employee to  
7 suitable gainful employment, or if the employee has not  
8 returned to suitable gainful employment within 180 days after  
9 referral for reemployment services or receives \$2,500 in  
10 reemployment services, whichever comes first, the carrier must  
11 discontinue reemployment services and refer the employee to  
12 the office ~~division~~ for a vocational evaluation.

13 Notwithstanding any provision of chapter 289 or chapter 627,  
14 the cost of a reemployment assessment and the first \$2,500 in  
15 reemployment services to an injured employee must not be  
16 treated as loss adjustment expense for workers' compensation  
17 ratemaking purposes.

18 (c) A carrier may voluntarily provide medical care  
19 coordination or reemployment services to the employee at  
20 intervals more frequent than those required in this section.  
21 For the purpose of monitoring reemployment, the carrier or the  
22 rehabilitation provider shall report to the office ~~division~~,  
23 in the manner prescribed by the office ~~division~~, the date of  
24 reemployment and wages of the employee. The carrier shall  
25 report its voluntary service activity to the office ~~division~~  
26 as required by rule. Voluntary services offered by the carrier  
27 for any of the following injuries must be considered benefits  
28 for purposes of ratemaking: traumatic brain injury; spinal  
29 cord injury; amputation, including loss of an eye or eyes;  
30 burns of 5 percent or greater of the total body surface.

31 (6) TRAINING AND EDUCATION.--

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

21           (b) When it appears that an employee who has attained  
22 maximum medical improvement requires training and education to  
23 obtain suitable gainful employment, the employer shall pay the  
24 employee additional temporary total compensation while the  
25 employee receives such training and education for a period not  
26 to exceed 26 weeks, which period may be extended for an  
27 additional 26 weeks or less, if such extended period is  
28 determined to be necessary and proper by a judge of  
29 compensation claims. However, a carrier or employer is not  
30 precluded from voluntarily paying additional temporary total  
31 disability compensation beyond that period. If an employee

1 requires temporary residence at or near a facility or an  
2 institution providing training and education which is located  
3 more than 50 miles away from the employee's customary  
4 residence, the reasonable cost of board, lodging, or travel  
5 must be borne by the office ~~division~~ from the Workers'  
6 Compensation Administration Trust Fund established by s.  
7 440.50. An employee who refuses to accept training and  
8 education that is recommended by the vocational evaluator and  
9 considered necessary by the office ~~division~~ is subject to a  
10 50-percent reduction in weekly compensation benefits,  
11 including wage-loss benefits, as determined under s.  
12 440.15(3)(b).

13 (7) PROVIDER QUALIFICATIONS.--

14 (a) The office ~~division~~ shall investigate and maintain  
15 a directory of each qualified public and private  
16 rehabilitation provider, facility, and agency, and shall  
17 establish by rule the minimum qualifications, credentials, and  
18 requirements that each rehabilitation service provider,  
19 facility, and agency must satisfy to be eligible for listing  
20 in the directory. These minimum qualifications and credentials  
21 must be based on those generally accepted within the service  
22 specialty for which the provider, facility, or agency is  
23 approved.

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

28 (c) The office ~~division~~ shall monitor and evaluate  
29 each rehabilitation service provider, facility, and agency  
30 qualified under this subsection to ensure its compliance with  
31 the minimum qualifications and credentials established by the

1 ~~office division~~. The failure of a qualified rehabilitation  
2 service provider, facility, or agency to provide the office  
3 ~~division~~ with information requested or access necessary for  
4 the office division to satisfy its responsibilities under this  
5 subsection is grounds for disqualifying the provider,  
6 facility, or agency from further referrals.

7 (d) A qualified rehabilitation service provider,  
8 facility, or agency may not be authorized by an employer, a  
9 carrier, or the office division to provide any services,  
10 including expert testimony, under this section in this state  
11 unless the provider, facility, or agency is listed or has been  
12 approved for listing in the directory. This restriction does  
13 not apply to services provided outside this state under this  
14 section.

15 (e) The office division, after consultation with  
16 representatives of employees, employers, carriers,  
17 rehabilitation providers, and qualified training and education  
18 providers, shall adopt rules governing professional practices  
19 and standards.

20 (8) CARRIER PRACTICES.--The office division shall  
21 monitor the selection of providers and the provision of  
22 services by carriers under this section for consistency with  
23 legislative intent set forth in subsection (2).

24 Section 47. Section 440.50, Florida Statutes, is  
25 amended to read:

26 440.50 Workers' Compensation Administration Trust  
27 Fund.--

28 (1)(a) There is established in the State Treasury a  
29 special fund to be known as the "Workers' Compensation  
30 Administration Trust Fund" for the purpose of providing for  
31 the payment of all expenses in respect to the administration

1 of this chapter, including the vocational rehabilitation of  
2 injured employees as provided in s. 440.49 and the payments  
3 due under s. 440.15(1)(f), the funding of the fixed  
4 administrative expenses of the plan, and the funding of the  
5 Bureau of Workers' Compensation Fraud within the Department of  
6 Insurance. Such fund shall be administered by the office  
7 ~~division~~.

8 (b) The office ~~division~~ is authorized to transfer as a  
9 loan an amount not in excess of \$250,000 from such special  
10 fund to the Special Disability Trust Fund established by s.  
11 440.49(9), which amount shall be repaid to said special fund  
12 in annual payments equal to not less than 10 percent of moneys  
13 received for such Special Disability Trust Fund.

14 (2) The Treasurer is authorized to disburse moneys  
15 from such fund only when approved by the office ~~division~~ and  
16 upon the order of the Comptroller.

17 (3) The Treasurer shall deposit any moneys paid into  
18 such fund into such depository banks as the office ~~division~~  
19 may designate and is authorized to invest any portion of the  
20 fund which, in the opinion of the office ~~division~~, is not  
21 needed for current requirements, in the same manner and  
22 subject to all the provisions of the law with respect to the  
23 deposit of state funds by such Treasurer. All interest earned  
24 by such portion of the fund as may be invested by the  
25 Treasurer shall be collected by him or her and placed to the  
26 credit of such fund.

27 (4) All civil penalties provided in this chapter, if  
28 not voluntarily paid, may be collected by civil suit brought  
29 by the office ~~division~~ and shall be paid into such fund.

30  
31

1           Section 48. Subsections (1), (2), (3), (7), (8), (9),  
2 (11), (12), and (14) and paragraph (a) of subsection (6) of  
3 section 440.51, Florida Statutes, are amended to read:

4           440.51 Expenses of administration.--

5           (1) The office ~~division~~ shall estimate annually in  
6 advance the amounts necessary for the administration of this  
7 chapter, in the following manner.

8           (a) The office ~~division~~ shall, by July 1 of each year,  
9 notify carriers and self-insurers of the assessment rate,  
10 which shall be based on the anticipated expenses of the  
11 administration of this chapter for the next calendar year.  
12 Such assessment rate shall take effect January 1 of the next  
13 calendar year and shall be included in workers' compensation  
14 rate filings approved by the Department of Insurance which  
15 become effective on or after January 1 of the next calendar  
16 year. Assessments shall become due and be paid quarterly.

17           (b) The total expenses of administration shall be  
18 prorated among the carriers writing compensation insurance in  
19 the state and self-insurers. The net premiums collected by  
20 carriers and the amount of premiums calculated by the office  
21 ~~division~~ for self-insured employers are the basis for  
22 computing the amount to be assessed. When reporting deductible  
23 policy premium for purposes of computing assessments levied  
24 after July 1, 2001, full policy premium value must be reported  
25 prior to application of deductible discounts or credits. This  
26 amount may be assessed as a specific amount or as a percentage  
27 of net premiums payable as the office ~~division~~ may direct,  
28 provided such amount so assessed shall not exceed 2.75  
29 percent, beginning January 1, 2001, except during the interim  
30 period from July 1, 2000, through December 31, 2000, such  
31 assessments shall not exceed 4 percent of such net premiums.

1 The carriers may elect to make the payments required under s.  
2 440.15(1)(f) rather than having these payments made by the  
3 office ~~division~~. In that event, such payments will be  
4 credited to the carriers, and the amount due by the carrier  
5 under this section will be reduced accordingly.

6 (2) The office ~~division~~ shall provide by regulation  
7 for the collection of the amounts assessed against each  
8 carrier. Such amounts shall be paid within 30 days from the  
9 date that notice is served upon such carrier. If such amounts  
10 are not paid within such period, there may be assessed for  
11 each 30 days the amount so assessed remains unpaid, a civil  
12 penalty equal to 10 percent of the amount so unpaid, which  
13 shall be collected at the same time and a part of the amount  
14 assessed. For those carriers who excluded ceded reinsurance  
15 premiums from their assessments prior to January 1, 2000, the  
16 office ~~division~~ shall not recover any past underpayments of  
17 assessments related to ceded reinsurance premiums prior to  
18 January 1, 2001, against such carriers.

19 (3) If any carrier fails to pay the amounts assessed  
20 against him or her under the provisions of this section within  
21 60 days from the time such notice is served upon him or her,  
22 the Department of Insurance upon being advised by the office  
23 ~~division~~ may suspend or revoke the authorization to insure  
24 compensation in accordance with the procedure in s.  
25 440.38(3)(a). The office ~~division~~ may permit a carrier to  
26 remit any underpayment of assessments for assessments levied  
27 after January 1, 2001.

28 (6)(a) The office ~~division~~ may require from each  
29 carrier, at such time and in accordance with such regulations  
30 as the office ~~division~~ may prescribe, reports in respect to  
31 all gross earned premiums and of all payments of compensation

1 made by such carrier during each prior period, and may  
2 determine the amounts paid by each carrier and the amounts  
3 paid by all carriers during such period.

4 (7) The office ~~division~~ shall keep accumulated cost  
5 records of all injuries occurring within the state coming  
6 within the purview of this chapter on a policy and  
7 calendar-year basis. For the purpose of this chapter, a  
8 "calendar year" is defined as the year in which the injury is  
9 reported to the office ~~division~~; "policy year" is defined as  
10 that calendar year in which the policy becomes effective, and  
11 the losses under such policy shall be chargeable against the  
12 policy year so defined.

13 (8) The office ~~division~~ shall assign an account number  
14 to each employer under this chapter and an account number to  
15 each insurance carrier authorized to write workers'  
16 compensation insurance in the state; and it shall be the duty  
17 of the office ~~division~~ under the account number so assigned to  
18 keep the cost experience of each carrier and the cost  
19 experience of each employer under the account number so  
20 assigned by calendar and policy year, as above defined.

21 (9) In addition to the above, it shall be the duty of  
22 the office ~~division~~ to keep the accident experience, as  
23 classified by the office ~~division~~, by industry as follows:

- 24 (a) Cause of the injury;  
25 (b) Nature of the injury; and  
26 (c) Type of disability.

27 (11) The office ~~division~~ shall furnish to any employer  
28 or carrier, upon request, its individual experience. The  
29 office ~~division~~ shall furnish to the Department of Insurance,  
30 upon request, the Florida experience as developed under  
31 accident year or calendar year.

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

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

17           Section 49. Subsections (1) and (3) of section 440.52,  
18 Florida Statutes, are amended to read:

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

22           (1) Each insurance carrier who desires to write such  
23 compensation insurance in compliance with this chapter shall  
24 be required, before writing such insurance, to register with  
25 the office ~~division~~ and pay a registration fee of \$100. This  
26 shall be deposited by the office ~~division~~ in the fund created  
27 by s. 440.50. Each entity, other than an insurance carrier or  
28 self-insurer who services its own claims, that desires to  
29 adjust workers' compensation claims shall be licensed by the  
30 office and pay a licensure fee of \$300. The office shall adopt  
31 rules that provide guidelines for claims handlers that

1 indicate behavior that may be construed as questionable  
2 claims-handling techniques or poor payment practices. The  
3 office may assess a punitive penalty in an amount not to  
4 exceed \$5,000 and suspend or revoke the license of any claims  
5 handler upon a finding by the office of questionable  
6 claims-handling techniques or poor payment practices. The  
7 punitive penalty shall be in addition to any other penalty set  
8 forth in this chapter.

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

20 Section 50. Section 440.525, Florida Statutes, is  
21 amended to read:

22 440.525 Examination of carriers and claims  
23 handlers.--Beginning July 1, 2002 ~~1994~~, the Office ~~Division~~ of  
24 Workers' Compensation Administration may monitor or audit of  
25 ~~the Department of Labor and Employment Security may examine~~  
26 each carrier and claims handler as often as is warranted to  
27 ensure that carriers and claims handlers are fulfilling their  
28 obligations under the law. The office shall adopt rules that  
29 indicate guidelines for determining the frequency of the  
30 audit, ~~and shall examine each carrier not less frequently than~~  
31 ~~once every 3 years. The examination must cover the preceding 3~~

1 ~~fiscal years of the carrier's operations and must commence~~  
2 ~~within 12 months after the end of the most recent fiscal year~~  
3 ~~being covered by the examination.~~ The audit examination may  
4 cover any period of the carrier's or claims handler's  
5 operations since the last previous audit examination. For the  
6 purposes of this section:

7 (1) "Monitor" means the continual review by the office  
8 of a carrier's or claims handler's claims-handling techniques  
9 or payment practices.

10 (2) "Audit" means an examination of the carrier's or  
11 claims handler's general business practice, claims-handling  
12 techniques, or payment practices conducted at the carrier's or  
13 claims handler's physical location.

14 Section 51. Section 440.572, Florida Statutes, is  
15 amended to read:

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

29 Section 52. Section 440.59, Florida Statutes, is  
30 amended to read:

31 440.59 Reporting requirements.--

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

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

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

16           Section 53. Section 440.591, Florida Statutes, is  
17 amended to read:

18           440.591 Administrative procedure; rulemaking  
19 authority.--The office ~~division~~ has authority to adopt rules  
20 pursuant to ss. 120.536(1) and 120.54 to implement the  
21 provisions of this chapter conferring duties upon it.

22           Section 54. Section 440.593, Florida Statutes, is  
23 amended to read:

24           440.593 Electronic reporting.--

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

1 reporting system than are otherwise required when reporting  
2 information by other means.

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

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

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

16 (5) The office ~~division~~ is authorized to adopt rules  
17 to administer this section.

18 Section 55. Subsection (3) of section 440.60, Florida  
19 Statutes, is amended to read:

20 440.60 Application of laws.--

21 (3) All acts or proceedings performed by or on behalf  
22 of the Office Division of Workers' Compensation Administration  
23 ~~of the Department of Labor and Employment Security~~ or the  
24 employer, or in which the office ~~division~~ or the employer was  
25 a party under s. 440.15(1) and (3) between October 1, 1974,  
26 and July 10, 1987, are ratified and validated in all respects  
27 if such acts or proceedings would have been valid if chapter  
28 87-330, Laws of Florida, had been in effect at the time such  
29 acts or proceedings were performed.

30  
31

1 Section 56. Paragraph (b) of subsection (4) and  
2 subsection (5) of section 20.171, Florida Statutes, are  
3 amended to read:

4 20.171 Department of Labor and Employment  
5 Security.--There is created a Department of Labor and  
6 Employment Security. The department shall operate its programs  
7 in a decentralized fashion.

8 (4)

9 (b) The assistant secretary is responsible for  
10 developing, monitoring, and enforcing policy and managing  
11 major technical programs and supervising the Bureau of Appeals  
12 of the Division of Unemployment Compensation. The  
13 responsibilities and duties of the position include, but are  
14 not limited to, the following functional areas:

15 ~~1. Workers' compensation management and policy~~  
16 ~~implementation.~~

17 1.2. Unemployment compensation management and policy  
18 implementation.

19 2.3. Blind services management and policy  
20 implementation.

21 3.4. Oversight of the five field offices and any local  
22 offices.

23 (5) The following divisions are established and shall  
24 be headed by division directors who shall be supervised by and  
25 shall be responsible to the Assistant Secretary for Programs  
26 and Operations:

27 (a) Division of Unemployment Compensation.

28 ~~(b) Division of Workers' Compensation.~~

29 (b)(c) Division of Vocational Rehabilitation.

30 Section 57. Paragraph (h) of subsection (2) of section  
31 112.19, Florida Statutes, is amended to read:

1           112.19 Law enforcement, correctional, and correctional  
2 probation officers; death benefits.--

3           (2)

4           (h)1. Any employer who employs a full-time law  
5 enforcement, correctional, or correctional probation officer  
6 who, on or after January 1, 1995, suffers a catastrophic  
7 injury, as defined in s. 440.02(6)~~(37)~~, in the line of duty  
8 shall pay the entire premium of the employer's health  
9 insurance plan for the injured employee, the injured  
10 employee's spouse, and for each dependent child of the injured  
11 employee until the child reaches the age of majority or until  
12 the end of the calendar year in which the child reaches the  
13 age of 25 if the child continues to be dependent for support,  
14 or the child is a full-time or part-time student and is  
15 dependent for support. The term "health insurance plan" does  
16 not include supplemental benefits that are not part of the  
17 basic group health insurance plan. If the injured employee  
18 subsequently dies, the employer shall continue to pay the  
19 entire health insurance premium for the surviving spouse until  
20 remarried, and for the dependent children, under the  
21 conditions outlined in this paragraph. However:

22           a. Health insurance benefits payable from any other  
23 source shall reduce benefits payable under this section.

24           b. It is unlawful for a person to willfully and  
25 knowingly make, or cause to be made, or to assist, conspire  
26 with, or urge another to make, or cause to be made, any false,  
27 fraudulent, or misleading oral or written statement to obtain  
28 health insurance coverage as provided under this paragraph. A  
29 person who violates this sub-subparagraph commits a  
30 misdemeanor of the first degree, punishable as provided in s.  
31 775.082 or s. 775.083.

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

12           2. In order for the officer, spouse, and dependent  
13 children to be eligible for such insurance coverage, the  
14 injury must have occurred as the result of the officer's  
15 response to fresh pursuit, the officer's response to what is  
16 reasonably believed to be an emergency, or an unlawful act  
17 perpetrated by another. Except as otherwise provided herein,  
18 nothing in this paragraph shall be construed to limit health  
19 insurance coverage for which the officer, spouse, or dependent  
20 children may otherwise be eligible, except that a person who  
21 qualifies under this section shall not be eligible for the  
22 health insurance subsidy provided under chapter 121, chapter  
23 175, or chapter 185.

24           Section 58. Paragraph (g) of subsection (2) of section  
25 112.191, Florida Statutes, is amended to read:

26           112.191 Firefighters; death benefits.--

27           (2)

28           (g)1. Any employer who employs a full-time firefighter  
29 who, on or after January 1, 1995, suffers a catastrophic  
30 injury, as defined in s. 440.02(6)~~(37)~~, in the line of duty  
31 shall pay the entire premium of the employer's health

1 insurance plan for the injured employee, the injured  
2 employee's spouse, and for each dependent child of the injured  
3 employee until the child reaches the age of majority or until  
4 the end of the calendar year in which the child reaches the  
5 age of 25 if the child continues to be dependent for support,  
6 or the child is a full-time or part-time student and is  
7 dependent for support. The term "health insurance plan" does  
8 not include supplemental benefits that are not part of the  
9 basic group health insurance plan. If the injured employee  
10 subsequently dies, the employer shall continue to pay the  
11 entire health insurance premium for the surviving spouse until  
12 remarried, and for the dependent children, under the  
13 conditions outlined in this paragraph. However:

14 a. Health insurance benefits payable from any other  
15 source shall reduce benefits payable under this section.

16 b. It is unlawful for a person to willfully and  
17 knowingly make, or cause to be made, or to assist, conspire  
18 with, or urge another to make, or cause to be made, any false,  
19 fraudulent, or misleading oral or written statement to obtain  
20 health insurance coverage as provided under this paragraph. A  
21 person who violates this sub-subparagraph commits a  
22 misdemeanor of the first degree, punishable as provided in s.  
23 775.082 or s. 775.083.

24 c. In addition to any applicable criminal penalty,  
25 upon conviction for a violation as described in  
26 sub-subparagraph b., a firefighter or other beneficiary who  
27 receives or seeks to receive health insurance benefits under  
28 this paragraph shall forfeit the right to receive such health  
29 insurance benefits, and shall reimburse the employer for all  
30 benefits paid due to the fraud or other prohibited activity.  
31 For purposes of this sub-subparagraph, "conviction" means a

1 determination of guilt that is the result of a plea or trial,  
2 regardless of whether adjudication is withheld.

3           2. In order for the firefighter, spouse, and dependent  
4 children to be eligible for such insurance coverage, the  
5 injury must have occurred as the result of the firefighter's  
6 response to what is reasonably believed to be an emergency  
7 involving the protection of life or property, or an unlawful  
8 act perpetrated by another. Except as otherwise provided  
9 herein, nothing in this paragraph shall be construed to limit  
10 health insurance coverage for which the firefighter, spouse,  
11 or dependent children may otherwise be eligible, except that a  
12 person who qualifies for benefits under this section shall not  
13 be eligible for the health insurance subsidy provided under  
14 chapter 121, chapter 175, or chapter 185.

15  
16 Notwithstanding any provision of this section to the contrary,  
17 the death benefits provided in paragraphs (b), (c), and (f)  
18 shall also be applicable and paid in cases where a firefighter  
19 received bodily injury prior to July 1, 1993, and subsequently  
20 died on or after July 1, 1993, as a result of such  
21 in-line-of-duty injury.

22           Section 59. Section 121.125, Florida Statutes, is  
23 amended to read:

24           121.125 Credit for workers' compensation payment  
25 periods.--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 return to active  
30 employment with a covered employer for 1 calendar month or  
31 upon approval for disability retirement in accordance with s.

1 121.091(4), receive full retirement credit for the period  
2 prior to such return to active employment or disability  
3 retirement for which the workers' compensation payments were  
4 received. However, no member may receive retirement credit  
5 for any such period occurring after the earlier of the date  
6 maximum medical improvement has been attained as defined in s.  
7 440.02(13)~~(9)~~ or the date termination has occurred as defined  
8 in s. 121.021(39). The employer of record at the time of the  
9 worker's compensation injury or illness shall make the  
10 required retirement contributions based on the member's rate  
11 of monthly compensation immediately prior to his or her  
12 receiving workers' compensation payments for retirement credit  
13 received by the member.

14 Section 60. Subsection (7) of section 122.03, Florida  
15 Statutes, is amended to read:

16 122.03 Contributions; participants; prior service  
17 credit.--

18 (7) A member of the retirement system created by this  
19 chapter who has been eligible or becomes eligible to receive  
20 workers' compensation payments for an injury or illness  
21 occurring during his or her employment while a member of any  
22 state retirement system shall, upon his or her return to  
23 active employment with a covered employer for 1 calendar month  
24 or upon his or her approval for disability retirement in  
25 accordance with s. 122.09, receive full retirement credit for  
26 the period prior to such return to active employment or  
27 disability retirement for which the workers' compensation  
28 payments were received. However, no member may receive  
29 retirement credit for any such period occurring after the  
30 earlier of the date maximum medical improvement has been  
31 attained as defined in s. 440.02(13)~~(9)~~ or the date

1 termination has occurred as defined in s. 121.021(39). The  
2 employer of record at the time of the worker's compensation  
3 injury or illness shall make the required employee and  
4 employer retirement contributions based on the member's rate  
5 of monthly compensation immediately prior to receipt of  
6 workers' compensation payments.

7 Section 61. Subsection (10) of section 238.06, Florida  
8 Statutes, is amended to read:

9 238.06 Membership application, creditable service, and  
10 time for making contributions.--

11 (10) A member of the retirement system created by this  
12 chapter who has been eligible or becomes eligible to receive  
13 workers' compensation payments for an injury or illness  
14 occurring during his or her employment while a member of any  
15 state retirement system shall, upon his or her return to  
16 active employment with a covered employer for 1 calendar month  
17 or upon his or her approval for disability retirement in  
18 accordance with s. 238.07, receive full retirement credit for  
19 the period prior to such return to active employment or  
20 disability retirement for which the workers' compensation  
21 payments were received. However, no member may receive  
22 retirement credit for any such period occurring after the  
23 earlier of the date maximum medical improvement has been  
24 attained as defined in s. 440.02(13)~~(9)~~ or the date  
25 termination has occurred as defined in s. 121.021(39). The  
26 employer of record at the time of the worker's compensation  
27 injury or illness shall make the required employee and  
28 employer retirement contributions based on the member's rate  
29 of monthly compensation immediately prior to his or her  
30 receiving workers' compensation payments.

31

1           Section 62. Subsection (3) of section 468.529, Florida  
2 Statutes, is amended to read:

3           468.529 Licensee's insurance; employment tax; benefit  
4 plans.--

5           (3) A licensed employee leasing company shall within  
6 30 days of initiation or termination notify its workers'  
7 compensation insurance carrier and the Office, ~~the Division of~~  
8 ~~Workers' Compensation Administration~~, ~~and the Division of~~  
9 ~~Unemployment Compensation of the Department of Labor and~~  
10 ~~Employment Security~~ of both the initiation or the termination  
11 of the company's relationship with any client company.

12           Section 63. Section 489.114, Florida Statutes, is  
13 amended to read:

14           489.114 Evidence of workers' compensation  
15 coverage.--Except as provided in s. 489.115(5)(d), any person,  
16 business organization, or qualifying agent engaged in the  
17 business of contracting in this state and certified or  
18 registered under this part shall, as a condition precedent to  
19 the issuance or renewal of a certificate, registration, or  
20 certificate of authority of the contractor, provide to the  
21 Construction Industry Licensing Board, as provided by board  
22 rule, evidence of workers' compensation coverage pursuant to  
23 chapter 440. In the event that the Office ~~Division~~ of  
24 ~~Workers' Compensation Administration~~ of the Department of  
25 ~~Labor and Employment Security~~ receives notice of the  
26 cancellation of a policy of workers' compensation insurance  
27 insuring a person or entity governed by this section, the  
28 Office ~~Division~~ of Workers' Compensation Administration shall  
29 certify and identify all persons or entities by certification  
30 or registration license number to the department after  
31 verification is made by the Office ~~Division~~ of Workers'

1 Compensation Administration that such cancellation has  
2 occurred or that persons or entities governed by this section  
3 are no longer covered by workers' compensation insurance.  
4 Such certification and verification by the Office Division of  
5 Workers' Compensation Administration shall result solely from  
6 records furnished to the Office Division of Workers'  
7 Compensation Administration by the persons or entities  
8 governed by this section. The department shall notify the  
9 persons or entities governed by this section who have been  
10 determined to be in noncompliance with chapter 440, and the  
11 persons or entities notified shall provide certification of  
12 compliance with chapter 440 to the department and pay an  
13 administrative fine as provided by rule. The failure to  
14 maintain workers' compensation coverage as required by law  
15 shall be grounds for the board to revoke, suspend, or deny the  
16 issuance or renewal of a certificate, registration, or  
17 certificate of authority of the contractor under the  
18 provisions of s. 489.129.

19 Section 64. Section 489.510, Florida Statutes, is  
20 amended to read:

21 489.510 Evidence of workers' compensation  
22 coverage.--Except as provided in s. 489.515(3)(b), any person,  
23 business organization, or qualifying agent engaged in the  
24 business of contracting in this state and certified or  
25 registered under this part shall, as a condition precedent to  
26 the issuance or renewal of a certificate or registration of  
27 the contractor, provide to the Electrical Contractors'  
28 Licensing Board, as provided by board rule, evidence of  
29 workers' compensation coverage pursuant to chapter 440. In  
30 the event that the Office Division of Workers' Compensation  
31 Administration of the Department of Labor and Employment

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

24 Section 65. Subsection (6) of section 553.88, Florida  
25 Statutes, is amended to read:

26 553.88 Adoption of electrical and alarm  
27 standards.--For the purpose of establishing minimum electrical  
28 and alarm standards in this state, the current edition of the  
29 following standards are adopted:

30 (6) The minimum standards for grounding of portable  
31 electric equipment, chapter 8C-27 as recommended by the

1 Industrial Standards Section, Office Division of Workers'  
2 Compensation Administration, ~~Department of Labor and~~  
3 ~~Employment Security~~.

4 Section 66. 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 Office Division of  
16 Workers' Compensation Administration ~~of the Department of~~  
17 ~~Labor and Employment Security~~ who administers only  
18 self-insured workers' compensation plans.

19 Section 67. 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 and the Office Division  
30 of Workers' Compensation Administration ~~of the Department of~~  
31 ~~Labor and Employment Security~~ are directed to prepare and

1 submit a joint performance report to the President of the  
2 Senate and the Speaker of the House of Representatives by  
3 November 1 of each year for each of the next 2 years, and then  
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 68. 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 Office Division of Workers' Compensation Administration of the  
17 ~~Department of Labor and Employment Security~~ or implement a  
18 safety program pursuant to provisions of the rating plan or  
19 implement both a drug-free workplace program and a safety  
20 program. The plans must be actuarially sound and must state  
21 the savings anticipated to result from such drug-testing and  
22 safety programs.

23 Section 69. Paragraph (a) of subsection (3) of section  
24 627.914, Florida 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 Office Division of Workers' Compensation  
30 Administration of the ~~Department of Labor and Employment~~  
31 ~~Security~~.

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

4           Section 70. All powers, duties, functions, rules,  
5 records, personnel, property, and unexpended balances of  
6 appropriations, allocations, and other funds for the Division  
7 of Workers' Compensation are transferred by a type two  
8 transfer, as defined in s. 20.06(2), Florida Statutes, from  
9 the Department of Labor and Employment Security to the Office  
10 of Workers' Compensation Administration, as created by this  
11 act.

12           Section 71. This act shall take effect July 1, 2002.  
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HOUSE SUMMARY

Creates the Office of Worker's Compensation Administration and transfers the Division of Workers' Compensation of the Department of Labor and Employment Security to the office. Requires the Department of Management Services to provide administrative support. Establishes the executive director as head of the office.

Provides for appointment of mediators and for rules and procedures.

Creates a Penalty Assessment Section within the office and establishes the penalty administrator as head of the section. Provides for penalties and fines and protests thereof.

Revises provisions relating to exemption of Workers' Compensation from ch. 120, F.S. Requires assessment of penalties and interest by written order and provides for right to protest such assessment. Provides for appeal.

Renames the Employee Assistance and Ombudsman Office as the Employee Assistance and Ombudsman Section.

Revises provisions relating to penalties for late payment. Requires the office to establish carrier and claims handler performance standards and monitor and audit their performance. Provides penalties.

Requires specified insurance carriers to be licensed by the office. Provides for a fee. Authorizes the office to monitor and audit carriers and claims handlers.

See bill for details.