

By the Committees on Appropriations; Banking and Insurance;
and Senator Clary

309-2552-03

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 27.34, F.S.; requiring the Chief
4 Financial Officer to contract with the state
5 attorneys of specified judicial circuits to
6 prosecute criminal violation of the Workers'
7 Compensation Law and related crimes; requiring
8 a report to the Legislature and the executive
9 branch; amending s. 440.015, F.S.; providing
10 legislative intent; amending s. 440.02, F.S.;
11 defining and redefining terms; amending s.
12 440.05, F.S.; revising exemption requirements;
13 amending s. 440.06, F.S.; specifying coverage
14 requirements; amending s. 440.077, F.S.;
15 revising exemption election; amending s.
16 440.09, F.S.; revising compensability
17 eligibility standards; amending s. 440.10,
18 F.S.; requiring all employers engaged in work
19 in Florida to obtain a Florida policy; amending
20 s. 440.1025, F.S.; providing workplace safety
21 rulemaking authority; amending s. 440.103,
22 F.S.; requiring certain proof of insurance when
23 obtaining building permits; amending s.
24 440.104, F.S.; deleting certain limitations
25 regarding recovery; amending s. 440.105, F.S.;
26 modifying stop-work-order violations; amending
27 s. 440.107, F.S.; revising the compliance
28 powers of the Department of Financial Services;
29 authorizing agency rulemaking authority;
30 clarifying department penalty calculation
31 formulas; amending s. 440.11, F.S.; clarifying

1 exclusiveness of liability regarding safety
2 services; amending s. 440.12, F.S.; revising
3 compensability calculation; amending s.
4 440.125, F.S.; conforming departmental
5 authority; amending s. 440.13, F.S.; redefining
6 terms; establishing new standards of care;
7 authorizing the adoption of practice
8 parameters; revising standards and procedures
9 for diagnosis and treatment; redefining
10 standards of eligibility for medical treatment;
11 establishing consent to peer review
12 jurisdiction; creating the Health Care
13 Oversight Board to assist in the establishment
14 of practice parameters, auditing peer review
15 organizations, and certain other
16 recommendations; eliminating independent
17 medical examinations; revising the utilization
18 review process; eliminating expert medical
19 advisors; modifying standards for witness fees;
20 revising departmental auditing standards and
21 scope; authorizing a three-member panel to
22 alter inpatient and outpatient reimbursement
23 levels; revising prescription dispensing fee
24 level; revising standards for authorization of
25 physicians to render medical care; revising
26 carrier obligations to pay health care
27 providers; eliminating current practice
28 parameters; amending s. 440.132, F.S.; revising
29 departmental authority; repealing s. 440.134,
30 F.S., relating to managed care; repealing s.
31 440.135, F.S., relating to pilot programs;

1 amending s. 440.14, F.S.; revising calculations
2 of average weekly wage; amending s. 440.15,
3 F.S., revising permanent total disability
4 indemnity reimbursement levels; defining
5 sheltered employment; revising supplemental
6 benefits; revising temporary total disability
7 benefits eligibility and reimbursement levels;
8 requiring a three-member panel to study a
9 residual functional loss model for calculating
10 permanent partial impairment awards; revising
11 benefit calculation for permanent impairment
12 benefits; eliminating permanent impairment
13 supplemental benefits; increasing temporary
14 partial disability benefits; providing that
15 benefits are payable only for the disability or
16 medical condition associated with a compensable
17 injury that results from aggravation or
18 acceleration of a preexisting condition;
19 eliminating obligation to rehire requirement;
20 amending s. 440.151, F.S.; revising the
21 standard for establishing compensability of
22 occupational diseases; creating s. 440.152,
23 F.S.; establishing standard for computing
24 fractions of a percent for determining
25 benefits; amending s. 440.16, F.S.; increasing
26 funeral and death benefits; amending s. 440.17,
27 F.S.; revising departmental authority; amending
28 s. 440.185, F.S.; revising presumption of
29 compensability; modifying employer and carrier
30 reporting standards; authorizing departmental
31 rulemaking authority for carrier reporting

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

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

1 Florida Self-Insurers Guaranty Association
2 recommendations; amending s. 440.381, F.S.;
3 providing the department additional payroll
4 auditing responsibilities; amending 440.385,
5 F.S.; clarifying appointment authority;
6 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. 440.1915, 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; authorizing the department to adopt
12 rules; amending s. 443.036, F.S.; requiring an
13 employee leasing company to report certain
14 information to the department; amending ss.
15 443.171, 443.1715, F.S.; amending provisions
16 relating to records and reports; amending s.
17 626.989, F.S.; providing that the Department of
18 Financial Services shall prepare an annual
19 report related to workers' compensation fraud
20 and compliance; amending s. 626.9891, F.S.;
21 amending reporting requirements for insurers;
22 providing penalties for noncompliance; amending
23 s. 627.062, F.S.; amending criteria for filing
24 with the department certain information
25 relating to rates; amending s. 627.311, F.S.;
26 revising Workers' Compensation Joint
27 Underwriting Association board of governors
28 membership and appointment method; revising
29 rating plan; providing rating criteria;
30 revising association procedures; revising
31 assessment calculation methodology; amending s.

1 921.0022, F.S.; revising criminal punishment
2 code to apply to workers compensation insurance
3 fraud; amending s. 112.181, F.S.; revising
4 requirements for medical reviews for certain
5 types of workers; requiring each workers'
6 compensation insurer or a licensed rating
7 organization to make a rate filing reflecting
8 the anticipated savings of the act; specifying
9 the effective date and requirements for such
10 filings; providing that amendments to ss.
11 440.02 and 440.15, F.S., do not affect certain
12 disability determinations; providing a type two
13 transfer of certain full time employees'
14 positions from the Division of Administrative
15 Hearings of the Department of Management
16 Services to the Department of Financial
17 Services; transferring positions and providing
18 appropriations from the Workers' Compensation
19 Administration Trust Fund to state attorneys in
20 specified judicial circuits and to the
21 Department of Legal Affairs; providing for a
22 type two transfer of workers' compensation
23 medical services from the Agency for Health
24 Care Administration to the Department of
25 Financial Services; providing legislative
26 intent to create a state mutual insurance fund
27 for workers' compensation, under certain
28 circumstances; establishing a Joint Select
29 Committee on Workers' Compensation Rating
30 Reform; providing an effective date.
31

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

2

3 Section 1. Subsection (4) of section 27.34, Florida
4 Statutes, is amended to read:

5 27.34 Salaries and other related costs of state
6 attorneys' offices; limitations.--

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

21 Section 2. Section 440.015, Florida Statutes, is
22 amended to read:

23 (Substantial rewording of section. See
24 s. 440.015, F.S., for present text.)
25 440.015 Legislative intent.--

26 (1) It is the intent of the Legislature to
27 fundamentally reform workers' compensation in Florida. The
28 Legislature finds that the historical approach to workers
29 compensation, as reflected by the prior statute and court
30 decisions under it, needs to be displaced by an approach more
31 suited to modern realities, including the changing composition

1 of the workforce, the emergence of knowledge work as an
2 alternative to physical labor, the changing labor markets, and
3 the increasingly competitive markets for legal and medical
4 services. The goals of this chapter continue to include prompt
5 provision of adequate benefits to legitimately injured workers
6 at a reasonable cost, but the goals extend beyond that as
7 well. This law intends to strike a precise economic balance
8 between the economic interests of employers, employees,
9 personnel ancillary to the workers' compensation system, and
10 the public at large. The statutory language is carefully
11 designed to create behavioral incentives for the participants
12 in the system, including workers, employers, doctors,
13 attorneys, and others, so as to minimize the total cost of
14 job-related injuries, including the cost of administering the
15 system.

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

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

1 workers' compensation system, treating all parties as equally
2 capable of making choices under the law.

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

26 (c) The law's operation in practice has been
27 unpredictable, creating an incentive to excessive litigation.
28 It is the express intent of the Legislature to specify
29 bright-line rules that are followed in practice. The resultant
30 reliability, stability, and predictability of the law have
31

1 immeasurable value that the Legislature declares to be
2 paramount.

3 (d) The degree of expense in the worker's compensation
4 system has become immense, without a corresponding increase in
5 the quantity, speed, or efficiency of benefits delivered.
6 There are immeasurable indirect costs as well, in the form of
7 distortions of decisions made by employers and employees
8 alike, resulting from the prospect of protracted litigation,
9 which is precisely what workers' compensation laws were
10 intended to prevent. Since employers initially bear the cost
11 of workers' compensation benefits, and ultimately pass those
12 on either to consumers in the form of higher prices or to the
13 noninjured employees in the form of lower wages, it is unfair
14 to all classes of persons to require a workers' compensation
15 system that costs nearly as much to operate as it provides in
16 benefits to injured workers.

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

26 (f) The incorporation of a federal Social Security
27 standard for permanent total disability has resulted in
28 Florida's having a rate of permanent total disability grossly
29 out of proportion to the number of injuries that are severe
30 enough to warrant such a conclusion. The Legislature finds
31 that declaring an individual permanently totally disabled is

1 in most cases not in the person's best interest and is
2 warranted only when the individual is unable to return to any
3 form of gainful or sheltered employment.

4 (3) To remedy the problems enumerated in subsection
5 (2), as well as numerous others, this statute is a fundamental
6 departure from prior law, in theory, concept, and execution.
7 While practices, rules, statutes, and court decisions existing
8 before the effective date of this act may be cited as
9 persuasive authority in courts and other tribunals, they are
10 not to be considered authoritative or binding in interpreting
11 rights and obligations under this statute. It is the express
12 intent of the Legislature that this new statute operate with a
13 clean slate of decisional law. The law should be interpreted
14 according to its plain language, without reference to
15 technical legal denotations, as a person of reasonable
16 intelligence would understand it, before deciding how to act
17 under it.

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

27 Section 3. Section 440.02, Florida Statutes, is
28 amended to read:

29 440.02 Definitions.--~~As when~~ used in this chapter, the
30 ~~term unless the context clearly requires otherwise, the~~
31 ~~following terms shall have the following meanings:~~

1 (1) "Accident" means only an unexpected or unusual
2 event or result that happens suddenly. A mental or nervous
3 injury due to stress, fright, or excitement only, or
4 disability or death due to the accidental acceleration or
5 aggravation of a venereal disease or of a disease due to the
6 habitual use of alcohol or controlled substances or narcotic
7 drugs, or a disease that manifests itself in the fear of or
8 dislike for an individual because of the individual's race,
9 color, religion, sex, national origin, age, or handicap is not
10 an injury by accident arising out of the employment. If a
11 preexisting disease or anomaly is accelerated or aggravated by
12 an accident arising out of and in the course of employment,
13 only acceleration of death or acceleration or aggravation of
14 the preexisting condition reasonably attributable to the
15 accident is compensable, with respect to death or permanent
16 impairment.

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

19 (3) "Agency" means the Agency for Health Care
20 Administration.

21 (4) "Carrier" means any person or fund as defined in
22 subsection (39) authorized under s. 440.38 to insure under
23 this chapter and includes a self-insurer, and a commercial
24 self-insurance fund authorized under s. 624.462.

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

29 (6) "Child" includes a posthumous child, a child
30 legally adopted prior to the injury of the employee, and a
31 stepchild or acknowledged child born out of wedlock dependent

1 upon the deceased, but does not include married children
2 unless wholly dependent on the employee. "Grandchild" means a
3 child as above defined of a child as above defined. "Brother"
4 and "sister" include stepbrothers and stepsisters, half
5 brothers and half sisters, and brothers and sisters by
6 adoption, but does not include married brothers or married
7 sisters unless wholly dependent on the employee. "Child,"
8 "grandchild," "brother," and "sister" include only persons who
9 at the time of the death of the deceased employees are under
10 18 years of age, or under 22 years of age if a full-time
11 student in an accredited educational institution.

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

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

31

1 (9) "Corporate officer" or "officer of a corporation"
2 means any person who fills an office provided for in the
3 corporate charter or articles of incorporation filed with the
4 Division of Corporations of the Department of State or as
5 permitted or required by chapter 607.

6 (10) "Date of maximum medical improvement" means the
7 date after which further recovery from, or lasting improvement
8 to, an injury or disease can no longer reasonably be
9 anticipated, based upon reasonable medical probability.

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

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

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

17 (14) "Division" means the Division of Workers'
18 Compensation of the Department of Financial Services
19 Insurance.

20 (15)(a) "Employee" means any person who receives
21 remuneration from an employer for performance of any work or
22 service, whether by ~~engaged in any employment under any~~
23 appointment or contract for ~~of~~ hire or apprenticeship, express
24 or implied, oral or written, whether lawfully or unlawfully
25 employed, and includes, but is not limited to, aliens and
26 minors.

27 (b) "Employee" includes any person who is an officer
28 of a corporation and who performs services for remuneration
29 for such corporation within this state, whether or not such
30 services are continuous.

31

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

4 2. Effective January 1, 2004,as to officers of a
5 corporation who are actively engaged in the construction
6 industry, no more than three officers of a corporation, or of
7 any group of affiliated corporations,may elect to be exempt
8 from this chapter by filing written notice of the election
9 with the department as provided in s. 440.05. Corporate
10 officers must be shareholders, each owning at least 10 percent
11 of the voting stock of such a corporation and must be listed
12 as officers of the corporation with the Department of State,
13 Division of Corporations at the time of requesting an
14 exemption in order to elect to be exempt under this chapter.

15 As used in this chapter, the term "corporation" means an
16 entity formed under chapter 607 or chapter 608. As used in
17 this chapter, the term "affiliated" means and includes one or
18 more corporations or entities, any one of which is a
19 corporation engaged in the construction industry, under the
20 same or substantially the same control of a group of business
21 entities that are connected or associated so that one entity
22 controls or has the power to control each of the other
23 business entities. The term "affiliated" includes the
24 officers, directors, shareholders active in management,
25 employees, and agents of the affiliated corporation. The
26 ownership by one business entity of a controlling interest in
27 another business entity or a pooling of equipment or income
28 among business entities shall be prima facie evidence that one
29 business is affiliated with the other.~~However, any exemption~~
30 ~~obtained by a corporate officer of a corporation actively~~
31 ~~engaged in the construction industry is not applicable with~~

1 ~~respect to any commercial building project estimated to be~~
2 ~~valued at \$250,000 or greater.~~

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

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

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

29 2. ~~Notwithstanding the provisions of subparagraph 1.,~~
30 ~~the term "employee" includes a sole proprietor or partner~~
31 ~~actively engaged in the construction industry with respect to~~

1 ~~any commercial building project estimated to be valued at~~
2 ~~\$250,000 or greater. Any exemption obtained is not applicable,~~
3 ~~with respect to work performed at such a commercial building~~
4 ~~project.~~

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

31

1 h. The independent contractor has continuing or
2 recurring business liabilities or obligations; ~~and~~

3 i. The success or failure of the independent
4 contractor's business depends on the relationship of business
5 receipts to expenditures; ~~and-~~

6 j. The independent contractor is not engaged in the
7 construction industry.

8
9 However, the determination as to whether an individual
10 included in the North American Industrial Classification
11 Manual Industry Numbers 115112, 115113, 54194, 115115, 115116,
12 54169, 56173, 111421, 111998, 11531, 11331, 321912, 321211,
13 321212, or 321912 Standard Industrial Classification Manual of
14 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
15 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
16 2448, or 2449, or a newspaper delivery person, is an
17 independent contractor is governed not by the criteria in this
18 paragraph but by common-law principles, giving due
19 consideration to the business activity of the individual.
20 ~~Notwithstanding the provisions of this paragraph or any other~~
21 ~~provision of this chapter, with respect to any commercial~~
22 ~~building project estimated to be valued at \$250,000 or~~
23 ~~greater, a person who is actively engaged in the construction~~
24 ~~industry is not an independent contractor and is either an~~
25 ~~employer or an employee who may not be exempt from the~~
26 ~~coverage requirements of this chapter.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~10.11.~~ A person who performs services as a sports
31 official for an entity sponsoring an interscholastic sports

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

13 11. Medicaid-enrolled clients under chapter 393 who
14 are excluded from the definition of employment under s.
15 443.036(21)(d)5. and served by Adult Day Training Service
16 under the Home and Community-Based Medicaid Waiver program in
17 a sheltered workshop setting licensed by the United States
18 Department of Labor for the purpose of training and earning
19 less than the federal hourly minimum wage.

20 (16) "Employer" means:

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

31

1 (b) However, a landowner is not considered to be the
2 employer of a person hired by the landowner to carry out
3 construction on the landowner's own premises, if those
4 premises are not intended to be sold, resold, or leased and
5 the landowner is not engaged in the construction industry as
6 defined in subsection (8).

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

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

16 (b) "Employment" includes:

17 1. Employment by the state and all political
18 subdivisions thereof and all public and quasi-public
19 corporations therein, including officers elected at the polls.

20 2. All private employments in which four or more
21 employees are employed by the same employer or, with respect
22 to the construction industry, all private employment in which
23 one or more employees are employed by the same employer.

24 3. Volunteer firefighters responding to or assisting
25 with fire or medical emergencies whether or not the
26 firefighters are on duty.

27 (c) "Employment" does not include service performed by
28 or as:

29 1. Domestic servants in private homes.

30 2. Agricultural labor performed on a farm in the
31 employ of a bona fide farmer, or association of farmers, that

1 employs 5 or fewer regular employees and that employs fewer
2 than 12 other employees at one time for seasonal agricultural
3 labor that is completed in less than 30 days, provided such
4 seasonal employment does not exceed 45 days in the same
5 calendar year. The term "farm" includes stock, dairy, poultry,
6 fruit, fur-bearing animals, fish, and truck farms, ranches,
7 nurseries, and orchards. The term "agricultural labor"
8 includes field foremen, timekeepers, checkers, and other farm
9 labor supervisory personnel.

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

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

16 5. State prisoners or county inmates, except those
17 performing services for private employers or those enumerated
18 in s. 948.03(8)(a).

19 (18) "Misconduct" includes, but is not limited to, the
20 following, which shall not be construed in pari materia with
21 each other:

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

26 (b) Carelessness or negligence of such a degree or
27 recurrence as to manifest culpability, wrongful intent, or
28 evil design, or to show an intentional and substantial
29 disregard of an employer's interests or of the employee's
30 duties and obligations to the employer.

31

1 (19) "Injury" means the existence of an objectively
2 confirmed and clinically relevant physiological abnormality in
3 one of the body's systems which directly and proximately
4 resulted from an accident ~~personal injury or death by accident~~
5 ~~arising out of and in the course of employment, and such~~
6 ~~diseases or infection as naturally or unavoidably result from~~
7 ~~such injury.~~ Damage to dentures, eyeglasses, prosthetic
8 devices, and artificial limbs may be included in this
9 definition only when the damage is shown to be part of, or in
10 conjunction with, an accident. This damage must specifically
11 occur as the result of an accident in the normal course of
12 employment.

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

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

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

29 (23) "Person" means individual, partnership,
30 association, or corporation, including any public service
31 corporation.

1 (24) "Self-insurer" means:

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

5 (b) Any employer who has secured payment of
6 compensation through a group self-insurance fund under s.
7 624.4621;

8 (c) Any group self-insurance fund established under s.
9 624.4621;

10 (d) A public utility as defined in s. 364.02 or s.
11 366.02 that has assumed by contract the liabilities of
12 contractors or subcontractors pursuant to s. 624.46225; or

13 (e) Any local government self-insurance fund
14 established under s. 624.4622.

15 (25) "Sole proprietor" means a natural person who owns
16 a form of business in which that person owns all the assets of
17 the business and is solely liable for all the debts of the
18 business.

19 (26) "Spouse" includes only a spouse substantially
20 dependent for financial support upon the decedent and living
21 with the decedent at the time of the decedent's injury and
22 death, or substantially dependent upon the decedent for
23 financial support and living apart at that time for
24 justifiable cause.

25 (27) "Time of injury" means the time of the occurrence
26 of the accident resulting in the injury.

27 (28) "Wages" means the money rate at which the service
28 rendered is recompensed under the contract of hiring in force
29 at the time of the injury and includes only the wages earned
30 and reported for federal income tax purposes on the job where
31 the employee is injured and any other concurrent employment

1 where he or she is also subject to workers' compensation
2 coverage and benefits, together with the reasonable value of
3 housing furnished to the employee by the employer which is the
4 permanent year-round residence of the employee, and gratuities
5 to the extent reported to the employer in writing as taxable
6 income received in the course of employment from others than
7 the employer and employer contributions for health insurance
8 for the employee or the employee's dependents. However,
9 housing furnished to migrant workers shall be included in
10 wages unless provided after the time of injury. In employment
11 in which an employee receives consideration for housing, the
12 reasonable value of such housing compensation shall be the
13 actual cost to the employer or based upon the Fair Market Rent
14 Survey promulgated pursuant to s. 8 of the Housing and Urban
15 Development Act of 1974, whichever is less. However, if
16 employer contributions for housing or health insurance are
17 continued after the time of the injury, the contributions are
18 not "wages" for the purpose of calculating an employee's
19 average weekly wage.

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

30 (30) "Construction design professional" means an
31 architect, professional engineer, landscape architect, or

1 surveyor and mapper, or any corporation, professional or
2 general, that has a certificate to practice in the
3 construction design field from the Department of Business and
4 Professional Regulation.

5 (31) "Individual self-insurer" means any employer who
6 has secured payment of compensation pursuant to s.
7 440.38(1)(b) ~~as an individual self-insurer~~.

8 (32) "Domestic individual self-insurer" means an
9 individual self-insurer:

10 (a) Which is a corporation formed under the laws of
11 this state;

12 (b) Who is an individual who is a resident of this
13 state or whose primary place of business is located in this
14 state; or

15 (c) Which is a partnership whose principals are
16 residents of this state or whose primary place of business is
17 located in this state.

18 (33) "Foreign individual self-insurer" means an
19 individual self-insurer:

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

23 (b) Who is an individual who is not a resident of this
24 state and whose primary place of business is not located in
25 this state; or

26 (c) Which is a partnership whose principals are not
27 residents of this state and whose primary place of business is
28 not located in this state.

29 (34) "Insolvent member" means an individual
30 self-insurer which is a member of the Florida Self-Insurers
31 Guaranty Association, Incorporated, or which was a member and

1 has withdrawn pursuant to s. 440.385(1)(b), and which has been
2 found insolvent, as defined in subparagraph (35)(a)1.,
3 subparagraph (35)(a)2., or subparagraph (35)(a)3., by a court
4 of competent jurisdiction in this or any other state, or meets
5 the definition of subparagraph (35)(a)4.

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

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

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

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

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

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

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

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

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

27 (36) "Arising out of" pertains to occupational
28 causation. An accidental injury or death arises out of
29 employment if work performed in the course and scope of
30 employment is the major contributing cause of the injury or
31 death.

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

4 (38) "Catastrophic injury" means a permanent
5 impairment constituted by:

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

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

10 (c) Severe brain or closed-head injury as evidenced
11 by:

12 1. Severe sensory or motor disturbances;

13 2. Severe communication disturbances;

14 3. Severe complex integrated disturbances of cerebral
15 function;

16 4. Severe episodic neurological disorders; or

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

20 (d) Second-degree or third-degree burns of 25 percent
21 or more of the total body surface or third-degree burns of 5
22 percent or more to the face and hands; or

23 (e) Total or industrial blindness; or

24 ~~(f) Any other injury that would otherwise qualify~~
25 ~~under this chapter of a nature and severity that would qualify~~
26 ~~an employee to receive disability income benefits under Title~~
27 ~~II or supplemental security income benefits under Title XVI of~~
28 ~~the federal Social Security Act as the Social Security Act~~
29 ~~existed on July 1, 1992, without regard to any time~~
30 ~~limitations provided under that act.~~

31

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

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

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

26 (42) "Compensable" means a determination by a carrier,
27 medical peer review panel, or, in cases outside the
28 jurisdiction of the peer review process, a judge of
29 compensation claims, that a condition suffered by an employee
30 resulted from an injury arising out of and in the course of
31

1 employment. The work-related accident must be the major
2 contributing cause of the injury to be compensable.

3 (43) "Functional disturbance" means objectively
4 identifiable loss of ability to perform, or difficulty in
5 performing, tasks or activities represented in terms of
6 limitations or restrictions.

7 (44) "Confirmed abnormal relevant physiology" means an
8 objectively clinically demonstrable physical change that is
9 inconsistent with the normal operation of the human body and
10 that corroborates the symptoms or functional disturbance of
11 which the injured worker complains.

12 (45) "Confirmatory consultation" means a clinical
13 evaluation or diagnostic testing for determination of the
14 necessity or reasonableness of medical care, recommendations,
15 or determinations in situations in which there has been a
16 recommendation by an authorized treating provider which has
17 been refused or disputed by the employer or carrier, or in
18 which there has been care, a recommendation, or a
19 determination sought by a patient and refused or disputed by
20 the authorized provider.

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

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

26 (48) "Clinical dysfunction" means a manifestation of a
27 defined and measurable component or element of an injury or
28 illness.

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

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

4 (51) "Objective" means measurable or determinable
5 without input from the patient, such that the same sign,
6 result, or outcome would be replicable by another like medical
7 provider.

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

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

18 (54) "Transfer of care" means the provider making a
19 recommendation to the carrier for referral to another provider
20 because the provider has relinquished the role of principal
21 treating provider to the provider being recommended.

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

30 ~~(42) "Residential building" means any building or~~
31 ~~structure intended for residential use containing four or~~

1 ~~fewer dwelling units and any structures intended as an~~
2 ~~accessory use to the residential structure.~~

3 Section 4. Section 440.05, Florida Statutes, is
4 amended to read:

5 440.05 Election of exemption; revocation of election;
6 notice; certification.--

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

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

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

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

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

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

27 (5) A notice given under subsection (1), subsection
28 (2), or subsection (3) shall become effective when issued by
29 the department or 30 days after an application for an
30 exemption is received by the department, whichever occurs
31 first. However, if an accident or occupational disease occurs

1 less than 30 days after the effective date of the insurance
2 policy under which the payment of compensation is secured or
3 the date the employer qualified as a self-insurer, such notice
4 is effective as of 12:01 a.m. of the day following the date it
5 is mailed to the department in Tallahassee.

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

27 (7) Any contractor responsible for compensation under
28 s. 440.10 may register electronically ~~in writing~~ with the
29 department ~~workers' compensation carrier~~ for any subcontractor
30 and shall thereafter be entitled to receive written notice
31

1 from the carrier of any cancellation or nonrenewal of the
2 policy.

3 (8)(a) The department must assess a fee of \$50 with
4 each request for a construction industry certificate of
5 election to be exempt or renewal of election to be exempt
6 under this section.

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

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

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

29 ~~(11) Any sole proprietor or partner actively engaged~~
30 ~~in the construction industry claiming an exemption under this~~
31 ~~section shall maintain a copy of his or her federal income tax~~

1 ~~records for each of the immediately previous 3 years in which~~
2 ~~he or she claims an exemption. Such federal income tax records~~
3 ~~must include a complete copy of the following for each year in~~
4 ~~which an exemption is claimed:~~

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

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

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

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

1 ~~section. The division shall establish by rule the form and~~
2 ~~format of financial information required to be submitted by~~
3 ~~such employers.~~

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

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

28 (13) A notice of election to be exempt and a
29 certificate of election to be exempt are subject to revocation
30 if, at any time after the filing of the notice or the issuance
31 of the certificate, the person named on the notice or

1 certificate no longer meets the requirements of this section
2 for issuance of a certificate. The department shall revoke a
3 certificate at any time for failure of the person named on the
4 certificate to meet the requirements of this section.

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

12 1. The spouse of such other person;

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

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

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

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

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

28 or

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

31

1 Section 5. Section 440.06, Florida Statutes, is
2 amended to read:

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

13 Section 6. Section 440.077, Florida Statutes, is
14 amended to read:

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

22 Section 7. Section 440.09, Florida Statutes, is
23 amended to read:

24 440.09 Coverage.--

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

1 medical findings. Mental or nervous injuries occurring as a
2 manifestation of an injury compensable under this section
3 shall be demonstrated by clear and convincing evidence. In
4 cases involving occupational disease or repetitive exposure,
5 both causation and sufficient exposure to support causation
6 must be proven by clear and convincing evidence.

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

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

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

24 (d) If an accident happens while the employee is
25 employed elsewhere than in this state, which would entitle the
26 employee or his or her dependents to compensation if it had
27 happened in this state, the employee or his or her dependents
28 are entitled to compensation if the contract of employment was
29 made in this state, or the employment was principally
30 localized in this state. However, if an employee receives
31 compensation or damages under the laws of any other state, the

1 total compensation for the injury may not be greater than is
2 provided in this chapter.

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

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

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

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

31

1 (c) Upon a finding of guilt of insurance fraud, a
2 judge of compensation claims has jurisdiction to order any
3 benefits payable to the employee to be paid into the court
4 registry or an escrow account during the pendency of an appeal
5 or until the time in which to file an appeal has expired.

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

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

27 (7)(a) To ensure that the workplace is a drug-free
28 environment and to deter the use of drugs and alcohol at the
29 workplace, ~~if the employer has reason to suspect that the~~
30 ~~injury was occasioned primarily by the intoxication of the~~
31 ~~employee or by the use of any drug, as defined in this~~

1 ~~chapter, which affected the employee to the extent that the~~
2 ~~employee's normal faculties were impaired, and the employer~~
3 ~~has not implemented a drug-free workplace pursuant to ss.~~
4 ~~440.101 and 440.102,~~the employer may require the employee to
5 submit to a test for the presence of any or all drugs or
6 alcohol in his or her system.

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

1 influence of such alcohol or drug, the presumptions specified
2 in this subsection do not apply.

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

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

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

17 Section 8. Section 440.10, Florida Statutes, is
18 amended to read:

19 440.10 Liability for compensation.--

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

30 (b) Subject to s. 440.38, any employer who has
31 employees engaged in work in this state shall obtain for such

1 employees a Florida policy or endorsement that utilizes
2 Florida class codes, rates, rules, and manuals that are in
3 compliance with and approved under this chapter and the
4 Insurance Code. The department shall adopt rules for
5 construction industry and non-construction industry employers
6 with regard to the activities that constitute being "engaged
7 in work" in this state, using the following standards:

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

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

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

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

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

29 (c)(b) In case a contractor sublets any part or parts
30 of his or her contract work to a subcontractor or
31 subcontractors, all of the employees of such contractor and

1 subcontractor or subcontractors engaged on such contract work
2 shall be deemed to be employed in one and the same business or
3 establishment; and the contractor shall be liable for, and
4 shall secure, the payment of compensation to all such
5 employees, except to employees of a subcontractor who has
6 secured such payment.

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

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

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

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

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

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

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

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

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

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

6 (2) Compensation shall be payable irrespective of
7 fault as a cause for the injury, except as provided in s.
8 440.09(3).

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

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

30 Section 10. Section 440.103, Florida Statutes, is
31 amended to read:

1 440.103 Building permits; identification of minimum
2 premium policy.--~~Except as otherwise provided in this chapter,~~
3 Every employer shall, as a condition to applying for and
4 receiving a building permit, show proof and certify to the
5 permit insurer that it has secured compensation for its
6 employees under this chapter as provided in ss. 440.10, and
7 440.38, and 440.107(2). Such proof of compensation must be
8 evidenced by a certificate of insurance coverage issued by the
9 carrier, a valid exemption certificate approved by the
10 department or the former Division of Workers' Compensation of
11 the Department of Labor and Employment Security, or a copy of
12 the employer's authority to self-insure and must be presented
13 each time the employer applies for a building permit. Prior to
14 issuing a building permit, such proof of compensation must be
15 verified by confirming coverage through the department's
16 proof-of-coverage database. Each certificate of insurance must
17 indicate the states for which the coverage applies.As
18 provided in s. 627.413(5), each certificate of coverage must
19 show, on its face, whether or not coverage is secured under
20 the minimum premium provisions of rules adopted by rating
21 organizations licensed by the department. The words "minimum
22 premium policy" or equivalent language shall be typed,
23 printed, stamped, or legibly handwritten.

24 Section 11. Subsection (6) of section 440.104, Florida
25 Statutes, is amended to read:

26 440.104 Competitive bidder; civil actions.--

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

30 ~~(a)~~ was in violation of s. 440.10, s. 440.105, or s.
31 440.38 at the time of making the bid on the contract. ~~+~~

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 12. 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, 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 Division of Insurance Fraud,
21 Bureau of Workers' Compensation Fraud, a report or information
22 pertinent to such knowledge or belief and such additional
23 information relative thereto as the bureau may require. The
24 bureau shall review such information or reports and select
25 such information or reports as, in its judgment, may require
26 further investigation. It shall then cause an independent
27 examination of the facts surrounding such information or
28 report to be made to determine the extent, if any, to which a
29 fraudulent act or any other act or practice which, upon
30 conviction, constitutes a felony or a misdemeanor under this
31 chapter is being committed. The bureau shall report any

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

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

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

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

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

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

30 (a) It shall be unlawful for any employer to
31 knowingly:

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

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

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

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

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

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

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

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

1 partnership, or association to receive any fee or other
2 consideration or any gratuity from a person on account of
3 services rendered for a person in connection with any
4 proceedings arising under this chapter, unless such fee,
5 consideration, or gratuity is approved by a judge of
6 compensation claims or by the Deputy Chief Judge of
7 Compensation Claims.

8 (4) Whoever violates any provision of this subsection
9 commits insurance fraud, punishable as provided in paragraph
10 (f).

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

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

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

23 3. Fail to secure payment of compensation if required
24 to do so by this chapter.

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

26 1. To knowingly make, or cause to be made, any false,
27 fraudulent, or misleading oral or written statement for the
28 purpose of obtaining or denying any benefit or payment under
29 this chapter.

30 2. To present or cause to be presented any written or
31 oral statement as part of, or in support of, a claim for

1 payment or other benefit pursuant to any provision of this
2 chapter, knowing that such statement contains any false,
3 incomplete, or misleading information concerning any fact or
4 thing material to such claim.

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

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

15 5. To knowingly make any false, fraudulent, or
16 misleading oral or written statement, or to knowingly omit or
17 conceal material information, required by s. 440.185 or s.
18 440.381, for the purpose of obtaining workers' compensation
19 coverage or for the purpose of avoiding, delaying, or
20 diminishing the amount of payment of any workers' compensation
21 premiums.

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

28 7. To knowingly present or cause to be presented any
29 false, fraudulent, or misleading oral or written statement to
30 any person as evidence of compliance with s. 440.38, as
31

1 evidence of eligibility for a certificate of exemption under
2 s. 440.05.

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

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

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

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

26 (e) It shall be unlawful for any attorney or other
27 person, in his or her individual capacity or in his or her
28 capacity as a public or private employee, or any firm,
29 corporation, partnership, or association, to knowingly assist,
30 conspire with, or urge any person to fraudulently violate any
31 of the provisions of this chapter.

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

4 1. Is less than \$20,000, the offender commits a felony
5 of the third degree, punishable as provided in s. 775.082, s.
6 775.083, or s. 775.084.

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

10 3. Is \$100,000 or more, the offender commits a felony
11 of the first degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

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

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

28 ~~(7) For the purpose of the section, the term~~
29 ~~"statement" includes, but is not limited to, any notice,~~
30 ~~representation, statement, proof of injury, bill for services,~~
31

1 ~~diagnosis, prescription, hospital or doctor records, X ray,~~
2 ~~test result, or other evidence of loss, injury, or expense.~~

3 (7)(8) The carrier shall obtain the personal signature
4 of the injured employee or any other party making a claim
5 under this chapter, attesting that he or she has reviewed,
6 understands, and acknowledges ~~All claim forms as provided for~~
7 ~~in this chapter shall contain a notice that clearly states in~~
8 ~~substance the following statement:~~ "Any person who, knowingly
9 and with intent to injure, defraud, or deceive any employer or
10 employee, insurance company, or self-insured program, files a
11 statement of claim containing any false or misleading
12 information commits insurance fraud, punishable as provided in
13 s. 817.234." If the injured employee refuses to sign the
14 statement attesting that he or she has reviewed, understands,
15 and acknowledges the statement, the injured employee is
16 ineligible for benefits under this chapter until such
17 signature is obtained.~~Each claimant shall personally sign the~~
18 ~~claim form and attest that he or she has reviewed,~~
19 ~~understands, and acknowledges the foregoing notice.~~

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

23 (9) As a condition of receiving compensation, as
24 provided in this chapter, an employee shall execute a waiver
25 authorizing the carrier or self-insured employer to verify or
26 determine through the Division of Unemployment Compensation
27 whether an employing unit is reporting such an employee as an
28 employee while the carrier is concurrently paying workers'
29 compensation benefits to the employee.

30 Section 13. Section 440.107, Florida Statutes, is
31 amended to read:

1 440.107 Department powers to enforce employer
2 compliance with coverage requirements.--

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

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

1 or carrier's duty to provide benefits under this chapter or
2 upon any of the employer's and carrier's rights and defenses
3 under this chapter, including exclusive remedy.

4 (3) The department shall enforce workers' compensation
5 coverage requirements, including the requirements that the
6 employer secure the payment of workers' compensation coverage,
7 provide the carrier with information to accurately determine
8 payroll, and correctly assign employee classification codes.
9 In addition to any other powers under this chapter, the
10 department may:

11 (a) Conduct investigations for the purpose of ensuring
12 employer compliance;

13 (b) Enter and inspect any place of business at any
14 reasonable time for the purpose of investigating employer
15 compliance;

16 (c) Examine and copy business records;

17 (d) Administer oaths and affirmations;

18 (e) Certify to official acts;

19 (f) Issue and serve subpoenas for attendance of
20 witnesses or production of business records, books, papers,
21 correspondence, memoranda, and other records;

22 (g) Issue stop-work orders, penalty-assessment orders,
23 and any other orders necessary for the administration of this
24 section;

25 (h) Enforce the terms of a stop-work order;

26 (i) Levy and pursue actions to recover penalties; and

27 (j) Seek injunctions and other appropriate relief.

28 (4) The department shall designate representatives who
29 may serve subpoenas and other process of the department issued
30 under this section.

31

1 (5) ~~The department shall specify by rule the business~~
2 ~~records that employers must maintain and produce to comply~~
3 ~~with this section.~~~~The department and its authorized~~
4 ~~representatives may enter and inspect any place of business at~~
5 ~~any reasonable time for the limited purpose of investigating~~
6 ~~compliance with workers' compensation coverage requirements~~
7 ~~under this chapter. Each employer shall keep true and accurate~~
8 ~~business records that contain such information as the~~
9 ~~department prescribes by rule. The business records must~~
10 ~~contain information necessary for the department to determine~~
11 ~~compliance with workers' compensation coverage requirements~~
12 ~~and must be maintained within this state by the business, in~~
13 ~~such a manner as to be accessible within a reasonable time~~
14 ~~upon request by the department. The business records must be~~
15 ~~open to inspection and be available for copying by the~~
16 ~~department at any reasonable time and place and as often as~~
17 ~~necessary. The department may require from any employer any~~
18 ~~sworn or unsworn reports, pertaining to persons employed by~~
19 ~~that employer, deemed necessary for the effective~~
20 ~~administration of the workers' compensation coverage~~
21 ~~requirements.~~

22 ~~(3)~~ ~~In discharging its duties, the department may~~
23 ~~administer oaths and affirmations, certify to official acts,~~
24 ~~issue subpoenas to compel the attendance of witnesses and the~~
25 ~~production of books, papers, correspondence, memoranda, and~~
26 ~~other records deemed necessary by the department as evidence~~
27 ~~in order to ensure proper compliance with the coverage~~
28 ~~provisions of this chapter.~~

29 (6)~~(4)~~ ~~If a person has refused to obey a subpoena to~~
30 ~~appear before the department or its authorized representative,~~
31 ~~to and produce evidence requested by the department, or to~~

1 give testimony about the matter that is under investigation, a
2 court has jurisdiction to issue an order requiring compliance
3 with the subpoena if the court has jurisdiction in the
4 geographical area where the inquiry is being carried on or in
5 the area where the person who has refused the subpoena is
6 found, resides, or transacts business. Failure to obey such a
7 court order may be punished by the court as contempt, either
8 civilly or criminally.

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

1 shall be effective immediately, the department shall
2 immediately proceed with service upon the employer which shall
3 be effective upon all employer work sites in the state. A
4 stop-work order may be served with regard to an employer's
5 work site by posting a copy of the stop-work order in a
6 conspicuous location at the work site. The order shall remain
7 in effect until the department issues an order releasing the
8 stop-work order upon the finding that the employer has come
9 into compliance with the coverage requirements of this chapter
10 and has paid any penalty assessed under this section. The
11 department may require an employer who is found to have failed
12 to comply with the coverage requirements of s. 440.38 to file
13 with the department, as a condition of release from a
14 stop-work order, periodic reports for a probationary period
15 that shall not exceed 2 years of demonstrating continued
16 compliance with this chapter. The department shall by rule
17 specify the reports required and the time for filing under
18 this subsection.

19 (b) Stop-work orders and penalty-assessment orders
20 issued under this section against a corporation, partnership,
21 or sole proprietorship shall be in effect against any
22 successor corporation or business entity that has one or more
23 of the same principals or officers as the corporation or
24 partnership against which the stop-work order was issued and
25 are engaged in the same or related enterprise.

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

30 (d)1. In addition to any penalty, stop-work order, or
31 injunction, the department shall assess against any employer

1 who has failed to secure the payment of compensation as
2 required by this chapter a penalty of five times the amount
3 the employer would have paid in premium when applying approved
4 manual rates to the employer's payroll during periods it
5 failed to secure the payment of workers' compensation required
6 by this chapter in the preceding 3-year period, or \$1,000,
7 whichever is greater.

8 2. Any subsequent violation within 5 years of the most
9 recent violation shall, in addition, to the penalty set forth
10 in this subsection, be considered a knowing act within the
11 meaning of s. 440.105.

12 (e) When an employer fails to provide business records
13 sufficient to enable the department to determine the
14 employer's payroll for the period requested for the
15 calculation of the penalty provided in paragraph (d),
16 remuneration shall be imputed, for penalty calculation
17 purposes, as follows: for each employee, corporate officer,
18 sole proprietor, or partner, the imputed weekly payroll for
19 each such individual shall be the statewide average weekly
20 wage as defined in s. 440.12(2) multiplied by 1.5.

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

27 (8)(6) In addition to filing a stop-work order under
28 subsection (7), the department may file a complaint in the
29 circuit court in and for Leon County to enjoin any employer,
30 who has failed to secure the payment of workers' compensation
31 as required by this chapter, from employing individuals and

1 from conducting business until the employer presents evidence
2 satisfactory to the department of having secured the payment
3 of workers' for compensation required by this chapter and pays
4 a civil penalty assessed by ~~to~~ the department under this
5 section, ~~to be deposited by the department into the Workers'~~
6 ~~Compensation Administration Trust Fund, in the amount of \$100~~
7 ~~per day for each day the employer was not in compliance with~~
8 ~~this chapter.~~

9 ~~(9)(7) In addition to any penalty, stop-work order, or~~
10 ~~injunction, the department shall assess against any employer,~~
11 ~~who has failed to secure the payment of compensation as~~
12 ~~required by this chapter, a penalty in the following amount:~~

13 ~~(a) An amount equal to at least the amount that the~~
14 ~~employer would have paid or up to twice the amount the~~
15 ~~employer would have paid during periods it illegally failed to~~
16 ~~secure payment of compensation in the preceding 3-year period~~
17 ~~based on the employer's payroll during the preceding 3-year~~
18 ~~period; or~~

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

20
21 ~~Any penalty assessed under this subsection is due within 30~~
22 ~~days after the date on which the employer is notified, except~~
23 ~~that, if the department has posted a stop-work order or~~
24 ~~obtained injunctive relief against the employer, payment is~~
25 ~~due, in addition to those conditions set forth in this~~
26 ~~section, as a condition to relief from a stop-work order or an~~
27 ~~injunction. Interest shall accrue on amounts not paid when due~~
28 ~~at the rate of 1 percent per month. The department division~~
29 ~~shall adopt rules to administer this section.~~

30 ~~(10)(8) The department may bring an action in circuit~~
31 ~~court to recover penalties assessed under this section,~~

1 including any interest owed to the department pursuant to this
2 section. In any action brought by the department pursuant to
3 this section in which it prevails, the circuit court shall
4 award costs, including the reasonable costs of investigation
5 and a reasonable attorney's fee.

6 (11)~~(9)~~ Any judgment obtained by the department and
7 any penalty due pursuant to the service of a stop-work order
8 or otherwise due under this section shall, until collected,
9 constitute a lien upon the entire interest of the employer,
10 legal or equitable, in any property, real or personal,
11 tangible or intangible; however, such lien is subordinate to
12 claims for unpaid wages and any prior recorded liens, and a
13 lien created by this section is not valid against any person
14 who, subsequent to such lien and in good faith and for value,
15 purchases real or personal property from such employer or
16 becomes the mortgagee on real or personal property of such
17 employer, or against a subsequent attaching creditor, unless,
18 with respect to real estate of the employer, a notice of the
19 lien is recorded in the public records of the county where the
20 real estate is located, and with respect to personal property
21 of the employer, the notice is recorded with the Secretary of
22 State.

23 (12)~~(10)~~ Any law enforcement agency in the state may,
24 at the request of the department, render any assistance
25 necessary to carry out the provisions of this section,
26 including, but not limited to, preventing any employee or
27 other person from remaining at a place of employment or job
28 site after a stop-work order or injunction has taken effect.

29 (13)~~(11)~~ Agency action ~~Actions~~ by the department under
30 this section must be contested as provided in chapter 120. All
31 ~~civil~~ penalties assessed by the department must be paid into

1 the Workers' Compensation Administration Trust Fund. ~~The~~
2 ~~department shall return any sums previously paid, upon~~
3 ~~conclusion of an action, if the department fails to prevail~~
4 ~~and if so directed by an order of court or an administrative~~
5 ~~hearing officer. The requirements of this subsection may be~~
6 ~~met by posting a bond in an amount equal to twice the penalty~~
7 ~~and in a form approved by the department.~~

8 (14)~~(12)~~ If the department division finds that an
9 employer who is certified or registered under part I or part
10 II of chapter 489 and who is required to secure payment of
11 workers' compensation provided for by this chapter to his
12 or her employees has failed to do so, the department division
13 shall immediately notify the Department of Business and
14 Professional Regulation.

15 Section 14. Subsection (3) of section 440.11, Florida
16 Statutes, is amended to read:

17 440.11 Exclusiveness of liability.--

18 (3) An employer's workers' compensation carrier,
19 service agent, or safety consultant shall not be liable as a
20 third-party tortfeasor to employees of the employer or
21 employees of its subcontractors for assisting the employer and
22 its subcontractors, if any, in carrying out the employer's
23 rights and responsibilities under this chapter by furnishing
24 any safety inspection, safety consultative service, or other
25 safety service incidental to the workers' compensation or
26 employers' liability coverage or to the workers' compensation
27 or employer's liability servicing contract. Without
28 limitation, a safety consultant may include an owner, as
29 defined in chapter 713, or an owner's related, affiliated, or
30 subsidiary companies and the employees of each.The exclusion
31 from liability under this subsection shall not apply in any

1 case in which injury or death is proximately caused by the
2 willful and unprovoked physical aggression, or by the
3 negligent operation of a motor vehicle, by employees,
4 officers, or directors of the employer's workers' compensation
5 carrier, service agent, or safety consultant.

6 Section 15. Section 440.12, Florida Statutes, is
7 amended to read:

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

10 (1) No compensation shall be allowed for the first 7
11 calendar days of the disability, except benefits provided for
12 in ~~ss.~~s.440.13 and 440.134. However, if the injury results
13 in disability and payment of any compensation benefits for ~~of~~
14 more than 21 calendar days, compensation shall be allowed from
15 the commencement of the disability. Calendar days of
16 disability do not have to be consecutive.All weekly
17 compensation payments, except for the first payment, shall be
18 paid by check or, if authorized by the employee, deposited
19 directly into the employee's account at a financial
20 institution. As used in this subsection, the term "financial
21 institution" means a financial institution as defined in s.
22 655.005(1)(h).

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

30 (a) Equal to 100 percent of the statewide average
31 weekly wage, determined as hereinafter provided for the year

1 in which the accident ~~injury~~ occurred regardless of whether
2 the employee thereafter returns to employment of any
3 description and regardless of any subsequent date upon which
4 the employee becomes disabled, except specifically in cases of
5 occupational disease in which the date of disability may be
6 synonymous with date of accident; however, the increase to 100
7 percent from 66 2/3 percent of the statewide average weekly
8 wage shall apply only to injuries occurring on or after August
9 1, 1979; and

10 (b) Adjusted to the nearest dollar.

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

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

1 suffered after December 31, 1967, and prior to July 1, 1970.
2 The provisions of this section as amended effective July 1,
3 1970, shall govern with respect to disability due to injuries
4 suffered after June 30, 1970, and prior to July 1, 1972. The
5 provisions of this section as amended effective July 1, 1972,
6 shall govern with respect to disability due to injuries
7 suffered after June 30, 1972, and prior to July 1, 1973. The
8 provisions of this section, as amended effective July 1, 1973,
9 shall govern with respect to disability due to injuries
10 suffered after June 30, 1973, and prior to January 1, 1975.

11 Section 16. Section 440.125, Florida Statutes, is
12 amended to read:

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

28 Section 17. Effective March 1, 2004, section 440.13,
29 Florida Statutes, is amended to read:

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

1 (1) DEFINITIONS.--As used in this section, the term:
2 ~~(a) "Alternate medical care" means a change in~~
3 ~~treatment or health care provider.~~
4 (a)(b) "Attendant care" means care rendered by trained
5 professional attendants after the date of execution of a
6 written prescription or order therefor by an authorized
7 provider which is beyond the scope of household duties.
8 Attendant care does not include housecleaning, meal
9 preparation, or home or yard maintenance, except in cases of a
10 severity that the injured worker would be confined to a
11 nursing facility as the only alternative to the provision of
12 such care. Family members may provide nonprofessional
13 attendant care, but may not be compensated under this chapter
14 for care that falls within the scope of household duties and
15 other services normally and gratuitously provided by family
16 members. "Family member" means a spouse, father, mother,
17 brother, sister, child, grandchild, father-in-law,
18 mother-in-law, aunt, or uncle.
19 ~~(c) "Carrier" means, for purposes of this section,~~
20 ~~insurance carrier, self-insurance fund or individually~~
21 ~~self-insured employer, or assessable mutual insurer.~~
22 (b)(d) "Catastrophic injury" means an injury as
23 defined in s. 440.02.
24 (c)(e) "Certified health care provider" means a health
25 care provider who has been certified by the department in
26 accordance with department rules for qualification ~~agency or~~
27 ~~who has entered an agreement with a licensed managed care~~
28 ~~organization to provide treatment to injured workers under~~
29 ~~this section.~~ Certification of such health care provider must
30 include documentation that the health care provider has read,
31 and is familiar with, and has committed to comply with, the

1 portions of the statute, impairment guides, standards of care,
2 practice guidelines and parameters,and rules which govern the
3 provision of remedial treatment, care, and attendance, as
4 prescribed by the department.

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

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

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

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

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

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

30 ~~(k) "Independent medical examination" means an~~
31 ~~objective evaluation of the injured employee's medical~~

1 ~~condition, including, but not limited to, impairment or work~~
2 ~~status, performed by a physician or an expert medical advisor~~
3 ~~at the request of a party, a judge of compensation claims, or~~
4 ~~the agency to assist in the resolution of a dispute arising~~
5 ~~under this chapter.~~

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

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

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

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

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 24 ~~18~~
25 treatments or rendered 12 ~~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 limitations
14 or restrictions prescribed by the provider at least every 30
15 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: one board-certified orthopedist who is a
11 physician licensed under chapter 458 or an osteopathic
12 physician licensed under chapter 459; one fellowship-trained,
13 board-certified spine surgeon who is a physician licensed
14 under chapter 458 or an osteopathic physician licensed under
15 chapter 459; one board-certified occupational-medicine
16 specialist who is a physician licensed under chapter 458 or an
17 osteopathic physician licensed under chapter 459; one physical
18 therapist; one board-certified physical medicine specialist
19 who is a physician licensed under chapter 458 or an
20 osteopathic physician licensed under chapter 459; one
21 board-certified neurologist or anesthesiologist specializing
22 in pain medicine who is a physician licensed under chapter 458
23 or an osteopathic physician licensed under chapter 459; one
24 chiropractor; one masters-level or doctoral-level,
25 university-based clinical research scientist or academician;
26 one registered nurse who is certified in quality assurance;
27 one representative of a professional utilization review
28 organization that has been accredited by the Utilization
29 Review Accreditation Commission; and the Chief Financial
30 Officer or his or her designee.

31 (b) POWERS AND DUTIES:

1 1. The board shall assist the department in monitoring
2 and auditing peer review organizations to determine compliance
3 with this chapter, including, but not limited to, compliance
4 with standards of care, practice parameters, and other
5 statutory provisions governing medical disputes, and with
6 applicable provisions in contracts between the department and
7 the peer review organizations. The board shall also review
8 other aspects of the medical delivery system and dispute
9 resolution process and determinations and make recommendations
10 to the three-member panel for regulatory or statutory changes
11 needed to assure the efficiency and effectiveness of the
12 medical delivery system.

13 2. Develop, and update as necessary, recommendations
14 for practice parameters to be utilized by health care
15 providers certified under this chapter. The practice
16 parameters must augment the "evidence-based" framework and
17 standards of care provided in this chapter.

18 3. When considering new protocols and technologies,
19 the board should assure that new procedures have achieved at
20 least comparable "evidence-based" support to existing and
21 related procedures, but not be required to have superior
22 support in order to be utilized by providers.

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

25 5. The board shall deliver its recommendations to the
26 three-member panel. The three-member panel shall consider the
27 board's recommendations and adopt practice parameters as
28 necessary. The department shall adopt by rule practice
29 parameters adopted by the three-member panel.

30 (c) The Chief Financial Officer shall appoint the
31 members of the board.

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

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

5 4. Except for the Chief Financial Officer, each member
6 shall serve for a period of 3 years and may serve no more than
7 two consecutive terms. However, upon initial creation of this
8 board, five of the members shall be appointed to serve for an
9 initial 2-year term and five members for 3-year terms.

10 5. The members shall choose a chair.

11 6. The division shall provide administrative support
12 to the board.

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

15 (e) A medical opinion other than the opinion of an
16 authorized treating provider is inadmissible in proceedings
17 before the Claims Bureau, the peer review panel, or the judges
18 of compensation claims.~~INDEPENDENT MEDICAL EXAMINATIONS.--~~

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

27 ~~(b) Each party is bound by his or her selection of an~~
28 ~~independent medical examiner and is entitled to an alternate~~
29 ~~examiner only if+~~

30
31

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

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

6 ~~3. The examiner is unavailable due to injury, death,~~
7 ~~or relocation outside a reasonably accessible geographic area;~~
8 ~~or~~

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

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

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

25 ~~(d) If the employee fails to appear for the~~
26 ~~independent medical examination without good cause and fails~~
27 ~~to advise the physician at least 24 hours before the scheduled~~
28 ~~date for the examination that he or she cannot appear, the~~
29 ~~employee is barred from recovering compensation for any period~~
30 ~~during which he or she has refused to submit to such~~
31 ~~examination. Further, the employee shall reimburse the carrier~~

1 ~~50 percent of the physician's cancellation or no-show fee~~
2 ~~unless the carrier that schedules the examination fails to~~
3 ~~timely provide to the employee a written confirmation of the~~
4 ~~date of the examination pursuant to paragraph (c) which~~
5 ~~includes an explanation of why he or she failed to appear. The~~
6 ~~employee may appeal to a judge of compensation claims for~~
7 ~~reimbursement when the carrier withholds payment in excess of~~
8 ~~the authority granted by this section.~~

9 ~~(e) No medical opinion other than the opinion of a~~
10 ~~medical advisor appointed by the judge of compensation claims~~
11 ~~or agency, an independent medical examiner, or an authorized~~
12 ~~treating provider is admissible in proceedings before the~~
13 ~~judges of compensation claims.~~

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

18 (6) UTILIZATION REVIEW.--Carriers shall review all
19 bills, invoices, and other claims for payment submitted by
20 health care providers in order to identify overutilization and
21 billing errors, or and may hire peer review consultants
22 accredited by the Utilization Review Accreditation Commission
23 for Workers' Compensation or other comparable qualifications
24 adopted by the department by rule, to identify overutilization
25 and billing errors, conduct prospective and retrospective
26 reviews, and conduct other recognized forms of utilization
27 review or conduct independent medical evaluations. Such
28 consultants, including peer review organizations, are immune
29 from liability in the execution of their functions under this
30 subsection to the extent provided in s. 766.101. If a carrier
31 finds that overutilization of medical services ~~or a billing~~

1 ~~error~~ has occurred, it must disallow or adjust payment for
2 such services ~~or error~~ without order of a judge of
3 compensation claims or the department ~~agency~~, if the carrier,
4 in making its determination, has complied with this section
5 and rules adopted by the department ~~agency~~.

6 (7) UTILIZATION ~~AND~~ REIMBURSEMENT DISPUTES.--

7 (a) Any health care provider, carrier, or employer who
8 elects to contest the disallowance or adjustment of treatment
9 or payment by a carrier under subsection (6) must, within 30
10 days after receipt of notice of disallowance or adjustment of
11 payment, petition the department ~~agency~~ to resolve the
12 dispute. The petitioner must serve a copy of the petition on
13 the carrier and on all affected parties by certified mail. The
14 petition must be accompanied by all documents and records that
15 support the allegations contained in the petition. Failure of
16 a petitioner to submit such documentation to the department
17 ~~agency~~ results in dismissal of the petition.

18 (b) The carrier must submit to the department ~~agency~~
19 within 10 days after receipt of the petition all documentation
20 substantiating the carrier's disallowance or adjustment.
21 Failure of the carrier to submit the requested documentation
22 to the department ~~agency~~ within 10 days constitutes a waiver
23 of all objections to the petition.

24 (c) Within 60 days after receipt of all documentation,
25 the department ~~agency~~ must provide to the petitioner, the
26 carrier, and the affected parties a written determination of
27 whether the carrier properly adjusted or disallowed payment.
28 The department ~~agency~~ must be guided by standards and policies
29 set forth in this chapter, including all applicable
30 reimbursement schedules, in rendering its determination.

31

1 (d) If the department, as a result of utilization
2 review as defined in this subsection, ~~agency~~ finds an improper
3 disallowance or improper adjustment of treatment or payment by
4 an insurer, the insurer shall reimburse the health care
5 provider, facility, insurer, or employer within 30 days,
6 subject to the penalties provided in this subsection.

7 (e) The department ~~agency~~ shall adopt rules to carry
8 out this subsection which are consistent with this section.
9 The rules may include, but are not limited to, provisions for
10 consolidating petitions filed by a petitioner and expanding
11 the timetable for rendering a determination upon a
12 consolidated petition.

13 (f) Any carrier that engages in a pattern or practice
14 of arbitrarily or unreasonably disallowing or reducing
15 payments to health care providers may be subject to one or
16 more of the following penalties imposed by the department
17 ~~agency~~:

18 1. Repayment of the appropriate amount to the health
19 care provider.

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

23 3. Award of the health care provider's costs,
24 including a reasonable attorney's fee, for prosecuting the
25 petition.

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

27 (a) Carriers must report to the department ~~agency~~ all
28 instances in which the carrier disallows or adjusts payment or
29 a determination has been made that the provided or recommended
30 treatment is in excess of the standards of care and practice
31 parameters provided for in this chapter or by department rule

1 of overutilization including, but not limited to, all
2 instances in which the carrier disallows or adjusts payment.
3 The department ~~agency~~ shall determine whether a pattern or
4 practice of overutilization exists.

5 (b) If the department ~~agency~~ determines that a health
6 care provider has engaged in a pattern or practice of
7 overutilization or a violation of this chapter or rules
8 adopted by the department, including a pattern or practice of
9 providing treatment in excess of the standards of care or
10 practice parameters ~~agency~~, it may impose one or more of the
11 following penalties:

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

24 ~~(9) EXPERT MEDICAL ADVISORS.~~

25 ~~(a) The agency shall certify expert medical advisors~~
26 ~~in each specialty to assist the agency and the judges of~~
27 ~~compensation claims within the advisor's area of expertise as~~
28 ~~provided in this section. The agency shall, in a manner~~
29 ~~prescribed by rule, in certifying, recertifying, or~~
30 ~~decertifying an expert medical advisor, consider the~~
31 ~~qualifications, training, impartiality, and commitment of the~~

1 ~~health care provider to the provision of quality medical care~~
2 ~~at a reasonable cost. As a prerequisite for certification or~~
3 ~~recertification, the agency shall require, at a minimum, that~~
4 ~~an expert medical advisor have specialized workers'~~
5 ~~compensation training or experience under the workers'~~
6 ~~compensation system of this state and board certification or~~
7 ~~board eligibility.~~

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

22 ~~(c) If there is disagreement in the opinions of the~~
23 ~~health care providers, if two health care providers disagree~~
24 ~~on medical evidence supporting the employee's complaints or~~
25 ~~the need for additional medical treatment, or if two health~~
26 ~~care providers disagree that the employee is able to return to~~
27 ~~work, the agency may, and the judge of compensation claims~~
28 ~~shall, upon his or her own motion or within 15 days after~~
29 ~~receipt of a written request by either the injured employee,~~
30 ~~the employer, or the carrier, order the injured employee to be~~
31 ~~evaluated by an expert medical advisor. The opinion of the~~

1 ~~expert medical advisor is presumed to be correct unless there~~
2 ~~is clear and convincing evidence to the contrary as determined~~
3 ~~by the judge of compensation claims. The expert medical~~
4 ~~advisor appointed to conduct the evaluation shall have free~~
5 ~~and complete access to the medical records of the employee. An~~
6 ~~employee who fails to report to and cooperate with such~~
7 ~~evaluation forfeits entitlement to compensation during the~~
8 ~~period of failure to report or cooperate.~~

9 ~~(d) The expert medical advisor must complete his or~~
10 ~~her evaluation and issue his or her report to the agency or to~~
11 ~~the judge of compensation claims within 45 days after receipt~~
12 ~~of all medical records. The expert medical advisor must~~
13 ~~furnish a copy of the report to the carrier and to the~~
14 ~~employee.~~

15 ~~(e) An expert medical advisor is not liable under any~~
16 ~~theory of recovery for evaluations performed under this~~
17 ~~section without a showing of fraud or malice. The protections~~
18 ~~of s. 766.101 apply to any officer, employee, or agent of the~~
19 ~~agency and to any officer, employee, or agent of any entity~~
20 ~~with which the agency has contracted under this subsection.~~

21 ~~(f) If the agency or a judge of compensation claims~~
22 ~~determines that the services of a certified expert medical~~
23 ~~advisor are required to resolve a dispute under this section,~~
24 ~~the carrier must compensate the advisor for his or her time in~~
25 ~~accordance with a schedule adopted by the agency. The agency~~
26 ~~may assess a penalty not to exceed \$500 against any carrier~~
27 ~~that fails to timely compensate an advisor in accordance with~~
28 ~~this section.~~

29 ~~(9)(10)~~ WITNESS FEES.--Any health care provider who
30 gives a deposition shall be allowed a witness fee for the
31 reasonable time spent preparing for and rendering testimony.

1 The amount charged by the witness may not exceed \$200 per
2 hour. An expert witness who has never provided direct
3 professional services to a party but has merely reviewed
4 medical records and provided an expert opinion or has provided
5 only direct professional services that were unrelated to the
6 workers' compensation case may not be allowed a witness fee in
7 excess of \$200 per day.

8 (10)~~(11)~~ AUDITS BY THE DIVISION OF WORKERS'
9 COMPENSATION AGENCY FOR HEALTH CARE ADMINISTRATION AND THE
10 DEPARTMENT OF INSURANCE; JURISDICTION.--

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

1 practice parameters, and protocols in accordance with this
2 chapter and department rule, or for overutilization, it must
3 return those payments to the carrier. The department agency
4 may assess a penalty not to exceed \$500 for each overpayment
5 that is not refunded within 30 days after notification of
6 overpayment by the department agency or carrier.

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

1 (c) Subject to s. 440.192(7), the department ~~The~~
2 ~~agency~~ has exclusive jurisdiction to decide any matters
3 concerning reimbursement, to resolve any overutilization
4 dispute under subsection (7), and to decide any question
5 concerning overutilization under subsection (8), which
6 question or dispute arises after January 1, 1994.

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

19 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
20 REIMBURSEMENT ALLOWANCES.--

21 (a) A three-member panel is created, consisting of the
22 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief
23 Financial Officer's ~~Insurance Commissioner's~~ designee, and two
24 members to be appointed by the Governor, subject to
25 confirmation by the Senate, one member who, on account of
26 present or previous vocation, employment, or affiliation,
27 shall be classified as a representative of employers, the
28 other member who, on account of previous vocation, employment,
29 or affiliation, shall be classified as a representative of
30 employees. The panel shall determine statewide schedules of
31 maximum reimbursement allowances for medically necessary

1 treatment, care, and attendance provided by physicians,
2 hospitals, ambulatory surgical centers, work-hardening
3 programs, pain programs, and durable medical equipment. All
4 amendments provided herein to this subsection shall be
5 effective July 1, 2003. Until the three-member panel approves
6 a schedule of reimbursement for inpatient hospital care based
7 on diagnostic-related group (DRG) methodology, or some other
8 nationally recognized methodology for reimbursement of
9 inpatient hospital care,the maximum reimbursement allowances
10 for inpatient hospital care shall be 20 percent less than the
11 per-diem rates in effect on December 31, 2002. The stop-loss
12 point for inpatient services shall be \$75,000, after which the
13 hospital shall be reimbursed 65 percent of its usual and
14 customary charges. Inpatient hospital care shall be reimbursed
15 at the maximum reimbursement allowance or at a lesser amount
16 mutually negotiated between the health care facility and the
17 employer or carrier. The statewide schedules of maximum
18 reimbursement allowances shall ~~based on a schedule of per diem~~
19 rates, to be approved by the three-member panel no later than
20 March 1, 1994, to be used in conjunction with a
21 precertification manual as determined by the department
22 agency. All compensable charges for hospital outpatient care
23 shall be reimbursed at 75 percent of usual and customary
24 charges. Until the three-member panel approves a schedule of
25 per diem rates for inpatient hospital care and it becomes
26 effective, all compensable charges for hospital inpatient care
27 must be reimbursed at 75 percent of their usual and customary
28 charges. Annually,The three-member panel shall adopt
29 schedules of maximum reimbursement allowances for physicians,
30 hospital inpatient care andhospital outpatient care. Maximum
31 reimbursement allowances for physicians, other health care

1 providers, ambulatory surgical centers, hospital outpatient
2 treatment, work-hardening programs, and pain programs shall,
3 on average, be equal to 125 percent of the reimbursement
4 allowed by Medicare as of December 31, 2002, except the
5 reimbursement for surgical procedures shall, on average, be
6 equal to 150 percent of the reimbursement allowed by Medicare
7 as of December 31, 2002. The maximum reimbursement allowance
8 for the facility charge for outpatient surgical procedures
9 shall, on average, be equal to 125 percent of the
10 reimbursement allowed by Medicare as of December 31, 2002,
11 until the three-member panel approves a schedule of maximum
12 reimbursement for outpatient surgical procedures based on the
13 Medicare Ambulatory Payment Classification (APC) System
14 reimbursement methodology or some other national model for
15 reimbursement of outpatient surgical procedures. The
16 three-member panel shall determine the maximum reimbursement
17 allowance for workers' compensation specific codes and shall
18 address increases to the statewide schedules of maximum
19 reimbursement allowances at least every 2 years. Reimbursement
20 allowances for medical treatment, care, and attendance, other
21 than those provided for in this subsection, are prohibited
22 unless specifically permitted in this subsection. However, the
23 maximum percentage of increase in the individual reimbursement
24 allowance may not exceed the percentage of increase in the
25 Consumer Price Index for the previous year. An individual
26 physician, hospital, ambulatory surgical center, pain program,
27 or work-hardening program shall be reimbursed either the usual
28 and customary charge for treatment, care, and attendance, the
29 agreed-upon contract price, or the maximum reimbursement
30 allowance in the appropriate schedule, whichever is less.
31

1 (b) As to reimbursement for a prescription medication,
2 the reimbursement amount for a prescription shall be the
3 average wholesale price times ~~1.2~~ plus \$2\$4.18 for the
4 dispensing fee, except where the carrier has contracted for a
5 lower amount. Fees for pharmaceuticals and pharmaceutical
6 services shall be reimbursable at the applicable fee schedule
7 amount. Where the employer or carrier has contracted for such
8 services and the employee elects to obtain them through a
9 provider not a party to the contract, the carrier shall
10 reimburse at the schedule, negotiated, or contract price,
11 whichever is lower.

12 (c) Reimbursement for all fees and other charges for
13 such treatment, care, and attendance, including treatment,
14 care, and attendance provided by any hospital or other health
15 care provider, ambulatory surgical center, work-hardening
16 program, or pain program, must not exceed the amounts provided
17 by the uniform schedule of maximum reimbursement allowances as
18 determined by the panel and published in rules adopted by the
19 department or as otherwise provided in this section. ~~This~~
20 ~~subsection also applies to independent medical examinations~~
21 ~~performed by health care providers under this chapter. Until~~
22 ~~the three-member panel approves a uniform schedule of maximum~~
23 ~~reimbursement allowances and it becomes effective, all~~
24 ~~compensable charges for treatment, care, and attendance~~
25 ~~provided by physicians, ambulatory surgical centers,~~
26 ~~work-hardening programs, or pain programs shall be reimbursed~~
27 ~~at the lowest maximum reimbursement allowance across all 1992~~
28 ~~schedules of maximum reimbursement allowances for the services~~
29 ~~provided regardless of the place of service. In determining~~
30 ~~the uniform schedule, the panel shall first approve the data~~
31 ~~which it finds representative of prevailing charges in the~~

1 ~~state for similar treatment, care, and attendance of injured~~
2 ~~persons.~~ Each health care provider, health care facility,
3 ambulatory surgical center, work-hardening program, or pain
4 program receiving workers' compensation payments shall
5 maintain records verifying their usual charges. In
6 establishing the uniform schedule of maximum reimbursement
7 allowances, the panel must consider:

- 8 1. The levels of reimbursement for similar treatment,
9 care, and attendance made by other health care programs or
10 third-party providers;
- 11 2. The impact upon cost to employers for providing a
12 level of reimbursement for treatment, care, and attendance
13 which will ensure the availability of treatment, care, and
14 attendance required by injured workers;
- 15 3. The financial impact of the reimbursement
16 allowances upon health care providers and health care
17 facilities, including trauma centers as defined in s.
18 395.4001, and its effect upon their ability to make available
19 to injured workers such medically necessary remedial
20 treatment, care, and attendance. The uniform schedule of
21 maximum reimbursement allowances must be reasonable, must
22 promote health care cost containment and efficiency with
23 respect to the workers' compensation health care delivery
24 system, and must be sufficient to ensure availability of such
25 medically necessary remedial treatment, care, and attendance
26 to injured workers; and
- 27 4. The most recent average maximum allowable rate of
28 increase for hospitals determined by the Health Care Board
29 under chapter 408.

30 (d) In addition to establishing the uniform schedule
31 of maximum reimbursement allowances, the panel shall:

1 1. Take testimony, receive records, and collect data
2 to evaluate the adequacy of the workers' compensation fee
3 schedule, nationally recognized fee schedules and alternative
4 methods of reimbursement to certified health care providers
5 and health care facilities for inpatient and outpatient
6 treatment and care.

7 2. Survey certified health care providers and health
8 care facilities to determine the availability and
9 accessibility of workers' compensation health care delivery
10 systems for injured workers.

11 3. Survey carriers to determine the estimated impact
12 on carrier costs and workers' compensation premium rates by
13 implementing changes to the carrier reimbursement schedule or
14 implementing alternative reimbursement methods.

15 4. Submit recommendations on or before January 1,
16 2003, and biennially thereafter, to the President of the
17 Senate and the Speaker of the House of Representatives on
18 methods to improve the workers' compensation health care
19 delivery system.

20
21 The department ~~division~~ shall provide data to the panel, as
22 required by the panel, to produce maximum reimbursement
23 allowances, including, but not limited to, utilization trends
24 in the workers' compensation health care delivery system. The
25 department ~~division~~ shall provide the panel with an annual
26 report regarding the resolution of medical reimbursement
27 disputes and any actions pursuant to s. 440.13(8). The
28 department ~~division~~ shall provide administrative support and
29 service to the panel to the extent requested by the panel.

30 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
31 AUTHORIZED TO RENDER MEDICAL CARE.--The department ~~agency~~

1 shall remove from the list of physicians or facilities
2 authorized to provide remedial treatment, care, and attendance
3 under this chapter the name of any physician or facility found
4 after reasonable investigation to have:

5 (a) Engaged in professional or other misconduct or
6 incompetency in connection with medical services rendered
7 under this chapter;

8 (b) Exceeded the limits of his or her or its
9 professional competence in rendering medical care under this
10 chapter, or to have made materially false statements regarding
11 his or her or its qualifications in his or her application;

12 (c) Failed to transmit copies of medical reports or
13 forms required under this section to the employer or carrier,
14 or failed to submit full and truthful medical reports of all
15 his or her or its findings to the employees, employer, or
16 carrier as required under this chapter;

17 (d) Solicited, or employed another to solicit for
18 himself or herself or itself or for another, professional
19 treatment, examination, or care of an injured employee in
20 connection with any claim under this chapter;

21 (e) Refused to appear before, or to answer upon
22 request of, the department ~~agency~~ or any duly authorized
23 officer of the state, any legal question, or to produce any
24 relevant book or paper concerning his or her conduct under any
25 authorization granted to him or her under this chapter;

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

28 (g) Engaged in a pattern of practice of
29 overutilization or a violation of this chapter or rules
30 adopted by the department; or ~~agency.~~

31

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

3 (14) PAYMENT OF MEDICAL FEES.--

4 (a) Except for emergency care treatment, fees for
5 medical services are payable only to a health care provider
6 certified and authorized to render remedial treatment, care,
7 or attendance under this chapter. Carriers shall pay, or
8 disallow or deny payment to, health care providers in the
9 manner and times set forth in this chapter and by department
10 rule. A health care provider may not collect or receive a fee
11 from an injured employee within this state, except as
12 otherwise provided by this chapter. Such providers have
13 recourse against the employer or carrier for payment for
14 services rendered in accordance with this chapter.

15 (b) Reimbursement ~~Fees charged~~ for remedial treatment,
16 care, and attendance, ~~except for independent medical~~
17 ~~examinations,~~ may not exceed or be less than the applicable
18 fee schedules adopted under this chapter, except as otherwise
19 provided in this chapter.

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

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

27 ~~(a) The Agency for Health Care Administration, in~~
28 ~~conjunction with the department and appropriate health~~
29 ~~professional associations and health-related organizations~~
30 ~~shall develop and may adopt by rule scientifically sound~~
31 ~~practice parameters for medical procedures relevant to~~

1 ~~workers' compensation claimants. Practice parameters developed~~
2 ~~under this section must focus on identifying effective~~
3 ~~remedial treatments and promoting the appropriate utilization~~
4 ~~of health care resources. Priority must be given to those~~
5 ~~procedures that involve the greatest utilization of resources~~
6 ~~either because they are the most costly or because they are~~
7 ~~the most frequently performed. Practice parameters for~~
8 ~~treatment of the 10 top procedures associated with workers'~~
9 ~~compensation injuries including the remedial treatment of~~
10 ~~lower back injuries must be developed by December 31, 1994.~~

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

19 ~~(c) Procedures must be instituted which provide for~~
20 ~~the periodic review and revision of practice parameters based~~
21 ~~on the latest outcomes data, research findings, technological~~
22 ~~advancements, and clinical experiences, at least once every 3~~
23 ~~years.~~

24 ~~(d) Practice parameters developed under this section~~
25 ~~must be used by carriers and the agency in evaluating the~~
26 ~~appropriateness and overutilization of medical services~~
27 ~~provided to injured employees.~~

28 Section 18. Section 440.132, Florida Statutes, is
29 amended to read:

30 440.132 Investigatory records relating to workers'
31 compensation managed care arrangements; confidentiality.--

1 (1) All investigatory records of the department Agency
2 ~~for Health Care Administration~~ made or received pursuant to s.
3 440.134 and any examination records necessary to complete an
4 investigation are confidential and exempt from the provisions
5 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
6 until the investigation is completed or ceases to be active,
7 except that portions of medical records which specifically
8 identify patients must remain confidential and exempt. An
9 investigation is considered "active" while such investigation
10 is being conducted by the department agency with a reasonable,
11 good faith belief that it may lead to the filing of
12 administrative, civil, or criminal proceedings. An
13 investigation does not cease to be active if the department
14 ~~agency~~ is proceeding with reasonable dispatch and there is
15 good faith belief that action may be initiated by the
16 department agency or other administrative or law enforcement
17 agency.

18 (2) The Legislature finds that it is a public
19 necessity that these investigatory and examination records be
20 held confidential and exempt during an investigation in order
21 not to compromise the investigation and disseminate
22 potentially inaccurate information. To the extent this
23 information is made available to the public, those persons
24 being investigated will have access to such information which
25 would potentially defeat the purpose of the investigation.
26 This would impede the effective and efficient operation of
27 investigatory governmental functions.

28 Section 19. Section 440.134, Florida Statutes, is
29 repealed.

30 Section 20. Section 440.135, Florida Statutes, is
31 repealed.

1 Section 21. Section 440.14, Florida Statutes, is
2 amended to read:

3 440.14 Determination of pay.--

4 (1) Except as otherwise provided in this chapter, the
5 average weekly wages of the injured employee on the date of
6 accident and not the date of disability at the time of the
7 injury shall be taken as the basis upon which to compute
8 compensation and shall be determined, subject to the
9 limitations of s. 440.12(2), as follows:

10 (a) If the injured employee has worked in the
11 employment in which she or he was working on the date of
12 accident at the time of the injury, whether for the same or
13 another employer, during substantially the whole of the 13
14 work weeks immediately preceding the accident injury, her or
15 his average weekly wage shall be ~~one-thirteenth~~ of the total
16 amount of wages earned in such employment during the 13 work
17 weeks divided by the number of weeks actually worked. As used
18 in this paragraph, the term "substantially the whole of 13
19 work weeks" means the calendar ~~shall be deemed to mean and~~
20 ~~refer to a constructive~~ period of 13 work weeks as a whole,
21 which shall be defined as the 13 work weeks before the
22 accident date, excluding the work week during which the
23 accident occurred. As used in this paragraph, the term "work"
24 means the 7 consecutive calendar day payroll period defined by
25 the employer's payroll practices. The ~~a consecutive period of~~
26 ~~91 days, and~~ The term "during substantially the whole of 13
27 work weeks" means ~~shall be deemed to mean~~ during not less than
28 75 ~~90~~ percent of the total customary full-time hours of
29 employment within such period considered as a whole. Raises
30 received during the aforementioned 13-work-week period are

31

1 only to be factored into the average weekly wage from the
2 actual date the raise became effective.

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

13 (c) If an employee is a seasonal worker and the
14 foregoing method cannot be fairly applied in determining the
15 average weekly wage, then the employee may use, instead of the
16 13 weeks immediately preceding the accident ~~injury~~, the
17 calendar year or the 52 weeks immediately preceding the
18 accident ~~injury~~. The employee will have the burden of proving
19 that this method will be more reasonable and fairer than the
20 method set forth in paragraphs (a) and (b) and, further, must
21 document prior earnings with W-2 forms, written wage
22 statements, or income tax returns. The employer shall have 30
23 days following the receipt of this written proof to adjust the
24 compensation rate, including the making of any additional
25 payment due for prior weekly payments, based on the lower rate
26 compensation.

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

31

1 (d)~~(e)~~ If it is established that the injured employee
2 was under 22 years of age when the accident occurred ~~injured~~
3 and that under normal conditions her or his wages should be
4 expected to increase during the period of disability, the fact
5 may be considered in arriving at her or his average weekly
6 wages.

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

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

23 (f)~~(g)~~ If compensation is due for a fractional part of
24 the week, the compensation for such fractional part shall be
25 determined by dividing the weekly compensation rate by the
26 number of days employed per week to compute the amount due for
27 each day.

28 (2) If, during the period of disability, the employer
29 continues to provide consideration, including board, rent,
30 housing, or lodging, the value of such consideration shall be
31

1 deducted when calculating the average weekly wage of the
2 employee so long as these benefits continue to be provided.

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

20 (4) Upon termination of the employee or upon
21 termination of the payment of fringe benefits of any employee
22 who is collecting indemnity benefits pursuant to s. 440.15(2)
23 or (3)(b), the employer shall within 7 days of such
24 termination file a corrected 13-week wage statement reflecting
25 the wages paid and the fringe benefits that had been paid to
26 the injured employee, as provided in s. 440.02(27).

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

31

1 (b) The employee waives any entitlement to interest,
2 penalties, and attorney's fees during the period in which the
3 employee has not provided information concerning the loss of
4 earnings from concurrent employment. Carriers are not subject
5 to penalties by the department ~~division~~ under s. 440.20(8)(b)
6 and (c) for unpaid compensation related to concurrent
7 employment during the period in which the employee has not
8 provided information concerning the loss of earnings from
9 concurrent employment.

10 Section 22. Section 440.15, Florida Statutes, is
11 amended to read:

12 440.15 Compensation for disability.--Compensation for
13 disability shall be paid to the employee, subject to the
14 limits provided in s. 440.12(2), as follows:

15 (1) PERMANENT TOTAL DISABILITY.--

16 (a) In case of total disability adjudged to be
17 permanent, 66 2/3 percent of the average weekly wages shall
18 be paid to the employee during the continuance of such total
19 disability.

20 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02
21 shall, in the absence of conclusive proof of a substantial
22 earning capacity, constitute permanent total disability. ~~Only~~
23 ~~claimants with catastrophic injuries are eligible for~~
24 ~~permanent total benefits. In no other case may permanent total~~
25 ~~disability be awarded.~~In any other case, no compensation
26 shall be payable under paragraph (a) if the employee is
27 engaged in or is physically capable of engaging in any work,
28 including sheltered employment. As used in this paragraph, the
29 term "sheltered employment" means work unavailable in the open
30 labor market which is offered to the employee or which is
31 actually performed by the employee. The burden is on the

1 employee to establish that he or she is unable to work, even
2 part-time, as a result of the industrial accident, if such
3 work is available within a 50-mile radius of the employee's
4 residence or such greater distance as the judge determines to
5 be reasonable under the circumstances. Such benefits shall be
6 payable until the employee reaches age 75.

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

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

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

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

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

11 (f)1. If permanent total disability results from
12 injuries that occurred subsequent to June 30, 1955, and for
13 which the liability of the employer for compensation has not
14 been discharged under s. 440.20(11), the injured employee
15 shall receive additional weekly compensation benefits equal to
16 3 5 percent of her or his weekly compensation rate, as
17 established pursuant to the law in effect on the date of her
18 or his injury, multiplied by the number of calendar years
19 since the date of injury. The weekly compensation payable and
20 the additional benefits payable under this paragraph, when
21 combined, may not exceed the maximum weekly compensation rate
22 in effect at the time of payment as determined pursuant to s.
23 440.12(2). Entitlement to these supplemental payments shall
24 cease at age 62 ~~if the employee is eligible for social~~
25 ~~security benefits under 42 U.S.C. ss. 402 and 423, whether or~~
26 ~~not the employee has applied for such benefits.~~ These
27 supplemental benefits shall be paid by the department out of
28 the Workers' Compensation Administration Trust Fund when the
29 injury occurred subsequent to June 30, 1955, and before July
30 1, 1984. These supplemental benefits shall be paid by the
31 employer when the injury occurred on or after July 1, 1984.

1 Supplemental benefits are not payable for any period prior to
2 October 1, 1974.

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

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

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

29 (2) TEMPORARY TOTAL DISABILITY.--

30 (a) In case of disability total in character but
31 temporary in quality, $66 \frac{2}{3}$ percent of the average weekly

1 wages shall be paid to the employee during the continuance
2 thereof, not to exceed 104 weeks except as provided in this
3 subsection, s. 440.12(1), and s. 440.14(3). This time
4 limitation for temporary benefits shall be presumed sufficient
5 unless there is clear and convincing evidence that the
6 employee has not yet reached maximum medical improvement and
7 continues to be eligible for temporary total disability
8 benefits. In no event shall temporary benefits exceed 260
9 weeks. Once the employee reaches the maximum number of weeks
10 allowed, or the employee reaches the date of maximum medical
11 improvement, whichever occurs earlier, temporary disability
12 benefits shall cease and the injured worker's permanent
13 impairment shall be determined.

14 (b) Notwithstanding the provisions of paragraph (a),
15 an employee who has sustained the loss of an arm, leg, hand,
16 or foot, has been rendered a paraplegic, paraparetic,
17 quadriplegic, or quadriparetic, or has lost the sight of both
18 eyes shall be paid temporary total disability of 80 percent of
19 her or his average weekly wage. The ~~increased~~ temporary total
20 disability compensation provided for in this paragraph must
21 not extend beyond 6 months from the date of the accident. The
22 compensation provided by this paragraph is not subject to the
23 limits provided in s. 440.12(2), but instead is subject to a
24 maximum weekly compensation rate of \$700. If, at the
25 conclusion of this period of increased temporary total
26 disability compensation, the employee has not reached maximum
27 medical improvement and is medically restricted in her or his
28 work abilities ~~is still temporarily totally disabled~~, the
29 employee shall continue to receive temporary total disability
30 compensation as set forth in paragraphs (a) and (c). The
31 period of time the employee has received this increased

1 compensation will be counted as part of, and not in addition
2 to, the maximum periods of time for which the employee is
3 entitled to compensation under paragraph (a) but not paragraph
4 (c).

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

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

26 (3) RESIDUAL FUNCTIONAL LOSS AND PERMANENT IMPAIRMENT
27 ~~AND WAGE-LOSS BENEFITS.--~~

28 (a) Intent to establish residual benefits.--

29 1. The Legislature finds that eligibility for
30 permanent partial disability benefits, or "residual benefits,"
31 should, in all cases that do not qualify for permanent total

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

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

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

1 b. Strong consideration must be given to the following
2 premises:

3 (I) Developing recommendations for a system in which
4 the eligibility period for maximum residual benefits is 401
5 weeks.

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

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

21 c. The three-member panel shall, on or before January
22 1, 2005, subject to the President of the Senate and the
23 Speaker of the House of Representatives the panel's
24 recommendations on the use or development of a uniform data
25 base or other resources in order to evaluate and quantify the
26 injured workers' pre-injury and post-injury earning capacity,
27 a methodology for calculating the length of time for which
28 benefits should be received, and a process for the evaluation
29 and quantification process.

30 (b)(a) Impairment benefits.--
31

1 1. For accidents that occur after July 1, 1994,once
2 the employee has reached the date of maximum medical
3 improvement, impairment benefits are due and payable within 14
4 ~~20~~ days after the carrier has knowledge of the impairment.
5 2. The three-member panel, in cooperation with the
6 department, shall ~~establish and use~~ The Florida Guides to a
7 ~~uniform~~ Permanent Impairment as the approved rating schedule.
8 This schedule must be based on medically or scientifically
9 demonstrable findings as well as the systems and criteria set
10 forth in the American Medical Association's guides to the
11 Evaluation of Permanent Impairment; the Snellen Charts,
12 published by American Medical Association Committee for Eye
13 Injuries; and the Minnesota Department of Labor and Industry
14 Disability Schedules. The schedule should be based upon
15 objective findings. The schedule shall be more comprehensive
16 than the AMA Guides to the Evaluation of Permanent Impairment
17 and shall expand the areas already addressed and address
18 additional areas not currently contained in the guides. On
19 August 1, 1979, and pending the adoption, by rule, of a
20 permanent schedule, Guides to the Evaluation of Permanent
21 Impairment, copyright 1977, 1971, 1988, by the American
22 Medical Association, shall be the ~~temporary~~ schedule and shall
23 be used for the purposes hereof. For injuries after July 1,
24 1990, pending the adoption by rule of a uniform disability
25 rating agency schedule, the Minnesota Department of Labor and
26 Industry Disability Schedule shall be used unless that
27 schedule does not address an injury. In such case, the Guides
28 to the Evaluation of Permanent Impairment by the American
29 Medical Association shall be used. Determination of permanent
30 impairment under this schedule must be made by a physician
31 licensed under chapter 458, a doctor of osteopathic medicine

1 licensed under chapters 458 and 459, a chiropractic physician
2 licensed under chapter 460, a podiatric physician licensed
3 under chapter 461, an optometrist licensed under chapter 463,
4 or a dentist licensed under chapter 466, as appropriate
5 considering the nature of the injury. No other persons are
6 authorized to render opinions regarding the existence of or
7 the extent of permanent impairment.

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

19 a. The expiration of a period computed at the rate of
20 3 weeks for each percentage point of impairment; or

21 b. The death of the employee.

22 4. For accidents occurring on or after July 1, 2003,
23 and until the adoption of a residual functional loss program,
24 impairment income benefits are paid biweekly at 75 percent of
25 the employee's temporary total disability benefit amount;
26 however, such benefits shall be reduced by 50 percent for each
27 week in which the employee has earned income equal to, or in
28 excess of, the employee's average weekly wages. Impairment
29 assigned for psychiatric or psychological injury shall not in
30 any circumstance be included in the impairment rating for the
31 purpose of this section or for any purpose in cases of

1 accident or injury occurring on or after July 1, 2003, except
2 as otherwise provided in this chapter. An employee's
3 entitlement to impairment income benefits begins the day after
4 the employee reaches maximum medical improvement or the
5 expiration of temporary benefits, whichever occurs earlier,
6 and continues for the following periods:

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

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

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

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

16
17 Impairment benefits end with the death of the employee.

18 (c)4. After the employee has been certified by a
19 doctor as having reached maximum medical improvement or 6
20 weeks before the expiration of temporary benefits, whichever
21 occurs earlier, the certifying doctor shall evaluate the
22 condition of the employee and assign an impairment rating,
23 using the impairment schedule referred to in subparagraph 2.
24 Compensation is not payable for the mental, psychological, or
25 emotional injury arising out of depression from being out of
26 work. If the certification and evaluation are performed by a
27 doctor other than the principal treating provider ~~employee's~~
28 ~~treating doctor~~, the certification and evaluation must be
29 submitted to the principal treating provider, the employee,
30 and the carrier within 10 days after the evaluation ~~treating~~
31 ~~doctor~~, and the principal treating provider ~~treating doctor~~

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

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

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

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

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

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

30 ~~b. The employee has not returned to work or has~~
31 ~~returned to work earning less than 80 percent of the~~

1 ~~employee's average weekly wage as a direct result of the~~
2 ~~employee's impairment; and~~

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

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

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

15 ~~b. The employee meets the other requirements of~~
16 ~~subparagraph 1.; and~~

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

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

1 ~~employee is discharged within 12 months after losing~~
2 ~~entitlement under this subsection, benefits may be reinstated~~
3 ~~if the employee was discharged at that time with the intent to~~
4 ~~deprive the employee of supplemental benefits.~~

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

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

25 ~~6. Supplemental benefits are calculated quarterly and~~
26 ~~paid monthly. For purposes of calculating supplemental~~
27 ~~benefits, 80 percent of the employee's average weekly wage and~~
28 ~~the average wages the employee has earned per week are~~
29 ~~compared quarterly. For purposes of this paragraph, if the~~
30 ~~employee is offered a bona fide position of employment that~~
31 ~~the employee is capable of performing, given the physical~~

1 ~~condition of the employee and the geographic accessibility of~~
2 ~~the position, the employee's weekly wages are considered~~
3 ~~equivalent to the weekly wages for the position offered to the~~
4 ~~employee.~~

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

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

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

21 (4) TEMPORARY PARTIAL DISABILITY.--

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

26 (b) If the employee returns to work for the employer
27 at which the accident or injury occurred, the employee shall
28 be entitled to temporary partial benefits equal to 85 percent
29 of the difference between 80 percent of the employee's average
30 weekly wage and the salary, wages, and other remuneration the
31 employee is able to earn, as compared weekly; however, the

1 weekly benefits may not exceed an amount equal to 66 2/3
2 percent of the employee's average weekly wage at the time of
3 injury.

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

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

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

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

7 (f)(b) Temporary partial disability Such benefits
8 shall be paid during the continuance of such disability, not
9 to exceed a period of 104 weeks, as provided by this
10 subsection and subsection (2). This time limitation for
11 temporary benefits shall be presumed sufficient unless there
12 is clear and convincing evidence that the employee has not yet
13 reached maximum medical improvement and continues to be
14 eligible for temporary partial disability benefits. In no
15 event shall temporary benefits exceed 260 weeks. Once the
16 injured employee reaches the maximum number of weeks,
17 temporary disability benefits cease and the injured worker's
18 permanent impairment must be determined. The department may by
19 rule specify forms and procedures governing the method of
20 payment of temporary disability benefits for dates of
21 accidents before January 1, 1994, and for dates of accidents
22 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, as specified in paragraph (b), for a subsequent
8 aggravation or acceleration of the preexisting condition nor
9 preclude benefits for death resulting therefrom, except that
10 no benefits shall be payable if the employee, at the time of
11 entering into the employment of the employer by whom the
12 benefits would otherwise be payable, falsely represents
13 herself or himself in writing as not having previously been
14 disabled or compensated because of such previous disability,
15 impairment, anomaly, or disease and the employer detrimentally
16 relies on the misrepresentation. ~~Compensation for temporary~~
17 ~~disability, medical benefits, and wage-loss benefits shall not~~
18 ~~be subject to apportionment.~~

19 (b) If a compensable injury, disability, or need for
20 medical care ~~permanent impairment~~, or any portion thereof, is
21 a result of aggravation or acceleration of a preexisting
22 condition, or is the result of merger with a preexisting
23 condition, only the disabilities and medical treatment
24 associated with such compensable injury shall be payable under
25 this chapter, excluding the degree of disability or medical
26 conditions existing at the time of the impairment rating or at
27 the time of the accident regardless of whether the preexisting
28 condition was disabling at the time of the accident or at the
29 time of the impairment rating and without considering whether
30 the preexisting condition would be disabling without the
31 compensable accident ~~impairment, an employee eligible to~~

1 ~~receive impairment benefits under paragraph (3)(a) shall~~
2 ~~receive such benefits for the total impairment found to~~
3 ~~result, excluding the degree of impairment existing at the~~
4 ~~time of the subject accident or injury or which would have~~
5 ~~existed by the time of the impairment rating without the~~
6 ~~intervention of the compensable accident or injury. The degree~~
7 ~~of permanent impairment or disability attributable to the~~
8 ~~accident or injury shall be compensated in accordance with~~
9 ~~this section, apportioning out the preexisting condition based~~
10 ~~on the anatomical impairment rating attributable to the~~
11 ~~preexisting condition. Medical benefits shall be paid~~
12 ~~apportioning out the percentage of the need for such care~~
13 ~~attributable to the preexisting condition paragraph (3)(a). As~~
14 ~~used in this paragraph, "merger" means the combining of a~~
15 ~~preexisting permanent impairment or disability with a~~
16 ~~subsequent compensable permanent impairment or disability~~
17 ~~which, when the effects of both are considered together,~~
18 ~~result in a permanent impairment or disability rating which is~~
19 ~~greater than the sum of the two permanent impairment or~~
20 ~~disability ratings when each impairment or disability is~~
21 ~~considered individually.~~

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

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

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

12 (7)~~(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
13 employee, when receiving compensation for temporary partial
14 disability, leaves the employment of the employer by whom she
15 or he was employed at the time of the accident for which such
16 compensation is being paid, the employee shall, upon securing
17 employment elsewhere, give to such former employer an
18 affidavit in writing containing the name of her or his new
19 employer, the place of employment, and the amount of wages
20 being received at such new employment; and, until she or he
21 gives such affidavit, the compensation for temporary partial
22 disability will cease. The employer by whom such employee was
23 employed at the time of the accident for which such
24 compensation is being paid may also at any time demand of such
25 employee an additional affidavit in writing containing the
26 name of her or his employer, the place of her or his
27 employment, and the amount of wages she or he is receiving;
28 and if the employee, upon such demand, fails or refuses to
29 make and furnish such affidavit, her or his right to
30 compensation for temporary partial disability shall cease
31 until such affidavit is made and furnished.

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

11 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
12 CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY
13 INSURANCE ACT.--

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

30 (b) If the provisions of 42 U.S.C. s. 424(a) are
31 amended to provide for a reduction or increase of the

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

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

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

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

8 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
9 CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE
10 UNEMPLOYMENT COMPENSATION.--

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

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

22 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
23 OFFICERS.--Any law enforcement officer as defined in s.
24 943.10(1), (2), or (3) who, while acting within the course of
25 employment as provided by s. 440.091, is maliciously or
26 intentionally injured and who thereby sustains a job-connected
27 disability compensable under this chapter shall be carried in
28 full-pay status rather than being required to use sick,
29 annual, or other leave. Full-pay status shall be granted only
30 after submission to the employing agency's head of a medical
31 report which gives a current diagnosis of the employee's

1 recovery and ability to return to work. In no case shall the
2 employee's salary and workers' compensation benefits exceed
3 the amount of the employee's regular salary requirements.

4 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum
5 as an indemnity benefit under any classification or category
6 of benefit under this chapter to which she or he is not
7 entitled, the employee is liable to repay that sum to the
8 employer or the carrier or to have that sum deducted from
9 future benefits, regardless of the classification of benefits,
10 payable to the employee under this chapter; however, a partial
11 payment of the total repayment may not exceed 20 percent of
12 the amount of the biweekly payment.

13 Section 23. Subsections (2) and (6) of section
14 440.151, Florida Statutes, are amended to read:

15 440.151 Occupational diseases.--

16 (2) As ~~Whenever~~ used in this section, the term
17 "occupational disease" shall be construed to mean only a
18 disease which is due to causes and conditions which are
19 characteristic of and peculiar to a particular trade,
20 occupation, process, or employment, and to exclude all
21 ordinary diseases of life to which the general public is
22 exposed, unless the incidence of the disease is substantially
23 higher in the particular trade, occupation, process, or
24 employment than for the general public. An occupational
25 disease or an injury or exposure caused by exposure to a toxic
26 substance, including, but not limited to, fungus and mold, is
27 not an injury by accident arising out of the employment unless
28 there is clear and convincing evidence establishing that
29 exposure to the specific substance involved, at the levels to
30 which the employee was exposed, can cause the injury or
31 disease sustained by the employee.

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

4 Section 24. Section 440.152, Florida Statutes, is
5 created to read:

6 440.152 Computation of fractions of a percent.--When
7 computing fractions of a percent as required to determine
8 benefits under this chapter, the applicable percentage must be
9 rounded to the nearest one ten-thousandth, for example, 66 2/3
10 percent equals .6667.

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

13 440.16 Compensation for death.--

14 (1) If death results from the accident within 1 year
15 thereafter or follows continuous disability and results from
16 the accident within 5 years thereafter, the employer shall
17 pay:

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

20 (b) Compensation, in addition to the above, in the
21 following percentages of the average weekly wages to the
22 following persons entitled thereto on account of dependency
23 upon the deceased, and in the following order of preference,
24 subject to the limitation provided in subparagraph 2., but
25 such compensation shall be subject to the limits provided in
26 s. 440.12(2), shall not exceed \$200,000 ~~\$100,000~~, and may be
27 less than, but shall not exceed, for all dependents or persons
28 entitled to compensation, 66 2/3 percent of the average wage:

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

1 2. To the spouse, if there is a child or children, the
2 compensation payable under subparagraph 1. and, in addition,
3 16 2/3 percent on account of the child or children. However,
4 when the deceased is survived by a spouse and also a child or
5 children, whether such child or children are the product of
6 the union existing at the time of death or of a former
7 marriage or marriages, the judge of compensation claims may
8 provide for the payment of compensation in such manner as may
9 appear to the judge of compensation claims just and proper and
10 for the best interests of the respective parties and, in so
11 doing, may provide for the entire compensation to be paid
12 exclusively to the child or children; and, in the case of
13 death of such spouse, 33 1/3 percent for each child.
14 However, upon the surviving spouse's remarriage, the spouse
15 shall be entitled to a lump-sum payment equal to 26 weeks of
16 compensation at the rate of 50 percent of the average weekly
17 wage as provided in s. 440.12(2), unless the \$100,000 limit
18 provided in this paragraph is exceeded, in which case the
19 surviving spouse shall receive a lump-sum payment equal to the
20 remaining available benefits in lieu of any further indemnity
21 benefits. In no case shall a surviving spouse's acceptance of
22 a lump-sum payment affect payment of death benefits to other
23 dependents.

24 3. To the child or children, if there is no spouse, 33
25 1/3 percent for each child.

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

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

30 (c) To the surviving spouse, payment of postsecondary
31 student fees for instruction at any area technical center

1 established under s. 1001.44 for up to 1,800 classroom hours
2 or payment of student fees at any community college
3 established under part III of chapter 1004 for up to 80
4 semester hours. The spouse of a deceased state employee shall
5 be entitled to a full waiver of such fees as provided in ss.
6 1009.22 and 1009.23 in lieu of the payment of such fees. The
7 benefits provided for in this paragraph shall be in addition
8 to other benefits provided for in this section and shall
9 terminate 7 years after the death of the deceased employee, or
10 when the total payment in eligible compensation under
11 paragraph (b) has been received. To qualify for the
12 educational benefit under this paragraph, the spouse shall be
13 required to meet and maintain the regular admission
14 requirements of, and be registered at, such area technical
15 center or community college, and make satisfactory academic
16 progress as defined by the educational institution in which
17 the student is enrolled.

18 Section 26. Section 440.17, Florida Statutes, is
19 amended to read:

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

1 event payment to such designated person shall discharge all
2 liability for such compensation.

3 Section 27. Section 440.185, Florida Statutes, is
4 amended to read:

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

7 (1) An employee who suffers an injury arising out of
8 and in the course of employment shall advise his or her
9 employer of the injury within 30 days after the date of or
10 initial manifestation of the accident injury. If the employee
11 reports the accident within 7 days, the accident shall be
12 presumed to be compensable so long as it otherwise meets the
13 requirements of this chapter, and the burden shall be on the
14 employer to disprove the compensability of the injury. If
15 the employee fails to comply with this section, the burden
16 shall be on the employee to prove the compensability of the
17 injury by clear and convincing evidence. The burden of proof
18 for proving the compensability of an illness or occupational
19 disease shall be governed by s. 440.151. Failure to ~~so~~ advise
20 the employer of an accident, illness, or occupational disease
21 shall bar a petition under this chapter unless:

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

24 (b) The cause of the injury could not be identified
25 without a medical opinion and the employee advised the
26 employer within 30 days after obtaining a medical opinion
27 indicating that the injury arose out of and in the course of
28 employment; or

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

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

3
4 In the event of death arising out of and in the course of
5 employment, the requirements of this subsection shall be
6 satisfied by the employee's agent or estate. Documents
7 prepared by counsel in connection with litigation, including
8 but not limited to notices of appearance, petitions, motions,
9 or complaints, shall not constitute notice for purposes of
10 this section.

11 (2) Within 7 days after actual knowledge of injury or
12 death, the employer shall report such injury or death to its
13 carrier, in a format prescribed by the department, and shall
14 provide a copy of such report to the employee or the
15 employee's estate. If the employer reports the injury to the
16 carrier by telephone or electronically, the carrier shall,
17 within 3 business days after its receipt of such telephonic or
18 electronic report of injury or death, mail to the employee or
19 the employee's estate, and to the employer, a paper copy of a
20 report of injury or death. The paper copy of a report of
21 injury or death must be in a form prescribed by the
22 department. The report of injury from the employer to the
23 carrier, regardless of the method of reporting, must shall
24 contain the following information:

- 25 (a) The name, address, and business of the employer;
26 (b) The name, social security number, street, mailing
27 address, telephone number, and occupation of the employee;
28 (c) The cause and nature of the injury or death;
29 (d) The year, month, day, and hour when, and the
30 particular locality where, the injury or death occurred; and
31

1 (e) Such other information as the department requires
2 by rule ~~may require~~. In addition, if the employee's employment
3 status changes after the employer's submission of the original
4 report of injury to the carrier, the employer shall notify the
5 carrier by telephone, by facsimile, or electronically, of the
6 injured employee's change in employment status within 3
7 business days after the change.

8 (f) The department shall provide by rule for a carrier
9 reporting system to identify the types of indemnity claims for
10 which the carrier must file first report of injury or death
11 information with the department and the time periods for
12 reporting.

13 (g) The employer shall record those injuries needing
14 first-aid only. The department shall by rule provide for a
15 reporting system to be used by employers to report to carriers
16 those injuries needing professional medical attention, for
17 which the employee does not receive compensation for
18 disability.

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

30 (3) In addition to the requirements of subsection (2),
31 the employer shall notify the department and the carrier

1 within 24 hours by telephone, by facsimile, or electronically
2 ~~or telegraph~~ of any injury resulting in death. However, this
3 special notice shall not be required when death results
4 subsequent to the submission to the department and the carrier
5 of a previous report of the injury pursuant to subsection (2).

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

27 (5)(a) Within 30 calendar days after the date the bill
28 was paid, the carrier shall provide to the department, in a
29 format and in the manner prescribed by the department by rule,
30 each paid medical, dental, and hospital bill received from a
31 health care provider or facility, the employer, or the

1 employee, with respect to the treatment, care, and attendance
2 of the injured employee, including any bill for examination,
3 diagnosis, or disability evaluation and the amounts paid, in a
4 format and manner specified by the department by rule.

5 (b) The department may require from the carrier,
6 employer, employee, or healthcare provider or facility
7 additional reports in a format prescribed by the department,
8 and in a manner and time prescribed by rule, with respect to
9 an employee's injury or claim, including reports on initial
10 payment, funeral expenses, claim costs, changes in claims
11 data, denials, and wage statements.

12 ~~(c)(5) Additional reports with respect to such injury~~
13 ~~and of the condition of such employee, including copies of~~
14 ~~medical reports, funeral expenses, and wage statements, shall~~
15 ~~be filed by the employer or carrier to the department at such~~
16 ~~times and in such manner as the department may prescribe by~~
17 ~~rule. In carrying out its responsibilities under this chapter,~~
18 ~~The department or agency may by rule~~ require from the carrier,
19 employer, employee, or healthcare provider or facility the
20 provision of information and documentation in response to a
21 request for information with respect to the employee's injury
22 or claim, including copies of ~~provide for the obtaining of any~~
23 medical reports and records relating to medical treatment
24 provided pursuant to this chapter, notwithstanding the
25 provisions of ss. 90.503 and 395.3025(4).

26 (d) Failure to respond to requests for information in
27 the manner and time prescribed by department rule subjects the
28 carrier, employer, employee, or health care provider or
29 facility to an administrative penalty not to exceed \$100 per
30 failure to respond.

31

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

7 (7) Every insurer ~~carrier~~ shall file with the
8 department, within 30 ~~21~~ days after the effectuation of
9 coverage, the effective date of a policy reinstatement, or
10 policy endorsement, issuance of a policy or contract of
11 ~~insurance~~ such policy information as the department requires
12 by rule, including notice of whether the policy is a minimum
13 premium policy. The department may require by rule that the
14 insurer identify large deductible policies. Information
15 regarding a notice of cancellation, notice of nonrenewal, or
16 expiration of a policy pursuant to ~~as set out in s. 440.42(3)~~
17 shall be filed with ~~mailed to~~ the department in accordance
18 with rules adopted by the department ~~under chapter 120~~.
19 Third-party vendors that submit ~~The department may contract~~
20 ~~with a private entity for the collection of policy~~ information
21 required to be filed by insurers ~~carriers~~ under this
22 subsection and the receipt of notices of cancellation or
23 expiration of a policy required to be filed by carriers under
24 s. 440.42(3) must be approved by the department. The insurer
25 shall notify the department if the insurer's third-party
26 vendor for the submission of policy information has changed or
27 the insurer's third-party vendor status has changed, in
28 accordance with the procedures and timeframe set forth in
29 department rule. The submission by a third-party vendor of
30 information required to be filed by an insurer does not alter
31 the time requirements set forth in this chapter or department

1 rule. The timely filing of required information shall be
2 determined by the date the department receives the required
3 information, either directly from the insurer or from the
4 third-party vendor.~~The submission of policy information or~~
5 ~~notices of cancellation or expiration to the contracted~~
6 ~~private entity satisfies the filing requirements of this~~
7 ~~subsection and s. 440.42(3).~~

8 (8)(a) When a claimant, employer, or carrier has the
9 right, or is required, to submit ~~mail~~ a report or notice with
10 required copies within the times prescribed in subsection (2),
11 subsection (4), or subsection (5), submission of paper
12 documents must be completed and must be in compliance with the
13 rules adopted by the department, and will be considered timely
14 ~~such mailing will be completed and in compliance with this~~
15 ~~section if it is~~ postmarked and mailed prepaid to the
16 appropriate recipient prior to the expiration of the time
17 periods prescribed in this section.

18 (b) Submission of information in department-approved
19 electronic formats is complete if the electronic transaction
20 is acknowledged by the department as having passed edits in
21 accordance with rules adopted by the department and is sent
22 within the times set forth in this chapter and department
23 rule.

24 1. If an electronic transaction is initially timely
25 submitted but is acknowledged by the department as having
26 failed edits, the carrier must resubmit a corrected electronic
27 transaction that passes edits within timeframes specified by
28 the department by rule from the date the initial electronic
29 acknowledgement was sent by the department to the carrier.

30
31

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

4 b. If the carrier timely resubmits a corrected
5 electronic transaction, but the resubmission does not pass
6 edits, the carrier is subject to a penalty in accordance with
7 subsection (9) based on the number of days from the date the
8 original resubmission was due in accordance with
9 sub-subparagraph 1. through the date the resubmission was
10 received by the department and passes edits.

11 c. If the carrier untimely resubmits a corrected
12 electronic transaction within timeframes specified by the
13 department by rule from the date the initial electronic
14 acknowledgment was sent by the department to the carrier, the
15 carrier is subject to a penalty in accordance with subsection
16 (9) based on the number of days from the date the resubmission
17 was originally due through the date the resubmission was
18 received by the department and passes edits.

19 2. If the initial electronic transaction is both
20 untimely submitted as set forth in this chapter and department
21 rule and acknowledged by the department as having failed
22 edits, the carrier shall resubmit a corrected electronic
23 transaction that passes edits within timeframes specified by
24 the department by rule from the date the initial electronic
25 acknowledgement was sent by the department.

26 a. If the carrier timely resubmits a corrected
27 electronic transaction that passes edits within timeframes
28 specified by the department by rule from the date the initial
29 electronic acknowledgment was sent by the department to the
30 carrier, the carrier is subject to a penalty in accordance
31

1 with subsection (9) for only the duration of time the initial
2 electronic transaction was untimely filed.

3 b. If the carrier timely resubmits a corrected
4 electronic transaction within timeframes specified by the
5 department by rule from the date the initial electronic
6 acknowledgment was sent by the department to the carrier, but
7 the resubmission does not pass edits, the carrier is subject
8 to a penalty in accordance with subsection (9) based on the
9 number of days from the date the initial resubmission was due
10 in accordance with sub-subparagraph 2. through the date the
11 resubmission was received by the department and passes edits.

12 c. If the carrier untimely 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, the
16 carrier is subject to a penalty in accordance with subsection
17 (9). Such a penalty shall be based on the combined number of
18 days from the date the initial submission was due through the
19 date the initial submission was received, and the date the
20 resubmission was initially due through the date the
21 resubmission was finally received by the department and passes
22 edits.

23 3. If the carrier submits an electronic transaction
24 that does not pass edits as set forth in department rule and
25 the carrier does not resubmit the electronic transaction in
26 accordance with department rule, in addition to penalties
27 assessed pursuant to subsection (9), the carrier is subject to
28 a failure to file penalty as follows:

29 a. If the carrier has not resubmitted the electronic
30 transaction within timeframes specified by the department by
31 rule from the date the electronic acknowledgement was sent to

1 the carrier, the carrier is subject to a penalty of \$50 for
2 each 30-day period the carrier has failed to resubmit the
3 electronic transaction.

4 b. If the electronic transaction has not been
5 resubmitted within timeframes specified by the department by
6 rule from the date the electronic acknowledgement was sent to
7 the carrier, the department may refer the insurer to the
8 Office of Insurance Regulation for action under s. 624.308, or
9 may take appropriate action for a self-insurer in accordance
10 with s. 440.38.

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

14 (9)(a) For each electronic transaction, form, report,
15 bill, or notice, other than the first report of injury,
16 required by this section to be filed with the department, the
17 department shall impose an administrative penalty for each
18 such failure to timely file with the department in accordance
19 with this chapter and department rule. The carrier shall pay
20 to the Workers' Compensation Administration Trust Fund a
21 penalty of:

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

27 2. Fifty dollars for every electronic transaction,
28 form, report, bill or notice that is filed with the department
29 14 through 20 calendar days after the date it was required to
30 be filed in accordance with this chapter and department rule.

31

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

6
7 If an electronic transaction, form, report, bill, or notice is
8 untimely filed, but is filed no more than 6 calendar days
9 after the date it is due, the filer is not subject to a
10 penalty under this section, but the untimely filing shall be
11 considered in evaluating patterns and practices under s.
12 440.525.

13 (b) For every first report of injury required under s.
14 440.185(2), the department shall impose an administrative
15 penalty for each such failure to file the first report of
16 injury in accordance with this section and department rule.
17 The carrier shall pay to the Workers' Compensation
18 Administration Trust Fund a penalty of:

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

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

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

31

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

24 (10) The department may by rule prescribe the format
25 forms and procedures governing the submission of the change in
26 claims administration,~~report and the risk class codes,~~ and
27 the 2002 North American Industry Classification System codes
28 code and standard industry code report for all lost time and
29 denied lost-time cases. The department may by rule define
30 terms that are necessary for the effective administration of
31 this section.

1 (11) Any information in a report of injury or illness
2 filed pursuant to this section that would identify an ill or
3 injured employee is confidential and exempt from the
4 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
5 Constitution. This subsection is subject to the Open
6 Government Sunset Review Act of 1995 in accordance with s.
7 119.15, and shall stand repealed on October 2, 2003, unless
8 reviewed and saved from repeal through reenactment by the
9 Legislature.

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

15 (13) A carrier shall report to the department any
16 information possessed by the carrier which the carrier relies
17 on or could rely on in applying premium against an insured
18 based on the payroll of a person who possesses a certificate
19 of exemption.

20 Section 28. Section 440.191, Florida Statutes, is
21 amended to read:

22 (Substantial rewording of section. See
23 s. 440.191, F.S., for present text.)
24 440.191 Early Intervention Office.--

25 (1) The Early Intervention Office is created within
26 the department in order to facilitate the self-executing
27 features of the Workers' Compensation Law and to conduct early
28 intervention programs.

29 (a) The primary responsibility of the Early
30 Intervention Office is to provide information to educate
31 employees, employers, carriers, and health care providers

1 about their rights, responsibilities, and obligations under
2 this chapter and to facilitate the avoidance or resolution of
3 disagreements as provided in this section.

4 (b) Upon receiving a notice of injury that results in
5 a lost-time case, or upon obtaining by any other means
6 knowledge that a lost-time case has occurred, the Early
7 Intervention Office shall initiate contact with the injured
8 employee by mail or telephone to provide information
9 concerning his or her rights, responsibilities, and
10 obligations, unless a petition for benefits has been filed for
11 that date of accident. The Early Intervention Office shall
12 facilitate access to its services through the establishment of
13 a toll-free hotline.

14 (c) The Early Intervention Office may contact and
15 assist the parties in avoiding or resolving any disagreement
16 regarding the benefits under this chapter upon request for
17 assistance from an injured worker, provider, employer, or
18 carrier indicating that a potential disagreement regarding the
19 provision of benefits under this chapter exists. Such
20 assistance may only be rendered when there is no petition for
21 benefits filed for that date of accident.

22 (d) The Early Intervention Office may obtain and
23 review documents, conduct interviews and conferences, and
24 collect other information necessary to assist the office in
25 facilitating the resolution of the disagreement. All parties
26 shall cooperate with the Early Intervention Office. Failure of
27 a party to provide information pursuant to this subsection
28 constitutes failure to comply with s. 440.185(5)(c). Upon
29 request, all parties shall provide requested documents or
30 participate in an interview or conference within 7 calendar
31 days after the request.

1 (e) If, in the course of carrying out its duties as
2 set forth in this section, the Early Intervention Office
3 identifies that a party has failed to comply with this
4 chapter, the office shall refer the failure to comply to the
5 appropriate regulator.

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

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

12 Section 29. Section 440.192, Florida Statutes, is
13 amended to read:

14 440.192 Procedure for resolving benefit disputes.--

15 (1)(a) Effective March 1, 2004 Subject to s. 440.191,
16 any employee seeking a benefit under this chapter shall make a
17 request upon the employer or carrier for provision of the
18 benefit with specificity. Within 14 days after the employer or
19 carrier receives the request, the carrier or employer shall
20 pay the benefits requested or send a written denial to the
21 employee. The department shall adopt by rule a form for such a
22 request.

23 (b) Any employee involved in a dispute, as defined in
24 s. 440.02, with a carrier who has not received a benefit to
25 which the employee believes she or he is entitled under this
26 chapter shall file by certified mail, or by electronic means,
27 with the Claims Bureau approved by the Deputy Chief Judge,
28 with the Office of the Judges of Compensation Claims a
29 petition for benefits which meets the requirements of this
30 section and serve a copy upon the employer and carrier. Each
31 petition served and filed must meet the specificity

1 requirements as provided in this section, have attached the
2 request as provided in paragraph (a), and include all
3 documentation and evidence that supports that all benefits
4 sought in the petition are ripe, due, and owing. 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 that are ripe, due, and owing on the date the petition
8 is filed. The department by rule shall define what
9 documentation is required to accompany a petition for
10 particular benefits. A petition shall require more than
11 "notice pleading," and shall instead be required to satisfy
12 the requirements of subsection (2). The Claims Bureau may
13 maintain an Internet web page upon which the information
14 contained in the petition for benefits files shall be
15 viewable.

16 (c) Within 14 days after being served with the
17 petition for benefits, the carrier must pay the requested
18 benefits without prejudice to its right to deny within 120
19 days after receipt of the petition or file a response to
20 petition with the Claims Bureau and submit any evidence under
21 its possession and control or that it could otherwise access
22 in support of its position. The carrier must list all benefits
23 requested but not paid and explain its justification for
24 nonpayment in the response to petition. A carrier that does
25 not deny compensability in accordance with s. 440.20(4) is
26 deemed to have accepted the employee's injuries as
27 compensable, unless it can establish material facts relevant
28 to the issue of compensability which could not have been
29 discovered through reasonable investigation within the 120-day
30 period. The carrier shall provide copies of the response to
31 the filing party, employer, and claimant by certified mail.

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

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

17 (f) Any petition not prosecuted shall be dismissed
18 after 210 days pursuant to rules adopted by the department.

19 (g) The bureau shall review accepted petitions and
20 administer the resolution of disputed claims within such
21 petitions by:

22 1. Resolving the dispute through administrative
23 determination based upon the evidence submitted, in accordance
24 with rules established by the bureau;

25 2. Referring a claim or claims to the Office of the
26 Judges of Compensation Claims for adjudication; or

27 3. Referring a claim or claims to a medical peer
28 review panel for adjudication of a medical dispute within 7
29 days after receipt of the response to the petition for
30 benefits.

31

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

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

12 (i) Issues distributed to the Office of the Judges of
13 Compensation Claims shall be docketed as such by the Claims
14 Bureau and referred to the Office of the Judges of
15 Compensation Claims.~~The department shall inform employees of~~
16 ~~the location of the Office of the Judges of Compensation~~
17 ~~Claims for purposes of filing a petition for benefits. The~~
18 ~~employee shall also serve copies of the petition for benefits~~
19 ~~by certified mail, or by electronic means approved by the~~
20 ~~Deputy Chief Judge, upon the employer and the employer's~~
21 ~~carrier. The Deputy Chief Judge shall refer the petitions to~~
22 ~~the judges of compensation claims.~~

23 ~~(2) Upon receipt, the Office of the Judges of~~
24 ~~Compensation Claims Bureau shall review each petition and~~
25 ~~shall dismiss each petition or any portion of such a petition,~~
26 ~~upon the judge's own motion or upon the motion of any party,~~
27 ~~that does not on its face specifically identify or itemize the~~
28 ~~following:~~

29 ~~(a) Name, address, telephone number, and social~~
30 ~~security number of the employee.~~

31

1 (b) Name, address, and telephone number of the
2 employer.

3 (c) A detailed description of the injury and cause of
4 the injury, including the location of the occurrence and the
5 date or dates of the accident.

6 (d) A detailed description of the employee's job, work
7 responsibilities, and work the employee was performing when
8 the injury occurred.

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

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

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

25 (h) Specific listing of all medical charges alleged
26 unpaid, including the name and address of the medical
27 provider, the amounts due, and the specific dates of
28 treatment.

29 (i) The type or nature of treatment care or attendance
30 sought and the justification for such treatment, with
31 documentation signed by an authorized health care provider or

1 confirmatory consultation provider to support that the claim
2 for treatment or care is ripe, due, and owing and is medically
3 necessary.

4 (j) Specific explanation of any other disputed issue
5 that a judge of compensation claims will be called to rule
6 upon.

7 (k) Any other information necessary to identify the
8 benefits being sought and the reason the benefits are being
9 sought, and documentation to support provision of those
10 benefits.

11 (l) A copy of the request upon the employer or carrier
12 provided for under subsection (1).

13
14 ~~The dismissal of any petition or portion of such a petition~~
15 ~~under this section is without prejudice and does not require a~~
16 ~~hearing.~~

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

26 (3)(4) The petition must include a certification by
27 the claimant or, if the claimant is represented by counsel,
28 the claimant's attorney, stating that the claimant, or
29 attorney if the claimant is represented by counsel, has made a
30 good faith effort to resolve the dispute and that the claimant
31

1 or attorney was unable to resolve the dispute with the
2 carrier.

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

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

19 ~~(4)(7) Notwithstanding the provisions of s. 440.34, a~~
20 ~~judge of compensation claims may not award Attorney's fees are~~
21 ~~not payable by the carrier for services expended or costs~~
22 ~~incurred prior to the filing of a petition that does not meet~~
23 ~~the requirements of this section.~~

24 (5) A medical opinion other than the opinion of an
25 authorized treating provider is inadmissible in proceedings
26 before the Claims Bureau, the peer review panel, or the judges
27 of compensation claims.

28 (6) When the Claims Bureau determines that a minor
29 dispute, including, but not limited to, a dispute concerning
30 average weekly wage, penalties and interest on uncontested
31 benefits, medical mileage disputes, and processing of

1 stipulated settlements, should be resolved through
2 administrative determination, the Claims Bureau shall make a
3 determination in accordance with the following:

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

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

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

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

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

24 (7)(a) As used in regard to medical disputes, the
25 term:

26 1. "Peer review organization" means one or more
27 qualified entities selected by and contracted with the
28 department which employs or contracts with panel members who
29 are qualified to address medical disputes.

30 2. "Panel member" means, at a minimum, a health care
31 provider, licensed by the State of Florida, who has an active

1 patient practice at least 8 hours per week and who is employed
2 by, or under contract with, a peer review organization that
3 provides contract services to the department to determine
4 medical disputes for the Florida Workers' Compensation system.

5 3. "Peer review panel" means the three panel members
6 selected from a list of health care providers on a rotational
7 basis to whom a particular medical dispute has been referred
8 by the peer review organization after receipt from the Claims
9 Bureau.

10 (b) The department shall contract, by January 1, 2004,
11 with one or more peer review organizations for the performance
12 of peer review of medical issues to final adjudication, the
13 cost of which shall be borne by the carrier. Contracted peer
14 review organizations shall be fully accredited by the
15 Utilization Review Accreditation Commission or another
16 comparable nationally recognized organization, shall maintain
17 an office in this state, shall be subject to the jurisdiction
18 of this state, and shall be responsible for properly
19 credentialing and educating panel members and ensuring
20 compliance with this section. Peer review organizations and
21 panel members are immune from liability in the execution of
22 their peer review functions to the extent provided in s.
23 766.101. All information received by the peer review
24 organization or panel member shall be confidential to the
25 extent provided for in s. 440.102(8) except if such
26 information is admitted into evidence before a judge of
27 compensation claims as provided in this section.

28 (c) Medical disputes, including issues of fact, shall
29 be decided in a summary manner by the peer review panel,
30 composed of health care providers licensed under the same
31 chapter as the treating health care provider, from the records

1 and pleadings submitted by the claimant with the petition and
2 by the employer or carrier with the response. The peer review
3 process shall depend upon the employee and carrier each
4 explaining the nature of the dispute and upon providing
5 sufficient documentation for resolution of the issue or claim.
6 The carrier must submit to the Claims Bureau, as provided
7 herein, its records and documentation that support its denial
8 within 21 days after being served with the petition for
9 benefits. The peer review panel may consider any documents
10 timely submitted by either party subject only to the
11 requirements of this chapter. Chapter 90 does not apply to
12 proceedings before the medical review panel. The peer review
13 panel, within 7 days after the peer review organization
14 receives the referral from the Claims Bureau, shall issue a
15 written report, concurred in by at least two members of the
16 peer review panel, that includes a statement of the issues
17 posed, the documents or evidence reviewed, findings of fact
18 regarding the medical issue, and the determination and
19 adjudication by the panel regarding the issues. If the peer
20 review panel determines that a nonmedical issue must be
21 resolved before making a determination and adjudication of the
22 medical dispute, the peer review panel shall remand the issue
23 to the Claims Bureau. The peer review panel shall consider the
24 entire record created before the bureau, and not examine the
25 claimant or otherwise seek to gather additional information. A
26 peer review panel may not make a finding of a degree of
27 permanent impairment which is greater than the greatest
28 permanent impairment rating given the claimant by any
29 examining or treating physician, except upon stipulation of
30 the parties. Applying the standards of care, applicable
31 practice parameters, and other relevant provisions of this

1 chapter, the peer review panel shall make an initial
2 determination and adjudication, pursuant to its contract with
3 the department, of the medical merits of the dispute.

4 (d) The peer review panel shall transmit its decision
5 to the bureau.

6 (e) Any party is entitled to a reconsideration of any
7 initial adjudication by a peer review panel. Such party shall
8 invoke that right by filing a request for reconsideration with
9 the Claims Bureau, also serving a copy of the request on all
10 other parties, on a form prescribed by the bureau, within 10
11 days after the decision being certified as mailed or otherwise
12 transmitted by the bureau to the parties. In the event of a
13 reconsideration, any party may conduct discovery, including
14 medical records requests, depositions of authorized medical
15 providers, confirmatory consultation providers, or factual
16 witnesses. Peer review panel members are not subject to
17 discovery except as provided in this section. Any depositions
18 taken for this purpose may be presented in transcribed format,
19 videotaped format, or both. The rules of evidence do not apply
20 to what evidence is discoverable from these sources or
21 admissible before the medical peer review panel except as
22 regards privileges. No privilege shall be waived by operation
23 of this section, and no privileged material shall be
24 admissible through operation of this section. The parties
25 shall complete discovery and submit all such discovery as
26 permitted herein to the Claims Bureau within 90 days after
27 filing the request with the Claims bureau. No evidence
28 submitted after the 90-day period shall be considered by the
29 peer review panel. The reconsideration shall be adjudicated by
30 the same peer review panel that issued the original
31 determination, if possible. If a member of the original panel

1 is unavailable, the contracting organization shall substitute
2 a provider of like qualifications and of like specialty to
3 replace the unavailable member. The peer review panel shall
4 consider the entire record created by the parties in the
5 reconsideration period. The peer review panel may not examine
6 the claimant or otherwise seek to gather additional
7 information for reconsideration. Applying the standards of
8 care, applicable practice parameters, and other relevant
9 provisions of this chapter, the peer review panel shall make a
10 final determination and final adjudication, pursuant to its
11 contract with the department, of the medical merits of the
12 dispute within 25 days after receipt of all information upon
13 which the peer review panel is to make its adjudication.

14 (f) Any party may appeal the decision or findings of
15 the Claims Bureau, the final adjudication of the peer review
16 panel, or the order of the Office of the judge of compensation
17 claims to the Workers' Compensation Appellate Tribunal within
18 30 days after the decision or findings, final adjudication, or
19 order.

20 (8)(a) An administrative determination by the Claims
21 Bureau becomes final and enforceable 30 days after it is
22 rendered unless an appeal is filed with the Workers'
23 Compensation Appellate Tribunal. Final adjudications of a peer
24 review panel and orders of the Office of the Judges of
25 Compensation Claims shall become final and enforceable 30 days
26 after the final adjudication or order is entered.

27 (b) After the Claims Bureau issues a determination and
28 recommendation on administrative issues, the bureau may
29 assign issues to the judge of compensation claims to take
30 evidence and hold a hearing for the purpose of deciding a
31 claimant's entitlement to disputed benefits.

1 (c) Any records or documentation reasonably available
2 to a party and otherwise authorized and admissible under this
3 chapter, which are not provided to the claims bureau within
4 the 21-day period, shall not be used in any proceeding as a
5 basis for challenging a peer review determination.

6 (9)(a) The judge of compensation claims may direct
7 pretrial procedure, discovery, and all other procedural
8 issues, subject to rules adopted by the Office of the Judges
9 of Compensation Claims. The judge may issue subpoenas and such
10 other orders as necessary to compel production of evidence;
11 however, an employee or agent of the Claims Bureau or of any
12 peer review panel may not be subject to subpoena or otherwise
13 called to testify unless there is first adduced other evidence
14 that the individual is complicit in a fraud. Hearings before
15 the judge of compensation claims shall be open to the public.
16 A judge of compensation claims does not have jurisdiction to
17 resolve a medical dispute.

18 (b) Each motion to dismiss must state with
19 particularity the basis for the motion. Any petition not
20 prosecuted shall be dismissed after 210 days pursuant to rules
21 adopted by the Office of the Judges of Compensation Claims.
22 The judge of compensation claims shall enter an order upon
23 such motions without hearing, unless good cause for hearing is
24 shown. When any petition or portion of a petition is dismissed
25 for lack of specificity under this subsection, the claimant
26 must be allowed 20 days after the date of the order of
27 dismissal in which to file an amended petition. Any grounds
28 for dismissal for lack of specificity under this section which
29 are not asserted within 10 days after receipt of the petition
30 for benefits are waived.

31

1 (10) After hearing the evidence, the judge shall issue
2 an order within 30 days. The order must contain a decree that
3 enumerates each benefit sought and the judge's decision to
4 grant or deny the benefits, along with any other order or
5 resolution directed by the judge. The order may also contain
6 findings of fact and conclusions of law. An order containing a
7 decree without findings of fact and conclusions of law becomes
8 final 30 days after rendition unless a party files a request
9 for findings of fact and conclusions of law within 10 days
10 after rendition, in which case the decree is vacated by
11 operation of law. An order containing findings of fact and
12 conclusions of law along with a decree becomes final 30 days
13 after rendition unless it is appealed to the Workers'
14 Compensation Appellate Tribunal as provided in this chapter.

15 (11) A party may obtain review of a final order of a
16 judge of compensation claims by filing a notice of appeal with
17 the Workers' Compensation Appellate Tribunal and serving a
18 copy upon the judge of compensation claims who rendered the
19 decision, within 30 days after the rendition. The notice must
20 state with specificity what issues are being appealed. The
21 Workers' Compensation Appellate Tribunal shall conduct
22 plenary, on-the-record review, exercising power judicial in
23 nature to the maximum extent permitted by the State
24 Constitution. The Workers' Compensation Appellate Tribunal
25 shall not have jurisdiction to declare a statute or any part
26 thereof unconstitutional, but shall apply the statute with due
27 regard for the due process rights of the parties.

28 (12) Any party seeking review of a decision rendered
29 by the Workers' Compensation Appellate Tribunal may petition
30 the First District Court of Appeal within 30 days after the
31 decision by the Workers' Compensation Appellate Tribunal. The

1 First District Court of Appeal may grant certiorari or
2 otherwise review decisions of the Workers' Compensation
3 Appellate Tribunal only to the extent necessary to protect the
4 rights of the parties under the State Constitution.

5 (13) Procedural rules for administrative determination
6 of claims by the Claims Bureau, including the determinations
7 of peer review panels, shall be governed by rules adopted by
8 the Department of Financial Services. In determining the scope
9 of rulemaking authority under this section, the department
10 shall have and be guided by the scope of rulemaking authority
11 exercised by the Supreme Court in making rules for civil
12 procedure and appellate procedure respectively.

13 ~~(8) Within 14 days after receipt of a petition for~~
14 ~~benefits by certified mail, the carrier must either pay the~~
15 ~~requested benefits without prejudice to its right to deny~~
16 ~~within 120 days from receipt of the petition or file a~~
17 ~~response to petition with the Office of the Judges of~~
18 ~~Compensation Claims. The carrier must list all benefits~~
19 ~~requested but not paid and explain its justification for~~
20 ~~nonpayment in the response to petition. A carrier that does~~
21 ~~not deny compensability in accordance with s. 440.20(4) is~~
22 ~~deemed to have accepted the employee's injuries as~~
23 ~~compensable, unless it can establish material facts relevant~~
24 ~~to the issue of compensability that could not have been~~
25 ~~discovered through reasonable investigation within the 120-day~~
26 ~~period. The carrier shall provide copies of the response to~~
27 ~~the filing party, employer, and claimant by certified mail.~~

28 Section 30. Section 440.1925, Florida Statutes, is
29 amended to read:

30 440.1925 Procedure for resolving maximum medical
31 improvement or permanent impairment disputes.--

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

14 (2) A dispute as to the date of maximum medical
15 improvement, ~~or degree of permanent impairment, or extent of~~
16 functional loss of impairment ~~which is not subject to dispute~~
17 ~~resolution according to rules promulgated pursuant to s.~~
18 ~~440.134~~ shall be resolved according to the procedure set out
19 in this section.

20 (3) Disputes shall be resolved under this section
21 when:

22 (a) A carrier that is entitled to obtain a
23 determination of an employee's date of maximum medical
24 improvement or permanent impairment, or extent of functional
25 loss or impairment, has done so;

26 (b) The confirmatory consultation providers
27 ~~independent medical examiner's~~ opinion on the date of the
28 employee's maximum medical improvement, and degree of ~~or~~
29 permanent impairment, or extent of functional loss or
30 disability, or any combination thereof, differs from the
31 opinion of the employee's treating physician on either of

1 those issues, or from the opinion of another confirmatory
2 consultation provider ~~the expert medical advisor appointed by~~
3 ~~the agency~~ on the degree of permanent impairment or extent of
4 functional loss or disability, or both; or

5 (c) The carrier denies any portion of an employee's
6 claim petition for benefits due to disputed issues concerning
7 maximum medical improvement, or permanent impairment, or
8 extent of functional loss or impairment, or any combination
9 thereof issues.

10 (4) Only opinions of the employee's treating physician
11 or those of a confirmatory consultation provider, an agency
12 ~~medical advisor, or an independent medical examiner~~ are
13 admissible in proceedings before a peer review panel or judge
14 of compensation claims to resolve disputes about maximum
15 medical improvement or impairment or about extent of
16 functional loss or disability disputes.

17 (5) ~~The peer review panel judge of compensation claims~~
18 shall first resolve any dispute concerning the date on which
19 the employee reached maximum medical improvement. The peer
20 review panel judge shall then determine the degree of the
21 employee's permanent impairment or of functional loss or
22 disability, which shall be either the highest or lowest
23 ~~estimate of permanent impairment which is in evidence before~~
24 ~~the judge of compensation claims.~~

25 Section 31. Section 440.20, Florida Statutes, is
26 amended to read:

27 440.20 Time for payment of compensation; penalties for
28 late payment.--

29 (1)(a) Unless it denies compensability or entitlement
30 to benefits, the carrier shall pay compensation directly to
31 the employee as required by ss. 440.14, 440.15, and 440.16, in

1 accordance with the obligations set forth in such sections. If
2 authorized by the employee, the carrier's obligation to pay
3 compensation directly to the employee is satisfied when the
4 carrier directly deposits, by electronic transfer or other
5 means, compensation into the employee's account at a financial
6 institution. As used in this paragraph, the term "financial
7 institution" means a financial institution as defined in s.
8 655.005(1)(h). Compensation by direct deposit is considered
9 paid on the date the funds become available for withdrawal by
10 the employee.

11 (b) Notwithstanding any other provision of this
12 chapter, all insurance carriers, group self-insurance funds,
13 assessable mutual insurers, and the Joint Underwriting
14 Association authorized to write workers' compensation
15 insurance in this state shall make available a notice in
16 writing to the employer the fact that a state-authorized
17 deductible plan is available. Under this plan, an employer may
18 pay, for each injury for which an employee files a claim under
19 this chapter as a deductible, up to the first \$2,500 of the
20 total amount payable under compensable claims related to such
21 injury. An employer shall not be reimbursed for any amount
22 paid under this paragraph; however, the reporting requirements
23 of the employer, relating to injuries required under any
24 provision under this chapter, are not altered or alleviated.
25 The rate base of any workers' compensation insurance offered
26 pursuant to this chapter shall include the deductible
27 provision authorized by this paragraph. Any amounts paid by an
28 employer pursuant to this paragraph shall not apply in any way
29 to such employer's experience rating for injury.

30 (2)(a) The carrier must pay the first installment of
31 compensation or deny compensability no later than the 14th

1 calendar day after the employer receives notification notice
2 of the injury or death, when disability is immediate and
3 continuous for 8 calendar days or more after the injury. If
4 the first 7 days of disability are nonconsecutive or delayed,
5 the first installment of compensation is due on the sixth day
6 after the first 8 calendar days of disability.The carrier
7 shall thereafter pay compensation in biweekly installments or
8 as otherwise provided in s. 440.15, unless the judge of
9 compensation claims determines or the parties agree that an
10 alternate installment schedule is in the best interests of the
11 employee.

12 (b) The carrier must pay, disallow, or deny all
13 medical, dental, pharmacy, and hospital bills submitted to the
14 carrier in accordance with department rule no later than 45
15 calendar days after the carrier's receipt of the bill.

16 (3) Upon making initial payment of indemnity benefits,
17 or upon suspension or cessation of payment for any reason, the
18 carrier shall immediately notify the department that it has
19 commenced, suspended, or ceased payment of compensation. The
20 department may require such notification to the injured
21 employee, the employer, and the department in the any format
22 and manner it deems necessary to obtain accurate and timely
23 notification reporting.

24 (4) If the carrier is uncertain of its obligation to
25 provide benefits or compensation, ~~it may initiate payment~~
26 ~~without prejudice and without admitting liability.~~the carrier
27 shall immediately and in good faith commence investigation of
28 the employee's entitlement to benefits under this chapter and
29 shall admit or deny compensability within 120 days after the
30 initial provision of compensation or benefits as required
31 under subsection (2) or s. 440.192(8). In addition, the

1 carrier shall initiate payment and continue the provision of
2 all benefits and compensation as if the claim had been
3 accepted as compensable, without prejudice and without
4 admitting liability. Upon commencement of payment as required
5 under subsection (2) or s. 440.192(8), the carrier shall
6 provide written notice to the employee that it has elected to
7 pay all ~~or part~~ of the claim pending further investigation,
8 and that it will advise the employee of claim acceptance or
9 denial within 120 days. A carrier that fails to deny
10 compensability within 120 days after the initial provision of
11 benefits or payment of compensation as required under
12 subsection (2) or s. 440.192(8) waives the right to deny
13 compensability, unless the carrier can establish material
14 facts relevant to the issue of compensability that it could
15 not have discovered through reasonable investigation within
16 the 120-day period. The initial provision of compensation or
17 benefits, for purposes of this subsection, means the first
18 installment of compensation or benefits to be paid by the
19 carrier under subsection (2) or pursuant to a petition for
20 benefits under s. 440.192(8).

21 (5) If the employer has advanced compensation payments
22 or benefits to the employee, the carrier shall reimburse the
23 employer for the advanced payments if the employee is entitled
24 to compensation and benefits pursuant to this chapter. The
25 carrier may deduct such reimbursements from the employee's
26 compensation installments or, if applicable, from payments to
27 the employee ordered by a judge of compensation claims.

28 (6)(a) If any installment of compensation for death or
29 dependency benefits, or for disability, permanent impairment,
30 or wage loss benefits payable without an award is not paid
31 within 7 days after it becomes due, as provided in subsection

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

1 ~~institution. As used in this subsection, the term "financial~~
2 ~~institution" means a financial institution as defined in s.~~
3 ~~655.005(1)(h).~~

4 (b) For dates of service on or after January 1, 2004,
5 the department shall require that all medical, hospital,
6 pharmacy, or dental bills that have been properly submitted by
7 the provider in accordance with department rule are timely
8 paid, disallowed, or denied by the carrier or its authorized
9 vendor within 45 calendar days after the carrier's receipt of
10 the bill. The carrier shall pay, to the Workers' Compensation
11 Administration Trust Fund, a penalty of:

12 1. Twenty-five dollars for every bill below 95 percent
13 and equal to or greater than 90 percent which is untimely
14 paid, disallowed, or denied.

15 2. Fifty dollars for every bill below 90 percent which
16 is untimely paid, disallowed, or denied.

17 (c) The department may adopt rules to administer this
18 section.

19 (7) If any compensation, payable under the terms of an
20 award, is not paid within 7 days after it becomes due, there
21 shall be added to such unpaid compensation an amount equal to
22 20 percent thereof, which shall be paid at the same time as,
23 but in addition to, such compensation, unless review of the
24 compensation order making such award is had as provided in s.
25 440.25.

26 (8) In addition to any other penalties provided by
27 this chapter for late payment, if any installment of
28 compensation is not paid when it becomes due, the employer,
29 carrier, or servicing agent shall pay interest thereon at the
30 rate determined pursuant to s. 55.03 for the year in which the
31 payment was due and in which it remained unpaid. The

1 applicable interest rate for any period must always be the
2 interest rate applicable to that period pursuant to law.
3 Interest must be computed as simple interest and must be paid
4 for any periods ~~of 12 percent per year~~ from the date the
5 installment becomes due until it is paid, whether such
6 installment is payable without an order or under the terms of
7 an order. The interest payment shall be the greater of the
8 amount of interest due or \$5.

9 (a) Within 30 days after final payment of compensation
10 has been made, the employer, carrier, or servicing agent shall
11 send to the department a notice, in accordance with a format
12 and manner prescribed by the department, stating that such
13 final payment has been made and stating the total amount of
14 compensation paid, the name of the employee and of any other
15 person to whom compensation has been paid, the date of the
16 injury or death, and the date to which compensation has been
17 paid.

18 (b) If the employer, carrier, or servicing agent fails
19 to so notify the department within such time, the department
20 shall assess against such employer, carrier, or servicing
21 agent a civil penalty in an amount not over \$100.

22 (c) In order to ensure carrier compliance under this
23 chapter and provisions of the Florida Insurance Code, the
24 Office of Insurance Regulation ~~department~~ shall monitor,
25 audit, and investigate the performance of carriers by
26 conducting market conduct examinations, as provided in s.
27 624.3161, and conducting investigations, as provided in s.
28 624.317. The department shall require that ~~establish by rule~~
29 ~~minimum performance standards for carriers to ensure that a~~
30 ~~minimum of 90 percent of all compensation benefits~~ be ~~are~~
31 timely paid in accordance with this section. The department

1 shall impose penalties ~~fine a carrier as provided in s.~~
2 ~~440.13(11)(b) up to \$50~~ for each late payment of compensation
3 that is below the minimum 95 ~~90~~ percent performance standard.

4 A carrier shall pay to the Workers' Compensation
5 Administration Trust Fund a penalty of:

6 1. Fifty dollars for each installment of compensation
7 below 95 percent and equal to or greater than 90 percent which
8 is timely paid.

9 2. One hundred dollars for each installment of
10 compensation below 90 percent which is timely paid.

11 (c) The department shall adopt rules to administer
12 this section.

13
14 This paragraph does not affect the imposition of any penalties
15 or interest due to the claimant. If a carrier contracts with a
16 servicing agent to fulfill its administrative responsibilities
17 under this chapter, the payment practices of the servicing
18 agent are deemed the payment practices of the carrier for the
19 purpose of assessing penalties against the carrier.

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

31

1 (10) If ~~Whenever~~ the department considers ~~deems~~ it
2 advisable, it may require any employer to make a deposit with
3 the Chief Financial Officer ~~Treasurer~~ to secure the prompt and
4 convenient payments of such compensation; and payments
5 therefrom upon any awards shall be made upon order of the
6 department or judge of compensation claims.

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

1 the judge of compensation claims, it shall be considered void.
2 Upon approval of a lump-sum settlement under this subsection,
3 the judge of compensation claims shall send a report to the
4 Chief Judge of the amount of the settlement and a statement of
5 the nature of the controversy. The Chief Judge shall keep a
6 record of all such reports filed by each judge of compensation
7 claims and shall submit to the Legislature a summary of all
8 such reports filed under this subsection annually by September
9 15.

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

1 review under s. 440.28, to determine whether such final
2 disposition will definitely aid the rehabilitation of the
3 injured worker or otherwise is clearly for the best interests
4 of the person entitled to compensation and, in her or his
5 discretion, may have an investigation made. The joint petition
6 and the report of any investigation so made will be deemed a
7 part of the proceeding. An employer shall have the right to
8 appear at any hearing pursuant to this subsection which
9 relates to the discharge of such employer's liability and to
10 present testimony at such hearing. The carrier shall provide
11 reasonable notice to the employer of the time and date of any
12 such hearing and inform the employer of her or his rights to
13 appear and testify. The probability of the death of the
14 injured employee or other person entitled to compensation
15 before the expiration of the period during which such person
16 is entitled to compensation shall, in the absence of special
17 circumstances making such course improper, be determined in
18 accordance with the most recent United States Life Tables
19 published by the National Office of Vital Statistics of the
20 United States Department of Health and Human Services. The
21 probability of the happening of any other contingency
22 affecting the amount or duration of the compensation, except
23 the possibility of the remarriage of a surviving spouse, shall
24 be disregarded. As a condition of approving a lump-sum payment
25 to a surviving spouse, the judge of compensation claims, in
26 the judge of compensation claims' discretion, may require
27 security which will ensure that, in the event of the
28 remarriage of such surviving spouse, any unaccrued future
29 payments so paid may be recovered or recouped by the employer
30 or carrier. Such applications shall be considered and
31 determined in accordance with s. 440.25.

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

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

31

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

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

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

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

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

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

28 2. An advance payment of compensation not in excess of
29 \$2,000 may be ordered by any judge of compensation claims
30 after giving the interested parties an opportunity for a
31 hearing thereon pursuant to not less than 10 days' notice by

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

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

22 (d) When an application for an advance payment in
23 excess of \$2,000 is opposed by the employer or carrier, it
24 shall be heard by a judge of compensation claims after giving
25 the interested parties not less than 10 days' notice of such
26 hearing by mail, unless such notice is waived. In her or his
27 discretion, the judge of compensation claims may have an
28 investigation of the matter made, in which event the report
29 and recommendation will be deemed a part of the record of the
30 proceedings. If the judge of compensation claims finds that
31 such advance payment is for the best interests of the person

1 entitled to compensation, will not materially prejudice the
2 rights of the employer and carrier, and is reasonable under
3 the circumstances of the case, she or he may order the same
4 paid. However, in no event may any such advance payment under
5 this paragraph be granted in excess of \$7,500 or 26 weeks of
6 benefits in any 48-month period, whichever is greater, from
7 the date of the last advance payment.

8 (13) If the employer has made advance payments of
9 compensation, she or he shall be entitled to be reimbursed out
10 of any unpaid installment or installments of compensation due.

11 (14) When an employee is injured and the employer pays
12 the employee's full wages or any part thereof during the
13 period of disability, or pays medical expenses for such
14 employee, and the case is contested by the carrier or the
15 carrier and employer and thereafter the carrier, either
16 voluntarily or pursuant to an award, makes a payment of
17 compensation or medical benefits, the employer shall be
18 entitled to reimbursement to the extent of the compensation
19 paid or awarded, plus medical benefits, if any, out of the
20 first proceeds paid by the carrier in compliance with such
21 voluntary payment or award, provided the employer furnishes
22 satisfactory proof to the judge of compensation claims of such
23 payment of compensation and medical benefits. Any payment by
24 the employer over and above compensation paid or awarded and
25 medical benefits, pursuant to subsection (13), shall be
26 considered a gratuity.

27 (15)(a) The department shall examine on an ongoing
28 basis claims files in accordance with s. 624.3161 and this
29 chapter and may impose fines pursuant to s. 624.310(5) and
30 this chapter in order to identify questionable claims-handling
31 techniques, questionable patterns or practices of claims, or a

1 pattern of repeated unreasonably controverted claims by
2 carriers, as defined in s. 440.02, third-party administrators,
3 or other claims-handling entities providing services to
4 employees pursuant to this chapter. If the department finds
5 such questionable techniques, patterns, or repeated
6 unreasonably controverted claims as constitute a general
7 business practice of a carrier, as defined in s. 440.02,
8 third-party administrators, or other claims-handling entities
9 the department shall take appropriate action so as to bring
10 such general business practices to a halt pursuant to s.
11 440.38(3) or may impose penalties pursuant to s. 624.4211. The
12 department may initiate investigations of questionable
13 techniques, patterns, practices, or repeated unreasonably
14 controverted claims by carriers, third-party administrators,
15 or other claims-handling entities. The department may by rule
16 establish forms and procedures for corrective action plans and
17 for auditing carriers.

18 (b) As to any examination, investigation, or hearing
19 being conducted under this chapter, the Chief Financial
20 Officer ~~Insurance Commissioner~~ or his or her designee:

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

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

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

1 wherein such person resides, may, on the application of the
2 department, issue an order requiring such person to comply
3 with the subpoena and to testify.

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

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

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

30 (16) Any penalty assessed by the department under this
31 section must be paid within 30 days after the date the

1 imposition of the penalty becomes final. If an employer fails
2 to pay a penalty assessed by the department as provided in
3 this section, the department shall refer such failure to pay
4 to the appropriate licensing entity applicable to the
5 employer. A ~~No~~ penalty assessed under this section may be
6 recouped by any carrier or self-insurer in the rate base, the
7 premium, or any rate filing. The Office of Insurance
8 Regulation ~~Department of Insurance~~ shall enforce this
9 subsection with regard to insurers.

10 (17) The department may by rule establish audit
11 procedures and set standards for the Automated Carrier
12 Performance System.

13 Section 32. Subsection (3) of section 440.24, Florida
14 Statutes, is amended to read:

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

17 (3) In any case where the employer is a self-insurer
18 and fails to comply with any compensation order of a judge of
19 compensation claims or court within 10 days after such order
20 becomes final, the Department of Financial Services ~~Insurance~~
21 may suspend or revoke any authorization previously given to
22 the employer to be a self-insurer, and the Florida
23 Self-Insurers Guaranty Association, Incorporated, may call or
24 sue upon the surety bond or exercise its rights under the
25 letter of credit deposited by the self-insurer with the
26 association as a qualifying security deposit as may be
27 necessary to satisfy the order.

28 Section 33. 440.25, Florida Statutes, is amended to
29 read:

30 440.25 Procedures for mediation and hearings.--

31

1 (1) ~~Within 90 days after a petition for benefits is~~
2 ~~filed under s. 440.192,~~A mediation conference concerning such
3 petition may shall be held at the election and expense of the
4 parties regarding any issues assigned by the bureau to the
5 judge of compensation claims. Mediation may be held at the
6 election and expense of the parties regarding any settlement
7 of the claim pursuant to s. 440.20.~~Within 40 days after such~~
8 ~~petition is filed, the judge of compensation claims shall~~
9 ~~notify the interested parties by order that a mediation~~
10 ~~conference concerning such petition will be held unless the~~
11 ~~parties have notified the Office of the Judges of Compensation~~
12 ~~Claims that a mediation has been held. Such order must give~~
13 ~~the date by which the mediation conference must be held. Such~~
14 ~~order may be served personally upon the interested parties or~~
15 ~~may be sent to the interested parties by mail. The claimant or~~
16 ~~the adjuster of the employer or carrier may, at the mediator's~~
17 ~~discretion, attend the mediation conference by telephone or,~~
18 ~~if agreed to by the parties, other electronic means. A~~
19 ~~continuance may be granted if the requesting party~~
20 ~~demonstrates to the judge of compensation claims that the~~
21 ~~reason for requesting the continuance arises from~~
22 ~~circumstances beyond the party's control. Any order granting a~~
23 ~~continuance must set forth the date of the rescheduled~~
24 ~~mediation conference. A mediation conference may not be used~~
25 ~~solely for the purpose of mediating attorney's fees.~~

26 (2) Any party who participates in a mediation
27 conference shall not be precluded from requesting a hearing
28 following the mediation conference should both parties not
29 agree to be bound by the results of the mediation conference.
30 A mediation conference is required to be held unless this
31 requirement is waived by the Deputy Chief Judge. No later than

1 3 days prior to the mediation conference, all parties must
2 submit any applicable motions, including, but not limited to,
3 a motion to waive the mediation conference, to the judge of
4 compensation claims.

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

28 ~~1. Unless the parties conduct a private mediation~~
29 ~~under subparagraph 2., mediation shall be conducted by a~~
30 ~~mediator selected by the Director of the Division of~~
31 ~~Administrative Hearings from among mediators employed on a~~

1 ~~full-time basis by the Office of the Judges of Compensation~~
2 ~~Claims. A mediator must be a member of The Florida Bar for at~~
3 ~~least 5 years and must complete a mediation training program~~
4 ~~approved by the Director of the Division of Administrative~~
5 ~~Hearings. Adjunct mediators may be employed by the Office of~~
6 ~~the Judges of Compensation Claims on an as-needed basis and~~
7 ~~shall be selected from a list prepared by the Director of the~~
8 ~~Division of Administrative Hearings. An adjunct mediator must~~
9 ~~be independent of all parties participating in the mediation~~
10 ~~conference. An adjunct mediator must be a member of The~~
11 ~~Florida Bar for at least 5 years and must complete a mediation~~
12 ~~training program approved by the Director of the Division of~~
13 ~~Administrative Hearings. An adjunct mediator shall have access~~
14 ~~to the office, equipment, and supplies of the judge of~~
15 ~~compensation claims in each district.~~

16 ~~2. With respect to any mediation occurring on or after~~
17 ~~January 1, 2003, if the parties agree or if mediators are not~~
18 ~~available under subparagraph 1. to conduct the required~~
19 ~~mediation within the period specified in this section, the~~
20 ~~parties shall hold a mediation conference at the carrier's~~
21 ~~expense within the 90-day period set for mediation. The~~
22 ~~mediation conference shall be conducted by a mediator~~
23 ~~certified under s. 44.106. If the parties do not agree upon a~~
24 ~~mediator within 10 days after the date of the order, the~~
25 ~~claimant shall notify the judge in writing and the judge shall~~
26 ~~appoint a mediator under this subparagraph within 7 days. In~~
27 ~~the event both parties agree, the results of the mediation~~
28 ~~conference shall be binding and neither party shall have a~~
29 ~~right to appeal the results. In the event either party refuses~~
30 ~~to agree to the results of the mediation conference, the~~
31 ~~results of the mediation conference as well as the testimony,~~

1 ~~witnesses, and evidence presented at the conference shall not~~
2 ~~be admissible at any subsequent proceeding on the claim. The~~
3 ~~mediator shall not be called in to testify or give deposition~~
4 ~~to resolve any claim for any hearing before the judge of~~
5 ~~compensation claims. The employer may be represented by an~~
6 ~~attorney at the mediation conference if the employee is also~~
7 ~~represented by an attorney at the mediation conference.~~

8 (b) The parties shall complete the pretrial
9 stipulations before the conclusion of the mediation conference
10 if the claims, except for attorney's fees and costs, have not
11 been settled and if any claims in any filed petition remain
12 unresolved. The judge of compensation claims may impose
13 sanctions against a party or both parties for failing to
14 complete the pretrial stipulations before the conclusion of
15 the mediation conference.

16 (4)(a) If the parties fail to agree upon written
17 submission of pretrial stipulations at the mediation
18 conference, the judge of compensation claims shall order a
19 pretrial hearing to occur within 14 days after the date of
20 mediation ordered by the judge of compensation claims. The
21 judge of compensation claims shall give the interested parties
22 at least 7 days' advance notice of the pretrial hearing by
23 mail. At the pretrial hearing, the judge of compensation
24 claims shall, subject to paragraph (b), set a date for the
25 final hearing that allows the parties at least 60 days to
26 conduct discovery unless the parties consent to an earlier
27 hearing date.

28 ~~(b) The final hearing must be held and concluded~~
29 ~~within 90 days after the mediation conference is held.~~
30 Continuances may be granted only if the requesting party
31 demonstrates to the judge of compensation claims that the

1 reason for requesting the continuance arises from
2 circumstances beyond the party's control. Requests for
3 continuances that are determined by the judge of compensation
4 claims to be of a nonemergency or frivolous nature shall
5 result in a sanction against the party making the request. The
6 written consent of the claimant must be obtained before any
7 request from a claimant's attorney is granted for an
8 additional continuance after the initial continuance has been
9 granted. Any order granting a continuance must set forth the
10 date and time of the rescheduled hearing. A continuance may be
11 granted only if the requesting party demonstrates to the judge
12 of compensation claims that the reason for requesting the
13 continuance arises from circumstances beyond the control of
14 the parties. The judge of compensation claims shall report any
15 grant of two or more continuances to the Deputy Chief Judge.

16 (c) The judge of compensation claims shall give the
17 interested parties at least 7 days' advance notice of the
18 final hearing, served upon the interested parties by mail.

19 (d) The final hearing shall be held within 210 days
20 after receipt of the petition for benefits in the county where
21 the injury occurred, if the injury occurred in this state,
22 unless otherwise agreed to between the parties and authorized
23 by the judge of compensation claims in the county where the
24 injury occurred. The judge of compensation claims shall report
25 to the deputy chief judge any final hearing not held within
26 210 days after receipt of the petition for benefits and the
27 reason for the continuance. If the injury occurred outside the
28 state and is one for which compensation is payable under this
29 chapter, then the final hearing may be held in the county of
30 the employer's residence or place of business, or in any other
31 county of the state that will, in the discretion of the Deputy

1 Chief Judge, be the most convenient for a hearing. The final
2 hearing shall be conducted by a judge of compensation claims,
3 who shall, within 30 days after final hearing or closure of
4 the hearing record, unless otherwise agreed by the parties,
5 enter a final order on the merits of the disputed issues. The
6 judge of compensation claims may enter an abbreviated final
7 order in cases in which compensability is not disputed. Either
8 party may request separate findings of fact and conclusions of
9 law. At the final hearing, the claimant and employer may each
10 present evidence with respect to the claims presented by the
11 petition for benefits and may be represented by any attorney
12 authorized in writing for such purpose. When there is a
13 conflict in the medical evidence submitted in the proceeding
14 ~~at the hearing~~, the provisions of ss. s-440.13 and 440.192
15 shall apply and the judge shall accept the peer review panel's
16 determination regarding such medical disputes. If a peer
17 review determination has not been rendered, the judge of
18 compensation claims shall certify the disputed medical issue
19 to the Claims Bureau for referral to a peer review panel.The
20 report or testimony of the confirmatory consultant ~~expert~~
21 ~~medical advisor~~ shall be made a part of the record of the
22 proceeding and shall be given the same consideration by the
23 judge of compensation claims as is accorded other medical
24 evidence submitted in the proceeding; and all costs incurred
25 in connection with such examination and testimony may be
26 assessed as costs in the proceeding, subject to the provisions
27 of s. 440.13. ~~No judge of compensation claims may make a~~
28 ~~finding of a degree of permanent impairment that is greater~~
29 ~~than the greatest permanent impairment rating given the~~
30 ~~claimant by any examining or treating physician, except upon~~
31 ~~stipulation of the parties.~~Any benefit due but not raised at

1 the final hearing which was ripe, due, or owing at the time of
2 the final hearing is waived.

3 (e) The order making an award or rejecting the claim,
4 referred to in this chapter as a "compensation order," shall
5 set forth the findings of ultimate facts and the mandate; and
6 the order need not include any other reason or justification
7 for such mandate. The compensation order shall be filed in the
8 Office of the Judges of Compensation Claims at Tallahassee. A
9 copy of such compensation order shall be sent by mail to the
10 parties and attorneys of record at the last known address of
11 each, with the date of mailing noted thereon.

12 (f) Each judge of compensation claims is required to
13 submit a special report to the Deputy Chief Judge in each
14 contested workers' compensation case in which the case is not
15 determined within 30 days of final hearing or closure of the
16 hearing record. Said form shall be provided by the director of
17 the Division of Administrative Hearings and shall contain the
18 names of the judge of compensation claims and of the attorneys
19 involved and a brief explanation by the judge of compensation
20 claims as to the reason for such a delay in issuing a final
21 order.

22 (g) Notwithstanding any other provision of this
23 section, the judge of compensation claims may require the
24 appearance of the parties and counsel before her or him
25 without written notice for an emergency conference where there
26 is a bona fide emergency involving the health, safety, or
27 welfare of an employee. An emergency conference under this
28 section may result in the entry of an order or the rendering
29 of an adjudication by the judge of compensation claims. This
30 section does not grant jurisdiction over medical issues or
31 medical disputes to a judge of compensation claims.

1 (h) To expedite dispute resolution and to enhance the
2 self-executing features of the Workers' Compensation Law, the
3 Deputy Chief Judge shall make provision by rule or order for
4 the resolution of appropriate motions by judges of
5 compensation claims without oral hearing upon submission of
6 brief written statements in support and opposition, and for
7 expedited discovery and docketing. Unless the judge of
8 compensation claims, for good cause, orders a hearing under
9 paragraph (i), each claim in a petition relating to the
10 determination of pay under s. 440.14 shall be resolved under
11 this paragraph without oral hearing.

12 (i) To further expedite dispute resolution and to
13 enhance the self-executing features of the system, those
14 petitions filed in accordance with s. 440.192 that involve a
15 claim for benefits of \$5,000 or less shall, in the absence of
16 compelling evidence to the contrary, be presumed to be
17 appropriate for expedited resolution under this paragraph; and
18 any other claim filed in accordance with s. 440.192, upon the
19 written agreement of both parties and application by either
20 party, may similarly be resolved under this paragraph. A claim
21 in a petition or \$5,000 or less for medical benefits only or a
22 petition for reimbursement for mileage for medical purposes
23 shall, in the absence of compelling evidence to the contrary,
24 be resolved through the expedited dispute resolution process
25 provided in this paragraph. For purposes of expedited
26 resolution pursuant to this paragraph, the Deputy Chief Judge
27 shall make provision by rule or order for expedited and
28 limited discovery and expedited docketing in such cases. At
29 least 15 days prior to hearing, the parties shall exchange and
30 file with the judge of compensation claims a pretrial outline
31 of all issues, defenses, and witnesses on a form adopted by

1 the Deputy Chief Judge; provided, in no event shall such
2 hearing be held without 15 days' written notice to all
3 parties. No pretrial hearing shall be held. The judge of
4 compensation claims shall limit all argument and presentation
5 of evidence at the hearing to a maximum of 30 minutes, and
6 such hearings shall not exceed 30 minutes in length. Neither
7 party shall be required to be represented by counsel. The
8 employer or carrier may be represented by an adjuster or other
9 qualified representative. The employer or carrier and any
10 witness may appear at such hearing by telephone. The rules of
11 evidence shall be liberally construed in favor of allowing
12 introduction of evidence.

13 (j) A judge of compensation claims may, upon the
14 motion of a party or the judge's own motion, dismiss a
15 petition for lack of prosecution if a petition, response,
16 motion, order, request for hearing, or notice of deposition
17 has not been filed during the previous 12 months unless good
18 cause is shown. A dismissal for lack of prosecution is without
19 prejudice and does not require a hearing.

20 (k) A judge of compensation claims may not award
21 interest on unpaid medical bills and the amount of such bills
22 may not be used to calculate the amount of interest awarded.
23 Regardless of the date benefits were initially requested,
24 attorney's fees do not attach under this subsection until 30
25 days after the date the carrier or self-insured employer
26 receives the petition.

27 (5)(a)1. Procedures with respect to appeals from
28 orders of judges of compensation claims shall be governed by
29 rules adopted by the Workers' Compensation Appellate Tribunal
30 ~~Supreme Court~~. Such an order shall become final 30 days after
31

1 mailing of copies of such order to the parties, unless
2 appealed pursuant to such rules.

3 2. Procedures with respect to appeals from orders of
4 the Workers' Compensation Appellate Tribunal shall be governed
5 by rules adopted by the Supreme Court. Such an order becomes
6 final 30 days after rendition of the order to be reviewed,
7 unless appealed pursuant to such rules.

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

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

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

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

8 (6) An award of compensation for disability may be
9 made after the death of an injured employee.

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

27 Section 34. Section 440.271, Florida Statutes, is
28 amended to read:

29 440.271 Appeal of order of judge of compensation
30 claims.--Review of any order of a judge of compensation claims
31 entered pursuant to this chapter shall be by appeal to the

1 Workers' Compensation Appellate Tribunal ~~District Court of~~
2 ~~Appeal, First District~~. Appeals shall be filed in accordance
3 with rules of procedure prescribed by the tribunal ~~Supreme~~
4 ~~Court~~ for review of such orders. The department shall be given
5 notice of any proceedings when the cost of the record on
6 appeal is paid by the Workers' Compensation Administrative
7 Trust Fund, or when the matter involves ~~pertaining to s.~~
8 ~~440.25, regarding indigency, or s. 440.49, regarding the~~
9 Special Disability Trust Fund, and shall have the right to
10 intervene in any proceedings.

11 Section 35. Section 440.2715, Florida Statutes, is
12 amended to read:

13 440.2715 Access to courts through state video
14 teleconferencing network.--The Workers' Compensation Appellate
15 Tribunal and the First District Court of Appeal shall use the
16 state video teleconferencing network established by the
17 Department of Management Services to facilitate access to
18 courts for purposes of workers' compensation actions.

19 Section 36. Section 440.2725, Florida Statutes, is
20 created to read:

21 440.2725 Review of orders of Workers' Compensation
22 Appellate Tribunal.--Orders of the Workers' Compensation
23 Appellate Tribunal shall be subject to review by certiorari,
24 or as otherwise constitutionally necessary, to the First
25 District Court of Appeal. The petition shall be filed in
26 accordance with rules of procedure prescribed by the Supreme
27 Court for a review of such orders. The department may
28 intervene in any such review.

29 Section 37. Section 440.28, Florida Statutes, is
30 amended to read:

31

1 440.28 Modification of orders.--Upon a judge of
2 compensation claims' own initiative, or upon the application
3 of any party in interest, on the ground of a change in
4 condition or because of a mistake in a determination of fact,
5 the judge of compensation claims may, at any time prior to 2
6 years after the date of the last payment of compensation
7 pursuant to the compensation order the party seeks to modify,
8 or at any time prior to 2 years after the date copies of an
9 order rejecting a claim are mailed to the parties at the last
10 known address of each, review a compensation case in
11 accordance with the procedure prescribed in respect of claims
12 in s. 440.25 and, in accordance with such section, issue a new
13 compensation order which may terminate, continue, reinstate,
14 increase, or decrease such compensation or award compensation.
15 Such new order shall not affect any compensation previously
16 paid, except that an award increasing the compensation rate
17 may be made effective from the date of the injury, and, if any
18 part of the compensation due or to become due is unpaid, an
19 award decreasing the compensation rate may be made effective
20 from the date of the injury, and any payment made prior
21 thereto in excess of such decreased rate shall be deducted
22 from any unpaid compensation, in such manner and by such
23 method as may be determined by the judge of compensation
24 claims. Peer review panels have the same jurisdiction to
25 review and modify initial or final adjudications that they
26 have rendered on the same basis and within the same parameters
27 as set forth in this section for judges.

28 Section 38. Section 440.29, Florida Statutes, is
29 repealed.

30 Section 39. Section 440.30, Florida Statutes, is
31 amended to read:

1 440.30 Depositions.--Depositions of witnesses or
2 parties, residing within or without the state, may be taken
3 and may be used in connection with proceedings under the
4 Workers' Compensation Law, either upon order of the judge of
5 compensation claims or at the instance of any party or
6 prospective party to such proceedings, and either prior to the
7 institution of a claim, if the claimant is represented by an
8 attorney, or after the filing of the claim in the same manner,
9 for the same purposes, including the purposes of discovery,
10 and subject to the same rules; all as now or hereafter
11 prescribed by law or by rules of court governing the taking
12 and use of such depositions in civil actions at law in the
13 circuit courts of this state. Such depositions may be taken
14 before any notary public, court reporter, or deputy, and the
15 fees of the officer taking the same and the fees of the
16 witnesses attending the same, including expert witness fees as
17 provided by law or court rule, shall be the same as in
18 depositions taken for such circuit courts. Such fees may be
19 taxed as costs and recovered by the claimant, if successful in
20 such workers' compensation proceedings. If no claim has been
21 filed, then the carrier or employer taking the deposition
22 shall pay the claimant's attorney a reasonable attorney's fee
23 for attending said deposition. The members of a peer review
24 panel or employees of the bureau or of the Office of
25 Adjudication are not subject to giving any deposition unless
26 the Deputy Chief Judge shall have determined, after due
27 inquiry including an evidentiary hearing if necessary, that
28 there is basis to believe that the employee has been complicit
29 with fraud.

30 Section 40. Subsections (1) and (2) of section 440.32,
31 Florida Statutes, are amended to read:

1 440.32 Cost in proceedings brought without reasonable
2 ground.--

3 (1) If the judge of compensation claims or any court
4 having jurisdiction of proceedings in respect of any claim or
5 compensation order or peer review adjudication determines that
6 the proceedings in respect of such claim or order have been
7 instituted or continued without reasonable ground, the cost of
8 such proceedings shall be assessed against the party who has
9 so instituted or continued the proceedings.

10 (2) If the judge of compensation claims or any court
11 having jurisdiction of proceedings in respect to any claims or
12 defense under this section determines that the proceedings
13 were maintained or continued frivolously, the cost of the
14 proceedings, including reasonable attorney's fees, shall be
15 assessed against the offending attorney. If a penalty is
16 assessed under this subsection, a copy of the order assessing
17 the penalty may ~~must~~ be forwarded to the appropriate grievance
18 committee acting under the jurisdiction of the Supreme Court.
19 Penalties, fees, and costs awarded under this provision may
20 not be recouped from the party.

21 Section 41. Section 440.34, Florida Statutes, is
22 amended to read:

23 440.34 Attorney's fees; costs.--

24 (1) A fee, gratuity, or other consideration may not be
25 paid for benefits secured ~~services rendered~~ for a claimant in
26 connection with any proceedings arising under this chapter,
27 unless approved as reasonable by the judge of compensation
28 claims or court having jurisdiction over such proceedings. For
29 purposes of this section, the term "benefits secured" shall
30 reflect the following: Except as provided by this section
31 ~~subsection~~, any attorney's fee approved by a judge of

1 compensation claims for benefits secured for ~~services rendered~~
2 to a claimant shall be must equal to 20 percent of the first
3 \$5,000 of the amount of the benefits secured, whether ordered
4 or agreed to by the parties, and 15 percent of the next \$5,000
5 ~~of the amount of the benefits secured, 10 percent of the~~
6 remaining amount of the benefits secured to be provided during
7 the first 10 years after the date the claim is filed, ~~and 5~~
8 ~~percent of the benefits secured after 10 years. In the~~
9 alternative ~~However~~, the judge of compensation claims may
10 approve an attorney's fee that may not exceed \$2,500, based on
11 a maximum hourly rate of \$150 per hour, if the judge of
12 compensation claims expressly finds that the fee, based upon
13 the total benefits secured, fails to fairly compensate the
14 attorney and the benefits secured are less than \$10,000. In a
15 proceeding in which a carrier or employer denies that an
16 injury occurred for which compensation benefits are payable
17 and the claimant prevails on the issue of compensability, in
18 lieu of an attorney's fee equal to 15 percent of the benefits
19 secured, the judge of compensation claims may award an
20 attorney's fee that may not exceed \$2,500, based on a maximum
21 hourly rate of \$150 per hour, if the judge of compensation
22 claims expressly finds that the attorney's fee, based on the
23 benefits secured, fails to fairly compensate the attorney and
24 ~~shall consider the following factors in each case and may~~
25 ~~increase or decrease the attorney's fee if, in her or his~~
26 ~~judgment,~~ the circumstances of the particular case warrant
27 such action. The judge of compensation claims may not approve
28 a compensation order, a joint stipulation for a lump-sum
29 settlement, a stipulation or agreement between a claimant and
30 his or her attorney, or any other agreement related to
31 benefits under this chapter which provides for an attorney's

1 fee in excess of the amount permitted by this section. An
2 attorney's fee may not be due and does not begin to accrue for
3 a proceeding on medical issues until the peer review panel has
4 issued its initial adjudication of the issue.†

5 ~~(a) The time and labor required, the novelty and~~
6 ~~difficulty of the questions involved, and the skill requisite~~
7 ~~to perform the legal service properly.~~

8 ~~(b) The fee customarily charged in the locality for~~
9 ~~similar legal services.~~

10 ~~(c) The amount involved in the controversy and the~~
11 ~~benefits resulting to the claimant.~~

12 ~~(d) The time limitation imposed by the claimant or the~~
13 ~~circumstances.~~

14 ~~(e) The experience, reputation, and ability of the~~
15 ~~lawyer or lawyers performing services.~~

16 ~~(f) The contingency or certainty of a fee.~~

17 (2) In awarding a reasonable claimant's attorney's
18 fee, the judge of compensation claims shall consider only
19 those benefits secured by the attorney to the claimant that
20 the attorney is responsible for securing. An attorney is not
21 entitled to attorney's fees for representation in any issue
22 that was ripe, due, and owing and that reasonably could have
23 been addressed during the pendency of other issues for the
24 same injury.The amount, statutory basis, and type of benefits
25 obtained through legal representation shall be listed on all
26 attorney's fees awarded by the judge of compensation claims.
27 For purposes of this section, the term "benefits secured"
28 ~~means benefits obtained as a result of the claimant's~~
29 ~~attorney's legal services rendered in connection with the~~
30 ~~claim for benefits. However, such term does not include future~~
31 ~~medical benefits to be provided on any date more than 5 years~~

1 after the date the claim is filed. If an offer to settle an
2 issue pending before a judge of compensation claims is
3 communicated in writing to the claimant or the claimant's
4 attorney at least 30 days prior to the trial date on such
5 issue, benefits secured shall be only that amount awarded
6 above that specified in the offer to settle. If multiple
7 issues are pending before the judge of compensation claims,
8 the offer of settlement shall address each issue pending, and
9 shall state explicitly whether or not the offer on each issue
10 is severable. The written offer shall also unequivocally state
11 whether or not it includes medical witness fees and expenses,
12 and all other costs associated with the claim.

13 (3) If any party ~~the claimant~~ should prevail in any
14 proceedings before a judge of compensation claims or court,
15 there shall be taxed against the nonprevailing party ~~employer~~
16 the reasonable costs of such proceedings, not to include ~~the~~
17 attorney's fees ~~of the claimant~~. A claimant shall be
18 responsible for the payment of her or his own attorney's fees,
19 except that a claimant shall be entitled to recover a
20 reasonable attorney's fee from a carrier or employer:

21 (a) Against whom she or he successfully asserts a
22 request for reconsideration ~~petition~~ for medical benefits
23 only, if the claimant has not filed or is not entitled to file
24 at such time a claim for disability, permanent impairment,
25 wage-loss, or death benefits, arising out of the same
26 accident;

27 (b) In any case in which the employer or carrier files
28 a response to petition denying benefits with the Office of the
29 Judges of Compensation Claims and the injured person has
30 employed an attorney in the successful prosecution of the
31

1 petition, subject to the restrictions on proceedings for peer
2 review initial adjudication upon which no fees shall be due;

3 (c) In a proceeding in which a carrier or employer
4 denies that an accident occurred for which compensation
5 benefits are payable, and the claimant prevails on the issue
6 of compensability; or

7 (d) In cases where the claimant successfully prevails
8 in proceedings filed under s. 440.24 or s. 440.28.

9
10 Regardless of the date benefits were initially requested,
11 attorney's fees shall not attach under this subsection until
12 30 days after the date the carrier or employer, if
13 self-insured, receives the petition. ~~In applying the factors~~
14 ~~set forth in subsection (1) to cases arising under paragraphs~~
15 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
16 ~~only consider only such benefits and the time reasonably spent~~
17 ~~in obtaining them as were secured for the claimant within the~~
18 ~~scope of paragraphs (a), (b), (c), and (d).~~

19 (4) In such cases in which the claimant is responsible
20 for the payment of her or his own attorney's fees, such fees
21 are a lien upon compensation payable to the claimant,
22 notwithstanding s. 440.22.

23 (5) If any proceedings are had for review of any
24 claim, award, or compensation order before any court, the
25 court may award the injured employee or dependent an
26 attorney's fee to be paid by the employer or carrier, in its
27 discretion, which shall be paid as the court may direct.

28 (6) Retainer agreements or contracts of representation
29 may not be submitted to a judge of compensation claims for
30 approval except in conjunction with an appropriate motion for
31 approval of a specific fee following the securing of a

1 specific benefit or benefits. A judge of compensation claims
2 may not prospectively approve a contract of representation
3 prior to the securing of the benefit.A judge of compensation
4 claims may not enter an order approving the contents of a
5 retainer agreement that permits the escrowing of any portion
6 of the employee's compensation until benefits have been
7 secured.

8 (7) The judge of compensation claims shall not approve
9 a compensation order, a joint stipulation for a lump-sum
10 settlement, a stipulation or agreement between a claimant and
11 his or her attorney, or any other agreement related to
12 benefits under this chapter which provides for an attorney's
13 fee in excess of the amount permitted by this section.

14 Section 42. Section 440.38, Florida Statutes, is
15 amended to read:

16 440.38 Security for compensation; insurance carriers
17 and self-insurers.--

18 (1) Every employer shall secure the payment of
19 compensation under this chapter:

20 (a) By insuring and keeping insured the payment of
21 such compensation with any stock company or mutual company or
22 association or exchange, authorized to do business in the
23 state;

24 (b) By furnishing satisfactory proof to the Florida
25 Self-Insurers Guaranty Association, Incorporated, created in
26 s. 440.385, that it has the financial strength necessary to
27 ensure timely payment of all current and future claims
28 individually and on behalf of its subsidiary and affiliated
29 companies with employees in this state and receiving an
30 authorization from the Department of Financial Services
31 ~~insurance~~ to pay such compensation directly. The association

1 shall review the financial strength of applicants for
2 membership, current members, and former members and make
3 recommendations to the Department of Financial Services
4 ~~Insurance~~ regarding their qualifications to self-insure in
5 accordance with this section and ss. 440.385 and 440.386. ~~The~~
6 ~~department shall act in accordance with the recommendations~~
7 ~~unless it finds by clear and convincing evidence that the~~
8 ~~recommendations are erroneous.~~

9 1. As a condition of authorization under paragraph
10 (a), the association may recommend that the Department of
11 Financial Services Insurance require an employer to deposit
12 with the association a qualifying security deposit. The
13 association shall recommend the type and amount of the
14 qualifying security deposit and shall prescribe conditions for
15 the qualifying security deposit, which shall include
16 authorization for the association to call the qualifying
17 security deposit in the case of default to pay compensation
18 awards and related expenses of the association. As a condition
19 to authorization to self-insure, the employer shall provide
20 proof that the employer has provided for competent personnel
21 with whom to deliver benefits and to provide a safe working
22 environment. The employer shall also provide evidence that it
23 carries reinsurance at levels that will ensure the financial
24 strength and actuarial soundness of such employer in
25 accordance with rules adopted by the Department of Financial
26 Services Insurance. The Department of Financial Service
27 ~~Insurance~~ may by rule require that, in the event of an
28 individual self-insurer's insolvency, such qualifying security
29 deposits and reinsurance policies are payable to the
30 association. Any employer securing compensation in accordance
31 with the provisions of this paragraph shall be known as a

1 self-insurer and shall be classed as a carrier of her or his
2 own insurance. The employer shall, if requested, provide the
3 association an actuarial report signed by a member of the
4 American Academy of Actuaries providing an opinion of the
5 appropriate present value of the reserves, using a 4-percent
6 discount rate, for current and future compensation claims. If
7 any member or former member of the association refuses to
8 timely provide such a report, the association may obtain an
9 order from a circuit court requiring the member to produce
10 such a report and ordering any other relief that the court
11 determines is appropriate. The association may recover all
12 reasonable costs and attorney's fees in such proceedings.

13 2. If the employer fails to maintain the foregoing
14 requirements, the association shall recommend to the
15 Department of Financial Services ~~Insurance~~ that the department
16 revoke the employer's authority to self-insure, unless the
17 employer provides to the association the certified opinion of
18 an independent actuary who is a member of the American Academy
19 of Actuaries as to the actuarial present value of the
20 employer's determined and estimated future compensation
21 payments based on cash reserves, using a 4-percent discount
22 rate, and a qualifying security deposit equal to 1.5 times the
23 value so certified. The employer shall thereafter annually
24 provide such a certified opinion until such time as the
25 employer meets the requirements of subparagraph 1. The
26 qualifying security deposit shall be adjusted at the time of
27 each such annual report. Upon the failure of the employer to
28 timely provide such opinion or to timely provide a security
29 deposit in an amount equal to 1.5 times the value certified in
30 the latest opinion, the association shall provide that
31 information to the Department of Financial Services ~~Insurance~~

1 along with a recommendation, and the Department of Financial
2 Services ~~insurance~~ shall then revoke such employer's
3 authorization to self-insure. Failure to comply with this
4 subparagraph constitutes an immediate serious danger to the
5 public health, safety, or welfare sufficient to justify the
6 summary suspension of the employer's authorization to
7 self-insure pursuant to s. 120.68.

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

1 or acquires legal or beneficial title to the majority of the
2 assets or the majority of the shares of the employer.

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

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

12 b. Irrevocable letters of credit in favor of the
13 association issued by financial institutions located within
14 this state, the deposits of which are insured through the
15 Federal Deposit Insurance Corporation.

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

1 maturity of existing security deposits, whichever occurs
2 later. The Department of Financial Services ~~insurance~~ may
3 specify by rule the amount of the qualifying security deposit
4 required prior to authorizing an employer to self-insure and
5 the amount of net worth required for an employer to qualify
6 for authorization to self-insure;

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

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

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

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

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

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

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

27 4. Policies providing coverage under this subsection
28 must use prescribed and acceptable underwriting standards,
29 forms, and policies approved by the department of ~~Insurance~~.
30 If any insurance policy that provides coverage under this
31 section is canceled, terminated, or nonrenewed for any reason,

1 the cancellation, termination, or nonrenewal is ineffective
2 until the self-insured employer or insurance carrier or
3 carriers notify the department ~~division~~ and the department of
4 ~~insurance~~ of the cancellation, termination, or nonrenewal, and
5 until the department ~~division~~ has actually received the
6 notification. The department ~~division~~ must be notified of
7 replacement coverage under a workers' compensation and
8 employer's liability insurance policy or plan by the employer
9 prior to the effective date of the cancellation, termination,
10 or nonrenewal; or

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

16 (2)(a) The department of ~~insurance~~ shall adopt rules
17 by which businesses may become qualified to provide
18 underwriting claims-adjusting, loss control, and safety
19 engineering services to self-insurers.

20 (b) The department of ~~insurance~~ shall adopt rules
21 requiring self-insurers to file any reports necessary to
22 fulfill the requirements of this chapter. Any self-insurer
23 who fails to file any report as prescribed by the rules
24 adopted by the Department of Financial Services ~~insurance~~
25 shall be subject to a civil penalty.

26 (3)(a) The license of any stock company or mutual
27 company or association or exchange authorized to do insurance
28 business in the state shall for good cause, upon
29 recommendation of the division, be suspended or revoked by the
30 department of ~~insurance~~. A ~~No~~ suspension or revocation does
31

1 not ~~shall~~ affect the liability of any carrier which has
2 already been incurred.

3 (b) The Department of Financial Services Insurance
4 shall suspend or revoke any authorization to a self-insurer
5 for failure to comply with this section or for good cause, as
6 defined by rule of the department ~~of Insurance~~. A No
7 suspension or revocation does not ~~shall~~ affect the liability
8 of any self-insurer which has already been incurred.

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

17 (4)(a) A carrier of insurance, including the parties
18 to any mutual, reciprocal, or other association, may not write
19 any compensation insurance under this chapter without a permit
20 from the department ~~of Insurance~~. Such permit shall be given,
21 upon application therefor, to any insurance or mutual or
22 reciprocal insurance association upon the department's being
23 satisfied of the solvency of such corporation or association
24 and its ability to perform all its undertakings. The
25 department ~~of Insurance~~ may revoke any permit so issued for
26 violation of any provision of this chapter.

27 (b) A carrier of insurance, including the parties to
28 any mutual, reciprocal, or other association, may not write
29 any compensation insurance under this chapter unless such
30 carrier has a claims adjuster, either in-house or under
31 contract, situated within this state. Self-insurers whose

1 compensation payments are administered through a third party
2 and carriers of insurance shall maintain a claims adjuster
3 within this state during any period for which there are any
4 open claims against such self-insurer or carrier arising under
5 the compensation insurance written by the self-insurer or
6 carrier. Individual self-insurers whose compensation payments
7 are administered by employees of the self-insurer shall not be
8 required to have their claims adjuster situated within this
9 state. Individual self-insurers shall not be required to have
10 their claims adjusters situated within this state.

11 (5) All insurance carriers authorized to write
12 workers' compensation insurance in this state shall make
13 available, at the written request of the employer, an
14 insurance policy containing deductibles in the amount of \$500,
15 \$1,000, \$1,500, \$2,000, and \$2,500 per claim and a coinsurance
16 provision per claim. Any amount of coinsurance shall bind the
17 carrier to pay 80 percent, and the employer to pay 20 percent,
18 of the benefits due to an employee for an injury compensable
19 under this chapter of the amount of benefits above the
20 deductible, up to the limit of \$21,000. One hundred percent
21 of the benefits above the amount of any deductible and
22 coinsurance, as the case may be, due to an employee for one
23 injury shall be paid solely by the carrier. Regardless of any
24 coinsurance or deductible amount, the claim shall be paid by
25 the applicable carrier, which shall then be reimbursed by the
26 employer for any coinsurance or deductible amounts paid by the
27 carrier. No insurance carrier shall be required to offer a
28 deductible or coinsurance to any employer if, as a result of a
29 credit investigation, the carrier determines that the employer
30 is not sufficiently financially stable to be responsible for
31 payment of such deductible or coinsurance amounts.

1 (6) The state and its boards, bureaus, departments,
2 and agencies and all of its political subdivisions which
3 employ labor shall be deemed self-insurers under the terms of
4 this chapter, unless they elect to procure and maintain
5 insurance to secure the benefits of this chapter to their
6 employees; and they are hereby authorized to pay the premiums
7 for such insurance.

8 Section 43. Subsections (1), (3), and (6) of section
9 440.381, Florida Statutes, are amended to read:

10 440.381 Application for coverage; reporting payroll;
11 payroll audit procedures; penalties.--

12 (1) Applications by an employer to a carrier for
13 coverage required by s. 440.38 must be made on a form
14 prescribed by the Office of Insurance Regulation ~~Department of~~
15 ~~Insurance~~. The Office of Insurance Regulation ~~Department of~~
16 ~~Insurance~~ shall adopt rules for applications for coverage
17 required by s. 440.38. The rules must provide that an
18 application include information on the employer, the type of
19 business, past and prospective payroll, estimated revenue,
20 previous workers' compensation experience, employee
21 classification, employee names, and any other information
22 necessary to enable a carrier to accurately underwrite the
23 applicant. The rules must include a provision that a carrier
24 or self-insurance fund may require that an employer update an
25 application monthly to reflect any change in the required
26 application information.

27 (3) The Office of Insurance Regulation ~~department~~
28 shall establish by rule minimum requirements for audits of
29 payroll and classifications in order to ensure that the
30 appropriate premium is charged for workers' compensation
31 coverage. The rules shall ensure that audits performed by both

1 carriers and employers are adequate to provide that all
2 sources of payments to employees, subcontractors, and
3 independent contractors have been reviewed and that the
4 accuracy of classification of employees has been verified. The
5 rules shall provide that employers in all classes other than
6 the construction class be audited not less frequently than
7 biennially and may provide for more frequent audits of
8 employers in specified classifications based on factors such
9 as amount of premium, type of business, loss ratios, or other
10 relevant factors. In no event shall employers in the
11 construction class, generating more than the amount of premium
12 required to be experience rated, be audited less than
13 annually. The annual audits required for construction classes
14 shall consist of physical onsite audits. Payroll verification
15 audit rules must include, but need not be limited to, the use
16 of state and federal reports of employee income, payroll and
17 other accounting records, certificates of insurance maintained
18 by subcontractors, and duties of employees. At the completion
19 of an audit, the employer or officer of the corporation and
20 the auditor must print and sign their names on the audit
21 document and attach proof of identification to the audit
22 document.

23 (6)(a) If an employer understates or conceals payroll,
24 or misrepresents or conceals employee duties so as to avoid
25 proper classification for premium calculations, or
26 misrepresents or conceals information pertinent to the
27 computation and application of an experience rating
28 modification factor, the employer, or the employer's agent or
29 attorney, shall pay to the insurance carrier a penalty of 10
30 times the amount of the difference in premium paid and the
31 amount the employer should have paid and reasonable attorney's

1 fees. The penalty may be enforced in the circuit courts of
2 this state.

3 (b) If the department issues an administrative penalty
4 against an employer that the department determines has
5 materially understated or concealed payroll, has materially
6 misrepresented or concealed employee duties so as to avoid
7 proper classification for premium calculations, or has
8 materially misrepresented or concealed information pertinent
9 to the computation and application of an experience rating
10 modification factor, the department shall immediately notify
11 the employer's carrier of such determination. The carrier
12 shall commence a physical onsite audit of the employer within
13 30 days after receiving notification from the department. If
14 the carrier fails to commence the audit as required by this
15 section, the department shall contract with auditing
16 professionals to conduct the audit at the carrier's expense. A
17 copy of the carrier's audit of the employer shall be provided
18 to the department upon completion. The carrier is not required
19 to conduct the physical onsite audit of the employer as set
20 forth in this paragraph if the carrier gives a written notice
21 of cancellation to the employer at least 30 days before the
22 effective date of the cancellation and an audit is conducted
23 in conjunction with the cancellation.

24 Section 44. Section 440.385, Florida Statutes, is
25 amended to read:

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

28 (1) CREATION OF ASSOCIATION.--

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

1 Upon incorporation of the association, all individual
2 self-insurers as defined in ss. 440.02(23)(a) and
3 440.38(1)(b), other than individual self-insurers which are
4 public utilities or governmental entities, shall be members of
5 the association as a condition of their authority to
6 individually self-insure in this state. The association shall
7 perform its functions under a plan of operation as established
8 and approved under subsection (5) and shall exercise its
9 powers and duties through a board of directors as established
10 under subsection (2). The association shall have those powers
11 granted or permitted corporations not for profit, as provided
12 in chapter 617. The activities of the association shall be
13 subject to continuous review by the Department of Financial
14 Services Insurance. The department of ~~Insurance~~ shall have
15 oversight responsibility as set forth in this section. The
16 association is specifically authorized to enter into
17 agreements with this state to perform specified services.

18 (b) A member may voluntarily withdraw from the
19 association when the member voluntarily terminates the
20 self-insurance privilege and pays all assessments due to the
21 date of such termination. However, the withdrawing member
22 shall continue to be bound by the provisions of this section
23 relating to the period of his or her membership and any claims
24 charged pursuant thereto. The withdrawing member who is a
25 member on or after January 1, 1991, shall also be required to
26 provide to the association upon withdrawal, and at 12-month
27 intervals thereafter, satisfactory proof, including, if
28 requested by the association, a report of known and potential
29 claims certified by a member of the American Academy of
30 Actuaries, that it continues to meet the standards of s.
31 440.38(1)(b)1. in relation to claims incurred while the

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

1 recover a judgment in the amount of the actuarial present
2 value of the determined and estimated future compensation
3 payments of the withdrawing member for claims incurred during
4 the time that the withdrawing member exercised the privilege
5 of self-insurance, together with reasonable attorney's fees.
6 The association is also entitled to recover reasonable
7 attorney's fees in any action to compel production of any
8 actuarial report required by this section. For purposes of
9 this section, the successor of a withdrawing member means any
10 person, business entity, or group of persons or business
11 entities, which holds or acquires legal or beneficial title to
12 the majority of the assets or the majority of the shares of
13 the withdrawing member.

14 (2) BOARD OF DIRECTORS.--The board of directors of the
15 association shall consist of nine persons and shall be
16 organized as established in the plan of operation. All board
17 members shall be experienced in self-insurance in this state.
18 Each director shall serve for a 4-year term and may be
19 reappointed. Appointments after January 1, 2002, shall be made
20 by the Chief Financial Officer ~~Department of Insurance~~ upon
21 recommendations ~~recommendation~~ of members of the association.
22 Any vacancy on the board shall be filled for the remaining
23 period of the term in the same manner as appointments other
24 than initial appointments are made. Each director shall be
25 reimbursed for expenses incurred in carrying out the duties of
26 the board on behalf of the association.

27 (3) POWERS AND DUTIES.--

28 (a) Upon creation of the Insolvency Fund pursuant to
29 ~~the provisions of~~ subsection (4), the association is obligated
30 for payment of compensation under this chapter to insolvent
31 members' employees resulting from incidents and injuries

1 existing prior to the member becoming an insolvent member and
2 from incidents and injuries occurring within 30 days after the
3 member has become an insolvent member, provided the incidents
4 giving rise to claims for compensation under this chapter
5 occur during the year in which such insolvent member is a
6 member of the guaranty fund and was assessable pursuant to the
7 plan of operation, and provided the employee makes timely
8 claim for such payments according to procedures set forth by a
9 court of competent jurisdiction over the delinquency or
10 bankruptcy proceedings of the insolvent member. Such
11 obligation includes only that amount due the injured worker or
12 workers of the insolvent member under this chapter. In no
13 event is the association obligated to a claimant in an amount
14 in excess of the obligation of the insolvent member. The
15 association shall be deemed the insolvent employer for
16 purposes of this chapter to the extent of its obligation on
17 the covered claims and, to such extent, shall have all rights,
18 duties, and obligations of the insolvent employer as if the
19 employer had not become insolvent. However, in no event shall
20 the association be liable for any penalties or interest.

21 (b) The association may:

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

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

26 3. Sue or be sued.

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

29 5. Purchase such reinsurance as is determined
30 necessary pursuant to the plan of operation.

31

1 6. Review all applicants for membership in the
2 association to determine whether the applicant is qualified
3 for membership under the law. The association shall recommend
4 to the Department of Financial Services ~~Insurance~~ that the
5 application be accepted or rejected based on the criteria set
6 forth in s. 440.38(1)(b). The department ~~of Insurance~~ shall
7 approve or disapprove the application as provided in paragraph
8 (6)(a).

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

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

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

29 c. Require an increase in the employer's security
30 deposit in an amount recommended ~~determined~~ by the association
31 to be necessary to ensure payment of compensation claims. The

1 Department of Financial Services Insurance shall act on such
2 recommendations as provided in paragraph (6)(a). The
3 association has a cause of action against an employer, and
4 against any successor of an employer, who fails to provide an
5 additional security deposit required by the Department of
6 Financial Services Insurance. The association shall file an
7 action in circuit court to recover a judgment in the amount of
8 the requested additional security deposit together with
9 reasonable attorney's fees. For the purposes of this section,
10 the successor of an employer is any person, business entity,
11 or group of persons or business entities which holds or
12 acquires legal or beneficial title to the majority of the
13 assets or the majority of the shares of the employer.

14 8. Charge fees to any member of the association to
15 cover the actual costs of examining the financial and safety
16 conditions of that member.

17 9. Charge an applicant for membership in the
18 association a fee sufficient to cover the actual costs of
19 examining the financial condition of the applicant.

20 10. Implement any procedures necessary to ensure
21 compliance with regulatory actions taken by the Department of
22 Financial Services Insurance.

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

1 shall not exceed 1 percent of the annual written premium
2 during the calendar year preceding the date of the assessment.
3 Assessments shall be remitted to and administered by the board
4 of directors in the manner specified by the approved plan.
5 Each employer so assessed shall have at least 30 days' written
6 notice as to the date the assessment is due and payable. The
7 association shall levy assessments against any newly admitted
8 member of the association so that the basis of contribution of
9 any newly admitted member is the same as previously admitted
10 members, provision for which shall be contained in the plan of
11 operation.

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

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

27 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
28 operation, there shall be created an Insolvency Fund to be
29 managed by the association.

30 (a) The Insolvency Fund is created for purposes of
31 meeting the obligations of insolvent members incurred while

1 members of the association and after the exhaustion of any
2 security deposit, as required under this chapter. However, if
3 such security deposit or reinsurance policy is payable to the
4 association, the association shall commence to provide
5 benefits out of the Insolvency Fund and be reimbursed from the
6 security deposit or reinsurance policy. The method of
7 operation of the Insolvency Fund shall be defined in the plan
8 of operation as provided in subsection (5).

9 (b) The Department of Financial Services Insurance
10 shall have the authority to audit the financial soundness of
11 the Insolvency Fund annually.

12 (c) The Department of Financial Services Insurance may
13 offer certain amendments to the plan of operation to the board
14 of directors of the association for purposes of assuring the
15 ongoing financial soundness of the Insolvency Fund and its
16 ability to meet the obligations of this section.

17 (5) PLAN OF OPERATION.--The association shall operate
18 pursuant to a plan of operation approved by the board of
19 directors. The plan of operation in effect on January 1, 2002,
20 and approved by the Department of Labor and Employment
21 Security shall remain in effect. However, any amendments to
22 the plan shall not become effective until approved by the
23 Department of Financial Services Insurance.

24 (a) The purpose of the plan of operation shall be to
25 provide the association and the board of directors with the
26 authority and responsibility to establish the necessary
27 programs and to take the necessary actions to protect against
28 the insolvency of a member of the association. In addition,
29 the plan shall provide that the members of the association
30 shall be responsible for maintaining an adequate Insolvency
31 Fund to meet the obligations of insolvent members provided for

1 under this act and shall authorize the board of directors to
2 contract and employ those persons with the necessary expertise
3 to carry out this stated purpose. By January 1, 2003, the
4 board of directors shall submit to the Department of Insurance
5 a proposed plan of operation for the administration of the
6 association. Approval of the plan shall be ~~The Department of~~
7 ~~insurance shall approve the plan~~ by order, consistent with
8 this section. The Department of Financial Services ~~Insurance~~
9 shall approve any amendments to the plan, consistent with this
10 section, which are determined appropriate to carry out the
11 duties and responsibilities of the association.

12 (b) All member employers shall comply with the plan of
13 operation.

14 (c) The plan of operation shall:

15 1. Establish the procedures whereby all the powers and
16 duties of the association under subsection (3) will be
17 performed.

18 2. Establish procedures for handling assets of the
19 association.

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

22 4. Establish procedures by which claims may be filed
23 with the association and establish acceptable forms of proof
24 of covered claims. Notice of claims to the receiver or
25 liquidator of the insolvent employer shall be deemed notice to
26 the association or its agent, and a list of such claims shall
27 be submitted periodically to the association or similar
28 organization in another state by the receiver or liquidator.

29 5. Establish regular places and times for meetings of
30 the board of directors.

31

1 6. Establish procedures for records to be kept of all
2 financial transactions of the association and its agents and
3 the board of directors.

4 7. Provide that any member employer aggrieved by any
5 final action or decision of the association may appeal to the
6 Department of Financial Services Insurance within 30 days
7 after the action or decision.

8 8. Establish the procedures whereby recommendations of
9 candidates for the board of directors shall be submitted to
10 the Department of Financial Services Insurance.

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

13 (d) The plan of operation may provide that any or all
14 of the powers and duties of the association, except those
15 specified under subparagraphs (c)1. and 2., be delegated to a
16 corporation, association, or other organization which performs
17 or will perform functions similar to those of this association
18 or its equivalent in two or more states. Such a corporation,
19 association, or organization shall be reimbursed as a
20 servicing facility would be reimbursed and shall be paid for
21 its performance of any other functions of the association. A
22 delegation of powers or duties under this subsection shall
23 take effect only with the approval of both the board of
24 directors and the Department of Financial Services Insurance
25 and may be made only to a corporation, association, or
26 organization which extends protection which is not
27 substantially less favorable and effective than the protection
28 provided by this section.

29 (6) POWERS AND DUTIES OF DEPARTMENT OF FINANCIAL
30 SERVICES INSURANCE.--The Department of Financial Services
31 Insurance shall:

1 (a) Review recommendations of the association
2 concerning whether current or former self-insured employers or
3 members of the association have the financial strength
4 necessary to ensure the timely payment of all current and
5 estimated future claims. If the association determines an
6 employer does not have the financial strength necessary to
7 ensure the timely payment of all current and future claims and
8 recommends action pursuant to paragraph (3)(b), the department
9 shall take such action as necessary to order the employer to
10 comply with the recommendation, unless the department finds ~~by~~
11 ~~clear and convincing evidence~~ that the recommendation is
12 erroneous.

13 (b) Contract with the association for services, which
14 may include, but are not limited to:

15 1. Processing applications for self-insurance.

16 2. Collecting and reviewing financial statements and
17 loss reserve information from individual self-insurers.

18 3. Collecting and maintaining files for original
19 security deposit documents and reinsurance policies from
20 individual self-insurers and, if necessary, perfecting
21 security interests in security deposits.

22 4. Processing compliance documentation for individual
23 self-insurers and providing copies of such documentation to
24 the department.

25 5. Collecting all data necessary to calculate annual
26 premium for all individual self-insurers, including individual
27 self-insurers that are public utilities or governmental
28 entities, and providing such calculated annual premium to the
29 department division for assessment purposes.

30 6. Inspecting and auditing annually, if necessary, the
31 payroll and other records of each individual self-insurer,

1 including individual self-insurers that are public utilities
2 or governmental entities, in order to determine the wages paid
3 by each individual self-insurer, the premium such individual
4 self-insurer would have to pay if insured, and all payments of
5 compensation made by such individual self-insurer during each
6 prior period with the results of such audit provided to the
7 department ~~division~~. For purposes of this section, the payroll
8 records of each individual self-insurer shall be open to
9 inspection and audit by the association and the department, or
10 their authorized representatives, during regular business
11 hours.

12 7. Processing applications and making recommendations
13 with respect to the qualification of a business to be approved
14 to provide or continue to provide services to individual
15 self-insurers in the areas of underwriting, claims adjusting,
16 loss control, and safety engineering.

17 8. Providing legal representation to implement the
18 administration and audit of individual self-insurers and
19 making recommendations regarding prosecution of any
20 administrative or legal proceedings necessitated by the
21 regulation of the individual self-insurers by the department.

22 ~~(c) Contract with an attorney or attorneys recommended~~
23 ~~by the association for representation of the department in any~~
24 ~~administrative or legal proceedings necessitated by the~~
25 ~~recommended regulation of the individual self-insurers.~~

26 (c)(d) Direct the association to require from each
27 individual self-insurer, at such time and in accordance with
28 such regulations as the department prescribes, reports
29 relating to wages paid, the amount of premiums such individual
30 self-insurer would have to pay if insured, and all payments of
31 compensation made by such individual self-insurer during each

1 prior period and to determine the amounts paid by each
2 individual self-insurer and the amounts paid by all individual
3 self-insurers during such period. For purposes of this
4 section, the payroll records of each individual self-insurer
5 shall be open to annual inspection and audit by the
6 association and the department, or their authorized
7 representative, during regular business hours, and if any
8 audit of such records of an individual self-insurer discloses
9 a deficiency in the amount reported to the association or in
10 the amounts paid to the department ~~division~~ by an individual
11 self-insurer for its assessment for the Workers' Compensation
12 Administration Trust Fund, the department or the association
13 may assess the cost of such audit against the individual
14 self-insurer.

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

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

31

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

4 (7) EFFECT OF PAID CLAIMS.--

5 (a) Any person who recovers from the association under
6 this section shall be deemed to have assigned his or her
7 rights to the association to the extent of such recovery.
8 Every claimant seeking the protection of this section shall
9 cooperate with the association to the same extent as such
10 person would have been required to cooperate with the
11 insolvent member. The association shall have no cause of
12 action against the employee of the insolvent member for any
13 sums the association has paid out, except such causes of
14 action as the insolvent member would have had if such sums had
15 been paid by the insolvent member. In the case of an
16 insolvent member operating on a plan with assessment
17 liability, payments of claims by the association shall not
18 operate to reduce the liability of the insolvent member to the
19 receiver, liquidator, or statutory successor for unpaid
20 assessments.

21 (b) The receiver, liquidator, or statutory successor
22 of an insolvent member shall be bound by settlements of
23 covered claims by the association or a similar organization in
24 another state. The court having jurisdiction shall grant such
25 claims priority against the assets of the insolvent member
26 equal to that to which the claimant would have been entitled
27 in the absence of this section. The expense of the association
28 or similar organization in handling claims shall be accorded
29 the same priority as the expenses of the liquidator.

30 (c) The association shall file periodically with the
31 receiver or liquidator of the insolvent member statements of

1 the covered claims paid by the association and estimates of
2 anticipated claims on the association, which shall preserve
3 the rights of the association against the assets of the
4 insolvent member.

5 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the
6 detection and prevention of employer insolvencies: Upon
7 determination by majority vote that any member employer may be
8 insolvent or in a financial condition hazardous to the
9 employees thereof or to the public, it shall be the duty of
10 the board of directors to notify the Department of Financial
11 Services Insurance of any information indicating such
12 condition.

13 (9) EXAMINATION OF THE ASSOCIATION.--The association
14 shall be subject to examination and regulation by the
15 Department of Financial Services Insurance. No later than
16 March 30 of each year, the board of directors shall submit an
17 audited financial statement for the preceding calendar year in
18 a form approved by the department.

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

26 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
27 JUDGMENTS.--All proceedings in which an insolvent employer is
28 a party, or is obligated to defend a party, in any court or
29 before any quasi-judicial body or administrative board in this
30 state shall be stayed for up to 6 months, or for such
31 additional period from the date the employer becomes an

1 insolvent member, as is deemed necessary by a court of
2 competent jurisdiction to permit proper defense by the
3 association of all pending causes of action as to any covered
4 claims arising from a judgment under any decision, verdict, or
5 finding based on the default of the insolvent member. The
6 association, either on its own behalf or on behalf of the
7 insolvent member, may apply to have such judgment, order,
8 decision, verdict, or finding set aside by the same court or
9 administrator that made such judgment, order, decision,
10 verdict, or finding and shall be permitted to defend against
11 such claim on the merits. If requested by the association,
12 the stay of proceedings may be shortened or waived.

13 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
14 any other provision of this chapter, a covered claim, as
15 defined herein, with respect to which settlement is not
16 effected and pursuant to which suit is not instituted against
17 the insured of an insolvent member or the association within 1
18 year after the deadline for filing claims with the receiver of
19 the insolvent member, or any extension of the deadline, shall
20 thenceforth be barred as a claim against the association.

21 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
22 by a member by refund, dividend, or otherwise from the
23 association shall be payable within 30 days of receipt to the
24 Department of Revenue for deposit with the Treasurer to the
25 credit of the General Revenue Fund. All provisions of chapter
26 220 relating to penalties and interest on delinquent corporate
27 income tax payments apply to payments due under this
28 subsection.

29 Section 45. Subsections (2) and (3), and paragraph (a)
30 of subsection (4) of section 440.386, Florida Statutes, are
31 amended to read:

1 440.386 Individual self-insurers' insolvency;
2 conservation; liquidation.--

3 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
4 Department of Financial Services Insurance or the Florida
5 Self-Insurers Guaranty Association, Incorporated, may commence
6 a delinquency proceeding by application to the court for an
7 order directing the individual self-insurer to show cause why
8 the department or association should not have the relief
9 sought. On the return of such order to show cause, and after a
10 full hearing, the court shall either deny the application or
11 grant the application, together with such other relief as the
12 nature of the case and the interests of the claimants,
13 creditors, stockholders, members, subscribers, or public may
14 require. The department and the association shall give
15 reasonable written notice to each other of all hearings which
16 pertain to an adjudication of insolvency of a member
17 individual self-insurer.

18 (3) GROUNDS FOR LIQUIDATION.--The Department of
19 Financial Services Insurance or the association may apply to
20 the court for an order appointing a receiver and directing the
21 receiver to liquidate the business of a domestic individual
22 self-insurer if such individual self-insurer is insolvent.

23 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
24 SELF-INSURERS.--

25 (a) The Department of Financial Services Insurance or
26 the association may apply to the court for an order appointing
27 a receiver or ancillary receiver, and directing the receiver
28 to conserve the assets within this state, of a foreign
29 individual self-insurer if such individual self-insurer is
30 insolvent.

31

1 Section 46. Section 440.40, Florida Statutes, is
2 amended to read:

3 440.40 Compensation notice; certificate of
4 insurance.--

5 (1) Every employer who has secured compensation under
6 the provisions of this chapter shall keep posted in a
7 conspicuous place or places in and about her or his place or
8 places of business typewritten or printed notices, in
9 accordance with forms ~~a form~~ prescribed by the department, the
10 following:

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

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

29 (2) Every employer who has secured compensation under
30 this chapter shall make available to the department at each
31 job site a certificate of insurance issued by the carrier, a

1 valid exemption certificate approved by the department or the
2 former Division of Workers' Compensation of the Department of
3 Labor and Employment Security, or a copy of the employer's
4 authority to self-insure.

5 Section 47. Subsection (3) of section 440.42, Florida
6 Statutes, is amended to read:

7 440.42 Insurance policies; liability.--

8 (3) No contract or policy of insurance issued by a
9 carrier under this chapter shall expire or be canceled until
10 at least 30 days have elapsed after a notice of cancellation
11 or nonrenewal has been sent to the ~~department and to the~~
12 ~~employer in accordance with the provisions of s. 440.185(7).~~
13 For cancellation due to nonpayment of premium, the insurer
14 shall give written notification to the employer at least 10
15 days before the effective date of the cancellation.However,
16 when duplicate or dual coverage exists by reason of two
17 different carriers having issued policies of insurance to the
18 same employer securing the same liability, it shall be
19 presumed that only that policy with the later effective date
20 shall be in force and that the earlier policy terminated upon
21 the effective date of the latter. In the event that both
22 policies carry the same effective date, one of the policies
23 may be canceled instanter upon filing a notice of cancellation
24 or nonrenewal with the department and serving a copy thereof
25 upon the employer in such manner as the department prescribes
26 by rule. The department may by rule prescribe the content of
27 the notice of retroactive cancellation and specify the time,
28 place, and manner in which the notice of cancellation is to be
29 served. A carrier shall file with the department, at least 30
30 days before the effective date of cancellation or nonrenewal
31 of the policy, a notice of such cancellation or nonrenewal,

1 or, for cancellation or nonrenewal of the policy for
2 nonpayment of premium, shall file such notice with the
3 department at least 10 days before the effective date of
4 cancellation, in a format prescribed by department rule.

5 Section 48. Section 440.44, Florida Statutes, is
6 amended to read:

7 440.44 Workers' compensation; staff organization.--

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

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

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

1 department, the agency, the Department of Education, or the
2 director of the Division of Administrative Hearings.

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

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

27 (6) SEAL.--The department the Workers' Compensation
28 Appellate Tribunal,and the judges of compensation claims
29 shall have a seal upon which shall be inscribed the words
30 "State of Florida Department of Financial Services
31 ~~Insurance--Seal,~~" ~~and~~ "Division of Administrative

1 Hearings--Seal," and State of Florida Workers' Compensation
2 Appellate Tribunal--Seal,"respectively, and each shall be
3 judicially noticed.

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

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

18 Section 49. Section 440.442, Florida Statutes, is
19 amended to read:

20 440.442 Code of Judicial Conduct.--The Chief Judge,
21 the Workers' Compensation Appellate Tribunal appellate judges,
22 the Deputy Chief Judge,and judges of compensation claims
23 shall observe and abide by the Code of Judicial Conduct as
24 adopted by the Florida Supreme Court. Any material violation
25 of a provision of the Code of Judicial Conduct shall
26 constitute either malfeasance or misfeasance in office and
27 shall be grounds for suspension and removal of the Chief
28 Judge, the Workers' Compensation Appellate Tribunal appellate
29 judges,the Deputy Chief Judge,or a judge of compensation
30 claims by the Governor.

31

1 Section 50. Section 440.45, Florida Statutes, is
2 amended to read:

3 440.45 Office of the Judges of Compensation Claims and
4 Workers' Compensation Appellate Tribunal.--

5 (1)(a) There is created the Workers' Compensation
6 Appellate Tribunal, which shall be administratively housed in
7 the Department of Management Services. The Workers'
8 Compensation Appellate Tribunal shall not be subject to
9 control, supervision, or direction of the Department of
10 Management Services in the performance of its powers and
11 duties under this chapter. The Workers' Compensation Appellate
12 Tribunal shall be headed by a Chief Judge who shall be
13 appointed by the Governor for a term of 4 years from a list of
14 three to six names submitted by the statewide nominating
15 commission created under subsection (2). The Chief Judge must
16 demonstrate prior administrative experience and possess the
17 same qualifications for appointment as a Workers' Compensation
18 Appellate Tribunal appellate judge, and the procedure for
19 reappointment of the Chief Judge shall be the same as for
20 reappointment of a Workers' Compensation Appellate Tribunal
21 appellate judge.There is created the Office of the Judges of
22 Compensation Claims within the Department of Management
23 Services. The Office of the Judges of Compensation Claims
24 shall be headed by the Deputy Chief Judge of Compensation
25 Claims. The Deputy Chief Judge shall report to the director of
26 the Division of Administrative Hearings. The Deputy Chief
27 Judge shall be appointed by the Governor for a term of 4 years
28 from a list of three names submitted by the statewide
29 nominating commission created under subsection (2). The Deputy
30 Chief Judge must demonstrate prior administrative experience
31 and possess the same qualifications for appointment as a judge

1 of compensation claims, and the procedure for reappointment of
2 the Deputy Chief Judge will be the same as for reappointment
3 of a judge of compensation claims. The office shall be a
4 separate budget entity and the Deputy Chief Judge ~~director of~~
5 ~~the Division of Administrative Hearings~~ shall be its agency
6 head for all purposes, including, but not limited to,
7 rulemaking pursuant to subsection (4) and establishing agency
8 policies and procedures. The Department of Management Services
9 shall provide administrative support and service to the office
10 to the extent requested by the director of the Division of
11 Administrative Hearings but shall not direct, supervise, or
12 control the Workers' Compensation Appellate Tribunal or the
13 Office of the Judges of Compensation Claims in any manner,
14 including, but not limited to, personnel, purchasing,
15 budgetary matters, or property transactions. The operating
16 budget of the Office of the Judges of Compensation Claims and
17 the Workers' Compensation Appellate Tribunal shall be paid out
18 of the Workers' Compensation Administration Trust Fund
19 established in s. 440.50. Notwithstanding any other provision
20 of law, each full-time Workers' Compensation Appellate
21 Tribunal appellate judge shall receive a salary in an amount
22 equal to that paid under state law to a judge of the district
23 courts of appeal.

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

28 (c) The Workers' Compensation Appellate Tribunal is
29 vested with all authority, powers, duties, and
30 responsibilities related to review of orders of judges of
31 compensation claims and peer review panels in workers'

1 compensation proceedings under chapter 440 effective for all
2 petitions for benefits filed on or after March 1, 2004. The
3 Workers' Compensation Appellate Tribunal shall review by
4 appeal final orders of the judges of compensation claims and
5 peer review panels entered pursuant to chapter 440. The First
6 District Court of Appeal shall retain jurisdiction over all
7 workers' compensation matters pending before it on February
8 29, 2004. The Workers' Compensation Appellate Tribunal may
9 hold sessions and conduct hearings at any place within the
10 state. Three appellate judges shall consider each case, and
11 the concurrence of two shall be necessary for a decision. Any
12 two appellate judges may request an en banc hearing for review
13 of a final order of a judge of compensation claims.

14 (d) The tribunal may, in its discretion, charge for
15 publications, subscriptions, and copies of records and
16 documents. Such funds shall be deposited in the trust fund
17 established in s. 440.50.

18 (e) The Chief Judge shall exercise administrative
19 supervision over the Workers' Compensation Appellate Tribunal
20 and over the appellate judges and other officers of the
21 tribunal.

22 (f) The Chief Judge of the Workers' Compensation
23 Appellate Tribunal shall have the power:

- 24 1. To assign appellate judges to panels and to review
25 or hear appeals from orders of judges of compensation claims.
- 26 2. To hire and assign clerks and staff.
- 27 3. To regulate use of courtrooms.
- 28 4. To supervise dockets and calendars.
- 29 5. To do everything necessary to promote the prompt
30 and efficient administration of justice relative to the review
31 and appeal of workers' compensation matters.

1 6. To adopt rules to effect the purposes of this
2 section.

3 (g) The Chief Judge may appoint an executive assistant
4 or staff attorney to perform such duties as the chief
5 appellate judge may direct. The tribunal shall be authorized
6 to employ research assistants or law clerks to assist the
7 appellate judges in performing their duties under this
8 section.

9 (h) The Chief Judge shall appoint a Clerk of the
10 Workers' Compensation Appellate Tribunal who shall serve at
11 the pleasure of the tribunal. Before entering upon the
12 discharge of the clerk's duties, the clerk shall give bond in
13 the sum of \$5,000 payable to the Governor or his successors in
14 office, to be approved by a majority of the tribunal
15 conditioned upon the faithful discharge of the duties of the
16 clerk's office, which bond shall be filed with the Office of
17 the Secretary of State.

18 1. The tribunal shall maintain and keep open during
19 reasonable business hours a clerk's office residing in Leon
20 County, for the transaction of its business. All books,
21 papers, records, files, and the seal of the tribunal shall be
22 kept at this office. The office shall be furnished and
23 equipped by the tribunal.

24 2. The clerk shall be paid an annual salary to be
25 determine in accordance with chapter 25.

26 3. The clerk may employ deputies and clerical
27 assistants as necessary. The number and compensation of the
28 deputies and clerical assistants shall be approved by the
29 tribunal and paid from the annual appropriations for the
30 Workers' Compensation Appellate Tribunal from the trust fund
31 established in s. 440.50.

1 4. The clerk, upon the filing of a certified copy of a
2 notice of appeal or petition, shall charge and collect a
3 filing fee of \$200 for each case docketed, and shall charge
4 and collect for copying, certifying, or furnishing opinions,
5 records, papers, or other instruments, and for other services
6 the same service charges as provided in s. 28.24. The state or
7 its agencies, when appearing as appellant or petitioner, is
8 exempt from the filing fee required in this subsection.

9 5. The Clerk of the Workers' Compensation Appellate
10 Tribunal shall prepare a statement of all fees collected in
11 duplicate each month and remit one copy of the statement,
12 together with all fees collected by the clerk's office, to the
13 Chief Financial Officer, who shall deposit the funds in the
14 Workers' Compensation Administrative Trust Fund established by
15 s. 440.50.

16 (2)(a) The Governor shall appoint full-time judges of
17 compensation claims and Workers' Compensation Appellate
18 Tribunal appellate judges to conduct proceedings as required
19 by this chapter or other law. No person may be nominated to
20 serve as a judge of compensation claims unless he or she has
21 been a member of The Florida Bar in good standing for the
22 previous 5 years and is experienced in the practice of law of
23 workers' compensation. No person may be nominated to serve as
24 a Workers' Compensation Appellate Tribunal appellate judge
25 unless he or she has been a member of The Florida Bar in good
26 standing for the previous 10 years and is experienced in the
27 practice of law of workers' compensation.No judge of
28 compensation claims or Workers' Compensation Appellate
29 Tribunal appellate judge shall engage in the private practice
30 of law during a term of office.

31

1 (b) Except as provided in paragraph (c), the Governor
2 shall appoint a judge of compensation claims or Workers'
3 Compensation Appellate Tribunal appellate judge from a list of
4 three persons nominated by a statewide nominating commission.
5 The statewide nominating commission shall be composed of the
6 following:

7 1. Five members, at least one of whom must be a member
8 of a minority group as defined in s. 288.703(3), one of each
9 who resides in each of the territorial jurisdictions of the
10 district courts of appeal, appointed by the Chief Financial
11 Officer Board of Governors of The Florida Bar from among The
12 Florida Bar members who are engaged in the practice of law. On
13 July 1, 2003 ~~1999~~, the term of office of each person appointed
14 by the Board of Governors of The Florida Bar to the commission
15 expires. ~~The Board of Governors shall appoint members who~~
16 ~~reside in the odd-numbered district court of appeal~~
17 ~~jurisdictions to 4-year terms each, beginning July 1, 1999,~~
18 ~~and members who reside in the even-numbered district court of~~
19 ~~appeal jurisdictions to 2-year terms each, beginning July 1,~~
20 ~~1999. Thereafter, each member shall be appointed for a 4-year~~
21 ~~term.~~

22 2. Five electors, at least one of whom must be a
23 member of a minority group as defined in s. 288.703(3), one of
24 each who resides in each of the territorial jurisdictions of
25 the district courts of appeal, appointed by the Governor. On
26 July 1, 2003 ~~1999~~, the term of office of each person appointed
27 by the Governor to the commission expires. The Governor shall
28 appoint members who reside in the odd-numbered district court
29 of appeal jurisdictions to 2-year terms each, beginning July
30 1, 2003 ~~1999~~, and members who reside in the even-numbered
31 district court of appeal jurisdictions to 4-year terms each,

1 beginning July 1, 2003 ~~1999~~. Thereafter, each member shall be
2 appointed for a 4-year term; and

3 3. One elector ~~Five electors, at least one of whom~~
4 ~~must be a member of a minority group as defined in s.~~
5 ~~288.703(3), one of each who resides in the territorial~~
6 ~~jurisdictions of the district courts of appeal, selected and~~
7 ~~appointed by a majority vote of the other 10 members of the~~
8 ~~commission. On October 1, 1999, the term of office of each~~
9 ~~person appointed to the commission by its other members~~
10 ~~expires. A majority of the other members of the commission~~
11 ~~shall appoint members who reside in the odd-numbered district~~
12 ~~court of appeal jurisdictions to 2-year terms each, beginning~~
13 ~~October 1, 1999, and members who reside in the even-numbered~~
14 ~~district court of appeal jurisdictions to 4-year terms each,~~
15 ~~beginning October 1, 1999.~~This Thereafter, each member shall
16 be appointed for a 4-year term.

17 4. The term of office of each person currently serving
18 by virtue of previously being selected and appointed by a
19 majority vote of the other 10 members of the commission shall
20 expire on July 1, 2003.

21
22 A vacancy occurring on the commission shall be filled by the
23 original appointing authority for the unexpired balance of the
24 term. No attorney who appears before any judge of compensation
25 claims more than four times a year is eligible to serve on the
26 statewide nominating commission. The meetings and
27 determinations of the nominating commission as to the Chief
28 Judge, the Workers' Compensation Appellate Tribunal appellate
29 judges, the Deputy Chief Judge, and the judges of compensation
30 claims shall be open to the public.

31

1 (c) Each judge of compensation claims shall be
2 appointed for a term of 4 years, but during the term of office
3 may be removed by the Governor for cause. The Chief Judge
4 shall be appointed for a term of 4 years by March 1, 2004. Two
5 Workers' Compensation Appellate Tribunal appellate judges
6 shall be appointed for an initial term of 2 years by March 1,
7 2004. Two Workers' Compensation Appellate Tribunal appellate
8 judges shall be appointed for an initial term of 4 years by
9 May 1, 2004. Each Workers' Compensation Appellate Tribunal
10 appellate judge shall thereafter be appointed or reappointed
11 for a term of 4 years. Prior to the expiration of a judge's or
12 appellate judge's term of office, the statewide nominating
13 commission shall review the judge's conduct and determine
14 whether the judge's performance is satisfactory. ~~Effective~~
15 ~~July 1, 2002,~~ In determining whether a judge's performance is
16 satisfactory, the Governor ~~commission~~ shall consider the
17 extent to which the judge has met the requirements of this
18 chapter, including, but not limited to, the requirements of
19 ss. 440.25(1) and (4)(a)-(f), 440.34(2), and 440.442. ~~If the~~
20 ~~judge's performance is deemed satisfactory, the commission~~
21 ~~shall report its finding to the Governor no later than 6~~
22 ~~months prior to the expiration of the judge's term of office.~~
23 The Governor ~~shall review the commission's report and~~ may
24 reappoint the judge or appellate judge for an additional
25 4-year term. If the Governor does not reappoint the judge or
26 appellate judge, the Governor shall inform the commission. The
27 judge or appellate judge shall remain in office until the
28 Governor has appointed a successor judge or appellate judge in
29 accordance with paragraphs (a) and (b). If a vacancy occurs
30 during a judge's or appellate judge's unexpired term, ~~the~~
31 ~~statewide nominating commission does not find the judge's~~

1 ~~performance is satisfactory,~~ or the Governor does not
2 reappoint the judge or appellate judge, the Governor shall
3 appoint a successor judge or appellate judge for a term of 4
4 years in accordance with paragraph (b). Notwithstanding the
5 foregoing, during the term of office any judge may be removed
6 by the Governor for cause.

7 (d) The Governor may appoint any attorney who has at
8 least 5 years of experience in the practice of law in this
9 state to serve as a judge of compensation claims or Workers'
10 Compensation Appellate Tribunal appellate judge pro hac vice
11 in the absence or disqualification of any full-time judge of
12 compensation claims or to serve temporarily as an additional
13 judge of compensation claims or Workers' Compensation
14 Appellate Tribunal appellate judge in any area of the state in
15 which the Governor determines that a need exists for such an
16 additional judge. However, an attorney who is so appointed by
17 the Governor may not serve for a period of more than 120
18 successive days.

19 (e) The director of the Division of Administrative
20 Hearings may receive or initiate complaints, conduct
21 investigations, and dismiss complaints against the Workers'
22 Compensation Appellate Tribunal appellate judges, the Deputy
23 Chief Judge, and the judges of compensation claims on the
24 basis of the Code of Judicial Conduct. The director may
25 recommend to the Governor the removal of a Workers'
26 Compensation Appellate Tribunal appellate judge, the Deputy
27 Chief Judge, or a judge of compensation claims or recommend
28 the discipline of a judge whose conduct during his or her term
29 of office warrants such discipline. For purposes of this
30 section, the term "discipline" includes reprimand, fine, and
31 suspension with or without pay. At the conclusion of each

1 investigation, the director shall submit preliminary findings
2 of fact and recommendations to the Workers' Compensation
3 Appellate Tribunal appellate judge, or the judge of
4 compensation claims who is the subject of the complaint. The
5 appellate judge or judge of compensation claims has 20 days
6 within which to respond to the preliminary findings. The
7 response and the director's rebuttal to the response must be
8 included in the final report submitted to the Governor.

9 (3) The Deputy Chief Judge shall establish training
10 and continuing education for new and sitting Workers'
11 Compensation Appellate Tribunal appellate judges and judges of
12 compensation claims.

13 (4) The Office of the Judges of Compensation Claims
14 shall adopt rules to effect the purposes of this section. Such
15 rules shall include procedural rules applicable to workers'
16 compensation claim resolution and uniform criteria for
17 measuring the performance of the office, including, but not
18 limited to, the number of cases assigned and disposed, the age
19 of pending and disposed cases, timeliness of decisionmaking,
20 extraordinary fee awards, and other data necessary for the
21 Governor ~~judicial nominating commission~~ to review the
22 performance of judges of compensation claims as required in
23 paragraph (2)(c). The workers' compensation rules of procedure
24 approved by the Supreme Court apply until the rules adopted by
25 the Office of the Judges of Compensation Claims pursuant to
26 this section become effective.

27 (5) Not later than December 1 of each year, the Office
28 of the Judges of Compensation Claims shall issue a written
29 report to the Governor, the House of Representatives, the
30 Senate, The Florida Bar, and the statewide nominating
31 commission summarizing the amount, cost, and outcome of all

1 litigation resolved in the previous fiscal year; summarizing
2 ~~the disposition of mediation conferences,~~ the number of
3 mediation conferences held, the number of continuances granted
4 for ~~mediations and~~ final hearings, the number and outcome of
5 litigated cases, including which party prevailed, the amount
6 of attorney's fees paid in each case according to order year
7 and accident year, the number of final hearings not held
8 within 210 days after receipt of the petition for benefit by
9 each judge of compensation claims, and the number of final
10 orders not issued within 30 days after the final hearing or
11 closure of the hearing record. The Office of the Judges of
12 Compensation Claims shall recommend; and recommending changes
13 or improvements to the dispute resolution elements of the
14 Workers' Compensation Law and regulations. If the ~~Deputy~~ Chief
15 Judge finds that judges generally are unable to meet a
16 particular statutory requirement for reasons beyond their
17 control, the Deputy Chief Judge shall submit such findings and
18 any recommendations to the Legislature.

19 Section 51. Section 440.1915, Florida Statutes, is
20 created to read:

21 440.1915 Claims Bureau.--There is created within the
22 Department of Financial Services a Claims Bureau. Personnel
23 who determine issues of ripe, due, and owing or specificity of
24 petitions for benefits must be members in good standing of The
25 Florida Bar for at least 2 years.

26 Section 52. Subsections (8), (9), (10), and (11) of
27 section 440.49, Florida Statutes, are amended to read:

28 440.49 Limitation of liability for subsequent injury
29 through Special Disability Trust Fund.--

30 (8) PREFERRED WORKER PROGRAM.--The Department of
31 Education or administrator shall issue identity cards to

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

14 (9) SPECIAL DISABILITY TRUST FUND.--

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

1 the provisions of the law with respect to the deposits of
2 state funds by such Chief Financial Officer ~~Treasurer~~. All
3 interest earned by such portion of the fund as may be invested
4 by the Chief Financial Officer ~~Treasurer~~ shall be collected by
5 her or him and placed to the credit of such fund.

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

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

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

24 b. Two times the disbursements of the most recent
25 calendar year.

26
27 Such amount shall be prorated among the insurance companies
28 writing compensation insurance in the state and the
29 self-insurers. Provided however, for those carriers that have
30 excluded ceded reinsurance premiums from their assessments on
31 or before January 1, 2000, no assessments on ceded reinsurance

1 premiums shall be paid by those carriers until such time as
2 the former Division of Workers' Compensation of the Department
3 of Labor and Employment Security or the department advises
4 each of those carriers of the impact that the inclusion of
5 ceded reinsurance premiums has on their assessment. The
6 department may not recover any past underpayments of
7 assessments levied against any carrier that on or before
8 January 1, 2000, excluded ceded reinsurance premiums from
9 their assessment prior to the point that the former Division
10 of Workers' Compensation of the Department of Labor and
11 Employment Security or the department advises of the
12 appropriate assessment that should have been paid.

13 3.a. The net direct premiums written by the companies
14 for workers' compensation in this state and the amount of net
15 premiums calculated by the division for self-insured employees
16 ~~net premium written applicable to the self-insurers in this~~
17 ~~state~~ are the basis for computing the amount to be assessed
18 under this section as a percentage of net premiums. Such
19 payments shall be made by each carrier and self-insurer to the
20 department for the Special Disability Trust Fund in accordance
21 with rules adopted by such regulations as the department
22 ~~prescribes~~.

23 b. When computing net direct premiums written for
24 purposes of the assessment a carrier owes under this section,
25 the carrier shall report such net direct premiums written as
26 the total of the amount of gross direct premiums written on
27 account of the state's workers' compensation risks, omitting
28 premiums for reinsurance accepted and reduced for:

29 (I) Return premiums for policies not accepted; and
30 (II) Premium refunds and dividends paid or credited to
31 policyholders, subject to the limits of s. 624.5094.

1 c. However, such net direct premiums written shall not
2 be reduced for:

3 (I) Reinsurance ceded to reinsurers or other insurers;

4 (II) Commissions and brokerages fees paid to agents
5 for transacting a workers' compensation policy; or

6 (III) Expense constants charged as a part of the total
7 policy premium.

8 4. The department shall adopt rules for collecting the
9 amounts assessed under this section. These assessments are due
10 within 30 days after the date the insurer receives notice of
11 its obligation to pay the quarterly assessment or 30 days
12 after the end of the quarter for which the assessment is owed,
13 whichever occurs later. If the assessment is not paid timely,
14 the department may assess, for each 30 days the amount remains
15 unpaid, a penalty equal to 10 percent of the unpaid amount.
16 The penalty shall be remitted at the same time as the amount
17 assessed.

18 5. If an insurer fails to pay the amounts assessed to
19 it under this section within 60 days after the date the
20 insurer receives notice of its obligation to pay the quarterly
21 assessment or 30 days after the end of the quarter for which
22 the assessment is owned, whichever occurs later, the Office of
23 Insurance Regulation may suspend or revoke the insurer's
24 certificate of authority. If a self-insurer fails to pay the
25 amounts assessed to it within 60 days after the due date
26 prescribed in this subparagraph, the department may revoke the
27 employer's authority to self-insure under this chapter.

28 6. All amounts collected under this section shall be
29 paid into the Special Disability Trust Fund.

30 7.a. The department shall require from each carrier
31 reports identifying the carrier's gross written premiums, the

1 computation of net direct premiums written from such gross
2 written premiums, and the calculation of the amount of
3 assessment due. Such reports must be filed with the carrier's
4 quarterly assessment payment or the carrier may be assessed a
5 \$1,000 penalty. The department shall review the amounts to be
6 paid by each carrier under this section. If the department
7 finds that a carrier has not calculated or paid its
8 assessments correctly, the carrier shall be notified of the
9 error in computation and provided the procedures whereby an
10 underpayment, or an overpayment, of the assessment owed shall
11 be corrected.

12 b. The department shall require from each self-insurer
13 payroll records with respect to wages paid and all payments of
14 compensation made by the self-insurer. The division shall
15 determine the assessment amounts to be paid by each
16 self-insurer as provided in paragraph (1)(b).

17 ~~8.4.~~ The Treasurer is authorized to receive and credit
18 to such Special Disability Trust Fund any sum or sums that may
19 at any time be contributed to the state by the United States
20 under any Act of Congress, or otherwise, to which the state
21 may be or become entitled by reason of any payments made out
22 of such fund.

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

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

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

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

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

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

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

23 Section 53. Paragraph (b) of subsection (1) and
24 subsections (2) and (3) of section 440.50, Florida Statutes,
25 are amended to read:

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

28 (1)

29 (b) The division ~~department~~ is authorized to transfer
30 as a loan an amount not in excess of \$250,000 from such
31 special fund to the Special Disability Trust Fund established

1 by s. 440.49(9), which amount shall be repaid to said special
2 fund in annual payments equal to not less than 10 percent of
3 moneys received for such Special Disability Trust Fund.

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

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

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

20 Section 54. Section 440.501, Florida Statutes, is
21 amended to read:

22 440.501 Workers' Compensation Administration Trust
23 Fund within the Department of Business and Professional
24 Regulation.--

25 (1) The Workers' Compensation Administration Trust
26 Fund is created within the Department of Business and
27 Professional Regulation, to be administered by the division
28 ~~such department~~. The trust fund shall be used for the purpose
29 of providing for the payment of all expenses in respect to the
30 administration of the child labor program, pursuant to
31 legislative appropriation or an approved amendment to the

1 division's ~~department's~~ operating budget pursuant to the
2 provisions of chapter 216.

3 (2) Notwithstanding the provisions of s. 216.301 and
4 pursuant to s. 216.351, any balance in the trust fund at the
5 end of any fiscal year shall remain in the trust fund at the
6 end of the year and shall be available for carrying out the
7 purposes of the trust fund.

8 (3) Pursuant to the provisions of s. 19(f)(2), Art.
9 III of the State Constitution, the trust fund shall, unless
10 terminated sooner, be terminated on July 1, 2006. Prior to
11 its scheduled termination, the trust fund shall be reviewed as
12 provided in s. 215.3206.

13 Section 55. Section 440.51, Florida Statutes, is
14 amended to read:

15 440.51 Expenses of administration.--

16 (1) The department shall estimate annually in advance
17 the amounts necessary for the administration of this chapter,
18 in the following manner.

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

28 (b)1. The total expenses of administration shall be
29 prorated among the insurance companies ~~carriers~~ writing
30 compensation insurance in the state, the commercial
31 self-insurers under ss. 624.462 and 624.4621, the assessable

1 mutual insurers under s. 628.6011, and self-insurers under
2 this chapter. The net direct premiums collected by carriers
3 and the amount of net premiums calculated by the department
4 for self-insured employers are the basis for computing the
5 amount to be assessed. When reporting deductible policy
6 premium for purposes of computing assessments levied after
7 July 1, 2001, full policy premium value must be reported prior
8 to application of deductible discounts or credits in the
9 manner provided in this subsection.

10 2. This amount may be assessed as a specific amount or
11 as a percentage of net premiums payable as the department may
12 direct, provided such amount so assessed shall not exceed 2.75
13 percent, beginning January 1, 2001, and except during the
14 interim period preceding such date, the amount assessed from
15 July 1, 2000, through December 31, 2000, such assessments
16 shall not exceed 4 percent of such net premiums. The carriers
17 may elect to make the payments required under s. 440.15(1)(f)
18 rather than having these payments made by the department. In
19 that event, such payments will be credited to the carriers,
20 and the amount due by the carrier under this section will be
21 reduced accordingly.

22 (c) When computing net direct premiums written for
23 purposes of the assessment a carrier owes under this section,
24 the carrier shall report such net direct premiums written as
25 the total of the amount of gross direct premiums written on
26 account of the state's workers' compensation risks, omitting
27 premiums for reinsurance accepted and reduced for:

- 28 1. Return premiums for policies not accepted; and
29 2. Premium refunds and dividends paid or credited to
30 policyholders, subject to the limits of s. 624.5094.

31

1 (d) However, such net direct premiums written shall
2 not be reduced for:

- 3 1. Reinsurance ceded to reinsurers or other insurers;
4 2. Commissions and brokerages fees paid to agents for
5 transacting a workers' compensation policy; or
6 3. Expense constants charged as a part of the total
7 policy premium.

8 (e) When reporting the full policy premium value of
9 deductible policies under paragraph (b), the carrier shall
10 include in the net direct premiums earned under this section a
11 prorated portion of the total premium discount or credit
12 applied on account of the deductible clause of the policy. The
13 prorated portion of the deductible premiums credit which shall
14 be included in the net premiums assessed for the prior period
15 shall be in the same proportion as the deductible policy's
16 reported earned premiums for the prior period bears to the
17 policy's gross written premiums.

18 (2) The department shall adopt rules ~~provide by~~
19 ~~regulation~~ for the collection of the amounts assessed under
20 this section against each carrier. These assessments are due
21 within 30 days after the date the insurer receives notice of
22 its obligation to pay the quarterly assessment or 30 days
23 after the end of the quarter for which the assessment is owed,
24 whichever occurs later. If the assessment is not paid timely,
25 the department may assess, Such amounts shall be paid within
26 ~~30 days from the date that notice is served upon such carrier.~~
27 ~~If such amounts are not paid within such period, there may be~~
28 ~~assessed for each 30 days the amount so assessed remains~~
29 ~~unpaid, a civil penalty equal to 10 percent of the unpaid~~
30 ~~amount. The penalty so unpaid, which shall be remitted~~
31 ~~collected at the same time as and a part of the amount~~

1 assessed. For those carriers who excluded ceded reinsurance
2 premiums from their assessments prior to January 1, 2000, the
3 department shall not recover any past underpayments of
4 assessments related to ceded reinsurance premiums prior to
5 January 1, 2001, against such carriers.

6 (3) If any carrier fails to pay the amounts assessed
7 against it under this section within 60 days after the date
8 the carrier receives notice of its obligation to pay the
9 quarterly assessment or 30 days after the end of the quarter
10 for which the assessment is owed, whichever occurs later, the
11 Office of Insurance Regulation may suspend or revoke the
12 carrier's certificate of authority. If a self-insurer fails to
13 pay the amounts assessed to it within the same period, the
14 department may revoke the self-insurer's authority to
15 self-insure under this chapter.~~him or her under the~~
16 ~~provisions of this section within 60 days from the time such~~
17 ~~notice is served upon him or her, the department may suspend~~
18 ~~or revoke the authorization to insure compensation in~~
19 ~~accordance with the procedure in s. 440.38(3)(a). The~~
20 ~~department may permit a carrier to remit any underpayment of~~
21 ~~assessments for assessments levied after January 1, 2001.~~

22 (4) All amounts collected under the provisions of this
23 section shall be paid into the Workers' Compensation
24 Administration Trust Fund ~~established in s. 440.50.~~

25 (5) Any amount so assessed against and paid by an
26 insurance carrier, self-insurer authorized pursuant to s.
27 624.4621, or commercial self-insurance fund authorized under
28 ss. 624.460-624.488 shall be allowed as a deduction against
29 the amount of any other tax levied by the state upon the
30 premiums, assessments, or deposits for workers' compensation
31 insurance on contracts or policies of said insurance carrier,

1 self-insurer, or commercial self-insurance fund. Any insurance
2 carrier claiming such a deduction against the amount of any
3 such tax shall not be required to pay any additional
4 retaliatory tax levied pursuant to s. 624.5091 as a result of
5 claiming such deduction. Because deductions under this
6 subsection are available to insurance carriers, s. 624.5091
7 does not limit such deductions in any manner.

8 (6)a. The department shall ~~may~~ require from each
9 carrier, ~~at such time and in accordance with such regulations~~
10 ~~as the department may prescribe,~~ reports identifying in
11 respect to all gross earned premiums and the carrier's
12 computation of net direct premiums earned from such gross
13 earned premiums, and calculation of the amount of assessment
14 due. When applicable under paragraph (1)(b), the carrier shall
15 also provide the amounts of deductible discounts or credits
16 the carrier has included in the total net earned premium
17 assessed during the prior period. Such reports shall be filed
18 with the carrier's quarterly assessment payment or the carrier
19 may be assessed a \$1,000 penalty. The department shall review
20 the amounts to be paid by each carrier under this section. If
21 the department finds that a carrier has not computed or paid
22 its assessment correctly, the carrier shall be notified and
23 provided the procedures whereby an underpayment, or an
24 overpayment, of the assessments owed shall be corrected.

25 (b) The department may require from each self-insurer
26 payroll records with respect to wages paid and all payments of
27 compensation made by the self-insurer. The division shall
28 determine the assessment amounts to be paid by each
29 self-insurer as provided in paragraph (1)(b). ~~and of all~~
30 ~~payments of compensation made by such carrier during each~~
31 ~~prior period, and may determine the amounts paid by each~~

1 ~~carrier and the amounts paid by all carriers during such~~
2 ~~period.~~

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

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

19 (9) In addition to the above, it shall be the duty of
20 the department to keep the accident experience, as classified
21 by the department, by industry as follows:

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

25 (10) In every case where the duration of disability
26 exceeds 30 days, the carrier shall establish a sufficient
27 reserve to pay all benefits to which the injured employee, or
28 in case of death, his or her dependents, may be entitled to
29 under the law. In establishing the reserve, consideration
30 shall be given to the nature of the injury, the probable
31

1 period of disability, and the estimated cost of medical
2 benefits.

3 (11) The department shall furnish to any employer or
4 carrier, upon request, its individual experience.

5 (12) In addition to any other penalties provided by
6 this law, the failure to submit any report or other
7 information required by this law shall be just cause to
8 suspend the right of a self-insurer to operate as such or
9 shall be just cause for the department to suspend or revoke
10 the license of such carrier.

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

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

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

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

27 Section 56. Section 440.515, Florida Statutes, is
28 amended to read:

29 440.515 Reports from self-insurers;
30 confidentiality.--The department ~~of Insurance~~ shall maintain
31 the reports filed in accordance with s. 440.51(6)(b) as

1 confidential and exempt from the provisions of s. 119.07(1),
2 and such reports shall be released only for bona fide research
3 or educational purposes or after receipt of consent from the
4 employer.

5 Section 57. Subsections (2) and (4) of section 440.52,
6 Florida Statutes, are amended to read:

7 440.52 Registration of insurance carriers; notice of
8 cancellation or expiration of policy; suspension or revocation
9 of authority.--

10 (2) If the department ~~A carrier or self-insurance fund~~
11 ~~that~~ receives notice pursuant to s. 440.05, the department
12 shall immediately notify the contractor of the cancellation or
13 expiration of the insurance.

14 (4) In addition to the penalties prescribed in
15 subsection (3), violation of s. 440.381 by an insurance
16 carrier shall result in the imposition of a fine not to exceed
17 \$1,000 per audit, if the insurance carrier fails to act on
18 said audits by correcting errors in employee classification or
19 accepted applications for coverage where it knew employee
20 classifications were incorrect. Such fines shall be levied by
21 the Department of Insurance and deposited into the Chief
22 Financial Officer's ~~Insurance Commissioner's~~ Regulatory Trust
23 Fund.

24 Section 58. Section 440.59, Florida Statutes, is
25 amended to read:

26 440.59 Reporting requirements.--The division
27 ~~department~~ shall annually prepare a report of the
28 administration of this chapter for the preceding calendar
29 year, including a detailed statement of the receipts of and
30 expenditures from the fund established in s. 440.50 and a
31 statement of the causes of the accidents leading to the

1 injuries for which the awards were made, together with such
2 recommendations as the division ~~department~~ considers
3 advisable. On or before September 15 of each year, the
4 division ~~department~~ shall submit a copy of the report to the
5 Governor, the President of the Senate, the Speaker of the
6 House of Representatives, the Democratic and Republican
7 Leaders of the Senate and the House of Representatives, and
8 the chairs of the legislative committees having jurisdiction
9 over workers' compensation.

10 Section 59. Section 440.591, Florida Statutes, is
11 amended to read:

12 440.591 Administrative procedure; rulemaking
13 authority.--The department, ~~the agency,~~ and the Department of
14 Education may adopt rules pursuant to ss. 120.536(1) and
15 120.54 to implement the provisions of this chapter conferring
16 duties upon it.

17 Section 60. Section 440.593, Florida Statutes, is
18 amended to read:

19 440.593 Electronic reporting.--

20 (1) For forms, reports, or other information filed
21 with the department by electronic reporting, the department
22 may by rule establish filing deadlines different from those
23 otherwise required when reporting the ~~an electronic reporting~~
24 ~~system requiring or authorizing an employer or carrier to~~
25 ~~submit required forms, reports, or other information~~
26 ~~electronically rather than by other means. The department may~~
27 ~~establish different deadlines for submitting forms, reports,~~
28 ~~or information to the department, or to its authorized agent,~~
29 ~~via the electronic reporting system than are otherwise~~
30 ~~required when reporting information by other means.~~

31

1 (2) The department may require any carrier to submit
2 data electronically, either directly or through a third-party
3 vendor, and may require any carrier or vendor submitting data
4 to the department electronically to be approved ~~certified~~ by
5 the department as prescribed by rule. The department shall ~~may~~
6 specify performance requirements for any carrier or vendor
7 submitting data electronically.

8 (3) The department may revoke the certification of any
9 carrier or vendor determined by the department to be in
10 noncompliance with performance standards prescribed by rule
11 for electronic submissions.

12 (4)(a) The department by rule shall establish a
13 schedule by which carriers must begin filing information
14 electronically. If a carrier is required to file
15 electronically, the failure to so file subjects the carrier to
16 an administrative penalty in the amount of \$500 per day for
17 the first 30 days of noncompliance, after which the department
18 shall take further action as set forth in s. 440.38, if the
19 carrier is a self-insurer, or shall refer the carrier to the
20 Office of Insurance Regulation for additional sanctions under
21 s. 624.308.

22 (b) A carrier shall timely file all electronic
23 information required by the department, in accordance with
24 department rule. Sanctions set forth in ss. 440.185(8) and (9)
25 and 440.525 must be imposed for failure to timely file any
26 required electronic information.~~The department may assess a~~
27 ~~civil penalty, not to exceed \$500 for each violation, as~~
28 ~~prescribed by rule.~~

29 (5) The department may adopt rules to administer this
30 section.

31

1 Section 61. Subsection (18) of section 443.036,
2 Florida Statutes, is amended to read:

3 443.036 Definitions.--As used in this chapter, unless
4 the context clearly requires otherwise:

5 (18) EMPLOYEE LEASING COMPANY.--The term "employee
6 leasing company" means an employing unit which maintains a
7 valid and active license under chapter 468 and which maintains
8 the records required by s. 443.171(7) and, in addition,
9 maintains a listing of the clients of the employee leasing
10 company and of the employees, including their social security
11 numbers, who have been assigned to work at each client company
12 job site. Further, each client company job site must be
13 identified by industry, products or services, and address. The
14 client list shall be provided to the division and the
15 Department of Financial Services by June 30 and by December 31
16 of each year. For purposes of this subsection, "client" means
17 a party who has contracted with an employee leasing company to
18 provide a worker, or workers, to perform services for the
19 client. Leased employees shall include employees subsequently
20 placed on the payroll of the employee leasing company on
21 behalf of the client. The employee leasing company shall
22 notify the division and the Department of Financial Services
23 within 30 days after ~~of~~ the initiation or termination of the
24 company's relationship with any client company pursuant to
25 chapter 468.

26 Section 62. Subsection (7) of section 443.171, Florida
27 Statutes, is amended to read:

28 443.171 Division and commission; powers and duties;
29 rules; advisory council; records and reports; proceedings;
30 state-federal cooperation.--

31

1 (7) RECORDS AND REPORTS.--Each employing unit shall
2 keep true and accurate work records, containing such
3 information as the division may prescribe. Such records shall
4 be open to inspection and be subject to being copied by the
5 division at any reasonable time and as often as may be
6 necessary. The division or an appeals referee may require from
7 any employing unit any sworn or unsworn reports, with respect
8 to persons employed by it, deemed necessary for the effective
9 administration of this chapter. However, a state or local
10 governmental agency performing intelligence or
11 counterintelligence functions need not report an employee if
12 the head of such agency has determined that reporting the
13 employee could endanger the safety of the employee or
14 compromise an ongoing investigation or intelligence mission.
15 Information revealing the employing unit's or individual's
16 identity thus obtained from the employing unit or from any
17 individual pursuant to the administration of this chapter,
18 shall, except to the extent necessary for the proper
19 presentation of a claim or upon written authorization of the
20 claimant who has a workers' compensation claim pending or is
21 receiving workers' compensation benefits, be held confidential
22 and exempt from the provisions of s. 119.07(1). Such
23 information shall be available only to public employees in the
24 performance of their public duties, including employees of the
25 Department of Education in obtaining information for the
26 Florida Education and Training Placement Information Program
27 and the Office of Tourism, Trade, and Economic Development in
28 its administration of the qualified defense contractor tax
29 refund program authorized by s. 288.1045, the qualified target
30 industry business tax refund program authorized by s. 288.106.
31 Any claimant, or the claimant's legal representative, at a

1 hearing before an appeals referee or the commission shall be
2 supplied with information from such records to the extent
3 necessary for the proper presentation of her or his claim. Any
4 employee or member of the commission or any employee of the
5 division, or any other person receiving confidential
6 information, who violates any provision of this subsection is
7 guilty of a misdemeanor of the second degree, punishable as
8 provided in s. 775.082 or s. 775.083. However, the division
9 may furnish to any employer copies of any report previously
10 submitted by such employer, upon the request of such employer,
11 and the division is authorized to charge therefor such
12 reasonable fee as the division may by rule prescribe not to
13 exceed the actual reasonable cost of the preparation of such
14 copies. Fees received by the division for copies provided
15 under this subsection shall be deposited to the credit of the
16 Employment Security Administration Trust Fund.

17 Section 63. Subsections (1) and (2) of section
18 443.1715, Florida Statutes, are amended to read:

19 443.1715 Disclosure of information; confidentiality.--

20 (1) RECORDS AND REPORTS.--Information revealing the
21 employing unit's or individual's identity obtained from the
22 employing unit or from any individual pursuant to the
23 administration of this chapter, and any determination
24 revealing such information, except to the extent necessary for
25 the proper presentation of a claim or upon written
26 authorization of the claimant who has a workers' compensation
27 claim pending or is receiving compensation benefits, must be
28 held confidential and exempt from the provisions of s.
29 119.07(1) and s. 24(a), Art. I of the State Constitution. Such
30 information may be made available only to public employees in
31 the performance of their public duties, including employees of

1 the Department of Education in obtaining information for the
2 Florida Education and Training Placement Information Program
3 and the Office of Tourism, Trade, and Economic Development in
4 its administration of the qualified defense contractor tax
5 refund program authorized by s. 288.1045 and the qualified
6 target industry tax refund program authorized by s. 288.106.
7 Except as otherwise provided by law, public employees
8 receiving such information must retain the confidentiality of
9 such information. Any claimant, or the claimant's legal
10 representative, at a hearing before an appeals referee or the
11 commission shall be supplied with information from such
12 records to the extent necessary for the proper presentation of
13 her or his claim. Any employee or member of the commission or
14 any employee of the division, or any other person receiving
15 confidential information, who violates any provision of this
16 subsection commits a misdemeanor of the second degree,
17 punishable as provided in s. 775.082 or s. 775.083. However,
18 the division may furnish to any employer copies of any report
19 previously submitted by such employer, upon the request of
20 such employer, and may furnish to any claimant copies of any
21 report previously submitted by such claimant, upon the request
22 of such claimant, and the division is authorized to charge
23 therefor such reasonable fee as the division may by rule
24 prescribe not to exceed the actual reasonable cost of the
25 preparation of such copies. Fees received by the division for
26 copies as provided in this subsection must be deposited to the
27 credit of the Employment Security Administration Trust Fund.

28 (2) DISCLOSURE OF INFORMATION.--

29 (a) Subject to such restrictions as the division
30 prescribes by rule, information declared confidential under
31 this section may be made available to any agency of this or

1 any other state, or any federal agency, charged with the
2 administration of any unemployment compensation law or the
3 maintenance of a system of public employment offices, or the
4 Bureau of Internal Revenue of the United States Department of
5 the Treasury, or the Florida Department of Revenue and
6 information obtained in connection with the administration of
7 the employment service may be made available to persons or
8 agencies for purposes appropriate to the operation of a public
9 employment service or a job-preparatory or career education or
10 training program. The division shall on a quarterly basis,
11 furnish the National Directory of New Hires with information
12 concerning the wages and unemployment compensation paid to
13 individuals, by such dates, in such format and containing such
14 information as the Secretary of Health and Human Services
15 shall specify in regulations. Upon request therefor, the
16 division shall furnish any agency of the United States charged
17 with the administration of public works or assistance through
18 public employment, and may furnish to any state agency
19 similarly charged, the name, address, ordinary occupation, and
20 employment status of each recipient of benefits and such
21 recipient's rights to further benefits under this chapter.
22 Except as otherwise provided by law, the receiving agency must
23 retain the confidentiality of such information as provided in
24 this section. The division may request the Comptroller of the
25 Currency of the United States to cause an examination of the
26 correctness of any return or report of any national banking
27 association rendered pursuant to the provisions of this
28 chapter and may in connection with such request transmit any
29 such report or return to the Comptroller of the Currency of
30 the United States as provided in s. 3305(c) of the federal
31 Internal Revenue Code.

1 (b)1. The employer or the employer's workers'
2 compensation carrier against whom a claim for benefits under
3 chapter 440 has been made, or a representative of either, may
4 request from the department records of wages of the employee
5 reported to the department by any employer for the quarter
6 that includes the date of the accident that is the subject of
7 such claim and for subsequent quarters. The request must be
8 made with the authorization or consent of the employee or any
9 employer who paid wages to the employee subsequent to the date
10 of the accident.

11 2. The employer or carrier shall make the request on a
12 form prescribed by rule for such purpose by the department in
13 the manner specified by the secretary. Such form shall contain
14 a certification by the requesting party that it is a party
15 entitled to the information requested as authorized by this
16 paragraph.

17 3. The division shall provide the most current
18 information readily available within 15 days after receiving
19 the request.

20 Section 64. Subsection (9) of section 626.989, Florida
21 Statutes, is amended to read:

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

26 (9) In recognition of the complementary roles of
27 investigating instances of workers' compensation fraud and
28 enforcing compliance with the workers' compensation coverage
29 requirements under chapter 440, the Department of Financial
30 Services shall ~~insurance is directed to~~ prepare and submit a
31 joint performance report to the President of the Senate and

1 the Speaker of the House of Representatives by January 1 of
2 each year ~~November 1, 2003, and then by November 1 every 3~~
3 ~~years thereafter, describing the results obtained in achieving~~
4 ~~compliance with the workers' compensation coverage~~
5 ~~requirements and reducing the incidence of workers'~~
6 ~~compensation fraud.~~ The annual report must include, but need
7 not be limited to:

8 (a) The total number of initial referrals received,
9 cases opened, cases presented for prosecution, cases closed,
10 and convictions resulting from cases presented for prosecution
11 by the Bureau of Workers' Compensation Insurance Fraud by type
12 of workers' compensation fraud and circuit.

13 (b) The number of referrals received from insurers and
14 the Division of Workers' Compensation and the outcome of those
15 referrals.

16 (c) The number of investigations undertaken by the
17 office which were not the result of a referral from an insurer
18 or the Division of Workers' Compensation.

19 (d) The number of investigations that resulted in a
20 referral to a regulatory agency and the disposition of those
21 referrals.

22 (e) The number and reasons provided by local
23 prosecutors or the statewide prosecutor for declining
24 prosecution of a case presented by the office by circuit.

25 (f) The total number of employees assigned to the
26 office and the Division of Workers' Compliance unit delineated
27 by location of staff assigned and the number and location of
28 employees assigned to the office who were assigned to work
29 other types of fraud cases.

30
31

1 (g) The average caseload and turnaround time by type
2 of case for each investigator and division compliance
3 employee.

4 (h) The training provided during the year to workers'
5 compensation fraud investigators and the division's compliance
6 employees.

7 Section 65. Section 626.9891, Florida Statutes, is
8 amended to read:

9 626.9891 Insurer anti-fraud investigative units;
10 reporting requirements; penalties for noncompliance.--

11 (1) Every insurer admitted to do business in this
12 state who in the previous calendar year, at any time during
13 that year, had \$10 million or more in direct premiums written
14 shall:

15 (a) Establish and maintain a unit or division within
16 the company to investigate possible fraudulent claims by
17 insureds or by persons making claims for services or repairs
18 against policies held by insureds; or

19 (b) Contract with others to investigate possible
20 fraudulent claims for services or repairs against policies
21 held by insureds.

22
23 An insurer subject to this subsection shall file with the
24 Division of Insurance Fraud of the department on or before
25 July 1, 1996, a detailed description of the unit or division
26 established pursuant to paragraph (a) or a copy of the
27 contract and related documents required by paragraph (b).

28 (2) Every insurer admitted to do business in this
29 state, which in the previous calendar year had less than \$10
30 million in direct premiums written, must adopt an anti-fraud
31 plan and file it with the Division of Insurance Fraud of the

1 department on or before July 1, 1996. An insurer may, in lieu
2 of adopting and filing an anti-fraud plan, comply with the
3 provisions of subsection (1).

4 (3) Each insurers anti-fraud plans shall include:

5 (a) A description of the insurer's procedures for
6 detecting and investigating possible fraudulent insurance
7 acts;

8 (b) A description of the insurer's procedures for the
9 mandatory reporting of possible fraudulent insurance acts to
10 the Division of Insurance Fraud of the department;

11 (c) A description of the insurer's plan for anti-fraud
12 education and training of its claims adjusters or other
13 personnel; and

14 (d) A written description or chart outlining the
15 organizational arrangement of the insurer's anti-fraud
16 personnel who are responsible for the investigation and
17 reporting of possible fraudulent insurance acts.

18 (4) Any insurer who obtains a certificate of authority
19 after July 1, 1995, shall have 18 months in which to comply
20 with the requirements of this section.

21 (5) For purposes of this section, the term "unit or
22 division" includes the assignment of fraud investigation to
23 employees whose principal responsibilities are the
24 investigation and disposition of claims. If an insurer
25 creates a distinct unit or division, hires additional
26 employees, or contracts with another entity to fulfill the
27 requirements of this section, the additional cost incurred
28 must be included as an administrative expense for ratemaking
29 purposes.

30 (6) Each insurer writing workers' compensation
31 insurance shall report to the department, on or before August

1 l of each year, on its experience in implementing and
2 maintaining an anti-fraud investigative unit or an anti-fraud
3 plan. The report must include, at a minimum:

4 (a) The dollar amount of recoveries and losses
5 attributable to workers' compensation fraud delineated by the
6 type of fraud: claimant, employer, provider, agent, or other;

7 (b) The number of referrals to the Bureau of Workers'
8 Compensation Fraud for the prior year;

9 (c) A description of the organization of the
10 anti-fraud investigative unit, if applicable, including the
11 position titles and descriptions of staffing;

12 (d) The rationale for the level of staffing and
13 resources being provided for the anti-fraud investigative
14 unit, which may include objective criteria such as number of
15 policies written, number of claims received on an annual
16 basis, volume of suspected fraudulent claims currently being
17 detected, other factors, and an assessment of optimal caseload
18 that can be handled by an investigator on an annual basis;

19 (e) The in-service education and training provided to
20 underwriting and claims personnel to assist in identifying and
21 evaluating instances of suspected fraudulent activity in
22 underwriting or claims activities; and

23 (f) A description of a public awareness program
24 focused on the costs and frequency of insurance fraud and
25 methods by which the public can prevent it.

26 (7) If an insurer fails to submit a final anti-fraud
27 plan or otherwise fails to submit a plan, or fails to
28 implement the provisions of a plan or an anti-fraud
29 investigative unit, or otherwise refuses to comply with the
30 provisions of this section, the department may:

31

1 (a) Impose an administrative fine of not more than
2 \$2,000 per day for such failure by an insurer, until the
3 department deems the insurer to be in compliance;

4 (b) Impose upon the insurer a fraud detection and
5 prevention plan that is deemed to be appropriate by the
6 department and that must be implemented by the insurer; or

7 (c) Impose the provisions of both paragraphs (a) and
8 (b).

9 (8) The department may adopt rules to administer this
10 section.

11 Section 66. Subsection (2) of section 627.062, Florida
12 Statutes, is amended to read:

13 627.062 Rate standards.--

14 (2) As to all such classes of insurance:

15 (a) Insurers or rating organizations shall establish
16 and use rates, rating schedules, or rating manuals to allow
17 the insurer a reasonable rate of return on such classes of
18 insurance written in this state. A copy of rates, rating
19 schedules, rating manuals, premium credits or discount
20 schedules, and surcharge schedules, and changes thereto, shall
21 be filed with the department under one of the following
22 procedures:

23 1. If the filing is made at least 90 days before the
24 proposed effective date and the filing is not implemented
25 during the department's review of the filing and any
26 proceeding and judicial review, then such filing shall be
27 considered a "file and use" filing. In such case, the
28 department shall finalize its review by issuance of a notice
29 of intent to approve or a notice of intent to disapprove
30 within 90 days after receipt of the filing. The notice of
31 intent to approve and the notice of intent to disapprove

1 constitute agency action for purposes of the Administrative
2 Procedure Act. Requests for supporting information, requests
3 for mathematical or mechanical corrections, or notification to
4 the insurer by the department of its preliminary findings
5 shall not toll the 90-day period during any such proceedings
6 and subsequent judicial review. The rate shall be deemed
7 approved if the department does not issue a notice of intent
8 to approve or a notice of intent to disapprove within 90 days
9 after receipt of the filing.

10 2. If the filing is not made in accordance with the
11 provisions of subparagraph 1., such filing shall be made as
12 soon as practicable, but no later than 30 days after the
13 effective date, and shall be considered a "use and file"
14 filing. An insurer making a "use and file" filing is
15 potentially subject to an order by the department to return to
16 policyholders portions of rates found to be excessive, as
17 provided in paragraph (h).

18 (b) Upon receiving a rate filing, the department shall
19 review the rate filing to determine if a rate is excessive,
20 inadequate, or unfairly discriminatory. In making that
21 determination, the department shall, in accordance with
22 generally accepted and reasonable actuarial techniques,
23 consider the following factors:

24 1. Past and prospective loss experience within and
25 without this state.

26 2. Past and prospective expenses.

27 3. The degree of competition among insurers for the
28 risk insured.

29 4. Investment income reasonably expected by the
30 insurer, consistent with the insurer's investment practices,
31 from investable premiums anticipated in the filing, plus any

1 other expected income from currently invested assets
2 representing the amount expected on unearned premium reserves
3 and loss reserves. The department may promulgate rules
4 utilizing reasonable techniques of actuarial science and
5 economics to specify the manner in which insurers shall
6 calculate investment income attributable to such classes of
7 insurance written in this state and the manner in which such
8 investment income shall be used in the calculation of
9 insurance rates. Such manner shall contemplate allowances for
10 an underwriting profit factor and full consideration of
11 investment income which produce a reasonable rate of return;
12 however, investment income from invested surplus shall not be
13 considered. The profit and contingency factor as specified in
14 the filing shall be utilized in computing excess profits in
15 conjunction with s. 627.0625.

16 5. The reasonableness of the judgment reflected in the
17 filing.

18 6. Dividends that are issued to employers that provide
19 financial incentives for employees who maintain a safe
20 workplace, savings, or unabsorbed premium deposits allowed or
21 returned to Florida policyholders, members, or subscribers.

22 7. The adequacy of loss reserves.

23 8. The cost of reinsurance.

24 9. Trend factors, including trends in actual losses
25 per insured unit for the insurer making the filing.

26 10. Conflagration and catastrophe hazards, if
27 applicable.

28 11. A reasonable margin for underwriting profit and
29 contingencies.

30 12. The cost of medical services, if applicable.

31

1 13. Other relevant factors which impact upon the
2 frequency or severity of claims or upon expenses.

3 (c) In the case of fire insurance rates, consideration
4 shall be given to the availability of water supplies and the
5 experience of the fire insurance business during a period of
6 not less than the most recent 5-year period for which such
7 experience is available.

8 (d) If conflagration or catastrophe hazards are given
9 consideration by an insurer in its rates or rating plan,
10 including surcharges and discounts, the insurer shall
11 establish a reserve for that portion of the premium allocated
12 to such hazard and shall maintain the premium in a catastrophe
13 reserve. Any removal of such premiums from the reserve for
14 purposes other than paying claims associated with a
15 catastrophe or purchasing reinsurance for catastrophes shall
16 be subject to approval of the department. Any ceding
17 commission received by an insurer purchasing reinsurance for
18 catastrophes shall be placed in the catastrophe reserve.

19 (e) After consideration of the rate factors provided
20 in paragraphs (b), (c), and (d), a rate may be found by the
21 department to be excessive, inadequate, or unfairly
22 discriminatory based upon the following standards:

23 1. Rates shall be deemed excessive if they are likely
24 to produce a profit from Florida business that is unreasonably
25 high in relation to the risk involved in the class of business
26 or if expenses are unreasonably high in relation to services
27 rendered.

28 2. Rates shall be deemed excessive if, among other
29 things, the rate structure established by a stock insurance
30 company provides for replenishment of surpluses from premiums,
31 when the replenishment is attributable to investment losses.

1 3. Rates shall be deemed inadequate if they are
2 clearly insufficient, together with the investment income
3 attributable to them, to sustain projected losses and expenses
4 in the class of business to which they apply.

5 4. A rating plan, including discounts, credits, or
6 surcharges, shall be deemed unfairly discriminatory if it
7 fails to clearly and equitably reflect consideration of the
8 policyholder's participation in a risk management program
9 adopted pursuant to s. 627.0625.

10 5. A rate shall be deemed inadequate as to the premium
11 charged to a risk or group of risks if discounts or credits
12 are allowed which exceed a reasonable reflection of expense
13 savings and reasonably expected loss experience from the risk
14 or group of risks.

15 6. A rate shall be deemed unfairly discriminatory as
16 to a risk or group of risks if the application of premium
17 discounts, credits, or surcharges among such risks does not
18 bear a reasonable relationship to the expected loss and
19 expense experience among the various risks.

20 (f) In reviewing a rate filing, the department may
21 require the insurer to provide at the insurer's expense all
22 information necessary to evaluate the condition of the company
23 and the reasonableness of the filing according to the criteria
24 enumerated in this section.

25 (g) The department may at any time review a rate,
26 rating schedule, rating manual, or rate change; the pertinent
27 records of the insurer; and market conditions. If the
28 department finds on a preliminary basis that a rate may be
29 excessive, inadequate, or unfairly discriminatory, the
30 department shall initiate proceedings to disapprove the rate
31 and shall so notify the insurer. However, the department may

1 not disapprove as excessive any rate for which it has given
2 final approval or which has been deemed approved for a period
3 of 1 year after the effective date of the filing unless the
4 department finds that a material misrepresentation or material
5 error was made by the insurer or was contained in the filing.
6 Upon being so notified, the insurer or rating organization
7 shall, within 60 days, file with the department all
8 information which, in the belief of the insurer or
9 organization, proves the reasonableness, adequacy, and
10 fairness of the rate or rate change. The department shall
11 issue a notice of intent to approve or a notice of intent to
12 disapprove pursuant to the procedures of paragraph (a) within
13 90 days after receipt of the insurer's initial response. In
14 such instances and in any administrative proceeding relating
15 to the legality of the rate, the insurer or rating
16 organization shall carry the burden of proof by a
17 preponderance of the evidence to show that the rate is not
18 excessive, inadequate, or unfairly discriminatory. After the
19 department notifies an insurer that a rate may be excessive,
20 inadequate, or unfairly discriminatory, unless the department
21 withdraws the notification, the insurer shall not alter the
22 rate except to conform with the department's notice until the
23 earlier of 120 days after the date the notification was
24 provided or 180 days after the date of the implementation of
25 the rate. The department may, subject to chapter 120,
26 disapprove without the 60-day notification any rate increase
27 filed by an insurer within the prohibited time period or
28 during the time that the legality of the increased rate is
29 being contested.

30 (h) In the event the department finds that a rate or
31 rate change is excessive, inadequate, or unfairly

1 discriminatory, the department shall issue an order of
2 disapproval specifying that a new rate or rate schedule which
3 responds to the findings of the department be filed by the
4 insurer. The department shall further order, for any "use and
5 file" filing made in accordance with subparagraph (a)2., that
6 premiums charged each policyholder constituting the portion of
7 the rate above that which was actuarially justified be
8 returned to such policyholder in the form of a credit or
9 refund. If the department finds that an insurer's rate or rate
10 change is inadequate, the new rate or rate schedule filed with
11 the department in response to such a finding shall be
12 applicable only to new or renewal business of the insurer
13 written on or after the effective date of the responsive
14 filing.

15 (i) Except as otherwise specifically provided in this
16 chapter, the department shall not prohibit any insurer,
17 including any residual market plan or joint underwriting
18 association, from paying acquisition costs based on the full
19 amount of premium, as defined in s. 627.403, applicable to any
20 policy, or prohibit any such insurer from including the full
21 amount of acquisition costs in a rate filing.

22

23 The provisions of this subsection shall not apply to workers'
24 compensation and employer's liability insurance and to motor
25 vehicle insurance.

26 Section 67. Subsection (4) of section 627.311, Florida
27 Statutes, is amended to read:

28 627.311 Joint underwriters and joint reinsurers.--

29 (4)(a) Effective upon this act becoming a law, the
30 department shall, after consultation with insurers, approve a
31 joint underwriting plan of insurers which shall operate as a

1 nonprofit entity. For the purposes of this subsection, the
2 term "insurer" includes group self-insurance funds authorized
3 by s. 624.4621, commercial self-insurance funds authorized by
4 s. 624.462, assessable mutual insurers authorized under s.
5 628.6011, and insurers licensed to write workers' compensation
6 and employer's liability insurance in this state. The purpose
7 of the plan is to provide workers' compensation and employer's
8 liability insurance to applicants who are required by law to
9 maintain workers' compensation and employer's liability
10 insurance and who are in good faith entitled to but who are
11 unable to procure ~~purchase~~ such insurance through the
12 voluntary market. It is the intent of the Legislature that the
13 plan rates for workers' compensation and employer's liability
14 insurance be actuarially sound and that such rates not be
15 competitive with approved voluntary market rates, so that the
16 plan functions as a residual market mechanism.~~The joint~~
17 ~~underwriting plan shall issue policies beginning January 1,~~
18 ~~1994. The plan must have actuarially sound rates that assure~~
19 ~~that the plan is self-supporting.~~

20 (b) The operation of the plan is subject to the
21 supervision of a 7-member ~~13-member~~ board of governors
22 appointed by the Chief Financial Officer. The board of
23 governors shall be comprised of:

24 1. Three representatives of workers' compensation
25 insurers, at least one of which represents a domestic workers'
26 compensation insurer ~~Five of the 20 domestic insurers, as~~
27 ~~defined in s. 624.06(1), having the largest voluntary direct~~
28 ~~premiums written in this state for workers' compensation and~~
29 ~~employer's liability insurance, which shall be elected by~~
30 ~~those 20 domestic insurers;~~

31

1 2. Three representatives of employers ~~Five of the 20~~
2 ~~foreign insurers as defined in s. 624.06(2) having the largest~~
3 ~~voluntary direct premiums written in this state for workers'~~
4 ~~compensation and employer's liability insurance, which shall~~
5 ~~be elected by those 20 foreign insurers; and~~

6 3. ~~One person, who shall serve as the chair, appointed~~
7 ~~by the Insurance Commissioner;~~

8 4. ~~One person appointed by the largest property and~~
9 ~~casualty insurance agents' association in this state; and~~

10 3.5. The consumer advocate appointed under s. 627.0613
11 or the consumer advocate's designee.

12
13 Each board member shall serve at the pleasure of the Chief
14 Financial Officer, shall be appointed to a 3-year ~~4-year~~ term,
15 and may serve consecutive terms. The Chief Financial Officer
16 shall designate one of the appointees as chair. The Chief
17 Financial Officer shall fill any board vacancy for the
18 remaining portion of an unexpired term. No board member shall
19 be an insurer which provides service to the plan or which has
20 an affiliate which provides services to the plan or which is
21 serviced by a service company or third-party administrator
22 which provides services to the plan or which has an affiliate
23 which provides services to the plan. The minutes, audits, and
24 procedures of the board of governors are subject to chapter
25 119, and the meetings of the board are subject to chapter 286.

26 (c) The operation of the plan shall be governed by a
27 plan of operation that is prepared at the direction of the
28 board of governors. The plan of operation may be changed at
29 any time by the board of governors or upon request of the
30 department. The plan of operation and all changes thereto are

31

1 subject to the approval of the department. The plan of
2 operation shall:

3 1. Authorize the board to engage in the activities
4 necessary to implement this subsection, including, but not
5 limited to, borrowing money.

6 2. Develop criteria for eligibility for coverage by
7 the plan, including, but not limited to, take-out and keep-out
8 provisions, as established in this subsection. documented
9 ~~rejection by at least two insurers which reasonably assures~~
10 ~~that insureds covered under the plan are unable to acquire~~
11 ~~coverage in the voluntary market. Any insured may voluntarily~~
12 ~~elect to accept coverage from an insurer for a premium equal~~
13 ~~to or greater than the plan premium if the insurer writing the~~
14 ~~coverage adheres to the provisions of s. 627.171.~~

15 3. Require notice from the producer agent to the
16 insured at the time of the application for coverage that the
17 application is for coverage with the plan and that coverage
18 may be available through an insurer, group self-insurers'
19 fund, commercial self-insurance fund, or assessable mutual
20 insurer through another insurance agent at a lower cost.

21 4. Establish a market-assistance plan to facilitate
22 depopulation of the plan by assisting employers that apply for
23 coverage, or that are insured by the plan, in obtaining
24 coverage in the voluntary market ~~programs to encourage~~
25 ~~insurers to provide coverage to applicants of the plan in the~~
26 ~~voluntary market and to insureds of the plan, including, but~~
27 not limited to:

28 a. Providing that all employers that apply for
29 coverage or that are insured by the plan participate in the
30 market-assistance plan.

31

1 b. Establishing procedures for an insurer to use in
2 notifying the plan of the insurer's desire to participate in
3 the market-assistance plan ~~provide coverage to applicants to~~
4 ~~the plan or existing insureds of the plan and in describing~~
5 ~~the types of risks in which the insurer is interested. The~~
6 ~~description of the desired risks must be on a form developed~~
7 ~~by the plan.~~

8 ~~c.b.~~ Developing forms and procedures for the
9 market-assistance plan to promptly that provide participating
10 insurers with account profiles, which include, but are not
11 limited to, the employer's name and federal employer
12 identification number; the effective date reserved for
13 in-process applications or the effective date of the plan
14 policy; the governing class code; business description of the
15 employer; the total number of employees estimated to be
16 covered under the policy; the total estimated annual payroll,
17 including corporate officers, partners, and sole proprietors;
18 the total estimated annual premium for the employer; the
19 employer's experience modification factor; the employer's
20 physical or mailing address; and the mailing address of the
21 applicable producer of record ~~an insurer with the information~~
22 ~~necessary to determine whether the insurer wants to write~~
23 ~~particular applicants to the plan or insureds of the plan.~~

24 ~~d.e.~~ Establishing procedures whereby an insurer can
25 keep out or take out an employer eligible for the Tier One
26 Rating Plan or the Tier Two Rating Plan, not to exceed 125
27 percent of the approved voluntary market manual rate for that
28 insured. An insurer keeping out or taking out an eligible
29 employer under this paragraph shall not be required to make an
30 additional rate or form filing with the Office of Insurance
31 Regulation, and such take out or keep out shall not invoke the

1 provision of s. 627.171. An employer that is the subject of a
2 take-out or keep-out under this paragraph may be charged by
3 the insurer taking out or keeping out the employer a rate not
4 to exceed 125 percent of the effective voluntary market manual
5 rate for no more than 3 years, after which time the employer
6 shall be rated on voluntary market rates and rules. An
7 employer who offers coverage under a take-out or keep-out
8 offer shall be ineligible for coverage in the plan. ~~Developing~~
9 ~~procedures for notice to the plan and the applicant to the~~
10 ~~plan or insured of the plan that an insurer will insure the~~
11 ~~applicant or the insured of the plan, and notice of the cost~~
12 ~~of the coverage offered; and developing procedures for the~~
13 ~~selection of an insuring entity by the applicant or insured of~~
14 ~~the plan.~~

15 e.d. Establishing procedures by which participating
16 insurers promptly notify the market assistance plan of the
17 identity of an employer whose insurance business it intends to
18 take out or keep out and the identity of any employer to whom
19 the insurer provides coverage, including the premium charged
20 for such coverage.~~Provide for a market-assistance plan to~~
21 ~~assist in the placement of employers. All applications for~~
22 ~~coverage in the plan received 45 days before the effective~~
23 ~~date for coverage shall be processed through the~~
24 ~~market-assistance plan. A market-assistance plan specifically~~
25 ~~designed to serve the needs of small good policyholders as~~
26 ~~defined by the board must be finalized by January 1, 1994.~~

27 f. Establishing procedures by which the
28 market-assistance plan will make available to participating
29 insurers monthly depopulation reports, which include the
30 account profiles of employers for whom the plan bound coverage
31

1 in the preceding month and employers covered by the plan whose
2 coverage is due to expire within the following 3 months.

3 5. Provide for policy and claims services to the
4 insureds of the plan of the nature and quality provided for
5 insureds in the voluntary market.

6 6. Provide for the review of applications for coverage
7 with the plan for reasonableness and accuracy, using any
8 available historic information regarding the applicant
9 insured.

10 7. Provide for procedures for auditing insureds of the
11 plan which are based on reasonable business judgment and are
12 designed to maximize the likelihood that the plan will collect
13 the appropriate premiums.

14 8. Authorize the plan to terminate the coverage of and
15 refuse future coverage for any insured that submits a
16 fraudulent application to the plan or provides fraudulent or
17 grossly erroneous records to the plan or to any service
18 provider of the plan in conjunction with the activities of the
19 plan.

20 9. Establish service standards for producers ~~agents~~
21 who submit business to the plan.

22 10. Establish criteria and procedures to prohibit any
23 producer ~~agent~~ who does not adhere to the established service
24 standards from placing business with the plan or receiving,
25 directly or indirectly, any commissions for business placed
26 with the plan.

27 11. Provide for the establishment of reasonable safety
28 programs for all insureds in the plan.

29 12. Authorize the plan to terminate the coverage of
30 and refuse future coverage to any insured who fails to pay
31 premiums or surcharges when due; who, at the time of

1 application, is delinquent in payments of workers'
2 compensation or employer's liability insurance premiums or
3 surcharges owed to an insurer, group self-insurers' fund,
4 commercial self-insurance fund, or assessable mutual insurer
5 licensed to write such coverage in this state; or who refuses
6 to substantially comply with any safety programs recommended
7 by the plan.

8 13. Authorize the board of governors to provide the
9 services required by the plan through staff employed by the
10 plan, through reasonably compensated service providers who
11 contract with the plan to provide services as specified by the
12 board of governors, or through a combination of employees and
13 service providers.

14 14. Provide for service standards for service
15 providers, methods of determining adherence to those service
16 standards, incentives and disincentives for service, and
17 procedures for terminating contracts for service providers
18 that fail to adhere to service standards.

19 15. Provide procedures for selecting service providers
20 and standards for qualification as a service provider that
21 reasonably assure that any service provider selected will
22 continue to operate as an ongoing concern and is capable of
23 providing the specified services in the manner required.

24 16. Provide for reasonable accounting and
25 data-reporting practices.

26 17. Provide for annual review of costs associated with
27 the administration and servicing of the policies issued by the
28 plan to determine alternatives by which costs can be reduced.

29 18. Authorize the acquisition of such excess insurance
30 or reinsurance as is consistent with the purposes of the plan.

31

1 19. Provide for an annual report to the department on
2 a date specified by the department and containing such
3 information as the department reasonably requires.

4 ~~20. Establish multiple rating plans for various~~
5 ~~classifications of risk which reflect risk of loss, hazard~~
6 ~~grade, actual losses, size of premium, and compliance with~~
7 ~~loss control. At least one of such plans must be a~~
8 ~~preferred-rating plan to accommodate small-premium~~
9 ~~policyholders with good experience as defined in~~
10 ~~sub-subparagraph 22.a.~~

11 20.21. Establish producer agent commission schedules.

12 21.22. Establish a three-tier rating plan three
13 subplans as follows:

14 a. Tier One must include those employers whose premium
15 does not exceed \$20,000 at the time of application who have
16 neither incurred any lost-time claims nor incurred
17 medical-only claims exceeding 50 percent of the premium in the
18 immediately preceding 2 years. However, if the final premium
19 audit shows that there has been material misclassification of
20 employees or material underreporting of payroll by the
21 employer, the employer is ineligible for the Tier One and Tier
22 Two rating plans and is subject to s. 440.107. Subplan "A"
23 ~~must include those insureds whose annual premium does not~~
24 ~~exceed \$2,500 and who have neither incurred any lost-time~~
25 ~~claims nor incurred medical-only claims exceeding 50 percent~~
26 ~~of their premium for the immediate 2 years.~~

27 b. Tier Two must include those employers in the plan
28 who are unable to procure in the voluntary market, but have an
29 experience modification factor of 1.05 or less, and charitable
30 and nonprofit organizations. For purposes of this
31 sub-subparagraph the term "charitable and nonprofit

1 organization" means an organization that is exempt from
2 federal income tax pursuant to section 501(c)(3) of the
3 Internal Revenue Code and receives 50 percent or more of its
4 funding from gifts, grants, endowments, or federal or state
5 contracts.~~Subplan "B" must include insureds that are~~
6 ~~employers identified by the board of governors as high-risk~~
7 ~~employers due solely to the nature of the operations being~~
8 ~~performed by those insureds and for whom no market exists in~~
9 ~~the voluntary market, and whose experience modifications are~~
10 ~~less than 1.00.~~

11 c. Tier Three must include all other employers of the
12 plan, and may include multiple subrating plans for various
13 classifications of insureds which reflect the risk of loss,
14 hazard grade, actual losses, size of premium, compliance with
15 loss control, and other reasonable actuarial factors. ~~Subplan~~
16 ~~"C" must include all other insureds within the plan.~~

17 d. For purposes of this subparagraph, the term
18 "employer" includes all affiliated entities of the employer.
19 The term "affiliated" means and includes one or more
20 corporations or entities under the same or substantially the
21 same control of a group of business entities that are
22 connected or associated so that one entity controls or has the
23 power to control each of the other business entities.

24 (d) The premiums for Tier One and Tier Two insureds
25 shall be 125 percent of the premium for that insured using the
26 approved voluntary market manual rates. The premium for Tier
27 Three shall be actuarially sound to assure that Tier Three is
28 self-supporting.~~The plan must be funded through actuarially~~
29 ~~sound premiums charged to insureds of the plan.~~~~The plan may~~
30 ~~issue assessable policies only to those insureds in Tier Three~~
31 ~~subplan "C."~~~~Those assessable policies must be clearly~~

1 identified as assessable by containing, in contrasting color
2 and in not less than 10-point type, the following statements:
3 "This is an assessable policy. If the plan is unable to pay
4 its obligations, policyholders will be required to contribute
5 on a pro rata earned premium basis the money necessary to meet
6 any assessment levied." The plan may issue assessable policies
7 with differing terms and conditions to different groups within
8 the plan when a reasonable basis exists for the
9 differentiation. The plan may offer rating, dividend plans,
10 and other plans to encourage loss prevention programs.

11 (e) The plan shall establish and use its rates and
12 rating plans, and the plan may establish and use changes in
13 rating plans at any time, but no more frequently than two
14 times per any rating class for any calendar year. ~~By December~~
15 ~~1, 1993, and December 1 of each year thereafter, the board~~
16 ~~shall establish and use actuarially sound rates for use by the~~
17 ~~plan to assure that the plan is self-funding while those rates~~
18 ~~are in effect. Such Plan rates and rating plans must be filed~~
19 with the department within 30 calendar days after their
20 effective dates, and shall be considered a "use and file"
21 filing. Any disapproval by the department must have an
22 effective date that is at least 60 days from the date of
23 disapproval of the rates and rating plan and must have
24 prospective effect only. The plan may not be subject to any
25 order by the department to return to policyholders any portion
26 of the rates disapproved by the department. The department may
27 not disapprove any rates or rating plans unless it
28 demonstrates that such rates and rating plans are excessive,
29 inadequate, or unfairly discriminatory.

30 (f) No later than June 1 of each year, the plan shall
31 obtain an independent actuarial certification of the results

1 of the operations of the plan for prior years, and shall
2 furnish a copy of the certification to the department. If,
3 after the effective date of the plan, the projected ultimate
4 incurred losses and expenses and dividends for prior years
5 exceed collected premiums, accrued net investment income, and
6 prior assessments for prior years, the certification is
7 subject to review and approval by the department before it
8 becomes final.

9 (g) Whenever a deficit occurs in Tier One or Tier Two,
10 the board shall levy, after verification by the department,
11 assessments for as many years as necessary to cover the
12 deficits, but not to exceed 2 percent of premium annually, to
13 be collected by all insurers to be paid by their Florida
14 workers' compensation policyholders as a line item in addition
15 to the calculated premium.Whenever a deficit exists in Tier
16 Three, the plan shall, within 90 days, provide the department
17 with a program to eliminate the deficit within a reasonable
18 time. The Tier-Three deficit may be funded through increased
19 premiums charged to insureds of the plan for subsequent years,
20 through the use of policyholder surplus attributable to any
21 year, and through assessments on insureds in the plan if the
22 plan uses assessable policies. The department shall adopt by
23 rule insurer reporting requirements for the assessments under
24 this paragraph.

25 (h) Any premium or assessments collected by the plan
26 in excess of the amount necessary to fund projected ultimate
27 incurred losses and expenses of the plan and not paid to
28 insureds of the plan in conjunction with loss prevention or
29 dividend programs shall be retained by the plan for future
30 use.

31

1 (i) The decisions of the board of governors do not
2 constitute final agency action and are not subject to chapter
3 120.

4 (j) Policies for insureds shall be issued by the plan.

5 (k) The plan created under this subsection is liable
6 only for payment for losses arising under policies issued by
7 the plan with dates of accidents occurring on or after January
8 1, 1994.

9 ~~(l) Plan losses are the sole and exclusive~~
10 ~~responsibility of the plan, and payment for such losses must~~
11 ~~be funded in accordance with this subsection and must not~~
12 ~~come, directly or indirectly, from insurers or any guaranty~~
13 ~~association for such insurers.~~

14 (l)(m) Each joint underwriting plan or association
15 created under this section is not a state agency, board, or
16 commission. However, for the purposes of s. 199.183(1) only,
17 the joint underwriting plan is a political subdivision of the
18 state and is exempt from the corporate income tax.

19 ~~(n) Each joint underwriting plan or association may~~
20 ~~elect to pay premium taxes on the premiums received on its~~
21 ~~behalf or may elect to have the member insurers to whom the~~
22 ~~premiums are allocated pay the premium taxes if the member~~
23 ~~insurer had written the policy. The joint underwriting plan or~~
24 ~~association shall notify the member insurers and the~~
25 ~~Department of Revenue by January 15 of each year of its~~
26 ~~election for the same year. As used in this paragraph, the~~
27 ~~term "premiums received" means the consideration for~~
28 ~~insurance, by whatever name called, but does not include any~~
29 ~~policy assessment or surcharge received by the joint~~
30 ~~underwriting association as a result of apportioning losses or~~
31 ~~deficits of the association pursuant to this section.~~

1 (m)~~(o)~~ Neither the plan nor any member of the board of
2 governors is liable for monetary damages to any person for any
3 statement, vote, decision, or failure to act, regarding the
4 management or policies of the plan, unless:

5 1. The member breached or failed to perform her or his
6 duties as a member; and

7 2. The member's breach of, or failure to perform,
8 duties constitutes:

9 a. A violation of the criminal law, unless the member
10 had reasonable cause to believe her or his conduct was not
11 unlawful. A judgment or other final adjudication against a
12 member in any criminal proceeding for violation of the
13 criminal law estops that member from contesting the fact that
14 her or his breach, or failure to perform, constitutes a
15 violation of the criminal law; but does not estop the member
16 from establishing that she or he had reasonable cause to
17 believe that her or his conduct was lawful or had no
18 reasonable cause to believe that her or his conduct was
19 unlawful;

20 b. A transaction from which the member derived an
21 improper personal benefit, either directly or indirectly; or

22 c. Recklessness or any act or omission that was
23 committed in bad faith or with malicious purpose or in a
24 manner exhibiting wanton and willful disregard of human
25 rights, safety, or property. For purposes of this
26 sub-subparagraph, the term "recklessness" means the acting, or
27 omission to act, in conscious disregard of a risk:

28 (I) Known, or so obvious that it should have been
29 known, to the member; and

30
31

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 maintained in the same city in which the plan was located as
14 of January 1, 2003.

15 Section 68. Paragraphs (a), (c), (e), and (g) of
16 subsection (3) of section 921.0022, Florida Statutes, are
17 amended to read:

18 921.0022 Criminal Punishment Code; offense severity
19 ranking chart.--

20 (3) OFFENSE SEVERITY RANKING CHART

21	22 Florida	23 Statute	24 Felony	25 Degree	26 Description
27					(a) LEVEL 1
28	24.118(3)(a)		3rd		Counterfeit or altered state lottery ticket.
29	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.
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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.
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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 69. 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 70. 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 71. 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 72. 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 73. 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 74. Four positions and the sum of \$290,923 are
20 appropriated from the Workers' Compensation Administration
21 Trust Fund in the Department of Financial Services. These
22 funds and positions are appropriated in lump sum and shall be
23 allocated pursuant to the review process in chapter 216.177,
24 Florida Statutes. Three positions and the sum of \$207,474
25 shall be allocated to the state attorneys in the Eleventh,
26 Fifteenth, and Seventeenth Judicial Circuits. One position and
27 \$83,449 shall be allocated to the Department of Legal Affairs.

28 Section 75. Nineteen full-time equivalent positions
29 and the associated funding for salaries, benefits, other
30 capital outlay, and expenses related to oversight of medical
31 services in workers' compensation provider relations, dispute

1 and complaint resolution, program evaluation, data management,
2 and review of carrier medical bill payments are transferred by
3 a type two transfer, as defined in section 20.06(2), Florida
4 Statutes, from the Agency for Health Care Administration to
5 the Department of Financial Services.

6 Section 76. It is the intent of the Legislature to
7 create a state mutual insurance fund for workers'
8 compensation, effective January 1, 2005, if the workers'
9 compensation rates do not decrease by 20 percent on or before
10 January 1, 2005.

11 Section 77. (1) There is established a Joint Select
12 Committee on Workers' Compensation Rating Reform. The
13 committee shall study the merits of requiring each workers'
14 compensation insurer to individually file its expense and
15 profit portion of a rate filing, while permitting each insurer
16 to use a lost cost filing made by a licensed rating
17 organization. The committee shall also study options for the
18 current prior approval system for workers' compensation rate
19 filings, including, but not limited to, rate filing procedures
20 that would promote greater competition and would encourage
21 insurers to write workers' compensation coverage in the state
22 while protecting employers from rates that are excessive,
23 inadequate, or unfairly discriminatory.

24 (2) The committee shall be composed of three Senators
25 appointed by the President of the Senate and three
26 Representatives appointed by the Speaker of the House of
27 Representatives. The appointed members of the committee shall
28 elect a chair and vice chair. The staffs of the Senate Banking
29 and Insurance Committee and the House Insurance Committee
30 shall serve as staff for the committee. The Department of
31 Financial Services and the Office of Insurance Regulation

1 shall provide information and assistance as requested by the
2 committee.

3 (3) The committee shall issue its final report and
4 recommendations to the President of the Senate and the Speaker
5 of the House of Representatives by December 1, 2003.

6 Section 78. This act shall take effect July 1, 2003.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill CS/SB 1132

4 The committee substitute:

- 5 1. Revises the definition of "catastrophic injury" to be
6 limited to specific types of injuries, and deletes all
references to ability to engage in gainful employment.
- 7 2. Revises the criteria for permanent total disability
8 benefits and reduces the supplemental benefits for
permanent total disability to 3 % per year.
- 9 3. Revises the attorney fee provision to include limiting
10 contingency fee awards to 20% of first \$5,000 of benefits
11 secured, and 15% of remainder for first 10 years of
benefits, except a fee based on future medical benefits
is limited to 5 years.
- 12 4. Revises the medical fee schedule to provide that until
13 the three-member panel approves a schedule of
reimbursement for inpatient hospital care based on DRGs,
14 the maximum reimbursement for inpatient hospital care
shall be 20 percent less than the per-diem rates in
15 effect on December 31, 2002.
- 16 5. Provides that the Early Intervention Office, upon
17 receiving a notice of a "lost time case," must contact
parties by phone or mail to explain rights related to
receiving assistance.
- 18 6. Deletes the transfer of the Bureau of Workers'
19 Compensation Insurance Fraud to the Department of Law
Enforcement and retains it in the Department of Financial
20 Services.
- 21 7. Requires the Judges of Compensation Claims to report to
22 the deputy chief judge of compensation claims any final
hearings not held within 210 days after he receipt of
23 the petition for benefits and the reasons for the
continuances.
- 24 8. Establishes a Joint Select Committee on Workers'
25 Compensation Rating Reform and requires a final report to
the Legislature by December 31, 2003.
- 26 9. Deletes the provision that the operational activities of
27 the joint underwriting plan shall be headquartered in
Tallahassee.
- 28 10. Requires peer review panel members to be licensed in
29 Florida, selected from a list of providers on a
rotational basis.
- 30 11. Provides that only the disability and medical treatment
31 associated with a compensable injury shall be payable,
excluding the pre-existing disability or medical
condition.

- 1 12. Reduces the limitation on chiropractic services from 36
- 2 to 24 treatments and 16 to 12 weeks.
- 3 13. Reduces permanent partial disability benefits by 50% for
- 4 each week in which the employee has earned income equal
- 5 to or greater than the employee's average week wage.
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