

By Senators Clary, Bennett, Miller, Peaden and Jones

4-34A-03

1 A bill to be entitled
2 An act relating to workers' compensation
3 insurance; providing for startup funding for
4 the Florida Employers Mutual Insurance Company,
5 as created by the act; requiring workers'
6 compensation insurers to report cost data to
7 the Department of Financial Services; requiring
8 insurance carriers to report medical claims
9 data to the Department of Health; providing for
10 the data to be used to determine trends and
11 changes in health care costs associated with
12 workers' compensation claims; requiring the
13 Chief Financial Officer to approve a plan for
14 operating a residual market to guarantee
15 insurance coverage for employers; providing for
16 rates; providing for any deficit to be
17 distributed through an assessment on insurance
18 carriers that write workers' compensation
19 insurance; requiring the Chief Financial
20 Officer to adopt rules; creating the Florida
21 Employers Mutual Insurance Company Act;
22 providing definitions; creating the Florida
23 Employers Mutual Insurance Company to provide
24 workers' compensation insurance and employer's
25 liability coverage; providing for organization
26 of the company as a not-for-profit corporation;
27 providing for a board of directors of the
28 company; providing for appointment of members
29 and terms of office; providing membership
30 qualifications; requiring the board to hire an
31 administrator; providing powers and duties;

1 requiring the administrator to give a bond;
2 providing immunity from liability for official
3 acts taken by a board member, officer, or
4 employee; authorizing the board to establish
5 insurance rates; requiring the board to adopt
6 an investment policy and supervise the
7 investments of the company; authorizing
8 insurance agents or brokers licensed in this
9 state to sell workers' compensation insurance
10 policies for the company; requiring a workplace
11 safety program for policyholders; prohibiting
12 the appropriation of state funds to the
13 company; requiring an annual audit of the books
14 of the company; requiring a report to the
15 Governor and the Legislature; requiring the
16 administrator to submit a budget to the board;
17 requiring the Department of Financial Services
18 to examine the company; providing definitions;
19 prohibiting discrimination in the payment of
20 dividends; providing that it is an unfair trade
21 practice to condition payment of a dividend
22 upon renewal of a policy; prohibiting certain
23 agreements restraining trade; requiring uniform
24 rating plans; requiring the Chief Financial
25 Officer to conduct certain examinations of
26 insurers; providing penalties; providing for a
27 determination of a competitive market in the
28 workers' compensation and employer's liability
29 lines of business; requiring the Chief
30 Financial Officer to monitor the degree of
31 competition; amending s. 440.02, F.S.;

1 revising, providing, and deleting definitions;
2 amending s. 440.05, F.S.; revising requirements
3 relating to submitting notice of election of
4 exemption and maintenance of records; amending
5 s. 440.06, F.S.; revising provisions relating
6 to failure to secure compensation; amending s.
7 440.077, F.S.; providing that a corporate
8 officer electing to be exempt may not receive
9 benefits under ch. 440, F.S.; amending s.
10 440.09, F.S.; providing for an increase in
11 compensation if the employer knowingly refused
12 or failed to provide a safety appliance or
13 observe a safety rule; amending s. 440.11,
14 F.S.; providing that certain limitations with
15 respect to an employer's liability do not apply
16 if the employer fails to secure coverage as
17 required; amending s. 440.13, F.S.; revising
18 the number of and period for certain medical
19 services; revising the requirements for
20 contesting a disallowance of payment;
21 establishing certain maximum reimbursement
22 allowances; amending s. 440.15, F.S.; providing
23 that certain time limitations for temporary
24 benefits are presumed sufficient; revising
25 certain benefits for impairment; amending s.
26 440.16, F.S.; increasing the amount of
27 compensation for funeral expenses and for
28 death; amending s. 440.185, F.S.; revising
29 certain requirements for notice of injury or
30 death; amending s. 440.19, F.S.; revising a
31 limitation on the period for filing a petition

1 for benefits; amending s. 440.381, F.S.;
2 requiring an application for coverage to
3 include job descriptions for the employment for
4 which the employer seeks coverage; requiring
5 that a sworn statement be included with certain
6 audit documents; providing a penalty; amending
7 s. 440.591, F.S.; requiring the Division of
8 Workers' Compensation to adopt rules for a
9 model settlement agreement; amending s.
10 627.062, F.S.; deleting an exemption for the
11 application of certain rate standards to
12 workers' compensation or employer's liability
13 insurance; amending s. 627.072, F.S.; deleting
14 certain requirements with respect to setting
15 rates for workers' compensation and employer's
16 liability insurance; amending s. 627.0645,
17 F.S.; deleting certain requirements for annual
18 filings; amending s. 627.096, F.S.; providing
19 that certain data and other information
20 submitted to the Workers' Compensation Rating
21 Bureau is a public record; amending s. 627.291,
22 F.S.; deleting requirements for rating
23 organizations to provide certain information;
24 repealing ss. 627.091, 627.101, 627.151,
25 627.211, and 627.281, F.S., relating to rate
26 filings for workers' compensation and
27 employer's liability insurance; providing an
28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. After January 1, 2004, the director of the
2 Division of Workers' Compensation shall make one or more loans
3 to the Florida Employers Mutual Insurance Company in an amount
4 not to exceed an aggregate amount of 5 million dollars from
5 the fund maintained to administer sections 1 through 22 of
6 this act for start-up funding and initial capitalization of
7 the company. The board of the company shall make application
8 to the director for the loans, stating the amount to be loaned
9 to the company. The loans shall be for a term of 5 years and,
10 at the time the application for such loans is approved by the
11 director, shall bear interest at the annual rate based on the
12 rate for linked deposit loans as calculated by the Chief
13 Financial Officer.

14 Section 2. Workers' compensation insurers to report
15 cost data to the Department of Financial Services.--All
16 workers' compensation insurers or their designated agents,
17 self-insurers, and state agencies responsible for the
18 collection or maintenance of workers' compensation related
19 data shall report claims information necessary to determine
20 and analyze costs of the workers' compensation system to the
21 Chief Financial Officer or to such agents as the Chief
22 Financial Officer designates. The Chief Financial Officer may
23 adopt rules to administer this section. All data, statistics,
24 schedules, or other information submitted to, or considered
25 by, the Department of Financial Services shall be a public
26 record.

27 Section 3. Insurers to report medical claims data to
28 the Department of Health; contents; consolidated health plan;
29 duties; purpose; costs.--

30 (1) Each commercial insurance carrier licensed to sell
31 workers' compensation insurance in this state shall provide to

1 the Department of Health at least every 6 months workers'
2 compensation medical claims history data as required by the
3 department. Such data shall be on electronic media and shall
4 include the current procedural and medical terminology codes
5 relating to the medical treatment, dates of treatment,
6 demographic characteristics of the worker, type of health care
7 provider rendering care, and charges for treatment. The
8 department may require a statistically valid sample of claims.
9 The department may, for purposes of verification, collect data
10 from health care providers relating to the treatment of
11 workers' compensation injuries.

12 (2) The data required in subsection (1) shall be used
13 by the department to determine historical and statistical
14 trends, variations, and changes in health care costs
15 associated with workers' compensation patients compared with
16 nonworkers' compensation patients with similar injuries and
17 conditions. Such data shall be readily available for review by
18 users of the workers' compensation system, members of the
19 Legislature, the Division of Workers' Compensation, and the
20 Department of Financial Services. Data released by the
21 department may not identify a patient or health care provider.

22 (3) Any additional personnel or equipment needed by
23 the Department of Health to meet the requirements of this
24 section shall be paid for by the workers' compensation fund.

25 Section 4. Residual market; Department of Financial
26 Services to develop plan; insurers to participate; rates;
27 procedures; duties of Chief Financial Officer.--

28 (1) Within 45 days after August 28, 2003, the Chief
29 Financial Officer shall approve a plan of operation for a new
30 residual market that will guarantee insurance coverage and
31 quality loss prevention and control services for employers

1 seeking coverage through the plan. The new residual market
2 shall begin operation January 1, 2004.

3 (2) Each insurer authorized to write workers'
4 compensation and employers' liability insurance shall
5 participate in the plan, providing for the equitable
6 apportionment among insurers of insurance that may be afforded
7 applicants who are in good faith entitled to but who are
8 unable to procure such insurance through ordinary methods,
9 except that all employers that have expiring annual premiums
10 greater than \$250,000 must negotiate a retrospective rating
11 plan with their insurer which is acceptable to the Chief
12 Financial Officer. The rates, supplementary rate information,
13 and policy forms to be used in such a plan and any future
14 modification thereof must be submitted to the Chief Financial
15 Officer for approval at least 75 days prior to the effective
16 date of the rate. Such rates shall be set by the Chief
17 Financial Officer after hearing so that the amount required in
18 premiums, together with reasonable investment income earned on
19 those premiums, is not excessive, inadequate, or unfairly
20 discriminatory and is actuarially sufficient to apply claims
21 and losses and reasonable operating expenses of the insurers.
22 This section does not prevent the Chief Financial Officer from
23 including a merit rating plan for nonexperienced rated
24 employers within the residual market plan. The Chief Financial
25 Officer shall adopt within the plan a system to distribute any
26 residual market deficit through an assessment on insurance
27 carriers authorized to write workers' compensation insurance
28 in proportion to the respective share of voluntary market
29 premium written by such carrier.

30 (3) The Chief Financial Officer shall disapprove any
31 filing that does not meet the requirements of this section. A

1 filing shall be deemed to meet such requirements unless
2 approved, disapproved, or modified by the Chief Financial
3 Officer within 75 days after the filing is made. In
4 disapproving a filing made pursuant to this section, the Chief
5 Financial Officer shall have the same authority and follow the
6 same procedures as in disapproving a rate filing pursuant to
7 the requirements for filings in the voluntary market. The
8 designated advisory organization may make and file the plan of
9 operation, rates, rating plans, rules, and policy forms under
10 this section.

11 (4) The Chief Financial Officer shall establish by
12 rule standards to assure that any employer insured through the
13 plan shall receive the same quality of service in the areas of
14 employee classification, safety engineering, loss control,
15 claims handling, and claim reserving practices as do employers
16 that are voluntarily insured. The standards established by the
17 Chief Financial Officer pursuant to this subsection shall also
18 specify the procedures and grounds according to which an
19 employer insured through the plan shall be assigned an
20 insurer, and the method by which such employers shall be
21 informed of such procedures and grounds. All insurers of the
22 residual market shall process applications, conduct safety
23 engineering or other loss control services, and provide claims
24 handling within the state or adjoining states.

25 Section 5. Florida Employers Mutual Insurance Company
26 Act; definitions.--

27 (1) Sections 5 through 15 of this act may be cited as
28 the "Florida Employers Mutual Insurance Company Act".

29 (2) As used in sections 5 through 15 of this act, the
30 term:

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1 (a) "Administrator" means the chief executive officer
2 of the Florida Employers Mutual Insurance Company.

3 (b) "Board" means the board of directors of the
4 Florida Employers Mutual Insurance Company.

5 (c) "Company" means the Florida Employers Mutual
6 Insurance Company.

7 Section 6. Florida Employers Mutual Insurance Company
8 created; powers; purpose.--The Florida Employers Mutual
9 Insurance Company is created as an independent public
10 corporation for the purpose of insuring employers in this
11 state against liability for workers' compensation,
12 occupational disease, and employers' liability coverage. The
13 company shall be organized and operated as a domestic mutual
14 insurance company and it shall not be a state agency. The
15 company shall have the powers granted a not-for-profit
16 corporation under chapter 617, Florida Statutes, to the extent
17 that such provisions do not conflict with sections 5 through
18 15 of this act. The company shall be a member of the Florida
19 Insurance Guaranty Association and shall be subject to
20 assessments therefrom, and the members of such association
21 shall bear responsibility in the event of the insolvency of
22 the company. The company shall be established pursuant to
23 sections 5 through 15 of this act. Preference shall be given
24 to employers that develop an annual premium of not greater
25 than \$10,000. The company shall use flexibility and
26 experimentation in developing types of policies and coverages
27 offered to employers, subject to the approval of the Chief
28 Financial Officer.

29 Section 7. Board created; members, appointment,
30 qualifications, and terms.--

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1 (1) There is created a board of directors for the
2 company. The board shall be appointed by January 1, 2004, and
3 shall consist of five members appointed or selected as
4 provided in this section. The Governor shall appoint the
5 initial five members of the board, who shall be subject to
6 confirmation by the Senate. Each director shall be appointed
7 to a 4-year term. Terms shall be staggered so that no more
8 than two director's terms expire in any year on the first day
9 of July. The five directors initially appointed by the
10 Governor shall determine their initial terms by lot. At the
11 expiration of the term of any member of the board, the
12 company's policyholders shall elect a new director in
13 accordance with provisions determined by the board.

14 (2) Any person may be a director who:

15 (a) Does not have any interest as a stockholder,
16 employee, attorney, agent, broker, or contractor of an
17 insurance entity who writes workers' compensation insurance or
18 whose affiliates write workers' compensation insurance; and

19 (b) Is of good moral character and who has never
20 pleaded guilty to, or been found guilty of, a felony.

21 (3) The board shall annually elect a chair and any
22 other officers it deems necessary for the performance of its
23 duties. Board committees and subcommittees may also be formed.

24 Section 8. Administrator; qualifications and
25 compensation; powers of board.--

26 (1) By March 1, 2004, the board shall hire an
27 administrator who shall serve at the pleasure of the board and
28 the company shall be fully prepared to be operational by March
29 1, 2005, and assume its responsibilities pursuant to sections
30 5 through 15 of this act. The administrator shall receive
31 compensation as established by the board and must have proven

1 successful experience as an executive at the general
2 management level in the insurance business.

3 (2) The board is vested with full power, authority,
4 and jurisdiction over the company. The board may perform all
5 acts necessary or convenient in the administration of the
6 company or in connection with the insurance business to be
7 carried on by the company. In this regard, the board is
8 empowered to function in all aspects as a governing body of a
9 private insurance carrier.

10 Section 9. Duties of administrator; bond required;
11 immunity from liability for board and employees.--

12 (1) The administrator of the company shall act as the
13 company's chief executive officer. The administrator shall be
14 in charge of the day-to-day operations and management of the
15 company.

16 (2) Before entering the duties of office, the
17 administrator shall give an official bond in an amount and
18 with sureties approved by the board. The premium for the bond
19 shall be paid by the company.

20 (3) The administrator or his or her designee shall be
21 the custodian of the moneys of the company, and all premiums,
22 deposits, or other moneys paid to the company shall be
23 deposited with a financial institution as designated by the
24 administrator.

25 (4) A board member, officer, or employee of the
26 company may not be held liable in a private capacity for any
27 act performed or obligation entered into when done in good
28 faith, without intent to defraud, and in an official capacity
29 in connection with the administration, management, or conduct
30 of the company or affairs relating to it.

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1 Section 10. Rates; board to determine.--The board
2 shall have full power and authority to establish rates to be
3 charged by the company for insurance. The board shall contract
4 for the services of or hire an independent actuary, a member
5 in good standing with the American Academy of Actuaries, to
6 develop and recommend actuarially sound rates. Rates shall be
7 set at amounts sufficient, when invested, to carry all claims
8 to maturity, meet the reasonable expenses of conducting the
9 business of the company, and maintain a reasonable surplus.
10 The company shall conduct a workers' compensation program that
11 shall be neither more nor less than self-supporting.

12 Section 11. Investment policy; board to determine;
13 administrator to make investments.--The board shall formulate
14 and adopt an investment policy and supervise the investment
15 activities of the company. The administrator may invest and
16 reinvest the surplus or reserves of the company subject to the
17 limitations imposed on domestic insurance companies by state
18 law. The company may retain an independent investment counsel.
19 The board shall periodically review and appraise the
20 investment strategy being followed and the effectiveness of
21 such services. Any investment counsel retained or hired shall
22 periodically report to the board on investment results and
23 related matters.

24 Section 12. Agents authorized to sell policies;
25 commissions.--Any insurance agent or broker licensed to sell
26 workers' compensation insurance in this state shall be
27 authorized to sell insurance policies for the company in
28 compliance with the bylaws adopted by the company. The board
29 shall establish a schedule of commissions to pay for the
30 services of the agent.

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1 Section 13. Workplace safety program; reduction in
2 rates.--

3 (1) The administrator shall formulate, implement, and
4 monitor a workplace safety program for all policyholders.

5 (2) The company shall have representatives whose sole
6 purpose is to develop, with policyholders, a written workplace
7 accident and injury reduction plan that promotes safe working
8 conditions and that is based upon clearly stated goals and
9 objectives. Company representatives shall have reasonable
10 access to the premises of any policyholder or applicant during
11 regular working hours. The company shall communicate the
12 importance of a well-defined safety plan and assist in any way
13 to obtain this objective.

14 (3) The administrator or board may refuse to insure,
15 or may terminate the insurance of, any subscriber who refuses
16 to permit on-site examinations or disregards the workplace
17 accident and injury reduction plan.

18 (4) Upon the completion of a detailed inspection and
19 recognition of a high regard for employee work safety, a
20 deviation may be applied to the rate structure of that insured
21 in recognition of those efforts.

22 Section 14. Company not to receive state
23 appropriation.--The Florida Employers Mutual Insurance Company
24 may not receive any state appropriation, directly or
25 indirectly, except as otherwise expressly provided by law.

26 Section 15. Audit required; procedure; report to
27 Governor and Legislature; administrator to formulate budget;
28 subscribers to be provided policy.--

29 (1) The board shall cause an annual audit of the books
30 of accounts, funds, and securities of the company to be made
31 by a competent and independent firm of certified public

1 accountants and the cost of the audit shall be charged against
2 the company. A copy of the audit report shall be filed with
3 the Chief Financial Officer and the administrator.

4 (2) The board shall submit an annual independently
5 audited report in accordance with procedures governing annual
6 reports adopted by the National Association of Insurance
7 Commissioners by March 1 of each year and the report shall be
8 delivered to the Governor and the Legislature and shall
9 indicate the business done by the company during the previous
10 year and contain a statement of the resources and liabilities
11 of the company.

12 (3) The administrator shall annually submit to the
13 board for its approval an estimated budget of the entire
14 expense of administering the company for the succeeding
15 calendar year, having due regard to the business interests and
16 contract obligations of the company.

17 (4) The incurred loss experience and expense of the
18 company shall be ascertained each year to include, but not be
19 limited to, estimates of outstanding liabilities for claims
20 reported to the company but not yet paid and liabilities for
21 claims arising from injuries that have occurred but have not
22 yet been reported to the company. If there is an excess of
23 assets over liabilities, necessary reserves, and a reasonable
24 surplus for the catastrophe hazard, a cash dividend may be
25 declared or a credit allowed to an employer who has been
26 insured with the company in accordance with criteria approved
27 by the board, which may account for the employer's safety
28 record and performance.

29 (5) The Department of Financial Services shall conduct
30 an examination of the company in the manner and under the
31 conditions provided by the Florida Insurance Code for the

1 examination of insurance carriers. The board shall pay the
2 cost of the examination as an expense of the company. The
3 company is subject to all provisions of law relating to
4 private insurance carriers and to the jurisdiction of the
5 Department of Financial Services in the same manner as private
6 insurance carriers, except as provided by the Chief Financial
7 Officer.

8 (6) For the purpose of ascertaining the correctness of
9 the amount of payroll reported, the number of employees on the
10 employer's payroll, and other information required by the
11 administrator in the proper administration of the company, the
12 records and payrolls of each employer insured by the company
13 shall always be open to inspection by the administrator or his
14 or her authorized agent or representative.

15 (7) Each employer provided insurance coverage by the
16 company, upon complying with the underwriting standards
17 adopted by the company and completing the application form
18 prescribed by the company, shall be furnished with a policy
19 showing the date on which the insurance becomes effective.

20 Section 16. Definitions.--As used in sections 16
21 through 22 of this act, the term:

22 (1) "Accepted actuarial standards" means the standards
23 adopted by the Casualty Actuarial Society in its Statement of
24 Principles Regarding Property and Casualty Insurance
25 Ratemaking, and the Standards of Practice adopted by the
26 Actuarial Standards Board.

27 (2) "Advisory organization" means any entity that has
28 two or more member insurers or is controlled either directly
29 or indirectly by two or more insurers and that assists
30 insurers in ratemaking-related activities. Two or more
31 insurers that have a common ownership or operate in this state

1 under common management or control constitute a single insurer
2 for the purpose of this definition. The term does not include
3 a joint underwriting association, any actuarial or legal
4 consultant, any employee of an insurer, or insurers under
5 common control or management or their employees or manager.

6 (3) "Classification system" or "classification" means
7 the plan, system, or arrangement for recognizing differences
8 in exposure to hazards among industries, occupations, or
9 operations of insurance policyholders.

10 (4) "Competitive market" means a market that has not
11 been found to be noncompetitive pursuant to section 21 of this
12 act.

13 (5) "Director" means the Chief Financial Officer.

14 (6) "Expenses" means that portion of any rate
15 attributable to acquisition and field supervision; collection
16 expenses and general expenses; and taxes, licenses, and fees.

17 (7) "Experience rating" means a rating procedure using
18 past insurance experience of the individual policyholder to
19 forecast future losses by measuring the policyholder's loss
20 experience against the loss experience of policyholders in the
21 same classification to produce a prospective premium credit,
22 debit, or unity modification.

23 (8) "Loss trending" means any procedure for projecting
24 developed losses to the average date of loss for the period
25 during which the policies are to be effective.

26 (9) "Market" means the interaction between buyers and
27 sellers of workers' compensation insurance within this state
28 pursuant to the provisions of sections 16 through 22 of this
29 act.

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1 (10) "Noncompetitive market" means a market for which
2 there is a ruling in effect pursuant to section 21 of this act
3 that a reasonable degree of competition does not exist.

4 (11) "Prospective loss costs" means that portion of a
5 rate which does not include provisions for expenses, other
6 than loss adjustment expenses, or profit. Prospective loss
7 costs are developed losses projected through loss trending to
8 a future point in time, including any assessments that are
9 loss-based and ascertained by accepted actuarial standards.

10 (12) "Pure premium rate" means that portion of the
11 rate which represents the loss cost per unit of exposure,
12 including loss adjustments expense.

13 (13) "Rate" means the cost of insurance per exposure
14 base unit, prior to any application of individual risk
15 variations based on loss or expense considerations, and does
16 not include minimum premiums.

17 (14) "Residual market" means the plan, either
18 voluntary or mandated by law, involving participation by
19 insurers in the equitable apportionment among them of
20 insurance that may be afforded applicants who are unable to
21 obtain insurance through ordinary methods.

22 (15) "Statistical plan" means the plan, system, or
23 arrangement used in collecting data.

24 (16) "Supplementary rate information" means any manual
25 or plan of rates, classifications system, rating schedule,
26 minimum premium, policy fee, rating rule, rating plan, and any
27 other similar information needed to determine the applicable
28 premium for an insured.

29 (17) "Supporting information" means the experience and
30 judgment of the filer and the experience or data of other
31 insurers or organizations relied on by the filer, the

1 interpretation of any statistical data relied on by the filer,
2 descriptions of methods used in making the rates, and any
3 other similar information required to be filed by the
4 director.

5 Section 17. Discrimination prohibited; unfair trade
6 practices.--

7 (1) Nothing in sections 16 through 22 of this act
8 prohibits or regulates the payment of dividends, savings, or
9 unabsorbed premium deposits allowed or returned by insurers to
10 their policyholders, members, or subscribers, but in the
11 payment of such dividends there may not be unfair
12 discrimination between policyholders.

13 (2) A plan for the payment of dividends, savings, or
14 unabsorbed premium deposits allowed or returned by insurers to
15 their policyholders, members, or subscribers is not a rating
16 plan or system.

17 (3) It is an unfair trade practice under the Florida
18 Deceptive and Unfair Trade Practices Act to make the payment
19 of a dividend or any portion thereof conditioned upon renewal
20 of the policy or contract.

21 Section 18. Insurer and advisory organization not to
22 make agreement restraining trade; insurer must use uniform
23 experience rating plan; exceptions.--

24 (1) An insurer or advisory organization may not make
25 any arrangement with any other insurer, advisory organization,
26 or other person which has the purpose or effect of restraining
27 trade unreasonably or of substantially lessening competition
28 in the business of insurance.

29 (2) An insurer may not agree with any other insurer or
30 with the advisory organization to adhere to or use any rate,
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1 rating plan, other than the uniform experience rating plan, or
2 rating rule except as otherwise expressly provided by law.

3 (3) The fact that two or more insurers, whether or not
4 members or subscribers of the advisory organization, use
5 consistently or intermittently the same rates, rating plans,
6 rating schedules, rating rules, policy forms, rate
7 classifications, underwriting rules, surveys or inspections,
8 or similar materials is not sufficient in itself to support a
9 finding that an agreement exists.

10 (4) Two or more insurers that have a common ownership
11 or operate in this state under common management or control
12 may act in concert between or among themselves with respect to
13 any matters pertaining to those activities authorized in
14 sections 16 through 22 of this act as if they constituted a
15 single insurer.

16 Section 19. Director may conduct examinations; insurer
17 and advisory organizations to maintain records; cost of
18 examination; outstate examination may be accepted.--

19 (1) The director may examine any insurer and the
20 advisory organization as deemed necessary to ascertain
21 compliance with sections 16 through 22 of this act.

22 (2) Each insurer and the advisory organization shall
23 maintain reasonable records of the type and kind reasonably
24 adapted to its method of operation containing its experiences
25 or the experience of its members including the data,
26 statistics, or information collected or used by it in its
27 activities. These records shall be available at all reasonable
28 times to enable the director to determine whether the
29 activities of the advisory organization, insurer, or
30 association comply with the provisions of sections 16 through
31 22 of this act. Such records shall be maintained in an office

1 within this state or shall be made available to the director
2 for examination or inspection at any time upon reasonable
3 notice.

4 (3) The reasonable cost of an examination made
5 pursuant to this section shall be paid by the examined party
6 upon presentation of a detailed account of such costs.

7 (4) In lieu of any such examination, the director may
8 accept the report of an examination by the insurance
9 supervisory official of another state which is made pursuant
10 to the laws of such state.

11 Section 20. Penalties for violations; each day a
12 separate violation; license may be suspended or revoked.--

13 (1) The director may, upon a finding that any person
14 or organization has violated any provision of sections 16
15 through 22 of this act, impose a penalty of not more than
16 \$1,000 for each such violation, but if the director finds such
17 violation to be willful, a penalty of not more than \$10,000
18 for each such violation may be imposed. Such penalties may be
19 in addition to any other penalty provided by law.

20 (2) For purposes of this section, any insurer using a
21 rate for which the insurer has failed to file the rate,
22 supplementary rate information, or supporting information, as
23 required by sections 16 through 22 of this act, commits a
24 separate violation for each day such failure continues.

25 (3) The director may suspend or revoke the license of
26 any advisory organization or insurer that fails to comply with
27 an order of the director within the time limit specified by
28 such order, or any extension thereof which the director may
29 grant.

30 (4) The director may determine when a suspension of
31 license shall become effective and such suspension shall

1 remain in effect for the period fixed by the director unless
2 the director modifies or rescinds such suspension or until the
3 order upon which such suspension is based is modified,
4 rescinded, or reversed.

5 (5) A penalty may not be imposed and a license may not
6 be suspended or revoked except upon a written order of the
7 director, stating the findings made after hearing.

8 Section 21. Competitive market presumed to exist;
9 reasonable degree of competition.--

10 (1) A competitive market is presumed to exist unless
11 the director, after hearing, determines that a reasonable
12 degree of competition does not exist in the market and the
13 director issues an order to that effect. Such an order shall
14 expire no later than 1 year after issue. In determining
15 whether a reasonable degree of competition exists, the
16 director may consider relevant tests of workable competition
17 pertaining to market structure, market performance, and market
18 conduct. For the purposes of this section, the term "market"
19 means the statewide workers' compensation and employer's
20 liability lines of business.

21 (2) In determining whether a reasonable degree of
22 competition exists, the following factors shall be considered:

23 (a) Generally accepted and relevant tests of
24 competition pertaining to market structure, market
25 performance, and market conduct;

26 (b) Market concentration as measured by the
27 Herfindahl-Herschman Index;

28 (c) The number of insurers transacting workers'
29 compensation insurance in the market;

30 (d) Insurer market shares and changes in market
31 shares;

- 1 (e) Ease of entry into the market;
2 (f) Whether long-term profitability for insurers in
3 the market is unreasonably high in relation to the risks being
4 insured; and
5 (g) Whether long-term profitability for insurers in
6 the market is reasonable in relation to industries of
7 comparable business risk.

8 Section 22. Director to monitor degree of competition;
9 purpose.--In determining whether or not a competitive market
10 exists pursuant to section 21 of this act, the director shall
11 monitor the degree of competition in this state. In doing so,
12 the director shall use existing relevant information,
13 analytical systems, and other sources; cause or participate in
14 the development of new relevant information, analytical
15 systems, and other sources; or rely on some combination
16 thereof. Such activities may be conducted internally within
17 the Department of Financial Services, in cooperation with
18 other state insurance agencies, through outside contractors,
19 or in any other appropriate manner.

20 Section 23. Subsections (8), (15), and (16), paragraph
21 (c) of subsection (17), and subsections (38), (41), and (42)
22 of section 440.02, Florida Statutes, are amended to read:

23 440.02 Definitions.--When used in this chapter, unless
24 the context clearly requires otherwise, the following terms
25 shall have the following meanings:

26 (8) "Construction industry" means any business that
27 carries out for-profit activities involving ~~the carrying out~~
28 of any building, clearing, filling, excavation, or substantial
29 improvement in the size or use of any structure or the
30 appearance of any land. ~~When appropriate to the context,~~
31 "construction" refers to the act of construction or the result

1 ~~of construction.~~ However, "construction" does ~~shall~~ not mean a
2 homeowner's ~~landowner's~~ act of construction or the result of a
3 construction upon his or her own premises, provided such
4 premises are not intended to be sold, or resold, or leased by
5 the owner within 1 year after the commencement of the
6 construction. The division may, by rule, establish those
7 standard industrial classification codes and their definitions
8 which meet the criteria of the term "construction industry" as
9 set forth in this section.

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

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

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

24 2. As to officers of a corporation who are ~~actively~~
25 engaged in the construction industry, no more than three
26 officers of a corporation or of any group of affiliated
27 corporations may elect to be exempt from this chapter by
28 filing written notice of the election with the department as
29 provided in s. 440.05. Officers must be shareholders, each
30 owning at least 10 percent of the stock of such corporation,
31 in order to elect exemptions under this chapter. ~~However, any~~

1 ~~exemption obtained by a corporate officer of a corporation~~
2 ~~actively engaged in the construction industry is not~~
3 ~~applicable with respect to any commercial building project~~
4 ~~estimated to be valued at \$250,000 or greater.~~

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

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

13 (c) ~~1.~~ "Employee" includes:

14 1. A sole proprietor or a partner who devotes full
15 time to the proprietorship or partnership and, ~~except as~~
16 ~~provided in this paragraph,~~ elects to be included in the
17 definition of employee by filing notice thereof as provided in
18 s. 440.05.

19 2. Any person who is being paid by a construction
20 contractor, except as otherwise permitted by this chapter, for
21 work performed by or as a subcontractor or employee of a
22 subcontractor.

23 3. An independent contractor working or performing
24 services in the construction industry. ~~Partners or sole~~
25 ~~proprietors actively engaged in the construction industry are~~
26 ~~considered employees unless they elect to be excluded from the~~
27 ~~definition of employee by filing written notice of the~~
28 ~~election with the department as provided in s. 440.05.~~
29 ~~However, no more than three partners in a partnership that is~~
30 ~~actively engaged in the construction industry may elect to be~~
31 ~~excluded.~~

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

9 ~~2.~~ Notwithstanding the provisions of subparagraph ~~1.~~,
10 ~~the term "employee" includes a sole proprietor or partner~~
11 ~~actively engaged in the construction industry with respect to~~
12 ~~any commercial building project estimated to be valued at~~
13 ~~\$250,000 or greater. Any exemption obtained is not applicable,~~
14 ~~with respect to work performed at such a commercial building~~
15 ~~project.~~

16 (d) "Employee" does not include:

17 1. An independent contractor that is not engaged in
18 the construction industry. ~~if:~~

19 ~~a.~~ The independent contractor maintains a separate
20 business with his or her own work facility, truck, equipment,
21 materials, or similar accommodations;

22 ~~b.~~ The independent contractor holds or has applied for
23 a federal employer identification number, unless the
24 independent contractor is a sole proprietor who is not
25 required to obtain a federal employer identification number
26 under state or federal requirements;

27 ~~c.~~ The independent contractor performs or agrees to
28 perform specific services or work for specific amounts of
29 money and controls the means of performing the services or
30 work;

31

1 ~~d. The independent contractor incurs the principal~~
2 ~~expenses related to the service or work that he or she~~
3 ~~performs or agrees to perform;~~

4 ~~e. The independent contractor is responsible for the~~
5 ~~satisfactory completion of work or services that he or she~~
6 ~~performs or agrees to perform and is or could be held liable~~
7 ~~for a failure to complete the work or services;~~

8 ~~f. The independent contractor receives compensation~~
9 ~~for work or services performed for a commission or on a~~
10 ~~per-job or competitive bid basis and not on any other basis;~~

11 ~~g. The independent contractor may realize a profit or~~
12 ~~suffer a loss in connection with performing work or services;~~

13 ~~h. The independent contractor has continuing or~~
14 ~~recurring business liabilities or obligations; and~~

15 ~~i. The success or failure of the independent~~
16 ~~contractor's business depends on the relationship of business~~
17 ~~receipts to expenditures.~~

18 ~~However, the determination as to whether an individual~~
19 ~~included in the Standard Industrial Classification Manual of~~
20 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~
21 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~
22 ~~2448, or 2449, or a newspaper delivery person, is an~~
23 ~~independent contractor is governed not by the criteria in this~~
24 ~~paragraph but by common-law principles, giving due~~
25 ~~consideration to the business activity of the individual.~~
26 ~~Notwithstanding the provisions of this paragraph or any other~~
27 ~~provision of this chapter, with respect to any commercial~~
28 ~~building project estimated to be valued at \$250,000 or~~
29 ~~greater, a person who is actively engaged in the construction~~
30 ~~industry is not an independent contractor and is either an~~

31

1 ~~employer or an employee who may not be exempt from the~~
2 ~~coverage requirements of this chapter.~~

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

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

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

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

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

1 a. Persons who serve in private nonprofit agencies and
2 who receive no compensation other than expenses in an amount
3 less than or equivalent to the standard mileage and per diem
4 expenses provided to salaried employees in the same agency or,
5 if such agency does not have salaried employees who receive
6 mileage and per diem, then such volunteers who receive no
7 compensation other than expenses in an amount less than or
8 equivalent to the customary mileage and per diem paid to
9 salaried workers in the community as determined by the
10 department; and

11 b. Volunteers participating in federal programs
12 established under Pub. L. No. 93-113.

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

16 8. An ~~A sole proprietor~~ or officer of a corporation
17 ~~who actively engages in the construction industry, and a~~
18 ~~partner in a partnership~~ that is actively engaged in the
19 construction industry, who elects to be exempt from the
20 provisions of this chapter, as otherwise permitted in this
21 chapter. Such ~~sole proprietor, officer, or partner~~ is not an
22 employee for any reason until the notice of revocation of
23 election filed pursuant to s. 440.05 is effective.

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

30 10. A taxicab, limousine, or other passenger
31 vehicle-for-hire driver who operates said vehicles pursuant to

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

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

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

1 (b) However, a landowner shall not be considered the
2 employer of a person hired by the landowner to carry out
3 construction on the landowner's own premises if those premises
4 are not intended for immediate sale or resale.

5 (17)

6 (c) "Employment" does not include service performed by
7 or as:

8 1. Domestic servants in private homes.

9 2. Agricultural labor performed on a farm in the
10 employ of a bona fide farmer, or association of farmers, that
11 employs 5 or fewer regular employees and that employs fewer
12 than 12 other employees at one time for seasonal agricultural
13 labor that is completed in less than 30 days, provided such
14 seasonal employment does not exceed 45 days in the same
15 calendar year. The term "farm" includes stock, dairy, poultry,
16 fruit, fur-bearing animals, fish, and truck farms, ranches,
17 nurseries, and orchards. The term "agricultural labor"
18 includes field foremen, timekeepers, checkers, and other farm
19 labor supervisory personnel.

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

24 4. Persons performing labor under a sentence of a
25 court to perform community services as provided in s. 316.193.

26 5. State prisoners or county inmates, except those
27 performing services for private employers or those enumerated
28 in s. 948.03(8)(a).

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

31

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

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

5 (c) Severe brain or closed-head injury as evidenced
6 by:

7 1. Severe sensory or motor disturbances;

8 2. Severe communication disturbances;

9 3. Severe complex integrated disturbances of cerebral
10 function;

11 4. Severe episodic neurological disorders; or

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

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

18 (e) Total or industrial blindness; or

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

26 (41) "Specificity" means information on the petition
27 for benefits sufficient to put the employer or carrier on
28 notice of the exact statutory classification and outstanding
29 time period of benefits being requested and includes a
30 detailed explanation of any benefits received that should be
31 increased, decreased, changed, or otherwise modified. If the

1 petition is for medical benefits, the information shall
2 include specific details as to why such benefits are being
3 requested, why such benefits are medically necessary, and why
4 current treatment, if any, is not sufficient.

5 ~~(41) "Commercial building" means any building or~~
6 ~~structure intended for commercial or industrial use, or any~~
7 ~~building or structure intended for multifamily use of more~~
8 ~~than four dwelling units, as well as any accessory use~~
9 ~~structures constructed in conjunction with the principal~~
10 ~~structure. The term, "commercial building," does not include~~
11 ~~the conversion of any existing residential building to a~~
12 ~~commercial building.~~

13 ~~(42) "Residential building" means any building or~~
14 ~~structure intended for residential use containing four or~~
15 ~~fewer dwelling units and any structures intended as an~~
16 ~~accessory use to the residential structure.~~

17 Section 24. Subsections (3), (6), (10), and (13) of
18 section 440.05, Florida Statutes, are amended to read:

19 440.05 Election of exemption; revocation of election;
20 notice; certification.--

21 (3) Each ~~sole proprietor, partner, or officer~~ of a
22 corporation who is actively engaged in the construction
23 industry and who elects an exemption from this chapter or who,
24 after electing such exemption, revokes that exemption, must
25 mail a written notice to such effect to the department on a
26 form prescribed by the department. The notice of election to
27 be exempt from the provisions of this chapter must be
28 notarized and under oath. The notice of election to be exempt
29 which is submitted to the department by the ~~sole proprietor,~~
30 ~~partner, or officer~~ of a corporation who is allowed to claim
31 an exemption as provided by this chapter must list the name,

1 federal tax identification number, social security number, all
2 certified or registered licenses issued pursuant to chapter
3 489 held by the person seeking the exemption, a copy of
4 relevant documentation as to employment status filed with the
5 Internal Revenue Service as specified by the department, a
6 copy of the relevant occupational license in the primary
7 jurisdiction of the business, and, ~~for corporate officers and~~
8 ~~partners,~~ the registration number of the corporation ~~or~~
9 ~~partnership~~ filed with the Division of Corporations of the
10 Department of State along with a copy of the stock certificate
11 evidencing the required ownership under this chapter. The
12 notice of election to be exempt must identify each ~~sole~~
13 ~~proprietorship, partnership, or~~ corporation that employs the
14 person electing the exemption and must list the social
15 security number or federal tax identification number of each
16 such employer and the additional documentation required by
17 this section. In addition, the notice of election to be exempt
18 must provide that the ~~sole proprietor, partner, or~~ officer
19 electing an exemption is not entitled to benefits under this
20 chapter, must provide that the election does not exceed
21 exemption limits for officers ~~and partnerships~~ provided in s.
22 440.02, and must certify that any employees of the corporation
23 whose ~~sole proprietor, partner, or officer elects~~ electing an
24 exemption are covered by workers' compensation insurance. Upon
25 receipt of the notice of the election to be exempt, receipt of
26 all application fees, and a determination by the department
27 that the notice meets the requirements of this subsection, the
28 department shall issue a certification of the election to the
29 ~~sole proprietor, partner, or~~ officer, unless the department
30 determines that the information contained in the notice is
31 invalid. The department shall revoke a certificate of election

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

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

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

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

19 (13) Any corporate officer permitted by this chapter
20 to claim ~~claiming~~ an exemption ~~under this section~~ must be
21 listed on the records of this state's Secretary of State,
22 Division of Corporations, as a corporate officer. ~~If the~~
23 ~~person who claims an exemption as a corporate officer is not~~
24 ~~so listed on the records of the Secretary of State, the~~
25 ~~individual must provide to the division, upon request by the~~
26 ~~division, a notarized affidavit stating that the individual is~~
27 ~~a bona fide officer of the corporation and stating the date~~
28 ~~his or her appointment or election as a corporate officer~~
29 ~~became or will become effective. The statement must be signed~~
30 ~~under oath by both the officer and the president or chief~~
31 ~~operating officer of the corporation and must be notarized.~~

1 The division shall issue a stop-work order under s. 440.107(1)
2 to any corporation who employs a person who claims to be
3 exempt as a corporate officer but who fails or refuses to
4 produce the documents required under this subsection to the
5 division within 3 business days after the request is made.

6 Section 25. Section 440.06, Florida Statutes, is
7 amended to read:

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

18 Section 26. Section 440.077, Florida Statutes, is
19 amended to read:

20 440.077 When a corporate ~~sole proprietor, partner, or~~
21 ~~officer~~ rejects chapter, effect.--An A sole proprietor,
22 ~~partner, or officer of a corporation who is permitted to elect~~
23 an exemption under this chapter ~~actively engaged in the~~
24 ~~construction industry~~ and who elects to be exempt from the
25 provisions of this chapter may not recover benefits under this
26 chapter.

27 Section 27. Subsection (5) of section 440.09, Florida
28 Statutes, is amended to read:

29 440.09 Coverage.--

30 (5) If injury is caused by the knowing refusal of the
31 employee to use a safety appliance or observe a safety rule

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

11 Section 28. Subsection (4) of section 440.11, Florida
12 Statutes, is amended, and subsection (5) is added to that
13 section, to read:

14 440.11 Exclusiveness of liability.--

15 (4) Notwithstanding the provisions of s. 624.155, the
16 liability of a carrier to an employee or to anyone entitled to
17 bring suit in the name of the employee shall be as provided in
18 this chapter, which shall be exclusive and in place of all
19 other liability, except as provided in s. 624.155.

20 (5) The limits placed on the employer's liability
21 under this section do not apply if the employer fails to have
22 secured coverage mandated under this chapter at the time of a
23 work-related accident.

24 Section 29. Paragraph (a) of subsection (2),
25 subsection (7), paragraph (a) of subsection (12) of section
26 440.13, Florida Statutes, are amended to read:

27 440.13 Medical services and supplies; penalty for
28 violations; limitations.--

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

30 (a) Subject to the limitations specified elsewhere in
31 this chapter, the employer shall furnish to the employee such

1 medically necessary remedial treatment, care, and attendance
2 for such period as the nature of the injury or the process of
3 recovery may require, including medicines, medical supplies,
4 durable medical equipment, orthoses, prostheses, and other
5 medically necessary apparatus. Remedial treatment, care, and
6 attendance, including work-hardening programs or
7 pain-management programs accredited by the Commission on
8 Accreditation of Rehabilitation Facilities or Joint Commission
9 on the Accreditation of Health Organizations or
10 pain-management programs affiliated with medical schools,
11 shall be considered as covered treatment only when such care
12 is given based on a referral by a physician as defined in this
13 chapter. Each facility shall maintain outcome data, including
14 work status at discharges, total program charges, total number
15 of visits, and length of stay. The department shall utilize
16 such data and report to the President of the Senate and the
17 Speaker of the House of Representatives regarding the efficacy
18 and cost-effectiveness of such program, no later than October
19 1, 1994. Medically necessary treatment, care, and attendance
20 does not include chiropractic services in excess of 36 ~~48~~
21 treatments or rendered 16 ~~8~~ weeks beyond the date of the
22 initial chiropractic treatment, whichever comes first, unless
23 the carrier authorizes additional treatment or the employee is
24 catastrophically injured.

25 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

26 (a) Any health care provider, carrier, or employer who
27 elects to contest the disallowance or adjustment of payment by
28 a carrier under subsection (6) may file a ~~must, within 30 days~~
29 ~~after receipt of notice of disallowance or adjustment of~~
30 ~~payment,~~ petition under s. 440.192 and proceed in the same
31 manner as a claimant, including the application of s. 440.34

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

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

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

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

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

30 (b)(f) Any carrier that engages in a pattern or
31 practice of arbitrarily or unreasonably disallowing or

1 reducing payments to health care providers may be subject to
2 one or more of the following penalties imposed by the agency:

3 1. Repayment of the appropriate amount to the health
4 care provider.

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

8 3. Award of the health care provider's costs,
9 including a reasonable attorney's fee, for prosecuting the
10 petition.

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

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

1 of usual and customary charges. Until the three-member panel
2 approves a schedule of per diem rates for inpatient hospital
3 care and it becomes effective, all compensable charges for
4 hospital inpatient care must be reimbursed at 75 percent of
5 their usual and customary charges. Annually, the three-member
6 panel shall adopt schedules of maximum reimbursement
7 allowances for physicians, hospital inpatient care, hospital
8 outpatient care, ambulatory surgical centers, work-hardening
9 programs, and pain programs. However, the maximum percentage
10 of increase in the individual reimbursement allowance may not
11 exceed the percentage of increase in the Consumer Price Index
12 for the previous year. The maximum reimbursement allowance may
13 not be less than 150 percent of the amount of reimbursement
14 provided by Medicare for nonsurgical medical care and
15 procedures, and may not be less than 200 percent of the amount
16 of reimbursement provided by Medicare for surgical procedures.
17 An individual physician, hospital, ambulatory surgical center,
18 pain program, or work-hardening program shall be reimbursed
19 either the usual and customary charge for treatment, care, and
20 attendance, the agreed-upon contract price, or the maximum
21 reimbursement allowance in the appropriate schedule, whichever
22 is less.

23 Section 30. Paragraph (a) of subsection (2),
24 paragraphs (a) and (b) of subsection (3), and paragraph (b) of
25 subsection (4) of section 440.15, Florida Statutes, are
26 amended to read:

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

30 (2) TEMPORARY TOTAL DISABILITY.--

31

1 (a) In case of disability total in character but
2 temporary in quality, 66 2/3 percent of the average weekly
3 wages shall be paid to the employee during the continuance
4 thereof, not to exceed 104 weeks except as provided in this
5 subsection, s. 440.12(1), and s. 440.14(3). This time
6 limitation for temporary benefits shall be presumed sufficient
7 unless there is clear and convincing evidence to the contrary
8 as determined by the judge of compensation claims. Temporary
9 benefits may not exceed 260 weeks. Once the employee reaches
10 the maximum number of weeks allowed, or the employee reaches
11 the date of maximum medical improvement, whichever occurs
12 earlier, temporary disability benefits shall cease and the
13 injured worker's permanent impairment shall be determined.

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

15 (a) Impairment benefits.--

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

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

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

22 3. All impairment income benefits shall be based on an
23 impairment rating using the impairment schedule referred to in
24 subparagraph 2. Impairment income benefits are paid weekly at
25 the rate of 66 2/3 ~~50~~ percent of the employee's average
26 weekly wages ~~temporary total disability benefit~~ not to exceed
27 the maximum weekly benefit under s. 440.12. An employee's
28 entitlement to impairment income benefits begins the day after
29 the employee reaches maximum medical improvement or the
30 expiration of temporary benefits, whichever occurs earlier,
31 and continues until the earlier of:

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

1 impairment benefits for dates of accidents before January 1,
2 1994, and for dates of accidents on or after January 1, 1994.

3 (b) Supplemental benefits.--

4 1. All supplemental benefits must be paid in
5 accordance with this subsection. An employee is entitled to
6 supplemental benefits as provided in this paragraph as of the
7 expiration of the impairment period, if:

8 a. The employee has an impairment rating from the
9 compensable injury of 10 ~~20~~ percent or more as determined
10 pursuant to this chapter;

11 b. The employee has not returned to work or has
12 returned to work earning less than 80 percent of the
13 employee's average weekly wage as a direct result of the
14 employee's impairment; and

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

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

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

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

29 c. The employee's decrease in earnings is a direct
30 result of the employee's impairment from the compensable
31 injury.

1 3. If an employee earns wages that are at least 80
2 percent of the employee's average weekly wage for a period of
3 at least 90 days during which the employee is receiving
4 supplemental benefits, the employee ceases to be entitled to
5 supplemental benefits for the filing period. Supplemental
6 benefits that have been terminated shall be reinstated when
7 the employee satisfies the conditions enumerated in
8 subparagraph 2. and files the statement required under
9 subparagraph 4. Notwithstanding any other provision, if an
10 employee is not entitled to supplemental benefits for 12
11 consecutive months, the employee ceases to be entitled to any
12 additional income benefits for the compensable injury. If the
13 employee is discharged within 12 months after losing
14 entitlement under this subsection, benefits may be reinstated
15 if the employee was discharged at that time with the intent to
16 deprive the employee of supplemental benefits.

17 4. After the initial determination of supplemental
18 benefits, the employee must file a statement with the carrier
19 stating that the employee has earned less than 80 percent of
20 the employee's average weekly wage as a direct result of the
21 employee's impairment, stating the amount of wages the
22 employee earned in the filing period, and stating that the
23 employee has in good faith sought employment commensurate with
24 the employee's ability to work. The statement must be filed
25 quarterly on a form and in the manner prescribed by the
26 department. The department may modify the filing period as
27 appropriate to an individual case. Failure to file a statement
28 relieves the carrier of liability for supplemental benefits
29 for the period during which a statement is not filed.

30 5. The carrier shall begin payment of supplemental
31 benefits not later than the seventh day after the expiration

1 date of the impairment income benefit period and shall
2 continue to timely pay those benefits. The carrier may request
3 a mediation conference for the purpose of contesting the
4 employee's entitlement to or the amount of supplemental income
5 benefits.

6 6. Supplemental benefits are calculated quarterly and
7 paid monthly. For purposes of calculating supplemental
8 benefits, 80 percent of the employee's average weekly wage and
9 the average wages the employee has earned per week are
10 compared quarterly. For purposes of this paragraph, if the
11 employee is offered a bona fide position of employment that
12 the employee is capable of performing, given the physical
13 condition of the employee and the geographic accessibility of
14 the position, the employee's weekly wages are considered
15 equivalent to the weekly wages for the position offered to the
16 employee.

17 7. Supplemental benefits are payable at the rate of 80
18 percent of the difference between 80 percent of the employee's
19 average weekly wage determined pursuant to s. 440.14 and the
20 weekly wages the employee has earned during the reporting
21 period, not to exceed the maximum weekly income benefit under
22 s. 440.12.

23 8. The department may by rule define terms that are
24 necessary for the administration of this section and forms and
25 procedures governing the method of payment of supplemental
26 benefits for dates of accidents before January 1, 1994, and
27 for dates of accidents on or after January 1, 1994.

28 (4) TEMPORARY PARTIAL DISABILITY.--

29 (b) Such benefits shall be paid during the continuance
30 of such disability, not to exceed a period of 104 weeks, as
31 provided by this subsection and subsection (2). This time

1 limitation for temporary benefits shall be presumed sufficient
2 unless there is clear and convincing evidence to the contrary
3 as determined by the judge of compensation claims. Temporary
4 benefits may not exceed 260 weeks.Once the injured employee
5 reaches the maximum number of weeks, temporary disability
6 benefits cease and the injured worker's permanent impairment
7 must be determined. The department may by rule specify forms
8 and procedures governing the method of payment of temporary
9 disability benefits for dates of accidents before January 1,
10 1994, and for dates of accidents on or after January 1, 1994.

11 Section 31. 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 \$10,000~~\$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 \$250,000~~\$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 32. Subsection (1) of section 440.185, Florida
19 Statutes, is amended to read:

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

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

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

29 (b) The cause of the injury could not be identified
30 without a medical opinion and the employee advised the
31 employer within 30 days after obtaining a medical opinion

1 | indicating that the injury arose out of and in the course of
2 | employment;

3 | (c) The employer did not put its employees on notice
4 | of the requirements of this section by posting notice pursuant
5 | to s. 440.055; or

6 | (d) The judge of compensation claims excuses such
7 | failure on the ground that for some satisfactory reason such
8 | notice could not be given.~~Exceptional circumstances, outside~~
9 | ~~the scope of paragraph (a) or paragraph (b) justify such~~
10 | ~~failure.~~

11 |

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

19 | Section 33. Subsection (2) of section 440.19, Florida
20 | Statutes, is amended to read:

21 | 440.19 Time bars to filing petitions for benefits.--

22 | (2) Payment of any indemnity benefit or the furnishing
23 | of remedial treatment, care, or attendance pursuant to either
24 | a notice of injury or a petition for benefits shall toll the
25 | limitations period set forth above for 2 years following 1
26 | ~~year from~~ the date of such payment. ~~This tolling period does~~
27 | ~~not apply to the issues of compensability, date of maximum~~
28 | ~~medical improvement, or permanent impairment.~~

29 | Section 34. Subsections (2) and (3) of section
30 | 440.381, Florida Statutes, are amended to read:

31 |

1 440.381 Application for coverage; reporting payroll;
2 payroll audit procedures; penalties.--

3 (2) The application must contain a statement that the
4 filing of an application containing false, misleading, or
5 incomplete information with the purpose of avoiding or
6 reducing the amount of premiums for workers' compensation
7 coverage is a felony of the third degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084. The
9 application must contain a sworn statement by the employer
10 attesting to the accuracy of the information submitted and
11 acknowledging the provisions of former s. 440.37(4). The
12 application must contain written job descriptions completed by
13 the employer describing the job responsibilities of all forms
14 of employment for which the employer seeks coverage as
15 required by s. 440.38.The application must contain a sworn
16 statement by the agent attesting that the agent explained to
17 the employer or officer the classification codes that are used
18 for premium calculations and for the accuracy of the
19 classification codes used in accordance with the written job
20 descriptions provided by the employer.

21 (3) The department shall establish by rule minimum
22 requirements for audits of payroll and classifications in
23 order to ensure that the appropriate premium is charged for
24 workers' compensation coverage. The rules shall ensure that
25 audits performed by both carriers and employers are adequate
26 to provide that all sources of payments to employees,
27 subcontractors, and independent contractors have been reviewed
28 and that the accuracy of classification of employees has been
29 verified. The rules shall provide that employers in all
30 classes other than the construction class be audited not less
31 frequently than biennially and may provide for more frequent

1 audits of employers in specified classifications based on
2 factors such as amount of premium, type of business, loss
3 ratios, or other relevant factors. In no event shall employers
4 in the construction class, generating more than the amount of
5 premium required to be experience rated, be audited less than
6 annually. The annual audits required for construction classes
7 shall consist of physical onsite audits. Payroll verification
8 audit rules must include, but need not be limited to, the use
9 of state and federal reports of employee income, payroll and
10 other accounting records, certificates of insurance maintained
11 by subcontractors, and duties of employees. At the completion
12 of an audit, the employer or officer of the corporation and
13 the auditor must print and sign their names on the audit
14 document and attach proof of identification to the audit
15 document. Each audit document must contain a sworn statement
16 to be signed by the auditor which shall attest that the
17 requirements for audits of payroll and classifications as
18 established by the rules adopted by the Department of
19 Financial Services have been strictly complied with in the
20 performance of the audit. An auditor who fails to strictly
21 comply with the rules adopted by the department setting forth
22 the minimum requirements for audits of payroll and
23 classifications commits a felony of the third degree,
24 punishable as provided in s. 775.082, s. 775.083, or s.
25 775.084.

26 Section 35. Section 440.591, Florida Statutes, is
27 amended to read:

28 440.591 Administrative procedure; rulemaking
29 authority; washouts.--

30 (1) The division ~~department~~, the agency, and the
31 Department of Education may adopt rules pursuant to ss.

1 120.536(1) and 120.54 to implement the provisions of this
2 chapter conferring duties upon it.

3 (2) The division shall adopt rules to provide for a
4 model settlement agreement that may be used in any washout
5 agreement where the employee is represented by an attorney and
6 that includes:

7 (a) The amount of the settlement;

8 (b) The amount allocated to past and future medical
9 care which is potentially covered by Medicare;

10 (c) The amount allocated to past and future medical
11 care which is not potentially covered by Medicare;

12 (d) The amount of past indemnity benefits;

13 (e) The amount of future indemnity benefits; and

14 (f) The amount of child support owed by the employee,
15 if any, which will be deducted from the washout proceeds.

16 (3) The washout of any workers' compensation case may
17 not be made contingent on the execution of a release of other
18 existing, or potential, employment rights.

19 (4) Settlement agreements under this section shall be
20 reviewed by the judge of compensation claims to determine if
21 the settlement agreement complies with this section and the
22 rules adopted under this section, in which case the judge of
23 compensation claims shall approve the settlement.

24 Section 36. Subsection (2) of section 627.062, Florida
25 Statutes, is amended to read:

26 627.062 Rate standards.--

27 (2) As to all such classes of insurance:

28 (a) Insurers or rating organizations shall establish
29 and use rates, rating schedules, or rating manuals to allow
30 the insurer a reasonable rate of return on such classes of
31 insurance written in this state. A copy of rates, rating

1 schedules, rating manuals, premium credits or discount
2 schedules, and surcharge schedules, and changes thereto, shall
3 be filed with the department under one of the following
4 procedures:

5 1. If the filing is made at least 90 days before the
6 proposed effective date and the filing is not implemented
7 during the department's review of the filing and any
8 proceeding and judicial review, then such filing shall be
9 considered a "file and use" filing. In such case, the
10 department shall finalize its review by issuance of a notice
11 of intent to approve or a notice of intent to disapprove
12 within 90 days after receipt of the filing. The notice of
13 intent to approve and the notice of intent to disapprove
14 constitute agency action for purposes of the Administrative
15 Procedure Act. Requests for supporting information, requests
16 for mathematical or mechanical corrections, or notification to
17 the insurer by the department of its preliminary findings
18 shall not toll the 90-day period during any such proceedings
19 and subsequent judicial review. The rate shall be deemed
20 approved if the department does not issue a notice of intent
21 to approve or a notice of intent to disapprove within 90 days
22 after receipt of the filing.

23 2. If the filing is not made in accordance with the
24 provisions of subparagraph 1., such filing shall be made as
25 soon as practicable, but no later than 30 days after the
26 effective date, and shall be considered a "use and file"
27 filing. An insurer making a "use and file" filing is
28 potentially subject to an order by the department to return to
29 policyholders portions of rates found to be excessive, as
30 provided in paragraph (h).

31

1 (b) Upon receiving a rate filing, the department shall
2 review the rate filing to determine if a rate is excessive,
3 inadequate, or unfairly discriminatory. In making that
4 determination, the department shall, in accordance with
5 generally accepted and reasonable actuarial techniques,
6 consider the following factors:

7 1. Past and prospective loss experience within and
8 without this state.

9 2. Past and prospective expenses.

10 3. The degree of competition among insurers for the
11 risk insured.

12 4. Investment income reasonably expected by the
13 insurer, consistent with the insurer's investment practices,
14 from investable premiums anticipated in the filing, plus any
15 other expected income from currently invested assets
16 representing the amount expected on unearned premium reserves
17 and loss reserves. The department may promulgate rules
18 utilizing reasonable techniques of actuarial science and
19 economics to specify the manner in which insurers shall
20 calculate investment income attributable to such classes of
21 insurance written in this state and the manner in which such
22 investment income shall be used in the calculation of
23 insurance rates. Such manner shall contemplate allowances for
24 an underwriting profit factor and full consideration of
25 investment income which produce a reasonable rate of return;
26 however, investment income from invested surplus shall not be
27 considered. The profit and contingency factor as specified in
28 the filing shall be utilized in computing excess profits in
29 conjunction with s. 627.0625.

30 5. The reasonableness of the judgment reflected in the
31 filing.

1 6. Dividends, savings, or unabsorbed premium deposits
2 allowed or returned to Florida policyholders, members, or
3 subscribers.

4 7. The adequacy of loss reserves.

5 8. The cost of reinsurance.

6 9. Trend factors, including trends in actual losses
7 per insured unit for the insurer making the filing.

8 10. Conflagration and catastrophe hazards, if
9 applicable.

10 11. A reasonable margin for underwriting profit and
11 contingencies.

12 12. The cost of medical services, if applicable.

13 13. Other relevant factors which impact upon the
14 frequency or severity of claims or upon expenses.

15 (c) In the case of fire insurance rates, consideration
16 shall be given to the availability of water supplies and the
17 experience of the fire insurance business during a period of
18 not less than the most recent 5-year period for which such
19 experience is available.

20 (d) If conflagration or catastrophe hazards are given
21 consideration by an insurer in its rates or rating plan,
22 including surcharges and discounts, the insurer shall
23 establish a reserve for that portion of the premium allocated
24 to such hazard and shall maintain the premium in a catastrophe
25 reserve. Any removal of such premiums from the reserve for
26 purposes other than paying claims associated with a
27 catastrophe or purchasing reinsurance for catastrophes shall
28 be subject to approval of the department. Any ceding
29 commission received by an insurer purchasing reinsurance for
30 catastrophes shall be placed in the catastrophe reserve.

31

1 (e) After consideration of the rate factors provided
2 in paragraphs (b), (c), and (d), a rate may be found by the
3 department to be excessive, inadequate, or unfairly
4 discriminatory based upon the following standards:

5 1. Rates shall be deemed excessive if they are likely
6 to produce a profit from Florida business that is unreasonably
7 high in relation to the risk involved in the class of business
8 or if expenses are unreasonably high in relation to services
9 rendered.

10 2. Rates shall be deemed excessive if, among other
11 things, the rate structure established by a stock insurance
12 company provides for replenishment of surpluses from premiums,
13 when the replenishment is attributable to investment losses.

14 3. Rates shall be deemed inadequate if they are
15 clearly insufficient, together with the investment income
16 attributable to them, to sustain projected losses and expenses
17 in the class of business to which they apply.

18 4. A rating plan, including discounts, credits, or
19 surcharges, shall be deemed unfairly discriminatory if it
20 fails to clearly and equitably reflect consideration of the
21 policyholder's participation in a risk management program
22 adopted pursuant to s. 627.0625.

23 5. A rate shall be deemed inadequate as to the premium
24 charged to a risk or group of risks if discounts or credits
25 are allowed which exceed a reasonable reflection of expense
26 savings and reasonably expected loss experience from the risk
27 or group of risks.

28 6. A rate shall be deemed unfairly discriminatory as
29 to a risk or group of risks if the application of premium
30 discounts, credits, or surcharges among such risks does not
31

1 bear a reasonable relationship to the expected loss and
2 expense experience among the various risks.

3 (f) In reviewing a rate filing, the department may
4 require the insurer to provide at the insurer's expense all
5 information necessary to evaluate the condition of the company
6 and the reasonableness of the filing according to the criteria
7 enumerated in this section.

8 (g) The department may at any time review a rate,
9 rating schedule, rating manual, or rate change; the pertinent
10 records of the insurer; and market conditions. If the
11 department finds on a preliminary basis that a rate may be
12 excessive, inadequate, or unfairly discriminatory, the
13 department shall initiate proceedings to disapprove the rate
14 and shall so notify the insurer. However, the department may
15 not disapprove as excessive any rate for which it has given
16 final approval or which has been deemed approved for a period
17 of 1 year after the effective date of the filing unless the
18 department finds that a material misrepresentation or material
19 error was made by the insurer or was contained in the filing.
20 Upon being so notified, the insurer or rating organization
21 shall, within 60 days, file with the department all
22 information which, in the belief of the insurer or
23 organization, proves the reasonableness, adequacy, and
24 fairness of the rate or rate change. The department shall
25 issue a notice of intent to approve or a notice of intent to
26 disapprove pursuant to the procedures of paragraph (a) within
27 90 days after receipt of the insurer's initial response. In
28 such instances and in any administrative proceeding relating
29 to the legality of the rate, the insurer or rating
30 organization shall carry the burden of proof by a
31 preponderance of the evidence to show that the rate is not

1 excessive, inadequate, or unfairly discriminatory. After the
2 department notifies an insurer that a rate may be excessive,
3 inadequate, or unfairly discriminatory, unless the department
4 withdraws the notification, the insurer shall not alter the
5 rate except to conform with the department's notice until the
6 earlier of 120 days after the date the notification was
7 provided or 180 days after the date of the implementation of
8 the rate. The department may, subject to chapter 120,
9 disapprove without the 60-day notification any rate increase
10 filed by an insurer within the prohibited time period or
11 during the time that the legality of the increased rate is
12 being contested.

13 (h) In the event the department finds that a rate or
14 rate change is excessive, inadequate, or unfairly
15 discriminatory, the department shall issue an order of
16 disapproval specifying that a new rate or rate schedule which
17 responds to the findings of the department be filed by the
18 insurer. The department shall further order, for any "use and
19 file" filing made in accordance with subparagraph (a)2., that
20 premiums charged each policyholder constituting the portion of
21 the rate above that which was actuarially justified be
22 returned to such policyholder in the form of a credit or
23 refund. If the department finds that an insurer's rate or rate
24 change is inadequate, the new rate or rate schedule filed with
25 the department in response to such a finding shall be
26 applicable only to new or renewal business of the insurer
27 written on or after the effective date of the responsive
28 filing.

29 (i) Except as otherwise specifically provided in this
30 chapter, the department shall not prohibit any insurer,
31 including any residual market plan or joint underwriting

1 association, from paying acquisition costs based on the full
2 amount of premium, as defined in s. 627.403, applicable to any
3 policy, or prohibit any such insurer from including the full
4 amount of acquisition costs in a rate filing.

5
6 The provisions of this subsection shall not apply to ~~workers'~~
7 ~~compensation and employer's liability insurance and to motor~~
8 ~~vehicle insurance.~~

9 Section 37. Section 627.072, Florida Statutes, is
10 amended to read:

11 627.072 Making and use of rates.--

12 ~~(1) As to workers' compensation and employer's~~
13 ~~liability insurance, the following factors shall be used in~~
14 ~~the determination and fixing of rates:~~

15 ~~(a) The past loss experience and prospective loss~~
16 ~~experience within and outside this state;~~

17 ~~(b) The conflagration and catastrophe hazards;~~

18 ~~(c) A reasonable margin for underwriting profit and~~
19 ~~contingencies;~~

20 ~~(d) Dividends, savings, or unabsorbed premium deposits~~
21 ~~allowed or returned by insurers to their policyholders,~~
22 ~~members, or subscribers;~~

23 ~~(e) Investment income on unearned premium reserves and~~
24 ~~loss reserves;~~

25 ~~(f) Past expenses and prospective expenses, both those~~
26 ~~countrywide and those specifically applicable to this state;~~
27 ~~and~~

28 ~~(g) All other relevant factors, including judgment~~
29 ~~factors, within and outside this state.~~

30 (1)~~(2)~~ As to all rates which are subject to this part,
31 the systems of expense provisions included in the rates for

1 use by an insurer or group of insurers may differ from those
2 of other insurers or groups of insurers to reflect the
3 requirements of the operating methods of any such insurer or
4 group with respect to any kind of insurance or with respect to
5 any subdivision or combination thereof for which subdivision
6 or combination separate expense provisions are applicable.

7 (2)~~(3)~~ As to all rates which are subject to this part,
8 risks may be grouped by classifications for the establishment
9 of rates and minimum premiums. Classification rates may be
10 modified to produce rates for individual risks in accordance
11 with rating plans which establish standards for measuring
12 variations in hazards or expense provisions, or both. Such
13 standards may measure any difference among risks that can be
14 demonstrated to have a probable effect upon losses or
15 expenses. Such classifications and modifications shall apply
16 to all risks under the same or substantially the same
17 circumstances or conditions.

18 ~~(4)(a) In the case of workers' compensation and~~
19 ~~employer's liability insurance, the department shall consider~~
20 ~~utilizing the following methodology in rate determinations:~~
21 ~~Premiums, expenses, and expected claim costs would be~~
22 ~~discounted to a common point of time, such as the initial~~
23 ~~point of a policy year, in the determination of rates; the~~
24 ~~cash-flow pattern of premiums, expenses, and claim costs would~~
25 ~~be determined initially by using data from 8 to 10 of the~~
26 ~~largest insurers writing workers' compensation insurance in~~
27 ~~the state; such insurers may be selected for their statistical~~
28 ~~ability to report the data on an accident-year basis and in~~
29 ~~accordance with subparagraphs (b)1., 2., and 3., for at least~~
30 ~~2 1/2 years; such a cash-flow pattern would be modified when~~
31 ~~necessary in accordance with the data and whenever a radical~~

1 ~~change in the payout pattern is expected in the policy year~~
2 ~~under consideration.~~

3 ~~(b) If the methodology set forth in paragraph (a) is~~
4 ~~utilized, to facilitate the determination of such a cash-flow~~
5 ~~pattern methodology:~~

6 ~~1. Each insurer shall include in its statistical~~
7 ~~reporting to the rating bureau and the department the accident~~
8 ~~year by calendar quarter data for paid-claim costs;~~

9 ~~2. Each insurer shall submit financial reports to the~~
10 ~~rating bureau and the department which shall include total~~
11 ~~incurred claim amounts and paid claim amounts by policy year~~
12 ~~and by injury types as of December 31 of each calendar year;~~
13 ~~and~~

14 ~~3. Each insurer shall submit to the rating bureau and~~
15 ~~the department paid-premium data on an individual risk basis~~
16 ~~in which risks are to be subdivided by premium size as~~
17 ~~follows:~~

19 Number of Risks in	
20 Premium Range	20 Standard Premium Size
22 ...(to be filled in by carrier)...	\$300--999
23 ...(to be filled in by carrier)...	1,000--4,999
24 ...(to be filled in by carrier)...	5,000--49,999
25 ...(to be filled in by carrier)...	50,000--99,999
26 ...(to be filled in by carrier)...	100,000 or more
27 Total:	

28 Section 38. Subsections (1) and (4) of section
29 627.0645, Florida Statutes, are amended to read:

30 627.0645 Annual filings.--

31

1 (1) Each rating organization filing rates for, and
2 each insurer writing, any line of property or casualty
3 insurance to which this part applies, except+

4 ~~(a) Workers' compensation and employer's liability~~
5 ~~insurance; or~~

6 **(b)** commercial property and casualty insurance as
7 defined in s. 627.0625(1) other than commercial multiple line
8 and commercial motor vehicle, shall make an annual base rate
9 filing for each such line with the department no later than 12
10 months after its previous base rate filing, demonstrating that
11 its rates are not inadequate.

12 (4) An insurer may satisfy the annual filing
13 requirements of this section by being a member or subscriber
14 of a licensed rating organization which complies with the
15 requirements of this section, except workers' compensation and
16 employer's liability insurance.

17 Section 39. Subsection (1) of section 627.096, Florida
18 Statutes, is amended to read:

19 627.096 Workers' Compensation Rating Bureau.--

20 (1) There is created within the department a Workers'
21 Compensation Rating Bureau, which shall make an investigation
22 and study of all insurers authorized to issue workers'
23 compensation and employer's liability coverage in this state.
24 Such bureau shall study the data, statistics, schedules, or
25 other information as it may deem necessary to assist and
26 advise the department in its review of filings made by or on
27 behalf of workers' compensation and employer's liability
28 insurers. The department shall have the authority to
29 promulgate rules requiring all workers' compensation and
30 employer's liability insurers to submit to the rating bureau
31 any data, statistics, schedules, and other information deemed

1 necessary to the rating bureau's study and advisement. All
2 data, statistics, schedules, or other information submitted
3 to, or considered by, the Workers' Compensation Rating Bureau
4 shall be a public record.

5 Section 40. Section 627.291, Florida Statutes, is
6 amended to read:

7 627.291 Information to be furnished insureds; appeal
8 by insureds; workers' compensation and employer's liability
9 insurances.--

10 (1) As to workers' compensation and employer's
11 liability insurances, ~~every rating organization~~ and every
12 insurer that ~~which~~ makes its own rates shall, within a
13 reasonable time after receiving written request therefor and
14 upon payment of such reasonable charge as it may make, furnish
15 to any insured affected by a rate made by it, or to the
16 authorized representative of such insured, all pertinent
17 information as to such rate.

18 (2) As to workers' compensation and employer's
19 liability insurances, ~~every rating organization~~ and every
20 insurer that ~~which~~ makes its own rates shall provide within
21 this state reasonable means whereby any person aggrieved by
22 the application of its rating system may be heard, in person
23 or by his or her authorized representative, on his or her
24 written request to review the manner in which such rating
25 system has been applied in connection with the insurance
26 afforded him or her. If the ~~rating organization~~ or insurer
27 fails to grant or rejects such request within 30 days after it
28 is made, the applicant may proceed in the same manner as if
29 his or her application had been rejected. Any party affected
30 by the action of such rating organization or insurer on such
31 request may, within 30 days after written notice of such

1 action, appeal to the department, which may affirm or reverse
2 such action.

3 Section 41. Sections 627.091, 627.101, 627.151,
4 627.211, and 627.281, Florida Statutes, are repealed.

5 Section 42. This act shall take effect July 1, 2003.

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SENATE SUMMARY

9 Revises laws governing workers' compensation insurance.
10 Imposes an assessment on the deposits, premiums, and
11 assessments of insurance carriers and self-insurers who
12 provide workers' compensation insurance to fund the
13 Florida Employers Mutual Insurance Company. Creates the
14 Florida Employers Mutual Insurance Company as a
15 not-for-profit company to provide workers' compensation
16 insurance and employer's liability coverage. Provides for
17 a board of directors of the company. Provides for the
18 board to establish insurance rates. Authorizes insurance
19 agents or brokers licensed in this state to sell workers'
20 compensation insurance policies for the company.
21 Authorizes the board to issue bonds.

16

17 Prohibits discrimination in the payment of dividends by
18 insurance companies. Provides that it is an unfair trade
19 practice to condition payment of a dividend upon renewal
20 of a policy. Requires uniform rating plans. Requires that
21 the Chief Financial Officer monitor the degree of
22 competition in the workers' compensation market.

20

21 Revises requirements for electing certain exemptions.
22 Provides for an increase in compensation if the employer
23 knowingly refused or failed to provide a safety appliance
24 or observe a safety rule. Revises requirements for
25 contesting a disallowance of payment. Revises
26 reimbursement allowances. Increases the amount of
27 compensation for funeral expenses and death. Increases
28 the period for filing a petition for benefits. Requires
29 the Division of Workers' Compensation to adopt rules for
30 a model settlement agreement. (See bill for details.)

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