

By the Committee on Banking and Insurance; and Senator Clary

311-2455-03

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 20.13, F.S.; abolishing the Bureau
4 of Workers' Compensation Insurance Fraud within
5 the Department of Insurance; amending s.
6 20.201, F.S.; creating the Office of Workers'
7 Compensation Insurance Fraud within the
8 Department of Law Enforcement; amending s.
9 27.34, F.S.; requiring the Chief Financial
10 Officer to contract with the state attorneys of
11 specified judicial circuits to prosecute
12 criminal violation of the Workers' Compensation
13 Law and related crimes; requiring a report to
14 the Legislature and the executive branch;
15 amending s. 440.015, F.S.; providing
16 legislative intent; amending s. 440.02, F.S.;
17 defining and redefining terms; amending s.
18 440.05, F.S.; revising exemption requirements;
19 amending s. 440.06, F.S.; specifying coverage
20 requirements; amending s. 440.077, F.S.;
21 revising exemption election; amending s.
22 440.09, F.S.; revising compensability
23 eligibility standards; amending s. 440.10,
24 F.S.; requiring all employers engaged in work
25 in Florida to obtain a Florida policy; amending
26 s. 440.1025, F.S.; providing workplace safety
27 rulemaking authority; amending s. 440.103,
28 F.S.; requiring certain proof of insurance when
29 obtaining building permits; amending s.
30 440.104, F.S.; deleting certain limitations
31 regarding recovery; amending s. 440.105, F.S.;

1 modifying stop-work-order violations; amending
2 s. 440.1051, F.S.; redesignating the Bureau of
3 Workers' Compensation Insurance Fraud as the
4 Office of Workers' Compensation Insurance
5 Fraud; amending s. 440.107, F.S.; revising the
6 compliance powers of the Department of
7 Financial Services; authorizing agency
8 rulemaking authority; clarifying department
9 penalty calculation formulas; amending s.
10 440.12, F.S.; revising condensability
11 eligibility timing; amending s. 440.125, F.S.;
12 conforming departmental authority; amending s.
13 440.13, F.S.; redefining terms; establishing
14 new standards of care; authorizing the adoption
15 of practice parameters; revising standards and
16 procedures for diagnosis and treatment;
17 redefining standards of eligibility for medical
18 treatment; establishing consent to peer review
19 jurisdiction; creating the Health Care
20 Oversight Board to assist in the establishment
21 of practice parameters, auditing peer review
22 organizations, and certain other
23 recommendations; eliminating independent
24 medical examinations; revising the utilization
25 review process; eliminating expert medical
26 advisors; modifying standards for witness fees;
27 revising departmental auditing standards and
28 scope; authorizing a three-member panel to
29 alter inpatient and outpatient reimbursement
30 levels; revising prescription dispensing fee
31 level; revising standards for authorization of

1 physicians to render medical care; revising
2 carrier obligations to pay health care
3 providers; eliminating current practice
4 parameters; amending s. 440.132, F.S.; revising
5 departmental authority; repealing s. 440.134,
6 F.S., relating to managed care; repealing s.
7 440.135, F.S., relating to pilot programs;
8 amending s. 440.14, F.S.; revising calculations
9 of average weekly wage; amending s. 440.15,
10 F.S., revising permanent total disability
11 indemnity reimbursement levels; defining
12 sheltered employment; revising supplemental
13 benefits; revising temporary total disability
14 benefits eligibility and reimbursement levels;
15 requiring a three-member panel to study a
16 residual functional loss model for calculating
17 permanent partial impairment awards; revising
18 benefit calculation for permanent impairment
19 benefits; eliminating permanent impairment
20 supplemental benefits; increasing temporary
21 partial disability benefits; repealing
22 obligation to rehire section; amending s.
23 440.151, F.S.; revising the standard for
24 establishing condensability of occupational
25 diseases; creating s. 440.152, F.S.;
26 establishing standard for computing fractions
27 of a percent for determining benefits; amending
28 s. 440.16, F.S.; increasing funeral and death
29 benefits; amending s. 440.17, F.S.; revising
30 departmental authority; amending s. 440.185,
31 F.S.; revising presumption of condensability;

1 modifying employer and carrier reporting
2 standards; authorizing departmental rulemaking
3 authority for carrier reporting standards;
4 providing departmental penalty authority;
5 enhancing departmental electronic data
6 collection and processing; amending s. 440.191,
7 F.S.; eliminating the Employment Assistance
8 Office and establishing the Early Intervention
9 Office; authorizing the Early Intervention
10 Office to assist injured employees; amending s.
11 440.192, F.S.; modifying the dispute resolution
12 process; creating the Claims Bureau to accept
13 claims and adjudicate certain claims; creating
14 the peer review panel process for adjudicating
15 medical disputes; establishing timelines
16 governing the peer review process; authorizing
17 the department to contract with peer review
18 organizations; revising the jurisdiction of
19 judges of compensation claims; creating the
20 Workers' Compensation Appellate Tribunal to
21 hear appeals; revising the procedure for appeal
22 to the First District Court of Appeal; amending
23 s. 440.1925, F.S.; revising the procedure for
24 resolving maximum medical improvement disputes;
25 amending s. 440.20, F.S.; revising payment
26 health care timelines by carriers; authorizing
27 departmental rulemaking authority; authorizing
28 departmental penalties; expanding departmental
29 claims auditing authority; amending s. 440.24,
30 F.S.; clarifying departmental authority;
31 amending s. 440.25, F.S.; revising the

1 mediation process; establishing judges of
2 compensation claims' jurisdictional authority;
3 establishing Workers' Compensation Appellate
4 Tribunal rulemaking authority; clarifying
5 appellate review rulemaking authority for
6 appeals from the Workers' Compensation
7 Appellate Tribunal; eliminating expert medical
8 advisor physical examinations; amending s.
9 440.271, F.S.; revising the appellate
10 jurisdiction of orders issued by judges of
11 compensation claims; amending s. 440.2715,
12 F.S.; expanding the use of a state video
13 teleconferencing network; creating s. 440.2725,
14 F.S.; providing appellate review of Workers'
15 Compensation Appellate Tribunal orders to the
16 First District Court of Appeal; amending s.
17 440.28, F.S.; allowing peer review panels to
18 modify their orders in certain circumstances;
19 repealing s. 440.29, F.S.; eliminating certain
20 procedures before judges of compensation
21 claims; amending s. 440.30, F.S.; providing
22 that peer review panel members are not subject
23 to deposition unless fraud has been implied;
24 amending s. 440.32, F.S.; providing certain
25 conforming changes dealing with costs in
26 proceedings; amending 440.34, F.S.; revising
27 the calculation for attorney's fees; providing
28 when attorney's fees are due; clarifying judges
29 of compensation claims jurisdictional issues
30 pertaining to attorney's fees; amending s.
31 440.38, F.S.; modifying departmental authority

1 over the Florida Self-Insurers Guaranty
2 Association recommendations; amending s.
3 440.381, F.S.; providing the department
4 additional payroll auditing responsibilities;
5 amending 440.385, F.S.; clarifying appointment
6 authority; providing conforming departmental
7 cross-references; modifying departmental
8 authority regarding employers who self-insure;
9 amending s. 440.386, F.S.; providing conforming
10 departmental cross-references; amending s.
11 440.40; F.S.; providing conforming departmental
12 cross-references; amending s. 440.42, F.S.;
13 providing certain workers' compensation
14 insurance policy notice periods; amending s.
15 440.44, F.S.; providing certain Workers'
16 Compensation Appellate Tribunal staffing
17 levels; amending s. 440.442, F.S.; modifying
18 the scope of the Code of Judicial Conduct;
19 amending s. 440.45, F.S.; creating a Workers'
20 Compensation Appellate Tribunal in the
21 Department of Management Services; providing an
22 appointment method; providing jurisdictional
23 authority; providing administrative authority;
24 providing powers and duties; revising the
25 statewide nominating commission membership and
26 appointment methodology; providing appointment
27 terms for appellate tribunal judges; creating
28 s. 440.465, F.S.; establishing claims bureau
29 personnel requirements; amending s. 440.49,
30 F.S.; clarifying Special Disability Trust Fund
31 assessment methodology; amending s. 440.50,

1 F.S.; providing conforming departmental
2 cross-references; amending s. 440.501, F.S.;
3 providing conforming departmental
4 cross-references; amending 440.51, F.S.;
5 clarifying Workers' Compensation Administrative
6 Trust Fund assessment methodology; amending ss.
7 440.515, 440.52, 440.59, 440.591, F.S.;
8 providing conforming departmental
9 cross-references; amending 440.593, F.S.;
10 revising electronic reporting methodology and
11 procedures; amending s. 443.036, F.S.;
12 redefining the term "employee leasing company";
13 amending ss. 443.171, 443.1715, F.S.; amending
14 provisions relating to records and reports;
15 amending s. 626.989, F.S.; providing that the
16 Office of Workers' Compensation Insurance Fraud
17 has exclusive jurisdiction to investigate
18 workers' compensation insurance fraud;
19 conforming terminology; providing for contents
20 of annual reports; amending s. 626.9891, F.S.;
21 amending reporting requirements for insurers;
22 providing penalties for noncompliance; amending
23 s. 626.062, F.S.; amending criteria for filing
24 with the department certain information
25 relating to rates; amending s. 627.311, F.S.;
26 revising Worker's Compensation Joint
27 Underwriting Association board of governors
28 membership and appointment method; revising
29 tiering of subclasses; providing rating
30 criteria; revising association procedures;
31 revising assessment calculation methodology;

1 amending s. 921.0022, F.S.; revising criminal
2 punishment code to apply to workers
3 compensation insurance fraud; amending s.
4 112.181, F.S.; revising requirements for
5 medical reviews for certain types of workers;
6 providing that the amendments to certain
7 sections do not affect any determination of
8 disability under other sections related to
9 certain public officers and employees;
10 requiring each workers' compensation insurer or
11 a licensed rating organization to make a rate
12 filing reflecting the anticipated savings of
13 the act; specifying the effective date and
14 requirements for such filings; providing that
15 amendments to ss. 440.02 and 440.15, F.S., do
16 not affect certain disability determinations;
17 providing a type two transfer of certain full
18 time employees' positions from the Division of
19 Administrative Hearings of the Department of
20 Management Services to the Department of
21 Financial Services; transferring positions and
22 providing appropriations from the Workers'
23 Compensation Administration Trust Fund to state
24 attorneys in specified judicial circuits and to
25 the Department of Legal Affairs; transferring
26 all powers, duties, functions, rules, records,
27 personnel, property, and unexpended balances of
28 appropriations, allocations, and other funds of
29 the Bureau of Workers' Compensation Fraud of
30 the Division of Insurance Fraud from the
31 Department of Financial Services to the

1 Department of Law Enforcement and redesignating
2 the bureau as the Office of Workers'
3 Compensation Insurance Fraud; providing
4 legislative intent to create a state mutual
5 insurance fund for workers' compensation, under
6 certain circumstances; providing an effective
7 date.

8

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

10

11 Section 1. Subsection (4) of section 20.13, Florida
12 Statutes, is amended to read:

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

15 (4) The Division of Insurance Fraud shall enforce the
16 provisions of s. 626.989. ~~The division shall establish a~~
17 ~~Bureau of Workers' Compensation Insurance Fraud for the sole~~
18 ~~purpose of enforcing the provisions of chapter 440 which, if~~
19 ~~violated, would result in the commission of fraudulent~~
20 ~~insurance acts.~~

21 Section 2. Paragraph (e) is added to subsection (2) of
22 section 20.201, Florida Statutes, to read:

23 20.201 Department of Law Enforcement.--

24 (2) The following programs of the Department of Law
25 Enforcement are established:

26 (e) The Office of Workers' Compensation Insurance
27 Fraud.

28 Section 3. Subsection (4) of section 27.34, Florida
29 Statutes, is amended to read:

30 27.34 Salaries and other related costs of state
31 attorneys' offices; limitations.--

1 (4) Notwithstanding s. 27.25, the Chief Financial
2 Officer shall ~~Insurance Commissioner may~~ contract with the
3 state attorneys ~~attorney~~ of the three largest ~~any~~ judicial
4 circuits ~~circuit~~ of the state for the prosecution of criminal
5 violations of the Workers' Compensation Law and related crimes
6 and shall ~~may~~ contribute funds from the Workers' Compensation
7 Administration Trust Fund for such purposes. Such contracts
8 shall ~~may~~ provide for the training, salary, and expenses of
9 one or more assistant state attorneys used in the prosecution
10 of such crimes. The three participating circuits shall provide
11 an annual report to the President of the Senate, the Speaker
12 of the House of Representatives, the Governor, and the
13 Department of Law Enforcement regarding the workload and
14 disposition of workers' compensation cases.

15 Section 4. Section 440.15, Florida Statutes, is
16 amended to read:

17 (Substantial rewording of section. See
18 s. 440.015, F.S., for present text.)

19 440.015 Legislative intent.--

20 (1) It is the intent of the Legislature to
21 fundamentally reform workers' compensation in Florida. The
22 Legislature finds that the historical approach to workers
23 compensation, as reflected by the prior statute and court
24 decisions under it, needs to be displaced by an approach more
25 suited to modern realities, including the changing composition
26 of the workforce, the emergence of knowledge work as an
27 alternative to physical labor, the changing labor markets, and
28 the increasingly competitive markets for legal and medical
29 services. The goals of this chapter continue to include prompt
30 provision of adequate benefits to legitimately injured workers
31 at a reasonable cost, but the goals extend beyond that as

1 well. This law intends to strike a precise economic balance
2 between the economic interests of employers, employees,
3 personnel ancillary to the workers' compensation system, and
4 the public at large. The statutory language is carefully
5 designed to create behavioral incentives for the participants
6 in the system, including workers, employers, doctors,
7 attorneys, and others, so as to minimize the total cost of
8 job-related injuries, including the cost of administering the
9 system.

10 (2) The Legislature finds that the prior workers'
11 compensation law was marked by several characteristics that
12 are particularly inappropriate in these times.

13 (a) Paternalism developed from the original conception
14 of workers' compensation as social welfare legislation
15 designed to help the victims of industrial accidents and their
16 families, in a time when the injured workers were largely
17 unsophisticated and had little access to legal services.
18 Paternalism was responsible for the now-discredited notion
19 that workers' compensation laws should be applied with a bias
20 in favor of one party and against the other, and for the law's
21 reticence to allow parties to make their own decisions. In the
22 modern world, employers and employees alike are held to a
23 standard of personal responsibility, as an essential component
24 of a free society. It is therefore the express legislative
25 intent to eradicate all vestiges of paternalism in the
26 workers' compensation system, treating all parties as equally
27 capable of making choices under the law.

28 (b) The common law of damages was developed to
29 quantify liability when a party was at fault for, and thus
30 responsible for the entire cost of, an injury. The focus of
31 negligence jurisprudence was on making the innocent victim

1 whole. That concept has no place in workers' compensation
2 law, where the liability is not dependent upon fault, but
3 rather upon the contractual relationships between employers
4 and employees. The operative concept under this statutory,
5 no-fault scheme is to specify the nature and amounts of
6 benefits payable in given circumstances, such that employers
7 and employees can accurately assess the value of workers'
8 compensation benefits when they formulate the terms of
9 employment, such as wages and benefits. The Legislature
10 therefore declares that the terms of this chapter are implied
11 in to each employment contract, whether written, verbal, or
12 implicit, that exists in the state, and, as such, the terms of
13 the statute should be interpreted as if they were terms of a
14 contract. Justice and fairness in workers' compensation thus
15 consist of giving effect to the language of the statute,
16 without resort to negligence-based concepts of common law. As
17 in contract law generally, parties should receive and be held
18 liable for exactly what the terms of the contract require, no
19 more and no less.

20 (c) The law's operation in practice has been
21 unpredictable, creating an incentive to excessive litigation.
22 It is the express intent of the Legislature to specify
23 bright-line rules that are followed in practice. The resultant
24 reliability, stability, and predictability of the law have
25 immeasurable value that the Legislature declares to be
26 paramount.

27 (d) The degree of expense in the worker's compensation
28 system has become immense, without a corresponding increase in
29 the quantity, speed, or efficiency of benefits delivered.
30 There are immeasurable indirect costs as well, in the form of
31 distortions of decisions made by employers and employees

1 alike, resulting from the prospect of protracted litigation,
2 which is precisely what workers' compensation laws were
3 intended to prevent. Since employers initially bear the cost
4 of workers' compensation benefits, and ultimately pass those
5 on either to consumers in the form of higher prices or to the
6 noninjured employees in the form of lower wages, it is unfair
7 to all classes of persons to require a workers' compensation
8 system that costs nearly as much to operate as it provides in
9 benefits to injured workers.

10 (e) In many cases, the provision of medical care to
11 injured workers became mired in litigation actuated by
12 ancillary goals unrelated to advancement of the worker's
13 return to health and productivity. A rational scheme for
14 health care provision and a dispute resolution system that
15 precludes extraneous considerations from governing a worker's
16 medical care are both essential to functioning of the workers'
17 compensation law, and this statute must be interpreted toward
18 those ends.

19 (f) The incorporation of a federal Social Security
20 standard for permanent total disability has resulted in
21 Florida's having a rate of permanent total disability grossly
22 out of proportion to the number of injuries that are severe
23 enough to warrant such a conclusion. The Legislature finds
24 that declaring an individual permanently totally disabled is
25 in most cases not in the person's best interest and is
26 warranted only when the individual is unable to return to any
27 form of gainful or sheltered employment.

28 (3) To remedy the problems enumerated in subsection
29 (2), as well as numerous others, this statute is a fundamental
30 departure from prior law, in theory, concept, and execution.
31 While practices, rules, statutes, and court decisions existing

1 before the effective date of this act may be cited as
2 persuasive authority in courts and other tribunals, they are
3 not to be considered authoritative or binding in interpreting
4 rights and obligations under this statute. It is the express
5 intent of the Legislature that this new statute operate with a
6 clean slate of decisional law. The law should be interpreted
7 according to its plain language, without reference to
8 technical legal denotations, as a person of reasonable
9 intelligence would understand it, before deciding how to act
10 under it.

11 (4) The workers' compensation law is declared to be an
12 insurance statute, not social welfare legislation. The law is
13 designed to make a fair and efficient allocation of the costs
14 of industrial accidents, in such a way as to give employers
15 and employees alike incentives to minimize the total cost of
16 these accidents. At all times, the statute must be
17 interpreted so as to maintain its status as a reasonable
18 substitute for the common-law rights that it abridges, to the
19 extent required by the State Constitution.

20 Section 5. Section 440.02, Florida Statutes, is
21 amended to read:

22 440.02 Definitions.--~~As when~~ used in this chapter, the
23 ~~term unless the context clearly requires otherwise, the~~
24 ~~following terms shall have the following meanings:~~

25 (1) "Accident" means only an unexpected or unusual
26 event or result that happens suddenly. A mental or nervous
27 injury due to stress, fright, or excitement only, or
28 disability or death due to the accidental acceleration or
29 aggravation of a venereal disease or of a disease due to the
30 habitual use of alcohol or controlled substances or narcotic
31 drugs, or a disease that manifests itself in the fear of or

1 dislike for an individual because of the individual's race,
2 color, religion, sex, national origin, age, or handicap is not
3 an injury by accident arising out of the employment. If a
4 preexisting disease or anomaly is accelerated or aggravated by
5 an accident arising out of and in the course of employment,
6 only acceleration of death or acceleration or aggravation of
7 the preexisting condition reasonably attributable to the
8 accident is compensable, with respect to death or permanent
9 impairment.

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

12 (3) "Agency" means the Agency for Health Care
13 Administration.

14 (4) "Carrier" means any person or fund as defined in
15 subsection (39) authorized ~~under s. 440.38~~ to insure under
16 this chapter and includes a self-insurer, and a commercial
17 self-insurance fund authorized under s. 624.462.

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

22 (6) "Child" includes a posthumous child, a child
23 legally adopted prior to the injury of the employee, and a
24 stepchild or acknowledged child born out of wedlock dependent
25 upon the deceased, but does not include married children
26 unless wholly dependent on the employee. "Grandchild" means a
27 child as above defined of a child as above defined. "Brother"
28 and "sister" include stepbrothers and stepsisters, half
29 brothers and half sisters, and brothers and sisters by
30 adoption, but does not include married brothers or married
31 sisters unless wholly dependent on the employee. "Child,"

1 "grandchild," "brother," and "sister" include only persons who
2 at the time of the death of the deceased employees are under
3 18 years of age, or under 22 years of age if a full-time
4 student in an accredited educational institution.

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

8 (8) "Construction industry" means any for-profit
9 activity, trade, or craft performed in the course of building,
10 renovating, or remodeling a structure to completion and
11 includes for-profit activities involving the carrying out of
12 any building, clearing, filling, demolishing, excavating, and
13 all finish and detail work excavation, or substantial
14 improvement in the size or use of any structure or the
15 appearance of any land. The department shall by rule specify
16 the classifications and classification codes that are within
17 the definition of the term "construction industry." When
18 appropriate to the context, "construction" refers to the act
19 of construction or the result of construction. However, the
20 term "construction" does shall not mean a landowner's act of
21 construction or the result of a construction upon his or her
22 own premises, provided such premises are not intended to be
23 sold, or resold, or leased.

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

29 (10) "Date of maximum medical improvement" means the
30 date after which further recovery from, or lasting improvement
31

1 to, an injury or disease can no longer reasonably be
2 anticipated, based upon reasonable medical probability.

3 (11) "Death" as a basis for a right to compensation
4 means only death resulting from an injury.

5 (12) "Department" means the Department of Financial
6 Services Insurance.

7 (13) "Disability" means incapacity because of the
8 injury to earn in the same or any other employment the wages
9 which the employee was receiving at the time of the injury.

10 (14) "Division" means the Division of Workers'
11 Compensation of the Department of Financial Services
12 Insurance.

13 (15)(a) "Employee" means any person who receives
14 remuneration from an employer for performance of any work or
15 service, whether by ~~engaged in any employment under any~~
16 appointment or contract for ~~of~~ hire or apprenticeship, express
17 or implied, oral or written, whether lawfully or unlawfully
18 employed, and includes, but is not limited to, aliens and
19 minors.

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

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

27 2. Effective January 1, 2004,as to officers of a
28 corporation who are actively engaged in the construction
29 industry, no more than three officers of a corporation, or of
30 any group of affiliated corporations, each of whom purchases a
31 limited medical benefit and disability policy with maximum

1 medical benefits not less than \$100,000 as specified by the
2 department by rule may elect to be exempt from this chapter by
3 filing written notice of the election with the department as
4 provided in s. 440.05. Corporate officers must be
5 shareholders, each owning at least 10 percent of the voting
6 stock of such a corporation and must be listed as officers of
7 the corporation with the Department of State, Division of
8 Corporations at the time of requesting an exemption in order
9 to elect to be exempt under this chapter. As used in this
10 chapter, the term "corporation" means an entity formed under
11 chapter 607 or chapter 608. As used in this chapter, the term
12 "affiliated means and includes one or more corporations or
13 entities, any one of which is a corporation engaged in the
14 construction industry, under the same or substantially the
15 same control of a group of business entities that are
16 connected or associated so that one entity controls or has the
17 power to control each of the other business entities. The term
18 "affiliated" includes the officers, directors, shareholders
19 active in management, employees, and agents of the affiliated
20 corporation. The ownership by one business entity of a
21 controlling interest in another business entity or a pooling
22 of equipment or income among business entities shall be prima
23 facie evidence that one business is affiliated with the other.
24 ~~However, any exemption obtained by a corporate officer of a~~
25 ~~corporation actively engaged in the construction industry is~~
26 ~~not applicable with respect to any commercial building project~~
27 ~~estimated to be valued at \$250,000 or greater.~~

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

1
2 Services are presumed to have been rendered to the corporation
3 if the officer is compensated by other than dividends upon
4 shares of stock of the corporation which the officer owns.

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

23 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
24 ~~the term "employee" includes a sole proprietor or partner~~
25 ~~actively engaged in the construction industry with respect to~~
26 ~~any commercial building project estimated to be valued at~~
27 ~~\$250,000 or greater. Any exemption obtained is not applicable,~~
28 ~~with respect to work performed at such a commercial building~~
29 ~~project.~~

30 (d) "Employee" does not include:
31 1. An independent contractor, if:

- 1 a. The independent contractor maintains a separate
2 business with his or her own work facility, truck, equipment,
3 materials, or similar accommodations;
- 4 b. The independent contractor holds or has applied for
5 a federal employer identification number, unless the
6 independent contractor is a sole proprietor who is not
7 required to obtain a federal employer identification number
8 under state or federal requirements;
- 9 c. The independent contractor performs or agrees to
10 perform specific services or work for specific amounts of
11 money and controls the means of performing the services or
12 work;
- 13 d. The independent contractor incurs the principal
14 expenses related to the service or work that he or she
15 performs or agrees to perform;
- 16 e. The independent contractor is responsible for the
17 satisfactory completion of work or services that he or she
18 performs or agrees to perform and is or could be held liable
19 for a failure to complete the work or services;
- 20 f. The independent contractor receives compensation
21 for work or services performed for a commission or on a
22 per-job or competitive-bid basis and not on any other basis;
- 23 g. The independent contractor may realize a profit or
24 suffer a loss in connection with performing work or services;
- 25 h. The independent contractor has continuing or
26 recurring business liabilities or obligations; ~~and~~
- 27 i. The success or failure of the independent
28 contractor's business depends on the relationship of business
29 receipts to expenditures; ~~and~~—
- 30 j. The independent contractor is not engaged in the
31 construction industry.

1
2 However, the determination as to whether an individual
3 included in the North American Industrial Classification
4 Manual Industry Numbers 115112, 115113, 54194, 115115, 115116,
5 54169, 56173, 111421, 111998, 11531, 11331, 321912, 321211,
6 321212, or 321912 ~~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 ~~Notwithstanding the provisions of this paragraph or any other~~
14 ~~provision of this chapter, with respect to any commercial~~
15 ~~building project estimated to be valued at \$250,000 or~~
16 ~~greater, a person who is actively engaged in the construction~~
17 ~~industry is not an independent contractor and is either an~~
18 ~~employer or an employee who may not be exempt from the~~
19 ~~coverage requirements of this chapter.~~

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

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

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

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

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

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

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

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

30
31

1 7. Unless otherwise prohibited by this chapter,any
2 officer of a corporation who elects to be exempt from this
3 chapter.

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

11 ~~8.9.~~ An exercise rider who does not work for a single
12 horse farm or breeder, and who is compensated for riding on a
13 case-by-case basis, provided a written contract is entered
14 into prior to the commencement of such activity which
15 evidences that an employee/employer relationship does not
16 exist.

17 ~~9.10.~~ A taxicab, limousine, or other passenger
18 vehicle-for-hire driver who operates said vehicles pursuant to
19 a written agreement with a company which provides any
20 dispatch, marketing, insurance, communications, or other
21 services under which the driver and any fees or charges paid
22 by the driver to the company for such services are not
23 conditioned upon, or expressed as a proportion of, fare
24 revenues.

25 ~~10.11.~~ A person who performs services as a sports
26 official for an entity sponsoring an interscholastic sports
27 event or for a public entity or private, nonprofit
28 organization that sponsors an amateur sports event. For
29 purposes of this subparagraph, such a person is an independent
30 contractor. For purposes of this subparagraph, the term
31 "sports official" means any person who is a neutral

1 participant in a sports event, including, but not limited to,
2 umpires, referees, judges, linespersons, scorekeepers, or
3 timekeepers. This subparagraph does not apply to any person
4 employed by a district school board who serves as a sports
5 official as required by the employing school board or who
6 serves as a sports official as part of his or her
7 responsibilities during normal school hours.

8 11. Medicaid-enrolled clients under chapter 393 who
9 are excluded from the definition of employment under s.
10 443.036(21)(d)5. and served by Adult Day Training Service
11 under the Home and Community-Based Medicaid Waiver program in
12 a sheltered workshop setting licensed by the United States
13 Department of Labor for the purpose of training and earning
14 less than the federal hourly minimum wage.

15 (16) "Employer" means:

16 (a) The state and all political subdivisions thereof,
17 all public and quasi-public corporations therein, every person
18 carrying on any employment, and the legal representative of a
19 deceased person or the receiver or trustees of any person. If
20 the employer is a corporation, parties in actual control of
21 the corporation, including, but not limited to, the president,
22 officers who exercise broad corporate powers, directors, and
23 all shareholders who directly or indirectly own a controlling
24 interest in the corporation, are considered the employer for
25 the purposes of ss. 440.105, ~~and~~ 440.106, and 440.107.

26 (b) However, a landowner is not considered to be the
27 employer of a person hired by the landowner to carry out
28 construction on the landowner's own premises, if those
29 premises are not intended to be sold, resold, or leased and
30 the landowner is not engaged in the construction industry as
31 defined in subsection (8).

1 (c) Facilities serving individuals under subparagraph
2 (15)(d)11. shall be considered agents of the Agency for Health
3 Care Administration as it relates to providing Adult Day
4 Training Services under the Home and Community-Based Medicaid
5 Waiver program, and not employers or third parties for the
6 purpose of limiting or denying Medicaid benefits.

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

10 (b) "Employment" includes:

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

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

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

21 (c) "Employment" does not include service performed by
22 or as:

23 1. Domestic servants in private homes.

24 2. Agricultural labor performed on a farm in the
25 employ of a bona fide farmer, or association of farmers, that
26 employs 5 or fewer regular employees and that employs fewer
27 than 12 other employees at one time for seasonal agricultural
28 labor that is completed in less than 30 days, provided such
29 seasonal employment does not exceed 45 days in the same
30 calendar year. The term "farm" includes stock, dairy, poultry,
31 fruit, fur-bearing animals, fish, and truck farms, ranches,

1 nurseries, and orchards. The term "agricultural labor"
2 includes field foremen, timekeepers, checkers, and other farm
3 labor supervisory personnel.

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

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

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

13 (18) "Misconduct" includes, but is not limited to, the
14 following, which shall not be construed in pari materia with
15 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 (19) "Injury" means the existence of an objectively
26 confirmed and clinically relevant physiological abnormality in
27 one of the body's systems which directly and proximately
28 resulted from an accident ~~personal injury or death by accident~~
29 ~~arising out of and in the course of employment, and such~~
30 ~~diseases or infection as naturally or unavoidably result from~~
31 ~~such injury.~~ Damage to dentures, eyeglasses, prosthetic

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

6 (20) "Parent" includes stepparents and parents by
7 adoption, parents-in-law, and any persons who for more than 3
8 years prior to the death of the deceased employee stood in the
9 place of a parent to him or her and were dependent on the
10 injured employee.

11 (21) "Partner" means any person who is a member of a
12 partnership that is formed by two or more persons to carry on
13 as coowners of a business with the understanding that there
14 will be a proportional sharing of the profits and losses
15 between them. For the purposes of this chapter, a partner is a
16 person who participates fully in the management of the
17 partnership and who is personally liable for its debts.

18 (22) "Permanent impairment" means any anatomic or
19 functional abnormality or loss determined as a percentage of
20 the body as a whole, existing after the date of maximum
21 medical improvement, which results from the injury.

22 (23) "Person" means individual, partnership,
23 association, or corporation, including any public service
24 corporation.

25 (24) "Self-insurer" means:

26 (a) Any employer who has secured payment of
27 compensation pursuant to s. 440.38(1)(b) or (6) ~~as an~~
28 ~~individual self-insurer~~;

29 (b) Any employer who has secured payment of
30 compensation through a group self-insurance fund under s.
31 624.4621;

1 (c) Any group self-insurance fund established under s.
2 624.4621;

3 (d) A public utility as defined in s. 364.02 or s.
4 366.02 that has assumed by contract the liabilities of
5 contractors or subcontractors pursuant to s. 624.46225; or

6 (e) Any local government self-insurance fund
7 established under s. 624.4622.

8 (25) "Sole proprietor" means a natural person who owns
9 a form of business in which that person owns all the assets of
10 the business and is solely liable for all the debts of the
11 business.

12 (26) "Spouse" includes only a spouse substantially
13 dependent for financial support upon the decedent and living
14 with the decedent at the time of the decedent's injury and
15 death, or substantially dependent upon the decedent for
16 financial support and living apart at that time for
17 justifiable cause.

18 (27) "Time of injury" means the time of the occurrence
19 of the accident resulting in the injury.

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

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

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

23 (30) "Construction design professional" means an
24 architect, professional engineer, landscape architect, or
25 surveyor and mapper, or any corporation, professional or
26 general, that has a certificate to practice in the
27 construction design field from the Department of Business and
28 Professional Regulation.

29 (31) "Individual self-insurer" means any employer who
30 has secured payment of compensation pursuant to s.
31 440.38(1)(b) ~~as an individual self-insurer.~~

1 (32) "Domestic individual self-insurer" means an
2 individual self-insurer:

3 (a) Which is a corporation formed under the laws of
4 this state;

5 (b) Who is an individual who is a resident of this
6 state or whose primary place of business is located in this
7 state; or

8 (c) Which is a partnership whose principals are
9 residents of this state or whose primary place of business is
10 located in this state.

11 (33) "Foreign individual self-insurer" means an
12 individual self-insurer:

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

16 (b) Who is an individual who is not a resident of this
17 state and whose primary place of business is not located in
18 this state; or

19 (c) Which is a partnership whose principals are not
20 residents of this state and whose primary place of business is
21 not located in this state.

22 (34) "Insolvent member" means an individual
23 self-insurer which is a member of the Florida Self-Insurers
24 Guaranty Association, Incorporated, or which was a member and
25 has withdrawn pursuant to s. 440.385(1)(b), and which has been
26 found insolvent, as defined in subparagraph (35)(a)1.,
27 subparagraph (35)(a)2., or subparagraph (35)(a)3., by a court
28 of competent jurisdiction in this or any other state, or meets
29 the definition of subparagraph (35)(a)4.

30 (35) "Insolvency" or "insolvent" means:

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

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

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

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

9 4. That the individual self-insurer has sought
10 protection under the United States Bankruptcy Code or has been
11 brought under the jurisdiction of a court of bankruptcy as a
12 debtor pursuant to the United States Bankruptcy Code.

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

15 1. Has ceased to pay his or her debts in the ordinary
16 course of business and cannot pay his or her debts as they
17 become due; or

18 2. Has been adjudicated insolvent pursuant to the
19 federal bankruptcy law.

20 (36) "Arising out of" pertains to occupational
21 causation. An accidental injury or death arises out of
22 employment if work performed in the course and scope of
23 employment is the major contributing cause of the injury or
24 death.

25 (37) "Soft-tissue injury" means an injury that
26 produces damage to the soft tissues, rather than to the
27 skeletal tissues or soft organs.

28 (38) "Catastrophic injury" means a permanent
29 impairment constituted by:

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

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

3 (c) Severe brain or closed-head injury as evidenced
4 by:

5 1. Severe sensory or motor disturbances;

6 2. Severe communication disturbances;

7 3. Severe complex integrated disturbances of cerebral
8 function;

9 4. Severe episodic neurological disorders; or

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

13 (d) Second-degree or third-degree burns of 25 percent
14 or more of the total body surface or third-degree burns of 5
15 percent or more to the face and hands;

16 (e) Total or industrial blindness; or

17 (f) In addition to meeting one of the criteria in
18 paragraphs (a)-(e), the employee's inability, according to the
19 facts, to engage in any type of suitable gainful or sheltered
20 employment.~~Any other injury that would otherwise qualify~~
21 ~~under this chapter of a nature and severity that would qualify~~
22 ~~an employee to receive disability income benefits under Title~~
23 ~~II or supplemental security income benefits under Title XVI of~~
24 ~~the federal Social Security Act as the Social Security Act~~
25 ~~existed on July 1, 1992, without regard to any time~~
26 ~~limitations provided under that act.~~

27 (39) "Insurer" means a group self-insurers' fund
28 authorized by s. 624.4621, an individual self-insurer
29 authorized by s. 440.38, a commercial self-insurance fund
30 authorized by s. 624.462, an assessable mutual insurer
31 authorized by s. 628.6011, and an insurer licensed to write

1 workers' compensation and employer's liability insurance in
2 this state. The term "carrier," as used in this chapter, means
3 an insurer as defined in this subsection.

4 (40) "Statement," for the purposes of ss. 440.105 and
5 440.106, includes, but is not limited to, any notice,
6 representation, statement, proof of injury, bill for services,
7 diagnosis, prescription, hospital or doctor record, X ray,
8 test result, or other evidence of loss, injury, or expense.
9 The statement must include the exact fraud statement language
10 in s. 440.105(8).

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

21 (42) "Compensable" means a determination by a carrier,
22 medical peer review panel, or, in cases outside the
23 jurisdiction of the peer review process, a judge of
24 compensation claims, that a condition suffered by an employee
25 resulted from an injury arising out of and in the course of
26 employment. The work-related accident must be the major
27 contributing cause of the injury to be compensable.

28 (43) "Functional disturbance" means objectively
29 identifiable loss of ability to perform, or difficulty in
30 performing, tasks or activities represented in terms of
31 limitations or restrictions.

1 (44) "Confirmed abnormal relevant physiology" means an
2 objectively clinically demonstrable physical change that is
3 inconsistent with the normal operation of the human body and
4 that corroborates the symptoms or functional disturbance of
5 which the injured worker complains.

6 (45) Confirmatory consultation" means a clinical
7 evaluation or diagnostic testing for determination of the
8 necessity or reasonableness of medical care, recommendations,
9 or determinations in situations in which there has been a
10 recommendation by an authorized treating provider which has
11 been refused or disputed by the employer or carrier, or in
12 which there has been care, a recommendation, or a
13 determination sought by a patient and refused or disputed by
14 the authorized provider.

15 (46) "Dispute" means that a benefit requested has been
16 denied, delayed, or not responded to by a carrier.

17 (47) "Illness" means the existence of an objectively
18 confirmed and clinically relevant physiologic abnormality in
19 one or more of the body's systems.

20 (48) "Clinical dysfunction" means a manifestation of a
21 defined and measurable component or element of an injury or
22 illness.

23 (49) "Major contributing cause" means the cause that
24 is more than 50-percent responsible for the injury for which
25 treatment or benefits are sought.

26 (50) "Diagnosis" means a generic pathology-based label
27 or statement of medical condition in clinical terms rendered
28 by a medical provider.

29 (51) "Objective" means measurable or determinable
30 without input from the patient, such that the same sign,
31

1 result, or outcome would be replicable by another like medical
2 provider.

3 (52) "Evidence-based criteria" means evidence-based,
4 research-supported treatment or method of diagnosis.

5 (53) "Principal treating provider" means the physician
6 who is authorized to provide care, clinical care coordination,
7 referral, or testing for the patient. The type of physician
8 selected to be the principal treating provider must be
9 relevant to the nature of the injury and he or she is
10 responsible for monitoring and coordinating all
11 recommendations for treatment to be rendered for the
12 compensable injury by any other providers.

13 (54) "Transfer of care" means the provider making a
14 recommendation to the carrier for referral to another provider
15 because the provider has relinquished the role of principal
16 treating provider to the provider being recommended.

17 ~~(41) "Commercial building" means any building or~~
18 ~~structure intended for commercial or industrial use, or any~~
19 ~~building or structure intended for multifamily use of more~~
20 ~~than four dwelling units, as well as any accessory use~~
21 ~~structures constructed in conjunction with the principal~~
22 ~~structure. The term, "commercial building," does not include~~
23 ~~the conversion of any existing residential building to a~~
24 ~~commercial building.~~

25 ~~(42) "Residential building" means any building or~~
26 ~~structure intended for residential use containing four or~~
27 ~~fewer dwelling units and any structures intended as an~~
28 ~~accessory use to the residential structure.~~

29 Section 6. Section 440.05, Florida Statutes, is
30 amended to read:

31

1 440.05 Election of exemption; revocation of election;
2 notice; certification.--

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

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

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

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

1 is employed by a new ~~sole proprietorship, partnership, or~~
2 different corporation that is not listed on the certificate of
3 election. A copy of the certificate of election must be sent
4 to each workers' compensation carrier identified in the
5 request for exemption. Upon filing a notice of revocation of
6 election, an ~~a sole proprietor, partner, or officer who is a~~
7 subcontractor or an officer of the corporate subcontractor
8 must notify her or his contractor. Upon revocation of a
9 certificate of election of exemption by the department, the
10 department shall notify the workers' compensation carriers
11 identified in the request for exemption.

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

23 (5) A notice given under subsection (1), subsection
24 (2), or subsection (3) shall become effective when issued by
25 the department or 30 days after an application for an
26 exemption is received by the department, whichever occurs
27 first. However, if an accident or occupational disease occurs
28 less than 30 days after the effective date of the insurance
29 policy under which the payment of compensation is secured or
30 the date the employer qualified as a self-insurer, such notice
31

1 is effective as of 12:01 a.m. of the day following the date it
2 is mailed to the department in Tallahassee.

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

24 (7) Any contractor responsible for compensation under
25 s. 440.10 may register electronically ~~in writing~~ with the
26 department ~~workers' compensation carrier~~ for any subcontractor
27 and shall thereafter be entitled to receive written notice
28 from the carrier of any cancellation or nonrenewal of the
29 policy.

30 (8)(a) The department must assess a fee of \$50 with
31 each request for a construction industry certificate of

1 election to be exempt or renewal of election to be exempt
2 under this section.

3 (b) The funds collected by the department shall be
4 used to administer this section, to audit the businesses that
5 pay the fee for compliance with any requirements of this
6 chapter, and to enforce compliance with the provisions of this
7 chapter.

8 (9) The department may by rule prescribe forms and
9 procedures for filing an election of exemption, revocation of
10 election to be exempt, and notice of election of coverage for
11 all employers and require specified forms to be submitted by
12 all employers in filing for the election of exemption. The
13 department may by rule prescribe forms and procedures for
14 issuing a certificate of the election of exemption.

15 (10) Each ~~sole proprietor, partner, or~~ officer of a
16 corporation who is actively engaged in the construction
17 industry and who elects an exemption from this chapter shall
18 maintain business records as specified by the department
19 ~~division~~ by rule, which rules must include the provision that
20 any corporation with exempt officers ~~and any partnership~~
21 ~~actively engaged in the construction industry with exempt~~
22 ~~partners~~ must maintain written statements of those exempted
23 persons affirmatively acknowledging each such individual's
24 exempt status.

25 ~~(11) Any sole proprietor or partner actively engaged~~
26 ~~in the construction industry claiming an exemption under this~~
27 ~~section shall maintain a copy of his or her federal income tax~~
28 ~~records for each of the immediately previous 3 years in which~~
29 ~~he or she claims an exemption. Such federal income tax records~~
30 ~~must include a complete copy of the following for each year in~~
31 ~~which an exemption is claimed:~~

1 ~~(a) For sole proprietors, a copy of Federal Income Tax~~
2 ~~Form 1040 and its accompanying Schedule C.~~

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

6
7 ~~A sole proprietor or partner shall produce, upon request by~~
8 ~~the division, a copy of those documents together with a~~
9 ~~statement by the sole proprietor or partner that the tax~~
10 ~~records provided are true and accurate copies of what the sole~~
11 ~~proprietor or partner has filed with the federal Internal~~
12 ~~Revenue Service. The statement must be signed under oath by~~
13 ~~the sole proprietor or partner and must be notarized. The~~
14 ~~division shall issue a stop-work order under s. 440.107(5) to~~
15 ~~any sole proprietor or partner who fails or refuses to produce~~
16 ~~a copy of the tax records and affidavit required under this~~
17 ~~paragraph to the division within 3 business days after the~~
18 ~~request is made.~~

19 ~~(12) For those sole proprietors or partners that have~~
20 ~~not been in business long enough to provide the information~~
21 ~~required of an established business, the division shall~~
22 ~~require such sole proprietor or partner to provide copies of~~
23 ~~the most recently filed Federal Income Tax Form 1040. The~~
24 ~~division shall establish by rule such other criteria to show~~
25 ~~that the sole proprietor or partner intends to engage in a~~
26 ~~legitimate enterprise within the construction industry and is~~
27 ~~not otherwise attempting to evade the requirements of this~~
28 ~~section. The division shall establish by rule the form and~~
29 ~~format of financial information required to be submitted by~~
30 ~~such employers.~~

31

1 ~~(11)(13)~~ Any corporate officer permitted by this
2 chapter to elect claiming an exemption under this section must
3 be listed on the records of this state's Secretary of State,
4 Division of Corporations, as a corporate officer. ~~if the~~
5 ~~person who claims an exemption as a corporate officer is not~~
6 ~~so listed on the records of the Secretary of State, the~~
7 ~~individual must provide to the division, upon request by the~~
8 ~~division, a notarized affidavit stating that the individual is~~
9 ~~a bona fide officer of the corporation and stating the date~~
10 ~~his or her appointment or election as a corporate officer~~
11 ~~became or will become effective. The statement must be signed~~
12 ~~under oath by both the officer and the president or chief~~
13 ~~operating officer of the corporation and must be notarized.~~
14 The department ~~division~~ shall issue a stop-work order under s.
15 440.107(1) to any corporation who employs a person who claims
16 to be exempt as a corporate officer but who fails or refuses
17 to produce the documents required under this subsection to the
18 department ~~division~~ within 5 ~~3~~ business days after the request
19 is made.

20 (12) A certificate of election to be exempt issued
21 under subsection (3) applies only to the corporate officer
22 named on the notice of election to be exempt and applies only
23 within the scope of the business or trade listed on the notice
24 of election to be exempt.

25 (13) A notice of election to be exempt and a
26 certificate of election to be exempt are subject to revocation
27 if, at any time after the filing of the notice or the issuance
28 of the certificate, the person named on the notice or
29 certificate no longer meets the requirements of this section
30 for issuance of a certificate. The department shall revoke a
31

1 certificate at any time for failure of the person named on the
2 certificate to meet the requirements of this section.

3 (14) Any corporate officer who is an affiliated person
4 of a person who is delinquent in paying a stop-work order and
5 penalty assessment order issued pursuant to s. 440.107, or
6 owed pursuant to a court order, is ineligible for an election
7 of exemption. The stop-work order and penalty assessment shall
8 be in effect against any such affiliated person. As used in
9 this subsection, the term "affiliated person" means:

10 1. The spouse of such other person;

11 2. Any person who directly or indirectly owns or
12 controls, or holds with the power to vote, 10 percent or more
13 of the outstanding voting securities of such other person;

14 3. Any person who directly or indirectly owns 10
15 percent or more of the outstanding voting securities that are
16 directly or indirectly owned, controlled, or held with the
17 power to vote by such other person;

18 4. Any person or group of persons who directly or
19 indirectly control, are controlled by, or are under common
20 control with such other person;

21 5. Any person who directly or indirectly acquires all
22 or substantially all of the other assets of such other person;

23 6. Any officer, director, trustee, partner, owner,
24 manager, joint venturer, or employee of such other person or a
25 person performing duties similar to persons in such positions;
26 or

27 7. Any person who has an officer, director, trustee,
28 partner, or joint venturer in common with such person.

29 Section 7. Section 440.06, Florida Statutes, is
30 amended to read:

31

1 440.06 Failure to secure compensation; effect.--Every
2 employer who fails to secure the payment of compensation under
3 this chapter as provided in s. 440.10 by failing to meet the
4 requirements of s. 440.38 may not, in any suit brought against
5 him or her by an employee subject to this chapter to recover
6 damages for injury or death, defend such a suit on the grounds
7 that the injury was caused by the negligence of a fellow
8 servant, that the employee assumed the risk of his or her
9 employment, or that the injury was due to the comparative
10 negligence of the employee.

11 Section 8. Section 440.077, Florida Statutes, is
12 amended to read:

13 440.077 When a corporate officer ~~sole proprietor,~~
14 ~~partner, or officer~~ rejects chapter, effect.--An A sole
15 ~~proprietor, partner, or officer~~ of a corporation who is
16 permitted to elect to be exempt under this chapter ~~actively~~
17 ~~engaged in the construction industry~~ and who elects to be
18 exempt from ~~the provisions of~~ this chapter may not recover
19 benefits under this chapter.

20 Section 9. Section 440.09, Florida Statutes, is
21 amended to read:

22 440.09 Coverage.--

23 (1) The employer shall pay compensation or furnish
24 benefits required by this chapter if the employee suffers an
25 accidental compensable injury or death arising out of work
26 performed in the course and the scope of employment. The
27 injury, its occupational cause, and any resulting
28 manifestations or disability shall be established to a
29 reasonable degree of medical certainty and by objective
30 medical findings. Mental or nervous injuries occurring as a
31 manifestation of an injury compensable under this section

1 shall be demonstrated by clear and convincing evidence. In
2 cases involving occupational disease or repetitive exposure,
3 both causation and sufficient exposure to support causation
4 must be proven by clear and convincing evidence.

5 (a) This chapter does not require any compensation or
6 benefits for any subsequent injury the employee suffers as a
7 result of an original injury arising out of and in the course
8 of employment unless the original injury is the major
9 contributing cause of the subsequent injury.

10 (b) If an injury arising out of and in the course of
11 employment combines with a preexisting disease or condition to
12 cause or prolong disability or need for treatment, the
13 employer must pay compensation or benefits required by this
14 chapter only to the extent that the injury arising out of and
15 in the course of employment is and remains the major
16 contributing cause of the disability or need for treatment.

17 (c) Death resulting from an operation by a surgeon
18 furnished by the employer for the cure of hernia as required
19 in s. 440.15(6) shall for the purpose of this chapter be
20 considered to be a death resulting from the accident causing
21 the hernia.

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

1 (2) Benefits are not payable in respect of the
2 disability or death of any employee covered by the Federal
3 Employer's Liability Act, the Longshoremen's and Harbor
4 Worker's Compensation Act, the Defense Base Act, or the Jones
5 Act.

6 (3) Compensation is not payable if the injury was
7 occasioned primarily by the intoxication of the employee; by
8 the influence of any drugs, barbiturates, or other stimulants
9 not prescribed by a physician; or by the willful intention of
10 the employee to injure or kill himself, herself, or another.

11 (4)(a) An employee shall not be entitled to receive or
12 retain compensation or benefits under this chapter if any
13 judge of compensation claims, administrative law judge, court,
14 or jury convened in this state determines that the employee
15 has knowingly or intentionally engaged in any of the acts
16 described in s. 440.105 on or after January 1, 1994, or any
17 criminal act,for the purpose of securing workers'
18 compensation benefits. As used in this section, the term
19 "intentional" includes, but is not limited to, pleas of guilty
20 or nolo contendere in criminal matters. This section applies
21 to accidents, regardless of the date of accident. For
22 injuries occurring before January 1, 1994, the section
23 pertains to the acts of the employee described in s. 440.105
24 occurring subsequent to August 1, 2003.

25 (b) A judge of compensation claims, administrative law
26 judge, or court of this state shall take judicial notice of a
27 finding of insurance fraud by a court of competent
28 jurisdiction and shall terminate benefits.

29 (c) Upon a finding of guilt of insurance fraud, a
30 judge of compensation claims has jurisdiction to order any
31 benefits payable to the employee to be paid into the court

1 registry or an escrow account during the pendency of an appeal
2 or until the time in which to file an appeal has expired.

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

11 (6) Except as provided in this chapter, a construction
12 design professional who is retained to perform professional
13 services on a construction project, or an employee of a
14 construction design professional in the performance of
15 professional services on the site of the construction project,
16 is not liable for any injuries resulting from the employer's
17 failure to comply with safety standards on the construction
18 project for which compensation is recoverable under this
19 chapter, unless responsibility for safety practices is
20 specifically assumed by contracts. The immunity provided by
21 this subsection to a construction design professional does not
22 apply to the negligent preparation of design plans or
23 specifications.

24 (7)(a) To ensure that the workplace is a drug-free
25 environment and to deter the use of drugs and alcohol at the
26 workplace, ~~if the employer has reason to suspect that the~~
27 ~~injury was occasioned primarily by the intoxication of the~~
28 ~~employee or by the use of any drug, as defined in this~~
29 ~~chapter, which affected the employee to the extent that the~~
30 ~~employee's normal faculties were impaired, and the employer~~
31 ~~has not implemented a drug-free workplace pursuant to ss.~~

1 ~~440.101 and 440.102~~, the employer may require the employee to
2 submit to a test for the presence of any or all drugs or
3 alcohol in his or her system.

4 (b) If the employee has, at the time of the injury, a
5 blood alcohol level equal to or greater than the level
6 specified in s. 316.193, or if the employee has a positive
7 confirmation of a drug as defined in this act, it is presumed
8 that the injury was occasioned primarily by the intoxication
9 of, or by the influence of the drug upon, the employee. If the
10 employer has implemented a drug-free workplace, this
11 presumption may be rebutted only by evidence that there is no
12 reasonable hypothesis that the intoxication or drug influence
13 contributed to the injury. In the absence of a drug-free
14 workplace program, this presumption may be rebutted by clear
15 and convincing evidence that the intoxication or influence of
16 the drug did not contribute to the injury. Percent by weight
17 of alcohol in the blood must be based upon grams of alcohol
18 per 100 milliliters of blood. If the results are positive, the
19 testing facility must maintain the specimen for a minimum of
20 90 days. Blood serum may be used for testing purposes under
21 this chapter; however, if this test is used, the presumptions
22 under this section do not arise unless the blood alcohol level
23 is proved to be medically and scientifically equivalent to or
24 greater than the comparable blood alcohol level that would
25 have been obtained if the test were based on percent by weight
26 of alcohol in the blood. However, if, before the accident, the
27 employer had actual knowledge of and expressly acquiesced in
28 the employee's presence at the workplace while under the
29 influence of such alcohol or drug, the presumptions specified
30 in this subsection do not apply.

31

1 (c) If the injured worker refuses to submit to a drug
2 test, it shall be presumed in the absence of clear and
3 convincing evidence to the contrary that the injury was
4 occasioned primarily by the influence of drugs.

5 (d) The agency shall provide by rule for the
6 authorization and regulation of drug-testing policies,
7 procedures, and methods. Testing of injured employees shall
8 not commence until such rules are adopted.

9 (8) If, by operation of s. 440.04, benefits become
10 payable to a professional athlete under this chapter, such
11 benefits shall be reduced or setoff in the total amount of
12 injury benefits or wages payable during the period of
13 disability by the employer under a collective bargaining
14 agreement or contract for hire.

15 Section 10. Section 440.10, Florida Statutes, is
16 amended to read:

17 440.10 Liability for compensation.--

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

28 (b) Subject to s. 440.38, any employer who has
29 employees engaged in work in this state shall obtain for such
30 employees a Florida policy or endorsement that utilizes
31 Florida class codes, rates, rules, and manuals that are in

1 compliance with and approved under this chapter and the
2 Insurance Code. The department shall adopt rules for
3 construction industry and non-construction industry employers
4 with regard to the activities that constitute being "engaged
5 in work" in this state, using the following standards:

6 1. For employees of non-construction industry
7 employers who have their headquarters outside Florida and also
8 operate in Florida and who are routinely crossing state lines,
9 but usually return to their state of residence each night, the
10 employee shall be assigned to the headquarters' state.

11 However, the construction industry employees performing new
12 construction or alterations in Florida shall be assigned to
13 Florida even if the employees return to their state of
14 residence each night.

15 2. The payroll associated with executive supervisors
16 who visit a Florida location but who are not in direct charge
17 of a Florida location shall be assigned to the state in which
18 the headquarters is located.

19 3. For construction contractors who maintain a
20 permanent staff of employees and superintendents, if any of
21 these employees or superintendents are assigned to a job that
22 is located in Florida either for the duration of the job or
23 any portion thereof, their payroll shall be assigned to
24 Florida rather than the headquarters' state.

25 4. Employees who are hired for a specific project in
26 Florida shall be assigned to Florida.

27 (c)(b) In case a contractor sublets any part or parts
28 of his or her contract work to a subcontractor or
29 subcontractors, all of the employees of such contractor and
30 subcontractor or subcontractors engaged on such contract work
31 shall be deemed to be employed in one and the same business or

1 establishment; and the contractor shall be liable for, and
2 shall secure, the payment of compensation to all such
3 employees, except to employees of a subcontractor who has
4 secured such payment.

5 ~~(d)(c)~~ A contractor shall ~~may~~ require a subcontractor
6 to provide evidence of workers' compensation insurance ~~or a~~
7 ~~copy of his or her certificate of election~~. A subcontractor
8 that is a corporation and that has an officer who elects
9 ~~electing~~ to be exempt as permitted under this chapter ~~a sole~~
10 ~~proprietor, partner, or officer of a corporation~~ shall provide
11 a copy of his or her certificate of election to be exempt to
12 the contractor.

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

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

30 ~~(e)~~ A subcontractor is not liable for the payment of
31 compensation to the employees of another subcontractor on such

1 ~~contract work and is not protected by the~~
2 ~~exclusiveness of liability provisions of s. 440.11 from action~~
3 ~~at law or in admiralty on account of injury of such employee~~
4 ~~of another subcontractor.~~

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

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

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

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

22
23 ~~A sole proprietor, partner, or officer of a corporation who~~
24 ~~elects exemption from this chapter by filing a certificate of~~
25 ~~election under s. 440.05 may not recover benefits or~~
26 ~~compensation under this chapter. An independent contractor~~
27 ~~who provides the general contractor with both an affidavit~~
28 ~~stating that he or she meets the requirements of s. 440.02 and~~
29 ~~a certificate of exemption is not an employee under s. 440.02~~
30 ~~and may not recover benefits under this chapter. For purposes~~
31 ~~of determining the appropriate premium for workers'~~

1 compensation coverage, carriers may not consider any officer
2 of a corporation ~~person~~ who validly meets the requirements of
3 this subsection ~~paragraph~~ to be an employee.

4 (2) Compensation shall be payable irrespective of
5 fault as a cause for the injury, except as provided in s.
6 440.09(3).

7 Section 11. Section 440.1025, Florida Statutes, is
8 amended to read:

9 440.1025 Consideration of ~~public~~ employer workplace
10 safety program in rate-setting; program requirements;
11 rulemaking.--For an ~~a public~~ employer to be eligible for
12 receipt of specific identifiable consideration under s.
13 627.0915 for a workplace safety program in the setting of
14 rates, the ~~public~~ employer must have a workplace safety
15 program. At a minimum, the program must include a written
16 safety policy and safety rules, and make provision for safety
17 inspections, preventative maintenance, safety training,
18 first-aid, accident investigation, and necessary
19 recordkeeping. ~~For purposes of this section, "public employer"~~
20 ~~means any agency within state, county, or municipal government~~
21 ~~employing individuals for salary, wages, or other~~
22 ~~remuneration.~~The department shall adopt by rule specific
23 components of a qualifying employer workplace safety program,
24 to be used by division may promulgate rules for insurers to
25 determine utilize in determining public employer compliance
26 with the requirements of this section and by the department to
27 determine self-insurer compliance with this section.

28 Section 12. Section 440.103, Florida Statutes, is
29 amended to read:

30 440.103 Building permits; identification of minimum
31 premium policy.--~~Except as otherwise provided in this chapter,~~

1 Every employer shall, as a condition to applying for and
2 receiving a building permit, show proof and certify to the
3 permit insurer that it has secured compensation for its
4 employees under this chapter as provided in ss. 440.10, and
5 440.38, and 440.107(2). Such proof of compensation must be
6 evidenced by a certificate of insurance coverage issued by the
7 carrier, a valid exemption certificate approved by the
8 department or the former Division of Workers' Compensation of
9 the Department of Labor and Employment Security, or a copy of
10 the employer's authority to self-insure and must be presented
11 each time the employer applies for a building permit. Prior to
12 issuing a building permit, such proof of compensation must be
13 verified by confirming coverage through the department's
14 proof-of-coverage database. Each certificate of insurance must
15 indicate the states for which the coverage applies.As
16 provided in s. 627.413(5), each certificate of coverage must
17 show, on its face, whether or not coverage is secured under
18 the minimum premium provisions of rules adopted by rating
19 organizations licensed by the department. The words "minimum
20 premium policy" or equivalent language shall be typed,
21 printed, stamped, or legibly handwritten.

22 Section 13. Subsection (6) of section 440.104, Florida
23 Statutes, is amended to read:

24 440.104 Competitive bidder; civil actions.--

25 (6) A person may not recover any amounts under this
26 section if the defendant in the action establishes by a
27 preponderance of the evidence that the plaintiff+

28 ~~(a)~~ was in violation of s. 440.10, s. 440.105, or s.
29 440.38 at the time of making the bid on the contract, ~~or~~

30
31

1 ~~(b) Was in violation of s. 440.10, s. 440.105, or s.~~
2 ~~440.38 with respect to any contract performed by the plaintiff~~
3 ~~within 1 year before making the bid on the contract.~~

4 Section 14. Section 440.105, Florida Statutes, is
5 amended to read:

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

8 (1)(a) Any insurance carrier, any individual
9 self-insured, any commercial or group self-insurance fund, any
10 professional practitioner licensed or regulated by the
11 Department of Health Business and Professional Regulation,
12 except as otherwise provided by law, any medical review
13 committee as defined in s. 766.101, any private medical review
14 committee, any peer review organization as provided for in s.
15 440.192(9), and any insurer, agent, or other person licensed
16 under the insurance code, or any employee thereof, having
17 knowledge or who believes that a fraudulent act or any other
18 act or practice which, upon conviction, constitutes a felony
19 or misdemeanor under this chapter is being or has been
20 committed must ~~shall~~ send to the Department of Law Enforcement
21 ~~Division of Insurance Fraud, Office Bureau~~ of Workers'
22 Compensation Insurance Fraud, a report or information
23 pertinent to such knowledge or belief and such additional
24 information relative thereto as the office bureau may require.
25 The office bureau shall review such information or reports and
26 select such information or reports as, in its judgment, may
27 require further investigation. It shall then cause an
28 independent examination of the facts surrounding such
29 information or report to be made to determine the extent, if
30 any, to which a fraudulent act or any other act or practice
31 which, upon conviction, constitutes a felony or a misdemeanor

1 under this chapter is being committed. The office ~~bureau~~ shall
2 report any alleged violations of law which its investigations
3 disclose to the appropriate licensing agency and state
4 attorney or other prosecuting agency having jurisdiction with
5 respect to any such violations of this chapter. If prosecution
6 by the state attorney or other prosecuting agency having
7 jurisdiction with respect to such violation is not begun
8 within 60 days of the office's ~~bureau's~~ report, the state
9 attorney or other prosecuting agency having jurisdiction with
10 respect to such violation shall inform the office ~~bureau~~ of
11 the reasons for the lack of prosecution.

12 (b) In the absence of fraud or bad faith, a person is
13 not subject to civil liability for libel, slander, or any
14 other relevant tort by virtue of filing reports, without
15 malice, or furnishing other information, without malice,
16 required by this section or required by the office ~~bureau~~, and
17 no civil cause of action of any nature shall arise against
18 such person:

19 1. For any information relating to suspected
20 fraudulent acts furnished to or received from law enforcement
21 officials, their agents, or employees;

22 2. For any information relating to suspected
23 fraudulent acts furnished to or received from other persons
24 subject to the provisions of this chapter; or

25 3. For any such information relating to suspected
26 fraudulent acts furnished in reports to the office ~~bureau~~, or
27 the National Association of Insurance Commissioners.

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

31

1 (a) It shall be unlawful for any employer to
2 knowingly:

3 1. Coerce or attempt to coerce, as a precondition to
4 employment or otherwise, an employee to obtain a certificate
5 of election of exemption pursuant to s. 440.05.

6 2. Discharge or refuse to hire an employee or job
7 applicant because the employee or applicant has filed a claim
8 for benefits under this chapter.

9 3. Discharge, discipline, or take any other adverse
10 personnel action against any employee for disclosing
11 information to the department or any law enforcement agency
12 relating to any violation or suspected violation of any of the
13 provisions of this chapter or rules promulgated hereunder.

14 ~~4. Violate a stop-work order issued by the department~~
15 ~~pursuant to s. 440.107.~~

16 (b) It shall be unlawful for any insurance entity to
17 revoke or cancel a workers' compensation insurance policy or
18 membership because an employer has returned an employee to
19 work or hired an employee who has filed a workers'
20 compensation claim.

21 (3) Whoever violates any provision of this subsection
22 commits a felony of the third degree ~~misdemeanor of the first~~
23 ~~degree~~, punishable as provided in s. 775.082 ~~or s. 775.083,~~ or
24 s. 775.084.

25 (a) It shall be unlawful for any employer to knowingly
26 fail to update applications for coverage as required by s.
27 440.381(1) and rules adopted by the Department of Financial
28 Services within 5 days after the end of the quarter in which
29 the change occurred ~~insurance rules~~, or to post notice of
30 coverage or certificate of insurance pursuant to s. 440.40.

31

1 (b) It is unlawful for any attorney or other person,
2 in his or her individual capacity or in his or her capacity as
3 a public or private employee, or for any firm, corporation,
4 partnership, or association to receive any fee or other
5 consideration or any gratuity from a person on account of
6 services rendered for a person in connection with any
7 proceedings arising under this chapter, unless such fee,
8 consideration, or gratuity is approved by a judge of
9 compensation claims or by the Deputy Chief Judge of
10 Compensation Claims.

11 (4) Whoever violates any provision of this subsection
12 commits insurance fraud, punishable as provided in paragraph
13 (f).

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

16 1. Present or cause to be presented any false,
17 fraudulent, or misleading oral or written statement to any
18 person as evidence of compliance with s. 440.38.

19 2. Make a deduction from the pay of any employee
20 entitled to the benefits of this chapter for the purpose of
21 requiring the employee to pay any portion of premium paid by
22 the employer to a carrier or to contribute to a benefit fund
23 or department maintained by such employer for the purpose of
24 providing compensation or medical services and supplies as
25 required by this chapter.

26 3. Fail to secure payment of compensation if required
27 to do so by this chapter.

28 (b) It shall be unlawful for any person:

29 1. To knowingly make, or cause to be made, any false,
30 fraudulent, or misleading oral or written statement for the
31

1 purpose of obtaining or denying any benefit or payment under
2 this chapter.

3 2. To present or cause to be presented any written or
4 oral statement as part of, or in support of, a claim for
5 payment or other benefit pursuant to any provision of this
6 chapter, knowing that such statement contains any false,
7 incomplete, or misleading information concerning any fact or
8 thing material to such claim.

9 3. To prepare or cause to be prepared any written or
10 oral statement that is intended to be presented to any
11 employer, insurance company, or self-insured program in
12 connection with, or in support of, any claim for payment or
13 other benefit pursuant to any provision of this chapter,
14 knowing that such statement contains any false, incomplete, or
15 misleading information concerning any fact or thing material
16 to such claim.

17 4. To knowingly assist, conspire with, or urge any
18 person to engage in activity prohibited by this section.

19 5. To knowingly make any false, fraudulent, or
20 misleading oral or written statement, or to knowingly omit or
21 conceal material information, required by s. 440.185 or s.
22 440.381, for the purpose of obtaining workers' compensation
23 coverage or for the purpose of avoiding, delaying, or
24 diminishing the amount of payment of any workers' compensation
25 premiums.

26 6. To knowingly misrepresent or conceal payroll,
27 classification of workers, or information regarding an
28 employer's loss history which would be material to the
29 computation and application of an experience rating
30 modification factor for the purpose of avoiding or diminishing
31 the amount of payment of any workers' compensation premiums.

1 7. To knowingly present or cause to be presented any
2 false, fraudulent, or misleading oral or written statement to
3 any person as evidence of compliance with s. 440.38, as
4 evidence of eligibility for a certificate of exemption under
5 s. 440.05.

6 8. To knowingly violate a stop-work order issued by
7 the department under s. 440.107.

8 9. To knowingly present or cause to be presented any
9 false, fraudulent, or misleading oral or written statement to
10 any person as evidence of identity for the purpose of
11 obtaining employment or filing or supporting a claim for
12 workers' compensation benefits.

13 (c) It shall be unlawful for any physician licensed
14 under chapter 458, osteopathic physician licensed under
15 chapter 459, chiropractic physician licensed under chapter
16 460, podiatric physician licensed under chapter 461,
17 optometric physician licensed under chapter 463, or any other
18 practitioner licensed under the laws of this state to
19 knowingly and willfully assist, conspire with, or urge any
20 person to fraudulently violate any of the provisions of this
21 chapter.

22 (d) It shall be unlawful for any person or
23 governmental entity licensed under chapter 395 to maintain or
24 operate a hospital in such a manner so that such person or
25 governmental entity knowingly and willfully allows the use of
26 the facilities of such hospital by any person, in a scheme or
27 conspiracy to fraudulently violate any of the provisions of
28 this chapter.

29 (e) It shall be unlawful for any attorney or other
30 person, in his or her individual capacity or in his or her
31 capacity as a public or private employee, or any firm,

1 corporation, partnership, or association, to knowingly assist,
2 conspire with, or urge any person to fraudulently violate any
3 of the provisions of this chapter.

4 (f) If the monetary value ~~amount~~ of any ~~claim or~~
5 ~~workers' compensation insurance premium involved in any~~
6 violation of this subsection:

7 1. Is less than \$20,000, the offender commits a felony
8 of the third degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084.

10 2. Is \$20,000 or more, but less than \$100,000, the
11 offender commits a felony of the second degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084.

13 3. Is \$100,000 or more, the offender commits a felony
14 of the first degree, punishable as provided in s. 775.082, s.
15 775.083, or s. 775.084.

16 (5) It shall be unlawful for any attorney or other
17 person, in his or her individual capacity or in his or her
18 capacity as a public or private employee or for any firm,
19 corporation, partnership, or association, to unlawfully
20 solicit any business in and about city or county hospitals,
21 courts, or any public institution or public place; in and
22 about private hospitals or sanitariums; in and about any
23 private institution; or upon private property of any character
24 whatsoever for the purpose of making workers' compensation
25 claims. Whoever violates any provision of this subsection
26 commits a felony of the third degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.085.

28 (6) This section does not ~~shall not be construed to~~
29 preclude the applicability of any other provision of criminal
30 law that applies or may apply to any transaction.

31

1 ~~(7) For the purpose of the section, the term~~
2 ~~"statement" includes, but is not limited to, any notice,~~
3 ~~representation, statement, proof of injury, bill for services,~~
4 ~~diagnosis, prescription, hospital or doctor records, X ray,~~
5 ~~test result, or other evidence of loss, injury, or expense.~~

6 (7)(8) The carrier shall obtain the personal signature
7 of the injured employee or any other party making a claim
8 under this chapter, attesting that he or she has reviewed,
9 understands, and acknowledges ~~All claim forms as provided for~~
10 ~~in this chapter shall contain a notice that clearly states in~~
11 ~~substance~~ the following statement: "Any person who, knowingly
12 and with intent to injure, defraud, or deceive any employer or
13 employee, insurance company, or self-insured program, files a
14 statement of claim containing any false or misleading
15 information commits insurance fraud, punishable as provided in
16 s. 817.234." If the injured employee refuses to sign the
17 statement attesting that he or she has reviewed, understands,
18 and acknowledges the statement, the injured employee is
19 ineligible for benefits under this chapter until such
20 signature is obtained. ~~Each claimant shall personally sign the~~
21 ~~claim form and attest that he or she has reviewed,~~
22 ~~understands, and acknowledges the foregoing notice.~~

23 (8) All workers' compensation payment checks issued by
24 a carrier pursuant to any claim under this chapter must
25 contain the fraud statement provided in subsection (7).

26 (9) As a condition of receiving compensation, as
27 provided in this chapter, an employee shall execute a waiver
28 authorizing the carrier or self-insured employer to verify or
29 determine through the Division of Unemployment Compensation
30 whether an employing unit is reporting such an employee as an
31

1 employee while the carrier is concurrently paying workers'
2 compensation benefits to the employee.

3 Section 15. Subsections (1) and (2) of section
4 440.1051, Florida Statutes, is amended to read:

5 440.1051 Fraud reports; civil immunity; criminal
6 penalties.--

7 (1) The Office ~~Bureau~~ of Workers' Compensation
8 Insurance Fraud ~~of the Division of Insurance Fraud~~ of the
9 Department of Law Enforcement ~~Insurance~~ shall establish a
10 toll-free telephone number to receive reports of workers'
11 compensation fraud committed by an employee, employer,
12 insurance provider, physician, attorney, or other person.

13 (2) Any person who reports workers' compensation fraud
14 to the division or the office under subsection (1) is immune
15 from civil liability for doing so, and the person or entity
16 alleged to have committed the fraud may not retaliate against
17 him or her for providing such report, unless the person making
18 the report knows it to be false.

19 Section 16. Section 440.107, Florida Statutes, is
20 amended to read:

21 440.107 Department powers to enforce employer
22 compliance with coverage requirements.--

23 (1) The Legislature finds that the failure of an
24 employer to comply with the workers' compensation coverage
25 requirements under this chapter poses an immediate danger to
26 public health, safety, and welfare. ~~The Legislature authorizes~~
27 ~~the department to secure employer compliance with the workers'~~
28 ~~compensation coverage requirements and authorizes the~~
29 ~~department to conduct investigations for the purpose of~~
30 ~~ensuring employer compliance.~~

31

1 (2) As used in this section, the term "to secure the
2 payment of workers' compensation" means to obtain coverage
3 that meets the requirements of this chapter and the Florida
4 Insurance Code. However, if at any time an employer
5 materially understates or conceals payroll, materially
6 misrepresents or conceals employee duties so as to avoid
7 proper classification for premium calculations, or materially
8 misrepresents or conceals information pertinent to the
9 computation and application of an experience rating
10 modification factor, the employer is considered to have failed
11 to secure payment of workers' compensation required under this
12 chapter and is subject to the sanctions set forth in this
13 section. A stop-work order issued because an employer is
14 considered to have failed to secure the payment of workers'
15 compensation required under this chapter because the employer
16 has materially understated or concealed payroll, has
17 materially misrepresented or concealed employee duties so as
18 to avoid proper classification for premium calculations, or
19 has materially misrepresented or concealed information
20 pertinent to the computation and application of an experience
21 rating modification factor has no effect upon an employer's
22 or carrier's duty to provide benefits under this chapter or
23 upon any of the employer's and carrier's rights and defenses
24 under this chapter, including exclusive remedy.

25 (3) The department shall enforce workers' compensation
26 coverage requirements, including the requirements that the
27 employer secure the payment of workers' compensation coverage,
28 provide the carrier with information to accurately determine
29 payroll, and correctly assign employee classification codes.
30 In addition to any other powers under this chapter, the
31 department may:

- 1 (a) Conduct investigations for the purpose of ensuring
2 employer compliance;
- 3 (b) Enter and inspect any place of business at any
4 reasonable time for the purpose of investigating employer
5 compliance;
- 6 (c) Examine and copy business records;
- 7 (d) Administer oaths and affirmations;
- 8 (e) Certify to official acts;
- 9 (f) Issue and serve subpoenas for attendance of
10 witnesses or production of business records, books, papers,
11 correspondence, memoranda, and other records;
- 12 (g) Issue stop-work orders, penalty-assessment orders,
13 and any other orders necessary for the administration of this
14 section;
- 15 (h) Enforce the terms of a stop-work order;
- 16 (i) Levy and pursue actions to recover penalties; and
- 17 (j) Seek injunctions and other appropriate relief.
- 18 (4) The department shall designate representatives who
19 may serve subpoenas and other process of the department issued
20 under this section.
- 21 (5) The department shall specify by rule the business
22 records that employers must maintain and produce to comply
23 with this section.~~The department and its authorized~~
24 ~~representatives may enter and inspect any place of business at~~
25 ~~any reasonable time for the limited purpose of investigating~~
26 ~~compliance with workers' compensation coverage requirements~~
27 ~~under this chapter. Each employer shall keep true and accurate~~
28 ~~business records that contain such information as the~~
29 ~~department prescribes by rule. The business records must~~
30 ~~contain information necessary for the department to determine~~
31 ~~compliance with workers' compensation coverage requirements~~

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

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

18 ~~(6)(4)~~ If a person has refused to obey a subpoena to
19 appear before the department or its authorized representative,
20 to and produce evidence requested by the department, or to
21 give testimony about the matter that is under investigation, a
22 court has jurisdiction to issue an order requiring compliance
23 with the subpoena if the court has jurisdiction in the
24 geographical area where the inquiry is being carried on or in
25 the area where the person who has refused the subpoena is
26 found, resides, or transacts business. Failure to obey such a
27 court order may be punished by the court as contempt, either
28 civilly or criminally.

29 ~~(7)(a)(5)~~ Whenever the department determines that an
30 employer who is required to secure the payment to his or her
31 employees of the compensation provided for by this chapter has

1 failed to secure the payment of workers' compensation required
2 by this chapter or to produce required business records
3 pursuant to subsection (5) within 5 business days after the
4 written request of the department ~~do so~~, such failure shall be
5 deemed an immediate serious danger to public health, safety,
6 or welfare sufficient to justify service by the department of
7 a stop-work order on the employer, requiring the cessation of
8 all business operations ~~at the place of employment or job~~
9 ~~site~~. If the department ~~division~~ makes such a determination,
10 the department ~~division~~ shall issue a stop-work order within
11 72 hours. The order shall take effect when served upon the
12 ~~date of service~~ upon the employer or, for a particular
13 employer work site, when served at that work site, ~~unless the~~
14 ~~employer provides evidence satisfactory to the department of~~
15 ~~having secured any necessary insurance or self-insurance and~~
16 ~~pays a civil penalty to the department, to be deposited by the~~
17 ~~department into the Workers' Compensation Administration Trust~~
18 ~~Fund, in the amount of \$100 per day for each day the employer~~
19 ~~was not in compliance with this chapter.~~ In addition to
20 serving a stop-work order at a particular work site which
21 shall be effective immediately, the department shall
22 immediately proceed with service upon the employer which shall
23 be effective upon all employer work sites in the state. A
24 stop-work order may be served with regard to an employer's
25 work site by posting a copy of the stop-work order in a
26 conspicuous location at the work site. The order shall remain
27 in effect until the department issues an order releasing the
28 stop-work order upon the finding that the employer has come
29 into compliance with the coverage requirements of this chapter
30 and has paid any penalty assessed under this section. The
31 department may require an employer who is found to have failed

1 to comply with the coverage requirements of s. 440.38 to file
2 with the department, as a condition of release from a
3 stop-work order, periodic reports for a probationary period
4 that shall not exceed 2 years of demonstrating continued
5 compliance with this chapter. The department shall by rule
6 specify the reports required and the time for filing under
7 this subsection.

8 (b) Stop-work orders and penalty-assessment orders
9 issued under this section against a corporation, partnership,
10 or sole proprietorship shall be in effect against any
11 successor corporation or business entity that has one or more
12 of the same principals or officers as the corporation or
13 partnership against which the stop-work order was issued and
14 are engaged in the same or related enterprise.

15 (c) The department shall assess a penalty of \$1,000
16 per day against an employer for each day that the employer
17 conducts business operations that are in violation of a
18 stop-work order.

19 (d)1. In addition to any penalty, stop-work order, or
20 injunction, the department shall assess against any employer
21 who has failed to secure the payment of compensation as
22 required by this chapter a penalty of five times the amount
23 the employer would have paid in premium when applying approved
24 manual rates to the employer's payroll during periods it
25 failed to secure the payment of workers' compensation required
26 by this chapter in the preceding 3-year period, or \$1,000,
27 whichever is greater.

28 2. Any subsequent violation within 5 years of the most
29 recent violation shall, in addition, to the penalty set forth
30 in this subsection, be considered a knowing act within the
31 meaning of s. 440.105.

1 (e) When an employer fails to provide business records
2 sufficient to enable the department to determine the
3 employer's payroll for the period requested for the
4 calculation of the penalty provided in paragraph (d),
5 remuneration shall be imputed, for penalty calculation
6 purposes, as follows: for each employee, corporate officer,
7 sole proprietor, or partner, the imputed weekly payroll for
8 each such individual shall be the statewide average weekly
9 wage as defined in s. 440.12(2) multiplied by 1.5.

10 (f) In addition to any other penalties provided for in
11 this chapter, the department may assess against the employer a
12 penalty of \$5,000 for each employee of that employer who the
13 employer represents to the department or carrier as an
14 independent contractor but who is determined by the department
15 not to be an independent contractor as defined in s. 440.02.

16 ~~(8)(6)~~ In addition to filing a stop-work order under
17 subsection (7), the department may file a complaint in the
18 circuit court in and for Leon County to enjoin any employer,
19 who has failed to secure the payment of workers' compensation
20 ~~as~~ required by this chapter, from employing individuals and
21 from conducting business until the employer presents evidence
22 satisfactory to the department of having secured the payment
23 of workers' ~~for~~ compensation required by this chapter and pays
24 a civil penalty assessed by ~~to~~ the department under this
25 section, ~~to be deposited by the department into the Workers'~~
26 ~~Compensation Administration Trust Fund, in the amount of \$100~~
27 ~~per day for each day the employer was not in compliance with~~
28 ~~this chapter.~~

29 ~~(9)(7)~~ In addition to any penalty, stop-work order, or
30 injunction, the department shall assess against any employer,
31

1 ~~who has failed to secure the payment of compensation as~~
2 ~~required by this chapter, a penalty in the following amount:~~

3 ~~(a) An amount equal to at least the amount that the~~
4 ~~employer would have paid or up to twice the amount the~~
5 ~~employer would have paid during periods it illegally failed to~~
6 ~~secure payment of compensation in the preceding 3-year period~~
7 ~~based on the employer's payroll during the preceding 3-year~~
8 ~~period; or~~

9 ~~(b) One thousand dollars, whichever is greater.~~

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

20 ~~(10)(8)~~ (10) The department may bring an action in circuit
21 court to recover penalties assessed under this section,
22 including any interest owed to the department pursuant to this
23 section. In any action brought by the department pursuant to
24 this section in which it prevails, the circuit court shall
25 award costs, including the reasonable costs of investigation
26 and a reasonable attorney's fee.

27 ~~(11)(9)~~ (11) Any judgment obtained by the department and
28 any penalty due pursuant to the service of a stop-work order
29 or otherwise due under this section shall, until collected,
30 constitute a lien upon the entire interest of the employer,
31 legal or equitable, in any property, real or personal,

1 tangible or intangible; however, such lien is subordinate to
2 claims for unpaid wages and any prior recorded liens, and a
3 lien created by this section is not valid against any person
4 who, subsequent to such lien and in good faith and for value,
5 purchases real or personal property from such employer or
6 becomes the mortgagee on real or personal property of such
7 employer, or against a subsequent attaching creditor, unless,
8 with respect to real estate of the employer, a notice of the
9 lien is recorded in the public records of the county where the
10 real estate is located, and with respect to personal property
11 of the employer, the notice is recorded with the Secretary of
12 State.

13 (12)~~(10)~~ Any law enforcement agency in the state may,
14 at the request of the department, render any assistance
15 necessary to carry out the provisions of this section,
16 including, but not limited to, preventing any employee or
17 other person from remaining at a place of employment or job
18 site after a stop-work order or injunction has taken effect.

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

29 (14)~~(12)~~ If the department ~~division~~ finds that an
30 employer who is certified or registered under part I or part
31 II of chapter 489 and who is required to secure payment of

1 workers'~~the~~ compensation provided for by this chapter to his
2 or her employees has failed to do so, the department ~~division~~
3 shall immediately notify the Department of Business and
4 Professional Regulation.

5 Section 17. Section 440.12, Florida Statutes, is
6 amended to read:

7 440.12 Time for commencement and limits on weekly rate
8 of compensation.--

9 (1) No compensation shall be allowed for the first 7
10 calendar days of the disability, except benefits provided for
11 in ~~ss. s.~~440.13 and 440.134. However, if the injury results
12 in disability and payment of any compensation benefits for ~~of~~
13 more than 21 calendar days, compensation shall be allowed from
14 the commencement of the disability. Calendar days of
15 disability do not have to be consecutive.All weekly
16 compensation payments, except for the first payment, shall be
17 paid by check or, if authorized by the employee, deposited
18 directly into the employee's account at a financial
19 institution. As used in this subsection, the term "financial
20 institution" means a financial institution as defined in s.
21 655.005(1)(h).

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

29 (a) Equal to 100 percent of the statewide average
30 weekly wage, determined as hereinafter provided for the year
31 in which the accident ~~injury~~ occurred regardless of whether

1 the employee thereafter returns to employment of any
2 description and regardless of any subsequent date upon which
3 the employee becomes disabled, except specifically in cases of
4 occupational disease in which the date of disability may be
5 synonymous with date of accident; however, the increase to 100
6 percent from 66 2/3 percent of the statewide average weekly
7 wage shall apply only to injuries occurring on or after August
8 1, 1979; and

9 (b) Adjusted to the nearest dollar.

10
11 For the purpose of this subsection, the "statewide average
12 weekly wage" means the average weekly wage paid by employers
13 subject to the Florida Unemployment Compensation Law as
14 reported to the Agency for Workforce Innovation for the four
15 calendar quarters ending each June 30, which average weekly
16 wage shall be determined by the Agency for Workforce
17 Innovation on or before November 30 of each year and shall be
18 used in determining the maximum weekly compensation rate with
19 respect to injuries occurring in the calendar year immediately
20 following. The statewide average weekly wage determined by the
21 Agency for Workforce Innovation shall be reported annually to
22 the Legislature and published by the division.

23 (3) The provisions of this section as amended
24 effective July 1, 1951, shall govern with respect to
25 disability due to injuries suffered prior to July 1, 1959.
26 The provisions of this section as amended effective July 1,
27 1959, shall govern with respect to disability due to injuries
28 suffered after June 30, 1959, and prior to January 1, 1968.
29 The provisions of this section as amended effective January 1,
30 1968, shall govern with respect to disability due to injuries
31 suffered after December 31, 1967, and prior to July 1, 1970.

1 The provisions of this section as amended effective July 1,
2 1970, shall govern with respect to disability due to injuries
3 suffered after June 30, 1970, and prior to July 1, 1972. The
4 provisions of this section as amended effective July 1, 1972,
5 shall govern with respect to disability due to injuries
6 suffered after June 30, 1972, and prior to July 1, 1973. The
7 provisions of this section, as amended effective July 1, 1973,
8 shall govern with respect to disability due to injuries
9 suffered after June 30, 1973, and prior to January 1, 1975.

10 Section 18. Section 440.125, Florida Statutes, is
11 amended to read:

12 440.125 Medical records and reports; identifying
13 information in employee medical bills; confidentiality.--Any
14 medical records and medical reports of an injured employee and
15 any information identifying an injured employee in medical
16 bills which are provided to the department, pursuant to s.
17 440.13, are confidential and exempt from the provisions of s.
18 119.07(1) and s. 24(a), Art. I of the State Constitution,
19 except as otherwise provided by this chapter. The department
20 may share any such confidential and exempt records, reports,
21 or information received pursuant to s. 440.13 with ~~the Agency~~
22 ~~for Health Care Administration and the Department of Education~~
23 in furtherance of their official duties under ss. 440.13 and
24 440.134. The agency and the department shall maintain the
25 confidential and exempt status of such records, reports, and
26 information received.

27 Section 19. Effective March 1, 2004, section 440.13,
28 Florida Statutes, is amended to read:

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

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

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

3 (a)(b) "Attendant care" means care rendered by trained
4 professional attendants after the date of execution of a
5 written prescription or order therefor by an authorized
6 provider which is beyond the scope of household duties.
7 Attendant care does not include housecleaning, meal
8 preparation, or home or yard maintenance, except in cases of a
9 severity that the injured worker would be confined to a
10 nursing facility as the only alternative to the provision of
11 such care. Family members may provide nonprofessional
12 attendant care, but may not be compensated under this chapter
13 for care that falls within the scope of household duties and
14 other services normally and gratuitously provided by family
15 members. "Family member" means a spouse, father, mother,
16 brother, sister, child, grandchild, father-in-law,
17 mother-in-law, aunt, or uncle.

18 ~~(c) "Carrier" means, for purposes of this section,~~
19 ~~insurance carrier, self-insurance fund or individually~~
20 ~~self-insured employer, or assessable mutual insurer.~~

21 (b)(d) "Catastrophic injury" means an injury as
22 defined in s. 440.02.

23 (c)(e) "Certified health care provider" means a health
24 care provider who has been certified by the department in
25 accordance with department rules for qualification ~~agency or~~
26 ~~who has entered an agreement with a licensed managed care~~
27 ~~organization to provide treatment to injured workers under~~
28 ~~this section.~~ Certification of such health care provider must
29 include documentation that the health care provider has read,
30 and is familiar with, and has committed to comply with, the
31 portions of the statute, impairment guides, standards of care,

1 practice guidelines and parameters, and rules which govern the
2 provision of remedial treatment, care, and attendance, as
3 prescribed by the department.

4 ~~(f) "Compensable" means a determination by a carrier~~
5 ~~or judge of compensation claims that a condition suffered by~~
6 ~~an employee results from an injury arising out of and in the~~
7 ~~course of employment.~~

8 ~~(d)(g)~~ "Emergency services and care" means emergency
9 services and care as defined in s. 395.002.

10 ~~(e)(h)~~ "Health care facility" means any hospital
11 licensed under chapter 395 and any health care institution
12 licensed under chapter 400.

13 ~~(f)(i)~~ "Health care provider" means a physician or any
14 recognized practitioner who provides skilled services pursuant
15 to a prescription or under the supervision or direction of a
16 physician and who has been certified by the department ~~agency~~
17 as a health care provider. The term "health care provider"
18 includes a health care facility.

19 ~~(g)~~ "Employment status" means terms and conditions of
20 the actual work being performed for the preinjury employer,
21 including, but not limited to, whether the employee is working
22 for the employer, working in the preinjury job or a different
23 job, working full-time or part-time, and working regular duty
24 or modified duty.

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

29 ~~(k) "Independent medical examination" means an~~
30 ~~objective evaluation of the injured employee's medical~~
31 ~~condition, including, but not limited to, impairment or work~~

1 ~~status, performed by a physician or an expert medical advisor~~
2 ~~at the request of a party, a judge of compensation claims, or~~
3 ~~the agency to assist in the resolution of a dispute arising~~
4 ~~under this chapter.~~

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

8 (i) "Limitations" means specific statements of maximum
9 abilities, which have been objectively and actually measured.

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

25 (k)(n) "Medicine" means a drug prescribed by an
26 authorized physician health care provider and includes only
27 generic drugs or single-source patented drugs for which there
28 is no generic equivalent, unless the authorized health care
29 provider writes or states that the brand-name drug as defined
30 in s. 465.025 is medically necessary, or is a drug appearing
31

1 on the schedule of drugs created pursuant to s. 465.025(6), or
2 is available at a cost lower than its generic equivalent.

3 (l)~~(o)~~ "Palliative care" means noncurative medical
4 services that mitigate the conditions, effects, or pain of an
5 injury.

6 (m)~~(p)~~ "Pattern or practice of overutilization" means
7 repetition of instances of overutilization within a specific
8 medical case or multiple cases by a single health care
9 provider.

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

16 (n)~~(r)~~ "Physician" or "doctor" means a physician
17 licensed under chapter 458, an osteopathic physician licensed
18 under chapter 459, a chiropractic physician licensed under
19 chapter 460, a podiatric physician licensed under chapter 461,
20 an optometrist licensed under chapter 463, or a dentist
21 licensed under chapter 466, each of whom must be certified by
22 the department ~~agency~~ as a health care provider.

23 (o)~~(s)~~ "Reimbursement dispute" means any disagreement
24 between a health care provider or health care facility and
25 carrier concerning payment for medical treatment.

26 (p) "Relevant" means correlating with subjective
27 complaints and reported functional disturbances presented by
28 the patient.

29 (q) "Restrictions" means functional parameters
30 assigned by a physician, based on a clinical protocol and
31 objective medical findings, and which describe activities that

1 are medically contraindicated as a result of a specific
2 injury. Restrictions may be temporary or permanent, and the
3 expected probable duration should be expressed when they are
4 assigned.

5 (n)(t) "Utilization control" means a systematic
6 process of implementing measures that assure overall
7 management and cost containment of services delivered,
8 including compliance with standards of care and practice as
9 provided for in this chapter and department rule.

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

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

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

1 durable medical equipment, orthoses, prostheses, and other
2 medically necessary apparatus.

3 (b) All remedial treatment, care, and attendance must
4 be rendered in accordance with the following standards of
5 care:

6 1. Remedial treatment, care, and attendance, including
7 work-hardening programs or pain-management programs accredited
8 by the Commission on Accreditation of Rehabilitation
9 Facilities or Joint Commission on the Accreditation of Health
10 Organizations or pain-management programs affiliated with
11 medical schools, shall be considered as covered treatment only
12 when such care is given based on a referral by a principal
13 treating provider ~~physician~~ as defined in this chapter.

14 2. Each facility shall maintain outcome data in a
15 format determined and published by the department as specified
16 by rule, including work status at discharges, total program
17 charges, total number of visits, and length of stay. The
18 department shall utilize such data and report to the President
19 of the Senate and the Speaker of the House of Representatives
20 regarding the efficacy and cost-effectiveness of such program,
21 no less frequently than every 5 years ~~later than October 1,~~
22 ~~1994.~~

23 3. Medically necessary treatment, care, and attendance
24 does not include chiropractic services in excess of 36 ~~48~~
25 treatments or rendered 16 ~~8~~ weeks beyond the date of the
26 initial chiropractic treatment, whichever comes first, unless
27 the carrier authorizes additional treatment or the employee is
28 catastrophically injured.

29 4. The injured employee shall be presumed normal until
30 there is confirmed abnormal relevant physiology as determined
31 by objective, relevant physical exam findings or diagnostic

1 testing, or both. The assignment of restrictions or
2 limitations requires confirmed abnormal relevant physiology,
3 except during the reasonable period necessary to determine the
4 presence or absence of a confirmed abnormal relevant
5 physiology in an expeditious manner. During the period of
6 time necessary for the authorized treating provider to make a
7 determination on the presence or absence of confirmed relevant
8 physiology, the carrier may pay compensation benefits in
9 accordance with s. 440.20(4) if the authorized treating
10 physician provides written confirmation of limitations or
11 restrictions. The presence of abnormal relevant physiology
12 cannot be confirmed by pain or other subjective complaints
13 alone. Pain or other subjective complaints alone shall also
14 not be the basis for establishing an injury, illness or
15 functional disturbance. Medical treatment, care, and
16 attendance must include evaluation, diagnostic testing, and
17 assessment necessary until the authorized treating provider
18 can reasonably determine the presence or absence of confirmed
19 abnormal relevant physiology. Upon completion of that
20 determination, medically necessary remedial treatment, care,
21 and attendance shall be provided only in the presence of
22 confirmed abnormal relevant physiology. Abnormal anatomical
23 findings alone, in the absence of confirmed abnormal relevant
24 physiology, shall not be an indicator of injury, illness, or
25 functional disturbance and shall not be justification for
26 provision of remedial medical care or assignment of
27 restrictions, nor foundation for limitations.

28 5. At all times during evaluation and treatment, the
29 provider shall act on the premise that returning to work is an
30 integral part of the treatment plan. The goal of removing all
31 restrictions and limitations as early as is appropriate should

1 be part of the treatment plan on a continuous basis. The
2 assignment of restrictions and limitations should be reviewed
3 with each patient examination and upon receipt of new
4 information such as progress reports from physical therapists
5 and other providers. Consideration should be given to
6 upgrading or removing the restrictions and limitations with
7 each patient examination, based upon the presence or absence
8 of confirmed abnormal relevant physiology.

9 6. The presence of confirmed abnormal relevant
10 physiology does not necessarily equate to an automatic
11 limitation or restriction in function. Functional limitations
12 must be measured directly, and correlated clinically. Clinical
13 substantiation is achieved when the provider can connect the
14 measured functional limitation to the relevant physiologic
15 findings. Prescribed functional restrictions must also
16 correlate directly to the relevant physiologic findings.

17 7. All medical and related decisions including, but
18 not limited to, diagnosis, treatment recommendations, consults
19 and referrals, authorization for clinical services, and
20 medical dispute resolution, shall be based on evidence-based
21 criteria as documented by at least one of the three acceptable
22 standards:

23 a. Research support, as represented through published
24 scientific studies in widely accepted juried journals.

25 b. Professional consensus as represented by published
26 practice guidelines or related documentation of major relevant
27 medical or research associations and societies, as recognized
28 by the Health Care Oversight Board.

29 c. Principle-based, as indicated through the
30 documented inherent logic of correlating universally accepted
31 principles of anatomy, physiology, pathology, and clinical

1 phenomena to the assessment and management of the injured
2 worker.

3 8. Reasonable necessary medical care of injured
4 employees must:

5 a. Be provided in a process of clinical management
6 which is progressive in practice and acknowledges that case
7 outcomes worsen as case duration increases. Clinical
8 management should be based on a "sports medicine" approach,
9 using a high-intensity, short-duration treatment approach that
10 focuses on early activation and restoration of function
11 wherever possible.

12 b. Include reassessment of the treatment plans,
13 regimes, therapies, prescriptions, and functional
14 limitations/restrictions prescribed by the provider at least
15 every 30 days.

16 c. Be problem-based, thereby focusing on treatment of
17 the individual employee's specific clinical dysfunction or
18 status, and not based upon non-descriptive diagnostic labels.

19 d. All treatment must be inherently scientifically
20 logical, and the evaluation or treatment procedure must match
21 the documented physiologic and clinical problem.

22 e. Treatment must match the type, intensity, and
23 duration of service required by the problem identified.

24 9. The department shall adopt practice parameters
25 that, upon adoption, shall become an integrated portion of the
26 contract between the department and each health care provider
27 upon certification under this chapter. Practice outside these
28 parameters should be denied when disputed unless found by
29 clear and convincing evidence to be medically necessary as
30 defined in this chapter.

31

1 10. Return to work, employment status, and work
2 modifications shall be determined solely by the employer and
3 employee. The role of physicians and other relevant
4 clinicians and health care practitioners is limited to
5 providing information regarding restrictions or limitations as
6 defined in this section, including predictions of further
7 recovery expected and, before reaching maximum medical
8 improvement, predicted duration of restrictions and
9 limitations.

10 11. If an accidental injury occurs, the need for
11 medical treatment shall be presumed to be the work-related
12 accident. The burden shall be on the employer to rebut this
13 presumption by the preponderance of the evidence. This
14 presumption does not apply if the clinical condition is one of
15 the scheduled list of conditions requiring specific
16 confirmation of causality, including:

- 17 a. Carpal tunnel syndrome;
- 18 b. Reflex Sympathetic Dystrophy;
- 19 c. Myofascial pain syndromes;
- 20 d. Spondylolisthesis;
- 21 e. Sexual dysfunction;
- 22 f. Emotional/psychological dysfunction and psychiatric
23 disorders;
- 24 g. Headache;
- 25 h. Fibromyalgia;
- 26 i. Inguinal hernia;
- 27 j. Circulatory failure or dysfunction, including
28 stroke or heart attack.

29
30 This presumption does not apply to illness or injury involving
31 environmental exposure, inhalation or ingestion of any

1 substance, or repetitive trauma. Instead, the employee must
2 prove the condition is work-related by clear and convincing
3 evidence.

4 12. Upon the allegation of accident or injury, the
5 employee is entitled, without exception, to an evaluation and
6 examination by a principal treating provider selected by the
7 employer or carrier. Diagnostic testing, treatment, care, or
8 therapy, after this initial evaluation, is not medically
9 necessary unless it is recommended by the principal treating
10 provider and authorized by the carrier.

11 13. Upon written request from the employee, the
12 employee is entitled to a one-time per accident transfer of
13 care to a different provider of the employee's choice from a
14 list of not fewer than three alternatives provided by the
15 carrier. The new provider will serve in the same capacity as
16 the previous provider; i.e., a principal treating provider
17 replaces a principal treating provider, and a treating
18 provider replaces a treating provider of the same specialty.
19 Upon the granting of a change of physician, the originally
20 authorized physician in the same specialty as the replacement
21 physician shall become deauthorized upon written notification
22 by the employer or carrier. Within 5 days after the request
23 for an alternative physician has been made, the carrier must
24 authorize the alternative physician, who may not be
25 professionally affiliated with the previous physician. If the
26 carrier fails to provide a change of physician as requested by
27 the employee, the employee may select the physician, and the
28 physician is considered to be authorized if the treatment
29 being provided is compensable and medically necessary.
30 Failure of the carrier to timely comply with this subsection
31

1 is a violation of this chapter and is subject to penalties as
2 provided for in s. 440.425.

3 14. The principal treating provider may request
4 consultation with an authorized specialist for clarification
5 of issues or care and may retain the role of principal
6 treating provider. The principal treating provider may
7 alternatively recommend to the carrier the transfer of care of
8 the employee, completely or for some portion of the injuries,
9 to the authorized specialist for evaluation or ongoing care.
10 A full transfer suspends or terminates the transferring
11 physician's role as an authorized provider and as principal
12 treating provider and vests the authority of being the
13 principal treating provider in the physician to whom the
14 employee has been transferred. The physician who was
15 originally the principal treating provider may resume that
16 role only if the new principal treating provider transfers the
17 employee back to him or her and the carrier authorizes the
18 transfer.

19 15. If the employee disagrees with the diagnosis,
20 treatment plan, or restrictions assigned, the employee is
21 entitled to a discretionary confirmatory consultation with a
22 provider of her or his choice who is within the same specialty
23 as the provider with whom the employee disagrees. A
24 confirmatory consultation provider is ineligible to become an
25 authorized provider or principal treating provider absent the
26 mutual consent of the employee and carrier. The employee and
27 the employer or carrier are limited to one discretionary
28 confirmatory consultation each, without exception, for each
29 accident or exposure except that, in addition to the
30 discretionary consultation, the employee and carrier are also
31

1 each entitled to a confirmatory consultation under the
2 following circumstances:

3 a. If a principal treating provider or authorized
4 physician has recommended a surgical procedure, the party
5 challenging the recommendation is entitled to a confirmatory
6 consultation on the question of whether surgery, or what
7 surgery, is medically necessary;

8 b. If there is a dispute regarding functional
9 restrictions or limitations at the time the injured worker
10 reaches maximum medical improvement, the party challenging the
11 functional restrictions or limitations is entitled to a
12 confirmatory consultation on the question of what restrictions
13 and limitations are appropriate; or

14 c. If the employee and carrier mutually agree that a
15 confirmatory consultation is needed.

16
17 A confirmatory consultation may only be used by the party
18 disputing the recommendation or finding of the principal
19 treating provider. In any clinical or functional dispute, the
20 providers or the parties may confer to resolve the issue. If
21 the employee is the disputing party and seeks such a
22 confirmatory consultation, the confirmatory consultation must
23 be with a provider of her or his choice who is within the same
24 specialty as the provider with whom the employee disagrees. If
25 an injured worker requests to exercise his or her option for a
26 transfer of care, the carrier must provide the injured worker
27 with a list of at least three choices within the appropriate
28 specialty and within an appropriate geographical area, as
29 specified by the department by rule. Neither the confirmatory
30 consultation nor the transfer of care option may be used to
31 circumvent the result of a completed dispute resolution

1 process. If the issue has already been appropriately addressed
2 through the dispute resolution process, an injured worker may
3 not use either discretionary provider option to attempt to get
4 a particular treatment, or referral to a different specialist.

5 16. The remedial treatment, care, and attendance must
6 be consistent with the macro framework of patient
7 classification:

8 a. Level I: Patient has a well-defined, work-related
9 clinical condition associated with a specific physiologic
10 dysfunction or dysfunctions; there are no significant
11 psychological or vocational factors; and there is no
12 discordance between physical findings and the reported
13 complaints.

14 b. Level II: Patient is defined by the presence of
15 systemic abnormalities such as deficits in strength,
16 flexibility, endurance, motor control (coordination); the
17 patient may or may not have a well-defined, specific
18 physiologic dysfunction or dysfunctions; and there are no
19 significant psychological or vocational factors.

20 c. Level III: Patient is defined by the presence of
21 significant, associated psychological or vocational issues;
22 typically, the patient does have systemic deficits; the
23 patient may or may not have specific physiologic dysfunctions.

24
25 The following periods are guidelines for the three levels of
26 patient classification for determination of the
27 appropriateness of clinical services as documented by the
28 treating providers. The guideline for Level I is the time
29 period following the reported work-related injury or exposure.
30 The guideline for Level II is 30-90 days (or more) following
31 the report of work-related injury or exposure. The guideline

1 for Level III is 3-6 months (or more) following the reported
2 work-related injury or exposure.

3 17. The remedial treatment, care, and attendance must
4 acknowledge that psycho-social factors are an important
5 component of clinical management of a work related injury or
6 illness, commensurate with the specifics of each case.

7 Therefore, if determined by the treating physicians/providers
8 to be clinically indicated, and if appropriately documented
9 consistent with this statute and department rules,
10 psychological support services or management may be authorized
11 if the support services are:

12 a. Of short duration;

13 b. Provided in conjunction with the primary management
14 of the principal injury; and

15 c. Limited to the specific psychological and
16 behavioral aspects of the work-related injury or illness.

17
18 These issues should not be factored into the determination of
19 disability or of eligibility for indemnity benefits.

20 (c)(b) The employer shall provide appropriate
21 professional or nonprofessional attendant care performed only
22 as prescribed or ordered in writing by a principal treating
23 provider and authorized by the carrier. Such care shall only
24 be the responsibility of the carrier after such a written
25 order or prescription has been provided to the carrier, and
26 such care and attendance shall be performed at the direction
27 and control of the principal treating provider ~~a physician~~
28 when such care is medically necessary. The value of
29 nonprofessional attendant care provided by a family member
30 must be determined as follows:

31

1 1. If the family member is not employed or if employed
2 and providing attendant care services during hours that he or
3 she is not engaged in employment, the per-hour value equals
4 the federal minimum hourly wage.

5 2. If the family member is employed and elects to
6 leave that employment to provide attendant or custodial care,
7 the per-hour value of that care equals the per-hour value of
8 the family member's former employment, not to exceed the
9 per-hour value of such care available in the community at
10 large. A family member or a combination of family members
11 providing nonprofessional attendant care under this paragraph
12 may not be compensated for more than a total of 12 hours per
13 day or for more than 40 hours per week.

14 (c) If the employer fails to provide treatment or care
15 ~~required by this section~~ after request by the injured employee
16 or recommendation by the principal treating provider, the
17 employee may file a petition for benefits in accordance with
18 the requirements of this chapter.~~obtain such treatment at the~~
19 ~~expense of the employer, if the~~ Such treatment is compensable
20 and medically necessary unless a peer review panel determines
21 that it is not compensable. There must be a specific request
22 for the treatment or recommendation by a principal treatment
23 provider, and the employer or carrier must be given a
24 reasonable time period, of no less than 5 business days,
25 within which to provide the treatment or care. However, the
26 employee is not entitled to recover any amount personally
27 expended for the treatment or service unless he or she has
28 requested the carrier ~~employer~~ to furnish that treatment or
29 service and the carrier ~~employer~~ has failed, refused, or
30 neglected to do so within 5 business days ~~a reasonable time~~ or
31 unless the nature of the injury requires such treatment,

1 nursing, and services and the employer ~~or his or her~~
2 ~~superintendent or foreman~~, having knowledge of the injury, has
3 neglected to provide the treatment or service.

4 ~~(e)(d)~~ The carrier shall ~~has the right to~~ transfer the
5 care of an injured employee from the principal treating
6 ~~attending health care provider~~ if a peer review panel,
7 pursuant to a request by the employer or carrier in accordance
8 with s. 440.192, an independent medical examination determines
9 that the employee is not making appropriate progress in
10 recuperation as defined by the principal treating provider
11 focusing on early activation and restoration of function with
12 the treatment rendered matching the type, intensity, and
13 duration of service required by the problem identified. This
14 transfer does not constitute a discretionary change of
15 provider.

16 ~~(f)(e)~~ Except in emergency situations ~~and for~~
17 ~~treatment rendered by a managed care arrangement~~, after any
18 initial examination and diagnosis by a physician providing
19 remedial treatment, care, and attendance, and before a
20 proposed course of medical treatment begins, each insurer
21 shall review, in accordance with the requirements of this
22 chapter and the practice parameters adopted by the department,
23 the proposed course of treatment, to determine whether such
24 treatment would be recognized as reasonably prudent. The
25 review must be in accordance with all applicable workers'
26 compensation practice parameters. The insurer must accept any
27 such proposed course of treatment unless the insurer notifies
28 the physician of its specific objections to the proposed
29 course of treatment by the close of the tenth business day
30 after notification by the physician, or a supervised designee
31 of the physician, of the proposed course of treatment.

1 ~~(f) Upon the written request of the employee, the~~
2 ~~carrier shall give the employee the opportunity for one change~~
3 ~~of physician during the course of treatment for any one~~
4 ~~accident. The employee shall be entitled to select another~~
5 ~~physician from among not fewer than three carrier-authorized~~
6 ~~physicians who are not professionally affiliated.~~

7 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

8 (a) As a condition to eligibility for payment under
9 this chapter, a health care provider who renders services must
10 be a certified health care provider and must receive
11 authorization from the carrier or the employer before
12 providing treatment as designated in s. 440.13(2)(a). This
13 paragraph does not apply to emergency care. The department
14 ~~agency~~ shall adopt rules to implement the certification of
15 health care providers.

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

29 (c) A health care provider may not refer the employee
30 to another health care provider, diagnostic facility, therapy
31 center, or other facility without prior authorization from the

1 carrier, except when emergency care is rendered. Any referral
2 must be to a health care provider that has been certified by
3 the department ~~agency~~, unless the referral is for emergency
4 treatment.

5 (d) A carrier must respond, ~~by telephone or~~ in
6 writing, to a request for authorization by the close of the
7 fifth ~~third~~ business day after receipt of the request. A
8 carrier who fails to respond to a written request for
9 authorization for referral for medical treatment by the close
10 of the third business day after receipt of the request
11 consents to the medical necessity for such treatment. All such
12 requests must be made by an authorized physician and must be
13 communicated in writing by the authorized physician to the
14 carrier. Notice to ~~the carrier does not include notice to the~~
15 employer does not constitute notice, constructive or
16 otherwise, to the carrier.

17 (e) Carriers shall adopt procedures for receiving,
18 reviewing, documenting, and responding to requests for
19 authorization. Such procedures shall be for a health care
20 provider certified under this section.

21 (f) By accepting payment under this chapter for
22 treatment rendered to an injured employee or for peer review
23 determinations, a health care provider and a peer review
24 provider and panel member as provided in s. 440.192 consent
25 ~~consents~~ to the jurisdiction of the department ~~agency~~ as
26 established in subsection (11) and to the submission of all
27 records and other information concerning such treatment or
28 determination to the department ~~agency~~ in connection with a
29 reimbursement dispute, a medical dispute as defined by s.
30 440.192, an audit, or a review as provided by this section
31 subject to s. 440.192. The health care provider and peer

1 review panel must further agree to comply with any decision of
2 the department agency rendered under this section.

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

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

9 (i) Notwithstanding paragraph (d), a claim for
10 specialist consultations, surgical operations,
11 physiotherapeutic or occupational therapy procedures, X-ray
12 examinations, or special diagnostic laboratory tests that cost
13 more than \$1,000 and other specialty services that the
14 department agency identifies by rule is not valid and
15 reimbursable unless the services have been expressly
16 authorized by the carrier, or unless the carrier has failed to
17 respond within 5 ~~10~~ days to a written request for
18 authorization, or unless emergency care is required. The
19 insurer shall not refuse to authorize such consultation or
20 procedure unless the health care provider or facility is not
21 authorized or certified or unless a peer review panel ~~an~~
22 ~~expert medical advisor~~ has determined that the consultation or
23 procedure is not medically necessary or otherwise compensable
24 under this chapter. Authorization of medical treatment by the
25 carrier and subsequent provision of such treatment constitutes
26 a binding commitment to pay the cost of such medical treatment
27 pursuant to the fee schedule established in this section.
28 ~~Authorization of a treatment plan does not constitute express~~
29 ~~authorization for purposes of this section, except to the~~
30 ~~extent the carrier provides otherwise in its authorization~~
31 ~~procedures.~~This paragraph does not limit the carrier's

1 obligation to identify and disallow overutilization or billing
2 errors.

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

15 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
16 DEPARTMENT.--

17 (a) Any health care provider providing necessary
18 remedial treatment, care, or attendance to any injured worker
19 shall submit a treatment record ~~treatment reports~~ to the
20 carrier in a format prescribed by the department, following
21 each medical treatment or appointment, and a medical status
22 form to the employee and carrier as provided by rule in
23 consultation with the agency. Status forms must be provided to
24 the employee and carrier within 2 business days after each
25 appointment. A claim for medical or surgical treatment is not
26 valid or enforceable against such employer or employee,
27 unless, by the close of the fifth ~~third~~ business day following
28 the first treatment, the physician providing the treatment
29 furnishes to the employer and the ~~or~~ carrier a preliminary
30 notice of the injury and treatment on forms prescribed by the
31 department ~~in consultation with the agency and, within 15 days~~

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

7 (b) Upon the request of the department ~~or agency~~, each
8 medical report or bill obtained or received by the employer,
9 the carrier, or the injured employee, or the attorney for the
10 employer, carrier, or injured employee, with respect to the
11 remedial treatment, care, and attendance of the injured
12 employee, including any report of an examination, diagnosis,
13 or disability evaluation, must be produced by the health care
14 provider to filed with the department ~~or agency~~ pursuant to
15 rules adopted by the department ~~in consultation with the~~
16 agency. The health care provider shall also furnish to the
17 injured employee, the employer, and the carrier, or to the his
18 or her attorney representing any of them, on demand, a copy of
19 his or her office chart, records, and reports, and may charge
20 the injured employee no more than 50 cents per page for
21 copying the records and the actual direct cost to the health
22 care provider or health care facility for x-rays, microfilm,
23 or other non-paper records for the requested copies other than
24 the forms specified in paragraph (a) ~~an amount authorized by~~
25 the department for the copies. Each such health care provider
26 shall provide to the ~~agency or~~ department information about
27 the remedial treatment, care, and attendance which the ~~agency~~
28 ~~or~~ department reasonably requests.

29 (c) It is the policy for the administration of the
30 workers' compensation system that there shall be reasonable
31 access to medical information by all parties to facilitate the

1 self-executing features of the law. An employee who reports an
2 injury or illness alleged to be work-related waives any
3 physician-patient privilege with respect to any condition or
4 complaint reasonably related to the condition for which the
5 employee claims compensation. Notwithstanding the limitations
6 in s. 456.057 and subject to the limitations in s. 381.004,
7 upon the request of the employer, the carrier, an authorized
8 qualified rehabilitation provider, the department, or the
9 attorney for the employer or carrier, the medical records
10 reports, and information concerning ~~of~~ an injured employee
11 which are relevant to the particular injury or illness for
12 which compensation is sought must be furnished to those
13 persons and the medical condition of the injured employee must
14 be discussed with those persons. Release of medical
15 information by the health care provider or other physician
16 does not require the authorization of the injured employee.
17 If medical records, reports, and information concerning an
18 injured employee are sought from health care providers who are
19 not subject to the jurisdiction of this state, the injured
20 employee shall sign an authorization allowing for the employer
21 or carrier to obtain the medical records, reports, or
22 information. ~~, if the records and the discussions are~~
23 ~~restricted to conditions relating to the workplace injury.~~ Any
24 such discussions or release of information may be held before
25 or after the filing of a claim or petition for benefits
26 without the knowledge, consent, or presence of any other party
27 or his or her agent or representative. A health care provider
28 who willfully refuses to provide medical records or to discuss
29 the medical condition of the injured employee, after a
30 reasonable request is made for such information pursuant to
31 this subsection, shall be subject by the department ~~agency~~ to

1 one or more of the penalties set forth in paragraph (8)(b).
2 The department may adopt rules necessary to administer this
3 section.

4 (5) HEALTH CARE OVERSIGHT BOARD.--

5 (a) There is created within the Department of
6 Financial Services the Health Care Oversight Board. The board
7 shall be composed of 11 members, each of whom has knowledge of
8 or experience with the workers' compensation system, including
9 representatives of the following categories currently licensed
10 by this state: 1 board-certified orthopedist who is an MD or a
11 DO; 1 fellowship-trained, board-certified spine surgeon who is
12 an MD or a DO; 1 board-certified occupational-medicine
13 specialist who is an MD or a DO; 1 physical therapist; 1
14 board-certified physical medicine specialist who is an MD or a
15 DO; 1 board-certified neurologist or anesthesiologist
16 specializing in pain medicine who is an MD or a DO; 1
17 chiropractor; 1 masters-level or doctoral-level,
18 university-based clinical research scientist or academician; 1
19 registered nurse who is certified in quality assurance; 1
20 representative of a professional utilization review
21 organization that has been accredited by the Utilization
22 Review Accreditation Commission; and the Chief Financial
23 Officer or his or her designee.

24 (b) POWERS AND DUTIES:

25 1. The board shall assist the department in monitoring
26 and auditing peer review organizations to determine compliance
27 with this chapter, including, but not limited to, compliance
28 with standards of care, practice parameters, and other
29 statutory provisions governing medical disputes, and with
30 applicable provisions in contracts between the department and
31 the peer review organizations. The board shall also review

1 other aspects of the medical delivery system and dispute
2 resolution process and determinations and make recommendations
3 to the three-member panel for regulatory or statutory changes
4 needed to assure the efficiency and effectiveness of the
5 medical delivery system.

6 2. Develop, and update as necessary, recommendations
7 for practice parameters to be utilized by health care
8 providers certified under this chapter. The practice
9 parameters must augment the "evidence-based" framework and
10 standards of care provided in this chapter.

11 3. When considering new protocols and technologies,
12 the board should assure that new procedures have achieved at
13 least comparable "evidence-based" support to existing and
14 related procedures, but not be required to have superior
15 support in order to be utilized by providers.

16 4. Recommend changes in the list of clinical
17 conditions to be considered as occupational diseases.

18 5. The board shall deliver its recommendations to the
19 three-member panel. The three-member panel shall consider the
20 board's recommendations and adopt practice parameters as
21 necessary. The department shall adopt by rule practice
22 parameters adopted by the three-member panel.

23 (c) The Chief Financial Officer shall appoint the
24 members of the board.

25 2. The Chief Financial Officer may remove a board
26 member for cause.

27 3. All members should have substantial experience or
28 knowledge, or both, in work-related injuries and illnesses.

29 4. Except for the Chief Financial Officer, each member
30 shall serve for a period of 3 years and may serve no more than
31 two consecutive terms. However, upon initial creation of this

1 board, five of the members shall be appointed to serve for an
2 initial 2-year term and five members for 3-year terms.

3 5. The members shall choose a chair.

4 6. The division shall provide administrative support
5 to the board.

6 (d) Travel expenses shall be reimbursed by the
7 department in accordance with state law.

8 (e) A medical opinion other than the opinion of an
9 authorized treating provider is inadmissible in proceedings
10 before the Claims Bureau, the peer review panel, or the judges
11 of compensation claims. ~~INDEPENDENT MEDICAL EXAMINATIONS.~~

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

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

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

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

28 ~~3. The examiner is unavailable due to injury, death,~~
29 ~~or relocation outside a reasonably accessible geographic area;~~
30 ~~or~~

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

1
2 ~~Any party may request, or a judge of compensation claims may~~
3 ~~require, designation of an agency medical advisor as an~~
4 ~~independent medical examiner. The opinion of the advisors~~
5 ~~acting as examiners shall not be afforded the presumption set~~
6 ~~forth in paragraph (9)(c).~~

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

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

31

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

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

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

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 treatment

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

10 (b) The carrier must submit to the department ~~agency~~
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 department ~~agency~~ within 10 days constitutes a waiver
15 of all objections to the petition.

16 (c) Within 60 days after receipt of all documentation,
17 the department ~~agency~~ 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 department ~~agency~~ 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 department, as a result of utilization
24 review as defined in this subsection,~~agency~~ finds an improper
25 disallowance or improper adjustment of treatment or payment by
26 an insurer, the insurer shall reimburse the health care
27 provider, facility, insurer, or employer within 30 days,
28 subject to the penalties provided in this subsection.

29 (e) The department ~~agency~~ shall adopt rules to carry
30 out this subsection which are consistent with this section.
31 The rules may include, but are not limited to,provisions for

1 consolidating petitions filed by a petitioner and expanding
2 the timetable for rendering a determination upon a
3 consolidated petition.

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

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

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

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

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

18 (a) Carriers must report to the department ~~agency~~ all
19 instances in which the carrier disallows or adjusts payment or
20 a determination has been made that the provided or recommended
21 treatment is in excess of the standards of care and practice
22 parameters provided for in this chapter or by department rule
23 of overutilization including, but not limited to, all
24 instances in which the carrier disallows or adjusts payment.
25 The department ~~agency~~ shall determine whether a pattern or
26 practice of overutilization exists.

27 (b) If the department ~~agency~~ determines that a health
28 care provider has engaged in a pattern or practice of
29 overutilization or a violation of this chapter or rules
30 adopted by the department, including a pattern or practice of
31 providing treatment in excess of the standards of care or

1 practice parameters ~~agency~~, it may impose one or more of the
2 following penalties:

- 3 1. An order of the department ~~agency~~ barring the
4 provider from payment under this chapter;
- 5 2. Deauthorization of care under review;
- 6 3. Denial of payment for care rendered in the future;
- 7 4. Decertification of a health care provider certified
8 as an expert medical advisor under subsection (9) or of a
9 rehabilitation provider certified under s. 440.49;
- 10 5. An administrative fine assessed by the department
11 ~~agency~~ in an amount not to exceed \$5,000 per instance of
12 overutilization or violation; and
- 13 6. Notification of and review by the appropriate
14 licensing authority pursuant to s. 440.106(3).

15 ~~(9) EXPERT MEDICAL ADVISORS.--~~

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

30 ~~(b) The agency shall contract with or employ expert~~
31 ~~medical advisors to provide peer review or medical~~

1 ~~consultation to the agency or to a judge of compensation~~
2 ~~claims in connection with resolving disputes relating to~~
3 ~~reimbursement, differing opinions of health care providers,~~
4 ~~and health care and physician services rendered under this~~
5 ~~chapter. Expert medical advisors contracting with the agency~~
6 ~~shall, as a term of such contract, agree to provide~~
7 ~~consultation or services in accordance with the timetables set~~
8 ~~forth in this chapter and to abide by rules adopted by the~~
9 ~~agency, including, but not limited to, rules pertaining to~~
10 ~~procedures for review of the services rendered by health care~~
11 ~~providers and preparation of reports and recommendations for~~
12 ~~submission to the agency.~~

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

31

1 ~~(d) The expert medical advisor must complete his or~~
2 ~~her evaluation and issue his or her report to the agency or to~~
3 ~~the judge of compensation claims within 45 days after receipt~~
4 ~~of all medical records. The expert medical advisor must~~
5 ~~furnish a copy of the report to the carrier and to the~~
6 ~~employee.~~

7 ~~(e) An expert medical advisor is not liable under any~~
8 ~~theory of recovery for evaluations performed under this~~
9 ~~section without a showing of fraud or malice. The protections~~
10 ~~of s. 766.101 apply to any officer, employee, or agent of the~~
11 ~~agency and to any officer, employee, or agent of any entity~~
12 ~~with which the agency has contracted under this subsection.~~

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

21 (9)(10) WITNESS FEES.--Any health care provider who
22 gives a deposition shall be allowed a witness fee for the
23 reasonable time spent preparing for and rendering testimony.
24 The amount charged by the witness may not exceed \$200 per
25 hour. An expert witness who has never provided direct
26 professional services to a party but has merely reviewed
27 medical records and provided an expert opinion or has provided
28 only direct professional services that were unrelated to the
29 workers' compensation case may not be allowed a witness fee in
30 excess of \$200 per day.

31

1 (10)~~(11)~~ AUDITS BY THE DIVISION OF WORKERS'
2 COMPENSATION AGENCY FOR HEALTH CARE ADMINISTRATION AND THE
3 DEPARTMENT OF INSURANCE; JURISDICTION.--

4 (a) The Division of Workers' Compensation Agency for
5 Health Care Administration may investigate health care
6 providers to determine whether providers are complying with
7 this chapter and with rules adopted by the department agency,
8 whether the providers are engaging in overutilization, ~~and~~
9 whether providers are engaging in improper billing practices,
10 and whether providers are adhering to standards of care,
11 practice parameters, and protocols in accordance with this
12 chapter and department rule. If the department agency finds
13 that a health care provider has improperly billed,
14 overutilized, or failed to comply with department agency rules
15 or the requirements of this chapter, including, but not
16 limited to, standards of care, practice parameters, and
17 protocols in accordance with this chapter and department rule,
18 it must notify the provider of its findings and may determine
19 that the health care provider may not receive payment from the
20 carrier or may impose penalties as set forth in subsection (8)
21 or other sections of this chapter. If the health care provider
22 has received payment from a carrier for services that were
23 improperly billed, for services that constitute
24 overutilization or that were outside standards of care,
25 practice parameters, and protocols in accordance with this
26 chapter and department rule, or for overutilization, it must
27 return those payments to the carrier. The department agency
28 may assess a penalty not to exceed \$500 for each overpayment
29 that is not refunded within 30 days after notification of
30 overpayment by the department agency or carrier.

31

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

26 (c) Subject to s. 440.192(7), the department ~~The~~
27 ~~agency~~ has exclusive jurisdiction to decide any matters
28 concerning reimbursement, to resolve any overutilization
29 dispute under subsection (7), and to decide any question
30 concerning overutilization under subsection (8), which
31 question or dispute arises after January 1, 1994.

1 (d) The following department ~~agency~~ actions do not
2 constitute agency action subject to review under ss. 120.569
3 and 120.57 and do not constitute actions subject to s. 120.56:
4 a referral for peer review in accordance with s. 440.192, and
5 the determination of a peer review panel in accordance with s.
6 440.192 referral by the entity responsible for utilization
7 review; a decision by the agency to refer a matter to a peer
8 review committee; establishment by a health care provider or
9 entity of procedures by which a peer review committee reviews
10 the rendering of health care services; and the review
11 proceedings, report, and recommendation of the peer review
12 committee.

13 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
14 REIMBURSEMENT ALLOWANCES.--

15 (a) A three-member panel is created, consisting of the
16 Chief Financial Officer Insurance Commissioner, or the Chief
17 Financial Officer's Insurance Commissioner's designee, and two
18 members to be appointed by the Governor, subject to
19 confirmation by the Senate, one member who, on account of
20 present or previous vocation, employment, or affiliation,
21 shall be classified as a representative of employers, the
22 other member who, on account of previous vocation, employment,
23 or affiliation, shall be classified as a representative of
24 employees. The panel shall determine statewide schedules of
25 maximum reimbursement allowances for medically necessary
26 treatment, care, and attendance provided by physicians,
27 hospitals, ambulatory surgical centers, work-hardening
28 programs, pain programs, and durable medical equipment. The
29 maximum reimbursement allowances for inpatient hospital care
30 shall be based on a schedule of per diem rates, to be approved
31 by the three-member panel no later than March 1, 1994, to be

1 used in conjunction with a precertification manual as
2 determined by the department ~~agency~~. All compensable charges
3 for hospital outpatient care shall be reimbursed at 75 percent
4 of usual and customary charges, except as provided in
5 paragraph (b). ~~Until the three-member panel approves a~~
6 ~~schedule of per diem rates for inpatient hospital care and it~~
7 ~~becomes effective, all compensable charges for hospital~~
8 ~~inpatient care must be reimbursed at 75 percent of their usual~~
9 ~~and customary charges.~~ Annually, the three-member panel shall
10 adopt schedules of maximum reimbursement allowances for
11 physicians, hospital inpatient care, hospital outpatient care,
12 ambulatory surgical centers, work-hardening programs, and pain
13 programs. However, the maximum percentage of increase in the
14 individual reimbursement allowance may not exceed the
15 percentage of increase in the Consumer Price Index for the
16 previous year. An individual physician, hospital, ambulatory
17 surgical center, pain program, or work-hardening program shall
18 be reimbursed either ~~the usual and customary charge for~~
19 ~~treatment, care, and attendance,~~ the agreed-upon contract
20 price, or the maximum reimbursement allowance in the
21 appropriate schedule, ~~whichever is less~~.

22 (b) It is the intent of the Legislature to increase
23 the schedule of maximum reimbursement allowances for selected
24 physicians effective January 1, 2004, and to pay for the
25 increases through reductions in payments to hospitals. These
26 payment revisions must not result in any increase in aggregate
27 medical payments but must be cost-neutral to the carriers,
28 employers, or insurers. Revisions developed under this
29 paragraph are limited to the following:

30 1. Maximum reimbursement allowances for neurologists,
31 orthopedic physicians, and primary care physicians treating

1 injured workers shall be increased to 125 percent of the
2 Medicare allowable fee schedule;

3 2. Payments for outpatient physical, occupational, and
4 speech therapy provided by hospitals shall be reduced to the
5 schedule of maximum reimbursement allowances for these
6 services which applies to nonhospital providers.

7 3. Payments for scheduled outpatient nonemergency
8 radiological and clinical laboratory services that are not
9 provided in conjunction with a surgical procedure shall be
10 reduced to the schedule of maximum reimbursement allowances
11 for these services which applies to nonhospital providers.

12 (c)(b) As to reimbursement for a prescription
13 medication, the reimbursement amount for a prescription shall
14 be the average wholesale price ~~times 1.2~~ plus ~~\$254.18~~ for the
15 dispensing fee, except where the carrier has contracted for a
16 lower amount. Fees for pharmaceuticals and pharmaceutical
17 services shall be reimbursable at the applicable fee schedule
18 amount. Where the employer or carrier has contracted for such
19 services and the employee elects to obtain them through a
20 provider not a party to the contract, the carrier shall
21 reimburse at the schedule, negotiated, or contract price,
22 whichever is lower.

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

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

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

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

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

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

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

9 (e)~~(d)~~ In addition to establishing the uniform
10 schedule of maximum reimbursement allowances, the panel shall:

11 1. Take testimony, receive records, and collect data
12 to evaluate the adequacy of the workers' compensation fee
13 schedule, nationally recognized fee schedules and alternative
14 methods of reimbursement to certified health care providers
15 and health care facilities for inpatient and outpatient
16 treatment and care.

17 2. Survey certified health care providers and health
18 care facilities to determine the availability and
19 accessibility of workers' compensation health care delivery
20 systems for injured workers.

21 3. Survey carriers to determine the estimated impact
22 on carrier costs and workers' compensation premium rates by
23 implementing changes to the carrier reimbursement schedule or
24 implementing alternative reimbursement methods.

25 4. Submit recommendations on or before January 1,
26 2003, and biennially thereafter, to the President of the
27 Senate and the Speaker of the House of Representatives on
28 methods to improve the workers' compensation health care
29 delivery system.

30
31

1 The department ~~division~~ shall provide data to the panel, as
2 required by the panel, to produce maximum reimbursement
3 allowances, including, but not limited to, utilization trends
4 in the workers' compensation health care delivery system. The
5 department ~~division~~ shall provide the panel with an annual
6 report regarding the resolution of medical reimbursement
7 disputes and any actions pursuant to s. 440.13(8). The
8 department ~~division~~ shall provide administrative support and
9 service to the panel to the extent requested by the panel.

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

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

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

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

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

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

6 (f) Self-referred in violation of this chapter or
7 other laws of this state; ~~or~~

8 (g) Engaged in a pattern of practice of
9 overutilization or a violation of this chapter or rules
10 adopted by the department; ~~or agency.~~

11 (h) Otherwise refused or failed to comply with any
12 substantive provision of this chapter.

13 (14) PAYMENT OF MEDICAL FEES.--

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

25 (b) Reimbursement Fees charged for remedial treatment,
26 care, and attendance, ~~except for independent medical~~
27 ~~examinations,~~ may not exceed or be less than the applicable
28 fee schedules adopted under this chapter, except as otherwise
29 provided in this chapter.

30 (c) ~~Notwithstanding any other provision of this~~
31 ~~chapter, following overall maximum medical improvement from an~~

1 ~~injury compensable under this chapter, the employee is~~
2 ~~obligated to pay a copayment of \$10 per visit for medical~~
3 ~~services. The copayment shall not apply to emergency care~~
4 ~~provided to the employee.~~

5 ~~(15) PRACTICE PARAMETERS.--~~

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

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

29 ~~(c) Procedures must be instituted which provide for~~
30 ~~the periodic review and revision of practice parameters based~~
31 ~~on the latest outcomes data, research findings, technological~~

1 ~~advancements, and clinical experiences, at least once every 3~~
2 ~~years.~~

3 ~~(d) Practice parameters developed under this section~~
4 ~~must be used by carriers and the agency in evaluating the~~
5 ~~appropriateness and overutilization of medical services~~
6 ~~provided to injured employees.~~

7 Section 20. Section 440.132, Florida Statutes, is
8 amended to read:

9 440.132 Investigatory records relating to workers'
10 compensation managed care arrangements; confidentiality.--

11 (1) All investigatory records of the department Agency
12 ~~for Health Care Administration~~ made or received pursuant to s.
13 440.134 and any examination records necessary to complete an
14 investigation are confidential and exempt from the provisions
15 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
16 until the investigation is completed or ceases to be active,
17 except that portions of medical records which specifically
18 identify patients must remain confidential and exempt. An
19 investigation is considered "active" while such investigation
20 is being conducted by the department agency with a reasonable,
21 good faith belief that it may lead to the filing of
22 administrative, civil, or criminal proceedings. An
23 investigation does not cease to be active if the department
24 ~~agency~~ is proceeding with reasonable dispatch and there is
25 good faith belief that action may be initiated by the
26 department agency or other administrative or law enforcement
27 agency.

28 (2) The Legislature finds that it is a public
29 necessity that these investigatory and examination records be
30 held confidential and exempt during an investigation in order
31 not to compromise the investigation and disseminate

1 potentially inaccurate information. To the extent this
2 information is made available to the public, those persons
3 being investigated will have access to such information which
4 would potentially defeat the purpose of the investigation.
5 This would impede the effective and efficient operation of
6 investigatory governmental functions.

7 Section 21. Section 440.134, Florida Statutes, is
8 repealed.

9 Section 22. Section 440.135, Florida Statutes, is
10 repealed.

11 Section 23. Section 440.14, Florida Statutes, is
12 amended to read:

13 440.14 Determination of pay.--

14 (1) Except as otherwise provided in this chapter, the
15 average weekly wages of the injured employee on the date of
16 accident and not the date of disability at the time of the
17 injury shall be taken as the basis upon which to compute
18 compensation and shall be determined, subject to the
19 limitations of s. 440.12(2), as follows:

20 (a) If the injured employee has worked in the
21 employment in which she or he was working on the date of
22 accident at the time of the injury, whether for the same or
23 another employer, during substantially the whole of the 13
24 work weeks immediately preceding the accident injury, her or
25 his average weekly wage shall be ~~one-thirteenth~~ of the total
26 amount of wages earned in such employment during the 13 work
27 weeks divided by the number of weeks actually worked. As used
28 in this paragraph, the term "substantially the whole of 13
29 work weeks" means the calendar ~~shall be deemed to mean and~~
30 ~~refer to a constructive~~ period of 13 work weeks as a whole,
31 which shall be defined as the 13 work weeks before the

1 accident date, excluding the work week during which the
2 accident occurred. As used in this paragraph, the term "work"
3 means the 7 consecutive calendar day payroll period defined by
4 the employer's payroll practices. The ~~a consecutive period of~~
5 ~~91 days, and~~ The term "during substantially the whole of 13
6 work weeks" means shall be deemed to mean during not less than
7 75 ~~90~~ percent of the total customary full-time hours of
8 employment within such period considered as a whole. Raises
9 received during the aforementioned 13-work-week period are
10 only to be factored into the average weekly wage from the
11 actual date the raise became effective.

12 (b) If the injured employee has not worked in such
13 employment during substantially the whole of 13 weeks
14 immediately preceding the accident, the actual daily earnings
15 of the employee shall be computed for the actual day or days
16 worked, and the resulting average daily wage shall be
17 multiplied by 5 days, except as provided in paragraph (c)
18 ~~injury, the wages of a similar employee in the same employment~~
19 ~~who has worked substantially the whole of such 13 weeks shall~~
20 ~~be used in making the determination under the preceding~~
21 ~~paragraph. The result is the employee's average weekly wage.~~

22 (c) If an employee is a seasonal worker and the
23 foregoing method cannot be fairly applied in determining the
24 average weekly wage, then the employee may use, instead of the
25 13 weeks immediately preceding the accident injury, the
26 calendar year or the 52 weeks immediately preceding the
27 accident injury. The employee will have the burden of proving
28 that this method will be more reasonable and fairer than the
29 method set forth in paragraphs (a) and (b) and, further, must
30 document prior earnings with W-2 forms, written wage
31 statements, or income tax returns. The employer shall have 30

1 days following the receipt of this written proof to adjust the
2 compensation rate, including the making of any additional
3 payment due for prior weekly payments, based on the lower rate
4 compensation.

5 ~~(d) If any of the foregoing methods cannot reasonably~~
6 ~~and fairly be applied, the full-time weekly wages of the~~
7 ~~injured employee shall be used, except as otherwise provided~~
8 ~~in paragraph (e) or paragraph (f).~~

9 (d)~~(e)~~ If it is established that the injured employee
10 was under 22 years of age when the accident occurred ~~injured~~
11 and that under normal conditions her or his wages should be
12 expected to increase during the period of disability, the fact
13 may be considered in arriving at her or his average weekly
14 wages.

15 (e)~~(f)~~ If it is established that the injured employee
16 was a part-time worker on the date of the accident~~at the time~~
17 ~~of the injury~~, that she or he had adopted part-time employment
18 as a customary practice, and that under normal working
19 conditions she or he probably would have remained a part-time
20 worker during the period of disability, the number of days
21 used to calculate an average weekly wage from the average
22 daily wage, if the employee did not work substantially the
23 whole of the 13 weeks before the accident, shall be the
24 average days actually worked by the employee per week for the
25 employer at the time of the accident ~~these factors shall be~~
26 ~~considered in arriving at her or his average weekly wages.~~

27 For the purpose of this paragraph, the term "part-time worker"
28 means an individual who customarily works less than the
29 full-time hours or full-time workweek of a similar employee in
30 the same employment.

31

1 ~~(f)(g)~~ If compensation is due for a fractional part of
2 the week, the compensation for such fractional part shall be
3 determined by dividing the weekly compensation rate by the
4 number of days employed per week to compute the amount due for
5 each day.

6 (2) If, during the period of disability, the employer
7 continues to provide consideration, including board, rent,
8 housing, or lodging, the value of such consideration shall be
9 deducted when calculating the average weekly wage of the
10 employee so long as these benefits continue to be provided.

11 (3) The department shall establish by rule a form
12 which shall contain a simplified checklist of those items
13 which may be included as "wage" for determining the average
14 weekly wage. If the department requests wage documentation
15 from the employer and the employer fails to provide proper
16 documentation to the department within 14 days after the
17 request by the department, the department may reasonably
18 impute an injured worker's wages and value of fringe benefits
19 pursuant to this section from documentation provided by the
20 employee or by using average wage information available from
21 the Agency for Workforce Innovation. If the employer
22 initially fails to provide proper documentation to the
23 department and does so later, and the department determines
24 that adjustments to the average weekly wage are appropriate,
25 the adjustment will be effective only for compensation paid
26 after the date the proper documentation was received by the
27 department.

28 (4) Upon termination of the employee or upon
29 termination of the payment of fringe benefits of any employee
30 who is collecting indemnity benefits pursuant to s. 440.15(2)
31 or (3)(b), the employer shall within 7 days of such

1 termination file a corrected 13-week wage statement reflecting
2 the wages paid and the fringe benefits that had been paid to
3 the injured employee, as provided in s. 440.02(27).

4 (5)(a) If the lost wages from concurrent employment
5 are used in calculating the average weekly wage, the employee
6 is responsible for providing information concerning the loss
7 of earnings from the concurrent employment.

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

17 Section 24. Section 440.15, Florida Statutes, is
18 amended to read:

19 440.15 Compensation for disability.--Compensation for
20 disability shall be paid to the employee, subject to the
21 limits provided in s. 440.12(2), as follows:

22 (1) PERMANENT TOTAL DISABILITY.--

23 (a) In case of total disability adjudged to be
24 permanent, 66 2/3 percent of the average weekly wages shall
25 be paid to the employee during the continuance of such total
26 disability.

27 (b) Only a catastrophic injury as defined in s. 440.02
28 shall, in the absence of conclusive proof of a substantial
29 earning capacity, constitute permanent total disability. Only
30 claimants with catastrophic injuries are eligible for
31 permanent total benefits. In no other case may permanent total

1 disability be awarded. No compensation shall be payable under
2 paragraph (a) if the employee is engaged in or is physically
3 capable of engaging in any work, including sheltered
4 employment. As used in this paragraph, the term "sheltered
5 employment" means work unavailable in the open labor market
6 which is offered to the employee or which is actually
7 performed by the employee. The burden is on the employee to
8 establish that he or she is unable to work, even part-time, as
9 a result of the industrial accident, if such work is available
10 within a 50-mile radius of the employee's residence or such
11 greater distance as the judge determines to be reasonable
12 under the circumstances. Such benefits shall be payable until
13 the employee reaches age 75.

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

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

28 (e)1. The employer's or carrier's right to conduct
29 vocational evaluations or testing pursuant to s. 440.491
30 continues even after the employee has been accepted or
31 adjudicated as entitled to compensation under this chapter.

1 This right includes, but is not limited to, instances in which
2 such evaluations or tests are recommended by a treating
3 physician or independent medical-examination physician,
4 instances warranted by a change in the employee's medical
5 condition, or instances in which the employee appears to be
6 making appropriate progress in recuperation. This right may
7 not be exercised more than once every calendar year.

8 2. The carrier must confirm the scheduling of the
9 vocational evaluation or testing in writing, and must notify
10 employee's counsel, if any, at least 7 days before the date on
11 which vocational evaluation or testing is scheduled to occur.

12 3. ~~Pursuant to an order of the judge of compensation~~
13 ~~claims,~~The employer or carrier may withhold payment of
14 benefits for permanent total disability or supplements for any
15 period during which the employee willfully fails or refuses to
16 appear without good cause for the scheduled vocational
17 evaluation or testing.

18 (f)1. If permanent total disability results from
19 injuries that occurred subsequent to June 30, 1955, and for
20 which the liability of the employer for compensation has not
21 been discharged under s. 440.20(11), the injured employee
22 shall receive additional weekly compensation benefits equal to
23 4 5 percent of her or his weekly compensation rate, as
24 established pursuant to the law in effect on the date of her
25 or his injury, multiplied by the number of calendar years
26 since the date of injury. The weekly compensation payable and
27 the additional benefits payable under this paragraph, when
28 combined, may not exceed the maximum weekly compensation rate
29 in effect at the time of payment as determined pursuant to s.
30 440.12(2). Entitlement to these supplemental payments shall
31 cease at age 62 ~~if the employee is eligible for social~~

1 ~~security benefits under 42 U.S.C. ss. 402 and 423, whether or~~
2 ~~not the employee has applied for such benefits.~~ These
3 supplemental benefits shall be paid by the department out of
4 the Workers' Compensation Administration Trust Fund when the
5 injury occurred subsequent to June 30, 1955, and before July
6 1, 1984. These supplemental benefits shall be paid by the
7 employer when the injury occurred on or after July 1, 1984.
8 Supplemental benefits are not payable for any period prior to
9 October 1, 1974.

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

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

31

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

6 (2) TEMPORARY TOTAL DISABILITY.--

7 (a) In case of disability total in character but
8 temporary in quality, 66 2/3 percent of the average weekly
9 wages shall be paid to the employee during the continuance
10 thereof, not to exceed 104 weeks except as provided in this
11 subsection, s. 440.12(1), and s. 440.14(3). This time
12 limitation for temporary benefits shall be presumed sufficient
13 unless there is clear and convincing evidence to the contrary
14 as determined by the judge of compensation claims. In no event
15 shall temporary benefits exceed 260 weeks. Once the employee
16 reaches the maximum number of weeks allowed, or the employee
17 reaches the date of maximum medical improvement, whichever
18 occurs earlier, temporary disability benefits shall cease and
19 the injured worker's permanent impairment shall be determined.

20 (b) Notwithstanding the provisions of paragraph (a),
21 an employee who has sustained the loss of an arm, leg, hand,
22 or foot, has been rendered a paraplegic, paraparetic,
23 quadriplegic, or quadriparetic, or has lost the sight of both
24 eyes shall be paid temporary total disability of 80 percent of
25 her or his average weekly wage. The ~~increased~~ temporary total
26 disability compensation provided for in this paragraph must
27 not extend beyond 6 months from the date of the accident. The
28 compensation provided by this paragraph is not subject to the
29 limits provided in s. 440.12(2), but instead is subject to a
30 maximum weekly compensation rate of \$700. If, at the
31 conclusion of this period of increased temporary total

1 disability compensation, the employee has not reached maximum
2 medical improvement and is medically restricted in her or his
3 work abilities ~~is still temporarily totally disabled~~, the
4 employee shall continue to receive temporary total disability
5 compensation as set forth in paragraphs (a) and (c). The
6 period of time the employee has received this increased
7 compensation will be counted as part of, and not in addition
8 to, the maximum periods of time for which the employee is
9 entitled to compensation under paragraph (a) but not paragraph
10 (c).

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

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

1 (3) RESIDUAL FUNCTIONAL LOSS AND PERMANENT IMPAIRMENT
2 ~~AND WAGE-LOSS BENEFITS.--~~
3 (a) Intent to establish residual benefits.--
4 1. The Legislature finds that eligibility for
5 permanent partial disability benefits, or "residual benefits,"
6 should, in all cases that do not qualify for permanent total
7 disability pursuant to subsection (1), be based upon actual
8 loss of earning capacity which directly results from residual
9 restrictions or limitations directly attributable to the work
10 injury. Permanent impairment ratings are not a valid measure
11 of loss of earning capacity, but such ratings have
12 historically been used for the measure of disability. Loss of
13 earning capacity is the loss of access to the labor market due
14 to the work-related injury and includes consideration of an
15 individual's restrictions or limitations, education, skills,
16 age, and employment history. Access to the labor market
17 involves access to job classifications, as well as a
18 consideration of the relative presence of those job
19 classifications in the Florida economy. The Legislature
20 believes that, upon reaching maximum medical improvement
21 (MMI), each employee who has residual restrictions or
22 limitations should be evaluated to determine if the employee
23 has experienced a loss of earning capacity. That information
24 would then be used to determine if the employee would be
25 eligible for residual benefits. The Legislature finds that,
26 in order to eliminate the current system of basing this
27 indemnity benefit eligibility on permanent impairment, it
28 needs to take time to determine the most appropriate
29 methodology to use to quantify an employee's loss of earning
30 capacity and then calculate the type and amount of post-MMI
31 indemnity benefits those injured workers should receive.

1 2. It is the intent of the Legislature to codify into
2 law, no later than July 1, 2005, these premises. Therefore,
3 the three-member panel shall:

4 a. Take testimony, receive records, and collect data
5 to evaluate all of the issues surrounding movement to a system
6 of indemnity based on residual functional loss.

7 b. Strong consideration must be given to the following
8 premises:

9 (I) Developing recommendations for a system in which
10 the eligibility period for maximum residual benefits is 401
11 weeks.

12 (II) Computing functional loss benefits by multiplying
13 the calculated percentage of lost earning capacity by the
14 maximum functional loss benefit, and basing entitlement to
15 functional loss benefits for up to that number of weeks,
16 payable for any week in which the employee earns less than 80
17 percent of the pre-injury average weekly wage; or
18 recommendations may be made for some other methodology.

19 (III) Investigating the existence and efficacy of any
20 other scientific or statistical database of occupations which
21 measures positions in terms of education/training and physical
22 demand level. The three-member panel may include
23 recommendations for adopting a commercial software program as
24 the official process for making the calculations and
25 determinations of percentage of opportunity loss, or the
26 establishment of proprietary software for this purpose.

27 c. The three-member panel shall, on or before January
28 1, 2005, subject to the President of the Senate and the
29 Speaker of the House of Representatives the panel's
30 recommendations on the use or development of a uniform data
31 base or other resources in order to evaluate and quantify the

1 injured workers' pre-injury and post-injury earning capacity,
2 a methodology for calculating the length of time for which
3 benefits should be received, and a process for the evaluation
4 and quantification process.

5 (b)(a) Impairment benefits.--

6 1. For accidents that occur after July 1, 1994,once
7 the employee has reached the date of maximum medical
8 improvement, impairment benefits are due and payable within 14
9 ~~20~~ days after the carrier has knowledge of the impairment.

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

1 schedule does not address an injury. In such case, the Guides
2 to the Evaluation of Permanent Impairment by the American
3 Medical Association shall be used. Determination of permanent
4 impairment under this schedule must be made by a physician
5 licensed under chapter 458, a doctor of osteopathic medicine
6 licensed under chapters 458 and 459, a chiropractic physician
7 licensed under chapter 460, a podiatric physician licensed
8 under chapter 461, an optometrist licensed under chapter 463,
9 or a dentist licensed under chapter 466, as appropriate
10 considering the nature of the injury. No other persons are
11 authorized to render opinions regarding the existence of or
12 the extent of permanent impairment.

13 3. All impairment income benefits shall be based on an
14 impairment rating using the impairment schedule referred to in
15 subparagraph 2. For accidents occurring after July 1994 and
16 before July 1, 2003, impairment income benefits are paid
17 weekly at the rate of 50 percent of the employee's average
18 weekly temporary total disability benefit not to exceed the
19 maximum weekly benefit under s. 440.12. An employee's
20 entitlement to impairment income benefits begins the day after
21 the employee reaches maximum medical improvement or the
22 expiration of temporary benefits, whichever occurs earlier,
23 and continues until the earlier of:

24 a. The expiration of a period computed at the rate of
25 3 weeks for each percentage point of impairment; or

26 b. The death of the employee.

27 4. For accidents occurring on or after July 1, 2003,
28 and until the adoption of a residual functional loss program,
29 impairment income benefits are paid biweekly at 75 percent of
30 the employee's temporary total disability benefit amount.
31 Impairment assigned for psychiatric or psychological injury

1 shall not in any circumstance be included in the impairment
2 rating for the purpose of this section or for any purpose in
3 cases of accident or injury occurring on or after July 1,
4 2003, except as otherwise provided in this chapter. An
5 employee's entitlement to impairment income benefits begins
6 the day after the employee reaches maximum medical improvement
7 or the expiration of temporary benefits, whichever occurs
8 earlier, and continues for the following periods:

9 a. Two weeks of benefits are to be paid to the
10 employee for each percentage point of impairment from 1
11 percent up to 11 percent.

12 b. For each percentage point of impairment from 11
13 percent up to 16 percent, 3 weeks of benefits are to be paid.

14 c. For each percentage point of impairment from 16
15 percent up to 21 percent, 4 weeks of benefits are to be paid.

16 d. For each percentage point of impairment above 21
17 percent, 6 weeks of benefits are to be paid.

18
19 Impairment benefits end with the death of the employee.

20 (c)4. After the employee has been certified by a
21 doctor as having reached maximum medical improvement or 6
22 weeks before the expiration of temporary benefits, whichever
23 occurs earlier, the certifying doctor shall evaluate the
24 condition of the employee and assign an impairment rating,
25 using the impairment schedule referred to in subparagraph 2.
26 Compensation is not payable for the mental, psychological, or
27 emotional injury arising out of depression from being out of
28 work. If the certification and evaluation are performed by a
29 doctor other than the principal treating provider ~~employee's~~
30 ~~treating doctor~~, the certification and evaluation must be
31 submitted to the principal treating provider, the employee,

1 and the carrier within 10 days after the evaluation ~~treating~~
2 ~~doctor~~, and the principal treating provider ~~treating doctor~~
3 must indicate agreement or disagreement with the certification
4 and evaluation. The principal treating provider ~~certifying~~
5 ~~doctor~~ shall issue a written report to the department, the
6 employee, and the carrier certifying that maximum medical
7 improvement has been reached, stating the impairment rating to
8 the body as a whole, and providing any other information
9 required by the department by rule. Within 14 days after the
10 carrier obtains knowledge of each maximum medical improvement
11 date and impairment rating to the body as a whole, the carrier
12 shall report information as requested by the department in a
13 format as set forth by rule. If the employee has not been
14 certified as having reached maximum medical improvement before
15 the expiration of 98 ~~102~~ weeks after the date temporary total
16 disability benefits begin to accrue, the carrier shall notify
17 the treating doctor of the requirements of this section.

18 (d)5. The carrier shall pay the employee impairment
19 income benefits for a period based on the impairment rating.

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

24 ~~(b) Supplemental benefits.--~~

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

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

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

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

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

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

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

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

22 ~~3. If an employee earns wages that are at least 80~~
23 ~~percent of the employee's average weekly wage for a period of~~
24 ~~at least 90 days during which the employee is receiving~~
25 ~~supplemental benefits, the employee ceases to be entitled to~~
26 ~~supplemental benefits for the filing period. Supplemental~~
27 ~~benefits that have been terminated shall be reinstated when~~
28 ~~the employee satisfies the conditions enumerated in~~
29 ~~subparagraph 2. and files the statement required under~~
30 ~~subparagraph 4. Notwithstanding any other provision, if an~~
31 ~~employee is not entitled to supplemental benefits for 12~~

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

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

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

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

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

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

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

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

23 (4) TEMPORARY PARTIAL DISABILITY.--

24 (a) If a compensable injury results in physical
25 limitations or restrictions prior to maximum medical
26 improvement, the employee may be entitled to temporary partial
27 disability benefits.

28 (b) If the employee returns to work for the employer
29 at which the accident or injury occurred, the employee shall
30 be entitled to temporary partial benefits equal to 85 percent
31 of the difference between 80 percent of the employee's average

1 weekly wage and the salary, wages, and other remuneration the
2 employee is able to earn, as compared weekly; however, the
3 weekly benefits may not exceed an amount equal to 66 2/3
4 percent of the employee's average weekly wage at the time of
5 injury.

6 (c) If the employer at which the accident or injury
7 occurred offers the employee employment within the physical
8 restrictions and the employee refuses the written offer, the
9 employee will be deemed able to earn the offered earnings,
10 which will be applied in calculating the temporary partial
11 benefits due.

12 (d) If the employer at which the accident or injury
13 occurred does not offer employment within the employee's
14 restrictions, the employee shall be entitled to temporary
15 partial benefits equal to 85 percent of the difference between
16 80 percent of the employee's average weekly wage and the
17 salary, wages, and other remuneration the employee is able to
18 earn, as compared weekly; however, the weekly benefits may not
19 exceed an amount equal to 66 2/3 percent of the employee's
20 average weekly wage at the time of injury.

21 (e) If the employer at which the accident or injury
22 occurred does not offer employment within the employee's
23 restrictions, the employer shall not apply any sum as deemed
24 earnings. In case of temporary partial disability,
25 compensation shall be equal to 80 percent of the difference
26 between 80 percent of the employee's average weekly wage and
27 the salary, wages, and other remuneration the employee is able
28 to earn, as compared weekly; however, the weekly benefits may
29 not exceed an amount equal to 66 2/3 percent of the
30 employee's average weekly wage at the time of injury. In order
31 to simplify the comparison of the preinjury average weekly

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

9 (f)(b) Temporary partial disability Such benefits
10 shall be paid during the continuance of such disability, not
11 to exceed a period of 104 weeks, as provided by this
12 subsection and subsection (2). This time limitation for
13 temporary benefits shall be presumed sufficient unless there
14 is clear and convincing evidence to the contrary as determined
15 by the judge of compensation claims. In no event shall
16 temporary benefits exceed 260 weeks. Once the injured employee
17 reaches the maximum number of weeks, temporary disability
18 benefits cease and the injured worker's permanent impairment
19 must be determined. The department may by rule specify forms
20 and procedures governing the method of payment of temporary
21 disability benefits for dates of accidents before January 1,
22 1994, and for dates of accidents on or after January 1, 1994.

23 (g) In order to simplify the comparison of the
24 preinjury average weekly wage with the salary, wages, and
25 other remuneration that the employee is able to earn, the
26 department may by rule provide for the modification of the
27 weekly comparison so as to coincide as closely as possible
28 with the injured worker's pay periods. The amount determined
29 to be the salary, wages, and other remuneration that the
30 employee is able to earn must not be less than the sum

31

1 actually being earned by the employee, including earnings from
2 sheltered employment.

3 (5) SUBSEQUENT INJURY.--

4 (a) The fact that an employee has suffered previous
5 disability, impairment, anomaly, or disease, or received
6 compensation therefor, shall not preclude her or him from
7 benefits for a subsequent aggravation or acceleration of the
8 preexisting condition nor preclude benefits for death
9 resulting therefrom, except that no benefits shall be payable
10 if the employee, at the time of entering into the employment
11 of the employer by whom the benefits would otherwise be
12 payable, falsely represents herself or himself in writing as
13 not having previously been disabled or compensated because of
14 such previous disability, impairment, anomaly, or disease and
15 the employer detrimentally relies on the misrepresentation.
16 Compensation for temporary disability, medical benefits, and
17 wage-loss benefits shall not be subject to apportionment.

18 (b) If a compensable permanent impairment, or any
19 portion thereof, is a result of aggravation or acceleration of
20 a preexisting condition, or is the result of merger with a
21 preexisting impairment, an employee eligible to receive
22 impairment benefits under paragraph (3)(a) shall receive such
23 benefits for the total impairment found to result, excluding
24 the degree of impairment existing at the time of the subject
25 accident or injury or which would have existed by the time of
26 the impairment rating without the intervention of the
27 compensable accident or injury. The degree of permanent
28 impairment attributable to the accident or injury shall be
29 compensated in accordance with paragraph (3)(a). As used in
30 this paragraph, the term "merger" means the combining of a
31 preexisting permanent impairment with a subsequent compensable

1 permanent impairment which, when the effects of both are
2 considered together, result in a permanent impairment rating
3 which is greater than the sum of the two permanent impairment
4 ratings when each impairment is considered individually.

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

19 (6)~~(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
20 employee refuses employment suitable to the capacity thereof,
21 offered to or procured therefor, such employee shall not be
22 entitled to any compensation at any time during the
23 continuance of such refusal unless at any time in the opinion
24 of the judge of compensation claims such refusal is
25 justifiable.

26 (7)~~(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
27 employee, when receiving compensation for temporary partial
28 disability, leaves the employment of the employer by whom she
29 or he was employed at the time of the accident for which such
30 compensation is being paid, the employee shall, upon securing
31 employment elsewhere, give to such former employer an

1 affidavit in writing containing the name of her or his new
2 employer, the place of employment, and the amount of wages
3 being received at such new employment; and, until she or he
4 gives such affidavit, the compensation for temporary partial
5 disability will cease. The employer by whom such employee was
6 employed at the time of the accident for which such
7 compensation is being paid may also at any time demand of such
8 employee an additional affidavit in writing containing the
9 name of her or his employer, the place of her or his
10 employment, and the amount of wages she or he is receiving;
11 and if the employee, upon such demand, fails or refuses to
12 make and furnish such affidavit, her or his right to
13 compensation for temporary partial disability shall cease
14 until such affidavit is made and furnished.

15 (8)~~(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In
16 case an employee becomes an inmate of a public institution,
17 then no compensation shall be payable unless she or he has
18 dependent upon her or him for support a person or persons
19 defined as dependents elsewhere in this chapter, whose
20 dependency shall be determined as if the employee were
21 deceased and to whom compensation would be paid in case of
22 death; and such compensation as is due such employee shall be
23 paid such dependents during the time she or he remains such
24 inmate.

25 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
26 CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY
27 INSURANCE ACT.--

28 (a) Weekly compensation benefits payable under this
29 chapter for disability resulting from injuries to an employee
30 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
31 be reduced to an amount whereby the sum of such compensation

1 benefits payable under this chapter and such total benefits
2 otherwise payable for such period to the employee and her or
3 his dependents, had such employee not been entitled to
4 benefits under this chapter, under 42 U.S.C. ss. 402 and 423,
5 does not exceed 80 percent of the employee's average weekly
6 wage. However, this provision shall not operate to reduce an
7 injured worker's benefits under this chapter to a greater
8 extent than such benefits would have otherwise been reduced
9 under 42 U.S.C. s. 424(a). This reduction of compensation
10 benefits is not applicable to any compensation benefits
11 payable for any week subsequent to the week in which the
12 injured worker reaches the age of 62 years.

13 (b) If the provisions of 42 U.S.C. s. 424(a) are
14 amended to provide for a reduction or increase of the
15 percentage of average current earnings that the sum of
16 compensation benefits payable under this chapter and the
17 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
18 the amount of the reduction of benefits provided in this
19 subsection shall be reduced or increased accordingly. The
20 department may by rule specify forms and procedures governing
21 the method for calculating and administering the offset of
22 benefits payable under this chapter and benefits payable under
23 42 U.S.C. ss. 402 and 423. The department shall have first
24 priority in taking any available social security offsets on
25 dates of accidents occurring before July 1, 1984.

26 (c) No disability compensation benefits payable for
27 any week, including those benefits provided by paragraph
28 (1)(f), shall be reduced pursuant to this subsection until the
29 Social Security Administration determines the amount otherwise
30 payable to the employee under 42 U.S.C. ss. 402 and 423 and
31 the employee has begun receiving such social security benefit

1 payments. The employee shall, upon demand by the department,
2 the employer, or the carrier, authorize the Social Security
3 Administration to release disability information relating to
4 her or him and authorize the Division of Unemployment
5 Compensation to release unemployment compensation information
6 relating to her or him, in accordance with rules to be adopted
7 by the department prescribing the procedure and manner for
8 requesting the authorization and for compliance by the
9 employee. Neither the department nor the employer or carrier
10 shall make any payment of benefits for total disability or
11 those additional benefits provided by paragraph (1)(f) for any
12 period during which the employee willfully fails or refuses to
13 authorize the release of information in the manner and within
14 the time prescribed by such rules. The authority for release
15 of disability information granted by an employee under this
16 paragraph shall be effective for a period not to exceed 12
17 months, such authority to be renewable as the department may
18 prescribe by rule.

19 (d) If compensation benefits are reduced pursuant to
20 this subsection, the minimum compensation provisions of s.
21 440.12(2) do not apply.

22 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
23 CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE
24 UNEMPLOYMENT COMPENSATION.--

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

29 (b) If an employee is entitled to temporary partial
30 benefits pursuant to subsection (4) and unemployment
31 compensation benefits, such unemployment compensation benefits

1 shall be primary and the temporary partial benefits shall be
2 supplemental only, the sum of the two benefits not to exceed
3 the amount of temporary partial benefits which would otherwise
4 be payable.

5 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
6 OFFICERS.--Any law enforcement officer as defined in s.
7 943.10(1), (2), or (3) who, while acting within the course of
8 employment as provided by s. 440.091, is maliciously or
9 intentionally injured and who thereby sustains a job-connected
10 disability compensable under this chapter shall be carried in
11 full-pay status rather than being required to use sick,
12 annual, or other leave. Full-pay status shall be granted only
13 after submission to the employing agency's head of a medical
14 report which gives a current diagnosis of the employee's
15 recovery and ability to return to work. In no case shall the
16 employee's salary and workers' compensation benefits exceed
17 the amount of the employee's regular salary requirements.

18 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum
19 as an indemnity benefit under any classification or category
20 of benefit under this chapter to which she or he is not
21 entitled, the employee is liable to repay that sum to the
22 employer or the carrier or to have that sum deducted from
23 future benefits, regardless of the classification of benefits,
24 payable to the employee under this chapter; however, a partial
25 payment of the total repayment may not exceed 20 percent of
26 the amount of the biweekly payment.

27 Section 25. Subsections (2) and (6) of section
28 440.151, Florida Statutes, are amended to read:

29 440.151 Occupational diseases.--

30 (2) As ~~Whenever~~ used in this section, the term
31 "occupational disease" shall be construed to mean only a

1 disease which is due to causes and conditions which are
2 characteristic of and peculiar to a particular trade,
3 occupation, process, or employment, and to exclude all
4 ordinary diseases of life to which the general public is
5 exposed, unless the incidence of the disease is substantially
6 higher in the particular trade, occupation, process, or
7 employment than for the general public. An occupational
8 disease or an injury or exposure caused by exposure to a toxic
9 substance, including, but not limited to, fungus and mold, is
10 not an injury by accident arising out of the employment unless
11 there is clear and convincing evidence establishing that
12 exposure to the specific substance involved, at the levels to
13 which the employee was exposed, can cause the injury or
14 disease sustained by the employee.

15 (6) The time for notice of injury or death provided in
16 s. 440.185(1) shall be extended in cases of occupational
17 diseases to a period of 30 ~~90~~ days.

18 Section 26. Section 440.152, Florida Statutes, is
19 created to read:

20 440.152 Computation of fractions of a percent.--When
21 computing fractions of a percent as required to determine
22 benefits under this chapter, the applicable percentage must be
23 rounded to the nearest one ten-thousandth, for example, 66 2/3
24 percent equals .6667.

25 Section 27. Subsection (1) of section 440.16, Florida
26 Statutes, is amended to read:

27 440.16 Compensation for death.--

28 (1) If death results from the accident within 1 year
29 thereafter or follows continuous disability and results from
30 the accident within 5 years thereafter, the employer shall
31 pay:

1 (a) Within 14 days after receiving the bill, actual
2 funeral expenses not to exceed \$7,500~~\$5,000~~.

3 (b) Compensation, in addition to the above, in the
4 following percentages of the average weekly wages to the
5 following persons entitled thereto on account of dependency
6 upon the deceased, and in the following order of preference,
7 subject to the limitation provided in subparagraph 2., but
8 such compensation shall be subject to the limits provided in
9 s. 440.12(2), shall not exceed \$200,000~~\$100,000~~, and may be
10 less than, but shall not exceed, for all dependents or persons
11 entitled to compensation, 66 2/3 percent of the average wage:

12 1. To the spouse, if there is no child, 50 percent of
13 the average weekly wage, such compensation to cease upon the
14 spouse's death.

15 2. To the spouse, if there is a child or children, the
16 compensation payable under subparagraph 1. and, in addition,
17 16 2/3 percent on account of the child or children. However,
18 when the deceased is survived by a spouse and also a child or
19 children, whether such child or children are the product of
20 the union existing at the time of death or of a former
21 marriage or marriages, the judge of compensation claims may
22 provide for the payment of compensation in such manner as may
23 appear to the judge of compensation claims just and proper and
24 for the best interests of the respective parties and, in so
25 doing, may provide for the entire compensation to be paid
26 exclusively to the child or children; and, in the case of
27 death of such spouse, 33 1/3 percent for each child.

28 However, upon the surviving spouse's remarriage, the spouse
29 shall be entitled to a lump-sum payment equal to 26 weeks of
30 compensation at the rate of 50 percent of the average weekly
31 wage as provided in s. 440.12(2), unless the \$100,000 limit

1 provided in this paragraph is exceeded, in which case the
2 surviving spouse shall receive a lump-sum payment equal to the
3 remaining available benefits in lieu of any further indemnity
4 benefits. In no case shall a surviving spouse's acceptance of
5 a lump-sum payment affect payment of death benefits to other
6 dependents.

7 3. To the child or children, if there is no spouse, 33
8 1/3 percent for each child.

9 4. To the parents, 25 percent to each, such
10 compensation to be paid during the continuance of dependency.

11 5. To the brothers, sisters, and grandchildren, 15
12 percent for each brother, sister, or grandchild.

13 (c) To the surviving spouse, payment of postsecondary
14 student fees for instruction at any area technical center
15 established under s. 1001.44 for up to 1,800 classroom hours
16 or payment of student fees at any community college
17 established under part III of chapter 1004 for up to 80
18 semester hours. The spouse of a deceased state employee shall
19 be entitled to a full waiver of such fees as provided in ss.
20 1009.22 and 1009.23 in lieu of the payment of such fees. The
21 benefits provided for in this paragraph shall be in addition
22 to other benefits provided for in this section and shall
23 terminate 7 years after the death of the deceased employee, or
24 when the total payment in eligible compensation under
25 paragraph (b) has been received. To qualify for the
26 educational benefit under this paragraph, the spouse shall be
27 required to meet and maintain the regular admission
28 requirements of, and be registered at, such area technical
29 center or community college, and make satisfactory academic
30 progress as defined by the educational institution in which
31 the student is enrolled.

1 Section 28. Section 440.17, Florida Statutes, is
2 amended to read:

3 440.17 Guardian for minor or incompetent.--Prior to
4 the filing of a claim, the department ~~division~~, and after the
5 filing of a claim, a judge of compensation claims, may require
6 the appointment by a court of competent jurisdiction, for any
7 person who is mentally incompetent or a minor, of a guardian
8 or other representative to receive compensation payable to
9 such person under this chapter and to exercise the powers
10 granted to or to perform the duties required of such person
11 under this chapter; however, the judge of compensation claims,
12 in the judge of compensation claims' discretion, may designate
13 in the compensation award a person to whom payment of
14 compensation may be paid for a minor or incompetent, in which
15 event payment to such designated person shall discharge all
16 liability for such compensation.

17 Section 29. Section 440.185, Florida Statutes, is
18 amended to read:

19 440.185 Notice of injury or death; reports; penalties
20 for violations.--

21 (1) An employee who suffers an injury arising out of
22 and in the course of employment shall advise his or her
23 employer of the injury within 30 days after the date of or
24 initial manifestation of the accident ~~injury~~. If the employee
25 reports the accident within 7 days, the accident shall be
26 presumed to be compensable so long as it otherwise meets the
27 requirements of this chapter, and the burden shall be on the
28 employer to disprove the compensability of the injury. If
29 the employee fails to comply with this section, the burden
30 shall be on the employee to prove the compensability of the
31 injury by clear and convincing evidence. The burden of proof

1 for proving the compensability of an illness or occupational
2 disease shall be governed by s. 440.151. Failure to so advise
3 the employer of an accident, illness, or occupational disease
4 shall bar a petition under this chapter unless:

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

7 (b) The cause of the injury could not be identified
8 without a medical opinion and the employee advised the
9 employer within 30 days after obtaining a medical opinion
10 indicating that the injury arose out of and in the course of
11 employment; or

12 (c) The employer did not put its employees on notice
13 of the requirements of this section by posting notice pursuant
14 to s. 440.055. ~~or~~

15 ~~(d) Exceptional circumstances, outside the scope of~~
16 ~~paragraph (a) or paragraph (b) justify such failure.~~

17
18 In the event of death arising out of and in the course of
19 employment, the requirements of this subsection shall be
20 satisfied by the employee's agent or estate. Documents
21 prepared by counsel in connection with litigation, including
22 but not limited to notices of appearance, petitions, motions,
23 or complaints, shall not constitute notice for purposes of
24 this section.

25 (2) Within 7 days after actual knowledge of injury or
26 death, the employer shall report such injury or death to its
27 carrier, in a format prescribed by the department, and shall
28 provide a copy of such report to the employee or the
29 employee's estate. If the employer reports the injury to the
30 carrier by telephone or electronically, the carrier shall,
31 within 3 business days after its receipt of such telephonic or

1 electronic report of injury or death, mail to the employee or
2 the employee's estate, and to the employer, a paper copy of a
3 report of injury or death. The paper copy of a report of
4 injury or death must be in a form prescribed by the
5 department.The report of injury from the employer to the
6 carrier, regardless of the method of reporting, must ~~shall~~
7 contain the following information:
8 (a) The name, address, and business of the employer;
9 (b) The name, social security number, street, mailing
10 address, telephone number, and occupation of the employee;
11 (c) The cause and nature of the injury or death;
12 (d) The year, month, day, and hour when, and the
13 particular locality where, the injury or death occurred; and
14 (e) Such other information as the department requires
15 by rule ~~may require~~. In addition, if the employee's employment
16 status changes after the employer's submission of the original
17 report of injury to the carrier, the employer shall notify the
18 carrier by telephone, by facsimile, or electronically, of the
19 injured employee's change in employment status within 3
20 business days after the change.
21 (f) The department shall provide by rule for a carrier
22 reporting system to identify the types of indemnity claims for
23 which the carrier must file first report of injury or death
24 information with the department and the time periods for
25 reporting.
26 (g) The employer shall record those injuries needing
27 first-aid only. The department shall by rule provide for a
28 reporting system to be used by employers to report to carriers
29 those injuries needing professional medical attention, for
30 which the employee does not receive compensation for
31 disability.

1
2 ~~The carrier shall, within 14 days after the employer's receipt~~
3 ~~of the form reporting the injury, file the information~~
4 ~~required by this subsection with the department. However, the~~
5 ~~department may by rule provide for a different reporting~~
6 ~~system for those types of injuries which it determines should~~
7 ~~be reported in a different manner and for those cases which~~
8 ~~involve minor injuries requiring professional medical~~
9 ~~attention in which the employee does not lose more than 7 days~~
10 ~~of work as a result of the injury and is able to return to the~~
11 ~~job immediately after treatment and resume regular work.~~

12 (3) In addition to the requirements of subsection (2),
13 the employer shall notify the department and the carrier
14 within 24 hours by telephone, by facsimile, or electronically
15 ~~or telegraph~~ of any injury resulting in death. However, this
16 special notice shall not be required when death results
17 subsequent to the submission to the department and the carrier
18 of a previous report of the injury pursuant to subsection (2).

19 (4) Within 3 business days after the employer or the
20 employee informs the carrier of an injury the carrier shall
21 mail to the injured worker an informational brochure approved
22 by the department which sets forth in clear and understandable
23 language an explanation of the rights, benefits, procedures
24 for obtaining benefits and assistance, criminal penalties, and
25 obligations of injured workers and their employers under the
26 Florida Workers' Compensation Law. Annually, the carrier or
27 its third-party administrator shall mail to the employer an
28 informational brochure approved by the department which sets
29 forth in clear and understandable language an explanation of
30 the rights, benefits, procedures for obtaining benefits and
31 assistance, criminal penalties, and obligations of injured

1 workers and their employers under the Florida Workers'
2 Compensation Law. All such informational brochures shall
3 contain a notice that clearly states in substance the
4 following: "Any person who, knowingly and with intent to
5 injure, defraud, or deceive any employer or employee,
6 insurance company, or self-insured program, files a statement
7 of claim containing any false or misleading information
8 commits a felony of the third degree."

9 (5)(a) Within 30 calendar days after the date the bill
10 was paid, the carrier shall provide to the department, in a
11 format and in the manner prescribed by the department by rule,
12 each paid medical, dental, and hospital bill received from a
13 health care provider or facility, the employer, or the
14 employee, with respect to the treatment, care, and attendance
15 of the injured employee, including any bill for examination,
16 diagnosis, or disability evaluation and the amounts paid, in a
17 format and manner specified by the department by rule.

18 (b) The department may require from the carrier,
19 employer, employee, or healthcare provider or facility
20 additional reports in a format prescribed by the department,
21 and in a manner and time prescribed by rule, with respect to
22 an employee's injury or claim, including reports on initial
23 payment, funeral expenses, claim costs, changes in claims
24 data, denials, and wage statements.

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

1 employer, employee, or healthcare provider or facility the
2 provision of information and documentation in response to a
3 request for information with respect to the employee's injury
4 or claim, including copies of ~~provide for the obtaining of any~~
5 medical reports and records relating to medical treatment
6 provided pursuant to this chapter, notwithstanding the
7 provisions of ss. 90.503 and 395.3025(4).

8 (d) Failure to respond to requests for information in
9 the manner and time prescribed by department rule subjects the
10 carrier, employer, employee, or health care provider or
11 facility to an administrative penalty not to exceed \$100 per
12 failure to respond.

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

19 (7) Every insurer ~~carrier~~ shall file with the
20 department, within 30 ~~21~~ days after the effectuation of
21 coverage, the effective date of a policy reinstatement, or
22 policy endorsement, ~~issuance of a policy or contract of~~
23 ~~insurance~~ such policy information as the department requires
24 by rule, including notice of whether the policy is a minimum
25 premium policy. The department may require by rule that the
26 insurer identify large deductible policies. Information
27 regarding a notice of cancellation, notice of nonrenewal, or
28 expiration of a policy pursuant to ~~as set out in s. 440.42(3)~~
29 shall be filed with ~~mailed to~~ the department in accordance
30 with rules adopted by the department ~~under chapter 120.~~

31 Third-party vendors that submit ~~The department may contract~~

1 ~~with a private entity for the collection of policy~~ information
2 required to be filed by insurers ~~carriers~~ under this
3 subsection and the receipt of notices of cancellation or
4 expiration of a policy required to be filed by carriers under
5 s. 440.42(3) must be approved by the department. The insurer
6 shall notify the department if the insurer's third-party
7 vendor for the submission of policy information has changed or
8 the insurer's third-party vendor status has changed, in
9 accordance with the procedures and timeframe set forth in
10 department rule. The submission by a third-party vendor of
11 information required to be filed by an insurer does not alter
12 the time requirements set forth in this chapter or department
13 rule. The timely filing of required information shall be
14 determined by the date the department receives the required
15 information, either directly from the insurer or from the
16 third-party vendor. ~~The submission of policy information or~~
17 ~~notices of cancellation or expiration to the contracted~~
18 ~~private entity satisfies the filing requirements of this~~
19 ~~subsection and s. 440.42(3).~~

20 (8)(a) When a claimant, employer, or carrier has the
21 right, or is required, to submit ~~mail~~ a report or notice with
22 required copies within the times prescribed in subsection (2),
23 subsection (4), or subsection (5), submission of paper
24 documents must be completed and must be in compliance with the
25 rules adopted by the department, and will be considered timely
26 ~~such mailing will be completed and in compliance with this~~
27 ~~section if it is~~ postmarked and mailed prepaid to the
28 appropriate recipient prior to the expiration of the time
29 periods prescribed in this section.

30 (b) Submission of information in department-approved
31 electronic formats is complete if the electronic transaction

1 is acknowledged by the department as having passed edits in
2 accordance with rules adopted by the department and is sent
3 within the times set forth in this chapter and department
4 rule.

5 1. If an electronic transaction is initially timely
6 submitted but is acknowledged by the department as having
7 failed edits, the carrier must resubmit a corrected electronic
8 transaction that passes edits within timeframes specified by
9 the department by rule from the date the initial electronic
10 acknowledgement was sent by the department to the carrier.

11 a. If the carrier timely resubmits a corrected
12 electronic transaction that passes edits, the carrier is not
13 subject to the penalties set forth in subsection (9).

14 b. If the carrier timely resubmits a corrected
15 electronic transaction, but the resubmission does not pass
16 edits, the carrier is subject to a penalty in accordance with
17 subsection (9) based on the number of days from the date the
18 original resubmission was due in accordance with
19 sub-subparagraph 1. through the date the resubmission was
20 received by the department and passes edits.

21 c. If the carrier untimely resubmits a corrected
22 electronic transaction within timeframes specified by the
23 department by rule from the date the initial electronic
24 acknowledgment was sent by the department to the carrier, the
25 carrier is subject to a penalty in accordance with subsection
26 (9) based on the number of days from the date the resubmission
27 was originally due through the date the resubmission was
28 received by the department and passes edits.

29 2. If the initial electronic transaction is both
30 untimely submitted as set forth in this chapter and department
31 rule and acknowledged by the department as having failed

1 edits, the carrier shall resubmit a corrected electronic
2 transaction that passes edits within timeframes specified by
3 the department by rule from the date the initial electronic
4 acknowledgement was sent by the department.

5 a. If the carrier timely resubmits a corrected
6 electronic transaction that passes edits within timeframes
7 specified by the department by rule from the date the initial
8 electronic acknowledgment was sent by the department to the
9 carrier, the carrier is subject to a penalty in accordance
10 with subsection (9) for only the duration of time the initial
11 electronic transaction was untimely filed.

12 b. If the carrier timely resubmits a corrected
13 electronic transaction within timeframes specified by the
14 department by rule from the date the initial electronic
15 acknowledgment was sent by the department to the carrier, but
16 the resubmission does not pass edits, the carrier is subject
17 to a penalty in accordance with subsection (9) based on the
18 number of days from the date the initial resubmission was due
19 in accordance with sub-subparagraph 2. through the date the
20 resubmission was received by the department and passes edits.

21 c. If the carrier untimely resubmits a corrected
22 electronic transaction within timeframes specified by the
23 department by rule from the date the initial electronic
24 acknowledgment was sent by the department to the carrier, the
25 carrier is subject to a penalty in accordance with subsection
26 (9). Such a penalty shall be based on the combined number of
27 days from the date the initial submission was due through the
28 date the initial submission was received, and the date the
29 resubmission was initially due through the date the
30 resubmission was finally received by the department and passes
31 edits.

1 3. If the carrier submits an electronic transaction
2 that does not pass edits as set forth in department rule and
3 the carrier does not resubmit the electronic transaction in
4 accordance with department rule, in addition to penalties
5 assessed pursuant to subsection (9), the carrier is subject to
6 a failure to file penalty as follows:

7 a. If the carrier has not resubmitted the electronic
8 transaction within timeframes specified by the department by
9 rule from the date the electronic acknowledgement was sent to
10 the carrier, the carrier is subject to a penalty of \$50 for
11 each 30-day period the carrier has failed to resubmit the
12 electronic transaction.

13 b. If the electronic transaction has not been
14 resubmitted within timeframes specified by the department by
15 rule from the date the electronic acknowledgement was sent to
16 the carrier, the department may refer the insurer to the
17 Office of Insurance Regulation for action under s. 624.308, or
18 may take appropriate action for a self-insurer in accordance
19 with s. 440.38.

20 (c) Submission by a third-party vendor of information
21 required to be filed by an insurer does not alter the time
22 requirements set forth in law or department rule.

23 (9)(a) For each electronic transaction, form, report,
24 bill, or notice, other than the first report of injury,
25 required by this section to be filed with the department, the
26 department shall impose an administrative penalty for each
27 such failure to timely file with the department in accordance
28 with this chapter and department rule. The carrier shall pay
29 to the Workers' Compensation Administration Trust Fund a
30 penalty of:

31

1 1. Twenty-five dollars for every electronic
2 transaction, form, report, bill, or notice that is filed with
3 the department 7 through 13 calendar days after the date it
4 was required to be filed in accordance with this chapter and
5 department rule.

6 2. Fifty dollars for every electronic transaction,
7 form, report, bill or notice that is filed with the department
8 14 through 20 calendar days after the date it was required to
9 be filed in accordance with this chapter and department rule.

10 3. One hundred dollars for every electronic
11 transaction, form, report, bill, or notice that is filed with
12 the department 21 or more calendar days after the date it was
13 required to be filed in accordance with this chapter and
14 department rule.

15
16 If an electronic transaction, form, report, bill, or notice is
17 untimely filed, but is filed no more than 6 calendar days
18 after the date it is due, the filer is not subject to a
19 penalty under this section, but the untimely filing shall be
20 considered in evaluating patterns and practices under s.
21 440.525.

22 (b) For every first report of injury required under s.
23 440.185(2), the department shall impose an administrative
24 penalty for each such failure to file the first report of
25 injury in accordance with this section and department rule.

26 The carrier shall pay to the Workers' Compensation
27 Administration Trust Fund a penalty of:

28 1. One hundred dollars for every first report of
29 injury that is filed with the department 3 through 6 calendar
30 days after the date the report was required to be filed in
31 accordance with this chapter and department rule.

1 2. Two hundred dollars for every first report of
2 injury that is filed with the department 7 through 13 calendar
3 days after the date the report was required to be filed in
4 accordance with this chapter and department rule.

5 3. Five hundred dollars for every first report of
6 injury that is filed with the department 14 or more calendar
7 days after the date the report was required to be filed in
8 accordance with this chapter and department rule.

9 (c) However, if an employer fails to notify the
10 carrier of the injury or change in the employee's employment
11 status as set forth in subsection (2) and in the times and
12 formats prescribed by the department, and the carrier fails to
13 so timely file the injury information with the department, the
14 employer is subject to an administrative penalty as set forth
15 in paragraph (a), which must be paid by the employer and not
16 by the carrier. Once the carrier receives notification of the
17 injury, failure by the employer to meet its obligations under
18 subsection (2) does not relieve the carrier from the
19 administrative penalty if it fails to comply with the filing
20 requirements set forth in subsections (4), (5), and (8) and
21 department rule.~~Any employer or carrier who fails or refuses~~
22 ~~to timely send any form, report, or notice required by this~~
23 ~~section shall be subject to a civil penalty not to exceed \$500~~
24 ~~for each such failure or refusal. However, any employer who~~
25 ~~fails to notify the carrier of the injury on the prescribed~~
26 ~~form or by letter within the 7 days required in subsection (2)~~
27 ~~shall be liable for the civil penalty, which shall be paid by~~
28 ~~the employer and not the carrier. Failure by the employer to~~
29 ~~meet its obligations under subsection (2) shall not relieve~~
30 ~~the carrier from liability for the civil penalty if it fails~~
31 ~~to comply with subsections (4) and (5).~~

1 (10) The department may by rule prescribe the format
2 ~~forms~~ and procedures governing ~~the~~ submission of the change in
3 claims administration, ~~report and the risk class codes, and~~
4 the 2002 North American Industry Classification System (NAICS)
5 ~~codes code and standard industry code report for all lost time~~
6 ~~and denied lost-time cases. The department may by rule define~~
7 ~~terms that are necessary for the effective administration of~~
8 ~~this section.~~

9 (11) Any information in a report of injury or illness
10 filed pursuant to this section that would identify an ill or
11 injured employee is confidential and exempt from the
12 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
13 Constitution. This subsection is subject to the Open
14 Government Sunset Review Act of 1995 in accordance with s.
15 119.15, and shall stand repealed on October 2, 2003, unless
16 reviewed and saved from repeal through reenactment by the
17 Legislature.

18 (12) A carrier shall initiate an investigation upon
19 receiving notification that a work-related injury may have
20 occurred to an employee of an insured employer. The
21 notification may come from the employee, the employer, the
22 health care provider, or the department.

23 (13) A carrier shall report to the department any
24 information possessed by the carrier which the carrier relies
25 on or could rely on in applying premium against an insured
26 based on the payroll of a person who possesses a certificate
27 of exemption.

28 Section 30. Section 440.191, Florida Statutes, is
29 amended to read:

30 (Substantial rewording of section. See
31 s. 440.191, F.S., for present text.)

1 440.191 Early Intervention Office.--
2 (1) The Early Intervention Office is created within
3 the department in order to facilitate the self-executing
4 features of the Workers' Compensation Law and to conduct early
5 intervention programs.
6 (a) The primary responsibility of the Early
7 Intervention Office is to provide information to educate
8 employees, employers, carriers, and health care providers
9 about their rights, responsibilities, and obligations under
10 this chapter and to facilitate the avoidance or resolution of
11 disagreements as provided in this section.
12 (b) Upon receiving a notice of injury or death, or
13 upon obtaining by any other means, knowledge that an accident
14 or injury has occurred, the Early Intervention Office may
15 initiate contact with the injured employee to discuss his or
16 her rights, responsibilities, and obligations. The Early
17 Intervention Office shall facilitate access to its services
18 through the establishment of a toll-free hotline.
19 (c) The Early Intervention Office shall contact and
20 assist the parties in avoiding or resolving any disagreement
21 regarding the benefits under this chapter upon request for
22 assistance from an injured worker, provider, employer, or
23 carrier indicating that a potential disagreement regarding the
24 provision of benefits under this chapter exists. Such
25 assistance may only be rendered when there is no petition for
26 benefits filed for that date of accident.
27 (d) The Early Intervention Office may obtain and
28 review documents, conduct interviews and conferences, and
29 collect other information necessary to assist the office in
30 facilitating the resolution of the disagreement. All parties
31 shall cooperate with the Early Intervention Office. Failure of

1 a party to provide information pursuant to this subsection
2 constitutes failure to comply with s. 440.185(5)(c). Upon
3 request, all parties shall provide requested documents or
4 participate in an interview or conference within 7 calendar
5 days after the request.

6 (e) If, in the course of carrying out its duties as
7 set forth in this section, the Early Intervention Office
8 identifies that a party has failed to comply with this
9 chapter, the office shall refer the failure to comply to the
10 appropriate regulator.

11 (f) The dollar value of any benefits that are provided
12 or secured as a result of the Early Intervention Office's
13 facilitation efforts may not be included in any subsequent
14 award pursuant to s. 440.34(2).

15 (g) The department may by rule specify forms and
16 procedures for administering this section.

17 Section 31. Section 440.192, Florida Statutes, is
18 amended to read:

19 440.192 Procedure for resolving benefit disputes.--

20 (1) Effective March 1, 2004 Subject to s. 440.191, any
21 employee seeking a benefit under this chapter shall make a
22 request upon the employer or carrier for provision of the
23 benefit with specificity. Within 14 days after receiving the
24 request, the carrier shall pay the benefits requested or send
25 a written denial to the employee.

26 (b) Any employee involved in a dispute, as defined in
27 s. 440.02, with a carrier ~~who has not received a benefit to~~
28 ~~which the employee believes she or he is entitled under this~~
29 ~~chapter shall file by certified mail, or by electronic means~~
30 approved by the Deputy Chief Judge, with the Office of the
31 Judges of Compensation Claims a petition for benefits which

1 meets the requirements of this section and serve a copy upon
2 the employer and carrier. Each petition served and filed must
3 have attached all documentation and evidence that supports
4 that all benefits sought in the petition are ripe. A petition
5 for benefits may contain a claim for past benefits and
6 continuing benefits in any benefit category, but is limited to
7 those ripe on the date the petition is filed. The department
8 by rule shall define what documentation is required to
9 accompany a petition for particular benefits. A petition shall
10 require more than "notice pleading," and shall instead be
11 required to satisfy a higher burden. The Claims Bureau shall
12 notify the carrier of the filing of the petition by electronic
13 means. The Claims Bureau shall maintain an Internet web page
14 upon which the information contained in the petition for
15 benefits files shall be viewable.

16 (c) Within 21 days after the Claims Bureau notifies
17 the carrier that a petition for benefits is filed, the carrier
18 must pay the requested benefits without prejudice to its right
19 to deny within 120 days after receipt of the petition or file
20 a response to petition with the Claims Bureau and submit any
21 evidence under its possession and control or that it could
22 otherwise access in support of its position. The carrier must
23 list all benefits requested but not paid and explain its
24 justification for nonpayment in the response to petition. A
25 carrier that does not deny compensability in accordance with
26 s. 440.20(4) is deemed to have accepted the employee's
27 injuries as compensable, unless it can establish material
28 facts relevant to the issue of compensability which could not
29 have been discovered through reasonable investigation within
30 the 120-day period. The carrier shall provide copies of the

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1 response to the filing party, employer, and claimant by
2 certified mail.

3 (d) Any records not sent to the bureau by either the
4 claimant with the petition or carrier with the response may
5 not later be used as a basis for overturning a decision of the
6 peer review panel, except as otherwise provided.

7 (e) The Claims Bureau may, by order of the Chief
8 Financial Officer, strike those portions of the petition or
9 dismiss any petition if the petition or underlying request
10 does not meet the requirements for specificity or ripeness,
11 without prejudice. Any dismissal based on lack of ripeness or
12 lack of specificity by the Claims Bureau may be appealed to a
13 deputy chief judge of compensation claims within 10 days after
14 the date of the order. If the deputy chief judge of
15 compensation claims reinstates the petition, the 21-day period
16 for the carrier to pay or deny the requested benefits shall
17 commence on the date of the deputy chief judge's order.

18 (f) Any petition not prosecuted as defined in Rule
19 1.420(e), Florida Rules of Civil Procedure shall be dismissed,
20 except that the dismissal shall occur after 210 days, rather
21 than 1 year in the manner established in Rule 1.420, Florida
22 Rules of Civil Procedure.

23 (g) The bureau shall review accepted petitions and
24 administer the resolution of disputed claims within such
25 petitions by:

26 1. Resolving the dispute through administrative
27 determination based upon the evidence submitted, in accordance
28 with rules established by the bureau;

29 2. Referring a claim or claims to the offices of the
30 judge of compensation claims for adjudication; or
31

1 3. Referring a claim or claims to a medical peer
2 review panel for adjudication of a medical dispute.

3
4 The bureau shall make the initial determination of which
5 issues are appropriate for which type of determination or
6 adjudication and shall determine whether some issues require
7 determination before other issues can be determined. The
8 Claims Bureau shall inform the petitioner and the employer or
9 carrier of the category and the priority of each claim.

10 (h) When the Claims Bureau determines that peer review
11 is necessary for a petition or an issue or claim contained in
12 a petition, the bureau shall refer the medical dispute to a
13 peer review panel and electronically transfer records as
14 provided in this chapter.

15 (i) Issues distributed to the Office of the Judges of
16 Compensation Claims shall be docketed as such by the Claims
17 Bureau and referred to the district office of the Judges of
18 Compensation Claims that is responsible for the adjudication
19 of claims for that district in which the accident or injury
20 occurred.~~The department shall inform employees of the~~
21 ~~location of the Office of the Judges of Compensation Claims~~
22 ~~for purposes of filing a petition for benefits. The employee~~
23 ~~shall also serve copies of the petition for benefits by~~
24 ~~certified mail, or by electronic means approved by the Deputy~~
25 ~~Chief Judge, upon the employer and the employer's carrier. The~~
26 ~~Deputy Chief Judge shall refer the petitions to the judges of~~
27 ~~compensation claims.~~

28 (2) Upon receipt, the Office of the Judges of
29 Compensation Claims Bureau shall review each petition and
30 shall dismiss each petition or any portion of such a petition,
31 upon the judge's own motion or upon the motion of any party,

1 that does not on its face specifically identify or itemize the
2 following:

3 (a) Name, address, telephone number, and social
4 security number of the employee.

5 (b) Name, address, and telephone number of the
6 employer.

7 (c) A detailed description of the injury and cause of
8 the injury, including the location of the occurrence and the
9 date or dates of the accident.

10 (d) A detailed description of the employee's job, work
11 responsibilities, and work the employee was performing when
12 the injury occurred.

13 (e) The time period for which compensation and the
14 specific classification of compensation were not timely
15 provided, with documentation signed by an authorized medical
16 provider or confirmatory consultation provider to support the
17 ripeness of the claim for compensation and the medical
18 relationship of such loss of earnings to the compensable
19 accident.

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

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

29 (h) Specific listing of all medical charges alleged
30 unpaid, including the name and address of the medical
31

1 provider, the amounts due, and the specific dates of
2 treatment.

3 (i) The type or nature of treatment care or attendance
4 sought and the justification for such treatment, with
5 documentation signed by an authorized medical provider or
6 confirmatory consultation provider to support the ripeness of
7 the claim for treatment or care and medical necessity of the
8 treatment or care.

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

12 (k) Any other information necessary to identify the
13 benefits being sought and the reason the benefits are being
14 sought, and documentation to support provision of those
15 benefits.

16

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

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

29 ~~(3)~~(4) The petition must include a certification by
30 the claimant or, if the claimant is represented by counsel,
31 the claimant's attorney, stating that the claimant, or

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

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

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

21 ~~(4)(7) Notwithstanding the provisions of s. 440.34, a~~
22 ~~judge of compensation claims may not award Attorney's fees are~~
23 ~~not payable by the carrier for services expended or costs~~
24 ~~incurred prior to the filing of a petition that does not meet~~
25 ~~the requirements of this section.~~

26 (5) When the Claims Bureau determines that a minor
27 dispute, including, but not limited to, a dispute concerning
28 average weekly wage, penalties and interest on uncontested
29 benefits, medical mileage disputes, and processing of
30 stipulated settlements, should be resolved through

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1 administrative determination, the Claims Bureau shall make a
2 determination in accordance with the following:

3 (a) The Claims Bureau's investigation and
4 determination shall be informal in process and not subject to
5 rules of evidence. During the course of an investigation and
6 determination, the Claims Bureau may order the parties and
7 witnesses to participate in interviews and may require records
8 to be produced to the Claims Bureau as required by
9 departmental rule. Any record in existence but not provided to
10 the Claims Bureau may not be used as a basis for overturning a
11 determination by the Claims Bureau. The bureau may sever any
12 parts of any petition and render a separate determination as
13 to each matter at issue.

14 (b) As to each issue within the Claims Bureau's
15 jurisdiction, the Claims Bureau shall have 45 days to render
16 an administrative determination, deciding that:

17 1. The carrier should provide the benefit as
18 requested;

19 2. The benefit requested is not ripe, due, or owing;
20 or

21 3. The carrier should provide the requested benefit
22 with modification.

23 (6)(a) As used in regard to medical disputes, the
24 term:

25 1. "Peer review organization" means one or more
26 qualified entities selected by and contracted with the
27 department which employs or contracts with panel members who
28 are qualified to address medical disputes.

29 2. "Panel member" means, at a minimum, a health care
30 provider, licensed in good standing to practice in the United
31 States, who has an active patient practice at least 8 hours

1 per week, who is not practicing in the State of Florida, and
2 who is employed by or, under contract with, a peer review
3 organization that provides contract services to the department
4 to determine medical disputes for the Florida Workers'
5 Compensation system.

6 3. "Peer review panel" means the three panel members
7 to whom a particular medical dispute has been referred by the
8 peer review organization after receipt from the Claims Bureau.

9 (b) The department shall contract, by January 1, 2004,
10 with one or more peer review organizations for the performance
11 of peer review of medical issues to final adjudication, the
12 cost of which shall be borne by the carrier. Contracted peer
13 review organizations shall be fully accredited by the
14 Utilization Review Accreditation Commission or another
15 comparable nationally recognized organization, shall maintain
16 an office in this state, shall be subject to the jurisdiction
17 of this state, and shall be responsible for properly
18 credentialing and educating panel members and ensuring
19 compliance with this section. Peer review organizations and
20 panel members are immune from liability in the execution of
21 their peer review functions to the extent provided in s.
22 766.101. All information received by the peer review
23 organization or panel member shall be confidential to the
24 extent provided for in s. 440.102(8) except if such
25 information is admitted into evidence before a judge of
26 compensation claims as provided in this section.

27 (c) Medical disputes, including issues of fact, shall
28 be decided in a summary manner by the peer review panel from
29 the records and pleadings submitted by the claimant with the
30 petition and by the employer or carrier with the response. The
31 peer review process shall depend upon the employee and carrier

1 each explaining the nature of the dispute and upon providing
2 sufficient documentation for resolution of the issue or claim.
3 The carrier must submit, as provided herein, its records and
4 documentation that support its denial. The peer review panel
5 may consider any documents timely submitted by either party
6 subject only to the requirements of this chapter. Chapter 90
7 does not apply to proceedings before the medical review panel.
8 The peer review panel, within 7 days after the peer review
9 organization receives the referral from the Claims Bureau,
10 shall issue a written report, concurred in by at least two
11 members of the peer review panel, that includes a statement of
12 the issues posed, the documents or evidence reviewed, findings
13 of fact regarding the medical issue, and the determination and
14 adjudication by the panel regarding the issues. If the peer
15 review panel determines that a nonmedical issue must be
16 resolved before making a determination and adjudication of the
17 medical dispute, the peer review panel shall remand the issue
18 to the Claims Bureau. The peer review panel shall consider the
19 entire record created before the bureau, and not examine the
20 claimant or otherwise seek to gather additional information. A
21 peer review panel may not make a finding of a degree of
22 permanent impairment which is greater than the greatest
23 permanent impairment rating given the claimant by any
24 examining or treating physician, except upon stipulation of
25 the parties. Applying the standards of care, applicable
26 practice parameters, and other relevant provisions of this
27 chapter, the peer review panel shall make an initial
28 determination and adjudication, pursuant to its contract with
29 the department, of the medical merits of the dispute.
30 (d) The peer review panel shall transmit its decision
31 to the bureau.

1 (e) Any party is entitled to a reconsideration of any
2 initial adjudication by a peer review panel. Such party shall
3 invoke that right by filing a request for reconsideration with
4 the Claims Bureau, also serving a copy of the request on all
5 other parties, on a form prescribed by the bureau, within 10
6 days after the decision being certified as mailed or otherwise
7 transmitted by the bureau to the parties. In the event of a
8 reconsideration, any party may conduct discovery, including
9 medical records requests, depositions of authorized medical
10 providers, confirmatory consultation providers, or factual
11 witnesses. Peer review panel members are not subject to
12 discovery except as provided in this section. Any depositions
13 taken for this purpose may be presented in transcribed format,
14 videotaped format, or both. The rules of evidence do not apply
15 to what evidence is discoverable from these sources or
16 admissible before the medical peer review panel except as
17 regards privileges. No privilege shall be waived by operation
18 of this section, and no privileged material shall be
19 admissible through operation of this section. The parties
20 shall complete discovery and submit all such discovery as
21 permitted herein to the Claims Bureau within 90 days after
22 filing the request with the Claims bureau. No evidence
23 submitted after the 90-day period shall be considered by the
24 peer review panel. The reconsideration shall be adjudicated by
25 the same peer review panel that issued the original
26 determination, if possible. If a member of the original panel
27 is unavailable, the contracting organization shall substitute
28 a provider of like qualifications and of like specialty to
29 replace the unavailable member. The peer review panel shall
30 consider the entire record created by the parties in the
31 reconsideration period. The peer review panel may not examine

1 the claimant or otherwise seek to gather additional
2 information for reconsideration. Applying the standards of
3 care, applicable practice parameters, and other relevant
4 provisions of this chapter, the peer review panel shall make a
5 final determination and final adjudication, pursuant to its
6 contract with the department, of the medical merits of the
7 dispute within 25 days after receipt of all information upon
8 which the peer review panel is to make its adjudication.

9 (f) Any party may appeal the decision or findings of
10 the Claims Bureau, the final adjudication of the peer review
11 panel, or the order of the Office of the judge of compensation
12 claims to the Workers' Compensation Appellate Tribunal.

13 (7)(a) An administrative determination by the Claims
14 Bureau becomes final and enforceable 14 days after it is
15 rendered unless an appeal is filed with the Workers'
16 Compensation Appellate Tribunal. Final adjudications of a peer
17 review panel and orders of the Office of the Judges of
18 Compensation Claims shall become final and enforceable 30 days
19 after the final adjudication or order is entered.

20 (b) After the Claims Bureau issues a determination and
21 recommendation on administrative issues, the bureau may
22 assign issues to the judge of compensation claims to take
23 evidence and hold a hearing for the purpose of deciding a
24 claimant's entitlement to disputed benefits.

25 (c) Any records or documentation reasonably available
26 to a party and otherwise authorized and admissible under this
27 chapter, which are not provided to the claims bureau within
28 the 21-day period, shall not be used in any proceeding as a
29 basis for challenging a peer review determination.

30 (8)(a) The judge may direct pretrial procedure,
31 discovery, and all other procedural issues, subject to rules

1 adopted by the Workers' Compensation Appellate Tribunal. The
2 judge may issue subpoenas and such other orders as necessary
3 to compel production of evidence; however, an employee or
4 agent of the Claims Bureau or of any peer review panel may not
5 be subject to subpoena or otherwise called to testify unless
6 there is first adduced other evidence that the individual is
7 complicit in a fraud. Hearings before the judge of
8 compensation claims shall be open to the public. A judge of
9 compensation claims does not have jurisdiction to resolve a
10 medical dispute.

11 (b) Each motion to dismiss must state with
12 particularity the basis for the motion. Any petition not
13 prosecuted as defined in Rule 1.420(e), Florida Rules of Civil
14 Procedure, shall be dismissed, except that the dismissal shall
15 occur after 210 days, rather than 1 year. The judge of
16 compensation claims shall enter an order upon such motions
17 without hearing, unless good cause for hearing is shown. When
18 any petition or portion of a petition is dismissed for lack of
19 specificity under this subsection, the claimant must be
20 allowed 20 days after the date of the order of dismissal in
21 which to file an amended petition. Any grounds for dismissal
22 for lack of specificity under this section which are not
23 asserted within 30 days after receipt of the petition for
24 benefits are waived.

25 (9) After hearing the evidence, the judge shall issue
26 an order within 30 days. The order must contain a decree that
27 enumerates each benefit sought and the judge's decision to
28 grant or deny the benefits, along with any other order or
29 resolution directed by the judge. The order may also contain
30 findings of fact and conclusions of law. An order containing a
31 decree without findings of fact and conclusions of law becomes

1 final 30 days after rendition unless a party files a request
2 for findings of fact and conclusions of law within 10 days
3 after rendition, in which case the decree is vacated by
4 operation of law. An order containing findings of fact and
5 conclusions of law along with a decree becomes final 30 days
6 after rendition unless it is appealed to the Workers'
7 Compensation Appellate Tribunal as provided in this chapter.

8 (10) A party may obtain review of a final order of a
9 judge of compensation claims by filing a notice of appeal with
10 the Workers' Compensation Appellate Tribunal and serving a
11 copy upon the judge of compensation claims who rendered the
12 decision, within 30 days after the rendition. The notice must
13 state with specificity what issues are being appealed. The
14 Workers' Compensation Appellate Tribunal shall conduct
15 plenary, on-the-record review, exercising power judicial in
16 nature to the maximum extent permitted by the State
17 Constitution. The Workers' Compensation Appellate Tribunal
18 shall not have jurisdiction to declare a statute or any part
19 thereof unconstitutional, but shall apply the statute with due
20 regard for the due process rights of the parties.

21 (11) Any party seeking review of a decision rendered
22 by the Workers' Compensation Appellate Tribunal may petition
23 the First District Court of Appeal within 30 days after the
24 decision by the Workers' Compensation Appellate Tribunal. The
25 First District Court of Appeal may grant certiorari or
26 otherwise review decisions of the Workers' Compensation
27 Appellate Tribunal only to the extent necessary to protect the
28 rights of the parties under the State Constitution.

29 (12) Procedural rules for administrative determination
30 of claims by the Claims Bureau, including the determinations
31 of peer review panels, shall be governed by rules adopted by

1 the Department of Financial Services. Procedural rules for
2 conduct of proceedings before judges of compensation claims
3 and for practice before the Workers' Compensation Appellate
4 Tribunal shall be adopted by the department. In determining
5 the scope of rulemaking authority under this section, the
6 department shall have and be guided by the scope of rulemaking
7 authority exercised by the Supreme Court in making rules for
8 civil procedure and appellate procedure respectively.

9 ~~(8) Within 14 days after receipt of a petition for~~
10 ~~benefits by certified mail, the carrier must either pay the~~
11 ~~requested benefits without prejudice to its right to deny~~
12 ~~within 120 days from receipt of the petition or file a~~
13 ~~response to petition with the Office of the Judges of~~
14 ~~Compensation Claims. The carrier must list all benefits~~
15 ~~requested but not paid and explain its justification for~~
16 ~~nonpayment in the response to petition. A carrier that does~~
17 ~~not deny compensability in accordance with s. 440.20(4) is~~
18 ~~deemed to have accepted the employee's injuries as~~
19 ~~compensable, unless it can establish material facts relevant~~
20 ~~to the issue of compensability that could not have been~~
21 ~~discovered through reasonable investigation within the 120-day~~
22 ~~period. The carrier shall provide copies of the response to~~
23 ~~the filing party, employer, and claimant by certified mail.~~

24 Section 32. Section 440.1925, Florida Statutes, is
25 amended to read:

26 440.1925 Procedure for resolving maximum medical
27 improvement or permanent impairment disputes.--

28 (1) Notwithstanding the limitations on carrier
29 independent medical examinations in s. 440.13, an employee or
30 carrier who wishes to obtain an opinion other than the opinion
31 of the treating physician or a confirmatory consultant ~~an~~

1 ~~agency advisor~~ on the issue of permanent impairment may obtain
2 one confirmatory consultation independent medical examination,
3 except that the employee or carrier who selects the treating
4 physician is not entitled to obtain an alternate opinion on
5 the issue of permanent impairment, unless the parties
6 otherwise agree. This section and s. 440.13(2) do not permit
7 an employee or a carrier to obtain an additional medical
8 opinion on the issue of permanent impairment by requesting an
9 alternate treating physician pursuant to s. 440.13.

10 (2) A dispute as to the date of maximum medical
11 improvement, ~~or~~ degree of permanent impairment, or extent of
12 functional loss of impairment which is not subject to dispute
13 ~~resolution according to rules promulgated pursuant to s.~~
14 ~~440.134~~ shall be resolved according to the procedure set out
15 in this section.

16 (3) Disputes shall be resolved under this section
17 when:

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

22 (b) The confirmatory consultation providers
23 ~~independent medical examiner's~~ opinion on the date of the
24 employee's maximum medical improvement, ~~and~~ degree of or
25 permanent impairment, or extent of functional loss or
26 disability, or any combination thereof, differs from the
27 opinion of the employee's treating physician on either of
28 those issues, or from the opinion of another confirmatory
29 consultation provider ~~the expert medical advisor appointed by~~
30 ~~the agency~~ on the degree of permanent impairment or extent of
31 functional loss or disability, or both; or

1 (c) The carrier denies any portion of an employee's
2 claim petition for benefits due to disputed issues concerning
3 maximum medical improvement, or permanent impairment, or
4 extent of functional loss or impairment, or any combination
5 thereof issues.

6 (4) Only opinions of the employee's treating physician
7 or those of a confirmatory consultation provider, an agency
8 medical advisor, or an independent medical examiner are
9 admissible in proceedings before a peer review panel or judge
10 of compensation claims to resolve disputes about maximum
11 medical improvement or impairment or about extent of
12 functional loss or disability disputes.

13 (5) The peer review panel judge of compensation claims
14 shall first resolve any dispute concerning the date on which
15 the employee reached maximum medical improvement. The peer
16 review panel judge shall then determine the degree of the
17 employee's permanent impairment or of functional loss or
18 disability, which shall be either the highest or lowest
19 estimate of permanent impairment which is in evidence before
20 the judge of compensation claims.

21 Section 33. Section 440.20, Florida Statutes, is
22 amended to read:

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

25 (1)(a) Unless it denies compensability or entitlement
26 to benefits, the carrier shall pay compensation directly to
27 the employee as required by ss. 440.14, 440.15, and 440.16, in
28 accordance with the obligations set forth in such sections. If
29 authorized by the employee, the carrier's obligation to pay
30 compensation directly to the employee is satisfied when the
31 carrier directly deposits, by electronic transfer or other

1 means, compensation into the employee's account at a financial
2 institution. As used in this paragraph, the term "financial
3 institution" means a financial institution as defined in s.
4 655.005(1)(h). Compensation by direct deposit is considered
5 paid on the date the funds become available for withdrawal by
6 the employee.

7 (b) Notwithstanding any other provision of this
8 chapter, all insurance carriers, group self-insurance funds,
9 assessable mutual insurers, and the Joint Underwriting
10 Association authorized to write workers' compensation
11 insurance in this state shall make available a notice in
12 writing to the employer the fact that a state-authorized
13 deductible plan is available. Under this plan, an employer may
14 pay, for each injury for which an employee files a claim under
15 this chapter as a deductible, up to the first \$2,500 of the
16 total amount payable under compensable claims related to such
17 injury. An employer shall not be reimbursed for any amount
18 paid under this paragraph; however, the reporting requirements
19 of the employer, relating to injuries required under any
20 provision under this chapter, are not altered or alleviated.
21 The rate base of any workers' compensation insurance offered
22 pursuant to this chapter shall include the deductible
23 provision authorized by this paragraph. Any amounts paid by an
24 employer pursuant to this paragraph shall not apply in any way
25 to such employer's experience rating for injury.

26 (2)(a) The carrier must pay the first installment of
27 compensation or deny compensability no later than the 14th
28 calendar day after the employer receives notification notice
29 of the injury or death, when disability is immediate and
30 continuous for 8 calendar days or more after the injury. If
31 the first 7 days of disability are nonconsecutive or delayed,

1 the first installment of compensation is due on the sixth day
2 after the first 8 calendar days of disability.The carrier
3 shall thereafter pay compensation in biweekly installments or
4 as otherwise provided in s. 440.15, unless the judge of
5 compensation claims determines or the parties agree that an
6 alternate installment schedule is in the best interests of the
7 employee.

8 (b) The carrier must pay, disallow, or deny all
9 medical, dental, pharmacy, and hospital bills submitted to the
10 carrier in accordance with department rule no later than 45
11 calendar days after the carrier's receipt of the bill.

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

20 (4) If the carrier is uncertain of its obligation to
21 provide benefits or compensation, ~~it may initiate payment~~
22 ~~without prejudice and without admitting liability.~~the carrier
23 shall immediately and in good faith commence investigation of
24 the employee's entitlement to benefits under this chapter and
25 shall admit or deny compensability within 120 days after the
26 initial provision of compensation or benefits as required
27 under subsection (2) or s. 440.192(8). In addition, the
28 carrier shall initiate payment and continue the provision of
29 all benefits and compensation as if the claim had been
30 accepted as compensable, without prejudice and without
31 admitting liability.Upon commencement of payment as required

1 under subsection (2) or s. 440.192(8), the carrier shall
2 provide written notice to the employee that it has elected to
3 pay all ~~or part~~ of the claim pending further investigation,
4 and that it will advise the employee of claim acceptance or
5 denial within 120 days. A carrier that fails to deny
6 compensability within 120 days after the initial provision of
7 benefits or payment of compensation as required under
8 subsection (2) or s. 440.192(8) waives the right to deny
9 compensability, unless the carrier can establish material
10 facts relevant to the issue of compensability that it could
11 not have discovered through reasonable investigation within
12 the 120-day period. The initial provision of compensation or
13 benefits, for purposes of this subsection, means the first
14 installment of compensation or benefits to be paid by the
15 carrier under subsection (2) or pursuant to a petition for
16 benefits under s. 440.192(8).

17 (5) If the employer has advanced compensation payments
18 or benefits to the employee, the carrier shall reimburse the
19 employer for the advanced payments if the employee is entitled
20 to compensation and benefits pursuant to this chapter. The
21 carrier may deduct such reimbursements from the employee's
22 compensation installments or, if applicable, from payments to
23 the employee ordered by a judge of compensation claims.

24 (6)(a) If any installment of compensation for death or
25 dependency benefits, or for disability, permanent impairment,
26 or wage loss benefits payable without an award is not paid
27 within 7 days after it becomes due, as provided in subsection
28 (2), subsection (3), or subsection (4), there shall be added
29 to such unpaid installment a ~~punitive~~ penalty of an amount
30 equal to 20 percent of the unpaid installment ~~or \$5~~, which
31 shall be paid at the same time as, but in addition to, such

1 installment of compensation. This penalty does not apply for
2 late payments resulting, unless notice is filed under
3 ~~subsection (4) or unless such nonpayment results~~ from
4 conditions over which the employer or carrier had no control.
5 When any installment of compensation payable without an award
6 has not been paid within 7 days after it became due and the
7 claimant concludes the prosecution of the claim before a judge
8 of compensation claims without having specifically claimed
9 additional compensation in the nature of a penalty under this
10 section, the claimant will be deemed to have acknowledged
11 that, owing to conditions over which the employer or carrier
12 had no control, such installment could not be paid within the
13 period prescribed for payment and to have waived the right to
14 claim such penalty. However, during the course of a hearing,
15 the judge of compensation claims shall on her or his own
16 motion raise the question of whether such penalty should be
17 awarded or excused. The department may assess without a
18 hearing the ~~punitive~~ penalty against either the employer or
19 the ~~insurance~~ carrier, depending upon who was at fault in
20 causing the delay. The insurance policy cannot provide that
21 this sum will be paid by the carrier if the department or the
22 judge of compensation claims determines that the ~~punitive~~
23 penalty should be paid ~~made~~ by the employer rather than the
24 carrier. Any additional installment of compensation paid by
25 the carrier pursuant to this section shall be paid directly to
26 the employee by check or, if authorized by the employee, by
27 direct deposit into the employee's account at a financial
28 institution. ~~As used in this subsection, the term "financial~~
29 ~~institution" means a financial institution as defined in s.~~
30 ~~655.005(1)(h).~~
31

1 (b) For dates of service on or after January 1, 2004,
2 the department shall require that all medical, hospital,
3 pharmacy, or dental bills that have been properly submitted by
4 the provider in accordance with department rule are timely
5 paid, disallowed, or denied by the carrier or its authorized
6 vendor within 45 calendar days after the carrier's receipt of
7 the bill. The carrier shall pay, to the Workers' Compensation
8 Administration Trust Fund, a penalty of:

9 1. Twenty-five dollars for every bill below 95 percent
10 and equal to or greater than 90 percent which is untimely
11 paid, disallowed, or denied.

12 2. Fifty dollars for every bill below 90 percent which
13 is untimely paid, disallowed, or denied.

14 (c) The department may adopt rules to administer this
15 section.

16 (7) If any compensation, payable under the terms of an
17 award, is not paid within 7 days after it becomes due, there
18 shall be added to such unpaid compensation an amount equal to
19 20 percent thereof, which shall be paid at the same time as,
20 but in addition to, such compensation, unless review of the
21 compensation order making such award is had as provided in s.
22 440.25.

23 (8) In addition to any other penalties provided by
24 this chapter for late payment, if any installment of
25 compensation is not paid when it becomes due, the employer,
26 carrier, or servicing agent shall pay interest thereon at the
27 rate determined pursuant to s. 55.03 for the year in which the
28 payment was due and in which it remained unpaid. The
29 applicable interest rate for any period must always be the
30 interest rate applicable to that period pursuant to law.
31 Interest must be computed as simple interest and must be paid

1 ~~for any periods of 12 percent per year~~ from the date the
2 installment becomes due until it is paid, whether such
3 installment is payable without an order or under the terms of
4 an order. The interest payment shall be the greater of the
5 amount of interest due or \$5.

6 (a) Within 30 days after final payment of compensation
7 has been made, the employer, carrier, or servicing agent shall
8 send to the department a notice, in accordance with a format
9 and manner prescribed by the department, stating that such
10 final payment has been made and stating the total amount of
11 compensation paid, the name of the employee and of any other
12 person to whom compensation has been paid, the date of the
13 injury or death, and the date to which compensation has been
14 paid.

15 (b) If the employer, carrier, or servicing agent fails
16 to so notify the department within such time, the department
17 shall assess against such employer, carrier, or servicing
18 agent a civil penalty in an amount not over \$100.

19 (c) In order to ensure carrier compliance under this
20 chapter and provisions of the Florida Insurance Code, the
21 Office of Insurance Regulation ~~department~~ shall monitor,
22 audit, and investigate the performance of carriers by
23 conducting market conduct examinations, as provided in s.
24 624.3161, and conducting investigations, as provided in s.
25 624.317. The department shall require that ~~establish by rule~~
26 ~~minimum performance standards for carriers to ensure that a~~
27 ~~minimum of 90 percent of all~~ compensation benefits be ~~are~~
28 timely paid in accordance with this section. The department
29 shall impose penalties ~~fine a carrier as provided in s.~~
30 ~~440.13(11)(b) up to \$50~~ for each late payment of compensation
31 that is below the minimum 95 ~~90~~ percent performance standard.

1 A carrier shall pay to the Workers' Compensation

2 Administration Trust Fund a penalty of:

3 1. Fifty dollars for each installment of compensation
4 below 95 percent and equal to or greater than 90 percent which
5 is timely paid.

6 2. One hundred dollars for each installment of
7 compensation below 90 percent which is timely paid.

8 (c) The department shall adopt rules to administer
9 this section.

10
11 This paragraph does not affect the imposition of any penalties
12 or interest due to the claimant. If a carrier contracts with a
13 servicing agent to fulfill its administrative responsibilities
14 under this chapter, the payment practices of the servicing
15 agent are deemed the payment practices of the carrier for the
16 purpose of assessing penalties against the carrier.

17 (9) The department may upon its own initiative at any
18 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) If ~~whenever~~ the department considers ~~deems~~ it
29 advisable, it may require any employer to make a deposit with
30 the Chief Financial Officer ~~Treasurer~~ to secure the prompt and
31 convenient payments of such compensation; and payments

1 therefrom upon any awards shall be made upon order of the
2 department or judge of compensation claims.

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

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

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

1 discretion, may have an investigation made. The joint petition
2 and the report of any investigation so made will be deemed a
3 part of the proceeding. An employer shall have the right to
4 appear at any hearing pursuant to this subsection which
5 relates to the discharge of such employer's liability and to
6 present 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 (c) Notwithstanding s. 440.21(2), when a claimant is
29 represented by counsel, the claimant may waive all rights to
30 any and all benefits under this chapter by entering into a
31 settlement agreement releasing the employer and the carrier

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

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

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

1 (e) This section applies to all claims that the
2 parties have not previously settled, regardless of the date of
3 accident.

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

10 (b) When the claimant has reached maximum recovery and
11 returned to her or his former or equivalent employment with no
12 substantial reduction in wages, such approval of a reasonable
13 advance payment of a part of the compensation payable to the
14 claimant may be given informally by letter by a judge of
15 compensation claims or by the department.

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

20 1. An advance payment of compensation not in excess of
21 \$2,000 may be approved informally by letter, without hearing,
22 by any judge of compensation claims or the Chief Judge.

23 2. An advance payment of compensation not in excess of
24 \$2,000 may be ordered by any judge of compensation claims
25 after giving the interested parties an opportunity for a
26 hearing thereon pursuant to not less than 10 days' notice by
27 mail, unless such notice is waived, and after giving due
28 consideration to the interests of the person entitled thereto.
29 When the parties have stipulated to an advance payment of
30 compensation not in excess of \$2,000, such advance may be
31 approved by an order of a judge of compensation claims, with

1 or without hearing, or informally by letter by any such judge
2 of compensation claims, or by the department, if such advance
3 is found to be for the best interests of the person entitled
4 thereto.

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

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

1 benefits in any 48-month period, whichever is greater, from
2 the date of the last advance payment.

3 (13) If the employer has made advance payments of
4 compensation, she or he shall be entitled to be reimbursed out
5 of any unpaid installment or installments of compensation due.

6 (14) When an employee is injured and the employer pays
7 the employee's full wages or any part thereof during the
8 period of disability, or pays medical expenses for such
9 employee, and the case is contested by the carrier or the
10 carrier and employer and thereafter the carrier, either
11 voluntarily or pursuant to an award, makes a payment of
12 compensation or medical benefits, the employer shall be
13 entitled to reimbursement to the extent of the compensation
14 paid or awarded, plus medical benefits, if any, out of the
15 first proceeds paid by the carrier in compliance with such
16 voluntary payment or award, provided the employer furnishes
17 satisfactory proof to the judge of compensation claims of such
18 payment of compensation and medical benefits. Any payment by
19 the employer over and above compensation paid or awarded and
20 medical benefits, pursuant to subsection (13), shall be
21 considered a gratuity.

22 (15)(a) The department shall examine on an ongoing
23 basis claims files in accordance with s. 624.3161 and this
24 chapter and may impose fines pursuant to s. 624.310(5) and
25 this chapter in order to identify questionable claims-handling
26 techniques, questionable patterns or practices of claims, or a
27 pattern of repeated unreasonably controverted claims by
28 carriers, as defined in s. 440.02, third-party administrators,
29 or other claims-handling entities providing services to
30 employees pursuant to this chapter. If the department finds
31 such questionable techniques, patterns, or repeated

1 unreasonably controverted claims as constitute a general
2 business practice of a carrier, as defined in s. 440.02,
3 third-party administrators, or other claims-handling entities
4 the department shall take appropriate action so as to bring
5 such general business practices to a halt pursuant to s.
6 440.38(3) or may impose penalties pursuant to s. 624.4211. The
7 department may initiate investigations of questionable
8 techniques, patterns, practices, or repeated unreasonably
9 controverted claims by carriers, third-party administrators,
10 or other claims-handling entities. The department may by rule
11 establish forms and procedures for corrective action plans and
12 for auditing carriers.

13 (b) As to any examination, investigation, or hearing
14 being conducted under this chapter, the Chief Financial
15 Officer ~~Insurance Commissioner~~ or his or her designee:

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

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

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

30 (d) Subpoenas shall be served, and proof of such
31 service made, in the same manner as if issued by a circuit

1 court. Witness fees, costs, and reasonable travel expenses, if
2 claimed, shall be allowed the same as for testimony in a
3 circuit court.

4 (e) The department shall publish annually a report
5 which indicates the promptness of first payment of
6 compensation records of each carrier, third-party
7 administrators, or other claims-handling entities or
8 self-insurer so as to focus attention on those carriers or
9 self-insurers with poor payment records for the preceding
10 year. The department shall take appropriate steps so as to
11 cause such poor ~~carrier~~ payment practices by carriers,
12 third-party administrators, or other claims-handling entities
13 to halt pursuant to s. 440.38(3). In addition, the department
14 shall take appropriate action so as to halt such poor payment
15 practices of self-insurers. "Poor payment practice" means a
16 practice of late payment sufficient to constitute a general
17 business practice.

18 (f) The department shall promulgate rules providing
19 guidelines to carriers, as defined in s. 440.02, third-party
20 administrators, other claims-handling entities,
21 self-insurers, and employers to indicate behavior that may be
22 construed as questionable claims-handling techniques,
23 questionable patterns of claims, repeated unreasonably
24 controverted claims, or poor payment practices.

25 (16) Any penalty assessed by the department under this
26 section must be paid within 30 days after the date the
27 imposition of the penalty becomes final. If an employer fails
28 to pay a penalty assessed by the department as provided in
29 this section, the department shall refer such failure to pay
30 to the appropriate licensing entity applicable to the
31 employer. A ~~No~~ penalty assessed under this section may be

1 recouped by any carrier or self-insurer in the rate base, the
2 premium, or any rate filing. The Office of Insurance
3 Regulation Department of Insurance shall enforce this
4 subsection with regard to insurers.

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

8 Section 34. Subsection (3) of section 440.24, Florida
9 Statutes, is amended to read:

10 440.24 Enforcement of compensation orders;
11 penalties.--

12 (3) In any case where the employer is a self-insurer
13 and fails to comply with any compensation order of a judge of
14 compensation claims or court within 10 days after such order
15 becomes final, the Department of Financial Services Insurance
16 may suspend or revoke any authorization previously given to
17 the employer to be a self-insurer, and the Florida
18 Self-Insurers Guaranty Association, Incorporated, may call or
19 sue upon the surety bond or exercise its rights under the
20 letter of credit deposited by the self-insurer with the
21 association as a qualifying security deposit as may be
22 necessary to satisfy the order.

23 Section 35. 440.25, Florida Statutes, is amended to
24 read:

25 440.25 Procedures for mediation and hearings.--

26 (1) ~~Within 90 days after a petition for benefits is~~
27 ~~filed under s. 440.192,~~ A mediation conference concerning such
28 petition may shall be held at the election and expense of the
29 parties regarding any issues assigned by the bureau to the
30 judge of compensation claims. Mediation may be held at the
31 election and expense of the parties regarding any settlement

1 ~~of the claim pursuant to s. 440.20. Within 40 days after such~~
2 ~~petition is filed, the judge of compensation claims shall~~
3 ~~notify the interested parties by order that a mediation~~
4 ~~conference concerning such petition will be held unless the~~
5 ~~parties have notified the Office of the Judges of Compensation~~
6 ~~Claims that a mediation has been held. Such order must give~~
7 ~~the date by which the mediation conference must be held. Such~~
8 ~~order may be served personally upon the interested parties or~~
9 ~~may be sent to the interested parties by mail. The claimant or~~
10 ~~the adjuster of the employer or carrier may, at the mediator's~~
11 ~~discretion, attend the mediation conference by telephone or,~~
12 ~~if agreed to by the parties, other electronic means. A~~
13 ~~continuance may be granted if the requesting party~~
14 ~~demonstrates to the judge of compensation claims that the~~
15 ~~reason for requesting the continuance arises from~~
16 ~~circumstances beyond the party's control. Any order granting a~~
17 ~~continuance must set forth the date of the rescheduled~~
18 ~~mediation conference. A mediation conference may not be used~~
19 ~~solely for the purpose of mediating attorney's fees.~~

20 (2) Any party who participates in a mediation
21 conference shall not be precluded from requesting a hearing
22 following the mediation conference should both parties not
23 agree to be bound by the results of the mediation conference.
24 A mediation conference is required to be held unless this
25 requirement is waived by the Deputy Chief Judge. No later than
26 3 days prior to the mediation conference, all parties must
27 submit any applicable motions, including, but not limited to,
28 a motion to waive the mediation conference, to the judge of
29 compensation claims.

30 (3)(a) ~~Such Mediation conferences conference~~ shall be
31 conducted informally and do ~~does~~ not require the use of formal

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

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

1 ~~shall be selected from a list prepared by the Director of the~~
2 ~~Division of Administrative Hearings. An adjunct mediator must~~
3 ~~be independent of all parties participating in the mediation~~
4 ~~conference. An adjunct mediator must be a member of The~~
5 ~~Florida Bar for at least 5 years and must complete a mediation~~
6 ~~training program approved by the Director of the Division of~~
7 ~~Administrative Hearings. An adjunct mediator shall have access~~
8 ~~to the office, equipment, and supplies of the judge of~~
9 ~~compensation claims in each district.~~

10 ~~2. With respect to any mediation occurring on or after~~
11 ~~January 1, 2003, if the parties agree or if mediators are not~~
12 ~~available under subparagraph 1. to conduct the required~~
13 ~~mediation within the period specified in this section, the~~
14 ~~parties shall hold a mediation conference at the carrier's~~
15 ~~expense within the 90-day period set for mediation. The~~
16 ~~mediation conference shall be conducted by a mediator~~
17 ~~certified under s. 44.106. If the parties do not agree upon a~~
18 ~~mediator within 10 days after the date of the order, the~~
19 ~~claimant shall notify the judge in writing and the judge shall~~
20 ~~appoint a mediator under this subparagraph within 7 days. In~~
21 ~~the event both parties agree, the results of the mediation~~
22 ~~conference shall be binding and neither party shall have a~~
23 ~~right to appeal the results. In the event either party refuses~~
24 ~~to agree to the results of the mediation conference, the~~
25 ~~results of the mediation conference as well as the testimony,~~
26 ~~witnesses, and evidence presented at the conference shall not~~
27 ~~be admissible at any subsequent proceeding on the claim. The~~
28 ~~mediator shall not be called in to testify or give deposition~~
29 ~~to resolve any claim for any hearing before the judge of~~
30 ~~compensation claims. The employer may be represented by an~~

31

1 ~~attorney at the mediation conference if the employee is also~~
2 ~~represented by an attorney at the mediation conference.~~

3 (b) The parties shall complete the pretrial
4 stipulations before the conclusion of the mediation conference
5 if the claims, except for attorney's fees and costs, have not
6 been settled and if any claims in any filed petition remain
7 unresolved. The judge of compensation claims may impose
8 sanctions against a party or both parties for failing to
9 complete the pretrial stipulations before the conclusion of
10 the mediation conference.

11 (4)(a) If the parties fail to agree upon written
12 submission of pretrial stipulations at the mediation
13 conference, the judge of compensation claims shall order a
14 pretrial hearing to occur within 14 days after the date of
15 mediation ordered by the judge of compensation claims. The
16 judge of compensation claims shall give the interested parties
17 at least 7 days' advance notice of the pretrial hearing by
18 mail. At the pretrial hearing, the judge of compensation
19 claims shall, subject to paragraph (b), set a date for the
20 final hearing that allows the parties at least 60 days to
21 conduct discovery unless the parties consent to an earlier
22 hearing date.

23 (b) ~~The final hearing must be held and concluded~~
24 ~~within 90 days after the mediation conference is held.~~
25 Continuances may be granted only if the requesting party
26 demonstrates to the judge of compensation claims that the
27 reason for requesting the continuance arises from
28 circumstances beyond the party's control. Requests for
29 continuances that are determined by the judge of compensation
30 claims to be of a nonemergency or frivolous nature shall
31 result in a sanction against the party making the request. The

1 written consent of the claimant must be obtained before any
2 request from a claimant's attorney is granted for an
3 additional continuance after the initial continuance has been
4 granted. Any order granting a continuance must set forth the
5 date and time of the rescheduled hearing. A continuance may be
6 granted only if the requesting party demonstrates to the judge
7 of compensation claims that the reason for requesting the
8 continuance arises from circumstances beyond the control of
9 the parties. The judge of compensation claims shall report any
10 grant of two or more continuances to the Deputy Chief Judge.

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

14 (d) The final hearing shall be held within 210 days
15 after receipt of the petition for benefits in the county where
16 the injury occurred, if the injury occurred in this state,
17 unless otherwise agreed to between the parties and authorized
18 by the judge of compensation claims in the county where the
19 injury occurred. If the injury occurred outside the state and
20 is one for which compensation is payable under this chapter,
21 then the final hearing may be held in the county of the
22 employer's residence or place of business, or in any other
23 county of the state that will, in the discretion of the Deputy
24 Chief Judge, be the most convenient for a hearing. The final
25 hearing shall be conducted by a judge of compensation claims,
26 who shall, within 30 days after final hearing or closure of
27 the hearing record, unless otherwise agreed by the parties,
28 enter a final order on the merits of the disputed issues. The
29 judge of compensation claims may enter an abbreviated final
30 order in cases in which compensability is not disputed. Either
31 party may request separate findings of fact and conclusions of

1 law. At the final hearing, the claimant and employer may each
2 present evidence with respect to the claims presented by the
3 petition for benefits and may be represented by any attorney
4 authorized in writing for such purpose. When there is a
5 conflict in the medical evidence submitted in the proceeding
6 ~~at the hearing~~, the provisions of ss.s-440.13 and 440.192
7 shall apply and the judge shall accept the peer review panel's
8 determination regarding such medical disputes. If a peer
9 review determination has not been rendered, the judge of
10 compensation claims shall certify the disputed medical issue
11 to the Claims Bureau for referral to a peer review panel.The
12 report or testimony of the confirmatory consultant ~~expert~~
13 ~~medical advisor~~ shall be made a part of the record of the
14 proceeding and shall be given the same consideration by the
15 judge of compensation claims as is accorded other medical
16 evidence submitted in the proceeding; and all costs incurred
17 in connection with such examination and testimony may be
18 assessed as costs in the proceeding, subject to the provisions
19 of s. 440.13. ~~No judge of compensation claims may make a~~
20 ~~finding of a degree of permanent impairment that is greater~~
21 ~~than the greatest permanent impairment rating given the~~
22 ~~claimant by any examining or treating physician, except upon~~
23 ~~stipulation of the parties.~~Any benefit due but not raised at
24 the final hearing which was ripe, due, or owing at the time of
25 the final hearing is waived.

26 (e) The order making an award or rejecting the claim,
27 referred to in this chapter as a "compensation order," shall
28 set forth the findings of ultimate facts and the mandate; and
29 the order need not include any other reason or justification
30 for such mandate. The compensation order shall be filed in the
31 Office of the Judges of Compensation Claims at Tallahassee. A

1 copy of such compensation order shall be sent by mail to the
2 parties and attorneys of record at the last known address of
3 each, with the date of mailing noted thereon.

4 (f) Each judge of compensation claims is required to
5 submit a special report to the Deputy Chief Judge in each
6 contested workers' compensation case in which the case is not
7 determined within 30 days of final hearing or closure of the
8 hearing record. Said form shall be provided by the director of
9 the Division of Administrative Hearings and shall contain the
10 names of the judge of compensation claims and of the attorneys
11 involved and a brief explanation by the judge of compensation
12 claims as to the reason for such a delay in issuing a final
13 order.

14 (g) Notwithstanding any other provision of this
15 section, the judge of compensation claims may require the
16 appearance of the parties and counsel before her or him
17 without written notice for an emergency conference where there
18 is a bona fide emergency involving the health, safety, or
19 welfare of an employee. An emergency conference under this
20 section may result in the entry of an order or the rendering
21 of an adjudication by the judge of compensation claims. This
22 section does not grant jurisdiction over medical issues or
23 medical disputes to a judge of compensation claims.

24 (h) To expedite dispute resolution and to enhance the
25 self-executing features of the Workers' Compensation Law, the
26 Deputy Chief Judge shall make provision by rule or order for
27 the resolution of appropriate motions by judges of
28 compensation claims without oral hearing upon submission of
29 brief written statements in support and opposition, and for
30 expedited discovery and docketing. Unless the judge of
31 compensation claims, for good cause, orders a hearing under

1 paragraph (i), each claim in a petition relating to the
2 determination of pay under s. 440.14 shall be resolved under
3 this paragraph without oral hearing.

4 (i) To further expedite dispute resolution and to
5 enhance the self-executing features of the system, those
6 petitions filed in accordance with s. 440.192 that involve a
7 claim for benefits of \$5,000 or less shall, in the absence of
8 compelling evidence to the contrary, be presumed to be
9 appropriate for expedited resolution under this paragraph; and
10 any other claim filed in accordance with s. 440.192, upon the
11 written agreement of both parties and application by either
12 party, may similarly be resolved under this paragraph. A claim
13 in a petition or \$5,000 or less for medical benefits only or a
14 petition for reimbursement for mileage for medical purposes
15 shall, in the absence of compelling evidence to the contrary,
16 be resolved through the expedited dispute resolution process
17 provided in this paragraph. For purposes of expedited
18 resolution pursuant to this paragraph, the Deputy Chief Judge
19 shall make provision by rule or order for expedited and
20 limited discovery and expedited docketing in such cases. At
21 least 15 days prior to hearing, the parties shall exchange and
22 file with the judge of compensation claims a pretrial outline
23 of all issues, defenses, and witnesses on a form adopted by
24 the Deputy Chief Judge; provided, in no event shall such
25 hearing be held without 15 days' written notice to all
26 parties. No pretrial hearing shall be held. The judge of
27 compensation claims shall limit all argument and presentation
28 of evidence at the hearing to a maximum of 30 minutes, and
29 such hearings shall not exceed 30 minutes in length. Neither
30 party shall be required to be represented by counsel. The
31 employer or carrier may be represented by an adjuster or other

1 qualified representative. The employer or carrier and any
2 witness may appear at such hearing by telephone. The rules of
3 evidence shall be liberally construed in favor of allowing
4 introduction of evidence.

5 (j) A judge of compensation claims may, upon the
6 motion of a party or the judge's own motion, dismiss a
7 petition for lack of prosecution if a petition, response,
8 motion, order, request for hearing, or notice of deposition
9 has not been filed during the previous 12 months unless good
10 cause is shown. A dismissal for lack of prosecution is without
11 prejudice and does not require a hearing.

12 (k) A judge of compensation claims may not award
13 interest on unpaid medical bills and the amount of such bills
14 may not be used to calculate the amount of interest awarded.
15 Regardless of the date benefits were initially requested,
16 attorney's fees do not attach under this subsection until 30
17 days after the date the carrier or self-insured employer
18 receives the petition.

19 (5)(a)1. Procedures with respect to appeals from
20 orders of judges of compensation claims shall be governed by
21 rules adopted by the Workers' Compensation Appellate Tribunal
22 ~~Supreme Court~~. Such an order shall become final 30 days after
23 mailing of copies of such order to the parties, unless
24 appealed pursuant to such rules.

25 2. Procedures with respect to appeals from orders of
26 the Workers' Compensation Appellate Tribunal shall be governed
27 by rules adopted by the Supreme Court. Such an order becomes
28 final 30 days after rendition of the order to be reviewed,
29 unless appealed pursuant to such rules.

30 (b) An appellant may be relieved of any necessary
31 filing fee by filing a verified petition of indigency for

1 approval as provided in s. 57.081(1) and may be relieved in
2 whole or in part from the costs for preparation of the record
3 on appeal if, within 15 days after the date notice of the
4 estimated costs for the preparation is served, the appellant
5 files with the judge of compensation claims a copy of the
6 designation of the record on appeal, and a verified petition
7 to be relieved of costs. A verified petition filed prior to
8 the date of service of the notice of the estimated costs shall
9 be deemed not timely filed. The verified petition relating to
10 record costs shall contain a sworn statement that the
11 appellant is insolvent and a complete, detailed, and sworn
12 financial affidavit showing all the appellant's assets,
13 liabilities, and income. Failure to state in the affidavit all
14 assets and income, including marital assets and income, shall
15 be grounds for denying the petition with prejudice. The Office
16 of the Judges of Compensation Claims shall adopt rules as may
17 be required pursuant to this subsection, including forms for
18 use in all petitions brought under this subsection. The
19 appellant's attorney, or the appellant if she or he is not
20 represented by an attorney, shall include as a part of the
21 verified petition relating to record costs an affidavit or
22 affirmation that, in her or his opinion, the notice of appeal
23 was filed in good faith and that there is a probable basis for
24 the District Court of Appeal, First District, to find
25 reversible error, and shall state with particularity the
26 specific legal and factual grounds for the opinion. Failure to
27 so affirm shall be grounds for denying the petition. A copy of
28 the verified petition relating to record costs shall be served
29 upon all interested parties. The judge of compensation claims
30 shall promptly conduct a hearing on the verified petition
31 relating to record costs, giving at least 15 days' notice to

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

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

30 (6) An award of compensation for disability may be
31 made after the death of an injured employee.

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

18 Section 36. Section 440.271, Florida Statutes, is
19 amended to read:

20 440.271 Appeal of order of judge of compensation
21 claims.--Review of any order of a judge of compensation claims
22 entered pursuant to this chapter shall be by appeal to the
23 Workers' Compensation Appellate Tribunal ~~District Court of~~
24 ~~Appeal, First District~~. Appeals shall be filed in accordance
25 with rules of procedure prescribed by the tribunal ~~Supreme~~
26 ~~Court~~ for review of such orders. The department shall be given
27 notice of any proceedings when the cost of the record on
28 appeal is paid by the Workers' Compensation Administrative
29 Trust Fund, or when the matter involves ~~pertaining to s.~~
30 ~~440.25, regarding indigency, or s. 440.49, regarding the~~
31

1 Special Disability Trust Fund, and shall have the right to
2 intervene in any proceedings.

3 Section 37. Section 440.2715, Florida Statutes, is
4 amended to read:

5 440.2715 Access to courts through state video
6 teleconferencing network.--The Workers' Compensation Appellate
7 Tribunal and the First District Court of Appeal shall use the
8 state video teleconferencing network established by the
9 Department of Management Services to facilitate access to
10 courts for purposes of workers' compensation actions.

11 Section 38. Section 440.2725, Florida Statutes, is
12 created to read:

13 440.2725 Review of orders of Workers' Compensation
14 Appellate Tribunal.--Orders of the Workers' Compensation
15 Appellate Tribunal shall be subject to review by certiorari,
16 or as otherwise constitutionally necessary, to the First
17 District Court of Appeal. The petition shall be filed in
18 accordance with rules of procedure prescribed by the Supreme
19 Court for a review of such orders. The department may
20 intervene in any such review.

21 Section 39. Section 440.28, Florida Statutes, is
22 amended to read:

23 440.28 Modification of orders.--Upon a judge of
24 compensation claims' own initiative, or upon the application
25 of any party in interest, on the ground of a change in
26 condition or because of a mistake in a determination of fact,
27 the judge of compensation claims may, at any time prior to 2
28 years after the date of the last payment of compensation
29 pursuant to the compensation order the party seeks to modify,
30 or at any time prior to 2 years after the date copies of an
31 order rejecting a claim are mailed to the parties at the last

1 known address of each, review a compensation case in
2 accordance with the procedure prescribed in respect of claims
3 in s. 440.25 and, in accordance with such section, issue a new
4 compensation order which may terminate, continue, reinstate,
5 increase, or decrease such compensation or award compensation.
6 Such new order shall not affect any compensation previously
7 paid, except that an award increasing the compensation rate
8 may be made effective from the date of the injury, and, if any
9 part of the compensation due or to become due is unpaid, an
10 award decreasing the compensation rate may be made effective
11 from the date of the injury, and any payment made prior
12 thereto in excess of such decreased rate shall be deducted
13 from any unpaid compensation, in such manner and by such
14 method as may be determined by the judge of compensation
15 claims. Peer review panels have the same jurisdiction to
16 review and modify initial or final adjudications that they
17 have rendered on the same basis and within the same parameters
18 as set forth in this section for judges.

19 Section 40. Section 440.29, Florida Statutes, is
20 repealed.

21 Section 41. Section 440.30, Florida Statutes, is
22 amended to read:

23 440.30 Depositions.--Depositions of witnesses or
24 parties, residing within or without the state, may be taken
25 and may be used in connection with proceedings under the
26 Workers' Compensation Law, either upon order of the judge of
27 compensation claims or at the instance of any party or
28 prospective party to such proceedings, and either prior to the
29 institution of a claim, if the claimant is represented by an
30 attorney, or after the filing of the claim in the same manner,
31 for the same purposes, including the purposes of discovery,

1 and subject to the same rules; all as now or hereafter
2 prescribed by law or by rules of court governing the taking
3 and use of such depositions in civil actions at law in the
4 circuit courts of this state. Such depositions may be taken
5 before any notary public, court reporter, or deputy, and the
6 fees of the officer taking the same and the fees of the
7 witnesses attending the same, including expert witness fees as
8 provided by law or court rule, shall be the same as in
9 depositions taken for such circuit courts. Such fees may be
10 taxed as costs and recovered by the claimant, if successful in
11 such workers' compensation proceedings. If no claim has been
12 filed, then the carrier or employer taking the deposition
13 shall pay the claimant's attorney a reasonable attorney's fee
14 for attending said deposition. The members of a peer review
15 panel or employees of the bureau or of the Office of
16 Adjudication are not subject to giving any deposition unless
17 the Deputy Chief Judge shall have determined, after due
18 inquiry including an evidentiary hearing if necessary, that
19 there is basis to believe that the employee has been complicit
20 with fraud.

21 Section 42. Subsections (1) and (2) of section 440.32,
22 Florida Statutes, are amended to read:

23 440.32 Cost in proceedings brought without reasonable
24 ground.--

25 (1) If the judge of compensation claims or any court
26 having jurisdiction of proceedings in respect of any claim or
27 compensation order or peer review adjudication determines that
28 the proceedings in respect of such claim or order have been
29 instituted or continued without reasonable ground, the cost of
30 such proceedings shall be assessed against the party who has
31 so instituted or continued the proceedings.

1 (2) If the judge of compensation claims or any court
2 having jurisdiction of proceedings in respect to any claims or
3 defense under this section determines that the proceedings
4 were maintained or continued frivolously, the cost of the
5 proceedings, including reasonable attorney's fees, shall be
6 assessed against the offending attorney. If a penalty is
7 assessed under this subsection, a copy of the order assessing
8 the penalty may ~~must~~ be forwarded to the appropriate grievance
9 committee acting under the jurisdiction of the Supreme Court.
10 Penalties, fees, and costs awarded under this provision may
11 not be recouped from the party.

12 Section 43. Section 440.34, Florida Statutes, is
13 amended to read:

14 440.34 Attorney's fees; costs.--

15 (1) A fee, gratuity, or other consideration may not be
16 paid for services rendered for a claimant in connection with
17 any proceedings arising under this chapter, unless approved as
18 reasonable by the judge of compensation claims or court having
19 jurisdiction over such proceedings. Except as provided by this
20 subsection, any attorney's fee approved by a judge of
21 compensation claims for services rendered to a claimant must
22 be equal to 20 percent of the first ~~\$10,000~~ \$5,000 of the
23 amount of the benefits secured and 15 percent of the, ~~next~~
24 ~~\$5,000 of the amount of the benefits secured, 10 percent of~~
25 ~~the remaining amount of the benefits secured to be provided~~
26 ~~during the first 10 years after the date the claim is filed,~~
27 ~~and 5 percent of the benefits secured after 10 years.~~ However,
28 the judge of compensation claims shall consider the following
29 factors in each case in which an hourly fee may be awarded as
30 provided in subsection (3) and may increase ~~or decrease~~ the
31

1 attorney's fee if, in her or his judgment, the circumstances
2 of the particular case warrant such action:

3 (a) The time and labor required, the novelty and
4 difficulty of the questions involved, and the skill requisite
5 to perform the legal service properly.

6 (b) The fee customarily charged in the locality for
7 similar legal services.

8 (c) The amount involved in the controversy and the
9 benefits resulting to the claimant.

10 (d) The time limitation imposed by the claimant or the
11 circumstances.

12 (e) The experience, reputation, and ability of the
13 lawyer or lawyers performing services.

14 (f) The contingency or certainty of a fee.

15 (2) In awarding a reasonable claimant's attorney's
16 fee, the judge of compensation claims shall consider only
17 those benefits to the claimant that the attorney is
18 responsible for securing. The amount, statutory basis, and
19 type of benefits obtained through legal representation shall
20 be listed on all attorney's fees awarded by the judge of
21 compensation claims. For purposes of this section, the term
22 "benefits secured" means benefits obtained as a result of the
23 claimant's attorney's legal services rendered in connection
24 with the claim for benefits. However, such term does not
25 include future medical benefits to be provided on any date
26 more than 5 years after the date the claim is filed.

27 (3) If the claimant should prevail in any proceedings
28 before a judge of compensation claims or court, there shall be
29 taxed against the employer the reasonable costs of such
30 proceedings, not to include ~~the~~ attorney's fees of the
31 claimant. A claimant shall be responsible for the payment of

1 her or his own attorney's fees, except that a claimant shall
2 be entitled to recover a reasonable attorney's fee from a
3 carrier or employer:

4 (a) Against whom she or he successfully asserts a
5 petition for medical benefits only, which may be increased by
6 an additional attorney's fee not to exceed \$5,000 based on a
7 reasonable hourly rate ~~if the claimant has not filed or is not~~
8 ~~entitled to file at such time a claim for disability,~~
9 ~~permanent impairment, wage-loss, or death benefits, arising~~
10 ~~out of the same accident;~~

11 (b) In any case in which the employer or carrier files
12 a response to petition denying benefits with the Office of the
13 Judges of Compensation Claims and the injured person has
14 employed an attorney in the successful prosecution of the
15 petition, which may be increased by an additional attorney's
16 fee not to exceed \$5,000 based on a reasonable hourly rate;

17 (c) In a proceeding in which a carrier or employer
18 denies that an accident occurred for which compensation
19 benefits are payable, and the claimant prevails on the issue
20 of compensability, which is the greater of the amount provided
21 in subsection (1), or upon showing to the judge of
22 compensation claims, an attorney's fee not to exceed \$20,000;
23 or

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

26
27 Regardless of the date benefits were initially requested,
28 attorney's fees shall not attach under this subsection until
29 30 days after the date the carrier or employer, if
30 self-insured, receives the petition. In applying the factors
31 set forth in subsection (1) to cases arising under paragraphs

1 (a), (b), (c), and (d), the judge of compensation claims must
2 only consider only such benefits and the time reasonably spent
3 in obtaining them as were secured for the claimant within the
4 scope of paragraphs (a), (b), (c), and (d).

5 (4) In such cases in which the claimant is responsible
6 for the payment of her or his own attorney's fees, such fees
7 are a lien upon compensation payable to the claimant,
8 notwithstanding s. 440.22.

9 (5) If any proceedings are had for review of any
10 claim, award, or compensation order before any court, the
11 court may award the injured employee or dependent an
12 attorney's fee to be paid by the employer or carrier, in its
13 discretion, which shall be paid as the court may direct.

14 (6) A judge of compensation claims may not enter an
15 order approving the contents of a retainer agreement that
16 permits the escrowing of any portion of the employee's
17 compensation until benefits have been secured.

18 Section 44. Section 440.38, Florida Statutes, is
19 amended to read:

20 440.38 Security for compensation; insurance carriers
21 and self-insurers.--

22 (1) Every employer shall secure the payment of
23 compensation under this chapter:

24 (a) By insuring and keeping insured the payment of
25 such compensation with any stock company or mutual company or
26 association or exchange, authorized to do business in the
27 state;

28 (b) By furnishing satisfactory proof to the Florida
29 Self-Insurers Guaranty Association, Incorporated, created in
30 s. 440.385, that it has the financial strength necessary to
31 ensure timely payment of all current and future claims

1 individually and on behalf of its subsidiary and affiliated
2 companies with employees in this state and receiving an
3 authorization from the Department of Financial Services
4 ~~Insurance~~ to pay such compensation directly. The association
5 shall review the financial strength of applicants for
6 membership, current members, and former members and make
7 recommendations to the Department of Financial Services
8 ~~Insurance~~ regarding their qualifications to self-insure in
9 accordance with this section and ss. 440.385 and 440.386. ~~The~~
10 ~~department shall act in accordance with the recommendations~~
11 ~~unless it finds by clear and convincing evidence that the~~
12 ~~recommendations are erroneous.~~

13 1. As a condition of authorization under paragraph
14 (a), the association may recommend that the Department of
15 Financial Services ~~Insurance~~ require an employer to deposit
16 with the association a qualifying security deposit. The
17 association shall recommend the type and amount of the
18 qualifying security deposit and shall prescribe conditions for
19 the qualifying security deposit, which shall include
20 authorization for the association to call the qualifying
21 security deposit in the case of default to pay compensation
22 awards and related expenses of the association. As a condition
23 to authorization to self-insure, the employer shall provide
24 proof that the employer has provided for competent personnel
25 with whom to deliver benefits and to provide a safe working
26 environment. The employer shall also provide evidence that it
27 carries reinsurance at levels that will ensure the financial
28 strength and actuarial soundness of such employer in
29 accordance with rules adopted by the Department of Financial
30 Services ~~Insurance~~. The Department of Financial Service
31 ~~Insurance~~ may by rule require that, in the event of an

1 individual self-insurer's insolvency, such qualifying security
2 deposits and reinsurance policies are payable to the
3 association. Any employer securing compensation in accordance
4 with the provisions of this paragraph shall be known as a
5 self-insurer and shall be classed as a carrier of her or his
6 own insurance. The employer shall, if requested, provide the
7 association an actuarial report signed by a member of the
8 American Academy of Actuaries providing an opinion of the
9 appropriate present value of the reserves, using a 4-percent
10 discount rate, for current and future compensation claims. If
11 any member or former member of the association refuses to
12 timely provide such a report, the association may obtain an
13 order from a circuit court requiring the member to produce
14 such a report and ordering any other relief that the court
15 determines is appropriate. The association may recover all
16 reasonable costs and attorney's fees in such proceedings.

17 2. If the employer fails to maintain the foregoing
18 requirements, the association shall recommend to the
19 Department of Financial Services ~~Insurance~~ that the department
20 revoke the employer's authority to self-insure, unless the
21 employer provides to the association the certified opinion of
22 an independent actuary who is a member of the American Academy
23 of Actuaries as to the actuarial present value of the
24 employer's determined and estimated future compensation
25 payments based on cash reserves, using a 4-percent discount
26 rate, and a qualifying security deposit equal to 1.5 times the
27 value so certified. The employer shall thereafter annually
28 provide such a certified opinion until such time as the
29 employer meets the requirements of subparagraph 1. The
30 qualifying security deposit shall be adjusted at the time of
31 each such annual report. Upon the failure of the employer to

1 timely provide such opinion or to timely provide a security
2 deposit in an amount equal to 1.5 times the value certified in
3 the latest opinion, the association shall provide that
4 information to the Department of Financial Services ~~Insurance~~
5 along with a recommendation, and the Department of Financial
6 Services ~~Insurance~~ shall then revoke such employer's
7 authorization to self-insure. Failure to comply with this
8 subparagraph constitutes an immediate serious danger to the
9 public health, safety, or welfare sufficient to justify the
10 summary suspension of the employer's authorization to
11 self-insure pursuant to s. 120.68.

12 3. Upon the suspension or revocation of the employer's
13 authorization to self-insure, the employer shall provide to
14 the association the certified opinion of an independent
15 actuary who is a member of the American Academy of Actuaries
16 of the actuarial present value of the determined and estimated
17 future compensation payments of the employer for claims
18 incurred while the member exercised the privilege of
19 self-insurance, using a discount rate of 4 percent. The
20 employer shall provide such an opinion at 6-month intervals
21 thereafter until such time as the latest opinion shows no
22 remaining value of claims. With each such opinion, the
23 employer shall deposit with the association a qualifying
24 security deposit in an amount equal to the value certified by
25 the actuary. The association has a cause of action against an
26 employer, and against any successor of the employer, who fails
27 to timely provide such opinion or who fails to timely maintain
28 the required security deposit with the association. The
29 association shall recover a judgment in the amount of the
30 actuarial present value of the determined and estimated future
31 compensation payments of the employer for claims incurred

1 while the employer exercised the privilege of self-insurance,
2 together with attorney's fees. For purposes of this section,
3 the successor of an employer means any person, business
4 entity, or group of persons or business entities, which holds
5 or acquires legal or beneficial title to the majority of the
6 assets or the majority of the shares of the employer.

7 4. A qualifying security deposit shall consist, at the
8 option of the employer, of:

9 a. Surety bonds, in a form and containing such terms
10 as prescribed by the association, issued by a corporation
11 surety authorized to transact surety business by the
12 Department of Financial Services Insurance, and whose
13 policyholders' and financial ratings, as reported in A.M.
14 Best's Insurance Reports, Property-Liability, are not less
15 than "A" and "V", respectively.

16 b. Irrevocable letters of credit in favor of the
17 association issued by financial institutions located within
18 this state, the deposits of which are insured through the
19 Federal Deposit Insurance Corporation.

20 5. The qualifying security deposit shall be held by
21 the association exclusively for the benefit of workers'
22 compensation claimants. The security shall not be subject to
23 assignment, execution, attachment, or any legal process
24 whatsoever, except as necessary to guarantee the payment of
25 compensation under this chapter. No surety bond may be
26 terminated, and no letter of credit may be allowed to expire,
27 without 90 days' prior written notice to the association and
28 deposit by the self-insuring employer of some other qualifying
29 security deposit of equal value within 10 business days after
30 such notice. Failure to provide such written notice or failure
31 to timely provide qualifying replacement security after such

1 notice shall constitute grounds for the association to call or
2 sue upon the surety bond or to exercise its rights under a
3 letter of credit. Current self-insured employers must comply
4 with this section on or before December 31, 2001, or upon the
5 maturity of existing security deposits, whichever occurs
6 later. The Department of Financial Services ~~Insurance~~ may
7 specify by rule the amount of the qualifying security deposit
8 required prior to authorizing an employer to self-insure and
9 the amount of net worth required for an employer to qualify
10 for authorization to self-insure;

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

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

19 (e) In accordance with s. 440.135, an employer, other
20 than a local government unit, may elect coverage under the
21 Workers' Compensation Law and retain the benefit of the
22 exclusiveness of liability provided in s. 440.11 by obtaining
23 a 24-hour health insurance policy from an authorized property
24 and casualty insurance carrier or an authorized life and
25 health insurance carrier, or by participating in a fully or
26 partially self-insured 24-hour health plan that is established
27 or maintained by or for two or more employers, so long as the
28 law of this state is not preempted by the Employee Retirement
29 Income Security Act of 1974, Pub. L. No. 93-406, or any
30 amendment to that law, which policy or plan must provide, for
31 at least occupational injuries and illnesses, medical benefits

1 that are comparable to those required by this chapter. A local
2 government unit, as a single employer, in accordance with s.
3 440.135, may participate in the 24-hour health insurance
4 coverage plan referenced in this paragraph. Disputes and
5 remedies arising under policies issued under this section are
6 governed by the terms and conditions of the policies and under
7 the applicable provisions of the Florida Insurance Code and
8 rules adopted under the insurance code and other applicable
9 laws of this state. The 24-hour health insurance policy may
10 provide for health care by a health maintenance organization
11 or a preferred provider organization. The premium for such
12 24-hour health insurance policy shall be paid entirely by the
13 employer. The 24-hour health insurance policy may use
14 deductibles and coinsurance provisions that require the
15 employee to pay a portion of the actual medical care received
16 by the employee. If an employer obtains a 24-hour health
17 insurance policy or self-insured plan to secure payment of
18 compensation as to medical benefits, the employer must also
19 obtain an insurance policy or policies that provide indemnity
20 benefits as follows:

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

24 2. If indemnity benefits are provided for both
25 occupational-related and nonoccupational-related disability,
26 such benefits must be comparable to those required by this
27 chapter, except that they must be based on 60 percent of the
28 average weekly wages.

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

31

1 4. Policies providing coverage under this subsection
2 must use prescribed and acceptable underwriting standards,
3 forms, and policies approved by the department ~~of Insurance~~.
4 If any insurance policy that provides coverage under this
5 section is canceled, terminated, or nonrenewed for any reason,
6 the cancellation, termination, or nonrenewal is ineffective
7 until the self-insured employer or insurance carrier or
8 carriers notify the department division and the department ~~of~~
9 ~~Insurance~~ of the cancellation, termination, or nonrenewal, and
10 until the department division has actually received the
11 notification. The department division must be notified of
12 replacement coverage under a workers' compensation and
13 employer's liability insurance policy or plan by the employer
14 prior to the effective date of the cancellation, termination,
15 or nonrenewal; or

16 (f) By entering into a contract with an individual
17 self-insurer under an approved individual
18 self-insurer-provided self-insurance program as set forth in
19 s. 624.46225. The department division may adopt rules to
20 administer this subsection.

21 (2)(a) The department ~~of Insurance~~ shall adopt rules
22 by which businesses may become qualified to provide
23 underwriting claims-adjusting, loss control, and safety
24 engineering services to self-insurers.

25 (b) The department ~~of Insurance~~ shall adopt rules
26 requiring self-insurers to file any reports necessary to
27 fulfill the requirements of this chapter. Any self-insurer
28 who fails to file any report as prescribed by the rules
29 adopted by the Department of Financial Services Insurance
30 shall be subject to a civil penalty.

31

1 (3)(a) The license of any stock company or mutual
2 company or association or exchange authorized to do insurance
3 business in the state shall for good cause, upon
4 recommendation of the division, be suspended or revoked by the
5 department ~~of Insurance~~. A No suspension or revocation does
6 not shall affect the liability of any carrier which has
7 already been incurred.

8 (b) The Department of Financial Services Insurance
9 shall suspend or revoke any authorization to a self-insurer
10 for failure to comply with this section or for good cause, as
11 defined by rule of the department ~~of Insurance~~. A No
12 suspension or revocation does not shall affect the liability
13 of any self-insurer which has already been incurred.

14 (c) Violation of s. 440.381 by a self-insurance fund
15 shall result in the imposition of a fine not to exceed \$1,000
16 per audit if the self-insurance fund fails to act on said
17 audits by correcting errors in employee classification or
18 accepted applications for coverage where it knew employee
19 classifications were incorrect. Such fines shall be levied by
20 the department division and deposited into the Workers'
21 Compensation Administration Trust Fund.

22 (4)(a) A carrier of insurance, including the parties
23 to any mutual, reciprocal, or other association, may not write
24 any compensation insurance under this chapter without a permit
25 from the department ~~of Insurance~~. Such permit shall be given,
26 upon application therefor, to any insurance or mutual or
27 reciprocal insurance association upon the department's being
28 satisfied of the solvency of such corporation or association
29 and its ability to perform all its undertakings. The
30 department ~~of Insurance~~ may revoke any permit so issued for
31 violation of any provision of this chapter.

1 (b) A carrier of insurance, including the parties to
2 any mutual, reciprocal, or other association, may not write
3 any compensation insurance under this chapter unless such
4 carrier has a claims adjuster, either in-house or under
5 contract, situated within this state. Self-insurers whose
6 compensation payments are administered through a third party
7 and carriers of insurance shall maintain a claims adjuster
8 within this state during any period for which there are any
9 open claims against such self-insurer or carrier arising under
10 the compensation insurance written by the self-insurer or
11 carrier. Individual self-insurers whose compensation payments
12 are administered by employees of the self-insurer shall not be
13 required to have their claims adjuster situated within this
14 state. Individual self-insurers shall not be required to have
15 their claims adjusters situated within this state.

16 (5) All insurance carriers authorized to write
17 workers' compensation insurance in this state shall make
18 available, at the written request of the employer, an
19 insurance policy containing deductibles in the amount of \$500,
20 \$1,000, \$1,500, \$2,000, and \$2,500 per claim and a coinsurance
21 provision per claim. Any amount of coinsurance shall bind the
22 carrier to pay 80 percent, and the employer to pay 20 percent,
23 of the benefits due to an employee for an injury compensable
24 under this chapter of the amount of benefits above the
25 deductible, up to the limit of \$21,000. One hundred percent
26 of the benefits above the amount of any deductible and
27 coinsurance, as the case may be, due to an employee for one
28 injury shall be paid solely by the carrier. Regardless of any
29 coinsurance or deductible amount, the claim shall be paid by
30 the applicable carrier, which shall then be reimbursed by the
31 employer for any coinsurance or deductible amounts paid by the

1 carrier. No insurance carrier shall be required to offer a
2 deductible or coinsurance to any employer if, as a result of a
3 credit investigation, the carrier determines that the employer
4 is not sufficiently financially stable to be responsible for
5 payment of such deductible or coinsurance amounts.

6 (6) The state and its boards, bureaus, departments,
7 and agencies and all of its political subdivisions which
8 employ labor shall be deemed self-insurers under the terms of
9 this chapter, unless they elect to procure and maintain
10 insurance to secure the benefits of this chapter to their
11 employees; and they are hereby authorized to pay the premiums
12 for such insurance.

13 Section 45. Subsections (1), (3), and (6) of section
14 440.381, Florida Statutes, are amended to read:

15 440.381 Application for coverage; reporting payroll;
16 payroll audit procedures; penalties.--

17 (1) Applications by an employer to a carrier for
18 coverage required by s. 440.38 must be made on a form
19 prescribed by the Office of Insurance Regulation ~~Department of~~
20 ~~Insurance~~. The Office of Insurance Regulation ~~Department of~~
21 ~~Insurance~~ shall adopt rules for applications for coverage
22 required by s. 440.38. The rules must provide that an
23 application include information on the employer, the type of
24 business, past and prospective payroll, estimated revenue,
25 previous workers' compensation experience, employee
26 classification, employee names, and any other information
27 necessary to enable a carrier to accurately underwrite the
28 applicant. The rules must include a provision that a carrier
29 or self-insurance fund may require that an employer update an
30 application monthly to reflect any change in the required
31 application information.

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

28 (6)(a) If an employer understates or conceals payroll,
29 or misrepresents or conceals employee duties so as to avoid
30 proper classification for premium calculations, or
31 misrepresents or conceals information pertinent to the

1 computation and application of an experience rating
2 modification factor, the employer, or the employer's agent or
3 attorney, shall pay to the insurance carrier a penalty of 10
4 times the amount of the difference in premium paid and the
5 amount the employer should have paid and reasonable attorney's
6 fees. The penalty may be enforced in the circuit courts of
7 this state.

8 (b) If the department issues an administrative penalty
9 against an employer that the department determines has
10 materially understated or concealed payroll, has materially
11 misrepresented or concealed employee duties so as to avoid
12 proper classification for premium calculations, or has
13 materially misrepresented or concealed information pertinent
14 to the computation and application of an experience rating
15 modification factor, the department shall immediately notify
16 the employer's carrier of such determination. The carrier
17 shall commence a physical onsite audit of the employer within
18 30 days after receiving notification from the department. If
19 the carrier fails to commence the audit as required by this
20 section, the department shall contract with auditing
21 professionals to conduct the audit at the carrier's expense. A
22 copy of the carrier's audit of the employer shall be provided
23 to the department upon completion. The carrier is not required
24 to conduct the physical onsite audit of the employer as set
25 forth in this paragraph if the carrier gives a written notice
26 of cancellation to the employer at least 30 days before the
27 effective date of the cancellation and an audit is conducted
28 in conjunction with the cancellation.

29 Section 46. Section 440.385, Florida Statutes, is
30 amended to read:

31

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

3 (1) CREATION OF ASSOCIATION.--

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

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

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

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

20 (2) BOARD OF DIRECTORS.--The board of directors of the
21 association shall consist of nine persons and shall be
22 organized as established in the plan of operation. All board
23 members shall be experienced in self-insurance in this state.
24 Each director shall serve for a 4-year term and may be
25 reappointed. Appointments after January 1, 2002, shall be made
26 by the Chief Financial Officer ~~Department of Insurance~~ upon
27 recommendations ~~recommendation~~ of members of the association.
28 Any vacancy on the board shall be filled for the remaining
29 period of the term in the same manner as appointments other
30 than initial appointments are made. Each director shall be
31

1 reimbursed for expenses incurred in carrying out the duties of
2 the board on behalf of the association.

3 (3) POWERS AND DUTIES.--

4 (a) Upon creation of the Insolvency Fund pursuant to
5 ~~the provisions of~~ subsection (4), the association is obligated
6 for payment of compensation under this chapter to insolvent
7 members' employees resulting from incidents and injuries
8 existing prior to the member becoming an insolvent member and
9 from incidents and injuries occurring within 30 days after the
10 member has become an insolvent member, provided the incidents
11 giving rise to claims for compensation under this chapter
12 occur during the year in which such insolvent member is a
13 member of the guaranty fund and was assessable pursuant to the
14 plan of operation, and provided the employee makes timely
15 claim for such payments according to procedures set forth by a
16 court of competent jurisdiction over the delinquency or
17 bankruptcy proceedings of the insolvent member. Such
18 obligation includes only that amount due the injured worker or
19 workers of the insolvent member under this chapter. In no
20 event is the association obligated to a claimant in an amount
21 in excess of the obligation of the insolvent member. The
22 association shall be deemed the insolvent employer for
23 purposes of this chapter to the extent of its obligation on
24 the covered claims and, to such extent, shall have all rights,
25 duties, and obligations of the insolvent employer as if the
26 employer had not become insolvent. However, in no event shall
27 the association be liable for any penalties or interest.

28 (b) The association may:

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

31

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

3 3. Sue or be sued.

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

6 5. Purchase such reinsurance as is determined
7 necessary pursuant to the plan of operation.

8 6. Review all applicants for membership in the
9 association to determine whether the applicant is qualified
10 for membership under the law. The association shall recommend
11 to the Department of Financial Services ~~Insurance~~ that the
12 application be accepted or rejected based on the criteria set
13 forth in s. 440.38(1)(b). The department ~~of Insurance~~ shall
14 approve or disapprove the application as provided in paragraph
15 (6)(a).

16 7. Collect and review financial information from
17 employers and make recommendations to the Department of
18 Financial Services ~~Insurance~~ regarding the appropriate
19 security deposit and reinsurance amounts necessary for an
20 employer to demonstrate that it has the financial strength
21 necessary to ensure the timely payment of all current and
22 future claims. The association may audit and examine an
23 employer to verify the financial strength of its current and
24 former members. If the association determines that a current
25 or former self-insured employer does not have the financial
26 strength necessary to ensure the timely payment of all current
27 and estimated future claims, the association may recommend to
28 the Department of Financial Services ~~Insurance~~ that the
29 department:

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

31

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

6 c. Require an increase in the employer's security
7 deposit in an amount recommended ~~determined~~ by the association
8 to be necessary to ensure payment of compensation claims. The
9 Department of Financial Services ~~Insurance~~ shall act on such
10 recommendations as provided in paragraph (6)(a). The
11 association has a cause of action against an employer, and
12 against any successor of an employer, who fails to provide an
13 additional security deposit required by the Department of
14 Financial Services ~~Insurance~~. The association shall file an
15 action in circuit court to recover a judgment in the amount of
16 the requested additional security deposit together with
17 reasonable attorney's fees. For the purposes of this section,
18 the successor of an employer is any person, business entity,
19 or group of persons or business entities which holds or
20 acquires legal or beneficial title to the majority of the
21 assets or the majority of the shares of the employer.

22 8. Charge fees to any member of the association to
23 cover the actual costs of examining the financial and safety
24 conditions of that member.

25 9. Charge an applicant for membership in the
26 association a fee sufficient to cover the actual costs of
27 examining the financial condition of the applicant.

28 10. Implement any procedures necessary to ensure
29 compliance with regulatory actions taken by the Department of
30 Financial Services ~~Insurance~~.

31

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

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

27 3. Funds may be allocated or paid from the Workers'
28 Compensation Administration Trust Fund to contract with the
29 association to perform services required by law. However, no
30 state funds of any kind shall be allocated or paid to the
31 association or any of its accounts for payment of covered

1 claims or related expenses except those state funds accruing
2 to the association by and through the assignment of rights of
3 an insolvent employer. The Department of Financial Services
4 ~~Insurance~~ may not levy any assessment on the association.

5 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
6 operation, there shall be created an Insolvency Fund to be
7 managed by the 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 security deposit, as required under this chapter. However, if
12 such security deposit or reinsurance policy is payable to the
13 association, the association shall commence to provide
14 benefits out of the Insolvency Fund and be reimbursed from the
15 security deposit or reinsurance policy. The method of
16 operation of the Insolvency Fund shall be defined in the plan
17 of operation as provided in subsection (5).

18 (b) The Department of Financial Services ~~Insurance~~
19 shall have the authority to audit the financial soundness of
20 the Insolvency Fund annually.

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

26 (5) PLAN OF OPERATION.--The association shall operate
27 pursuant to a plan of operation approved by the board of
28 directors. The plan of operation in effect on January 1, 2002,
29 and approved by the Department of Labor and Employment
30 Security shall remain in effect. However, any amendments to
31

1 the plan shall not become effective until approved by the
2 Department of Financial Services Insurance.

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

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

24 (c) 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 Department of Financial Services Insurance within 30 days
16 after the action or decision.

17 8. Establish the procedures whereby recommendations of
18 candidates for the board of directors shall be submitted to
19 the Department of Financial Services Insurance.

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

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

1 take effect only with the approval of both the board of
2 directors and the Department of Financial Services Insurance
3 and may be made only to a corporation, association, or
4 organization which extends protection which is not
5 substantially less favorable and effective than the protection
6 provided by this section.

7 (6) POWERS AND DUTIES OF DEPARTMENT OF FINANCIAL
8 SERVICES INSURANCE.--The Department of Financial Services
9 Insurance shall:

10 (a) Review recommendations of the association
11 concerning whether current or former self-insured employers or
12 members of the association have the financial strength
13 necessary to ensure the timely payment of all current and
14 estimated future claims. If the association determines an
15 employer does not have the financial strength necessary to
16 ensure the timely payment of all current and future claims and
17 recommends action pursuant to paragraph (3)(b), the department
18 shall take such action as necessary to order the employer to
19 comply with the recommendation, unless the department finds ~~by~~
20 ~~clear and convincing evidence~~ that the recommendation is
21 erroneous.

22 (b) Contract with the association for services, which
23 may include, but are not limited to:

- 24 1. Processing applications for self-insurance.
- 25 2. Collecting and reviewing financial statements and
26 loss reserve information from individual self-insurers.
- 27 3. Collecting and maintaining files for original
28 security deposit documents and reinsurance policies from
29 individual self-insurers and, if necessary, perfecting
30 security interests in security deposits.

31

1 4. Processing compliance documentation for individual
2 self-insurers and providing copies of such documentation to
3 the department.

4 5. Collecting all data necessary to calculate annual
5 premium for all individual self-insurers, including individual
6 self-insurers that are public utilities or governmental
7 entities, and providing such calculated annual premium to the
8 department ~~division~~ for assessment purposes.

9 6. Inspecting and auditing annually, if necessary, the
10 payroll and other records of each individual self-insurer,
11 including individual self-insurers that are public utilities
12 or governmental entities, in order to determine the wages paid
13 by each individual self-insurer, the premium such individual
14 self-insurer would have to pay if insured, and all payments of
15 compensation made by such individual self-insurer during each
16 prior period with the results of such audit provided to the
17 department ~~division~~. For purposes of this section, the payroll
18 records of each individual self-insurer shall be open to
19 inspection and audit by the association and the department, or
20 their authorized representatives, during regular business
21 hours.

22 7. Processing applications and making recommendations
23 with respect to the qualification of a business to be approved
24 to provide or continue to provide services to individual
25 self-insurers in the areas of underwriting, claims adjusting,
26 loss control, and safety engineering.

27 8. Providing legal representation to implement the
28 administration and audit of individual self-insurers and
29 making recommendations regarding prosecution of any
30 administrative or legal proceedings necessitated by the
31 regulation of the individual self-insurers by the department.

1 ~~(c) Contract with an attorney or attorneys recommended~~
2 ~~by the association for representation of the department in any~~
3 ~~administrative or legal proceedings necessitated by the~~
4 ~~recommended regulation of the individual self-insurers.~~

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

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

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

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

11 (f)~~(g)~~ Revoke the designation of any servicing
12 facility if the department finds that claims are being handled
13 unsatisfactorily.

14 (7) EFFECT OF PAID CLAIMS.--

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

31

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

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

16 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the
17 detection and prevention of employer insolvencies: Upon
18 determination by majority vote that any member employer may be
19 insolvent or in a financial condition hazardous to the
20 employees thereof or to the public, it shall be the duty of
21 the board of directors to notify the Department of Financial
22 Services Insurance of any information indicating such
23 condition.

24 (9) EXAMINATION OF THE ASSOCIATION.--The association
25 shall be subject to examination and regulation by the
26 Department of Financial Services Insurance. No later than
27 March 30 of each year, the board of directors shall submit an
28 audited financial statement for the preceding calendar year in
29 a form approved by the department.

30 (10) IMMUNITY.--There shall be no liability on the
31 part of, and no cause of action of any nature shall arise

1 against, any member employer, the association or its agents or
2 employees, the board of directors, or the Department of
3 Financial Services Insurance or its representatives for any
4 action taken by them in the performance of their powers and
5 duties under this section.

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

24 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
25 any other provision of this chapter, a covered claim, as
26 defined herein, with respect to which settlement is not
27 effected and pursuant to which suit is not instituted against
28 the insured of an insolvent member or the association within 1
29 year after the deadline for filing claims with the receiver of
30 the insolvent member, or any extension of the deadline, shall
31 thenceforth be barred as a claim against the association.

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

9 Section 47. Subsections (2) and (3), and paragraph (a)
10 of subsection (4) of section 440.386, Florida Statutes, are
11 amended to read:

12 440.386 Individual self-insurers' insolvency;
13 conservation; liquidation.--

14 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
15 Department of Financial Services ~~Insurance~~ or the Florida
16 Self-Insurers Guaranty Association, Incorporated, may commence
17 a delinquency proceeding by application to the court for an
18 order directing the individual self-insurer to show cause why
19 the department or association should not have the relief
20 sought. On the return of such order to show cause, and after a
21 full hearing, the court shall either deny the application or
22 grant the application, together with such other relief as the
23 nature of the case and the interests of the claimants,
24 creditors, stockholders, members, subscribers, or public may
25 require. The department and the association shall give
26 reasonable written notice to each other of all hearings which
27 pertain to an adjudication of insolvency of a member
28 individual self-insurer.

29 (3) GROUNDS FOR LIQUIDATION.--The Department of
30 Financial Services ~~Insurance~~ or the association may apply to
31 the court for an order appointing a receiver and directing the

1 receiver to liquidate the business of a domestic individual
2 self-insurer if such individual self-insurer is insolvent.

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

5 (a) The Department of Financial Services ~~insurance~~ or
6 the association may apply to the court for an order appointing
7 a receiver or ancillary receiver, and directing the receiver
8 to conserve the assets within this state, of a foreign
9 individual self-insurer if such individual self-insurer is
10 insolvent.

11 Section 48. Section 440.40, Florida Statutes, is
12 amended to read:

13 440.40 Compensation notice; certificate of
14 insurance.--

15 (1) Every employer who has secured compensation under
16 the provisions of this chapter shall keep posted in a
17 conspicuous place or places in and about her or his place or
18 places of business typewritten or printed notices, in
19 accordance with forms ~~a form~~ prescribed by the department, the
20 following:

21 (a)~~(1)~~ A notice stating that such employer has secured
22 the payment of compensation in accordance with the provisions
23 of this chapter. Such notices shall contain the name and
24 address of the carrier, if any, with whom the employer has
25 secured payment of compensation and the date of the expiration
26 of the policy. The department may by rule prescribe the form
27 of the notices and require carriers to provide the notices to
28 policyholders.

29 (b)~~(2)~~ A notice stating: "Anti-Fraud Reward
30 Program.--Rewards of up to \$25,000 may be paid to persons
31 providing information to the Department of Financial Services

1 ~~Insurance~~ leading to the arrest and conviction of persons
2 committing insurance fraud, including employers who illegally
3 fail to obtain workers' compensation coverage. Persons may
4 report suspected fraud to the department at ...(Phone No.)....
5 A person is not subject to civil liability for furnishing such
6 information, if such person acts without malice, fraud, or bad
7 faith."

8 (2) Every employer who has secured compensation under
9 this chapter shall make available to the department at each
10 job site a certificate of insurance issued by the carrier, a
11 valid exemption certificate approved by the department or the
12 former Division of Workers' Compensation of the Department of
13 Labor and Employment Security, or a copy of the employer's
14 authority to self-insure.

15 Section 49. Subsection (3) of section 440.42, Florida
16 Statutes, is amended to read:

17 440.42 Insurance policies; liability.--

18 (3) No contract or policy of insurance issued by a
19 carrier under this chapter shall expire or be canceled until
20 at least 30 days have elapsed after a notice of cancellation
21 or nonrenewal has been sent to the ~~department and to the~~
22 ~~employer in accordance with the provisions of s. 440.185(7).~~
23 For cancellation due to nonpayment of premium, the insurer
24 shall give written notification to the employer at least 10
25 days before the effective date of the cancellation.However,
26 when duplicate or dual coverage exists by reason of two
27 different carriers having issued policies of insurance to the
28 same employer securing the same liability, it shall be
29 presumed that only that policy with the later effective date
30 shall be in force and that the earlier policy terminated upon
31 the effective date of the latter. In the event that both

1 policies carry the same effective date, one of the policies
2 may be canceled instanter upon filing a notice of cancellation
3 or nonrenewal with the department and serving a copy thereof
4 upon the employer in such manner as the department prescribes
5 by rule. The department may by rule prescribe the content of
6 the notice of retroactive cancellation and specify the time,
7 place, and manner in which the notice of cancellation is to be
8 served. A carrier shall file with the department, at least 30
9 days before the effective date of cancellation or nonrenewal
10 of the policy, a notice of such cancellation or nonrenewal,
11 or, for cancellation or nonrenewal of the policy for
12 nonpayment of premium, shall file such notice with the
13 department at least 10 days before the effective date of
14 cancellation, in a format prescribed by department rule.

15 Section 50. Section 440.44, Florida Statutes, is
16 amended to read:

17 440.44 Workers' compensation; staff organization.--

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

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

31

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

14 (4) PERSONNEL ADMINISTRATION.--Subject to the other
15 provisions of this chapter, the department, ~~the agency,~~the
16 Department of Education, and the Division of Administrative
17 Hearings may appoint, and prescribe the duties and powers of,
18 bureau chiefs, attorneys, accountants, medical advisers,
19 technical assistants, inspectors, claims examiners, and such
20 other employees as may be necessary in the performance of
21 their duties under this chapter.

22 (5) OFFICE.--The department, ~~the agency,~~the
23 Department of Education, and the Deputy Chief Judge shall
24 maintain and keep open during reasonable business hours an
25 office, which shall be provided in the Capitol or some other
26 suitable building in the City of Tallahassee, for the
27 transaction of business under this chapter, at which office
28 the official records and papers shall be kept. The office
29 shall be furnished and equipped. The department, ~~the agency,~~
30 any judge of compensation claims, any appellate tribunal
31 appellate judge, or the Deputy Chief Judge may hold sessions

1 and conduct hearings at any place within the state. The
2 Workers' Compensation Appellate Tribunal shall maintain one
3 office and five appellate judges.The Office of the Judges of
4 Compensation Claims shall maintain ~~the~~ 17 district offices
5 ~~and 31 judges of compensation claims, and 31 mediators as~~
6 ~~they exist on June 30, 2001.~~

7 (6) SEAL.--The department the Workers' Compensation
8 Appellate Tribunal, and the judges of compensation claims
9 shall have a seal upon which shall be inscribed the words
10 "State of Florida Department of Financial Services
11 ~~Insurance--Seal,~~" and "Division of Administrative
12 Hearings--Seal," and State of Florida Workers' Compensation
13 Appellate Tribunal--Seal," respectively, and each shall be
14 judicially noticed.

15 (7) DESTRUCTION OF OBSOLETE RECORDS.--The department
16 is expressly authorized to provide by regulation for and to
17 destroy obsolete records of the department. The Division of
18 Administrative Hearings is expressly authorized to provide by
19 regulation for and to destroy obsolete records of the Office
20 of the Judges of Compensation Claims.

21 (8) PROCEDURE.--In the exercise of their duties and
22 functions requiring administrative hearings, the department
23 ~~and the agency~~ shall proceed in accordance with the
24 Administrative Procedure Act. The authority of the department
25 ~~and the agency~~ to issue orders resulting from administrative
26 hearings as provided for in this chapter shall not infringe
27 upon the jurisdiction of the judges of compensation claims or
28 the Workers' Compensation Appellate Tribunal tribunal judge.

29 Section 51. Section 440.442, Florida Statutes, is
30 amended to read:
31

1 440.442 Code of Judicial Conduct.--The Chief Judge,
2 the Workers' Compensation Appellate Tribunal appellate judges,
3 the Deputy Chief Judge,and judges of compensation claims
4 shall observe and abide by the Code of Judicial Conduct as
5 adopted by the Florida Supreme Court. Any material violation
6 of a provision of the Code of Judicial Conduct shall
7 constitute either malfeasance or misfeasance in office and
8 shall be grounds for suspension and removal of the Chief
9 Judge, the Workers' Compensation Appellate Tribunal appellate
10 judges,the Deputy Chief Judge,or a judge of compensation
11 claims by the Governor.

12 Section 52. Section 440.45, Florida Statutes, is
13 amended to read:

14 440.45 Office of the Judges of Compensation Claims and
15 Workers' Compensation Appellate Tribunal.--

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

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

28 (b) ~~The current term of the Chief Judge of~~
29 ~~Compensation Claims shall expire October 1, 2001.~~Effective
30 October 1, 2001, the position of Deputy Chief Judge of
31 Compensation Claims is created.

1 (c) The Workers' Compensation Appellate Tribunal is
2 vested with all authority, powers, duties, and
3 responsibilities related to review of orders of judges of
4 compensation claims and peer review panels in workers'
5 compensation proceedings under chapter 440 effective for all
6 petitions for benefits filed on or after March 1, 2004. The
7 Workers' Compensation Appellate Tribunal shall review by
8 appeal final orders of the judges of compensation claims and
9 peer review panels entered pursuant to chapter 440. The First
10 District Court of Appeal shall retain jurisdiction over all
11 workers' compensation matters pending before it on February
12 29, 2004. The Workers' Compensation Appellate Tribunal may
13 hold sessions and conduct hearings at any place within the
14 state. Three appellate judges shall consider each case, and
15 the concurrence of two shall be necessary for a decision. Any
16 two appellate judges may request an en banc hearing for review
17 of a final order of a judge of compensation claims.

18 (d) The tribunal may, in its discretion, charge for
19 publications, subscriptions, and copies of records and
20 documents. Such funds shall be deposited in the trust fund
21 established in s. 440.50.

22 (e) The Chief Judge shall exercise administrative
23 supervision over the Workers' Compensation Appellate Tribunal
24 and over the appellate judges and other officers of the
25 tribunal.

26 (f) The Chief Judge of the Workers' Compensation
27 Appellate Tribunal shall have the power:

- 28 1. To assign appellate judges to panels and to review
29 or hear appeals from orders of judges of compensation claims.
30 2. To hire and assign clerks and staff.
31 3. To regulate use of courtrooms.

1 4. To supervise dockets and calendars.
2 5. To do everything necessary to promote the prompt
3 and efficient administration of justice relative to the review
4 and appeal of workers' compensation matters.

5 (g) The Chief Judge may appoint an executive assistant
6 or staff attorney to perform such duties as the chief
7 appellate judge may direct. The tribunal shall be authorized
8 to employ research assistants or law clerks to assist the
9 appellate judges in performing their duties under this
10 section.

11 (h) The Chief Judge shall appoint a Clerk of the
12 Workers' Compensation Appellate Tribunal who shall serve at
13 the pleasure of the tribunal. Before entering upon the
14 discharge of the clerk's duties, the clerk shall give bond in
15 the sum of \$5,000 payable to the Governor or his successors in
16 office, to be approved by a majority of the tribunal
17 conditioned upon the faithful discharge of the duties of the
18 clerk's office, which bond shall be filed with the Office of
19 the Secretary of State.

20 1. The tribunal shall maintain and keep open during
21 reasonable business hours a clerk's office residing in Leon
22 County, for the transaction of its business. All books,
23 papers, records, files, and the seal of the tribunal shall be
24 kept at this office. The office shall be furnished and
25 equipped by the tribunal.

26 2. The clerk shall be paid an annual salary to be
27 determine in accordance with chapter 25.

28 3. The clerk may employ deputies and clerical
29 assistants as necessary. The number and compensation of the
30 deputies and clerical assistants shall be approved by the
31 tribunal and paid from the annual appropriations for the

1 Workers' Compensation Appellate Tribunal from the trust fund
2 established in s. 440.50.

3 4. The clerk, upon the filing of a certified copy of a
4 notice of appeal or petition, shall charge and collect a
5 filing fee of \$200 for each case docketed, and shall charge
6 and collect for copying, certifying, or furnishing opinions,
7 records, papers, or other instruments, and for other services
8 the same service charges as provided in s. 28.24. The state or
9 its agencies, when appearing as appellant or petitioner, is
10 exempt from the filing fee required in this subsection.

11 5. The Clerk of the Workers' Compensation Appellate
12 Tribunal shall prepare a statement of all fees collected in
13 duplicate each month and remit one copy of the statement,
14 together with all fees collected by the clerk's office, to the
15 Chief Financial Officer, who shall place the funds to the
16 credit of the Workers' Compensation Administrative Trust Fund
17 established by s. 440.50.

18 (2)(a) The Governor shall appoint full-time judges of
19 compensation claims and Workers' Compensation Appellate
20 Tribunal appellate judges to conduct proceedings as required
21 by this chapter or other law. No person may be nominated to
22 serve as a judge of compensation claims unless he or she has
23 been a member of The Florida Bar in good standing for the
24 previous 5 years and is experienced in the practice of law of
25 workers' compensation. No person may be nominated to serve as
26 a Workers' Compensation Appellate Tribunal appellate judge
27 unless he or she has been a member of The Florida Bar in good
28 standing for the previous 10 years and is experienced in the
29 practice of law of workers' compensation. No judge of
30 compensation claims or Workers' Compensation Appellate
31

1 Tribunal appellate judge shall engage in the private practice
2 of law during a term of office.

3 (b) Except as provided in paragraph (c), the Governor
4 shall appoint a judge of compensation claims or Workers'
5 Compensation Appellate Tribunal appellate judge from a list of
6 three persons nominated by a statewide nominating commission.
7 The statewide nominating commission shall be composed of the
8 following:

9 1. Five members, at least one of whom must be a member
10 of a minority group as defined in s. 288.703(3), one of each
11 who resides in each of the territorial jurisdictions of the
12 district courts of appeal, appointed by the Board of Governors
13 of The Florida Bar from among The Florida Bar members who are
14 engaged in the practice of law. On July 1, 2003 ~~1999~~, the term
15 of office of each person appointed by the Chief Financial
16 Officer ~~Board of Governors of The Florida Bar~~ to the
17 commission expires. ~~The Board of Governors shall appoint~~
18 ~~members who reside in the odd-numbered district court of~~
19 ~~appeal jurisdictions to 4-year terms each, beginning July 1,~~
20 ~~1999, and members who reside in the even-numbered district~~
21 ~~court of appeal jurisdictions to 2-year terms each, beginning~~
22 ~~July 1, 1999. Thereafter, each member shall be appointed for a~~
23 ~~4-year term;~~

24 2. Five electors, at least one of whom must be a
25 member of a minority group as defined in s. 288.703(3), one of
26 each who resides in each of the territorial jurisdictions of
27 the district courts of appeal, appointed by the Governor. On
28 July 1, 2003 ~~1999~~, the term of office of each person appointed
29 by the Governor to the commission expires. The Governor shall
30 appoint members who reside in the odd-numbered district court
31 of appeal jurisdictions to 2-year terms each, beginning July

1 1, 2003 ~~1999~~, and members who reside in the even-numbered
2 district court of appeal jurisdictions to 4-year terms each,
3 beginning July 1, 2003 ~~1999~~. Thereafter, each member shall be
4 appointed for a 4-year term; and

5 3. One elector ~~Five electors, at least one of whom~~
6 ~~must be a member of a minority group as defined in s.~~
7 ~~288.703(3), one of each who resides in the territorial~~
8 ~~jurisdictions of the district courts of appeal, selected and~~
9 ~~appointed by a majority vote of the other 10 members of the~~
10 ~~commission. On October 1, 1999, the term of office of each~~
11 ~~person appointed to the commission by its other members~~
12 ~~expires. A majority of the other members of the commission~~
13 ~~shall appoint members who reside in the odd-numbered district~~
14 ~~court of appeal jurisdictions to 2-year terms each, beginning~~
15 ~~October 1, 1999, and members who reside in the even-numbered~~
16 ~~district court of appeal jurisdictions to 4-year terms each,~~
17 ~~beginning October 1, 1999.~~This Thereafter, each member shall
18 be appointed for a 4-year term.

19 4. The term of office of each person currently serving
20 by virtue of previously being selected and appointed by a
21 majority vote of the other 10 members of the commission shall
22 expire on July 1, 2003.

23
24 A vacancy occurring on the commission shall be filled by the
25 original appointing authority for the unexpired balance of the
26 term. No attorney who appears before any judge of compensation
27 claims more than four times a year is eligible to serve on the
28 statewide nominating commission. The meetings and
29 determinations of the nominating commission as to the Chief
30 Judge, the Workers' Compensation Appellate Tribunal appellate
31

1 judges, the Deputy Chief Judge, and the judges of compensation
2 claims shall be open to the public.

3 (c) Each judge of compensation claims shall be
4 appointed for a term of 4 years, but during the term of office
5 may be removed by the Governor for cause. The Chief Judge
6 shall be appointed for a term of 4 years by March 1, 2004. Two
7 Workers' Compensation Appellate Tribunal appellate judges
8 shall be appointed for an initial term of 2 years by March 1,
9 2004. Two Workers' Compensation Appellate Tribunal appellate
10 judges shall be appointed for an initial term of 4 years by
11 May 1, 2004. Each Workers' Compensation Appellate Tribunal
12 appellate judge shall thereafter be appointed or reappointed
13 for a term of 4 years. ~~Prior to the expiration of a judge's or~~
14 ~~appellate judge's term of office, the statewide nominating~~
15 ~~commission shall review the judge's conduct and determine~~
16 ~~whether the judge's performance is satisfactory. Effective~~
17 ~~July 1, 2002,~~ ~~In determining whether a judge's performance is~~
18 ~~satisfactory, the Governor~~ ~~commission~~ shall consider the
19 extent to which the judge has met the requirements of this
20 chapter, including, but not limited to, the requirements of
21 ss. 440.25(1) and (4)(a)-(f), 440.34(2), and 440.442. ~~If the~~
22 ~~judge's performance is deemed satisfactory, the commission~~
23 ~~shall report its finding to the Governor no later than 6~~
24 ~~months prior to the expiration of the judge's term of office.~~
25 The Governor ~~shall review the commission's report and~~ may
26 reappoint the judge or appellate judge for an additional
27 4-year term. If the Governor does not reappoint the judge or
28 appellate judge, the Governor shall inform the commission. The
29 judge or appellate judge shall remain in office until the
30 Governor has appointed a successor judge or appellate judge in
31 accordance with paragraphs (a) and (b). If a vacancy occurs

1 during a judge's or appellate judge's unexpired term, ~~the~~
2 ~~statewide nominating commission does not find the judge's~~
3 ~~performance is satisfactory,~~ or the Governor does not
4 reappoint the judge or appellate judge, the Governor shall
5 appoint a successor judge or appellate judge for a term of 4
6 years in accordance with paragraph (b). Notwithstanding the
7 foregoing, during the term of office any judge may be removed
8 by the Governor for cause.

9 (d) The Governor may appoint any attorney who has at
10 least 5 years of experience in the practice of law in this
11 state to serve as a judge of compensation claims or Workers'
12 Compensation Appellate Tribunal appellate judge pro hac vice
13 in the absence or disqualification of any full-time judge of
14 compensation claims or to serve temporarily as an additional
15 judge of compensation claims or Workers' Compensation
16 Appellate Tribunal appellate judge in any area of the state in
17 which the Governor determines that a need exists for such an
18 additional judge. However, an attorney who is so appointed by
19 the Governor may not serve for a period of more than 120
20 successive days.

21 (e) The director of the Division of Administrative
22 Hearings may receive or initiate complaints, conduct
23 investigations, and dismiss complaints against the Workers'
24 Compensation Appellate Tribunal appellate judges, the Deputy
25 Chief Judge, and the judges of compensation claims on the
26 basis of the Code of Judicial Conduct. The director may
27 recommend to the Governor the removal of a Workers'
28 Compensation Appellate Tribunal appellate judge, the Deputy
29 Chief Judge, or a judge of compensation claims or recommend
30 the discipline of a judge whose conduct during his or her term
31 of office warrants such discipline. For purposes of this

1 section, the term "discipline" includes reprimand, fine, and
2 suspension with or without pay. At the conclusion of each
3 investigation, the director shall submit preliminary findings
4 of fact and recommendations to the Workers' Compensation
5 Appellate Tribunal appellate judge, or the judge of
6 compensation claims who is the subject of the complaint. The
7 appellate judge or judge of compensation claims has 20 days
8 within which to respond to the preliminary findings. The
9 response and the director's rebuttal to the response must be
10 included in the final report submitted to the Governor.

11 (3) The Deputy Chief Judge shall establish training
12 and continuing education for new and sitting Workers'
13 Compensation Appellate Tribunal appellate judges and judges of
14 compensation claims.

15 (4) The Office of the Judges of Compensation Claims
16 shall adopt rules to effect the purposes of this section. Such
17 rules shall include procedural rules applicable to workers'
18 compensation claim resolution, including the appellate review
19 of decisions of judges of compensation claims,and uniform
20 criteria for measuring the performance of the office,
21 including, but not limited to, the number of cases assigned
22 and disposed, the age of pending and disposed cases,
23 timeliness of decisionmaking, extraordinary fee awards, and
24 other data necessary for the judicial nominating commission to
25 review the performance of judges of compensation claims and
26 Workers' Compensation Appellate Tribunal appellate judges as
27 required in paragraph (2)(c). The workers' compensation rules
28 of procedure approved by the Supreme Court apply until the
29 rules adopted by the Office of the Judges of Compensation
30 Claims pursuant to this section become effective.

31

1 (5) Not later than December 1 of each year, the Office
2 of the Judges of Compensation Claims shall issue a written
3 report to the Governor, the House of Representatives, the
4 Senate, The Florida Bar, and the statewide nominating
5 commission summarizing the amount, cost, and outcome of all
6 litigation resolved in the previous fiscal year; summarizing
7 ~~the disposition of mediation conferences,~~ the number of
8 mediation conferences held, the number of continuances granted
9 for ~~mediations and~~ final hearings, the number and outcome of
10 litigated cases, including which party prevailed, the amount
11 of attorney's fees paid in each case according to order year
12 and accident year, and the number of final orders not issued
13 within 30 days after the final hearing or closure of the
14 hearing record. The Office of the Judges of Compensation
15 Claims shall recommend; ~~and recommending~~ changes or
16 improvements to the dispute resolution elements of the
17 Workers' Compensation Law and regulations. If the ~~Deputy~~ Chief
18 Judge finds that judges generally are unable to meet a
19 particular statutory requirement for reasons beyond their
20 control, the Deputy Chief Judge shall submit such findings and
21 any recommendations to the Legislature.

22 Section 53. Section 440.465, Florida Statutes, is
23 created to read:

24 440.465 Claims Bureau.--There is created within the
25 Department of Financial Services a Claims Bureau. All
26 personnel who determine issues of ripeness or specificity of
27 petitions for benefits must be members in good standing of The
28 Florida Bar for at least 2 years and must have at least 1 year
29 of professional experience in workers' compensation.

30 Section 54. Subsections (8), (9), (10), and (11) of
31 section 440.49, Florida Statutes, are amended to read:

1 440.49 Limitation of liability for subsequent injury
2 through Special Disability Trust Fund.--

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

18 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

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

30
31

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

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

28 b. When computing net direct premiums written for
29 purposes of the assessment a carrier owes under this section,
30 the carrier shall report such net direct premiums written as
31 the total of the amount of gross direct premiums written on

1 account of the state's workers' compensation risks, omitting
2 premiums for reinsurance accepted and reduced for:

3 (I) Return premiums for policies not accepted; and

4 (II) Premium refunds and dividends paid or credited to
5 policyholders, subject to the limits of s. 624.5094.

6 c. However, such net direct premiums written shall not
7 be reduced for:

8 (I) Reinsurance ceded to reinsurers or other insurers;

9 (II) Commissions and brokerages fees paid to agents
10 for transacting a workers' compensation policy; or

11 (III) Expense constants charged as a part of the total
12 policy premium.

13 4. The department shall adopt rules for collecting the
14 amounts assessed under this section. These assessments are due
15 within 30 days after the date the insurer receives notice of
16 its obligation to pay the quarterly assessment or 30 days
17 after the end of the quarter for which the assessment is owed,
18 whichever occurs later. If the assessment is not paid timely,
19 the department may assess, for each 30 days the amount remains
20 unpaid, a penalty equal to 10 percent of the unpaid amount.
21 The penalty shall be remitted at the same time as the amount
22 assessed.

23 5. If an insurer fails to pay the amounts assessed to
24 it under this section within 60 days after the date the
25 insurer receives notice of its obligation to pay the quarterly
26 assessment or 30 days after the end of the quarter for which
27 the assessment is owned, whichever occurs later, the Office of
28 Insurance Regulation may suspend or revoke the insurer's
29 certificate of authority. If a self-insurer fails to pay the
30 amounts assessed to it within 60 days after the due date

31

1 prescribed in this subparagraph, the department may revoke the
2 employer's authority to self-insure under this chapter.

3 6. All amounts collected under this section shall be
4 paid into the Special Disability Trust Fund.

5 7.a. The department shall require from each carrier
6 reports identifying the carrier's gross written premiums, the
7 computation of net direct premiums written from such gross
8 written premiums, and the calculation of the amount of
9 assessment due. Such reports must be filed with the carrier's
10 quarterly assessment payment or the carrier may be assessed a
11 \$1,000 penalty. The department shall review the amounts to be
12 paid by each carrier under this section. If the department
13 finds that a carrier has not calculated or paid its
14 assessments correctly, the carrier shall be notified of the
15 error in computation and provided the procedures whereby an
16 underpayment, or an overpayment, of the assessment owed shall
17 be corrected.

18 b. The department shall require from each self-insurer
19 payroll records with respect to wages paid and all payments of
20 compensation made by the self-insurer. The division shall
21 determine the assessment amounts to be paid by each
22 self-insurer as provided in paragraph (1)(b).

23 ~~8.4.~~ The Treasurer is authorized to receive and credit
24 to such Special Disability Trust Fund any sum or sums that may
25 at any time be contributed to the state by the United States
26 under any Act of Congress, or otherwise, to which the state
27 may be or become entitled by reason of any payments made out
28 of such fund.

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

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

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

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

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

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

29 Section 55. Section 440.50, Florida Statutes, is
30 amended to read:

31

1 440.50 Workers' Compensation Administration Trust
2 Fund.--

3 (1)(a) There is established in the State Treasury a
4 special fund to be known as the "Workers' Compensation
5 Administration Trust Fund" for the purpose of providing for
6 the payment of all expenses in respect to the administration
7 of this chapter, including the vocational rehabilitation of
8 injured employees as provided in s. 440.49 and the payments
9 due under s. 440.15(1)(f), the funding of the fixed
10 administrative expenses of the plan, and the funding of the
11 Office Bureau of Workers' Compensation Insurance Fraud within
12 the Department of Law Enforcement Insurance. Such fund shall
13 be administered by the Department of Law Enforcement.

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

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

23 (3) The Treasurer shall deposit any moneys paid into
24 such fund into such depository banks as the division
25 ~~department~~ may designate and is authorized to invest any
26 portion of the fund which, in the opinion of the division
27 ~~department~~, is not needed for current requirements, in the
28 same manner and subject to all the provisions of the law with
29 respect to the deposit of state funds by such Treasurer. All
30 interest earned by such portion of the fund as may be invested
31

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

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

6 Section 56. Section 440.501, Florida Statutes, is
7 amended to read:

8 440.501 Workers' Compensation Administration Trust
9 Fund within the Department of Business and Professional
10 Regulation.--

11 (1) The Workers' Compensation Administration Trust
12 Fund is created within the Department of Business and
13 Professional Regulation, to be administered by the division
14 ~~such department~~. The trust fund shall be used for the purpose
15 of providing for the payment of all expenses in respect to the
16 administration of the child labor program, pursuant to
17 legislative appropriation or an approved amendment to the
18 division's ~~department's~~ operating budget pursuant to the
19 provisions of chapter 216.

20 (2) Notwithstanding the provisions of s. 216.301 and
21 pursuant to s. 216.351, any balance in the trust fund at the
22 end of any fiscal year shall remain in the trust fund at the
23 end of the year and shall be available for carrying out the
24 purposes of the trust fund.

25 (3) Pursuant to the provisions of s. 19(f)(2), Art.
26 III of the State Constitution, the trust fund shall, unless
27 terminated sooner, be terminated on July 1, 2006. Prior to
28 its scheduled termination, the trust fund shall be reviewed as
29 provided in s. 215.3206.

30 Section 57. Section 440.51, Florida Statutes, is
31 amended to read:

1 440.51 Expenses of administration.--

2 (1) The department shall estimate annually in advance
3 the amounts necessary for the administration of this chapter,
4 in the following manner.

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

14 (b)1. The total expenses of administration shall be
15 prorated among the insurance companies ~~carriers~~ writing
16 compensation insurance in the state, the commercial
17 self-insurers under ss. 624.462 and 624.4621, the assessable
18 mutual insurers under s. 628.6011, and self-insurers under
19 this chapter. The net direct premiums collected by carriers
20 and the amount of net premiums calculated by the department
21 for self-insured employers are the basis for computing the
22 amount to be assessed. When reporting deductible policy
23 premium for purposes of computing assessments levied after
24 July 1, 2001, full policy premium value must be reported prior
25 to application of deductible discounts or credits in the
26 manner provided in this subsection.

27 2. This amount may be assessed as a specific amount or
28 as a percentage of net premiums payable as the department may
29 direct, provided such amount so assessed shall not exceed 2.75
30 percent, beginning January 1, 2001, and ~~except~~ during the
31 interim period preceding such date, the amount assessed from

1 ~~July 1, 2000, through December 31, 2000, such assessments~~
2 shall not exceed 4 percent of such net premiums. The carriers
3 may elect to make the payments required under s. 440.15(1)(f)
4 rather than having these payments made by the department. In
5 that event, such payments will be credited to the carriers,
6 and the amount due by the carrier under this section will be
7 reduced accordingly.

8 (c) When computing net direct premiums written for
9 purposes of the assessment a carrier owes under this section,
10 the carrier shall report such net direct premiums written as
11 the total of the amount of gross direct premiums written on
12 account of the state's workers' compensation risks, omitting
13 premiums for reinsurance accepted and reduced for:

- 14 1. Return premiums for policies not accepted; and
15 2. Premium refunds and dividends paid or credited to
16 policyholders, subject to the limits of s. 624.5094.

17 (d) However, such net direct premiums written shall
18 not be reduced for:

- 19 1. Reinsurance ceded to reinsurers or other insurers;
20 2. Commissions and brokerages fees paid to agents for
21 transacting a workers' compensation policy; or
22 3. Expense constants charged as a part of the total
23 policy premium.

24 (e) When reporting the full policy premium value of
25 deductible policies under paragraph (b), the carrier shall
26 include in the net direct premiums earned under this section a
27 prorated portion of the total premium discount or credit
28 applied on account of the deductible clause of the policy. The
29 prorated portion of the deductible premiums credit which shall
30 be included in the net premiums assessed for the prior period
31 shall be in the same proportion as the deductible policy's

1 reported earned premiums for the prior period bears to the
2 policy's gross written premiums.

3 (2) The department shall adopt rules ~~provide by~~
4 ~~regulation~~ for the collection of the amounts assessed under
5 this section against each carrier. These assessments are due
6 within 30 days after the date the insurer receives notice of
7 its obligation to pay the quarterly assessment or 30 days
8 after the end of the quarter for which the assessment is owed,
9 whichever occurs later. If the assessment is not paid timely,
10 the department may assess, ~~Such amounts shall be paid within~~
11 ~~30 days from the date that notice is served upon such carrier.~~
12 ~~If such amounts are not paid within such period, there may be~~
13 ~~assessed~~ for each 30 days the amount ~~so assessed~~ remains
14 unpaid, a ~~civil~~ penalty equal to 10 percent of the unpaid
15 amount. The penalty ~~so unpaid, which shall be remitted~~
16 ~~collected~~ at the same time as ~~and a part of~~ the amount
17 assessed. For those carriers who excluded ceded reinsurance
18 premiums from their assessments prior to January 1, 2000, the
19 department shall not recover any past underpayments of
20 assessments related to ceded reinsurance premiums prior to
21 January 1, 2001, against such carriers.

22 (3) If any carrier fails to pay the amounts assessed
23 against it under this section within 60 days after the date
24 the carrier receives notice of its obligation to pay the
25 quarterly assessment or 30 days after the end of the quarter
26 for which the assessment is owed, whichever occurs later, the
27 Office of Insurance Regulation may suspend or revoke the
28 carrier's certificate of authority. If a self-insurer fails to
29 pay the amounts assessed to it within the same period, the
30 department may revoke the self-insurer's authority to
31 self-insure under this chapter. ~~him or her under the~~

1 ~~provisions of this section within 60 days from the time such~~
2 ~~notice is served upon him or her, the department may suspend~~
3 ~~or revoke the authorization to insure compensation in~~
4 ~~accordance with the procedure in s. 440.38(3)(a). The~~
5 ~~department may permit a carrier to remit any underpayment of~~
6 ~~assessments for assessments levied after January 1, 2001.~~

7 (4) All amounts collected under the provisions of this
8 section shall be paid into the Workers' Compensation
9 Administration Trust Fund ~~established in s. 440.50.~~

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

24 (6)a. The department shall ~~may~~ require from each
25 carrier, ~~at such time and in accordance with such regulations~~
26 ~~as the department may prescribe,~~ reports identifying in
27 respect to all gross earned premiums and the carrier's
28 computation of net direct premiums earned from such gross
29 earned premiums, and calculation of the amount of assessment
30 due. When applicable under paragraph (1)(b), the carrier shall
31 also provide the amounts of deductible discounts or credits

1 the carrier has included in the total net earned premium
2 assessed during the prior period. Such reports shall be filed
3 with the carrier's quarterly assessment payment or the carrier
4 may be assessed a \$1,000 penalty. The department shall review
5 the amounts to be paid by each carrier under this section. If
6 the department finds that a carrier has not computed or paid
7 its assessment correctly, the carrier shall be notified and
8 provided the procedures whereby an underpayment, or an
9 overpayment, of the assessments owed shall be corrected.

10 (b) The department may require from each self-insurer
11 payroll records with respect to wages paid and all payments of
12 compensation made by the self-insurer. The division shall
13 determine the assessment amounts to be paid by each
14 self-insurer as provided in paragraph (1)(b).~~and of all~~
15 ~~payments of compensation made by such carrier during each~~
16 ~~prior period, and may determine the amounts paid by each~~
17 ~~carrier and the amounts paid by all carriers during such~~
18 ~~period.~~

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

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

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

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

7 (a) Cause of the injury;

8 (b) Nature of the injury; and

9 (c) Type of disability.

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

18 (11) The department shall furnish to any employer or
19 carrier, upon request, its individual experience.

20 (12) In addition to any other penalties provided by
21 this law, the failure to submit any report or other
22 information required by this law shall be just cause to
23 suspend the right of a self-insurer to operate as such or
24 shall be just cause for the department to suspend or revoke
25 the license of such carrier.

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

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

29 (b) "Fixed administrative expenses" means the expenses
30 of the plan, not to exceed \$750,000, which are directly
31 related to the plan's administration but which do not vary in

1 direct relationship to the amount of premium written by the
2 plan and which do not include loss adjustment premiums.

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

11 Section 58. Section 440.515, Florida Statutes, is
12 amended to read:

13 440.515 Reports from self-insurers;
14 confidentiality.--The department ~~of Insurance~~ shall maintain
15 the reports filed in accordance with s. 440.51(6)(b) as
16 confidential and exempt from the provisions of s. 119.07(1),
17 and such reports shall be released only for bona fide research
18 or educational purposes or after receipt of consent from the
19 employer.

20 Section 59. Subsections (2) and (4) of section 440.52,
21 Florida Statutes, are amended to read:

22 440.52 Registration of insurance carriers; notice of
23 cancellation or expiration of policy; suspension or revocation
24 of authority.--

25 (2) If the department ~~A carrier or self-insurance fund~~
26 ~~that~~ receives notice pursuant to s. 440.05, the department
27 shall immediately notify the contractor of the cancellation or
28 expiration of the insurance.

29 (4) In addition to the penalties prescribed in
30 subsection (3), violation of s. 440.381 by an insurance
31 carrier shall result in the imposition of a fine not to exceed

1 \$1,000 per audit, if the insurance carrier fails to act on
2 said audits by correcting errors in employee classification or
3 accepted applications for coverage where it knew employee
4 classifications were incorrect. Such fines shall be levied by
5 the Department of Insurance and deposited into the Chief
6 Financial Officer's Insurance Commissioner's Regulatory Trust
7 Fund.

8 Section 60. Section 440.59, Florida Statutes, is
9 amended to read:

10 440.59 Reporting requirements.--The division
11 ~~department~~ shall annually prepare a report of the
12 administration of this chapter for the preceding calendar
13 year, including a detailed statement of the receipts of and
14 expenditures from the fund established in s. 440.50 and a
15 statement of the causes of the accidents leading to the
16 injuries for which the awards were made, together with such
17 recommendations as the division ~~department~~ considers
18 advisable. On or before September 15 of each year, the
19 division ~~department~~ shall submit a copy of the report to the
20 Governor, the President of the Senate, the Speaker of the
21 House of Representatives, the Democratic and Republican
22 Leaders of the Senate and the House of Representatives, and
23 the chairs of the legislative committees having jurisdiction
24 over workers' compensation.

25 Section 61. Section 440.591, Florida Statutes, is
26 amended to read:

27 440.591 Administrative procedure; rulemaking
28 authority.--The department, ~~the agency,~~ and the Department of
29 Education may adopt rules pursuant to ss. 120.536(1) and
30 120.54 to implement the provisions of this chapter conferring
31 duties upon it.

1 Section 62. Section 440.593, Florida Statutes, is
2 amended to read:

3 440.593 Electronic reporting.--

4 (1) For forms, reports, or other information filed
5 with the department by electronic reporting,the department
6 may by rule establish filing deadlines different from those
7 otherwise required when reporting the an electronic reporting
8 system requiring or authorizing an employer or carrier to
9 submit required forms, reports, or other information
10 electronically rather than by other means. The department may
11 establish different deadlines for submitting forms, reports,
12 or information to the department, or to its authorized agent,
13 via the electronic reporting system than are otherwise
14 required when reporting information by other means.

15 (2) The department may require any carrier to submit
16 data electronically, either directly or through a third-party
17 vendor, and may require any carrier or vendor submitting data
18 to the department electronically to be approved certified by
19 the department as prescribed by rule. The department shall may
20 specify performance requirements for any carrier or vendor
21 submitting data electronically.

22 (3) The department may revoke the certification of any
23 carrier or vendor determined by the department to be in
24 noncompliance with performance standards prescribed by rule
25 for electronic submissions.

26 (4) (a) The department by rule shall establish a
27 schedule by which carriers must begin filing information
28 electronically. If a carrier is required to file
29 electronically, the failure to so file subjects the carrier to
30 an administrative penalty in the amount of \$500 per day for
31 the first 30 days of noncompliance, after which the department

1 shall take further action as set forth in s. 440.38, if the
2 carrier is a self-insurer, or shall refer the carrier to the
3 Office of Insurance Regulation for additional sanctions under
4 s. 624.308.

5 (b) A carrier shall timely file all electronic
6 information required by the department, in accordance with
7 department rule. Sanctions set forth in ss. 440.185(8) and (9)
8 and 440.525 must be imposed for failure to timely file any
9 required electronic information.~~The department may assess a~~
10 ~~civil penalty, not to exceed \$500 for each violation, as~~
11 ~~prescribed by rule.~~

12 (5) The department may adopt rules to administer this
13 section.

14 Section 63. Subsection (18) of section 443.036,
15 Florida Statutes, is amended to read:

16 443.036 Definitions.--As used in this chapter, unless
17 the context clearly requires otherwise:

18 (18) EMPLOYEE LEASING COMPANY.--The term "employee
19 leasing company" means an employing unit which maintains a
20 valid and active license under chapter 468 and which maintains
21 the records required by s. 443.171(7) and, in addition,
22 maintains a listing of the clients of the employee leasing
23 company and of the employees, including their social security
24 numbers, who have been assigned to work at each client company
25 job site. Further, each client company job site must be
26 identified by industry, products or services, and address. The
27 client list shall be provided to the division and the
28 Department of Financial Services by June 30 and by December 31
29 of each year. For purposes of this subsection, "client" means
30 a party who has contracted with an employee leasing company to
31 provide a worker, or workers, to perform services for the

1 client. Leased employees shall include employees subsequently
2 placed on the payroll of the employee leasing company on
3 behalf of the client. The employee leasing company shall
4 notify the division and the Department of Financial Services
5 within 30 days after ~~of~~ the initiation or termination of the
6 company's relationship with any client company pursuant to
7 chapter 468.

8 Section 64. Subsection (7) of section 443.171, Florida
9 Statutes, is amended to read:

10 443.171 Division and commission; powers and duties;
11 rules; advisory council; records and reports; proceedings;
12 state-federal cooperation.--

13 (7) RECORDS AND REPORTS.--Each employing unit shall
14 keep true and accurate work records, containing such
15 information as the division may prescribe. Such records shall
16 be open to inspection and be subject to being copied by the
17 division at any reasonable time and as often as may be
18 necessary. The division or an appeals referee may require from
19 any employing unit any sworn or unsworn reports, with respect
20 to persons employed by it, deemed necessary for the effective
21 administration of this chapter. However, a state or local
22 governmental agency performing intelligence or
23 counterintelligence functions need not report an employee if
24 the head of such agency has determined that reporting the
25 employee could endanger the safety of the employee or
26 compromise an ongoing investigation or intelligence mission.
27 Information revealing the employing unit's or individual's
28 identity thus obtained from the employing unit or from any
29 individual pursuant to the administration of this chapter,
30 shall, except to the extent necessary for the proper
31 presentation of a claim or upon written authorization of the

1 claimant who has a workers' compensation claim pending or is
2 receiving workers' compensation benefits, be held confidential
3 and exempt from the provisions of s. 119.07(1). Such
4 information shall be available only to public employees in the
5 performance of their public duties, including employees of the
6 Department of Education in obtaining information for the
7 Florida Education and Training Placement Information Program
8 and the Office of Tourism, Trade, and Economic Development in
9 its administration of the qualified defense contractor tax
10 refund program authorized by s. 288.1045, the qualified target
11 industry business tax refund program authorized by s. 288.106.
12 Any claimant, or the claimant's legal representative, at a
13 hearing before an appeals referee or the commission shall be
14 supplied with information from such records to the extent
15 necessary for the proper presentation of her or his claim. Any
16 employee or member of the commission or any employee of the
17 division, or any other person receiving confidential
18 information, who violates any provision of this subsection is
19 guilty of a misdemeanor of the second degree, punishable as
20 provided in s. 775.082 or s. 775.083. However, the division
21 may furnish to any employer copies of any report previously
22 submitted by such employer, upon the request of such employer,
23 and the division is authorized to charge therefor such
24 reasonable fee as the division may by rule prescribe not to
25 exceed the actual reasonable cost of the preparation of such
26 copies. Fees received by the division for copies provided
27 under this subsection shall be deposited to the credit of the
28 Employment Security Administration Trust Fund.

29 Section 65. Subsections (1) and (2) of section
30 443.1715, Florida Statutes, are amended to read:

31 443.1715 Disclosure of information; confidentiality.--

1 (1) RECORDS AND REPORTS.--Information revealing the
2 employing unit's or individual's identity obtained from the
3 employing unit or from any individual pursuant to the
4 administration of this chapter, and any determination
5 revealing such information, except to the extent necessary for
6 the proper presentation of a claim or upon written
7 authorization of the claimant who has a workers' compensation
8 claim pending or is receiving compensation benefits, must be
9 held confidential and exempt from the provisions of s.
10 119.07(1) and s. 24(a), Art. I of the State Constitution. Such
11 information may be made available only to public employees in
12 the performance of their public duties, including employees of
13 the Department of Education in obtaining information for the
14 Florida Education and Training Placement Information Program
15 and the Office of Tourism, Trade, and Economic Development in
16 its administration of the qualified defense contractor tax
17 refund program authorized by s. 288.1045 and the qualified
18 target industry tax refund program authorized by s. 288.106.
19 Except as otherwise provided by law, public employees
20 receiving such information must retain the confidentiality of
21 such information. Any claimant, or the claimant's legal
22 representative, at a hearing before an appeals referee or the
23 commission shall be supplied with information from such
24 records to the extent necessary for the proper presentation of
25 her or his claim. Any employee or member of the commission or
26 any employee of the division, or any other person receiving
27 confidential information, who violates any provision of this
28 subsection commits a misdemeanor of the second degree,
29 punishable as provided in s. 775.082 or s. 775.083. However,
30 the division may furnish to any employer copies of any report
31 previously submitted by such employer, upon the request of

1 such employer, and may furnish to any claimant copies of any
2 report previously submitted by such claimant, upon the request
3 of such claimant, and the division is authorized to charge
4 therefor such reasonable fee as the division may by rule
5 prescribe not to exceed the actual reasonable cost of the
6 preparation of such copies. Fees received by the division for
7 copies as provided in this subsection must be deposited to the
8 credit of the Employment Security Administration Trust Fund.

9 (2) DISCLOSURE OF INFORMATION.--

10 (a) Subject to such restrictions as the division
11 prescribes by rule, information declared confidential under
12 this section may be made available to any agency of this or
13 any other state, or any federal agency, charged with the
14 administration of any unemployment compensation law or the
15 maintenance of a system of public employment offices, or the
16 Bureau of Internal Revenue of the United States Department of
17 the Treasury, or the Florida Department of Revenue and
18 information obtained in connection with the administration of
19 the employment service may be made available to persons or
20 agencies for purposes appropriate to the operation of a public
21 employment service or a job-preparatory or career education or
22 training program. The division shall on a quarterly basis,
23 furnish the National Directory of New Hires with information
24 concerning the wages and unemployment compensation paid to
25 individuals, by such dates, in such format and containing such
26 information as the Secretary of Health and Human Services
27 shall specify in regulations. Upon request therefor, the
28 division shall furnish any agency of the United States charged
29 with the administration of public works or assistance through
30 public employment, and may furnish to any state agency
31 similarly charged, the name, address, ordinary occupation, and

1 employment status of each recipient of benefits and such
2 recipient's rights to further benefits under this chapter.
3 Except as otherwise provided by law, the receiving agency must
4 retain the confidentiality of such information as provided in
5 this section. The division may request the Comptroller of the
6 Currency of the United States to cause an examination of the
7 correctness of any return or report of any national banking
8 association rendered pursuant to the provisions of this
9 chapter and may in connection with such request transmit any
10 such report or return to the Comptroller of the Currency of
11 the United States as provided in s. 3305(c) of the federal
12 Internal Revenue Code.

13 (b)1. The employer or the employer's workers'
14 compensation carrier against whom a claim for benefits under
15 chapter 440 has been made, or a representative of either, may
16 request from the department records of wages of the employee
17 reported to the department by any employer for the quarter
18 that includes the date of the accident that is the subject of
19 such claim and for subsequent quarters. The request must be
20 made with the authorization or consent of the employee or any
21 employer who paid wages to the employee subsequent to the date
22 of the accident.

23 2. The employer or carrier shall make the request on a
24 form prescribed by rule for such purpose by the department in
25 the manner specified by the secretary. Such form shall contain
26 a certification by the requesting party that it is a party
27 entitled to the information requested as authorized by this
28 paragraph.

29 3. The division shall provide the most current
30 information readily available within 15 days after receiving
31 the request.

1 Section 66. Section 626.989, Florida Statutes, is
2 amended to read:

3 626.989 Investigation by department,~~or~~ Division of
4 Insurance Fraud, or Office of Workers' Compensation Insurance
5 Fraud; compliance; immunity; confidential information; reports
6 to division; division investigator's power of arrest.--

7 (1) For the purposes of this section, a person commits
8 a "fraudulent insurance act" if the person knowingly and with
9 intent to defraud presents, causes to be presented, or
10 prepares with knowledge or belief that it will be presented,
11 to or by an insurer, self-insurer, self-insurance fund,
12 servicing corporation, purported insurer, broker, or any agent
13 thereof, any written statement as part of, or in support of,
14 an application for the issuance of, or the rating of, any
15 insurance policy, or a claim for payment or other benefit
16 pursuant to any insurance policy, which the person knows to
17 contain materially false information concerning any fact
18 material thereto or if the person conceals, for the purpose of
19 misleading another, information concerning any fact material
20 thereto. For the purposes of this section, the term "insurer"
21 also includes any health maintenance organization and the term
22 "insurance policy" also includes a health maintenance
23 organization subscriber contract.

24 (2) If, by its own inquiries or as a result of
25 complaints, the department or its Division of Insurance Fraud
26 has reason to believe that a person has engaged in, or is
27 engaging in, a fraudulent insurance act, an act or practice
28 that violates s. 626.9541 or s. 817.234, or an act or practice
29 punishable under s. 624.15, it may administer oaths and
30 affirmations, request the attendance of witnesses or
31 proffering of matter, and collect evidence. The Office of

1 Workers' Compensation Insurance Fraud within the Department of
2 Law Enforcement shall have exclusive jurisdiction regarding
3 the investigation of workers' compensation insurance fraud.

4 The department or office shall not compel the attendance of
5 any person or matter in any such investigation except pursuant
6 to subsection (4).

7 (3) If matter that the office, department, or its
8 division seeks to obtain by request is located outside the
9 state, the person so requested may make it available to the
10 office or division or its representative to examine the matter
11 at the place where it is located. The division or office may
12 designate representatives, including officials of the state in
13 which the matter is located, to inspect the matter on its
14 behalf, and it may respond to similar requests from officials
15 of other states.

16 (4)(a) The office, department, or its division may
17 request that an individual who refuses to comply with any such
18 request be ordered by the circuit court to provide the
19 testimony or matter. The court shall not order such compliance
20 unless the office, department, or its division has
21 demonstrated to the satisfaction of the court that the
22 testimony of the witness or the matter under request has a
23 direct bearing on the commission of a fraudulent insurance
24 act, on a violation of s. 626.9541 or s. 817.234, or on an act
25 or practice punishable under s. 624.15 or is pertinent and
26 necessary to further such investigation.

27 (b) Except in a prosecution for perjury, an individual
28 who complies with a court order to provide testimony or matter
29 after asserting a privilege against self-incrimination to
30 which the individual is entitled by law may not be subjected
31 to a criminal proceeding or to a civil penalty with respect to

1 the act concerning which the individual is required to testify
2 or produce relevant matter.

3 (c) In the absence of fraud or bad faith, a person is
4 not subject to civil liability for libel, slander, or any
5 other relevant tort by virtue of filing reports, without
6 malice, or furnishing other information, without malice,
7 required by this section or required by the office,
8 department, or division under the authority granted in this
9 section, and no civil cause of action of any nature shall
10 arise against such person:

11 1. For any information relating to suspected
12 fraudulent insurance acts or persons suspected of engaging in
13 such acts furnished to or received from law enforcement
14 officials, their agents, or employees;

15 2. For any information relating to suspected
16 fraudulent insurance acts or persons suspected of engaging in
17 such acts furnished to or received from other persons subject
18 to the provisions of this chapter;

19 3. For any such information furnished in reports to
20 the department, the division, the National Insurance Crime
21 Bureau, the National Association of Insurance Commissioners,
22 or any local, state, or federal enforcement officials or their
23 agents or employees; or

24 4. For other actions taken in cooperation with any of
25 the agencies or individuals specified in this paragraph in the
26 lawful investigation of suspected fraudulent insurance acts.

27 (d) In addition to the immunity granted in paragraph
28 (c), persons identified as designated employees whose
29 responsibilities include the investigation and disposition of
30 claims relating to suspected fraudulent insurance acts may
31 share information relating to persons suspected of committing

1 fraudulent insurance acts with other designated employees
2 employed by the same or other insurers whose responsibilities
3 include the investigation and disposition of claims relating
4 to fraudulent insurance acts, provided the department has been
5 given written notice of the names and job titles of such
6 designated employees prior to such designated employees
7 sharing information. Unless the designated employees of the
8 insurer act in bad faith or in reckless disregard for the
9 rights of any insured, neither the insurer nor its designated
10 employees are civilly liable for libel, slander, or any other
11 relevant tort, and a civil action does not arise against the
12 insurer or its designated employees:

13 1. For any information related to suspected fraudulent
14 insurance acts provided to an insurer; or

15 2. For any information relating to suspected
16 fraudulent insurance acts provided to the National Insurance
17 Crime Bureau or the National Association of Insurance
18 Commissioners.

19
20 Provided, however, that the qualified immunity against civil
21 liability conferred on any insurer or its designated employees
22 shall be forfeited with respect to the exchange or publication
23 of any defamatory information with third persons not expressly
24 authorized by this paragraph to share in such information.

25 (e) The Chief Financial Officer ~~Insurance Commissioner~~
26 and any employee or agent of the office, department, or
27 division, when acting without malice and in the absence of
28 fraud or bad faith, is not subject to civil liability for
29 libel, slander, or any other relevant tort, and no civil cause
30 of action of any nature exists against such person by virtue
31 of the execution of official activities or duties of the

1 department under this section or by virtue of the publication
2 of any report or bulletin related to the official activities
3 or duties of the office, department, or division under this
4 section.

5 (f) This section does not abrogate or modify in any
6 way any common-law or statutory privilege or immunity
7 heretofore enjoyed by any person.

8 (5) The office's and department's papers, documents,
9 reports, or evidence relative to the subject of an
10 investigation under this section are confidential and exempt
11 from the provisions of s. 119.07(1) until such investigation
12 is completed or ceases to be active. For purposes of this
13 subsection, an investigation is considered "active" while the
14 investigation is being conducted by the department with a
15 reasonable, good faith belief that it could lead to the filing
16 of administrative, civil, or criminal proceedings. An
17 investigation does not cease to be active if the office or
18 department is proceeding with reasonable dispatch and has a
19 good faith belief that action could be initiated by the
20 department or other administrative or law enforcement agency.
21 After an investigation is completed or ceases to be active,
22 portions of records relating to the investigation shall remain
23 exempt from the provisions of s. 119.07(1) if disclosure
24 would:

25 (a) Jeopardize the integrity of another active
26 investigation;

27 (b) Impair the safety and soundness of an insurer;

28 (c) Reveal personal financial information;

29 (d) Reveal the identity of a confidential source;

30

31

1 (e) Defame or cause unwarranted damage to the good
2 name or reputation of an individual or jeopardize the safety
3 of an individual; or

4 (f) Reveal investigative techniques or procedures.
5 Further, such papers, documents, reports, or evidence relative
6 to the subject of an investigation under this section shall
7 not be subject to discovery until the investigation is
8 completed or ceases to be active. Office, department, or
9 division investigators shall not be subject to subpoena in
10 civil actions by any court of this state to testify concerning
11 any matter of which they have knowledge pursuant to a pending
12 insurance fraud investigation by the office or division.

13 (6) Any person, other than an insurer, agent, or other
14 person licensed under the code, or an employee thereof, having
15 knowledge or who believes that a fraudulent insurance act or
16 any other act or practice which, upon conviction, constitutes
17 a felony or a misdemeanor under the code, or under s. 817.234,
18 is being or has been committed may send to the Division of
19 Insurance Fraud a report or information pertinent to such
20 knowledge or belief and such additional information relative
21 thereto as the department may request. Any professional
22 practitioner licensed or regulated by the Department of
23 Business and Professional Regulation, except as otherwise
24 provided by law, any medical review committee as defined in s.
25 766.101, any private medical review committee, and any
26 insurer, agent, or other person licensed under the code, or an
27 employee thereof, having knowledge or who believes that a
28 fraudulent insurance act or any other act or practice which,
29 upon conviction, constitutes a felony or a misdemeanor under
30 the code, or under s. 817.234, is being or has been committed
31 shall send to the office or the Division of Insurance Fraud a

1 report or information pertinent to such knowledge or belief
2 and such additional information relative thereto as the office
3 or department may require. The office or the Division of
4 Insurance Fraud shall review such information or reports and
5 select such information or reports as, in its judgment, may
6 require further investigation. It shall then cause an
7 independent examination of the facts surrounding such
8 information or report to be made to determine the extent, if
9 any, to which a fraudulent insurance act or any other act or
10 practice which, upon conviction, constitutes a felony or a
11 misdemeanor under the code, or under s. 817.234, is being
12 committed. The office or the Division of Insurance Fraud shall
13 report any alleged violations of law which its investigations
14 disclose to the appropriate licensing agency and state
15 attorney or other prosecuting agency having jurisdiction with
16 respect to any such violation, as provided in s. 624.310. If
17 prosecution by the state attorney or other prosecuting agency
18 having jurisdiction with respect to such violation is not
19 begun within 60 days of the office's or division's report, the
20 state attorney or other prosecuting agency having jurisdiction
21 with respect to such violation shall inform the office or
22 division of the reasons for the lack of prosecution.

23 (7) Office and division investigators shall have the
24 power to make arrests for criminal violations established as a
25 result of investigations only. The general laws applicable to
26 arrests by law enforcement officers of this state shall also
27 be applicable to such investigators. Such investigators shall
28 have the power to execute arrest warrants and search warrants
29 for the same criminal violations; to serve subpoenas issued
30 for the examination, investigation, and trial of all offenses
31 determined by their investigations; and to arrest upon

1 | probable cause without warrant any person found in the act of
2 | violating any of the provisions of applicable laws.
3 | Investigators empowered to make arrests under this section
4 | shall be empowered to bear arms in the performance of their
5 | duties. In such a situation, the investigator must be
6 | certified in compliance with the provisions of s. 943.1395 or
7 | must meet the temporary employment or appointment exemption
8 | requirements of s. 943.131 until certified.

9 | (8) It is unlawful for any person to resist an arrest
10 | authorized by this section or in any manner to interfere,
11 | either by abetting or assisting such resistance or otherwise
12 | interfering, with division investigators in the duties imposed
13 | upon them by law or department rule.

14 | (9) In recognition of the complementary roles of
15 | investigating instances of workers' compensation fraud and
16 | enforcing compliance with the workers' compensation coverage
17 | requirements under chapter 440, the Department of Insurance
18 | and the Office of Workers' Compensation Insurance Fraud shall
19 | ~~is directed to~~ prepare and submit a joint performance report
20 | to the President of the Senate and the Speaker of the House of
21 | Representatives by January 1 of each year ~~November 1, 2003,~~
22 | ~~and then by November 1 every 3 years thereafter, describing~~
23 | ~~the results obtained in achieving compliance with the workers'~~
24 | ~~compensation coverage requirements and reducing the incidence~~
25 | ~~of workers' compensation fraud.~~ The annual report must
26 | include, but need not be limited to:

27 | (a) The total number of initial referrals received,
28 | cases opened, cases presented for prosecution, cases closed,
29 | and convictions resulting from cases presented for prosecution
30 | by the Office of Workers' Compensation Insurance Fraud by type
31 | of workers' compensation fraud and circuit.

1 (b) The number of referrals received from insurers and
2 the Division of Workers' Compensation and the outcome of those
3 referrals.

4 (c) The number of investigations undertaken by the
5 office which were not the result of a referral from an insurer
6 or the Division of Workers' Compensation.

7 (d) The number of investigations that resulted in a
8 referral to a regulatory agency and the disposition of those
9 referrals.

10 (e) The number and reasons provided by local
11 prosecutors or the statewide prosecutor for declining
12 prosecution of a case presented by the office by circuit.

13 (f) The total number of employees assigned to the
14 office and the Division of Workers' Compliance unit delineated
15 by location of staff assigned and the number and location of
16 employees assigned to the office who were assigned to work
17 other types of fraud cases.

18 (g) The average caseload and turnaround time by type
19 of case for each investigator and division compliance
20 employee.

21 (h) The training provided during the year to workers'
22 compensation fraud investigators and the division's compliance
23 employees.

24 Section 67. Section 626.9891, Florida Statutes, is
25 amended to read:

26 626.9891 Insurer anti-fraud investigative units;
27 reporting requirements; penalties for noncompliance.--

28 (1) Every insurer admitted to do business in this
29 state who in the previous calendar year, at any time during
30 that year, had \$10 million or more in direct premiums written
31 shall:

1 (a) Establish and maintain a unit or division within
2 the company to investigate possible fraudulent claims by
3 insureds or by persons making claims for services or repairs
4 against policies held by insureds; or

5 (b) Contract with others to investigate possible
6 fraudulent claims for services or repairs against policies
7 held by insureds.

8
9 An insurer subject to this subsection shall file with the
10 Division of Insurance Fraud of the department on or before
11 July 1, 1996, a detailed description of the unit or division
12 established pursuant to paragraph (a) or a copy of the
13 contract and related documents required by paragraph (b).

14 (2) Every insurer admitted to do business in this
15 state, which in the previous calendar year had less than \$10
16 million in direct premiums written, must adopt an anti-fraud
17 plan and file it with the Division of Insurance Fraud of the
18 department on or before July 1, 1996. An insurer may, in lieu
19 of adopting and filing an anti-fraud plan, comply with the
20 provisions of subsection (1).

21 (3) Each insurers anti-fraud plans shall include:

22 (a) A description of the insurer's procedures for
23 detecting and investigating possible fraudulent insurance
24 acts;

25 (b) A description of the insurer's procedures for the
26 mandatory reporting of possible fraudulent insurance acts to
27 the Division of Insurance Fraud of the department;

28 (c) A description of the insurer's plan for anti-fraud
29 education and training of its claims adjusters or other
30 personnel; and

31

1 (d) A written description or chart outlining the
2 organizational arrangement of the insurer's anti-fraud
3 personnel who are responsible for the investigation and
4 reporting of possible fraudulent insurance acts.

5 (4) Any insurer who obtains a certificate of authority
6 after July 1, 1995, shall have 18 months in which to comply
7 with the requirements of this section.

8 (5) For purposes of this section, the term "unit or
9 division" includes the assignment of fraud investigation to
10 employees whose principal responsibilities are the
11 investigation and disposition of claims. If an insurer
12 creates a distinct unit or division, hires additional
13 employees, or contracts with another entity to fulfill the
14 requirements of this section, the additional cost incurred
15 must be included as an administrative expense for ratemaking
16 purposes.

17 (6) Each insurer writing workers' compensation
18 insurance shall report to the department, on or before August
19 1 of each year, on its experience in implementing and
20 maintaining an anti-fraud investigative unit or an anti-fraud
21 plan. The report must include, at a minimum:

22 (a) The dollar amount of recoveries and losses
23 attributable to workers' compensation fraud delineated by the
24 type of fraud: claimant, employer, provider, agent, or other;

25 (b) The number of referrals to the Bureau of Workers'
26 Compensation Fraud for the prior year;

27 (c) A description of the organization of the
28 anti-fraud investigative unit, if applicable, including the
29 position titles and descriptions of staffing;

30 (d) The rationale for the level of staffing and
31 resources being provided for the anti-fraud investigative

1 unit, which may include objective criteria such as number of
2 policies written, number of claims received on an annual
3 basis, volume of suspected fraudulent claims currently being
4 detected, other factors, and an assessment of optimal caseload
5 that can be handled by an investigator on an annual basis;

6 (e) The in-service education and training provided to
7 underwriting and claims personnel to assist in identifying and
8 evaluating instances of suspected fraudulent activity in
9 underwriting or claims activities; and

10 (f) A description of a public awareness program
11 focused on the costs and frequency of insurance fraud and
12 methods by which the public can prevent it.

13 (7) If an insurer fails to submit a final anti-fraud
14 plan or otherwise fails to submit a plan, or fails to
15 implement the provisions of a plan or an anti-fraud
16 investigative unit, or otherwise refuses to comply with the
17 provisions of this section, the department may:

18 (a) Impose an administrative fine of not more than
19 \$2,000 per day for such failure by an insurer, until the
20 department deems the insurer to be in compliance;

21 (b) Impose upon the insurer a fraud detection and
22 prevention plan that is deemed to be appropriate by the
23 department and that must be implemented by the insurer; or

24 (c) Impose the provisions of both paragraphs (a) and
25 (b).

26 (8) The department may adopt rules to administer this
27 section.

28 Section 68. Subsection (2) of section 627.062, Florida
29 Statutes, is amended to read:

30 627.062 Rate standards.--

31 (2) As to all such classes of insurance:

1 (a) Insurers or rating organizations shall establish
2 and use rates, rating schedules, or rating manuals to allow
3 the insurer a reasonable rate of return on such classes of
4 insurance written in this state. A copy of rates, rating
5 schedules, rating manuals, premium credits or discount
6 schedules, and surcharge schedules, and changes thereto, shall
7 be filed with the department under one of the following
8 procedures:

9 1. If the filing is made at least 90 days before the
10 proposed effective date and the filing is not implemented
11 during the department's review of the filing and any
12 proceeding and judicial review, then such filing shall be
13 considered a "file and use" filing. In such case, the
14 department shall finalize its review by issuance of a notice
15 of intent to approve or a notice of intent to disapprove
16 within 90 days after receipt of the filing. The notice of
17 intent to approve and the notice of intent to disapprove
18 constitute agency action for purposes of the Administrative
19 Procedure Act. Requests for supporting information, requests
20 for mathematical or mechanical corrections, or notification to
21 the insurer by the department of its preliminary findings
22 shall not toll the 90-day period during any such proceedings
23 and subsequent judicial review. The rate shall be deemed
24 approved if the department does not issue a notice of intent
25 to approve or a notice of intent to disapprove within 90 days
26 after receipt of the filing.

27 2. If the filing is not made in accordance with the
28 provisions of subparagraph 1., such filing shall be made as
29 soon as practicable, but no later than 30 days after the
30 effective date, and shall be considered a "use and file"
31 filing. An insurer making a "use and file" filing is

1 potentially subject to an order by the department to return to
2 policyholders portions of rates found to be excessive, as
3 provided in paragraph (h).

4 (b) Upon receiving a rate filing, the department shall
5 review the rate filing to determine if a rate is excessive,
6 inadequate, or unfairly discriminatory. In making that
7 determination, the department shall, in accordance with
8 generally accepted and reasonable actuarial techniques,
9 consider the following factors:

10 1. Past and prospective loss experience within and
11 without this state.

12 2. Past and prospective expenses.

13 3. The degree of competition among insurers for the
14 risk insured.

15 4. Investment income reasonably expected by the
16 insurer, consistent with the insurer's investment practices,
17 from investable premiums anticipated in the filing, plus any
18 other expected income from currently invested assets
19 representing the amount expected on unearned premium reserves
20 and loss reserves. The department may promulgate rules
21 utilizing reasonable techniques of actuarial science and
22 economics to specify the manner in which insurers shall
23 calculate investment income attributable to such classes of
24 insurance written in this state and the manner in which such
25 investment income shall be used in the calculation of
26 insurance rates. Such manner shall contemplate allowances for
27 an underwriting profit factor and full consideration of
28 investment income which produce a reasonable rate of return;
29 however, investment income from invested surplus shall not be
30 considered. The profit and contingency factor as specified in
31

1 the filing shall be utilized in computing excess profits in
2 conjunction with s. 627.0625.

3 5. The reasonableness of the judgment reflected in the
4 filing.

5 6. Dividends that are issued to employers that provide
6 financial incentives for employees who maintain a safe
7 workplace, savings, or unabsorbed premium deposits allowed or
8 returned to Florida policyholders, members, or subscribers.

9 7. The adequacy of loss reserves.

10 8. The cost of reinsurance.

11 9. Trend factors, including trends in actual losses
12 per insured unit for the insurer making the filing.

13 10. Conflagration and catastrophe hazards, if
14 applicable.

15 11. A reasonable margin for underwriting profit and
16 contingencies.

17 12. The cost of medical services, if applicable.

18 13. Other relevant factors which impact upon the
19 frequency or severity of claims or upon expenses.

20 (c) In the case of fire insurance rates, consideration
21 shall be given to the availability of water supplies and the
22 experience of the fire insurance business during a period of
23 not less than the most recent 5-year period for which such
24 experience is available.

25 (d) If conflagration or catastrophe hazards are given
26 consideration by an insurer in its rates or rating plan,
27 including surcharges and discounts, the insurer shall
28 establish a reserve for that portion of the premium allocated
29 to such hazard and shall maintain the premium in a catastrophe
30 reserve. Any removal of such premiums from the reserve for
31 purposes other than paying claims associated with a

1 catastrophe or purchasing reinsurance for catastrophes shall
2 be subject to approval of the department. Any ceding
3 commission received by an insurer purchasing reinsurance for
4 catastrophes shall be placed in the catastrophe reserve.

5 (e) After consideration of the rate factors provided
6 in paragraphs (b), (c), and (d), a rate may be found by the
7 department to be excessive, inadequate, or unfairly
8 discriminatory based upon the following standards:

9 1. Rates shall be deemed excessive if they are likely
10 to produce a profit from Florida business that is unreasonably
11 high in relation to the risk involved in the class of business
12 or if expenses are unreasonably high in relation to services
13 rendered.

14 2. Rates shall be deemed excessive if, among other
15 things, the rate structure established by a stock insurance
16 company provides for replenishment of surpluses from premiums,
17 when the replenishment is attributable to investment losses.

18 3. Rates shall be deemed inadequate if they are
19 clearly insufficient, together with the investment income
20 attributable to them, to sustain projected losses and expenses
21 in the class of business to which they apply.

22 4. A rating plan, including discounts, credits, or
23 surcharges, shall be deemed unfairly discriminatory if it
24 fails to clearly and equitably reflect consideration of the
25 policyholder's participation in a risk management program
26 adopted pursuant to s. 627.0625.

27 5. A rate shall be deemed inadequate as to the premium
28 charged to a risk or group of risks if discounts or credits
29 are allowed which exceed a reasonable reflection of expense
30 savings and reasonably expected loss experience from the risk
31 or group of risks.

1 6. A rate shall be deemed unfairly discriminatory as
2 to a risk or group of risks if the application of premium
3 discounts, credits, or surcharges among such risks does not
4 bear a reasonable relationship to the expected loss and
5 expense experience among the various risks.

6 (f) In reviewing a rate filing, the department may
7 require the insurer to provide at the insurer's expense all
8 information necessary to evaluate the condition of the company
9 and the reasonableness of the filing according to the criteria
10 enumerated in this section.

11 (g) The department may at any time review a rate,
12 rating schedule, rating manual, or rate change; the pertinent
13 records of the insurer; and market conditions. If the
14 department finds on a preliminary basis that a rate may be
15 excessive, inadequate, or unfairly discriminatory, the
16 department shall initiate proceedings to disapprove the rate
17 and shall so notify the insurer. However, the department may
18 not disapprove as excessive any rate for which it has given
19 final approval or which has been deemed approved for a period
20 of 1 year after the effective date of the filing unless the
21 department finds that a material misrepresentation or material
22 error was made by the insurer or was contained in the filing.
23 Upon being so notified, the insurer or rating organization
24 shall, within 60 days, file with the department all
25 information which, in the belief of the insurer or
26 organization, proves the reasonableness, adequacy, and
27 fairness of the rate or rate change. The department shall
28 issue a notice of intent to approve or a notice of intent to
29 disapprove pursuant to the procedures of paragraph (a) within
30 90 days after receipt of the insurer's initial response. In
31 such instances and in any administrative proceeding relating

1 to the legality of the rate, the insurer or rating
2 organization shall carry the burden of proof by a
3 preponderance of the evidence to show that the rate is not
4 excessive, inadequate, or unfairly discriminatory. After the
5 department notifies an insurer that a rate may be excessive,
6 inadequate, or unfairly discriminatory, unless the department
7 withdraws the notification, the insurer shall not alter the
8 rate except to conform with the department's notice until the
9 earlier of 120 days after the date the notification was
10 provided or 180 days after the date of the implementation of
11 the rate. The department may, subject to chapter 120,
12 disapprove without the 60-day notification any rate increase
13 filed by an insurer within the prohibited time period or
14 during the time that the legality of the increased rate is
15 being contested.

16 (h) In the event the department finds that a rate or
17 rate change is excessive, inadequate, or unfairly
18 discriminatory, the department shall issue an order of
19 disapproval specifying that a new rate or rate schedule which
20 responds to the findings of the department be filed by the
21 insurer. The department shall further order, for any "use and
22 file" filing made in accordance with subparagraph (a)2., that
23 premiums charged each policyholder constituting the portion of
24 the rate above that which was actuarially justified be
25 returned to such policyholder in the form of a credit or
26 refund. If the department finds that an insurer's rate or rate
27 change is inadequate, the new rate or rate schedule filed with
28 the department in response to such a finding shall be
29 applicable only to new or renewal business of the insurer
30 written on or after the effective date of the responsive
31 filing.

1 (i) Except as otherwise specifically provided in this
2 chapter, the department shall not prohibit any insurer,
3 including any residual market plan or joint underwriting
4 association, from paying acquisition costs based on the full
5 amount of premium, as defined in s. 627.403, applicable to any
6 policy, or prohibit any such insurer from including the full
7 amount of acquisition costs in a rate filing.

8
9 The provisions of this subsection shall not apply to workers'
10 compensation and employer's liability insurance and to motor
11 vehicle insurance.

12 Section 69. Subsection (4) of section 627.311, Florida
13 Statutes, is amended to read:

14 627.311 Joint underwriters and joint reinsurers.--

15 (4)(a) Effective upon this act becoming a law, the
16 department shall, after consultation with insurers, approve a
17 joint underwriting plan of insurers which shall operate as a
18 nonprofit entity. For the purposes of this subsection, the
19 term "insurer" includes group self-insurance funds authorized
20 by s. 624.4621, commercial self-insurance funds authorized by
21 s. 624.462, assessable mutual insurers authorized under s.
22 628.6011, and insurers licensed to write workers' compensation
23 and employer's liability insurance in this state. The purpose
24 of the plan is to provide workers' compensation and employer's
25 liability insurance to applicants who are required by law to
26 maintain workers' compensation and employer's liability
27 insurance and who are in good faith entitled to but who are
28 unable to procure ~~purchase~~ such insurance through the
29 voluntary market. It is the intent of the Legislature that the
30 plan rates for workers' compensation and employer's liability
31 insurance be actuarially sound and that such rates not be

1 competitive with approved voluntary market rates, so that the
2 plan functions as a residual market mechanism.~~The joint~~
3 ~~underwriting plan shall issue policies beginning January 1,~~
4 ~~1994. The plan must have actuarially sound rates that assure~~
5 ~~that the plan is self-supporting.~~

6 (b) The operation of the plan is subject to the
7 supervision of a 7-member ~~13-member~~ board of governors
8 appointed by the Chief Financial Officer. The board of
9 governors shall be comprised of:

10 1. Three representatives of workers' compensation
11 insurers, at least one of which represents a domestic workers'
12 compensation insurer ~~Five of the 20 domestic insurers, as~~
13 ~~defined in s. 624.06(1), having the largest voluntary direct~~
14 ~~premiums written in this state for workers' compensation and~~
15 ~~employer's liability insurance, which shall be elected by~~
16 ~~those 20 domestic insurers;~~

17 2. Three representatives of employers ~~Five of the 20~~
18 ~~foreign insurers as defined in s. 624.06(2) having the largest~~
19 ~~voluntary direct premiums written in this state for workers'~~
20 ~~compensation and employer's liability insurance, which shall~~
21 ~~be elected by those 20 foreign insurers; and~~

22 3. ~~One person, who shall serve as the chair, appointed~~
23 ~~by the Insurance Commissioner;~~

24 4. ~~One person appointed by the largest property and~~
25 ~~casualty insurance agents' association in this state; and~~

26 3.5. ~~The consumer advocate appointed under s. 627.0613~~
27 ~~or the consumer advocate's designee.~~

28
29 Each board member shall serve at the pleasure of the Chief
30 Financial Officer, shall be appointed to a 3-year ~~4-year~~ term,
31 and may serve consecutive terms. The Chief Financial Officer

1 shall designate one of the appointees as chair. The Chief
2 Financial Officer shall fill any board vacancy for the
3 remaining portion of an unexpired term.No board member shall
4 be an insurer which provides service to the plan or which has
5 an affiliate which provides services to the plan or which is
6 serviced by a service company or third-party administrator
7 which provides services to the plan or which has an affiliate
8 which provides services to the plan. The minutes, audits, and
9 procedures of the board of governors are subject to chapter
10 119, and the meetings of the board are subject to chapter 286.

11 (c) The operation of the plan shall be governed by a
12 plan of operation that is prepared at the direction of the
13 board of governors. The plan of operation may be changed at
14 any time by the board of governors or upon request of the
15 department. The plan of operation and all changes thereto are
16 subject to the approval of the department. The plan of
17 operation shall:

18 1. Authorize the board to engage in the activities
19 necessary to implement this subsection, including, but not
20 limited to, borrowing money.

21 2. Develop criteria for eligibility for coverage by
22 the plan, including, but not limited to, take-out and keep-out
23 provisions, as established in this subsection. ~~documented~~
24 ~~rejection by at least two insurers which reasonably assures~~
25 ~~that insureds covered under the plan are unable to acquire~~
26 ~~coverage in the voluntary market. Any insured may voluntarily~~
27 ~~elect to accept coverage from an insurer for a premium equal~~
28 ~~to or greater than the plan premium if the insurer writing the~~
29 ~~coverage adheres to the provisions of s. 627.171.~~

30 3. Require notice from the producer agent to the
31 insured at the time of the application for coverage that the

1 application is for coverage with the plan and that coverage
2 may be available through an insurer, group self-insurers'
3 fund, commercial self-insurance fund, or assessable mutual
4 insurer through another insurance agent at a lower cost.

5 4. Establish a market-assistance plan to facilitate
6 depopulation of the plan by assisting employers that apply for
7 coverage, or that are insured by the plan, in obtaining
8 coverage in the voluntary market programs to encourage
9 ~~insurers to provide coverage to applicants of the plan in the~~
10 ~~voluntary market and to insureds of the plan, including, but~~
11 not limited to:

12 a. Providing that all employers that apply for
13 coverage or that are insured by the plan participate in the
14 market-assistance plan.

15 b. Establishing procedures for an insurer to use in
16 notifying the plan of the insurer's desire to participate in
17 the market-assistance plan provide coverage to applicants to
18 ~~the plan or existing insureds of the plan and in describing~~
19 ~~the types of risks in which the insurer is interested. The~~
20 ~~description of the desired risks must be on a form developed~~
21 ~~by the plan.~~

22 ~~c.b.~~ Developing forms and procedures for the
23 market-assistance plan to promptly that provide participating
24 insurers with account profiles, which include, but are not
25 limited to, the employer's name and federal employer
26 identification number; the effective date reserved for
27 in-process applications or the effective date of the plan
28 policy; the governing class code; business description of the
29 employer; the total number of employees estimated to be
30 covered under the policy; the total estimated annual payroll,
31 including corporate officers, partners, and sole proprietors;

1 the total estimated annual premium for the employer; the
2 employer's experience modification factor; the employer's
3 physical or mailing address; and the mailing address of the
4 applicable producer of record ~~an insurer with the information~~
5 ~~necessary to determine whether the insurer wants to write~~
6 ~~particular applicants to the plan or insureds of the plan.~~

7 d.c. Establishing procedures whereby an insurer can
8 keep out or take out an employer eligible for the Tier One
9 Rating Plan or the Tier Two Rating Plan, not to exceed 125
10 percent of the approved voluntary market manual rate for that
11 insured. An insurer keeping out or taking out an eligible
12 employer under this paragraph shall not be required to make an
13 additional rate or form filing with the Office of Insurance
14 Regulation, and such take out or keep out shall not invoke the
15 provision of s. 627.171. An employer that is the subject of a
16 take-out or keep-out under this paragraph may be charged by
17 the insurer taking out or keeping out the employer a rate not
18 to exceed 125 percent of the effective voluntary market manual
19 rate for no more than 3 years, after which time the employer
20 shall be rated on voluntary market rates and rules. An
21 employer who offers coverage under a take-out or keep-out
22 offer shall be ineligible for coverage in the plan. ~~Developing~~
23 ~~procedures for notice to the plan and the applicant to the~~
24 ~~plan or insured of the plan that an insurer will insure the~~
25 ~~applicant or the insured of the plan, and notice of the cost~~
26 ~~of the coverage offered; and developing procedures for the~~
27 ~~selection of an insuring entity by the applicant or insured of~~
28 ~~the plan.~~

29 e.d. Establishing procedures by which participating
30 insurers promptly notify the market assistance plan of the
31 identity of an employer whose insurance business it intends to

1 take out or keep out and the identity of any employer to whom
2 the insurer provides coverage, including the premium charged
3 for such coverage.~~Provide for a market-assistance plan to~~
4 ~~assist in the placement of employers. All applications for~~
5 ~~coverage in the plan received 45 days before the effective~~
6 ~~date for coverage shall be processed through the~~
7 ~~market-assistance plan. A market-assistance plan specifically~~
8 ~~designed to serve the needs of small good policyholders as~~
9 ~~defined by the board must be finalized by January 1, 1994.~~

10 f. Establishing procedures by which the
11 market-assistance plan will make available to participating
12 insurers monthly depopulation reports, which include the
13 account profiles of employers for whom the plan bound coverage
14 in the preceding month and employers covered by the plan whose
15 coverage is due to expire within the following 3 months.

16 5. Provide for policy and claims services to the
17 insureds of the plan of the nature and quality provided for
18 insureds in the voluntary market.

19 6. Provide for the review of applications for coverage
20 with the plan for reasonableness and accuracy, using any
21 available historic information regarding the applicant
22 insured.

23 7. Provide for procedures for auditing insureds of the
24 plan which are based on reasonable business judgment and are
25 designed to maximize the likelihood that the plan will collect
26 the appropriate premiums.

27 8. Authorize the plan to terminate the coverage of and
28 refuse future coverage for any insured that submits a
29 fraudulent application to the plan or provides fraudulent or
30 grossly erroneous records to the plan or to any service

31

1 provider of the plan in conjunction with the activities of the
2 plan.

3 9. Establish service standards for producers ~~agents~~
4 who submit business to the plan.

5 10. Establish criteria and procedures to prohibit any
6 producer ~~agent~~ who does not adhere to the established service
7 standards from placing business with the plan or receiving,
8 directly or indirectly, any commissions for business placed
9 with the plan.

10 11. Provide for the establishment of reasonable safety
11 programs for all insureds in the plan.

12 12. Authorize the plan to terminate the coverage of
13 and refuse future coverage to any insured who fails to pay
14 premiums or surcharges when due; who, at the time of
15 application, is delinquent in payments of workers'
16 compensation or employer's liability insurance premiums or
17 surcharges owed to an insurer, group self-insurers' fund,
18 commercial self-insurance fund, or assessable mutual insurer
19 licensed to write such coverage in this state; or who refuses
20 to substantially comply with any safety programs recommended
21 by the plan.

22 13. Authorize the board of governors to provide the
23 services required by the plan through staff employed by the
24 plan, through reasonably compensated service providers who
25 contract with the plan to provide services as specified by the
26 board of governors, or through a combination of employees and
27 service providers.

28 14. Provide for service standards for service
29 providers, methods of determining adherence to those service
30 standards, incentives and disincentives for service, and
31

1 procedures for terminating contracts for service providers
2 that fail to adhere to service standards.

3 15. Provide procedures for selecting service providers
4 and standards for qualification as a service provider that
5 reasonably assure that any service provider selected will
6 continue to operate as an ongoing concern and is capable of
7 providing the specified services in the manner required.

8 16. Provide for reasonable accounting and
9 data-reporting practices.

10 17. Provide for annual review of costs associated with
11 the administration and servicing of the policies issued by the
12 plan to determine alternatives by which costs can be reduced.

13 18. Authorize the acquisition of such excess insurance
14 or reinsurance as is consistent with the purposes of the plan.

15 19. Provide for an annual report to the department on
16 a date specified by the department and containing such
17 information as the department reasonably requires.

18 ~~20. Establish multiple rating plans for various~~
19 ~~classifications of risk which reflect risk of loss, hazard~~
20 ~~grade, actual losses, size of premium, and compliance with~~
21 ~~loss control. At least one of such plans must be a~~
22 ~~preferred rating plan to accommodate small premium~~
23 ~~policyholders with good experience as defined in~~
24 ~~sub-subparagraph 22.a.~~

25 20.21. Establish producer agent commission schedules.

26 21.22. Establish a three-tier rating plan ~~three~~
27 ~~subplans~~ as follows:

28 a. Tier One must include those insureds whose manual
29 premium does not exceed \$20,000 at the time of application who
30 have neither incurred any lost-time claims nor incurred
31 medical-only claims exceeding 50 percent of the premium in the

1 immediately preceding 2 years. However, if the final premium
2 audit shows that there has been material misclassification of
3 employees or material underreporting of payroll by the
4 employer, the employer is ineligible for the Tier One and Tier
5 Two rating plans and is subject to s. 440.107. Subplan "A"
6 must include those insureds whose annual premium does not
7 exceed \$2,500 and who have neither incurred any lost-time
8 claims nor incurred medical-only claims exceeding 50 percent
9 of their premium for the immediate 2 years.

10 b. Tier Two must include those insureds in the plan
11 who are unable to procure in the voluntary market, but have an
12 experience modification factor of 1.05 or less, and charitable
13 and nonprofit organizations. Subplan "B" must include insureds
14 that are employers identified by the board of governors as
15 high-risk employers due solely to the nature of the operations
16 being performed by those insureds and for whom no market
17 exists in the voluntary market, and whose experience
18 modifications are less than 1.00.

19 c. Tier Three must include all other insureds of the
20 plan, and may include multiple subrating plans for various
21 classifications of insureds which reflect the risk of loss,
22 hazard grad, actual losses, size of premium, compliance with
23 loss control, and other reasonable actuarial factors. Subplan
24 "C" must include all other insureds within the plan.

25 (d) The rates for Tier One and Tier Two insureds shall
26 be 125 percent of the rate for that insured using the approved
27 voluntary market manual rates. The rates for Tier Three shall
28 be actuarially sound to assure that Tier Three is
29 self-supporting. The plan must be funded through actuarially
30 sound premiums charged to insureds of the plan. The plan may
31 issue assessable policies only to those insureds in Tier Three

1 ~~subplan "C."~~ Those assessable policies must be clearly
2 identified as assessable by containing, in contrasting color
3 and in not less than 10-point type, the following statements:
4 "This is an assessable policy. If the plan is unable to pay
5 its obligations, policyholders will be required to contribute
6 on a pro rata earned premium basis the money necessary to meet
7 any assessment levied." The plan may issue assessable policies
8 with differing terms and conditions to different groups within
9 the plan when a reasonable basis exists for the
10 differentiation. The plan may offer rating, dividend plans,
11 and other plans to encourage loss prevention programs.

12 (e) The plan shall establish and use its rates and
13 rating plans, and the plan may establish and use changes in
14 rating plans at any time, but no more frequently than two
15 times per any rating class for any calendar year. ~~By December~~
16 ~~1, 1993, and December 1 of each year thereafter, the board~~
17 ~~shall establish and use actuarially sound rates for use by the~~
18 ~~plan to assure that the plan is self-funding while those rates~~
19 ~~are in effect. Such Plan rates and rating plans must be filed~~
20 with the department within 30 calendar days after their
21 effective dates, and shall be considered a "use and file"
22 filing. Any disapproval by the department must have an
23 effective date that is at least 60 days from the date of
24 disapproval of the rates and rating plan and must have
25 prospective effect only. The plan may not be subject to any
26 order by the department to return to policyholders any portion
27 of the rates disapproved by the department. The department may
28 not disapprove any rates or rating plans unless it
29 demonstrates that such rates and rating plans are excessive,
30 inadequate, or unfairly discriminatory.

31

1 (f) No later than June 1 of each year, the plan shall
2 obtain an independent actuarial certification of the results
3 of the operations of the plan for prior years, and shall
4 furnish a copy of the certification to the department. If,
5 after the effective date of the plan, the projected ultimate
6 incurred losses and expenses and dividends for prior years
7 exceed collected premiums, accrued net investment income, and
8 prior assessments for prior years, the certification is
9 subject to review and approval by the department before it
10 becomes final.

11 (g) Whenever a deficit occurs in Tier One or Tier Two,
12 the board shall levy, after verification by the department,
13 assessments for as many years as necessary to cover the
14 deficits, but not to exceed 2 percent of premium annually, to
15 be collected by all insurers to be paid by their Florida
16 workers' compensation policyholders as a line item in addition
17 to the calculated premium.Whenever a deficit exists in Tier
18 Three, the plan shall, within 90 days, provide the department
19 with a program to eliminate the deficit within a reasonable
20 time. The Tier-Three deficit may be funded through increased
21 premiums charged to insureds of the plan for subsequent years,
22 through the use of policyholder surplus attributable to any
23 year, and through assessments on insureds in the plan if the
24 plan uses assessable policies. The department shall adopt by
25 rule insurer reporting requirements for the assessments under
26 this paragraph.

27 (h) Any premium or assessments collected by the plan
28 in excess of the amount necessary to fund projected ultimate
29 incurred losses and expenses of the plan and not paid to
30 insureds of the plan in conjunction with loss prevention or
31

1 dividend programs shall be retained by the plan for future
2 use.

3 (i) The decisions of the board of governors do not
4 constitute final agency action and are not subject to chapter
5 120.

6 (j) Policies for insureds shall be issued by the plan.

7 (k) The plan created under this subsection is liable
8 only for payment for losses arising under policies issued by
9 the plan with dates of accidents occurring on or after January
10 1, 1994.

11 ~~(l) Plan losses are the sole and exclusive~~
12 ~~responsibility of the plan, and payment for such losses must~~
13 ~~be funded in accordance with this subsection and must not~~
14 ~~come, directly or indirectly, from insurers or any guaranty~~
15 ~~association for such insurers.~~

16 (l)(m) Each joint underwriting plan or association
17 created under this section is not a state agency, board, or
18 commission. However, for the purposes of s. 199.183(1) only,
19 the joint underwriting plan is a political subdivision of the
20 state and is exempt from the corporate income tax.

21 ~~(n) Each joint underwriting plan or association may~~
22 ~~elect to pay premium taxes on the premiums received on its~~
23 ~~behalf or may elect to have the member insurers to whom the~~
24 ~~premiums are allocated pay the premium taxes if the member~~
25 ~~insurer had written the policy. The joint underwriting plan or~~
26 ~~association shall notify the member insurers and the~~
27 ~~Department of Revenue by January 15 of each year of its~~
28 ~~election for the same year. As used in this paragraph, the~~
29 ~~term "premiums received" means the consideration for~~
30 ~~insurance, by whatever name called, but does not include any~~
31 ~~policy assessment or surcharge received by the joint~~

1 ~~underwriting association as a result of apportioning losses or~~
2 ~~deficits of the association pursuant to this section.~~

3 (m)~~(o)~~ Neither the plan nor any member of the board of
4 governors is liable for monetary damages to any person for any
5 statement, vote, decision, or failure to act, regarding the
6 management or policies of the plan, unless:

7 1. The member breached or failed to perform her or his
8 duties as a member; and

9 2. The member's breach of, or failure to perform,
10 duties constitutes:

11 a. A violation of the criminal law, unless the member
12 had reasonable cause to believe her or his conduct was not
13 unlawful. A judgment or other final adjudication against a
14 member in any criminal proceeding for violation of the
15 criminal law estops that member from contesting the fact that
16 her or his breach, or failure to perform, constitutes a
17 violation of the criminal law; but does not estop the member
18 from establishing that she or he had reasonable cause to
19 believe that her or his conduct was lawful or had no
20 reasonable cause to believe that her or his conduct was
21 unlawful;

22 b. A transaction from which the member derived an
23 improper personal benefit, either directly or indirectly; or

24 c. Recklessness or any act or omission that was
25 committed in bad faith or with malicious purpose or in a
26 manner exhibiting wanton and willful disregard of human
27 rights, safety, or property. For purposes of this
28 sub-subparagraph, the term "recklessness" means the acting, or
29 omission to act, in conscious disregard of a risk:

30 (I) Known, or so obvious that it should have been
31 known, to the member; and

1 (II) Known to the member, or so obvious that it should
2 have been known, to be so great as to make it highly probable
3 that harm would follow from such act or omission.

4 (n)~~(p)~~ No insurer shall provide workers' compensation
5 and employer's liability insurance to any person who is
6 delinquent in the payment of premiums, assessments, penalties,
7 or surcharges owed to the plan.

8 (o) The plan and any premiums, assessments, penalties,
9 fees, and surcharges of the plan are exempt from premium
10 taxation, and are exempt from any assessments under ss. 440.49
11 and 440.51.

12 (p) The operational activities of the plan shall be
13 headquartered in Tallahassee.

14 Section 70. Paragraphs (a), (c), (e), and (g) of
15 subsection (3) of section 921.0022, Florida Statutes, are
16 amended to read:

17 921.0022 Criminal Punishment Code; offense severity
18 ranking chart.--

19 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(a) LEVEL 1
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.

1	212.15(2)(b)	3rd	Failure to remit sales taxes,
2			amount greater than \$300 but less
3			than \$20,000.
4	319.30(5)	3rd	Sell, exchange, give away
5			certificate of title or
6			identification number plate.
7	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
8			odometer.
9	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
10			registration license plates or
11			validation stickers.
12	322.212		
13	(1)(a)-(c)	3rd	Possession of forged, stolen,
14			counterfeit, or unlawfully issued
15			driver's license; possession of
16			simulated identification.
17	322.212(4)	3rd	Supply or aid in supplying
18			unauthorized driver's license or
19			identification card.
20	322.212(5)(a)	3rd	False application for driver's
21			license or identification card.
22	370.13(3)(a)	3rd	Molest any stone crab trap, line,
23			or buoy which is property of
24			licenseholder.
25	370.135(1)	3rd	Molest any blue crab trap, line,
26			or buoy which is property of
27			licenseholder.
28	372.663(1)	3rd	Poach any alligator or
29			crocodilia.
30			
31			

1	414.39(2)	3rd	Unauthorized use, possession,
2			forgery, or alteration of food
3			stamps, Medicaid ID, value
4			greater than \$200.
5	<u>414.105(3)</u>	<u>3rd</u>	<u>Workers' compensation insurance</u>
6			<u>fraud.</u>
7	414.39(3)(a)	3rd	Fraudulent misappropriation of
8			public assistance funds by
9			employee/official, value more
10			than \$200.
11	443.071(1)	3rd	False statement or representation
12			to obtain or increase
13			unemployment compensation
14			benefits.
15	509.151(1)	3rd	Defraud an innkeeper, food or
16			lodging value greater than \$300.
17	517.302(1)	3rd	Violation of the Florida
18			Securities and Investor
19			Protection Act.
20	562.27(1)	3rd	Possess still or still apparatus.
21	713.69	3rd	Tenant removes property upon
22			which lien has accrued, value
23			more than \$50.
24	812.014(3)(c)	3rd	Petit theft (3rd conviction);
25			theft of any property not
26			specified in subsection (2).
27	812.081(2)	3rd	Unlawfully makes or causes to be
28			made a reproduction of a trade
29			secret.
30			
31			

1	815.04(4)(a)	3rd	Offense against intellectual
2			property (i.e., computer
3			programs, data).
4	817.52(2)	3rd	Hiring with intent to defraud,
5			motor vehicle services.
6	817.569(2)	3rd	Use of public record or public
7			records information to facilitate
8			commission of a felony.
9	826.01	3rd	Bigamy.
10	828.122(3)	3rd	Fighting or baiting animals.
11	831.04(1)	3rd	Any erasure, alteration, etc., of
12			any replacement deed, map, plat,
13			or other document listed in s.
14			92.28.
15	831.31(1)(a)	3rd	Sell, deliver, or possess
16			counterfeit controlled
17			substances, all but s. 893.03(5)
18			drugs.
19	832.041(1)	3rd	Stopping payment with intent to
20			defraud \$150 or more.
21	832.05		
22	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
23			worthless checks \$150 or more or
24			obtaining property in return for
25			worthless check \$150 or more.
26	838.015(3)	3rd	Bribery.
27	838.016(1)	3rd	Public servant receiving unlawful
28			compensation.
29	838.15(2)	3rd	Commercial bribe receiving.
30	838.16	3rd	Commercial bribery.
31			

1	843.18	3rd	Fleeing by boat to elude a law
2			enforcement officer.
3	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
4			lewd, etc., material (2nd
5			conviction).
6	849.01	3rd	Keeping gambling house.
7	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
8			or assist therein, conduct or
9			advertise drawing for prizes, or
10			dispose of property or money by
11			means of lottery.
12	849.23	3rd	Gambling-related machines;
13			"common offender" as to property
14			rights.
15	849.25(2)	3rd	Engaging in bookmaking.
16	860.08	3rd	Interfere with a railroad signal.
17	860.13(1)(a)	3rd	Operate aircraft while under the
18			influence.
19	893.13(2)(a)2.	3rd	Purchase of cannabis.
20	893.13(6)(a)	3rd	Possession of cannabis (more than
21			20 grams).
22	934.03(1)(a)	3rd	Intercepts, or procures any other
23			person to intercept, any wire or
24			oral communication.
25			(c) LEVEL 3
26	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
27	316.1935(2)	3rd	Fleeing or attempting to elude
28			law enforcement officer in marked
29			patrol vehicle with siren and
30			lights activated.
31			

1	319.30(4)	3rd	Possession by junkyard of motor
2			vehicle with identification
3			number plate removed.
4	319.33(1)(a)	3rd	Alter or forge any certificate of
5			title to a motor vehicle or
6			mobile home.
7	319.33(1)(c)	3rd	Procure or pass title on stolen
8			vehicle.
9	319.33(4)	3rd	With intent to defraud, possess,
10			sell, etc., a blank, forged, or
11			unlawfully obtained title or
12			registration.
13	327.35(2)(b)	3rd	Felony BUI.
14	328.05(2)	3rd	Possess, sell, or counterfeit
15			fictitious, stolen, or fraudulent
16			titles or bills of sale of
17			vessels.
18	328.07(4)	3rd	Manufacture, exchange, or possess
19			vessel with counterfeit or wrong
20			ID number.
21	376.302(5)	3rd	Fraud related to reimbursement
22			for cleanup expenses under the
23			Inland Protection Trust Fund.
24	<u>440.105(4)(f)1.</u>	<u>3rd</u>	<u>Workers' compensation insurance</u>
25			<u>fraud; property value less than</u>
26			<u>\$20,000.</u>
27	501.001(2)(b)	2nd	Tampers with a consumer product
28			or the container using materially
29			false/misleading information.
30	697.08	3rd	Equity skimming.
31			

1	790.15(3)	3rd	Person directs another to
2			discharge firearm from a vehicle.
3	796.05(1)	3rd	Live on earnings of a prostitute.
4	806.10(1)	3rd	Maliciously injure, destroy, or
5			interfere with vehicles or
6			equipment used in firefighting.
7	806.10(2)	3rd	Interferes with or assaults
8			firefighter in performance of
9			duty.
10	810.09(2)(c)	3rd	Trespass on property other than
11			structure or conveyance armed
12			with firearm or dangerous weapon.
13	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
14			less than \$10,000.
15	812.0145(2)(c)	3rd	Theft from person 65 years of age
16			or older; \$300 or more but less
17			than \$10,000.
18	815.04(4)(b)	2nd	Computer offense devised to
19			defraud or obtain property.
20	817.034(4)(a)3.	3rd	Engages in scheme to defraud
21			(Florida Communications Fraud
22			Act), property valued at less
23			than \$20,000.
24	817.233	3rd	Burning to defraud insurer.
25	817.234(8)&(9)	3rd	Unlawful solicitation of persons
26			involved in motor vehicle
27			accidents.
28	817.234(11)(a)	3rd	Insurance fraud; property value
29			less than \$20,000.
30	817.505(4)	3rd	Patient brokering.
31			

1	828.12(2)	3rd	Tortures any animal with intent
2			to inflict intense pain, serious
3			physical injury, or death.
4	831.28(2)(a)	3rd	Counterfeiting a payment
5			instrument with intent to defraud
6			or possessing a counterfeit
7			payment instrument.
8	831.29	2nd	Possession of instruments for
9			counterfeiting drivers' licenses
10			or identification cards.
11	838.021(3)(b)	3rd	Threatens unlawful harm to public
12			servant.
13	843.19	3rd	Injure, disable, or kill police
14			dog or horse.
15	870.01(2)	3rd	Riot; inciting or encouraging.
16	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
17			cannabis (or other s.
18			893.03(1)(c), (2)(c)1., (2)(c)2.,
19			(2)(c)3., (2)(c)5., (2)(c)6.,
20			(2)(c)7., (2)(c)8., (2)(c)9.,
21			(3), or (4) drugs).
22	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
23			893.03(1)(c), (2)(c)1., (2)(c)2.,
24			(2)(c)3., (2)(c)5., (2)(c)6.,
25			(2)(c)7., (2)(c)8., (2)(c)9.,
26			(3), or (4) drugs within 200 feet
27			of university or public park.
28			
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1	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
2			893.03(1)(c), (2)(c)1., (2)(c)2.,
3			(2)(c)3., (2)(c)5., (2)(c)6.,
4			(2)(c)7., (2)(c)8., (2)(c)9.,
5			(3), or (4) drugs within 200 feet
6			of public housing facility.
7	893.13(6)(a)	3rd	Possession of any controlled
8			substance other than felony
9			possession of cannabis.
10	893.13(7)(a)8.	3rd	Withhold information from
11			practitioner regarding previous
12			receipt of or prescription for a
13			controlled substance.
14	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
15			controlled substance by fraud,
16			forgery, misrepresentation, etc.
17	893.13(7)(a)10.	3rd	Affix false or forged label to
18			package of controlled substance.
19	893.13(7)(a)11.	3rd	Furnish false or fraudulent
20			material information on any
21			document or record required by
22			chapter 893.
23	893.13(8)(a)1.	3rd	Knowingly assist a patient, other
24			person, or owner of an animal in
25			obtaining a controlled substance
26			through deceptive, untrue, or
27			fraudulent representations in or
28			related to the practitioner's
29			practice.
30			
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1	893.13(8)(a)2.	3rd	Employ a trick or scheme in the
2			practitioner's practice to assist
3			a patient, other person, or owner
4			of an animal in obtaining a
5			controlled substance.
6	893.13(8)(a)3.	3rd	Knowingly write a prescription
7			for a controlled substance for a
8			fictitious person.
9	893.13(8)(a)4.	3rd	Write a prescription for a
10			controlled substance for a
11			patient, other person, or an
12			animal if the sole purpose of
13			writing the prescription is a
14			monetary benefit for the
15			practitioner.
16	918.13(1)(a)	3rd	Alter, destroy, or conceal
17			investigation evidence.
18	944.47		
19	(1)(a)1.-2.	3rd	Introduce contraband to
20			correctional facility.
21	944.47(1)(c)	2nd	Possess contraband while upon the
22			grounds of a correctional
23			institution.
24	985.3141	3rd	Escapes from a juvenile facility
25			(secure detention or residential
26			commitment facility).
27			(e) LEVEL 5
28	316.027(1)(a)	3rd	Accidents involving personal
29			injuries, failure to stop;
30			leaving scene.
31	316.1935(4)	2nd	Aggravated fleeing or eluding.

1	322.34(6)	3rd	Careless operation of motor
2			vehicle with suspended license,
3			resulting in death or serious
4			bodily injury.
5	327.30(5)	3rd	Vessel accidents involving
6			personal injury; leaving scene.
7	381.0041		
8	(11)(b)	3rd	Donate blood, plasma, or organs
9			knowing HIV positive.
10	<u>440.105(4)(f)2.</u>	<u>2nd</u>	<u>Workers' compensation insurance</u>
11			<u>fraud; property value \$20,000 or</u>
12			<u>more but less than \$200,000.</u>
13	790.01(2)	3rd	Carrying a concealed firearm.
14	790.162	2nd	Threat to throw or discharge
15			destructive device.
16	790.163(1)	2nd	False report of deadly explosive
17			or weapon of mass destruction.
18	790.221(1)	2nd	Possession of short-barreled
19			shotgun or machine gun.
20	790.23	2nd	Felons in possession of firearms
21			or electronic weapons or devices.
22	800.04(6)(c)	3rd	Lewd or lascivious conduct;
23			offender less than 18 years.
24	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
25			offender 18 years or older.
26	806.111(1)	3rd	Possess, manufacture, or dispense
27			fire bomb with intent to damage
28			any structure or property.
29	812.0145(2)(b)	2nd	Theft from person 65 years of age
30			or older; \$10,000 or more but
31			less than \$50,000.

1	812.015(8)	3rd	Retail theft; property stolen is
2			valued at \$300 or more and one or
3			more specified acts.
4	812.019(1)	2nd	Stolen property; dealing in or
5			trafficking in.
6	812.131(2)(b)	3rd	Robbery by sudden snatching.
7	812.16(2)	3rd	Owning, operating, or conducting
8			a chop shop.
9	817.034(4)(a)2.	2nd	Communications fraud, value
10			\$20,000 to \$50,000.
11	817.234(11)(b)	2nd	Insurance fraud; property value
12			\$20,000 or more but less than
13			\$100,000.
14	817.568(2)(b)	2nd	Fraudulent use of personal
15			identification information; value
16			of benefit, services received,
17			payment avoided, or amount of
18			injury or fraud, \$75,000 or more.
19	817.625(2)(b)	2nd	Second or subsequent fraudulent
20			use of scanning device or
21			reencoder.
22	825.1025(4)	3rd	Lewd or lascivious exhibition in
23			the presence of an elderly person
24			or disabled adult.
25	827.071(4)	2nd	Possess with intent to promote
26			any photographic material, motion
27			picture, etc., which includes
28			sexual conduct by a child.
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1	839.13(2)(b)	2nd	Falsifying records of an
2			individual in the care and
3			custody of a state agency
4			involving great bodily harm or
5			death.
6	843.01	3rd	Resist officer with violence to
7			person; resist arrest with
8			violence.
9	874.05(2)	2nd	Encouraging or recruiting another
10			to join a criminal street gang;
11			second or subsequent offense.
12	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
13			cocaine (or other s.
14			893.03(1)(a), (1)(b), (1)(d),
15			(2)(a), (2)(b), or (2)(c)4.
16			drugs).
17	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
18			cannabis (or other s.
19			893.03(1)(c), (2)(c)1., (2)(c)2.,
20			(2)(c)3., (2)(c)5., (2)(c)6.,
21			(2)(c)7., (2)(c)8., (2)(c)9.,
22			(3), or (4) drugs) within 1,000
23			feet of a child care facility or
24			school.
25	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
26			cocaine (or other s.
27			893.03(1)(a), (1)(b), (1)(d),
28			(2)(a), (2)(b), or (2)(c)4.
29			drugs) within 200 feet of
30			university or public park.
31			

1	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver
2			cannabis or other drug prohibited
3			under s. 893.03(1)(c), (2)(c)1.,
4			(2)(c)2., (2)(c)3., (2)(c)5.,
5			(2)(c)6., (2)(c)7., (2)(c)8.,
6			(2)(c)9., (3), or (4) within
7			1,000 feet of property used for
8			religious services or a specified
9			business site.
10	893.13(1)(f)1.	1st	Sell, manufacture, or deliver
11			cocaine (or other s. 893.03(1)
12			(a), (1)(b), (1)(d), or (2)(a),
13			(2)(b), or (2)(c)4. drugs) within
14			200 feet of public housing
15			facility.
16	893.13(4)(b)	2nd	Deliver to minor cannabis (or
17			other s. 893.03(1)(c), (2)(c)1.,
18			(2)(c)2., (2)(c)3., (2)(c)5.,
19			(2)(c)6., (2)(c)7., (2)(c)8.,
20			(2)(c)9., (3), or (4) drugs).
21			(g) LEVEL 7
22	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
23			injury.
24	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
25			bodily injury.
26	402.319(2)	2nd	Misrepresentation and negligence
27			or intentional act resulting in
28			great bodily harm, permanent
29			disfiguration, permanent
30			disability, or death.
31	409.920(2)	3rd	Medicaid provider fraud.

1	<u>440.105(4)(f)3.</u>	<u>1st</u>	<u>Workers' compensation insurance</u>
2			<u>fraud, the amount of the claim or</u>
3			<u>premium \$100,000 or more.</u>
4	456.065(2)	3rd	Practicing a health care
5			profession without a license.
6	456.065(2)	2nd	Practicing a health care
7			profession without a license
8			which results in serious bodily
9			injury.
10	458.327(1)	3rd	Practicing medicine without a
11			license.
12	459.013(1)	3rd	Practicing osteopathic medicine
13			without a license.
14	460.411(1)	3rd	Practicing chiropractic medicine
15			without a license.
16	461.012(1)	3rd	Practicing podiatric medicine
17			without a license.
18	462.17	3rd	Practicing naturopathy without a
19			license.
20	463.015(1)	3rd	Practicing optometry without a
21			license.
22	464.016(1)	3rd	Practicing nursing without a
23			license.
24	465.015(2)	3rd	Practicing pharmacy without a
25			license.
26	466.026(1)	3rd	Practicing dentistry or dental
27			hygiene without a license.
28	467.201	3rd	Practicing midwifery without a
29			license.
30	468.366	3rd	Delivering respiratory care
31			services without a license.

1	483.828(1)	3rd	Practicing as clinical laboratory
2			personnel without a license.
3	483.901(9)	3rd	Practicing medical physics
4			without a license.
5	484.013(1)(c)	3rd	Preparing or dispensing optical
6			devices without a prescription.
7	484.053	3rd	Dispensing hearing aids without a
8			license.
9	494.0018(2)	1st	Conviction of any violation of
10			ss. 494.001-494.0077 in which the
11			total money and property
12			unlawfully obtained exceeded
13			\$50,000 and there were five or
14			more victims.
15	560.123(8)(b)1.	3rd	Failure to report currency or
16			payment instruments exceeding
17			\$300 but less than \$20,000 by
18			money transmitter.
19	560.125(5)(a)	3rd	Money transmitter business by
20			unauthorized person, currency or
21			payment instruments exceeding
22			\$300 but less than \$20,000.
23	655.50(10)(b)1.	3rd	Failure to report financial
24			transactions exceeding \$300 but
25			less than \$20,000 by financial
26			institution.
27	782.051(3)	2nd	Attempted felony murder of a
28			person by a person other than the
29			perpetrator or the perpetrator of
30			an attempted felony.
31			

1	782.07(1)	2nd	Killing of a human being by the
2			act, procurement, or culpable
3			negligence of another
4			(manslaughter).
5	782.071	2nd	Killing of human being or viable
6			fetus by the operation of a motor
7			vehicle in a reckless manner
8			(vehicular homicide).
9	782.072	2nd	Killing of a human being by the
10			operation of a vessel in a
11			reckless manner (vessel
12			homicide).
13	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
14			causing great bodily harm or
15			disfigurement.
16	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
17			weapon.
18	784.045(1)(b)	2nd	Aggravated battery; perpetrator
19			aware victim pregnant.
20	784.048(4)	3rd	Aggravated stalking; violation of
21			injunction or court order.
22	784.07(2)(d)	1st	Aggravated battery on law
23			enforcement officer.
24	784.074(1)(a)	1st	Aggravated battery on sexually
25			violent predators facility staff.
26	784.08(2)(a)	1st	Aggravated battery on a person 65
27			years of age or older.
28	784.081(1)	1st	Aggravated battery on specified
29			official or employee.
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1	784.082(1)	1st	Aggravated battery by detained
2			person on visitor or other
3			detainee.
4	784.083(1)	1st	Aggravated battery on code
5			inspector.
6	790.07(4)	1st	Specified weapons violation
7			subsequent to previous conviction
8			of s. 790.07(1) or (2).
9	790.16(1)	1st	Discharge of a machine gun under
10			specified circumstances.
11	790.165(2)	2nd	Manufacture, sell, possess, or
12			deliver hoax bomb.
13	790.165(3)	2nd	Possessing, displaying, or
14			threatening to use any hoax bomb
15			while committing or attempting to
16			commit a felony.
17	790.166(3)	2nd	Possessing, selling, using, or
18			attempting to use a hoax weapon
19			of mass destruction.
20	790.166(4)	2nd	Possessing, displaying, or
21			threatening to use a hoax weapon
22			of mass destruction while
23			committing or attempting to
24			commit a felony.
25	796.03	2nd	Procuring any person under 16
26			years for prostitution.
27	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
28			victim less than 12 years of age;
29			offender less than 18 years.
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1	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
2			victim 12 years of age or older
3			but less than 16 years; offender
4			18 years or older.
5	806.01(2)	2nd	Maliciously damage structure by
6			fire or explosive.
7	810.02(3)(a)	2nd	Burglary of occupied dwelling;
8			unarmed; no assault or battery.
9	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
10			unarmed; no assault or battery.
11	810.02(3)(d)	2nd	Burglary of occupied conveyance;
12			unarmed; no assault or battery.
13	812.014(2)(a)	1st	Property stolen, valued at
14			\$100,000 or more; cargo stolen
15			valued at \$50,000 or more;
16			property stolen while causing
17			other property damage; 1st degree
18			grand theft.
19	812.014(2)(b)3.	2nd	Property stolen, emergency
20			medical equipment; 2nd degree
21			grand theft.
22	812.0145(2)(a)	1st	Theft from person 65 years of age
23			or older; \$50,000 or more.
24	812.019(2)	1st	Stolen property; initiates,
25			organizes, plans, etc., the theft
26			of property and traffics in
27			stolen property.
28	812.131(2)(a)	2nd	Robbery by sudden snatching.
29	812.133(2)(b)	1st	Carjacking; no firearm, deadly
30			weapon, or other weapon.
31			

1	817.234(11)(c)	1st	Insurance fraud; property value
2			\$100,000 or more.
3	825.102(3)(b)	2nd	Neglecting an elderly person or
4			disabled adult causing great
5			bodily harm, disability, or
6			disfigurement.
7	825.103(2)(b)	2nd	Exploiting an elderly person or
8			disabled adult and property is
9			valued at \$20,000 or more, but
10			less than \$100,000.
11	827.03(3)(b)	2nd	Neglect of a child causing great
12			bodily harm, disability, or
13			disfigurement.
14	827.04(3)	3rd	Impregnation of a child under 16
15			years of age by person 21 years
16			of age or older.
17	837.05(2)	3rd	Giving false information about
18			alleged capital felony to a law
19			enforcement officer.
20	872.06	2nd	Abuse of a dead human body.
21	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
22			cocaine (or other drug prohibited
23			under s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), (2)(b), or
25			(2)(c)4.) within 1,000 feet of a
26			child care facility or school.
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1	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
2			cocaine or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), (2)(b), or
5			(2)(c)4., within 1,000 feet of
6			property used for religious
7			services or a specified business
8			site.
9	893.13(4)(a)	1st	Deliver to minor cocaine (or
10			other s. 893.03(1)(a), (1)(b),
11			(1)(d), (2)(a), (2)(b), or
12			(2)(c)4. drugs).
13	893.135(1)(a)1.	1st	Trafficking in cannabis, more
14			than 25 lbs., less than 2,000
15			lbs.
16	893.135		
17	(1)(b)1.a.	1st	Trafficking in cocaine, more than
18			28 grams, less than 200 grams.
19	893.135		
20	(1)(c)1.a.	1st	Trafficking in illegal drugs,
21			more than 4 grams, less than 14
22			grams.
23	893.135		
24	(1)(d)1.	1st	Trafficking in phencyclidine,
25			more than 28 grams, less than 200
26			grams.
27	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
28			than 200 grams, less than 5
29			kilograms.
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1 893.135(1)(f)1. 1st Trafficking in amphetamine, more
2 than 14 grams, less than 28
3 grams.
4 893.135
5 (1)(g)1.a. 1st Trafficking in flunitrazepam, 4
6 grams or more, less than 14
7 grams.
8 893.135
9 (1)(h)1.a. 1st Trafficking in
10 gamma-hydroxybutyric acid (GHB),
11 1 kilogram or more, less than 5
12 kilograms.
13 893.135
14 (1)(j)1.a. 1st Trafficking in 1,4-Butanediol, 1
15 kilogram or more, less than 5
16 kilograms.
17 893.135
18 (1)(k)2.a. 1st Trafficking in Phenethylamines,
19 10 grams or more, less than 200
20 grams.
21 896.101(5)(a) 3rd Money laundering, financial
22 transactions exceeding \$300 but
23 less than \$20,000.
24 896.104(4)(a)1. 3rd Structuring transactions to evade
25 reporting or registration
26 requirements, financial
27 transactions exceeding \$300 but
28 less than \$20,000.
29 Section 71. Subsection (6) of section 112.181, Florida
30 Statutes, is amended to read:
31

1 112.181 Firefighters, paramedics, emergency medical
2 technicians, law enforcement officers, correctional officers;
3 special provisions relative to certain communicable
4 diseases.--

5 (6) REQUIRED MEDICAL TESTS; PREEMPLOYMENT
6 PHYSICAL.--In order to be entitled to the presumption provided
7 by this section:

8 (a) An emergency rescue or public safety or
9 correctional officer worker must, prior to diagnosis, have
10 undergone standard, medically acceptable tests for evidence of
11 the communicable disease for which the presumption is sought,
12 or evidence of medical conditions derived therefrom, which
13 tests fail to indicate the presence of infection. This
14 paragraph does not apply in the case of meningococcal
15 meningitis.

16 (b) On or after June 15, 1995, an emergency rescue or
17 public safety worker may be required to undergo a
18 preemployment physical examination that tests for and fails to
19 reveal any evidence of hepatitis or tuberculosis.

20 Section 72. Each workers' compensation insurer shall
21 make a rate filing by August 15, 2003, reflecting the
22 anticipated savings of this act, to be effective January 1,
23 2004, for new and renewal policies, subject to approval by the
24 Office of Insurance Regulation. An insurer may satisfy its
25 obligation to make such a filing by being a member of, or a
26 subscriber to, a licensed rating organization which makes such
27 filings on its behalf. Such filing shall be subject to all
28 requirements of Florida law that apply to rate filings for
29 workers' compensation.

30 Section 73. The amendments to sections 440.02 and
31 440.15, Florida Statutes, which are made by this act shall not

1 be construed to affect any determination of disability under
2 section 112.18, section 112.181, or section 112.19, Florida
3 Statutes.

4 Section 74. Four positions within the Division of
5 Administrative Hearings of the Department of Management
6 Services responsible for coding or entering data contained
7 within final orders issued by the judges of compensation
8 claims are transferred by a type two transfer, as defined in
9 section 20.06(2), Florida Statutes, to the Division of
10 Workers' Compensation of the Department of Financial Services.

11 Section 75. Ten positions within the Division of
12 Administrative Hearings of the Department of Management
13 Services responsible for receiving and preparing docketing
14 orders for the petitions for benefits and for receiving and
15 entering data related to the petitions for benefits are
16 transferred by a type two transfer, as defined in section
17 20.06(2), Florida Statutes, to the Division of Workers'
18 Compensation of the Department of Financial Services.

19 Section 76. Four positions within the Division of
20 Administrative Hearings of the Department of Management
21 Services responsible for financial management, accounting, and
22 budgeting for the Office of the Judges of Compensation Claims
23 are transferred by a type two transfer, as defined in section
24 20.06(2), Florida Statutes, to the Division of Workers'
25 Compensation within the Department of Financial Services.

26 Section 77. Four positions and the sum of \$290,923 are
27 appropriated from the Workers' Compensation Administration
28 Trust Fund in the Department of Financial Services. These
29 funds and positions are appropriated in lump sum and shall be
30 allocated pursuant to the review process in chapter 216.177,
31 Florida Statutes. Three positions and the sum of \$207,474

1 shall be allocated to the state attorneys in the Eleventh,
2 Fifteenth, and Seventeenth Judicial Circuits. One position and
3 \$83,449 shall be allocated to the Department of Legal Affairs.

4 Section 78. All powers, duties, functions, rules,
5 records, personnel, property, and unexpended balances of
6 appropriations, allocations, and other funds of the Bureau of
7 Workers' Compensation Fraud of the Division of Insurance Fraud
8 are transferred by a type two transfer, as defined in section
9 20.06(2), Florida Statutes, from the Department of Financial
10 Services to the Department of Law Enforcement as the Office of
11 Workers' Compensation Insurance Fraud.

12 Section 79. It is the intent of the Legislature to
13 create a state mutual insurance fund for workers'
14 compensation, effective January 1, 2005, if the workers'
15 compensation rates do not decrease by 20 percent on or before
16 January 1, 2005.

17 Section 80. This act shall take effect July 1, 2003.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 1132

22 The committee substitute provides changes to the workers'
23 compensation system that are designed to expedite the dispute
24 resolution process, provide greater compliance and enforcement
25 authority for the Division of Workers' Compensation to combat
26 fraud, revise certain indemnity benefits for injured workers,
27 and increase availability and affordability of coverage.
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