

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Goodlette offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Effective upon this act becoming a law, subsections (1), (15), (29), (38), (39), (40), (41), and (42) of section 440.02, Florida Statutes, are amended to read:

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

- (1) "Accident" means only an unexpected or unusual event or result that happens suddenly. ~~A mental or nervous injury due to stress, fright, or excitement only,~~ or Disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or

Amendment No. (for drafter's use only)

28 controlled substances or narcotic drugs, or a disease that
29 manifests itself in the fear of or dislike for an individual
30 because of the individual's race, color, religion, sex, national
31 origin, age, or handicap is not an injury by accident arising
32 out of the employment. Subject to s. 440.15(5), if a preexisting
33 disease or anomaly is accelerated or aggravated by an accident
34 arising out of and in the course of employment, only
35 acceleration of death or acceleration or aggravation of the
36 preexisting condition reasonably attributable to the accident is
37 compensable, with respect to any compensation otherwise payable
38 under this chapter ~~death or permanent impairment.~~ An injury or
39 disease caused by exposure to a toxic substance, including, but
40 not limited to, fungus or mold, is not an injury by accident
41 arising out of the employment unless there is clear and
42 convincing evidence establishing that exposure to the specific
43 substance involved, at the levels to which the employee was
44 exposed, can cause the injury or disease sustained by the
45 employee.

46 (15)(a) "Employee" means any person engaged in any
47 employment under any appointment or contract of hire or
48 apprenticeship, express or implied, oral or written, whether
49 lawfully or unlawfully employed, and includes, but is not
50 limited to, aliens and minors.

51 (b) "Employee" includes any person who is an officer of a
52 corporation and who performs services for remuneration for such
53 corporation within this state, whether or not such services are
54 continuous.

Amendment No. (for drafter's use only)

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

58 2. As to officers of a corporation who are actively
59 engaged in the construction industry, no more than three
60 officers may elect to be exempt from this chapter by filing
61 written notice of the election with the department as provided
62 in s. 440.05. ~~However, any exemption obtained by a corporate~~
63 ~~officer of a corporation actively engaged in the construction~~
64 ~~industry is not applicable with respect to any commercial~~
65 ~~building project estimated to be valued at \$250,000 or greater.~~

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

69
70 Services are presumed to have been rendered to the corporation
71 if the officer is compensated by other than dividends upon
72 shares of stock of the corporation which the officer owns.

73 (c)~~1~~. "Employee" includes a sole proprietor or a partner
74 who devotes full time to the proprietorship or partnership and,
75 except as provided in this paragraph, elects to be included in
76 the definition of employee by filing notice thereof as provided
77 in s. 440.05. Partners or sole proprietors actively engaged in
78 the construction industry are considered employees unless they
79 elect to be excluded from the definition of employee by filing
80 written notice of the election with the department as provided
81 in s. 440.05. However, no more than three partners in a
82 partnership that is actively engaged in the construction
83 industry may elect to be excluded. A sole proprietor or partner

286063

Amendment No. (for drafter's use only)

84 who is actively engaged in the construction industry and who
85 elects to be exempt from this chapter by filing a written notice
86 of the election with the department as provided in s. 440.05 is
87 not an employee. For purposes of this chapter, an independent
88 contractor is an employee unless he or she meets all of the
89 conditions set forth in subparagraph (d)1.

90 ~~2. Notwithstanding the provisions of subparagraph 1., the~~
91 ~~term "employee" includes a sole proprietor or partner actively~~
92 ~~engaged in the construction industry with respect to any~~
93 ~~commercial building project estimated to be valued at \$250,000~~
94 ~~or greater. Any exemption obtained is not applicable, with~~
95 ~~respect to work performed at such a commercial building project.~~

96 (d) "Employee" does not include:

97 1. An independent contractor, if:

98 a. The independent contractor maintains a separate
99 business with his or her own work facility, truck, equipment,
100 materials, or similar accommodations;

101 b. The independent contractor holds or has applied for a
102 federal employer identification number, unless the independent
103 contractor is a sole proprietor who is not required to obtain a
104 federal employer identification number under state or federal
105 requirements;

106 c. The independent contractor performs or agrees to
107 perform specific services or work for specific amounts of money
108 and controls the means of performing the services or work;

109 d. The independent contractor incurs the principal
110 expenses related to the service or work that he or she performs
111 or agrees to perform;

Amendment No. (for drafter's use only)

112 e. The independent contractor is responsible for the
113 satisfactory completion of work or services that he or she
114 performs or agrees to perform and is or could be held liable for
115 a failure to complete the work or services;

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

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

121 h. The independent contractor has continuing or recurring
122 business liabilities or obligations; and

123 i. The success or failure of the independent contractor's
124 business depends on the relationship of business receipts to
125 expenditures.
126

127 However, the determination as to whether an individual included
128 in the Standard Industrial Classification Manual of 1987,
129 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
130 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
131 or a newspaper delivery person, is an independent contractor is
132 governed not by the criteria in this paragraph but by common-law
133 principles, giving due consideration to the business activity of
134 the individual. ~~Notwithstanding the provisions of this paragraph
135 or any other provision of this chapter, with respect to any
136 commercial building project estimated to be valued at \$250,000
137 or greater, a person who is actively engaged in the construction
138 industry is not an independent contractor and is either an
139 employer or an employee who may not be exempt from the coverage
140 requirements of this chapter.~~

286063

Amendment No. (for drafter's use only)

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

144 3. Bands, orchestras, and musical and theatrical
145 performers, including disk jockeys, performing in licensed
146 premises as defined in chapter 562, if a written contract
147 evidencing an independent contractor relationship is entered
148 into before the commencement of such entertainment.

149 4. An owner-operator of a motor vehicle who transports
150 property under a written contract with a motor carrier which
151 evidences a relationship by which the owner-operator assumes the
152 responsibility of an employer for the performance of the
153 contract, if the owner-operator is required to furnish the
154 necessary motor vehicle equipment and all costs incidental to
155 the performance of the contract, including, but not limited to,
156 fuel, taxes, licenses, repairs, and hired help; and the owner-
157 operator is paid a commission for transportation service and is
158 not paid by the hour or on some other time-measured basis.

159 5. A person whose employment is both casual and not in the
160 course of the trade, business, profession, or occupation of the
161 employer.

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

Amendment No. (for drafter's use only)

169 a. Persons who serve in private nonprofit agencies and who
170 receive no compensation other than expenses in an amount less
171 than or equivalent to the standard mileage and per-diem expenses
172 provided to salaried employees in the same agency or, if such
173 agency does not have salaried employees who receive mileage and
174 per diem, then such volunteers who receive no compensation other
175 than expenses in an amount less than or equivalent to the
176 customary mileage and per diem paid to salaried workers in the
177 community as determined by the department; and

178 b. Volunteers participating in federal programs
179 established under Pub. L. No. 93-113.

180 7. Any officer of a corporation who elects to be exempt
181 from this chapter.

182 8. A sole proprietor or officer of a corporation who
183 actively engages in the construction industry, and a partner in
184 a partnership that is actively engaged in the construction
185 industry, who elects to be exempt from the provisions of this
186 chapter. Such sole proprietor, officer, or partner is not an
187 employee for any reason until the notice of revocation of
188 election filed pursuant to s. 440.05 is effective.

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

194 10. A taxicab, limousine, or other passenger vehicle-for-
195 hire driver who operates said vehicles pursuant to a written
196 agreement with a company which provides any dispatch, marketing,
197 insurance, communications, or other services under which the

286063

Amendment No. (for drafter's use only)

198 driver and any fees or charges paid by the driver to the company
199 for such services are not conditioned upon, or expressed as a
200 proportion of, fare revenues.

201 11. A person who performs services as a sports official
202 for an entity sponsoring an interscholastic sports event or for
203 a public entity or private, nonprofit organization that sponsors
204 an amateur sports event. For purposes of this subparagraph, such
205 a person is an independent contractor. For purposes of this
206 subparagraph, the term "sports official" means any person who is
207 a neutral participant in a sports event, including, but not
208 limited to, umpires, referees, judges, linespersons,
209 scorekeepers, or timekeepers. This subparagraph does not apply
210 to any person employed by a district school board who serves as
211 a sports official as required by the employing school board or
212 who serves as a sports official as part of his or her
213 responsibilities during normal school hours.

214 (29) "Weekly compensation rate" means and refers to the
215 amount of compensation payable for a period of 7 consecutive
216 calendar days, including any Saturdays, Sundays, holidays, and
217 other nonworking days which fall within such period of 7
218 consecutive calendar days. When Saturdays, Sundays, holidays, or
219 other nonworking days immediately follow the first 7 calendar
220 days of disability or occur at the end of a period of disability
221 as the last day or days of such period, such nonworking days
222 constitute a part of the period of disability with respect to
223 which compensation is payable.

224 ~~(38) "Catastrophic injury" means a permanent impairment~~
225 ~~constituted by:~~

Amendment No. (for drafter's use only)

226 ~~(a) Spinal cord injury involving severe paralysis of an~~
227 ~~arm, a leg, or the trunk;~~

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

230 ~~(c) Severe brain or closed head injury as evidenced by:~~

231 ~~1. Severe sensory or motor disturbances;~~

232 ~~2. Severe communication disturbances;~~

233 ~~3. Severe complex integrated disturbances of cerebral~~
234 ~~function;~~

235 ~~4. Severe episodic neurological disorders; or~~

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

239 ~~(d) Second degree or third degree burns of 25 percent or~~
240 ~~more of the total body surface or third degree burns of 5~~
241 ~~percent or more to the face and hands;~~

242 ~~(e) Total or industrial blindness; or~~

243 ~~(f) Any other injury that would otherwise qualify under~~
244 ~~this chapter of a nature and severity that would qualify an~~
245 ~~employee to receive disability income benefits under Title II or~~
246 ~~supplemental security income benefits under Title XVI of the~~
247 ~~federal Social Security Act as the Social Security Act existed~~
248 ~~on July 1, 1992, without regard to any time limitations provided~~
249 ~~under that act.~~

250 ~~(38)(39)~~ "Insurer" means a group self-insurers' fund
251 authorized by s. 624.4621, an individual self-insurer authorized
252 by s. 440.38, a commercial self-insurance fund authorized by s.
253 624.462, an assessable mutual insurer authorized by s. 628.6011,
254 and an insurer licensed to write workers' compensation and

286063

Amendment No. (for drafter's use only)

255 employer's liability insurance in this state. The term
256 "carrier," as used in this chapter, means an insurer as defined
257 in this subsection.

258 ~~(39)~~(40) "Statement," for the purposes of ss. 440.105 and
259 440.106, shall include the exact fraud statement language in s.
260 440.105(7). This requirement includes, but is not limited to,
261 any notice, representation, statement, proof of injury, bill for
262 services, diagnosis, prescription, hospital or doctor record, X
263 ray, test result, or other evidence of loss, injury, or expense.

264 ~~(40)~~(41) "Specificity" means information on the petition
265 for benefits sufficient to put the employer or carrier on notice
266 of the exact statutory classification and outstanding time
267 period of benefits being requested and includes a detailed
268 explanation of any benefits received that should be increased,
269 decreased, changed, or otherwise modified. If the petition is
270 for medical benefits, the information shall include specific
271 details as to why such benefits are being requested, why such
272 benefits are medically necessary, and why current treatment, if
273 any, is not sufficient. Any petition requesting alternate or
274 other medical care, including, but not limited to, petitions
275 requesting psychiatric or psychological treatment, must
276 specifically identify the physician, as defined in s. 440.13(1),
277 that is recommending such treatment. A copy of a report from
278 such physician making the recommendation for alternate or other
279 medical care shall also be attached to the petition. A judge of
280 compensation claims shall not order such treatment if a
281 physician is not recommending such treatment. "Commercial
282 building" means any building or structure intended for
283 commercial or industrial use, or any building or structure

286063

Amendment No. (for drafter's use only)

284 ~~intended for multifamily use of more than four dwelling units,~~
285 ~~as well as any accessory use structures constructed in~~
286 ~~conjunction with the principal structure. The term, "commercial~~
287 ~~building," does not include the conversion of any existing~~
288 ~~residential building to a commercial building.~~

289 ~~(42) "Residential building" means any building or~~
290 ~~structure intended for residential use containing four or fewer~~
291 ~~dwelling units and any structures intended as an accessory use~~
292 ~~to the residential structure.~~

293 Section 2. Effective January 1, 2004, subsections (8),
294 (15), and (16) of section 440.02, Florida Statutes, as amended
295 by this act, are amended to read:

296 440.02 Definitions.--When used in this chapter, unless the
297 context clearly requires otherwise, the following terms shall
298 have the following meanings:

299 (8) "Construction industry" means for-profit activities
300 involving ~~the carrying out of~~ any building, clearing, filling,
301 excavation, or substantial improvement in the size or use of any
302 structure or the appearance of any land. ~~When appropriate to the~~
303 ~~context, "construction" refers to the act of construction or the~~
304 ~~result of construction.~~ However, "construction" does ~~shall~~ not
305 mean a homeowner's landowner's act of construction or the result
306 of a construction upon his or her own premises, provided such
307 premises are not intended to be sold, ~~or~~ resold, or leased by
308 the owner within 1 year after the commencement of construction.
309 The division may, by rule, establish standard industrial
310 classification codes and definitions thereof which meet the
311 criteria of the term "construction industry" as set forth in
312 this section.

286063

Amendment No. (for drafter's use only)

313 (15)(a) "Employee" means any person who receives
314 remuneration from an employer for the performance of any work or
315 service while engaged in any employment under any appointment or
316 contract for ~~of~~ hire or apprenticeship, express or implied, oral
317 or written, whether lawfully or unlawfully employed, and
318 includes, but is not limited to, aliens and minors.

319 (b) "Employee" includes any person who is an officer of a
320 corporation and who performs services for remuneration for such
321 corporation within this state, whether or not such services are
322 continuous.

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

326 2. As to officers of a corporation who are ~~actively~~
327 engaged in the construction industry, no more than three
328 officers of a corporation or of any group of affiliated
329 corporations may elect to be exempt from this chapter by filing
330 written notice of the election with the department as provided
331 in s. 440.05. Officers must be shareholders, each owning at
332 least 10 percent of the stock of such corporation and listed as
333 an officer of such corporation with the Division of Corporations
334 of the Department of State, in order to elect exemptions under
335 this chapter. For purposes of this subparagraph, the term
336 "affiliated" means and includes one or more corporations or
337 entities, any one of which is a corporation engaged in the
338 construction industry, under the same or substantially the same
339 control of a group of business entities which are connected or
340 associated so that one entity controls or has the power to
341 control each of the other business entities. The term

286063

Amendment No. (for drafter's use only)

342 "affiliated" includes, but is not limited to, the officers,
343 directors, executives, shareholders active in management,
344 employees, and agents of the affiliated corporation. The
345 ownership by one business entity of a controlling interest in
346 another business entity or a pooling of equipment or income
347 among business entities shall be prima facie evidence that one
348 business is affiliated with the other.

349 3. An officer of a corporation who elects to be exempt
350 from this chapter by filing a written notice of the election
351 with the department as provided in s. 440.05 is not an employee.
352

353 Services are presumed to have been rendered to the corporation
354 if the officer is compensated by other than dividends upon
355 shares of stock of the corporation which the officer owns.

356 (c) "Employee" includes:

357 1. A sole proprietor or a partner who is not engaged in
358 the construction industry, devotes full time to the
359 proprietorship or partnership, ~~and, except as provided in this~~
360 ~~paragraph,~~ elects to be included in the definition of employee
361 by filing notice thereof as provided in s. 440.05. ~~Partners or~~
362 ~~sole proprietors actively engaged in the construction industry~~
363 ~~are considered employees unless they elect to be excluded from~~
364 ~~the definition of employee by filing written notice of the~~
365 ~~election with the department as provided in s. 440.05. However,~~
366 ~~no more than three partners in a partnership that is actively~~
367 ~~engaged in the construction industry may elect to be excluded. A~~
368 ~~sole proprietor or partner who is actively engaged in the~~
369 ~~construction industry and who elects to be exempt from this~~
370 ~~chapter by filing a written notice of the election with the~~

286063

Amendment No. (for drafter's use only)

371 ~~department as provided in s. 440.05 is not an employee. For~~
372 ~~purposes of this chapter, an independent contractor is an~~
373 ~~employee unless he or she meets all of the conditions set forth~~
374 ~~in subparagraph (d)1.~~

375 2. All persons who are being paid by a construction
376 contractor as a subcontractor, unless the subcontractor has
377 validly elected an exemption as permitted by this chapter, or
378 has otherwise secured the payment of compensation coverage as a
379 subcontractor, consistent with s. 440.10, for work performed by
380 or as a subcontractor.

381 3. An independent contractor working or performing
382 services in the construction industry.

383 4. A sole proprietor who engages in the construction
384 industry and a partner or partnership that is engaged in the
385 construction industry.

386 (d) "Employee" does not include:

387 1. An independent contractor who is not engaged in the
388 construction industry., if:

389 a. In order to meet the definition of independent
390 contractor, at least four of the following criteria must be met:

391 (I) The independent contractor maintains a separate
392 business with his or her own work facility, truck, equipment,
393 materials, or similar accommodations;

394 (II) The independent contractor holds or has applied for a
395 federal employer identification number, unless the independent
396 contractor is a sole proprietor who is not required to obtain a
397 federal employer identification number under state or federal
398 regulations;

Amendment No. (for drafter's use only)

399 (III) The independent contractor receives compensation for
400 services rendered or work performed and such compensation is
401 paid to a business rather than to an individual;

402 (IV) The independent contractor holds one or more bank
403 accounts in the name of the business entity for purposes of
404 paying business expenses or other expenses related to services
405 rendered or work performed for compensation;

406 (V) The independent contractor performs work or is able to
407 perform work for any entity in addition to or besides the
408 employer at his or her own election without the necessity of
409 completing an employment application or process; or

410 (VI) The independent contractor receives compensation for
411 work or services rendered on a competitive-bid basis or
412 completion of a task or a set of tasks as defined by a
413 contractual agreement, unless such contractual agreement
414 expressly states that an employment relationship exists. The
415 independent contractor maintains a separate business with his or
416 her own work facility, truck, equipment, materials, or similar
417 accommodations;

418 b. If four of the criteria listed in sub-subparagraph a.
419 do not exist, an individual may still be presumed to be an
420 independent contractor and not an employee based on full
421 consideration of the nature of the individual situation with
422 regard to satisfying any of the following conditions:

423 (I) The independent contractor performs or agrees to
424 perform specific services or work for a specific amount of money
425 and controls the means of performing the services or work.

Amendment No. (for drafter's use only)

426 (II) The independent contractor incurs the principal
427 expenses related to the service or work that he or she performs
428 or agrees to perform.

429 (III) The independent contractor is responsible for the
430 satisfactory completion of the work or services that he or she
431 performs or agrees to perform.

432 (IV) The independent contractor receives compensation for
433 work or services performed for a commission or on a per-job
434 basis and not on any other basis.

435 (V) The independent contractor may realize a profit or
436 suffer a loss in connection with performing work or services.

437 (VI) The independent contractor has continuing or
438 recurring business liabilities or obligations.

439 (VII) The success or failure of the independent
440 contractor's business depends on the relationship of business
441 receipts to expenditures. ~~The independent contractor holds or~~
442 has applied for a federal employer identification number, unless
443 the independent contractor is a sole proprietor who is not
444 required to obtain a federal employer identification number
445 under state or federal requirements;

446 c. Notwithstanding anything to the contrary in this
447 subparagraph, an individual claiming to be an independent
448 contractor has the burden of proving that he or she is an
449 independent contractor for purposes of this chapter. ~~The~~
450 independent contractor performs or agrees to perform specific
451 services or work for specific amounts of money and controls the
452 means of performing the services or work;

Amendment No. (for drafter's use only)

453 ~~d. The independent contractor incurs the principal~~
454 ~~expenses related to the service or work that he or she performs~~
455 ~~or agrees to perform;~~

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

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

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

465 ~~h. The independent contractor has continuing or recurring~~
466 ~~business liabilities or obligations; and~~

467 ~~i. The success or failure of the independent contractor's~~
468 ~~business depends on the relationship of business receipts to~~
469 ~~expenditures.~~

470
471 ~~However, the determination as to whether an individual included~~
472 ~~in the Standard Industrial Classification Manual of 1987,~~
473 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
474 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
475 ~~or a newspaper delivery person, is an independent contractor is~~
476 ~~governed not by the criteria in this paragraph but by common-law~~
477 ~~principles, giving due consideration to the business activity of~~
478 ~~the individual.~~

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

286063

Amendment No. (for drafter's use only)

482 3. Bands, orchestras, and musical and theatrical
483 performers, including disk jockeys, performing in licensed
484 premises as defined in chapter 562, if a written contract
485 evidencing an independent contractor relationship is entered
486 into before the commencement of such entertainment.

487 4. An owner-operator of a motor vehicle who transports
488 property under a written contract with a motor carrier which
489 evidences a relationship by which the owner-operator assumes the
490 responsibility of an employer for the performance of the
491 contract, if the owner-operator is required to furnish the
492 necessary motor vehicle equipment and all costs incidental to
493 the performance of the contract, including, but not limited to,
494 fuel, taxes, licenses, repairs, and hired help; and the owner-
495 operator is paid a commission for transportation service and is
496 not paid by the hour or on some other time-measured basis.

497 5. A person whose employment is both casual and not in the
498 course of the trade, business, profession, or occupation of the
499 employer.

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

507 a. Persons who serve in private nonprofit agencies and who
508 receive no compensation other than expenses in an amount less
509 than or equivalent to the standard mileage and per diem expenses
510 provided to salaried employees in the same agency or, if such

286063

Amendment No. (for drafter's use only)

511 agency does not have salaried employees who receive mileage and
512 per diem, then such volunteers who receive no compensation other
513 than expenses in an amount less than or equivalent to the
514 customary mileage and per diem paid to salaried workers in the
515 community as determined by the department; and

516 b. Volunteers participating in federal programs
517 established under Pub. L. No. 93-113.

518 7. Unless otherwise prohibited by this chapter, any
519 officer of a corporation who elects to be exempt from this
520 chapter. Such officer is not an employee for any reason under
521 this chapter until the notice of revocation of election filed
522 pursuant to s. 440.05 is effective.

523 8. ~~An a sole proprietor or officer of a corporation who~~
524 ~~actively engages in the construction industry, and a partner in~~
525 ~~a partnership that is actively engaged in the construction~~
526 ~~industry, who elects to be exempt from the provisions of this~~
527 ~~chapter, as otherwise permitted by this chapter.~~ Such sole
528 ~~proprietor, officer, or partner~~ is not an employee for any
529 reason until the notice of revocation of election filed pursuant
530 to s. 440.05 is effective.

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

536 10. A taxicab, limousine, or other passenger vehicle-for-
537 hire driver who operates said vehicles pursuant to a written
538 agreement with a company which provides any dispatch, marketing,
539 insurance, communications, or other services under which the

Amendment No. (for drafter's use only)

540 driver and any fees or charges paid by the driver to the company
541 for such services are not conditioned upon, or expressed as a
542 proportion of, fare revenues.

543 11. A person who performs services as a sports official
544 for an entity sponsoring an interscholastic sports event or for
545 a public entity or private, nonprofit organization that sponsors
546 an amateur sports event. For purposes of this subparagraph, such
547 a person is an independent contractor. For purposes of this
548 subparagraph, the term "sports official" means any person who is
549 a neutral participant in a sports event, including, but not
550 limited to, umpires, referees, judges, linespersons,
551 scorekeepers, or timekeepers. This subparagraph does not apply
552 to any person employed by a district school board who serves as
553 a sports official as required by the employing school board or
554 who serves as a sports official as part of his or her
555 responsibilities during normal school hours.

556 12. Medicaid-enrolled clients under chapter 393 who are
557 excluded from the definition of employment under s.
558 443.036(21)(d)5. and served by Adult Day Training Services under
559 the Home and Community-Based Medicaid Waiver program in a
560 sheltered workshop setting licensed by the United States
561 Department of Labor for the purpose of training and earning less
562 than the federal hourly minimum wage.

563 (16)(a) "Employer" means the state and all political
564 subdivisions thereof, all public and quasi-public corporations
565 therein, every person carrying on any employment, and the legal
566 representative of a deceased person or the receiver or trustees
567 of any person. "Employer" also includes employment agencies,
568 employee leasing companies, and similar agents who provide

Amendment No. (for drafter's use only)

569 employees to other persons. If the employer is a corporation,
570 parties in actual control of the corporation, including, but not
571 limited to, the president, officers who exercise broad corporate
572 powers, directors, and all shareholders who directly or
573 indirectly own a controlling interest in the corporation, are
574 considered the employer for the purposes of ss. 440.105, and
575 440.106, and 440.107.

576 (b) A homeowner shall not be considered the employer of
577 persons hired by the homeowner to carry out construction on the
578 homeowner's own premises if those premises are not intended for
579 immediate lease, sale, or resale.

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

586 Section 3. Effective January 1, 2004, subsections (3),
587 (4), (6), (10), (11), and (12) of section 440.05, Florida
588 Statutes, are amended, present subsection (13) is renumbered as
589 subsection (11) and amended, and new subsections (12), (13),
590 (14), and (15) are added to said section, to read:

591 440.05 Election of exemption; revocation of election;
592 notice; certification.--

593 (3) Each ~~sole proprietor, partner, or~~ officer of a
594 corporation who is ~~actively~~ engaged in the construction industry
595 and who elects an exemption from this chapter or who, after
596 electing such exemption, revokes that exemption, must mail a
597 written notice to such effect to the department on a form

Amendment No. (for drafter's use only)

598 prescribed by the department. The notice of election to be
599 exempt from the provisions of this chapter must be notarized and
600 under oath. The notice of election to be exempt which is
601 submitted to the department by the ~~sole proprietor, partner, or~~
602 officer of a corporation who is allowed to claim an exemption as
603 provided by this chapter must list the name, federal tax
604 identification number, social security number, all certified or
605 registered licenses issued pursuant to chapter 489 held by the
606 person seeking the exemption, a copy of relevant documentation
607 as to employment status filed with the Internal Revenue Service
608 as specified by the department, a copy of the relevant
609 occupational license in the primary jurisdiction of the
610 business, and, ~~for corporate officers and partners,~~ the
611 registration number of the corporation ~~or partnership~~ filed with
612 the Division of Corporations of the Department of State along
613 with a copy of the stock certificate evidencing the required
614 ownership under this chapter. The notice of election to be
615 exempt must identify each ~~sole proprietorship, partnership, or~~
616 corporation that employs the person electing the exemption and
617 must list the social security number or federal tax
618 identification number of each such employer and the additional
619 documentation required by this section. In addition, the notice
620 of election to be exempt must provide that the ~~sole proprietor,~~
621 ~~partner, or~~ officer electing an exemption is not entitled to
622 benefits under this chapter, must provide that the election does
623 not exceed exemption limits for officers ~~and partnerships~~
624 provided in s. 440.02, and must certify that any employees of
625 the corporation whose ~~sole proprietor, partner, or~~ officer
626 elects ~~electing~~ an exemption are covered by workers'

286063

Amendment No. (for drafter's use only)

627 compensation insurance. Upon receipt of the notice of the
628 election to be exempt, receipt of all application fees, and a
629 determination by the department that the notice meets the
630 requirements of this subsection, the department shall issue a
631 certification of the election to the ~~sole proprietor, partner,~~
632 ~~or~~ officer, unless the department determines that the
633 information contained in the notice is invalid. The department
634 shall revoke a certificate of election to be exempt from
635 coverage upon a determination by the department that the person
636 does not meet the requirements for exemption or that the
637 information contained in the notice of election to be exempt is
638 invalid. The certificate of election must list the name ~~names~~ of
639 the ~~sole proprietorship, partnership, or~~ corporation listed in
640 the request for exemption. A new certificate of election must be
641 obtained each time the person is employed by a new ~~sole~~
642 ~~proprietorship, partnership,~~ or different corporation that is
643 not listed on the certificate of election. A copy of the
644 certificate of election must be sent to each workers'
645 compensation carrier identified in the request for exemption.
646 Upon filing a notice of revocation of election, an a ~~sole~~
647 ~~proprietor, partner, or~~ officer who is a subcontractor or an
648 officer of a corporate subcontractor must notify her or his
649 contractor. Upon revocation of a certificate of election of
650 exemption by the department, the department shall notify the
651 workers' compensation carriers identified in the request for
652 exemption.

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

Amendment No. (for drafter's use only)

656 and with intent to injure, defraud, or deceive the department or
657 any employer or employee, insurance company, or any other person
658 ~~purpose program~~, files a notice of election to be exempt
659 containing any false or misleading information is guilty of a
660 felony of the third degree." Each person filing a notice of
661 election to be exempt shall personally sign the notice and
662 attest that he or she has reviewed, understands, and
663 acknowledges the foregoing notice.

664 (6) A construction industry certificate of election to be
665 exempt which is issued in accordance with this section shall be
666 valid for 2 years after the effective date stated thereon. Both
667 the effective date and the expiration date must be listed on the
668 face of the certificate by the department. The construction
669 industry certificate must expire at midnight, 2 years from its
670 issue date, as noted on the face of the exemption certificate.
671 Any person who has received from the division a construction
672 industry certificate of election to be exempt which is in effect
673 on December 31, 1998, shall file a new notice of election to be
674 exempt by the last day in his or her birth month following
675 December 1, 1998. A construction industry certificate of
676 election to be exempt may be revoked before its expiration by
677 the ~~sole proprietor, partner, or~~ officer for whom it was issued
678 or by the department for the reasons stated in this section. At
679 least 60 days prior to the expiration date of a construction
680 industry certificate of exemption issued after December 1, 1998,
681 the department shall send notice of the expiration date and an
682 application for renewal to the certificateholder at the address
683 on the certificate.

Amendment No. (for drafter's use only)

684 (10) ~~Each sole proprietor, partner, or officer of a~~
685 ~~corporation who is actively engaged in the construction industry~~
686 ~~and who elects an exemption from this chapter shall maintain~~
687 ~~business records as specified by the division by rule, which~~
688 ~~rules must include the provision that any corporation with~~
689 ~~exempt officers and any partnership actively engaged in the~~
690 ~~construction industry with exempt partners must maintain written~~
691 ~~statements of those exempted persons affirmatively acknowledging~~
692 ~~each such individual's exempt status.~~

693 ~~(11) Any sole proprietor or partner actively engaged in~~
694 ~~the construction industry claiming an exemption under this~~
695 ~~section shall maintain a copy of his or her federal income tax~~
696 ~~records for each of the immediately previous 3 years in which he~~
697 ~~or she claims an exemption. Such federal income tax records must~~
698 ~~include a complete copy of the following for each year in which~~
699 ~~an exemption is claimed:~~

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

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

705
706 ~~A sole proprietor or partner shall produce, upon request by the~~
707 ~~division, a copy of those documents together with a statement by~~
708 ~~the sole proprietor or partner that the tax records provided are~~
709 ~~true and accurate copies of what the sole proprietor or partner~~
710 ~~has filed with the federal Internal Revenue Service. The~~
711 ~~statement must be signed under oath by the sole proprietor or~~
712 ~~partner and must be notarized. The division shall issue a stop-~~

286063

Amendment No. (for drafter's use only)

713 ~~work order under s. 440.107(5) to any sole proprietor or partner~~
714 ~~who fails or refuses to produce a copy of the tax records and~~
715 ~~affidavit required under this paragraph to the division within 3~~
716 ~~business days after the request is made.~~

717 ~~(12) For those sole proprietors or partners that have not~~
718 ~~been in business long enough to provide the information required~~
719 ~~of an established business, the division shall require such sole~~
720 ~~proprietor or partner to provide copies of the most recently~~
721 ~~filed Federal Income Tax Form 1040. The division shall establish~~
722 ~~by rule such other criteria to show that the sole proprietor or~~
723 ~~partner intends to engage in a legitimate enterprise within the~~
724 ~~construction industry and is not otherwise attempting to evade~~
725 ~~the requirements of this section. The division shall establish~~
726 ~~by rule the form and format of financial information required to~~
727 ~~be submitted by such employers.~~

728 ~~(11)(13) Any corporate officer permitted by this chapter~~
729 ~~to claim claiming an exemption under this section must be listed~~
730 ~~on the records of this state's Secretary of State, Division of~~
731 ~~Corporations, as a corporate officer. If the person who claims~~
732 ~~an exemption as a corporate officer is not so listed on the~~
733 ~~records of the Secretary of State, the individual must provide~~
734 ~~to the division, upon request by the division, a notarized~~
735 ~~affidavit stating that the individual is a bona fide officer of~~
736 ~~the corporation and stating the date his or her appointment or~~
737 ~~election as a corporate officer became or will become effective.~~
738 ~~The statement must be signed under oath by both the officer and~~
739 ~~the president or chief operating officer of the corporation and~~
740 ~~must be notarized. The division shall issue a stop-work order~~
741 ~~under s. 440.107(1) to any corporation who employs a person who~~

286063

Amendment No. (for drafter's use only)

742 claims to be exempt as a corporate officer but who fails or
743 refuses to produce the documents required under this subsection
744 to the division within 3 business days after the request is
745 made.

746 (12) Certificates of election to be exempt issued under
747 subsection (3) shall apply only to the corporate officer named
748 on the notice of election to be exempt and apply only within the
749 scope of the business or trade listed on the notice of election
750 to be exempt.

751 (13) Notices of election to be exempt and certificates of
752 election to be exempt shall be subject to revocation if, at any
753 time after the filing of the notice or the issuance of the
754 certificate, the person named on the notice or certificate no
755 longer meets the requirements of this section for issuance of a
756 certificate. The department shall revoke a certificate at any
757 time for failure of the person named on the certificate to meet
758 the requirements of this section.

759 (14) An officer of a corporation who elects exemption from
760 this chapter by filing a certificate of election under this
761 section may not recover benefits or compensation under this
762 chapter. For purposes of determining the appropriate premium for
763 workers' compensation coverage, carriers may not consider any
764 officer of a corporation who validly meets the requirements of
765 this section to be an employee.

766 (15) Any corporate officer who is an affiliated person
767 of a person who is delinquent in paying a stop-work order and
768 penalty assessment order issued pursuant to s. 440.107, or owed
769 pursuant to a court order, is ineligible for an election of
770 exemption. The stop-work order and penalty assessment shall be

286063

Amendment No. (for drafter's use only)

771 in effect against any such affiliated person. As used in this
772 subsection, the term "affiliated person" means:

773 (a) The spouse of such other person;

774 (b) Any person who directly or indirectly owns or
775 controls, or holds with the power to vote, 10 percent or more of
776 the outstanding voting securities of such other person;

777 (c) Any person who directly or indirectly owns 10 percent
778 or more of the outstanding voting securities that are directly
779 or indirectly owned, controlled, or held with the power to vote
780 by such other person;

781 (d) Any person or group of persons who directly or
782 indirectly control, are controlled by, or are under common
783 control with such other person;

784 (e) Any person who directly or indirectly acquires all or
785 substantially all of the other assets of such other person;

786 (f) Any officer, director, trustee, partner, owner,
787 manager, joint venturer, or employee of such other person or a
788 person performing duties similar to persons in such positions;
789 or

790 (g) Any person who has an officer, director, trustee,
791 partner, or joint venturer in common with such person.

792 Section 4. Section 440.06, Florida Statutes, is amended to
793 read:

794 440.06 Failure to secure compensation; effect.--Every
795 employer who fails to secure the payment of compensation, as
796 provided in s. 440.10, by failing to meet the requirements of
797 under this chapter as provided in s. 440.38 may not, in any suit
798 brought against him or her by an employee subject to this
799 chapter to recover damages for injury or death, defend such a

286063

Amendment No. (for drafter's use only)

800 suit on the grounds that the injury was caused by the negligence
801 of a fellow servant, that the employee assumed the risk of his
802 or her employment, or that the injury was due to the comparative
803 negligence of the employee.

804 Section 5. Effective January 1, 2004, section 440.077,
805 Florida Statutes, is amended to read:

806 440.077 When a corporate sole proprietor, partner, or
807 officer rejects chapter, effect.--An A sole proprietor, partner,
808 or officer of a corporation who is permitted to elect an
809 exemption under this chapter actively engaged in the
810 construction industry and who elects to be exempt from the
811 provisions of this chapter may not recover benefits under this
812 chapter.

813 Section 6. Subsections (1) and (4) of section 440.09,
814 Florida Statutes, are amended and paragraph (e) is added to
815 subsection (7) of said section, to read:

816 440.09 Coverage.--

817 (1) The employer must ~~shall~~ pay compensation or furnish
818 benefits required by this chapter if the employee suffers an
819 accidental compensable injury or death arising out of work
820 performed in the course and the scope of employment. The injury,
821 its occupational cause, and any resulting manifestations or
822 disability must ~~shall~~ be established to a reasonable degree of
823 medical certainty, based on and by objective relevant medical
824 findings, and the accidental compensable injury must be the
825 major contributing cause of any resulting injuries. For purposes
826 of this section, "major contributing cause" means the cause
827 which is more than 50 percent responsible for the injury as
828 compared to all other causes combined for which treatment or

286063

Amendment No. (for drafter's use only)

829 benefits are sought. In cases involving occupational disease or
830 repetitive exposure, both causation and sufficient exposure to
831 support causation must be proven by clear and convincing
832 evidence. Pain or other subjective complaints alone, in the
833 absence of objective relevant medical findings, are not
834 compensable. For purposes of this section, "objective relevant
835 medical findings" are those objective findings that correlate to
836 the subjective complaints of the injured employee and are
837 confirmed by physical examination findings or diagnostic
838 testing. Establishment of the causal relationship between a
839 compensable accident and injuries for conditions that are not
840 readily observable must be by medical evidence only, as
841 demonstrated by physical examination findings or diagnostic
842 testing. Major contributing cause must be demonstrated by
843 medical evidence only. ~~Mental or nervous injuries occurring as a~~
844 ~~manifestation of an injury compensable under this section shall~~
845 ~~be demonstrated by clear and convincing evidence.~~

846 (a) This chapter does not require any compensation or
847 benefits for any subsequent injury the employee suffers as a
848 result of an original injury arising out of and in the course of
849 employment unless the original injury is the major contributing
850 cause of the subsequent injury. Major contributing cause must be
851 demonstrated by medical evidence only.

852 (b) If an injury arising out of and in the course of
853 employment combines with a preexisting disease or condition to
854 cause or prolong disability or need for treatment, the employer
855 must pay compensation or benefits required by this chapter only
856 to the extent that the injury arising out of and in the course
857 of employment is and remains more than 50 percent responsible

286063

Amendment No. (for drafter's use only)

858 for the injury as compared to all other causes combined and
859 thereafter remains the major contributing cause of the
860 disability or need for treatment. Major contributing cause must
861 be demonstrated by medical evidence only.

862 (c) Death resulting from an operation by a surgeon
863 furnished by the employer for the cure of hernia as required in
864 s. 440.15(6) [F.S. 1981] shall for the purpose of this chapter be
865 considered to be a death resulting from the accident causing the
866 hernia.

867 (d) If an accident happens while the employee is employed
868 elsewhere than in this state, which would entitle the employee
869 or his or her dependents to compensation if it had happened in
870 this state, the employee or his or her dependents are entitled
871 to compensation if the contract of employment was made in this
872 state, or the employment was principally localized in this
873 state. However, if an employee receives compensation or damages
874 under the laws of any other state, the total compensation for
875 the injury may not be greater than is provided in this chapter.

876 (4)(a) An employee shall not be entitled to compensation
877 or benefits under this chapter if any judge of compensation
878 claims, administrative law judge, court, or jury convened in
879 this state determines that the employee has knowingly or
880 intentionally engaged in any of the acts described in s. 440.105
881 or any criminal act for the purpose of securing workers'
882 compensation benefits. For purposes of this section, the term
883 "intentional" shall include, but is not limited to, pleas of
884 guilty or nolo contendere in criminal matters. This section
885 shall apply to accidents, regardless of the date of the
886 accident. For injuries occurring prior to January 1, 1994, this

286063

Amendment No. (for drafter's use only)

887 section shall pertain to the acts of the employee described in
888 s. 440.105 or criminal activities occurring subsequent to
889 January 1, 1994.

890 (b) A judge of compensation claims, administrative law
891 judge, or court of this state shall take judicial notice of a
892 finding of insurance fraud by a court of competent jurisdiction
893 and terminate or otherwise disallow benefits.

894 (c) Upon the denial of benefits in accordance with this
895 section, a judge of compensation claims shall have the
896 jurisdiction to order any benefits payable to the employee to be
897 paid into the court registry or an escrow account during the
898 pendency of an appeal or until such time as the time in which to
899 file an appeal has expired.

900 (7)

901 (e) As a part of rebutting any presumptions under
902 paragraph (b), the injured worker must prove the actual
903 quantitative amounts of the drug or its metabolites as measured
904 on the initial and confirmation post-accident drug tests of the
905 injured worker's urine sample and provide additional evidence
906 regarding the absence of drug influence other than the worker's
907 denial of being under the influence of a drug. No drug test
908 conducted on a urine sample shall be rejected as to its results
909 or the presumption imposed under paragraph (b) on the basis of
910 the urine being bodily fluid tested.

911 Section 7. Section 440.093, Florida Statutes, is created
912 to read:

913 440.093 Mental and nervous injuries.--

914 (1) A mental or nervous injury due to stress, fright, or
915 excitement only is not an injury by accident arising out of the

286063

Amendment No. (for drafter's use only)

916 employment. Nothing in this section shall be construed to allow
917 for the payment of benefits under this chapter for mental or
918 nervous injuries without an accompanying physical injury
919 requiring medical treatment. A physical injury resulting from
920 mental or nervous injuries unaccompanied by physical trauma
921 requiring medical treatment shall not be compensable under this
922 chapter.

923 (2) Mental or nervous injuries occurring as a
924 manifestation of an injury compensable under this chapter shall
925 be demonstrated by clear and convincing medical evidence by a
926 licensed psychiatrist meeting criteria established in the most
927 recent edition of the diagnostic and statistical manual of
928 mental disorders published by the American Psychiatric
929 Association. The compensable physical injury must be and remain
930 the major contributing cause of the mental or nervous condition
931 and the compensable physical injury as determined by reasonable
932 medical certainty must be at least 50 percent responsible for
933 the mental or nervous condition as compared to all other
934 contributing causes combined. Compensation is not payable for
935 the mental, psychological, or emotional injury arising out of
936 depression from being out of work or losing employment
937 opportunities, resulting from a preexisting mental,
938 psychological, or emotional condition or due to pain or other
939 subjective complaints that cannot be substantiated by objective,
940 relevant medical findings.

941 (3) Subject to the payment of permanent benefits under s.
942 440.15, in no event shall temporary benefits for a compensable
943 mental or nervous injury be paid for more than 6 months after
944 the date of maximum medical improvement for the injured

286063

Amendment No. (for drafter's use only)

945 employee's physical injury or injuries, which shall be included
946 in the period of 104 weeks as provided in s. 440.15(2) and (4).
947 Mental or nervous injuries are compensable only in accordance
948 with the terms of this section.

949 Section 8. Effective January 1, 2004, subsection (1) of
950 section 440.10, Florida Statutes, is amended to read:

951 440.10 Liability for compensation.--

952 (1)(a) Every employer coming within the provisions of this
953 ~~chapter, including any brought within the chapter by waiver of~~
954 ~~exclusion or of exemption,~~ shall be liable for, and shall
955 secure, the payment to his or her employees, or any physician,
956 surgeon, or pharmacist providing services under the provisions
957 of s. 440.13, of the compensation payable under ss. 440.13,
958 440.15, and 440.16. Any contractor or subcontractor who engages
959 in any public or private construction in the state shall secure
960 and maintain compensation for his or her employees under this
961 chapter as provided in s. 440.38.

962 (b) In case a contractor sublets any part or parts of his
963 or her contract work to a subcontractor or subcontractors, all
964 of the employees of such contractor and subcontractor or
965 subcontractors engaged on such contract work shall be deemed to
966 be employed in one and the same business or establishment, and
967 the contractor shall be liable for, and shall secure, the
968 payment of compensation to all such employees, except to
969 employees of a subcontractor who has secured such payment.

970 (c) A contractor shall ~~may~~ require a subcontractor to
971 provide evidence of workers' compensation insurance ~~or a copy of~~
972 ~~his or her certificate of election.~~ A subcontractor who is a
973 corporation and has an officer who elects ~~electing~~ to be exempt

Amendment No. (for drafter's use only)

974 as permitted under this chapter ~~a sole proprietor, partner, or~~
975 ~~officer of a corporation~~ shall provide a copy of his or her
976 certificate of exemption election to the contractor.

977 (d)1. If a contractor becomes liable for the payment of
978 compensation to the employees of a subcontractor who has failed
979 to secure such payment in violation of s. 440.38, the contractor
980 or other third-party payor shall be entitled to recover from the
981 subcontractor all benefits paid or payable plus interest unless
982 the contractor and subcontractor have agreed in writing that the
983 contractor will provide coverage.

984 2. If a contractor or third-party payor becomes liable for
985 the payment of compensation to the corporate officer ~~employee~~ of
986 a subcontractor who is ~~actively~~ engaged in the construction
987 industry and has elected to be exempt from the provisions of
988 this chapter, but whose election is invalid, the contractor or
989 third-party payor may recover from the claimant, ~~partnership,~~ or
990 corporation all benefits paid or payable plus interest, unless
991 the contractor and the subcontractor have agreed in writing that
992 the contractor will provide coverage.

993 (e) A subcontractor providing services in conjunction with
994 a contractor on the same project or contract work is not liable
995 for the payment of compensation to the employees of another
996 subcontractor or the contractor on such contract work and is ~~not~~
997 protected by the exclusiveness-of-liability provisions of s.
998 440.11 from any action at law or in admiralty on account of
999 injury to an ~~of such~~ employee of another subcontractor, or of
1000 the contractor, provided that:

1001 1. The subcontractor has secured workers' compensation
1002 insurance for its employees or the contractor has secured such

286063

Amendment No. (for drafter's use only)

1003 insurance on behalf of the subcontractor and its employees in
1004 accordance with paragraph (b); and

1005 2. The subcontractor's own gross negligence was not the
1006 major contributing cause of the injury.

1007 (f) If an employer fails to secure compensation as
1008 required by this chapter, the department shall ~~may~~ assess
1009 against the employer a penalty not to exceed \$5,000 for each
1010 employee of that employer who is classified by the employer as
1011 an independent contractor but who is found by the department to
1012 not meet the criteria for an independent contractor that are set
1013 forth in s. 440.02. The division shall adopt rules to administer
1014 the provisions of this paragraph.

1015 (g) Subject to s. 440.38, any employer who has employees
1016 engaged in work in this state shall obtain a Florida policy or
1017 endorsement for such employees which utilizes Florida class
1018 codes, rates, rules, and manuals that are in compliance with and
1019 approved under the provisions of this chapter and the Florida
1020 Insurance Code. Failure to comply with this paragraph is a
1021 felony of the second degree, punishable as provided in s.
1022 775.082, s. 775.083, or s. 775.084. The department shall adopt
1023 rules for construction industry and nonconstruction-industry
1024 employers with regard to the activities that define what
1025 constitutes being "engaged in work" in this state, using the
1026 following standards:

1027 1. For employees of nonconstruction-industry employers who
1028 have their headquarters outside of Florida and also operate in
1029 Florida and who are routinely crossing state lines, but usually
1030 return to their homes each night, the employee shall be assigned
1031 to the headquarters' state. However, the construction industry

286063

Amendment No. (for drafter's use only)

1032 employees performing new construction or alterations in Florida
1033 shall be assigned to Florida even if the employees return to
1034 their home state each night.

1035 2. The payroll of executive supervisors who may visit a
1036 Florida location but who are not in direct charge of a Florida
1037 location shall be assigned to the state in which the
1038 headquarters is located.

1039 3. For construction contractors who maintain a permanent
1040 staff of employees and superintendents, if any of these
1041 employees or superintendents are assigned to a job that is
1042 located in Florida, either for the duration of the job or any
1043 portion thereof, their payroll shall be assigned to Florida
1044 rather than headquarters' state.

1045 4. Employees who are hired for a specific project in
1046 Florida shall be assigned to Florida. ~~For purposes of this~~
1047 ~~section, a person is conclusively presumed to be an independent~~
1048 ~~contractor if:~~

1049 ~~1. The independent contractor provides the general~~
1050 ~~contractor with an affidavit stating that he or she meets all~~
1051 ~~the requirements of s. 440.02; and~~

1052 ~~2. The independent contractor provides the general~~
1053 ~~contractor with a valid certificate of workers' compensation~~
1054 ~~insurance or a valid certificate of exemption issued by the~~
1055 ~~department.~~

1056
1057 ~~A sole proprietor, partner, or officer of a corporation who~~
1058 ~~elects exemption from this chapter by filing a certificate of~~
1059 ~~election under s. 440.05 may not recover benefits or~~
1060 ~~compensation under this chapter. An independent contractor who~~

286063

Amendment No. (for drafter's use only)

1061 ~~provides the general contractor with both an affidavit stating~~
1062 ~~that he or she meets the requirements of s. 440.02 and a~~
1063 ~~certificate of exemption is not an employee under s. 440.02 and~~
1064 ~~may not recover benefits under this chapter. For purposes of~~
1065 ~~determining the appropriate premium for workers' compensation~~
1066 ~~coverage, carriers may not consider any person who meets the~~
1067 ~~requirements of this paragraph to be an employee.~~

1068 Section 9. Section 440.1025, Florida Statutes, is amended
1069 to read:

1070 440.1025 ~~Consideration of public~~ Employer workplace safety
1071 program in rate-setting; program requirements; rulemaking.-

1072 (1) For a public or private employer to be eligible for
1073 receipt of specific identifiable consideration under s. 627.0915
1074 for a workplace safety program in the setting of rates, the
1075 ~~public~~ employer must have a workplace safety program. At a
1076 minimum, the program must include a written safety policy and
1077 safety rules, and make provision for safety inspections,
1078 preventative maintenance, safety training, first-aid, accident
1079 investigation, and necessary recordkeeping. ~~For purposes of this~~
1080 ~~section, "public employer" means any agency within state,~~
1081 ~~county, or municipal government employing individuals for~~
1082 ~~salary, wages, or other remuneration.~~ The division may adopt
1083 ~~promulgate~~ rules for insurers to utilize in determining ~~public~~
1084 employer compliance with the requirements of this section.

1085 (2) The division shall publicize on the Internet, and
1086 shall encourage insurers to publicize, the availability of free
1087 safety consultation services and safety program resources.

1088 Section 10. Section 440.103, Florida Statutes, is amended
1089 to read:

286063

Amendment No. (for drafter's use only)

1090 440.103 Building permits; identification of minimum
1091 premium policy.--~~Except as otherwise provided in this chapter,~~
1092 Every employer shall, as a condition to applying for and
1093 receiving a building permit, show proof and certify to the
1094 permit issuer that it has secured compensation for its employees
1095 under this chapter as provided in ss. 440.10 and 440.38. Such
1096 proof of compensation must be evidenced by a certificate of
1097 coverage issued by the carrier, a valid exemption certificate
1098 approved by the department ~~or the former Division of Workers'~~
1099 ~~Compensation of the Department of Labor and Employment Security,~~
1100 or a copy of the employer's authority to self-insure and shall
1101 be presented each time the employer applies for a building
1102 permit. As provided in s. 627.413(5), each certificate of
1103 coverage must show, on its face, whether or not coverage is
1104 secured under the minimum premium provisions of rules adopted by
1105 rating organizations licensed by the department. The words
1106 "minimum premium policy" or equivalent language shall be typed,
1107 printed, stamped, or legibly handwritten.

1108 Section 11. Section 440.105, Florida Statutes, is amended
1109 to read:

1110 440.105 Prohibited activities; reports; penalties;
1111 limitations.--

1112 (1)(a) Any insurance carrier, any individual self-insured,
1113 any commercial or group self-insurance fund, any professional
1114 practitioner licensed or regulated by the Department of Health
1115 ~~Business and Professional Regulation~~, except as otherwise
1116 provided by law, any medical review committee as defined in s.
1117 766.101, any private medical review committee, and any insurer,
1118 agent, or other person licensed under the insurance code, or any

286063

Amendment No. (for drafter's use only)

1119 employee thereof, having knowledge or who believes that a
1120 fraudulent act or any other act or practice which, upon
1121 conviction, constitutes a felony or misdemeanor under this
1122 chapter is being or has been committed shall send to the
1123 Division of Insurance Fraud, Bureau of Workers' Compensation
1124 Fraud, a report or information pertinent to such knowledge or
1125 belief and such additional information relative thereto as the
1126 bureau may require. The bureau shall review such information or
1127 reports and select such information or reports as, in its
1128 judgment, may require further investigation. It shall then cause
1129 an independent examination of the facts surrounding such
1130 information or report to be made to determine the extent, if
1131 any, to which a fraudulent act or any other act or practice
1132 which, upon conviction, constitutes a felony or a misdemeanor
1133 under this chapter is being committed. The bureau shall report
1134 any alleged violations of law which its investigations disclose
1135 to the appropriate licensing agency and state attorney or other
1136 prosecuting agency having jurisdiction with respect to any such
1137 violations of this chapter. If prosecution by the state attorney
1138 or other prosecuting agency having jurisdiction with respect to
1139 such violation is not begun within 60 days of the bureau's
1140 report, the state attorney or other prosecuting agency having
1141 jurisdiction with respect to such violation shall inform the
1142 bureau of the reasons for the lack of prosecution.

1143 (b) In the absence of fraud or bad faith, a person is not
1144 subject to civil liability for libel, slander, or any other
1145 relevant tort by virtue of filing reports, without malice, or
1146 furnishing other information, without malice, required by this

Amendment No. (for drafter's use only)

1147 section or required by the bureau, and no civil cause of action
1148 of any nature shall arise against such person:

1149 1. For any information relating to suspected fraudulent
1150 acts furnished to or received from law enforcement officials,
1151 their agents, or employees;

1152 2. For any information relating to suspected fraudulent
1153 acts furnished to or received from other persons subject to the
1154 provisions of this chapter; or

1155 3. For any such information relating to suspected
1156 fraudulent acts furnished in reports to the bureau, or the
1157 National Association of Insurance Commissioners.

1158 (2) Whoever violates any provision of this subsection
1159 commits a misdemeanor of the first ~~second~~ degree, punishable as
1160 provided in s. 775.082 or s. 775.083.

1161 (a) It shall be unlawful for any employer to knowingly:

1162 1. Coerce or attempt to coerce, as a precondition to
1163 employment or otherwise, an employee to obtain a certificate of
1164 election of exemption pursuant to s. 440.05.

1165 2. Discharge or refuse to hire an employee or job
1166 applicant because the employee or applicant has filed a claim
1167 for benefits under this chapter.

1168 3. Discharge, discipline, or take any other adverse
1169 personnel action against any employee for disclosing information
1170 to the department or any law enforcement agency relating to any
1171 violation or suspected violation of any of the provisions of
1172 this chapter or rules promulgated hereunder.

1173 4. Violate a stop-work order issued by the department
1174 pursuant to s. 440.107.

Amendment No. (for drafter's use only)

1175 (b) It shall be unlawful for any insurance entity to
1176 revoke or cancel a workers' compensation insurance policy or
1177 membership because an employer has returned an employee to work
1178 or hired an employee who has filed a workers' compensation
1179 claim.

1180 (3) Whoever violates any provision of this subsection
1181 commits a misdemeanor of the first degree, punishable as
1182 provided in s. 775.082 or s. 775.083.

1183 (a) It shall be unlawful for any employer to knowingly
1184 fail to update applications for coverage as required by s.
1185 440.381(1) and department of Insurance rules within 7 days after
1186 the reporting date for any change in the required information,
1187 or to post notice of coverage pursuant to s. 440.40.

1188 (b) It shall be unlawful for any employer to knowingly
1189 participate in the creation of the employment relationship in
1190 which the employee has used any false, fraudulent, or misleading
1191 oral or written statement as evidence of identity.

1192 ~~(c)(b)~~ It is unlawful for any attorney or other person, in
1193 his or her individual capacity or in his or her capacity as a
1194 public or private employee, or for any firm, corporation,
1195 partnership, or association to receive any fee or other
1196 consideration or any gratuity from a person on account of
1197 services rendered for a person in connection with any
1198 proceedings arising under this chapter, unless such fee,
1199 consideration, or gratuity is approved by a judge of
1200 compensation claims or by the Deputy Chief Judge of Compensation
1201 Claims.

Amendment No. (for drafter's use only)

1202 (4) Whoever violates any provision of this subsection
1203 commits insurance fraud, punishable as provided in paragraph
1204 (f).

1205 (a) It shall be unlawful for any employer to knowingly:

1206 1. Present or cause to be presented any false, fraudulent,
1207 or misleading oral or written statement to any person as
1208 evidence of compliance with s. 440.38.

1209 2. Make a deduction from the pay of any employee entitled
1210 to the benefits of this chapter for the purpose of requiring the
1211 employee to pay any portion of premium paid by the employer to a
1212 carrier or to contribute to a benefit fund or department
1213 maintained by such employer for the purpose of providing
1214 compensation or medical services and supplies as required by
1215 this chapter.

1216 3. Fail to secure payment of compensation if required to
1217 do so by this chapter.

1218 (b) It shall be unlawful for any person:

1219 1. To knowingly make, or cause to be made, any false,
1220 fraudulent, or misleading oral or written statement for the
1221 purpose of obtaining or denying any benefit or payment under
1222 this chapter.

1223 2. To present or cause to be presented any written or oral
1224 statement as part of, or in support of, a claim for payment or
1225 other benefit pursuant to any provision of this chapter, knowing
1226 that such statement contains any false, incomplete, or
1227 misleading information concerning any fact or thing material to
1228 such claim.

1229 3. To prepare or cause to be prepared any written or oral
1230 statement that is intended to be presented to any employer,

286063

Amendment No. (for drafter's use only)

1231 insurance company, or self-insured program in connection with,
1232 or in support of, any claim for payment or other benefit
1233 pursuant to any provision of this chapter, knowing that such
1234 statement contains any false, incomplete, or misleading
1235 information concerning any fact or thing material to such claim.

1236 4. To knowingly assist, conspire with, or urge any person
1237 to engage in activity prohibited by this section.

1238 5. To knowingly make any false, fraudulent, or misleading
1239 oral or written statement, or to knowingly omit or conceal
1240 material information, required by s. 440.185 or s. 440.381, for
1241 the purpose of obtaining workers' compensation coverage or for
1242 the purpose of avoiding, delaying, or diminishing the amount of
1243 payment of any workers' compensation premiums.

1244 6. To knowingly misrepresent or conceal payroll,
1245 classification of workers, or information regarding an
1246 employer's loss history which would be material to the
1247 computation and application of an experience rating modification
1248 factor for the purpose of avoiding or diminishing the amount of
1249 payment of any workers' compensation premiums.

1250 7. To knowingly present or cause to be presented any
1251 false, fraudulent, or misleading oral or written statement to
1252 any person as evidence of compliance with s. 440.38, as evidence
1253 of eligibility for a certificate of exemption under s. 440.05.

1254 8. To knowingly violate a stop-work order issued by the
1255 department pursuant to s. 440.107.

1256 9. To knowingly present or cause to be presented any
1257 false, fraudulent, or misleading oral or written statement to
1258 any person as evidence of identity for the purpose of obtaining

Amendment No. (for drafter's use only)

1259 employment or filing or supporting a claim for workers'
1260 compensation benefits.

1261 (c) It shall be unlawful for any physician licensed under
1262 chapter 458, osteopathic physician licensed under chapter 459,
1263 chiropractic physician licensed under chapter 460, podiatric
1264 physician licensed under chapter 461, optometric physician
1265 licensed under chapter 463, or any other practitioner licensed
1266 under the laws of this state to knowingly and willfully assist,
1267 conspire with, or urge any person to fraudulently violate any of
1268 the provisions of this chapter.

1269 (d) It shall be unlawful for any person or governmental
1270 entity licensed under chapter 395 to maintain or operate a
1271 hospital in such a manner so that such person or governmental
1272 entity knowingly and willfully allows the use of the facilities
1273 of such hospital by any person, in a scheme or conspiracy to
1274 fraudulently violate any of the provisions of this chapter.

1275 (e) It shall be unlawful for any attorney or other person,
1276 in his or her individual capacity or in his or her capacity as a
1277 public or private employee, or any firm, corporation,
1278 partnership, or association, to knowingly assist, conspire with,
1279 or urge any person to fraudulently violate any of the provisions
1280 of this chapter.

1281 (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~
1282 ~~compensation insurance premium involved in any~~ violation of this
1283 subsection:

1284 1. Is less than \$20,000, the offender commits a felony of
1285 the third degree, punishable as provided in s. 775.082, s.
1286 775.083, or s. 775.084.

Amendment No. (for drafter's use only)

1287 2. Is \$20,000 or more, but less than \$100,000, the
1288 offender commits a felony of the second degree, punishable as
1289 provided in s. 775.082, . 775.083, or s. 775.084.

1290 3. Is \$100,000 or more, the offender commits a felony of
1291 the first degree, punishable as provided in s. 775.082, s.
1292 775.083, or s. 775.084.

1293 (5) It shall be unlawful for any attorney or other person,
1294 in his or her individual capacity or in his or her capacity as a
1295 public or private employee or for any firm, corporation,
1296 partnership, or association, to unlawfully solicit any business
1297 in and about city or county hospitals, courts, or any public
1298 institution or public place; in and about private hospitals or
1299 sanitariums; in and about any private institution; or upon
1300 private property of any character whatsoever for the purpose of
1301 making workers' compensation claims. Whoever violates any
1302 provision of this subsection commits a felony of the second
1303 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
1304 or s. 775.085.

1305 (6) This section shall not be construed to preclude the
1306 applicability of any other provision of criminal law that
1307 applies or may apply to any transaction.

1308 ~~(7) For the purpose of the section, the term "statement"~~
1309 ~~includes, but is not limited to, any notice, representation,~~
1310 ~~statement, proof of injury, bill for services, diagnosis,~~
1311 ~~prescription, hospital or doctor records, X ray, test result, or~~
1312 ~~other evidence of loss, injury, or expense.~~

1313 (7)(8) An injured employee or any other party making a
1314 claim under this chapter shall provide his or her personal
1315 signature attesting that he or she has reviewed, understands,

286063

Amendment No. (for drafter's use only)

1316 ~~and acknowledges All claim forms as provided for in this chapter~~
1317 ~~shall contain a notice that clearly states in substance the~~
1318 ~~following statement:~~ "Any person who, knowingly and with intent
1319 to injure, defraud, or deceive any employer or employee,
1320 insurance company, or self-insured program, files a statement of
1321 claim containing any false or misleading information commits
1322 insurance fraud, punishable as provided in s. 817.234." If the
1323 injured employee or other party refuses to sign the document
1324 attesting ~~Each claimant shall personally sign the claim form and~~
1325 ~~attest~~ that he or she has reviewed, understands, and
1326 acknowledges the statement, benefits or payments under this
1327 chapter shall be suspended until such signature is obtained
1328 ~~foregoing notice.~~

1329 Section 12. Subsection (3) of section 440.1051, Florida
1330 Statutes, is amended to read:

1331 440.1051 Fraud reports; civil immunity; criminal
1332 penalties.--

1333 (2) Any person who reports workers' compensation fraud to
1334 the division under subsection (1) is immune from civil liability
1335 for doing so, and the person or entity alleged to have committed
1336 the fraud may not retaliate against him or her for providing
1337 such report, unless the person making the report knows it to be
1338 false.

1339 (3) A person who calls and, knowingly and falsely, reports
1340 workers' compensation fraud or who, in violation of subsection
1341 (2) retaliates against a person for making such report, commits
1342 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,
1343 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
1344 775.084 both.

286063

Amendment No. (for drafter's use only)

1345 Section 13. Section 440.107, Florida Statutes, is amended
1346 to read:

1347 440.107 Department powers to enforce employer compliance
1348 with coverage requirements.--

1349 (1) The Legislature finds that the failure of an employer
1350 to comply with the workers' compensation coverage requirements
1351 under this chapter poses an immediate danger to public health,
1352 safety, and welfare. ~~The Legislature authorizes the department
1353 to secure employer compliance with the workers' compensation
1354 coverage requirements and authorizes the department to conduct
1355 investigations for the purpose of ensuring employer compliance.~~

1356 (2) For the purposes of this section, "securing the
1357 payment of workers' compensation" means obtaining coverage that
1358 meets the requirements of this chapter and the Florida Insurance
1359 Code. However, if at any time an employer materially understates
1360 or conceals payroll, materially misrepresents or conceals
1361 employee duties so as to avoid proper classification for premium
1362 calculations, or materially misrepresents or conceals
1363 information pertinent to the computation and application of an
1364 experience rating modification factor, such employer shall be
1365 deemed to have failed to secure payment of workers' compensation
1366 and shall be subject to the sanctions set forth in this section.
1367 A stop-work order issued because an employer is deemed to have
1368 failed to secure the payment of workers' compensation required
1369 under this chapter because the employer has materially
1370 understated or concealed payroll, materially misrepresented or
1371 concealed employee duties so as to avoid proper classification
1372 for premium calculations, or materially misrepresented or
1373 concealed information pertinent to the computation and

286063

Amendment No. (for drafter's use only)

1374 application of an experience rating modification factor shall
1375 have no effect upon an employer's or carrier's duty to provide
1376 benefits under this chapter or upon any of the employer's or
1377 carrier's rights and defenses under this chapter, including
1378 exclusive remedy. ~~The department and its authorized~~
1379 ~~representatives may enter and inspect any place of business at~~
1380 ~~any reasonable time for the limited purpose of investigating~~
1381 ~~compliance with workers' compensation coverage requirements~~
1382 ~~under this chapter. Each employer shall keep true and accurate~~
1383 ~~business records that contain such information as the department~~
1384 ~~prescribes by rule. The business records must contain~~
1385 ~~information necessary for the department to determine compliance~~
1386 ~~with workers' compensation coverage requirements and must be~~
1387 ~~maintained within this state by the business, in such a manner~~
1388 ~~as to be accessible within a reasonable time upon request by the~~
1389 ~~department. The business records must be open to inspection and~~
1390 ~~be available for copying by the department at any reasonable~~
1391 ~~time and place and as often as necessary. The department may~~
1392 ~~require from any employer any sworn or unsworn reports,~~
1393 ~~pertaining to persons employed by that employer, deemed~~
1394 ~~necessary for the effective administration of the workers'~~
1395 ~~compensation coverage requirements.~~

1396 (3) The department shall enforce workers' compensation
1397 coverage requirements, including the requirement that the
1398 employer secure the payment of workers' compensation, and the
1399 requirement that the employer provide the carrier with
1400 information to accurately determine payroll and correctly assign
1401 classification codes. In addition to any other powers under this
1402 chapter, the department shall have the power to:

286063

Amendment No. (for drafter's use only)

- 1403 (a) Conduct investigations for the purpose of ensuring
1404 employer compliance.
- 1405 (b) Enter and inspect any place of business at any
1406 reasonable time for the purpose of investigating employer
1407 compliance.
- 1408 (c) Examine and copy business records.
- 1409 (d) Administer oaths and affirmations.
- 1410 (e) Certify to official acts.
- 1411 (f) Issue and serve subpoenas for attendance of witnesses
1412 or production of business records, books, papers,
1413 correspondence, memoranda, and other records.
- 1414 (g) Issue stop-work orders, penalty assessment orders, and
1415 any other orders necessary for the administration of this
1416 section.
- 1417 (h) Enforce the terms of a stop-work order.
- 1418 (i) Levy and pursue actions to recover penalties.
- 1419 (j) Seek injunctions and other appropriate relief. In
1420 ~~discharging its duties, the department may administer oaths and~~
1421 ~~affirmations, certify to official acts, issue subpoenas to~~
1422 ~~compel the attendance of witnesses and the production of books,~~
1423 ~~papers, correspondence, memoranda, and other records deemed~~
1424 ~~necessary by the department as evidence in order to ensure~~
1425 ~~proper compliance with the coverage provisions of this chapter.~~
- 1426 (4) The department shall designate representatives who may
1427 serve subpoenas and other process of the department issued under
1428 this section.
- 1429 (5) The department shall specify by rule the business
1430 records that employers must maintain and produce to comply with
1431 this section.

286063

Amendment No. (for drafter's use only)

1432 ~~(6)(4)~~ If a person has refused to obey a subpoena to
1433 appear before the department or its authorized representative or
1434 ~~and~~ produce evidence requested by the department or to give
1435 testimony about the matter that is under investigation, a court
1436 has jurisdiction to issue an order requiring compliance with the
1437 subpoena if the court has jurisdiction in the geographical area
1438 where the inquiry is being carried on or in the area where the
1439 person who has refused the subpoena is found, resides, or
1440 transacts business. Failure to obey such a court order may be
1441 punished by the court as contempt, either civilly or criminally.
1442 Costs, including reasonable attorney's fees, incurred by the
1443 department to obtain an order granting, in whole or in part, a
1444 petition to enforce a subpoena or a subpoena duces tecum shall
1445 be taxed against the subpoenaed party.

1446 ~~(7)(a)(5)~~ Whenever the department determines that an
1447 employer who is required to secure the payment to his or her
1448 employees of the compensation provided for by this chapter has
1449 failed to secure the payment of workers' compensation required
1450 by this chapter or to produce the required business records
1451 under subsection (5) within 5 business days after receipt of the
1452 written request of the department ~~do so~~, such failure shall be
1453 deemed an immediate serious danger to public health, safety, or
1454 welfare sufficient to justify service by the department of a
1455 stop-work order on the employer, requiring the cessation of all
1456 business operations ~~at the place of employment or job site~~. If
1457 the department ~~division~~ makes such a determination, the
1458 department ~~division~~ shall issue a stop-work order within 72
1459 hours. The order shall take effect when served upon the ~~date of~~
1460 ~~service upon the~~ employer or, for a particular employer work

286063

Amendment No. (for drafter's use only)

1461 ~~site, when served at that work site, unless the employer~~
1462 ~~provides evidence satisfactory to the department of having~~
1463 ~~secured any necessary insurance or self-insurance and pays a~~
1464 ~~civil penalty to the department, to be deposited by the~~
1465 ~~department into the Workers' Compensation Administration Trust~~
1466 ~~Fund, in the amount of \$100 per day for each day the employer~~
1467 ~~was not in compliance with this chapter. In addition to serving~~
1468 ~~a stop-work order at a particular work site which shall be~~
1469 ~~effective immediately, the department shall immediately proceed~~
1470 ~~with service upon the employer which shall be effective upon all~~
1471 ~~employer work sites in the state for which the employer is not~~
1472 ~~in compliance. A stop-work order may be served with regard to an~~
1473 ~~employer's work site by posting a copy of the stop-work order in~~
1474 ~~a conspicuous location at the work site. The order shall remain~~
1475 ~~in effect until the department issues an order releasing the~~
1476 ~~stop-work order upon a finding that the employer has come into~~
1477 ~~compliance with the coverage requirements of this chapter and~~
1478 ~~has paid any penalty assessed under this section. The department~~
1479 ~~may require an employer who is found to have failed to comply~~
1480 ~~with the coverage requirements of s. 440.38 to file with the~~
1481 ~~department, as a condition of release from a stop-work order,~~
1482 ~~periodic reports for a probationary period that shall not exceed~~
1483 ~~2 years that demonstrate the employer's continued compliance~~
1484 ~~with this chapter. The department shall by rule specify the~~
1485 ~~reports required and the time for filing under this subsection.~~
1486 (b) Stop-work orders and penalty assessment orders issued
1487 under this section against a corporation, partnership, or sole
1488 proprietorship shall be in effect against any successor
1489 corporation or business entity that has one or more of the same

286063

Amendment No. (for drafter's use only)

1490 principals or officers as the corporation or partnership against
1491 which the stop-work order was issued and are engaged in the same
1492 or equivalent trade or activity.

1493 (c) The department shall assess a penalty of \$1,000 per
1494 day against an employer for each day that the employer conducts
1495 business operations that are in violation of a stop-work order.

1496 (d)1. In addition to any penalty, stop-work order, or
1497 injunction, the department shall assess against any employer who
1498 has failed to secure the payment of compensation as required by
1499 this chapter a penalty equal to 1.5 times the amount the
1500 employer would have paid in premium when applying approved
1501 manual rates to the employer's payroll during periods for which
1502 it failed to secure the payment of workers' compensation
1503 required by this chapter within the preceding 3-year period or
1504 \$1,000, whichever is greater.

1505 2. Any subsequent violation within 5 years after the most
1506 recent violation shall, in addition to the penalties set forth
1507 in this subsection, be deemed a knowing act within the meaning
1508 of s. 440.105.

1509 (e) When an employer fails to provide business records
1510 sufficient to enable the department to determine the employer's
1511 payroll for the period requested for the calculation of the
1512 penalty provided in paragraph (d), for penalty calculation
1513 purposes, the imputed weekly payroll for each employee,
1514 corporate officer, sole proprietor, or partner shall be the
1515 statewide average weekly wage as defined in s. 440.12(2)
1516 multiplied by 1.5.

1517 (f) In addition to any other penalties provided for in
1518 this chapter, the department may assess against the employer a

Amendment No. (for drafter's use only)

1519 penalty of \$5,000 for each employee of that employer who the
1520 employer represents to the department or carrier as an
1521 independent contractor but who is determined by the department
1522 not to be an independent contractor as defined in s. 440.02.

1523 ~~(8)(6)~~ In addition to the issuance of a stop-work order
1524 under subsection (7), the department may file a complaint in the
1525 circuit court in and for Leon County to enjoin any employer, who
1526 has failed to secure the payment of workers' compensation as
1527 required by this chapter, from employing individuals and from
1528 conducting business until the employer presents evidence
1529 satisfactory to the department of having secured the payment of
1530 workers' for compensation required by this chapter and pays a
1531 civil penalty assessed by to the department under this section,
1532 to be deposited by the department into the Workers' Compensation
1533 Administration Trust Fund, in the amount of \$100 per day for
1534 each day the employer was not in compliance with this chapter.

1535 ~~(9)(7)~~ In addition to any penalty, stop-work order, or
1536 injunction, the department shall assess against any employer,
1537 who has failed to secure the payment of compensation as required
1538 by this chapter, a penalty in the following amount:

1539 ~~(a)~~ An amount equal to at least the amount that the
1540 employer would have paid or up to twice the amount the employer
1541 would have paid during periods it illegally failed to secure
1542 payment of compensation in the preceding 3-year period based on
1543 the employer's payroll during the preceding 3-year period; or

1544 ~~(b)~~ One thousand dollars, whichever is greater. Any
1545 penalty assessed under this subsection is due within 30 days
1546 after the date on which the employer is notified, except that,
1547 if the department has posted a stop-work order or obtained

286063

Amendment No. (for drafter's use only)

1548 ~~injunctive relief against the employer, payment is due, in~~
1549 ~~addition to those conditions set forth in this section, as a~~
1550 ~~condition to relief from a stop-work order or an injunction.~~
1551 ~~Interest shall accrue on amounts not paid when due at the rate~~
1552 ~~of 1 percent per month. The department ~~division~~ shall adopt~~
1553 rules to administer this section.

1554 ~~(10)~~(8) The department may bring an action in circuit
1555 court to recover penalties assessed under this section,
1556 including any interest owed to the department pursuant to this
1557 section. In any action brought by the department pursuant to
1558 this section in which it prevails, the circuit court shall award
1559 costs, including the reasonable costs of investigation and a
1560 reasonable attorney's fee.

1561 ~~(11)~~(9) Any judgment obtained by the department and any
1562 penalty due pursuant to the service of a stop-work order or
1563 otherwise due under this section shall, until collected,
1564 constitute a lien upon the entire interest of the employer,
1565 legal or equitable, in any property, real or personal, tangible
1566 or intangible; however, such lien is subordinate to claims for
1567 unpaid wages and any prior recorded liens, and a lien created by
1568 this section is not valid against any person who, subsequent to
1569 such lien and in good faith and for value, purchases real or
1570 personal property from such employer or becomes the mortgagee on
1571 real or personal property of such employer, or against a
1572 subsequent attaching creditor, unless, with respect to real
1573 estate of the employer, a notice of the lien is recorded in the
1574 public records of the county where the real estate is located,
1575 and with respect to personal property of the employer, the
1576 notice is recorded with the Secretary of State.

286063

Amendment No. (for drafter's use only)

1577 ~~(12)~~(10) Any law enforcement agency in the state may, at
1578 the request of the department, render any assistance necessary
1579 to carry out the provisions of this section, including, but not
1580 limited to, preventing any employee or other person from
1581 remaining at a place of employment or job site after a stop-work
1582 order or injunction has taken effect.

1583 ~~(13)~~(11) Agency action ~~Actions~~ by the department under
1584 this section, if contested, must be contested as provided in
1585 chapter 120. All ~~civil~~ penalties assessed by the department must
1586 be paid into the Workers' Compensation Administration Trust
1587 Fund. ~~The department shall return any sums previously paid, upon~~
1588 ~~conclusion of an action, if the department fails to prevail and~~
1589 ~~if so directed by an order of court or an administrative hearing~~
1590 ~~officer. The requirements of this subsection may be met by~~
1591 ~~posting a bond in an amount equal to twice the penalty and in a~~
1592 ~~form approved by the department.~~

1593 ~~(14)~~(12) If the department ~~division~~ finds that an employer
1594 who is certified or registered under part I or part II of
1595 chapter 489 and who is required to secure the payment of
1596 workers' the compensation under ~~provided for by~~ this chapter to
1597 his or her employees has failed to do so, the department
1598 ~~division~~ shall immediately notify the Department of Business and
1599 Professional Regulation.

1600 Section 14. Subsections (1) and (3) of section 440.11,
1601 Florida Statutes, are amended to read:

1602 440.11 Exclusiveness of liability.--

1603 (1) The liability of an employer prescribed in s. 440.10
1604 shall be exclusive and in place of all other liability,
1605 including vicarious liability, of such employer to any third-

Amendment No. (for drafter's use only)

1606 party tortfeasor and to the employee, the legal representative
1607 thereof, husband or wife, parents, dependents, next of kin, and
1608 anyone otherwise entitled to recover damages from such employer
1609 at law or in admiralty on account of such injury or death,
1610 except as follows: that

1611 (a) If an employer fails to secure payment of compensation
1612 as required by this chapter, an injured employee, or the legal
1613 representative thereof in case death results from the injury,
1614 may elect to claim compensation under this chapter or to
1615 maintain an action at law or in admiralty for damages on account
1616 of such injury or death. In such action the defendant may not
1617 plead as a defense that the injury was caused by negligence of a
1618 fellow employee, that the employee assumed the risk of the
1619 employment, or that the injury was due to the comparative
1620 negligence of the employee.

1621 (b) When an employer commits an intentional tort that
1622 causes the injury or death of the employee. For purposes of this
1623 paragraph, an employer's actions shall be deemed to constitute
1624 an intentional tort and not an accident only when the employee
1625 proves, by clear and convincing evidence, that:

1626 1. The employer deliberately intended to injure the
1627 employee; or

1628 2. The employer engaged in conduct that the employer knew,
1629 based on prior similar accidents or on explicit warnings
1630 specifically identifying a known danger, was virtually certain
1631 to result in injury or death to the employee, and the employee
1632 was not aware of the risk because the danger was not apparent
1633 and the employer deliberately concealed or misrepresented the

Amendment No. (for drafter's use only)

1634 danger so as to prevent the employee from exercising informed
1635 judgment about whether to perform the work.

1636

1637 The same immunities from liability enjoyed by an employer shall
1638 extend as well to each employee of the employer when such
1639 employee is acting in furtherance of the employer's business and
1640 the injured employee is entitled to receive benefits under this
1641 chapter. Such fellow-employee immunities shall not be applicable
1642 to an employee who acts, with respect to a fellow employee, with
1643 willful and wanton disregard or unprovoked physical aggression
1644 or with gross negligence when such acts result in injury or
1645 death or such acts proximately cause such injury or death, nor
1646 shall such immunities be applicable to employees of the same
1647 employer when each is operating in the furtherance of the
1648 employer's business but they are assigned primarily to unrelated
1649 works within private or public employment. The same immunity
1650 provisions enjoyed by an employer shall also apply to any sole
1651 proprietor, partner, corporate officer or director, supervisor,
1652 or other person who in the course and scope of his or her duties
1653 acts in a managerial or policymaking capacity and the conduct
1654 which caused the alleged injury arose within the course and
1655 scope of said managerial or policymaking duties and was not a
1656 violation of a law, whether or not a violation was charged, for
1657 which the maximum penalty which may be imposed does not exceed
1658 60 days' imprisonment as set forth in s. 775.082. The immunity
1659 from liability provided in this subsection extends to county
1660 governments with respect to employees of county constitutional
1661 officers whose offices are funded by the board of county
1662 commissioners.

286063

Amendment No. (for drafter's use only)

1663 (3) An employer's workers' compensation carrier, service
1664 agent, or safety consultant shall not be liable as a third-party
1665 tortfeasor to employees of the employer or employees of its
1666 subcontractors for assisting the employer and its
1667 subcontractors, if any, in carrying out the employer's rights
1668 and responsibilities under this chapter by furnishing any safety
1669 inspection, safety consultative service, or other safety service
1670 incidental to the workers' compensation or employers' liability
1671 coverage or to the workers' compensation or employer's liability
1672 servicing contract. Without limitation, a safety consultant may
1673 include an owner, as defined in chapter 713, or an owner's
1674 related, affiliated, or subsidiary companies and the employees
1675 of each. The exclusion from liability under this subsection
1676 shall not apply in any case in which injury or death is
1677 proximately caused by the willful and unprovoked physical
1678 aggression, or by the negligent operation of a motor vehicle, by
1679 employees, officers, or directors of the employer's workers'
1680 compensation carrier, service agent, or safety consultant.

1681 Section 15. Section 440.13, Florida Statutes, is amended
1682 to read:

1683 440.13 Medical services and supplies; penalty for
1684 violations; limitations.--

1685 (1) DEFINITIONS.--As used in this section, the term:

1686 (a) "Alternate medical care" means a change in treatment
1687 or health care provider.

1688 (b) "Attendant care" means care rendered by trained
1689 professional attendants which is beyond the scope of household
1690 duties. Family members may provide nonprofessional attendant
1691 care, but may not be compensated under this chapter for care

286063

Amendment No. (for drafter's use only)

1692 that falls within the scope of household duties and other
1693 services normally and gratuitously provided by family members.
1694 "Family member" means a spouse, father, mother, brother, sister,
1695 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1696 (c) "Carrier" means, for purposes of this section,
1697 insurance carrier, self-insurance fund or individually self-
1698 insured employer, or assessable mutual insurer.

1699 ~~(d) "Catastrophic injury" means an injury as defined in s.~~
1700 ~~440.02.~~

1701 (d)(e) "Certified health care provider" means a health
1702 care provider who has been certified by the agency or who has
1703 entered an agreement with a licensed managed care organization
1704 to provide treatment to injured workers under this section.
1705 Certification of such health care provider must include
1706 documentation that the health care provider has read and is
1707 familiar with the portions of the statute, impairment guides,
1708 practice parameters, protocols of treatment, and rules which
1709 govern the provision of remedial treatment, care, and
1710 attendance.

1711 (e)(f) "Compensable" means a determination by a carrier or
1712 judge of compensation claims that a condition suffered by an
1713 employee results from an injury arising out of and in the course
1714 of employment.

1715 (f)(g) "Emergency services and care" means emergency
1716 services and care as defined in s. 395.002.

1717 (g)(h) "Health care facility" means any hospital licensed
1718 under chapter 395 and any health care institution licensed under
1719 chapter 400.

Amendment No. (for drafter's use only)

1720 ~~(h)(i)~~ "Health care provider" means a physician or any
1721 recognized practitioner who provides skilled services pursuant
1722 to a prescription or under the supervision or direction of a
1723 physician and who has been certified by the agency as a health
1724 care provider. The term "health care provider" includes a health
1725 care facility.

1726 ~~(i)(j)~~ "Independent medical examiner" means a physician
1727 selected by either an employee or a carrier to render one or
1728 more independent medical examinations in connection with a
1729 dispute arising under this chapter.

1730 ~~(j)(k)~~ "Independent medical examination" means an
1731 objective evaluation of the injured employee's medical
1732 condition, including, but not limited to, impairment or work
1733 status, performed by a physician or an expert medical advisor at
1734 the request of a party, a judge of compensation claims, or the
1735 agency to assist in the resolution of a dispute arising under
1736 this chapter.

1737 ~~(k)(l)~~ "Instance of overutilization" means a specific
1738 inappropriate service or level of service provided to an injured
1739 employee that includes the provision of treatment in excess of
1740 established practice parameters and protocols of treatment
1741 established in accordance with this chapter.

1742 ~~(l)(m)~~ "Medically necessary" or "medical necessity" means
1743 any medical service or medical supply which is used to identify
1744 or treat an illness or injury, is appropriate to the patient's
1745 diagnosis and status of recovery, and is consistent with the
1746 location of service, the level of care provided, and applicable
1747 practice parameters. The service should be widely accepted among
1748 practicing health care providers, based on scientific criteria,

286063

Amendment No. (for drafter's use only)

1749 and determined to be reasonably safe. The service must not be of
1750 an experimental, investigative, or research nature, ~~except in~~
1751 ~~those instances in which prior approval of the Agency for Health~~
1752 ~~Care Administration has been obtained. The Agency for Health~~
1753 ~~Care Administration shall adopt rules providing for such~~
1754 ~~approval on a case-by-case basis when the service or supply is~~
1755 ~~shown to have significant benefits to the recovery and well-~~
1756 ~~being of the patient.~~

1757 (m)~~(n)~~ "Medicine" means a drug prescribed by an authorized
1758 health care provider and includes only generic drugs or single-
1759 source patented drugs for which there is no generic equivalent,
1760 unless the authorized health care provider writes or states that
1761 the brand-name drug as defined in s. 465.025 is medically
1762 necessary, or is a drug appearing on the schedule of drugs
1763 created pursuant to s. 465.025(6), or is available at a cost
1764 lower than its generic equivalent.

1765 (n)~~(o)~~ "Palliative care" means noncurative medical
1766 services that mitigate the conditions, effects, or pain of an
1767 injury.

1768 (o)~~(p)~~ "Pattern or practice of overutilization" means
1769 repetition of instances of overutilization within a specific
1770 medical case or multiple cases by a single health care provider.

1771 (p)~~(q)~~ "Peer review" means an evaluation by two or more
1772 physicians licensed under the same authority and with the same
1773 or similar specialty as the physician under review, of the
1774 appropriateness, quality, and cost of health care and health
1775 services provided to a patient, based on medically accepted
1776 standards.

Amendment No. (for drafter's use only)

1777 ~~(q)(r)~~ "Physician" or "doctor" means a physician licensed
1778 under chapter 458, an osteopathic physician licensed under
1779 chapter 459, a chiropractic physician licensed under chapter
1780 460, a podiatric physician licensed under chapter 461, an
1781 optometrist licensed under chapter 463, or a dentist licensed
1782 under chapter 466, each of whom must be certified by the agency
1783 as a health care provider.

1784 ~~(r)(s)~~ "Reimbursement dispute" means any disagreement
1785 between a health care provider or health care facility and
1786 carrier concerning payment for medical treatment.

1787 ~~(s)(t)~~ "Utilization control" means a systematic process of
1788 implementing measures that assure overall management and cost
1789 containment of services delivered, including compliance with
1790 practice parameters and protocols of treatment as provided for
1791 in this chapter.

1792 ~~(t)(u)~~ "Utilization review" means the evaluation of the
1793 appropriateness of both the level and the quality of health care
1794 and health services provided to a patient, including, but not
1795 limited to, evaluation of the appropriateness of treatment,
1796 hospitalization, or office visits based on medically accepted
1797 standards. Such evaluation must be accomplished by means of a
1798 system that identifies the utilization of medical services based
1799 on practice parameters and protocols of treatment as provided
1800 for in this chapter ~~medically accepted standards as established~~
1801 ~~by medical consultants with qualifications similar to those~~
1802 ~~providing the care under review, and that refers patterns and~~
1803 ~~practices of overutilization to the agency.~~

1804 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

Amendment No. (for drafter's use only)

1805 (a) Subject to the limitations specified elsewhere in this
1806 chapter, the employer shall furnish to the employee such
1807 medically necessary remedial treatment, care, and attendance for
1808 such period as the nature of the injury or the process of
1809 recovery may require, which is in accordance with established
1810 practice parameters and protocols of treatment as provided for
1811 in this chapter, including medicines, medical supplies, durable
1812 medical equipment, orthoses, prostheses, and other medically
1813 necessary apparatus. Remedial treatment, care, and attendance,
1814 including work-hardening programs or pain-management programs
1815 accredited by the Commission on Accreditation of Rehabilitation
1816 Facilities or Joint Commission on the Accreditation of Health
1817 Organizations or pain-management programs affiliated with
1818 medical schools, shall be considered as covered treatment only
1819 when such care is given based on a referral by a physician as
1820 defined in this chapter. ~~Each facility shall maintain outcome~~
1821 ~~data, including work status at discharges, total program~~
1822 ~~charges, total number of visits, and length of stay. The~~
1823 ~~department shall utilize such data and report to the President~~
1824 ~~of the Senate and the Speaker of the House of Representatives~~
1825 ~~regarding the efficacy and cost-effectiveness of such program,~~
1826 ~~no later than October 1, 1994.~~ Medically necessary treatment,
1827 care, and attendance does not include chiropractic services in
1828 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the
1829 date of the initial chiropractic treatment, whichever comes
1830 first, unless the carrier authorizes additional treatment or the
1831 employee is catastrophically injured.

1832 (b) The employer shall provide appropriate professional or
1833 nonprofessional attendant care performed only at the direction

286063

Amendment No. (for drafter's use only)

1834 and control of a physician when such care is medically
1835 necessary. The physician shall prescribe such care in writing.
1836 The employer or carrier shall not be responsible for such care
1837 until the prescription for attendant care is received by the
1838 employer and carrier, which shall specify the time periods for
1839 such care, the level of care required, and the type of
1840 assistance required. A prescription for attendant care shall not
1841 prescribe such care retroactively. The value of nonprofessional
1842 attendant care provided by a family member must be determined as
1843 follows:

1844 1. If the family member is not employed or if the family
1845 member is employed and is providing attendant care services
1846 during hours that he or she is not engaged in employment, the
1847 per-hour value equals the federal minimum hourly wage.

1848 2. If the family member is employed and elects to leave
1849 that employment to provide attendant or custodial care, the per-
1850 hour value of that care equals the per-hour value of the family
1851 member's former employment, not to exceed the per-hour value of
1852 such care available in the community at large. A family member
1853 or a combination of family members providing nonprofessional
1854 attendant care under this paragraph may not be compensated for
1855 more than a total of 12 hours per day.

1856 3. If the family member remains employed while providing
1857 attendant or custodial care, the per-hour value of that care
1858 equals the per-hour value of the family member's employment, not
1859 to exceed the per-hour value of such care available in the
1860 community at large.

1861 (c) If the employer fails to provide initial treatment or
1862 care required by this section after request by the injured

286063

Amendment No. (for drafter's use only)

1863 employee, the employee may obtain such initial treatment at the
1864 expense of the employer, if the initial treatment or care is
1865 compensable and medically necessary and is in accordance with
1866 established practice parameters and protocols of treatment as
1867 provided for in this chapter. There must be a specific request
1868 for the initial treatment or care, and the employer or carrier
1869 must be given a reasonable time period within which to provide
1870 the initial treatment or care. However, the employee is not
1871 entitled to recover any amount personally expended for the
1872 initial treatment or care ~~service~~ unless he or she has requested
1873 the employer to furnish that initial treatment or service and
1874 the employer has failed, refused, or neglected to do so within a
1875 reasonable time or unless the nature of the injury requires such
1876 initial treatment, nursing, and services and the employer or his
1877 or her superintendent or foreman, having knowledge of the
1878 injury, has neglected to provide the initial treatment or care
1879 ~~service~~.

1880 (d) The carrier has the right to transfer the care of an
1881 injured employee from the attending health care provider if an
1882 independent medical examination determines that the employee is
1883 not making appropriate progress in recuperation.

1884 (e) Except in emergency situations and for treatment
1885 rendered by a managed care arrangement, after any initial
1886 examination and diagnosis by a physician providing remedial
1887 treatment, care, and attendance, and before a proposed course of
1888 medical treatment begins, each insurer shall review, in
1889 accordance with the requirements of this chapter, the proposed
1890 course of treatment, to determine whether such treatment would
1891 be recognized as reasonably prudent. The review must be in

286063

Amendment No. (for drafter's use only)

1892 accordance with all applicable workers' compensation practice
1893 parameters and protocols of treatment established in accordance
1894 with this chapter. The insurer must accept any such proposed
1895 course of treatment unless the insurer notifies the physician of
1896 its specific objections to the proposed course of treatment by
1897 the close of the tenth business day after notification by the
1898 physician, or a supervised designee of the physician, of the
1899 proposed course of treatment.

1900 (f) Upon the written request of the employee, the carrier
1901 shall give the employee the opportunity for one change of
1902 physician during the course of treatment for any one accident.
1903 Upon the granting of a change of physician, the originally
1904 authorized physician in the same specialty as the changed
1905 physician shall become deauthorized upon written notification by
1906 the employer or carrier. The carrier shall authorize an
1907 alternative physician who shall not be professionally affiliated
1908 with the previous physician within 5 days after receipt of the
1909 request. If the carrier fails to provide a change of physician
1910 as requested by the employee, the employee may select the
1911 physician and such physician shall be considered authorized if
1912 the treatment being provided is compensable and medically
1913 necessary.

1914
1915 Failure of the carrier to timely comply with this subsection
1916 shall be a violation of this chapter and the carrier shall be
1917 subject to penalties as provided for in s. 440.525. ~~The employee~~
1918 ~~shall be entitled to select another physician from among not~~
1919 ~~fewer than three carrier-authorized physicians who are not~~
1920 ~~professionally affiliated.~~

286063

Amendment No. (for drafter's use only)

1921 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

1922 (a) As a condition to eligibility for payment under this
1923 chapter, a health care provider who renders services must be a
1924 certified health care provider and must receive authorization
1925 from the carrier before providing treatment. This paragraph does
1926 not apply to emergency care. The agency shall adopt rules to
1927 implement the certification of health care providers.

1928 (b) A health care provider who renders emergency care must
1929 notify the carrier by the close of the third business day after
1930 it has rendered such care. If the emergency care results in
1931 admission of the employee to a health care facility, the health
1932 care provider must notify the carrier by telephone within 24
1933 hours after initial treatment. Emergency care is not compensable
1934 under this chapter unless the injury requiring emergency care
1935 arose as a result of a work-related accident. Pursuant to
1936 chapter 395, all licensed physicians and health care providers
1937 in this state shall be required to make their services available
1938 for emergency treatment of any employee eligible for workers'
1939 compensation benefits. To refuse to make such treatment
1940 available is cause for revocation of a license.

1941 (c) A health care provider may not refer the employee to
1942 another health care provider, diagnostic facility, therapy
1943 center, or other facility without prior authorization from the
1944 carrier, except when emergency care is rendered. Any referral
1945 must be to a health care provider that has been certified by the
1946 agency, unless the referral is for emergency treatment, and the
1947 referral must be made in accordance with practice parameters and
1948 protocols of treatment as provided for in this chapter.

286063

Amendment No. (for drafter's use only)

1949 (d) A carrier must respond, by telephone or in writing, to
1950 a request for authorization from an authorized health care
1951 provider by the close of the third business day after receipt of
1952 the request. A carrier who fails to respond to a written request
1953 for authorization for referral for medical treatment by the
1954 close of the third business day after receipt of the request
1955 consents to the medical necessity for such treatment. All such
1956 requests must be made to the carrier. Notice to the carrier does
1957 not include notice to the employer.

1958 (e) Carriers shall adopt procedures for receiving,
1959 reviewing, documenting, and responding to requests for
1960 authorization. Such procedures shall be for a health care
1961 provider certified under this section.

1962 (f) By accepting payment under this chapter for treatment
1963 rendered to an injured employee, a health care provider consents
1964 to the jurisdiction of the agency as set forth in subsection
1965 (11) and to the submission of all records and other information
1966 concerning such treatment to the agency in connection with a
1967 reimbursement dispute, audit, or review as provided by this
1968 section. The health care provider must further agree to comply
1969 with any decision of the agency rendered under this section.

1970 (g) The employee is not liable for payment for medical
1971 treatment or services provided pursuant to this section except
1972 as otherwise provided in this section.

1973 (h) The provisions of s. 456.053 are applicable to
1974 referrals among health care providers, as defined in subsection
1975 (1), treating injured workers.

1976 (i) Notwithstanding paragraph (d), a claim for specialist
1977 consultations, surgical operations, physiotherapeutic or

286063

Amendment No. (for drafter's use only)

1978 occupational therapy procedures, X-ray examinations, or special
1979 diagnostic laboratory tests that cost more than \$1,000 and other
1980 specialty services that the agency identifies by rule is not
1981 valid and reimbursable unless the services have been expressly
1982 authorized by the carrier, or unless the carrier has failed to
1983 respond within 10 days to a written request for authorization,
1984 or unless emergency care is required. The insurer shall ~~not~~
1985 ~~refuse to~~ authorize such consultation or procedure unless the
1986 health care provider or facility is not authorized or certified,
1987 unless such treatment is not in accordance with practice
1988 parameters and protocols of treatment established in this
1989 chapter, or unless a judge of compensation claims an expert
1990 ~~medical advisor~~ has determined that the consultation or
1991 procedure is not medically necessary, not in accordance with the
1992 practice parameters and protocols of treatment established in
1993 this chapter, or otherwise not compensable under this chapter.
1994 Authorization of a treatment plan does not constitute express
1995 authorization for purposes of this section, except to the extent
1996 the carrier provides otherwise in its authorization procedures.
1997 This paragraph does not limit the carrier's obligation to
1998 identify and disallow overutilization or billing errors.

1999 (j) Notwithstanding anything in this chapter to the
2000 contrary, a sick or injured employee shall be entitled, at all
2001 times, to free, full, and absolute choice in the selection of
2002 the pharmacy or pharmacist dispensing and filling prescriptions
2003 for medicines required under this chapter. It is expressly
2004 forbidden for the agency, an employer, or a carrier, or any
2005 agent or representative of the agency, an employer, or a carrier
2006 to select the pharmacy or pharmacist which the sick or injured

286063

Amendment No. (for drafter's use only)

2007 employee must use; condition coverage or payment on the basis of
2008 the pharmacy or pharmacist utilized; or to otherwise interfere
2009 in the selection by the sick or injured employee of a pharmacy
2010 or pharmacist.

2011 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
2012 DEPARTMENT.--

2013 (a) Any health care provider providing necessary remedial
2014 treatment, care, or attendance to any injured worker shall
2015 submit treatment reports to the carrier in a format prescribed
2016 by the department ~~in consultation with the agency~~. A claim for
2017 medical or surgical treatment is not valid or enforceable
2018 against such employer or employee, unless, by the close of the
2019 third business day following the first treatment, the physician
2020 providing the treatment furnishes to the employer or carrier a
2021 preliminary notice of the injury and treatment in a format ~~on~~
2022 ~~forms~~ prescribed by the department ~~in consultation with the~~
2023 ~~agency~~ and, within 15 days thereafter, furnishes to the employer
2024 or carrier a complete report, and subsequent thereto furnishes
2025 progress reports, if requested by the employer or insurance
2026 carrier, at intervals of not less than 3 weeks apart or at less
2027 frequent intervals if requested in a format ~~on forms~~ prescribed
2028 by the department ~~in consultation with the agency~~.

2029 (b) Upon the request of the department ~~or agency~~, each
2030 medical report or bill obtained or received by the employer, the
2031 carrier, or the injured employee, or the attorney for the
2032 employer, carrier, or injured employee, with respect to the
2033 remedial treatment, care, and attendance of the injured
2034 employee, including any report of an examination, diagnosis, or
2035 disability evaluation, must be produced by the health care

286063

Amendment No. (for drafter's use only)

2036 provider to filed with the department or agency pursuant to
2037 rules adopted by the department in consultation with the agency.
2038 The health care provider shall also furnish to the injured
2039 employee or ~~to~~ his or her attorney and the employer or carrier
2040 or its attorney, on demand, a copy of his or her office chart,
2041 records, and reports, and may charge the injured employee no
2042 more than 50 cents per page for copying the records and the
2043 actual direct cost to the health care provider or health care
2044 facility for X rays, microfilm, or other nonpaper records an
2045 ~~amount authorized by the department for the copies.~~ Each such
2046 health care provider shall provide to the ~~agency or~~ department
2047 information about the remedial treatment, care, and attendance
2048 which the ~~agency or~~ department reasonably requests.

2049 (c) It is the policy for the administration of the
2050 workers' compensation system that there shall be reasonable
2051 access to medical information by all parties to facilitate the
2052 self-executing features of the law. An employee who reports an
2053 injury or illness alleged to be work-related waives any
2054 physician-patient privilege with respect to any condition or
2055 complaint reasonably related to the condition for which the
2056 employee claims compensation. Notwithstanding the limitations in
2057 s. 456.057 and subject to the limitations in s. 381.004, upon
2058 the request of the employer, the carrier, an authorized
2059 qualified rehabilitation provider, or the attorney for the
2060 employer or carrier, the medical records, reports, and
2061 information of an injured employee relevant to the particular
2062 injury or illness for which compensation is sought must be
2063 furnished to those persons and the medical condition of the
2064 injured employee must be discussed with those persons, if the

286063

Amendment No. (for drafter's use only)

2065 records and the discussions are restricted to conditions
2066 relating to the workplace injury. Release of medical information
2067 by the health care provider or other physician does not require
2068 the authorization of the injured employee. If medical records,
2069 reports, and information of an injured employee are sought from
2070 health care providers who are not subject to the jurisdiction of
2071 the state, the injured employee shall sign an authorization
2072 allowing for the employer or carrier to obtain the medical
2073 records, reports, or information. Any such discussions or
2074 release of information may be held before or after the filing of
2075 a claim or petition for benefits without the knowledge, consent,
2076 or presence of any other party or his or her agent or
2077 representative. A health care provider who willfully refuses to
2078 provide medical records or to discuss the medical condition of
2079 the injured employee, after a reasonable request is made for
2080 such information pursuant to this subsection, shall be subject
2081 by the department agency to one or more of the penalties set
2082 forth in paragraph (8)(b). The department may adopt rules to
2083 carry out this subsection.

2084 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2085 (a) In any dispute concerning overutilization, medical
2086 benefits, compensability, or disability under this chapter, the
2087 carrier or the employee may select an independent medical
2088 examiner. If the parties agree, the examiner may be a health
2089 care provider treating or providing other care to the employee.
2090 An independent medical examiner may not render an opinion
2091 outside his or her area of expertise, as demonstrated by
2092 licensure and applicable practice parameters. The employer and
2093 employee shall be entitled to only one independent medical

Amendment No. (for drafter's use only)

2094 examination per accident and not one independent medical
2095 examination per medical specialty. The party requesting and
2096 selecting the independent medical examination shall be
2097 responsible for all expenses associated with said examination,
2098 including, but not limited to, medically necessary diagnostic
2099 testing performed and physician or medical care provider fees
2100 for the evaluation. The party selecting the independent medical
2101 examination shall identify the choice of the independent medical
2102 examiner to all other parties within 15 days after the date the
2103 independent medical examination is to take place. Failure to
2104 timely provide such notification shall preclude the requesting
2105 party from submitting the findings of such independent medical
2106 examiner in a proceeding before a judge of compensation claims.
2107 The independent medical examiner may not provide followup care
2108 if such recommendation for care is found to be medically
2109 necessary. If the employee prevails in a medical dispute as
2110 determined in an order by a judge of compensation claims or if
2111 benefits are paid or treatment provided after the employee has
2112 obtained an independent medical examination based upon the
2113 examiner's findings, the costs of such examination shall be paid
2114 by the employer or carrier.

2115 (b) Each party is bound by his or her selection of an
2116 independent medical examiner, including the selection of the
2117 independent medical examiner in accordance with s. 440.134 and
2118 the opinions of such independent medical examiner. Each party
2119 ~~and~~ is entitled to an alternate examiner only if:

2120 1. The examiner is not qualified to render an opinion upon
2121 an aspect of the employee's illness or injury which is material
2122 to the claim or petition for benefits;

286063

Amendment No. (for drafter's use only)

2123 2. The examiner ceases to practice in the specialty
2124 relevant to the employee's condition;

2125 3. The examiner is unavailable due to injury, death, or
2126 relocation outside a reasonably accessible geographic area; or

2127 4. The parties agree to an alternate examiner.

2128
2129 ~~Any party may request, or a judge of compensation claims may~~
2130 ~~require, designation of an agency medical advisor as an~~
2131 ~~independent medical examiner. The opinion of the advisors acting~~
2132 ~~as examiners shall not be afforded the presumption set forth in~~
2133 ~~paragraph (9)(c).~~

2134 (c) The carrier may, at its election, contact the claimant
2135 directly to schedule a reasonable time for an independent
2136 medical examination. The carrier must confirm the scheduling
2137 agreement in writing with the claimant and the ~~within 5 days and~~
2138 ~~notify~~ claimant's counsel, if any, at least 7 days before the
2139 date upon which the independent medical examination is scheduled
2140 to occur. An attorney representing a claimant is not authorized
2141 to schedule the self-insured employer's or carrier's independent
2142 medical evaluations under this subsection. Neither the self-
2143 insured employer nor the carrier shall be responsible for
2144 scheduling any independent medical examination other than an
2145 employer or carrier independent medical examination.

2146 (d) If the employee fails to appear for the independent
2147 medical examination scheduled by the employer or carrier without
2148 good cause and fails to advise the physician at least 24 hours
2149 before the scheduled date for the examination that he or she
2150 cannot appear, the employee is barred from recovering
2151 compensation for any period during which he or she has refused

286063

Amendment No. (for drafter's use only)

2152 to submit to such examination. Further, the employee shall
2153 reimburse the employer or carrier 50 percent of the physician's
2154 cancellation or no-show fee unless the employer or carrier that
2155 schedules the examination fails to timely provide to the
2156 employee a written confirmation of the date of the examination
2157 pursuant to paragraph (c) which includes an explanation of why
2158 he or she failed to appear. The employee may appeal to a judge
2159 of compensation claims for reimbursement when the employer or
2160 carrier withholds payment in excess of the authority granted by
2161 this section.

2162 (e) No medical opinion other than the opinion of a medical
2163 advisor appointed by the judge of compensation claims or the
2164 department agency, an independent medical examiner, or an
2165 authorized treating provider is admissible in proceedings before
2166 the judges of compensation claims.

2167 (f) Attorney's fees incurred by an injured employee in
2168 connection with delay of or opposition to an independent medical
2169 examination, including, but not limited to, motions for
2170 protective orders, are not recoverable under this chapter.

2171 (g) When a medical dispute arises, the parties may
2172 mutually agree to refer the employee to a licensed physician
2173 specializing in the diagnosis and treatment of the medical
2174 condition at issue for an independent medical examination and
2175 report. Such medical examination shall be referred to as a
2176 "consensus independent medical examination." The findings and
2177 conclusions of such mutually agreed upon consensus independent
2178 medical examination shall be binding on the parties and shall
2179 constitute resolution of the medical dispute addressed in the
2180 independent consensus medical examination and in any proceeding.

286063

Amendment No. (for drafter's use only)

2181 Agreement by the parties to a consensus independent medical
2182 examination shall not affect the employer's, carrier's, or
2183 employee's entitlement to one independent medical examination
2184 per accident as provided for in this subsection.

2185 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
2186 invoices, and other claims for payment submitted by health care
2187 providers in order to identify overutilization and billing
2188 errors, including compliance with practice parameters and
2189 protocols of treatment established in accordance with this
2190 chapter, and may hire peer review consultants or conduct
2191 independent medical evaluations. Such consultants, including
2192 peer review organizations, are immune from liability in the
2193 execution of their functions under this subsection to the extent
2194 provided in s. 766.101. If a carrier finds that overutilization
2195 of medical services or a billing error has occurred, or there is
2196 a violation of the practice parameters and protocols of
2197 treatment established in accordance with this chapter, it must
2198 disallow or adjust payment for such services or error without
2199 order of a judge of compensation claims or the agency, if the
2200 carrier, in making its determination, has complied with this
2201 section and rules adopted by the agency.

2202 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

2203 (a) Any health care provider, carrier, or employer who
2204 elects to contest the disallowance or adjustment of payment by a
2205 carrier under subsection (6) must, within 30 days after receipt
2206 of notice of disallowance or adjustment of payment, petition the
2207 agency to resolve the dispute. The petitioner must serve a copy
2208 of the petition on the carrier and on all affected parties by
2209 certified mail. The petition must be accompanied by all

286063

Amendment No. (for drafter's use only)

2210 documents and records that support the allegations contained in
2211 the petition. Failure of a petitioner to submit such
2212 documentation to the agency results in dismissal of the
2213 petition.

2214 (b) The carrier must submit to the agency within 10 days
2215 after receipt of the petition all documentation substantiating
2216 the carrier's disallowance or adjustment. Failure of the carrier
2217 to timely submit the requested documentation to the agency
2218 within 10 days constitutes a waiver of all objections to the
2219 petition.

2220 (c) Within 60 days after receipt of all documentation, the
2221 agency must provide to the petitioner, the carrier, and the
2222 affected parties a written determination of whether the carrier
2223 properly adjusted or disallowed payment. The agency must be
2224 guided by standards and policies set forth in this chapter,
2225 including all applicable reimbursement schedules, practice
2226 parameters, and protocols of treatment, in rendering its
2227 determination.

2228 (d) If the agency finds an improper disallowance or
2229 improper adjustment of payment by an insurer, the insurer shall
2230 reimburse the health care provider, facility, insurer, or
2231 employer within 30 days, subject to the penalties provided in
2232 this subsection.

2233 (e) The agency shall adopt rules to carry out this
2234 subsection. The rules may include provisions for consolidating
2235 petitions filed by a petitioner and expanding the timetable for
2236 rendering a determination upon a consolidated petition.

2237 (f) Any carrier that engages in a pattern or practice of
2238 arbitrarily or unreasonably disallowing or reducing payments to

Amendment No. (for drafter's use only)

2239 health care providers may be subject to one or more of the
2240 following penalties imposed by the agency:

2241 1. Repayment of the appropriate amount to the health care
2242 provider.

2243 2. An administrative fine assessed by the agency in an
2244 amount not to exceed \$5,000 per instance of improperly
2245 disallowing or reducing payments.

2246 3. Award of the health care provider's costs, including a
2247 reasonable attorney's fee, for prosecuting the petition.

2248 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2249 (a) Carriers must report to the agency all instances of
2250 overutilization including, but not limited to, all instances in
2251 which the carrier disallows or adjusts payment or a
2252 determination has been made that the provided or recommended
2253 treatment is in excess of the practice parameters and protocols
2254 of treatment established in this chapter. The agency shall
2255 determine whether a pattern or practice of overutilization
2256 exists.

2257 (b) If the agency determines that a health care provider
2258 has engaged in a pattern or practice of overutilization or a
2259 violation of this chapter or rules adopted by the agency,
2260 including a pattern or practice of providing treatment in excess
2261 of the practice parameters or protocols of treatment, it may
2262 impose one or more of the following penalties:

2263 1. An order of the agency barring the provider from
2264 payment under this chapter;

2265 2. Deauthorization of care under review;

2266 3. Denial of payment for care rendered in the future;

Amendment No. (for drafter's use only)

2267 4. Decertification of a health care provider certified as
2268 an expert medical advisor under subsection (9) or of a
2269 rehabilitation provider certified under s. 440.49;

2270 5. An administrative fine assessed by the agency in an
2271 amount not to exceed \$5,000 per instance of overutilization or
2272 violation; and

2273 6. Notification of and review by the appropriate licensing
2274 authority pursuant to s. 440.106(3).

2275 (9) EXPERT MEDICAL ADVISORS.--

2276 (a) The agency shall certify expert medical advisors in
2277 each specialty to assist the agency and the judges of
2278 compensation claims within the advisor's area of expertise as
2279 provided in this section. The agency shall, in a manner
2280 prescribed by rule, in certifying, recertifying, or decertifying
2281 an expert medical advisor, consider the qualifications,
2282 training, impartiality, and commitment of the health care
2283 provider to the provision of quality medical care at a
2284 reasonable cost. As a prerequisite for certification or
2285 recertification, the agency shall require, at a minimum, that
2286 an expert medical advisor have specialized workers' compensation
2287 training or experience under the workers' compensation system of
2288 this state and board certification or board eligibility.

2289 (b) The agency shall contract with one or more entities
2290 that employ, contract with, or otherwise secure or employ expert
2291 medical advisors to provide peer review or expert medical
2292 consultation, opinions, and testimony to the agency or to a
2293 judge of compensation claims in connection with resolving
2294 disputes relating to reimbursement, differing opinions of health
2295 care providers, and health care and physician services rendered

286063

Amendment No. (for drafter's use only)

2296 under this chapter, including utilization issues. The agency
2297 shall by rule establish the qualifications of expert medical
2298 advisors, including training and experience in the workers'
2299 compensation system in the state and the expert medical
2300 advisor's knowledge of and commitment to the standards of care,
2301 practice parameters, and protocols established pursuant to this
2302 chapter. Expert medical advisors contracting with the agency
2303 shall, as a term of such contract, agree to provide consultation
2304 or services in accordance with the timetables set forth in this
2305 chapter and to abide by rules adopted by the agency, including,
2306 but not limited to, rules pertaining to procedures for review of
2307 the services rendered by health care providers and preparation
2308 of reports and testimony or recommendations for submission to
2309 the agency or the judge of compensation claims.

2310 (c) If there is disagreement in the opinions of the health
2311 care providers, if two health care providers disagree on medical
2312 evidence supporting the employee's complaints or the need for
2313 additional medical treatment, or if two health care providers
2314 disagree that the employee is able to return to work, the agency
2315 may, and the judge of compensation claims shall, upon his or her
2316 own motion or within 15 days after receipt of a written request
2317 by either the injured employee, the employer, or the carrier,
2318 order the injured employee to be evaluated by an expert medical
2319 advisor. The opinion of the expert medical advisor is presumed
2320 to be correct unless there is clear and convincing evidence to
2321 the contrary as determined by the judge of compensation claims.
2322 The expert medical advisor appointed to conduct the evaluation
2323 shall have free and complete access to the medical records of
2324 the employee. An employee who fails to report to and cooperate

286063

Amendment No. (for drafter's use only)

2325 with such evaluation forfeits entitlement to compensation during
2326 the period of failure to report or cooperate.

2327 (d) The expert medical advisor must complete his or her
2328 evaluation and issue his or her report to the agency or to the
2329 judge of compensation claims within 15 45 days after receipt of
2330 all medical records. The expert medical advisor must furnish a
2331 copy of the report to the carrier and to the employee.

2332 (e) An expert medical advisor is not liable under any
2333 theory of recovery for evaluations performed under this section
2334 without a showing of fraud or malice. The protections of s.
2335 766.101 apply to any officer, employee, or agent of the agency
2336 and to any officer, employee, or agent of any entity with which
2337 the agency has contracted under this subsection.

2338 (f) If the agency or a judge of compensation claims orders
2339 ~~determines that~~ the services of a certified expert medical
2340 advisor ~~are required~~ to resolve a dispute under this section,
2341 the party requesting such examination carrier must compensate
2342 the advisor for his or her time in accordance with a schedule
2343 adopted by the agency. If the employee prevails in a dispute as
2344 determined in an order by a judge of compensation claims based
2345 upon the expert medical advisor's findings, the employer or
2346 carrier shall pay for the costs of such expert medical advisor.
2347 If a judge of compensation claims, upon his or her motion, finds
2348 that an expert medical advisor is needed to resolve the dispute,
2349 the carrier must compensate the advisor for his or her time in
2350 accordance with a schedule adopted by the agency. The agency may
2351 assess a penalty not to exceed \$500 against any carrier that
2352 fails to timely compensate an advisor in accordance with this
2353 section.

286063

Amendment No. (for drafter's use only)

2354 (10) WITNESS FEES.--Any health care provider who gives a
2355 deposition shall be allowed a witness fee. The amount charged by
2356 the witness may not exceed \$200 per hour. An expert witness who
2357 has never provided direct professional services to a party but
2358 has merely reviewed medical records and provided an expert
2359 opinion or has provided only direct professional services that
2360 were unrelated to the workers' compensation case may not be
2361 allowed a witness fee in excess of \$200 per day.

2362 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
2363 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2364 (a) The Agency for Health Care Administration may
2365 investigate health care providers to determine whether providers
2366 are complying with this chapter and with rules adopted by the
2367 agency, whether the providers are engaging in overutilization,
2368 ~~and~~ whether providers are engaging in improper billing
2369 practices, and whether providers are adhering to practice
2370 parameters and protocols established in accordance with this
2371 chapter. If the agency finds that a health care provider has
2372 improperly billed, overutilized, or failed to comply with agency
2373 rules or the requirements of this chapter, including, but not
2374 limited to, practice parameters and protocols established in
2375 accordance with this chapter, it must notify the provider of its
2376 findings and may determine that the health care provider may not
2377 receive payment from the carrier or may impose penalties as set
2378 forth in subsection (8) or other sections of this chapter. If
2379 the health care provider has received payment from a carrier for
2380 services that were improperly billed, that constitute
2381 overutilization, or that were outside practice parameters or
2382 protocols established in accordance with this chapter ~~or for~~

286063

Amendment No. (for drafter's use only)

2383 ~~overutilization~~, it must return those payments to the carrier.
2384 The agency may assess a penalty not to exceed \$500 for each
2385 overpayment that is not refunded within 30 days after
2386 notification of overpayment by the agency or carrier.

2387 (b) The department shall monitor and audit carriers as
2388 provided in s. 624.3161, to determine if medical bills are paid
2389 in accordance with this section and department rules. Any
2390 employer, if self-insured, or carrier found by the division not
2391 to be within 90 percent compliance as to the payment of medical
2392 bills after July 1, 1994, must be assessed a fine not to exceed
2393 1 percent of the prior year's assessment levied against such
2394 entity under s. 440.51 for every quarter in which the entity
2395 fails to attain 90-percent compliance. The department shall fine
2396 or otherwise discipline an employer or carrier, pursuant to this
2397 chapter, the insurance code, or rules adopted by the department,
2398 for each late payment of compensation that is below the minimum
2399 95-percent ~~90-percent~~ performance standard. Any carrier that is
2400 found to be not in compliance in subsequent consecutive quarters
2401 must implement a medical-bill review program approved by the
2402 division, and the carrier is subject to disciplinary action by
2403 the Department of Insurance.

2404 (c) The agency has exclusive jurisdiction to decide any
2405 matters concerning reimbursement, to resolve any overutilization
2406 dispute under subsection (7), and to decide any question
2407 concerning overutilization under subsection (8), which question
2408 or dispute arises after January 1, 1994.

2409 (d) The following agency actions do not constitute agency
2410 action subject to review under ss. 120.569 and 120.57 and do not
2411 constitute actions subject to s. 120.56: referral by the entity

286063

Amendment No. (for drafter's use only)

2412 responsible for utilization review; a decision by the agency to
2413 refer a matter to a peer review committee; establishment by a
2414 health care provider or entity of procedures by which a peer
2415 review committee reviews the rendering of health care services;
2416 and the review proceedings, report, and recommendation of the
2417 peer review committee.

2418 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2419 REIMBURSEMENT ALLOWANCES.--

2420 (a) A three-member panel is created, consisting of the
2421 Insurance Commissioner, or the Insurance Commissioner's
2422 designee, and two members to be appointed by the Governor,
2423 subject to confirmation by the Senate, one member who, on
2424 account of present or previous vocation, employment, or
2425 affiliation, shall be classified as a representative of
2426 employers, the other member who, on account of previous
2427 vocation, employment, or affiliation, shall be classified as a
2428 representative of employees. The panel shall determine statewide
2429 schedules of maximum reimbursement allowances for medically
2430 necessary treatment, care, and attendance provided by
2431 physicians, hospitals, ambulatory surgical centers, work-
2432 hardening programs, pain programs, and durable medical
2433 equipment. The maximum reimbursement allowances for inpatient
2434 hospital care shall be based on a schedule of per diem rates, to
2435 be approved by the three-member panel no later than March 1,
2436 1994, to be used in conjunction with a precertification manual
2437 as determined by the department, including maximum hours in
2438 which an outpatient may remain in observation status, which
2439 shall not exceed 23 hours ~~agency~~. All compensable charges for
2440 hospital outpatient care shall be reimbursed at 75 percent of

286063

Amendment No. (for drafter's use only)

2441 usual and customary charges, except as otherwise provided by
2442 this subsection. ~~Until the three-member panel approves a~~
2443 ~~schedule of per diem rates for inpatient hospital care and it~~
2444 ~~becomes effective, all compensable charges for hospital~~
2445 ~~inpatient care must be reimbursed at 75 percent of their usual~~
2446 ~~and customary charges.~~ Annually, the three-member panel shall
2447 adopt schedules of maximum reimbursement allowances for
2448 physicians, hospital inpatient care, hospital outpatient care,
2449 ambulatory surgical centers, work-hardening programs, and pain
2450 programs. ~~However, the maximum percentage of increase in the~~
2451 ~~individual reimbursement allowance may not exceed the percentage~~
2452 ~~of increase in the Consumer Price Index for the previous year.~~
2453 An individual physician, hospital, ambulatory surgical center,
2454 pain program, or work-hardening program shall be reimbursed
2455 either ~~the usual and customary charge for treatment, care, and~~
2456 ~~attendance,~~ the agreed-upon contract price, or the maximum
2457 reimbursement allowance in the appropriate schedule, ~~whichever~~
2458 ~~is less.~~

2459 (b) It is the intent of the Legislature to increase the
2460 schedule of maximum reimbursement allowances for selected
2461 physicians effective January 1, 2004, and to pay for the
2462 increases through reductions in payments to hospitals. Revisions
2463 developed pursuant to this subsection are limited to the
2464 following:

2465 1. Payments for outpatient physical, occupational, and
2466 speech therapy provided by hospitals shall be reduced to the
2467 schedule of maximum reimbursement allowances for these services
2468 which applies to nonhospital providers.

Amendment No. (for drafter's use only)

2469 2. Payments for scheduled outpatient nonemergency
2470 radiological and clinical laboratory services that are not
2471 provided in conjunction with a surgical procedure shall be
2472 reduced to the schedule of maximum reimbursement allowances for
2473 these services which applies to nonhospital providers.

2474 3. Outpatient reimbursement for scheduled surgeries shall
2475 be reduced from 75 percent of charges to 60 percent of charges.

2476 4. Maximum reimbursement for a physician licensed under
2477 chapter 458 or chapter 459 shall be increased to 110 percent of
2478 the reimbursement allowed by Medicare, using appropriate codes
2479 and modifiers or the medical reimbursement level adopted by the
2480 three-member panel as of January 1, 2003, whichever is greater.

2481 5. Maximum reimbursement for surgical procedures shall be
2482 increased to 140 percent of the reimbursement allowed by
2483 Medicare or the medical reimbursement level adopted by the
2484 three-member panel as of January 1, 2003, whichever is greater.

2485 (c)(b) As to reimbursement for a prescription medication,
2486 the reimbursement amount for a prescription shall be the average
2487 wholesale price ~~times 1.2~~ plus \$4.18 for the dispensing fee,
2488 except where the carrier has contracted for a lower amount. Fees
2489 for pharmaceuticals and pharmaceutical services shall be
2490 reimbursable at the applicable fee schedule amount. Where the
2491 employer or carrier has contracted for such services and the
2492 employee elects to obtain them through a provider not a party to
2493 the contract, the carrier shall reimburse at the schedule,
2494 negotiated, or contract price, whichever is lower. No such
2495 contract shall rely on a provider that is not reasonably
2496 accessible to the employee.

Amendment No. (for drafter's use only)

2497 ~~(d)(e)~~ Reimbursement for all fees and other charges for
2498 such treatment, care, and attendance, including treatment, care,
2499 and attendance provided by any hospital or other health care
2500 provider, ambulatory surgical center, work-hardening program, or
2501 pain program, must not exceed the amounts provided by the
2502 uniform schedule of maximum reimbursement allowances as
2503 determined by the panel or as otherwise provided in this
2504 section. This subsection also applies to independent medical
2505 examinations performed by health care providers under this
2506 chapter. ~~Until the three member panel approves a uniform~~
2507 ~~schedule of maximum reimbursement allowances and it becomes~~
2508 ~~effective, all compensable charges for treatment, care, and~~
2509 ~~attendance provided by physicians, ambulatory surgical centers,~~
2510 ~~work-hardening programs, or pain programs shall be reimbursed at~~
2511 ~~the lowest maximum reimbursement allowance across all 1992~~
2512 ~~schedules of maximum reimbursement allowances for the services~~
2513 ~~provided regardless of the place of service. In determining the~~
2514 uniform schedule, the panel shall first approve the data which
2515 it finds representative of prevailing charges in the state for
2516 similar treatment, care, and attendance of injured persons. Each
2517 health care provider, health care facility, ambulatory surgical
2518 center, work-hardening program, or pain program receiving
2519 workers' compensation payments shall maintain records verifying
2520 their usual charges. In establishing the uniform schedule of
2521 maximum reimbursement allowances, the panel must consider:
2522 1. The levels of reimbursement for similar treatment,
2523 care, and attendance made by other health care programs or
2524 third-party providers;

286063

Amendment No. (for drafter's use only)

2525 2. The impact upon cost to employers for providing a level
2526 of reimbursement for treatment, care, and attendance which will
2527 ensure the availability of treatment, care, and attendance
2528 required by injured workers;

2529 3. The financial impact of the reimbursement allowances
2530 upon health care providers and health care facilities, including
2531 trauma centers as defined in s. 395.4001, and its effect upon
2532 their ability to make available to injured workers such
2533 medically necessary remedial treatment, care, and attendance.
2534 The uniform schedule of maximum reimbursement allowances must be
2535 reasonable, must promote health care cost containment and
2536 efficiency with respect to the workers' compensation health care
2537 delivery system, and must be sufficient to ensure availability
2538 of such medically necessary remedial treatment, care, and
2539 attendance to injured workers; and

2540 4. The most recent average maximum allowable rate of
2541 increase for hospitals determined by the Health Care Board under
2542 chapter 408.

2543 ~~(e)~~(d) In addition to establishing the uniform schedule of
2544 maximum reimbursement allowances, the panel shall:

2545 1. Take testimony, receive records, and collect data to
2546 evaluate the adequacy of the workers' compensation fee schedule,
2547 nationally recognized fee schedules and alternative methods of
2548 reimbursement to certified health care providers and health care
2549 facilities for inpatient and outpatient treatment and care.

2550 2. Survey certified health care providers and health care
2551 facilities to determine the availability and accessibility of
2552 workers' compensation health care delivery systems for injured
2553 workers.

286063

Amendment No. (for drafter's use only)

2554 3. Survey carriers to determine the estimated impact on
2555 carrier costs and workers' compensation premium rates by
2556 implementing changes to the carrier reimbursement schedule or
2557 implementing alternative reimbursement methods.

2558 4. Submit recommendations on or before January 1, 2003,
2559 and biennially thereafter, to the President of the Senate and
2560 the Speaker of the House of Representatives on methods to
2561 improve the workers' compensation health care delivery system.

2562
2563 The division shall provide data to the panel, including but not
2564 limited to, utilization trends in the workers' compensation
2565 health care delivery system. The division shall provide the
2566 panel with an annual report regarding the resolution of medical
2567 reimbursement disputes and any actions pursuant to s. 440.13(8).
2568 The division shall provide administrative support and service to
2569 the panel to the extent requested by the panel.

2570 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
2571 TO RENDER MEDICAL CARE.--The agency shall remove from the list
2572 of physicians or facilities authorized to provide remedial
2573 treatment, care, and attendance under this chapter the name of
2574 any physician or facility found after reasonable investigation
2575 to have:

2576 (a) Engaged in professional or other misconduct or
2577 incompetency in connection with medical services rendered under
2578 this chapter;

2579 (b) Exceeded the limits of his or her or its professional
2580 competence in rendering medical care under this chapter, or to
2581 have made materially false statements regarding his or her or
2582 its qualifications in his or her application;

286063

Amendment No. (for drafter's use only)

2583 (c) Failed to transmit copies of medical reports to the
2584 employer or carrier, or failed to submit full and truthful
2585 medical reports of all his or her or its findings to the
2586 employer or carrier as required under this chapter;

2587 (d) Solicited, or employed another to solicit for himself
2588 or herself or itself or for another, professional treatment,
2589 examination, or care of an injured employee in connection with
2590 any claim under this chapter;

2591 (e) Refused to appear before, or to answer upon request
2592 of, the agency or any duly authorized officer of the state, any
2593 legal question, or to produce any relevant book or paper
2594 concerning his or her conduct under any authorization granted to
2595 him or her under this chapter;

2596 (f) Self-referred in violation of this chapter or other
2597 laws of this state; or

2598 (g) Engaged in a pattern of practice of overutilization or
2599 a violation of this chapter or rules adopted by the agency,
2600 including failure to adhere to practice parameters and protocols
2601 established in accordance with this chapter.

2602 (14) PAYMENT OF MEDICAL FEES.--

2603 (a) Except for emergency care treatment, fees for medical
2604 services are payable only to a health care provider certified
2605 and authorized to render remedial treatment, care, or attendance
2606 under this chapter. Carriers shall pay, disallow, or deny
2607 payment to health care providers in the manner and at times set
2608 forth in this chapter. A health care provider may not collect or
2609 receive a fee from an injured employee within this state, except
2610 as otherwise provided by this chapter. Such providers have
2611 recourse against the employer or carrier for payment for

286063

Amendment No. (for drafter's use only)

2612 services rendered in accordance with this chapter. Payment to
2613 health care providers or physicians shall be subject to the
2614 medical fee schedule and applicable practice parameters and
2615 protocols, regardless of whether the health care provider or
2616 claimant is asserting that the payment should be made.

2617 (b) Fees charged for remedial treatment, care, and
2618 attendance, except for independent medical examinations and
2619 consensus independent medical examinations, may not exceed the
2620 applicable fee schedules adopted under this chapter and
2621 department rule. Notwithstanding any other provision in this
2622 chapter, if a physician or health care provider specifically
2623 agrees in writing to follow identified procedures aimed at
2624 providing quality medical care to injured workers at reasonable
2625 costs, deviations from established fee schedules shall be
2626 permitted. Written agreements warranting deviations may include,
2627 but are not limited to, the timely scheduling of appointments
2628 for injured workers, participating in return-to-work programs
2629 with injured workers' employers, expediting the reporting of
2630 treatments provided to injured workers, and agreeing to
2631 continuing education, utilization review, quality assurance,
2632 precertification, and case management systems that are designed
2633 to provide needed treatment for injured workers.

2634 (c) Notwithstanding any other provision of this chapter,
2635 following overall maximum medical improvement from an injury
2636 compensable under this chapter, the employee is obligated to pay
2637 a copayment of \$10 per visit for medical services. The copayment
2638 shall not apply to emergency care provided to the employee.

2639 (15) PRACTICE PARAMETERS.--The practice parameters and
2640 protocols mandated under this chapter shall be the practice

286063

Amendment No. (for drafter's use only)

2641 parameters and protocols adopted by the United States Agency for
2642 Healthcare Research and Quality in effect on January 1, 2003.

2643 ~~(a) The Agency for Health Care Administration, in~~
2644 ~~conjunction with the department and appropriate health~~
2645 ~~professional associations and health-related organizations shall~~
2646 ~~develop and may adopt by rule scientifically sound practice~~
2647 ~~parameters for medical procedures relevant to workers'~~
2648 ~~compensation claimants. Practice parameters developed under this~~
2649 ~~section must focus on identifying effective remedial treatments~~
2650 ~~and promoting the appropriate utilization of health care~~
2651 ~~resources. Priority must be given to those procedures that~~
2652 ~~involve the greatest utilization of resources either because~~
2653 ~~they are the most costly or because they are the most frequently~~
2654 ~~performed. Practice parameters for treatment of the 10 top~~
2655 ~~procedures associated with workers' compensation injuries~~
2656 ~~including the remedial treatment of lower-back injuries must be~~
2657 ~~developed by December 31, 1994.~~

2658 ~~(b) The guidelines may be initially based on guidelines~~
2659 ~~prepared by nationally recognized health care institutions and~~
2660 ~~professional organizations but should be tailored to meet the~~
2661 ~~workers' compensation goal of returning employees to full~~
2662 ~~employment as quickly as medically possible, taking into~~
2663 ~~consideration outcomes data collected from managed care~~
2664 ~~providers and any other inpatient and outpatient facilities~~
2665 ~~serving workers' compensation claimants.~~

2666 ~~(c) Procedures must be instituted which provide for the~~
2667 ~~periodic review and revision of practice parameters based on the~~
2668 ~~latest outcomes data, research findings, technological~~

286063

Amendment No. (for drafter's use only)

2669 ~~advancements, and clinical experiences, at least once every 3~~
2670 ~~years.~~

2671 ~~(d) Practice parameters developed under this section must~~
2672 ~~be used by carriers and the agency in evaluating the~~
2673 ~~appropriateness and overutilization of medical services provided~~
2674 ~~to injured employees.~~

2675 (16) STANDARDS OF CARE.--The following standards of care
2676 shall be followed in providing medical care under this chapter:

2677 (a) Abnormal anatomical findings alone, in the absence of
2678 objective relevant medical findings, shall not be an indicator
2679 of injury or illness, a justification for the provision of
2680 remedial medical care or the assignment of restrictions, or a
2681 foundation for limitations.

2682 (b) At all times during evaluation and treatment, the
2683 provider shall act on the premise that returning to work is an
2684 integral part of the treatment plan. The goal of removing all
2685 restrictions and limitations as early as appropriate shall be
2686 part of the treatment plan on a continuous basis. The assignment
2687 of restrictions and limitations shall be reviewed with each
2688 patient exam and upon receipt of new information, such as
2689 progress reports from physical therapists and other providers.
2690 Consideration shall be given to upgrading or removing the
2691 restrictions and limitations with each patient exam, based upon
2692 the presence or absence of objective relevant medical findings.

2693 (c) Reasonable necessary medical care of injured employees
2694 shall in all situations:

2695 1. Utilize a high intensity, short duration treatment
2696 approach that focuses on early activation and restoration of
2697 function whenever possible.

286063

Amendment No. (for drafter's use only)

2698 2. Include reassessment of the treatment plans, regimes,
2699 therapies, prescriptions, and functional limitations or
2700 restrictions prescribed by the provider every 30 days.

2701 3. Be focused on treatment of the individual employee's
2702 specific clinical dysfunction or status and shall not be based
2703 upon nondescript diagnostic labels.

2704

2705 All treatment shall be inherently scientifically logical and the
2706 evaluation or treatment procedure must match the documented
2707 physiologic and clinical problem. Treatment shall match the
2708 type, intensity, and duration of service required by the problem
2709 identified.

2710 (17) Failure to comply with this section shall be
2711 considered a violation of this chapter and is subject to
2712 penalties as provided for in s. 440.525.

2713 Section 16. Paragraphs (d) and (i) of subsection (1) and
2714 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
2715 of section 440.134, Florida Statutes, are amended to read:

2716 440.134 Workers' compensation managed care arrangement.--

2717 (1) As used in this section, the term:

2718 (d) "Grievance" means a written complaint, other than a
2719 petition for benefits, filed by the injured worker pursuant to
2720 the requirements of the managed care arrangement, expressing
2721 dissatisfaction with the ~~medical care provided by an insurer's~~
2722 workers' compensation managed care arrangement's refusal to
2723 provide medical care or the medical care provided ~~arrangement~~
2724 health care providers, expressed in writing by an injured
2725 worker.

Amendment No. (for drafter's use only)

2726 (i) "Medical care coordinator" means a primary care
2727 provider within a provider network who is responsible for
2728 managing the medical care of an injured worker including
2729 determining other health care providers and health care
2730 facilities to which the injured employee will be referred for
2731 evaluation or treatment. A medical care coordinator shall be a
2732 physician licensed under chapter 458, ~~or~~ an osteopathic
2733 physician licensed under chapter 459, a chiropractic physician
2734 licensed under chapter 460, or a podiatric physician licensed
2735 under chapter 461.

2736 (2)(a) The self-insured employer or carrier may, subject
2737 to the terms and limitations specified elsewhere in this section
2738 and chapter, furnish to the employee solely through managed care
2739 arrangements such medically necessary remedial treatment, care,
2740 and attendance for such period as the nature of the injury or
2741 the process of recovery requires and which shall be in
2742 accordance with practice parameters and protocols established
2743 pursuant to this chapter. For any self-insured employer or
2744 carrier who elects to deliver the medical benefits required by
2745 this chapter through a method other than a workers' compensation
2746 managed care arrangement, the discontinuance of the use of the
2747 workers' compensation managed care arrangement shall be without
2748 regard to the date of the accident, notwithstanding any other
2749 provision of law or rule.

2750 (b) The agency shall authorize an insurer to offer or
2751 utilize a workers' compensation managed care arrangement after
2752 the insurer files a completed application along with the payment
2753 of a \$1,000 application fee, and upon the agency's being
2754 satisfied that the applicant has the ability to provide quality

286063

Amendment No. (for drafter's use only)

2755 of care consistent with the prevailing professional standards of
2756 care and the insurer and its workers' compensation managed care
2757 arrangement otherwise meets the requirements of this section. No
2758 insurer may offer or utilize a managed care arrangement without
2759 such authorization. The authorization, unless sooner suspended
2760 or revoked, shall automatically expire 2 years after the date of
2761 issuance unless renewed by the insurer. The authorization shall
2762 be renewed upon application for renewal and payment of a renewal
2763 fee of \$1,000, provided that the insurer is in compliance with
2764 the requirements of this section and any rules adopted
2765 hereunder. An application for renewal of the authorization shall
2766 be made 90 days prior to expiration of the authorization, on
2767 forms provided by the agency. The renewal application shall not
2768 require the resubmission of any documents previously filed with
2769 the agency if such documents have remained valid and unchanged
2770 since their original filing.

2771 (6) The proposed managed care plan of operation must
2772 include:

2773 (a) A statement or map providing a clear description of
2774 the service area.

2775 (b) A description of the grievance procedure to be used.

2776 (c) A description of the quality assurance program which
2777 assures that the health care services provided to workers shall
2778 be rendered under reasonable standards of quality of care
2779 consistent with the prevailing standards of medical practice in
2780 the medical community. The program shall include, but not be
2781 limited to:

2782 1. A written statement of goals and objectives that
2783 stresses health and return-to-work outcomes as the principal

286063

Amendment No. (for drafter's use only)

2784 criteria for the evaluation of the quality of care rendered to
2785 injured workers.

2786 2. A written statement describing how methodology has been
2787 incorporated into an ongoing system for monitoring of care that
2788 is individual case oriented and, when implemented, can provide
2789 interpretation and analysis of patterns of care rendered to
2790 individual patients by individual providers.

2791 3. Written procedures for taking appropriate remedial
2792 action whenever, as determined under the quality assurance
2793 program, inappropriate or substandard services have been
2794 provided or services that should have been furnished have not
2795 been provided.

2796 4. A written plan, which includes ongoing review, for
2797 providing review of physicians and other licensed medical
2798 providers.

2799 5. Appropriate financial incentives to reduce service
2800 costs and utilization without sacrificing the quality of
2801 service.

2802 6. Adequate methods of peer review and utilization review.
2803 The utilization review process shall include a health care
2804 facility's facilities precertification mechanism, including, but
2805 not limited to, all elective admissions and nonemergency
2806 surgeries and adherence to practice parameters and protocols
2807 established in accordance with this chapter.

2808 7. Provisions for resolution of disputes arising between a
2809 health care provider and an insurer regarding reimbursements and
2810 utilization review.

2811 8. Availability of a process for aggressive medical care
2812 coordination, as well as a program involving cooperative efforts

286063

Amendment No. (for drafter's use only)

2813 by the workers, the employer, and the workers' compensation
2814 managed care arrangement to promote early return to work for
2815 injured workers.

2816 9. A written plan allowing for the independent medical
2817 examination provided for in s. 440.13(5). Notwithstanding any
2818 provision to the contrary, the costs for the independent medical
2819 examination shall be paid by the carrier if such examination is
2820 performed by a physician in the provider network. Otherwise,
2821 such costs shall be paid in accordance with s. 440.13(5). An
2822 independent medical examination requested by a claimant and paid
2823 for by the carrier shall constitute the claimant's one
2824 independent medical examination per accident under s. 440.13(5).

2825 ~~A process allowing employees to obtain one second medical~~
2826 ~~opinion in the same specialty and within the provider network~~
2827 ~~during the course of treatment for a work-related injury.~~

2828 10. A provision for the selection of a primary care
2829 provider by the employee from among primary providers in the
2830 provider network.

2831 11. The written information proposed to be used by the
2832 insurer to comply with subparagraph 8.

2833 (7) Written procedures to provide the insurer with timely
2834 medical records and information including, but not limited to,
2835 work status, work restrictions, date of maximum medical
2836 improvement, permanent impairment ratings, and other information
2837 as required, including information demonstrating compliance with
2838 the practice parameters and protocols of treatment established
2839 pursuant to this chapter.

2840 (8) Evidence that appropriate health care providers and
2841 administrative staff of the insurer's workers' compensation

286063

Amendment No. (for drafter's use only)

2842 managed care arrangement have received training and education on
2843 the provisions of this chapter; ~~and~~ the administrative rules
2844 that govern the provision of remedial treatment, care, and
2845 attendance of injured workers; and the practice parameters and
2846 protocols of treatment established pursuant to this chapter.

2847 (9) Written procedures and methods to prevent
2848 inappropriate or excessive treatment that are in accordance with
2849 the practice parameters and protocols of treatment established
2850 pursuant to this chapter.

2851 (10) Written procedures and methods for the management of
2852 an injured worker's medical care by a medical care coordinator
2853 including:

2854 (a) The mechanism for assuring that covered employees
2855 receive all initial covered services from a primary care
2856 provider participating in the provider network, except for
2857 emergency care.

2858 (b) The mechanism for assuring that all continuing covered
2859 services be received from the same primary care provider
2860 participating in the provider network that provided the initial
2861 covered services, except when services from another provider are
2862 authorized by the medical care coordinator pursuant to paragraph
2863 (d).

2864 (c) The policies and procedures for allowing an employee
2865 one change to another provider within the ~~same specialty and~~
2866 provider network as the authorized treating physician during the
2867 course of treatment for a work-related injury, in accordance
2868 with the procedures provided in s. 440.13(2)(f), ~~if a request is~~
2869 ~~made to the medical care coordinator by the employee; and~~

286063

Amendment No. (for drafter's use only)

2870 ~~requiring that special provision be made for more than one such~~
2871 ~~referral through the arrangement's grievance procedures.~~

2872 (d) The process for assuring that all referrals authorized
2873 by a medical care coordinator, in accordance with the practice
2874 parameters and protocols of treatment established pursuant to
2875 this chapter, are made to the participating network providers,
2876 unless medically necessary treatment, care, and attendance are
2877 not available and accessible to the injured worker in the
2878 provider network.

2879 (e) Assignment of a medical care coordinator licensed
2880 under chapter 458 or chapter 459 to manage care by physicians
2881 licensed under chapter 458 or chapter 459, a medical care
2882 coordinator licensed under chapter 460 to manage care by
2883 physicians licensed under chapter 460, and a medical care
2884 coordinator licensed under chapter 461 to manage care by
2885 physicians licensed under chapter 461 upon request by an injured
2886 employee for care by a physician licensed under chapter 458,
2887 chapter 459, chapter 460, or chapter 461.

2888 (11) A description of the use of workers' compensation
2889 practice parameters and protocols of treatment for health care
2890 services ~~when adopted by the agency.~~

2891 (17) Notwithstanding any other provisions of this chapter,
2892 when a carrier provides medical care through a workers'
2893 compensation managed care arrangement, pursuant to this section,
2894 those workers who are subject to the arrangement must receive
2895 medical services for work-related injuries and diseases as
2896 prescribed in the contract, provided the employer and carrier
2897 have provided notice to the employees of the arrangement in a
2898 manner approved by the agency and the medical services are in

286063

Amendment No. (for drafter's use only)

2899 accordance with the practice parameters and protocols
2900 established pursuant to this chapter. Treatment received outside
2901 the workers' compensation managed care arrangement is not
2902 compensable, regardless of the purpose of the treatment,
2903 including, but not limited to, evaluations, examinations, or
2904 diagnostic studies to determine causation between medical
2905 findings and a compensable accident, the existence or extent of
2906 impairments or disabilities, and whether the injured employee
2907 has reached maximum medical improvement, unless authorized by
2908 the carrier prior to the treatment date.

2909 (25) The agency shall adopt rules that specify:

2910 (a) Procedures for authorization and examination of
2911 workers' compensation managed care arrangements by the agency.

2912 (b) Requirements and procedures for authorization of
2913 workers' compensation arrangement provider networks and
2914 procedures for the agency to grant exceptions from accessibility
2915 of services.

2916 (c) Requirements and procedures for case management,
2917 utilization management, and peer review.

2918 (d) Requirements and procedures for quality assurance and
2919 medical records.

2920 (e) Requirements and procedures for dispute resolution in
2921 conformance with this chapter.

2922 (f) Requirements and procedures for employee and provider
2923 education.

2924 (g) Requirements and procedures for reporting data
2925 regarding grievances, return-to-work outcomes, and provider
2926 networks.

286063

Amendment No. (for drafter's use only)

2927 Section 17. Subsections (1) and (4) and paragraph (b) of
2928 subsection (5) of section 440.14, Florida Statutes, are amended
2929 to read:

2930 440.14 Determination of pay.--

2931 (1) Except as otherwise provided in this chapter, the
2932 average weekly wages of the injured employee on the date of the
2933 accident ~~at the time of the injury~~ shall be taken as the basis
2934 upon which to compute compensation and shall be determined,
2935 subject to the limitations of s. 440.12(2), as follows:

2936 (a) If the injured employee has worked in the employment
2937 in which she or he was working on the date of the accident ~~at~~
2938 ~~the time of the injury~~, whether for the same or another
2939 employer, during substantially the whole of 13 weeks immediately
2940 preceding the accident ~~injury~~, her or his average weekly wage
2941 shall be one-thirteenth of the total amount of wages earned in
2942 such employment during the 13 weeks. As used in this paragraph,
2943 the term "substantially the whole of 13 weeks" means the
2944 calendar ~~shall be deemed to mean and refer to a constructive~~
2945 period of 13 weeks as a whole, which shall be defined as the 13
2946 calendar weeks before the date of the accident, excluding the
2947 week during which the accident occurred. ~~a consecutive period of~~
2948 ~~91 days, and~~ The term "during substantially the whole of 13
2949 weeks" shall be deemed to mean during not less than 75 ~~90~~
2950 percent of the total customary ~~full-time~~ hours of employment
2951 within such period considered as a whole.

2952 (b) If the injured employee has not worked in such
2953 employment during substantially the whole of 13 weeks
2954 immediately preceding the accident ~~injury~~, the wages of a
2955 similar employee in the same employment who has worked

286063

Amendment No. (for drafter's use only)

2956 substantially the whole of such 13 weeks shall be used in making
2957 the determination under the preceding paragraph.

2958 (c) If an employee is a seasonal worker and the foregoing
2959 method cannot be fairly applied in determining the average
2960 weekly wage, then the employee may use, instead of the 13 weeks
2961 immediately preceding the accident injury, the calendar year or
2962 the 52 weeks immediately preceding the accident injury. The
2963 employee will have the burden of proving that this method will
2964 be more reasonable and fairer than the method set forth in
2965 paragraphs (a) and (b) and, further, must document prior
2966 earnings with W-2 forms, written wage statements, or income tax
2967 returns. The employer shall have 30 days following the receipt
2968 of this written proof to adjust the compensation rate, including
2969 the making of any additional payment due for prior weekly
2970 payments, based on the lower rate compensation.

2971 (d) If any of the foregoing methods cannot reasonably and
2972 fairly be applied, the full-time weekly wages of the injured
2973 employee shall be used, except as otherwise provided in
2974 paragraph (e) or paragraph (f).

2975 (e) If it is established that the injured employee was
2976 under 22 years of age when the accident occurred ~~injured~~ and
2977 that under normal conditions her or his wages should be expected
2978 to increase during the period of disability, the fact may be
2979 considered in arriving at her or his average weekly wages.

2980 (f) If it is established that the injured employee was a
2981 part-time worker on the date of the accident ~~at the time of the~~
2982 ~~injury~~, that she or he had adopted part-time employment as a
2983 customary practice, and that under normal working conditions she
2984 or he probably would have remained a part-time worker during the

286063

Amendment No. (for drafter's use only)

2985 period of disability, these factors shall be considered in
2986 arriving at her or his average weekly wages. For the purpose of
2987 this paragraph, the term "part-time worker" means an individual
2988 who customarily works less than the full-time hours or full-time
2989 workweek of a similar employee in the same employment.

2990 (g) If compensation is due for a fractional part of the
2991 week, the compensation for such fractional part shall be
2992 determined by dividing the weekly compensation rate by the
2993 number of days employed per week to compute the amount due for
2994 each day.

2995 (4) Upon termination of the employee or upon termination
2996 of the payment of fringe benefits of any employee who is
2997 collecting indemnity benefits pursuant to s. 440.15(2) or
2998 (3)~~(b)~~, the employer shall within 7 days of such termination
2999 file a corrected 13-week wage statement reflecting the wages
3000 paid and the fringe benefits that had been paid to the injured
3001 employee, as provided in s. 440.02(27).

3002 (5)

3003 (b) The employee waives any entitlement to interest,
3004 penalties, and attorney's fees during the period in which the
3005 employee has not provided information concerning the loss of
3006 earnings from concurrent employment. Carriers are not subject to
3007 penalties by the division under s. 440.20(8)(b) ~~and (c)~~ for
3008 unpaid compensation related to concurrent employment during the
3009 period in which the employee has not provided information
3010 concerning the loss of earnings from concurrent employment.

3011 Section 18. Section 440.15, Florida Statutes, is amended
3012 to read:

Amendment No. (for drafter's use only)

3013 440.15 Compensation for disability.--Compensation for
3014 disability shall be paid to the employee, subject to the limits
3015 provided in s. 440.12(2), as follows:

3016 (1) PERMANENT TOTAL DISABILITY.--

3017 (a) In case of total disability adjudged to be permanent,
3018 66 2/3 percent of the average weekly wages shall be paid to the
3019 employee during the continuance of such total disability. No
3020 compensation shall be payable under this section if the employee
3021 is engaged in, or is physically capable of engaging in, at least
3022 sedentary employment.

3023 (b) In the following cases, an injured employee is
3024 presumed to be permanently and totally disabled unless the
3025 employer or carrier establishes that the employee is physically
3026 capable of engaging in at least sedentary employment within a
3027 50-mile radius of the employee's residence:

3028 1. Spinal cord injury involving severe paralysis of an
3029 arm, a leg, or the trunk;

3030 2. Amputation of an arm, a hand, a foot, or a leg
3031 involving the effective loss of use of that appendage;

3032 3. Severe brain or closed-head injury as evidenced by:

3033 a. Severe sensory or motor disturbances;

3034 b. Severe communication disturbances;

3035 c. Severe complex integrated disturbances of cerebral
3036 function;

3037 d. Severe episodic neurological disorders; or

3038 e. Other severe brain and closed-head injury conditions at
3039 least as severe in nature as any condition provided in sub-
3040 subparagraphs a.-d.;

Amendment No. (for drafter's use only)

3041 4. Second-degree or third-degree burns of 25 percent or
3042 more of the total body surface or third-degree burns of 5
3043 percent or more to the face and hands; or

3044 5. Total or industrial blindness.
3045

3046 In all other cases, in order to obtain permanent total
3047 disability benefits, the employee must establish that he or she
3048 is not able to engage in at least sedentary employment, within a
3049 50-mile radius of the employee's residence, due to his or her
3050 physical limitation. Entitlement to such benefits shall cease
3051 when the employee reaches age 75, unless the employee is not
3052 eligible for social security benefits under 42 U.S.C. s. 402 or
3053 s. 423 because the employee's compensable injury has prevented
3054 the employee from working sufficient quarters to be eligible for
3055 such benefits, notwithstanding any age limits. If the accident
3056 occurred on or after the employee reaches age 70, benefits shall
3057 be payable during the continuance of permanent total disability,
3058 not to exceed 5 years following the determination of permanent
3059 total disability. Only a catastrophic injury as defined in s.
3060 440.02 shall, in the absence of conclusive proof of a
3061 substantial earning capacity, constitute permanent total
3062 disability. Only claimants with catastrophic injuries or
3063 claimants who are incapable of engaging in employment, as
3064 described in this paragraph, are eligible for permanent total
3065 benefits. In no other case may permanent total disability be
3066 awarded.

3067 (c) In cases of permanent total disability resulting from
3068 injuries that occurred prior to July 1, 1955, such payments
3069 shall not be made in excess of 700 weeks.

286063

Amendment No. (for drafter's use only)

3070 (d) If an employee who is being paid compensation for
3071 permanent total disability becomes rehabilitated to the extent
3072 that she or he establishes an earning capacity, the employee
3073 shall be paid, instead of the compensation provided in paragraph
3074 (a), benefits pursuant to subsection (3). The department shall
3075 adopt rules to enable a permanently and totally disabled
3076 employee who may have reestablished an earning capacity to
3077 undertake a trial period of reemployment without prejudicing her
3078 or his return to permanent total status in the case that such
3079 employee is unable to sustain an earning capacity.

3080 (e)1. The employer's or carrier's right to conduct
3081 vocational evaluations or testing by the employer's or carrier's
3082 chosen rehabilitation advisor or provider pursuant to s. 440.491
3083 continues even after the employee has been accepted or
3084 adjudicated as entitled to compensation under this chapter and
3085 costs for such evaluations and testing shall be borne by the
3086 employer or carrier, respectively. This right includes, but is
3087 not limited to, instances in which such evaluations or tests are
3088 recommended by a treating physician or independent medical-
3089 examination physician, instances warranted by a change in the
3090 employee's medical condition, or instances in which the employee
3091 appears to be making appropriate progress in recuperation. This
3092 right may not be exercised more than once every calendar year.

3093 2. The carrier must confirm the scheduling of the
3094 vocational evaluation or testing in writing, and must notify the
3095 employee and the employee's counsel, if any, at least 7 days
3096 before the date on which vocational evaluation or testing is
3097 scheduled to occur.

Amendment No. (for drafter's use only)

3098 3. ~~Pursuant to an order of the judge of compensation~~
3099 ~~claims,~~ The employer or carrier may withhold payment of benefits
3100 for permanent total disability or supplements for any period
3101 during which the employee willfully fails or refuses to appear
3102 without good cause for the scheduled vocational evaluation or
3103 testing.

3104 (f)1. If permanent total disability results from injuries
3105 that occurred subsequent to June 30, 1955, and for which the
3106 liability of the employer for compensation has not been
3107 discharged under s. 440.20(11), the injured employee shall
3108 receive additional weekly compensation benefits equal to 3 5
3109 percent of her or his weekly compensation rate, as established
3110 pursuant to the law in effect on the date of her or his injury,
3111 multiplied by the number of calendar years since the date of
3112 injury. The weekly compensation payable and the additional
3113 benefits payable under this paragraph, when combined, may not
3114 exceed the maximum weekly compensation rate in effect at the
3115 time of payment as determined pursuant to s. 440.12(2).
3116 ~~Entitlement to~~ These supplemental payments shall not be paid or
3117 payable after the employee attains ~~cease at~~ age 62, regardless
3118 of whether if the employee has applied for or is eligible to
3119 apply is eligible for social security benefits under 42 U.S.C.
3120 s. ~~ss.~~ 402 or s. ~~and~~ 423, unless the employee is not eligible
3121 for social security benefits under 42 U.S.C. s. 402 or s. 423
3122 because the employee's compensable injury has prevented the
3123 employee from working sufficient quarters to be eligible for
3124 such benefits ~~whether or not the employee has applied for such~~
3125 ~~benefits.~~ These supplemental benefits shall be paid by the
3126 department out of the Workers' Compensation Administration Trust

286063

Amendment No. (for drafter's use only)

3127 Fund when the injury occurred subsequent to June 30, 1955, and
3128 before July 1, 1984. These supplemental benefits shall be paid
3129 by the employer when the injury occurred on or after July 1,
3130 1984. Supplemental benefits are not payable for any period prior
3131 to October 1, 1974.

3132 2.a. The department shall provide by rule for the periodic
3133 reporting to the department of all earnings of any nature and
3134 social security income by the injured employee entitled to or
3135 claiming additional compensation under subparagraph 1. Neither
3136 the department nor the employer or carrier shall make any
3137 payment of those additional benefits provided by subparagraph 1.
3138 for any period during which the employee willfully fails or
3139 refuses to report upon request by the department in the manner
3140 prescribed by such rules.

3141 b. The department shall provide by rule for the periodic
3142 reporting to the employer or carrier of all earnings of any
3143 nature and social security income by the injured employee
3144 entitled to or claiming benefits for permanent total disability.
3145 The employer or carrier is not required to make any payment of
3146 benefits for permanent total disability for any period during
3147 which the employee willfully fails or refuses to report upon
3148 request by the employer or carrier in the manner prescribed by
3149 such rules or if any employee who is receiving permanent total
3150 disability benefits refuses to apply for or cooperate with the
3151 employer or carrier in applying for social security benefits.

3152 3. When an injured employee receives a full or partial
3153 lump-sum advance of the employee's permanent total disability
3154 compensation benefits, the employee's benefits under this

Amendment No. (for drafter's use only)

3155 paragraph shall be computed on the employee's weekly
3156 compensation rate as reduced by the lump-sum advance.

3157 (2) TEMPORARY TOTAL DISABILITY.--

3158 (a) Subject to subsection (7), in case of disability total
3159 in character but temporary in quality, 66 2/3 percent of the
3160 average weekly wages shall be paid to the employee during the
3161 continuance thereof, not to exceed 104 weeks except as provided
3162 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3163 employee reaches the maximum number of weeks allowed, or the
3164 employee reaches the date of maximum medical improvement,
3165 whichever occurs earlier, temporary disability benefits shall
3166 cease and the injured worker's permanent impairment shall be
3167 determined.

3168 (b) Notwithstanding the provisions of paragraph (a), an
3169 employee who has sustained the loss of an arm, leg, hand, or
3170 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3171 or quadriparetic, or has lost the sight of both eyes shall be
3172 paid temporary total disability of 80 percent of her or his
3173 average weekly wage. The increased temporary total disability
3174 compensation provided for in this paragraph must not extend
3175 beyond 6 months from the date of the accident; however, such
3176 benefits shall not be due or payable if the employee is eligible
3177 for, entitled to, or collecting permanent total disability
3178 benefits. The compensation provided by this paragraph is not
3179 subject to the limits provided in s. 440.12(2), but instead is
3180 subject to a maximum weekly compensation rate of \$700. If, at
3181 the conclusion of this period of increased temporary total
3182 disability compensation, the employee is still temporarily
3183 totally disabled, the employee shall continue to receive

286063

Amendment No. (for drafter's use only)

3184 temporary total disability compensation as set forth in
3185 paragraphs (a) and (c). The period of time the employee has
3186 received this increased compensation will be counted as part of,
3187 and not in addition to, the maximum periods of time for which
3188 the employee is entitled to compensation under paragraph (a) but
3189 not paragraph (c).

3190 (c) Temporary total disability benefits paid pursuant to
3191 this subsection shall include such period as may be reasonably
3192 necessary for training in the use of artificial members and
3193 appliances, and shall include such period as the employee may be
3194 receiving training and education under a program pursuant to s.
3195 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
3196 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
3197 ~~than the last day for which such temporary disability benefits~~
3198 ~~are paid.~~

3199 (d) The department shall, by rule, provide for the
3200 periodic reporting to the department, employer, or carrier of
3201 all earned income, including income from social security, by the
3202 injured employee who is entitled to or claiming benefits for
3203 temporary total disability. The employer or carrier is not
3204 required to make any payment of benefits for temporary total
3205 disability for any period during which the employee willfully
3206 fails or refuses to report upon request by the employer or
3207 carrier in the manner prescribed by the rules. The rule must
3208 require the claimant to personally sign the claim form and
3209 attest that she or he has reviewed, understands, and
3210 acknowledges the foregoing.

3211 (3) PERMANENT IMPAIRMENT ~~AND WAGE LOSS~~ BENEFITS.--

3212 (a) ~~Impairment benefits.--~~

Amendment No. (for drafter's use only)

3213 ~~1-~~ Once the employee has reached the date of maximum
3214 medical improvement, impairment benefits are due and payable
3215 within 14 ~~20~~ days after the carrier has knowledge of the
3216 impairment.

3217 **(b)2-** The three-member panel, in cooperation with the
3218 department, shall establish and use a uniform permanent
3219 impairment rating schedule. This schedule must be based on
3220 medically or scientifically demonstrable findings as well as the
3221 systems and criteria set forth in the American Medical
3222 Association's Guides to the Evaluation of Permanent Impairment;
3223 the Snellen Charts, published by American Medical Association
3224 Committee for Eye Injuries; and the Minnesota Department of
3225 Labor and Industry Disability Schedules. The schedule must
3226 ~~should~~ be based upon objective findings. The schedule shall be
3227 more comprehensive than the AMA Guides to the Evaluation of
3228 Permanent Impairment and shall expand the areas already
3229 addressed and address additional areas not currently contained
3230 in the guides. On August 1, 1979, and pending the adoption, by
3231 rule, of a permanent schedule, Guides to the Evaluation of
3232 Permanent Impairment, copyright 1977, 1971, 1988, by the
3233 American Medical Association, shall be the temporary schedule
3234 and shall be used for the purposes hereof. For injuries after
3235 July 1, 1990, pending the adoption by rule of a uniform
3236 disability rating agency schedule, the Minnesota Department of
3237 Labor and Industry Disability Schedule shall be used unless that
3238 schedule does not address an injury. In such case, the Guides to
3239 the Evaluation of Permanent Impairment by the American Medical
3240 Association shall be used. Determination of permanent impairment
3241 under this schedule must be made by a physician licensed under

286063

Amendment No. (for drafter's use only)

3242 chapter 458, a doctor of osteopathic medicine licensed under
3243 chapters 458 and 459, a chiropractic physician licensed under
3244 chapter 460, a podiatric physician licensed under chapter 461,
3245 an optometrist licensed under chapter 463, or a dentist licensed
3246 under chapter 466, as appropriate considering the nature of the
3247 injury. No other persons are authorized to render opinions
3248 regarding the existence of or the extent of permanent
3249 impairment.

3250 ~~(c)3-~~ All impairment income benefits shall be based on an
3251 impairment rating using the impairment schedule referred to in
3252 paragraph (b) subparagraph 2. Impairment income benefits are
3253 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
3254 employee's average weekly temporary total disability benefit not
3255 to exceed the maximum weekly benefit under s. 440.12; provided,
3256 however, that such benefits shall be reduced by 50 percent for
3257 each week in which the employee has earned income equal to or in
3258 excess of the employee's average weekly wage. An employee's
3259 entitlement to impairment income benefits begins the day after
3260 the employee reaches maximum medical improvement or the
3261 expiration of temporary benefits, whichever occurs earlier, and
3262 continues until the earlier of:

3263 1.a- The expiration of a period computed at the rate of 3
3264 weeks for each percentage point of impairment; or

3265 2.b- The death of the employee.

3266
3267 Impairment income benefits as defined by this subsection are
3268 payable only for impairment ratings for physical impairments. If
3269 objective medical findings can substantiate a permanent
3270 psychiatric impairment resulting from the accident, permanent

286063

Amendment No. (for drafter's use only)

3271 impairment benefits are limited for the permanent psychiatric
3272 impairment to 1-percent permanent impairment.

3273 (d)4. After the employee has been certified by a doctor as
3274 having reached maximum medical improvement or 6 weeks before the
3275 expiration of temporary benefits, whichever occurs earlier, the
3276 certifying doctor shall evaluate the condition of the employee
3277 and assign an impairment rating, using the impairment schedule
3278 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
3279 ~~payable for the mental, psychological, or emotional injury~~
3280 ~~arising out of depression from being out of work.~~ If the
3281 certification and evaluation are performed by a doctor other
3282 than the employee's treating doctor, the certification and
3283 evaluation must be submitted to the treating doctor, the
3284 employee, and the carrier within 10 days after the evaluation.
3285 ~~and~~ The treating doctor must indicate to the carrier agreement
3286 or disagreement with the other doctor's certification and
3287 evaluation.

3288 1. The certifying doctor shall issue a written report to
3289 ~~the department, the employee,~~ and the carrier certifying that
3290 maximum medical improvement has been reached, stating the
3291 impairment rating to the body as a whole, and providing any
3292 other information required by the department by rule. The
3293 carrier shall establish an overall maximum medical improvement
3294 date and permanent impairment rating, based upon all such
3295 reports.

3296 2. Within 14 days after the carrier's knowledge of each
3297 maximum medical improvement date and impairment rating to the
3298 body as a whole upon which the carrier is paying benefits, the
3299 carrier shall report such maximum medical improvement date and,

Amendment No. (for drafter's use only)

3300 when determined, the overall maximum medical improvement date
3301 and associated impairment rating to the department in a format
3302 as set forth in department rule. If the employee has not been
3303 certified as having reached maximum medical improvement before
3304 the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~
3305 disability benefits begin to accrue, the carrier shall notify
3306 the treating doctor of the requirements of this section.

3307 (e)~~5~~. The carrier shall pay the employee impairment income
3308 benefits for a period based on the impairment rating.

3309 (f)~~6~~. The department may by rule specify forms and
3310 procedures governing the method of payment of ~~wage loss and~~
3311 ~~impairment benefits under this section for dates of accidents~~
3312 ~~before January 1, 1994, and for dates of accidents on or after~~
3313 ~~January 1, 1994.~~

3314 ~~(b) Supplemental benefits.--~~

3315 ~~1. All supplemental benefits must be paid in accordance~~
3316 ~~with this subsection. An employee is entitled to supplemental~~
3317 ~~benefits as provided in this paragraph as of the expiration of~~
3318 ~~the impairment period, if:~~

3319 ~~a. The employee has an impairment rating from the~~
3320 ~~compensable injury of 20 percent or more as determined pursuant~~
3321 ~~to this chapter;~~

3322 ~~b. The employee has not returned to work or has returned~~
3323 ~~to work earning less than 80 percent of the employee's average~~
3324 ~~weekly wage as a direct result of the employee's impairment; and~~

3325 ~~e. The employee has in good faith attempted to obtain~~
3326 ~~employment commensurate with the employee's ability to work.~~

3327 ~~2. If an employee is not entitled to supplemental benefits~~
3328 ~~at the time of payment of the final weekly impairment income~~

Amendment No. (for drafter's use only)

3329 ~~benefit because the employee is earning at least 80 percent of~~
3330 ~~the employee's average weekly wage, the employee may become~~
3331 ~~entitled to supplemental benefits at any time within 1 year~~
3332 ~~after the impairment income benefit period ends if:~~
3333 ~~a. The employee earns wages that are less than 80 percent~~
3334 ~~of the employee's average weekly wage for a period of at least~~
3335 ~~90 days;~~
3336 ~~b. The employee meets the other requirements of~~
3337 ~~subparagraph 1.; and~~
3338 ~~c. The employee's decrease in earnings is a direct result~~
3339 ~~of the employee's impairment from the compensable injury.~~
3340 ~~3. If an employee earns wages that are at least 80 percent~~
3341 ~~of the employee's average weekly wage for a period of at least~~
3342 ~~90 days during which the employee is receiving supplemental~~
3343 ~~benefits, the employee ceases to be entitled to supplemental~~
3344 ~~benefits for the filing period. Supplemental benefits that have~~
3345 ~~been terminated shall be reinstated when the employee satisfies~~
3346 ~~the conditions enumerated in subparagraph 2. and files the~~
3347 ~~statement required under subparagraph 4. Notwithstanding any~~
3348 ~~other provision, if an employee is not entitled to supplemental~~
3349 ~~benefits for 12 consecutive months, the employee ceases to be~~
3350 ~~entitled to any additional income benefits for the compensable~~
3351 ~~injury. If the employee is discharged within 12 months after~~
3352 ~~losing entitlement under this subsection, benefits may be~~
3353 ~~reinstated if the employee was discharged at that time with the~~
3354 ~~intent to deprive the employee of supplemental benefits.~~
3355 ~~4. After the initial determination of supplemental~~
3356 ~~benefits, the employee must file a statement with the carrier~~
3357 ~~stating that the employee has earned less than 80 percent of the~~

286063

Amendment No. (for drafter's use only)

3358 ~~employee's average weekly wage as a direct result of the~~
3359 ~~employee's impairment, stating the amount of wages the employee~~
3360 ~~earned in the filing period, and stating that the employee has~~
3361 ~~in good faith sought employment commensurate with the employee's~~
3362 ~~ability to work. The statement must be filed quarterly on a form~~
3363 ~~and in the manner prescribed by the department. The department~~
3364 ~~may modify the filing period as appropriate to an individual~~
3365 ~~ease. Failure to file a statement relieves the carrier of~~
3366 ~~liability for supplemental benefits for the period during which~~
3367 ~~a statement is not filed.~~

3368 ~~5. The carrier shall begin payment of supplemental~~
3369 ~~benefits not later than the seventh day after the expiration~~
3370 ~~date of the impairment income benefit period and shall continue~~
3371 ~~to timely pay those benefits. The carrier may request a~~
3372 ~~mediation conference for the purpose of contesting the~~
3373 ~~employee's entitlement to or the amount of supplemental income~~
3374 ~~benefits.~~

3375 ~~6. Supplemental benefits are calculated quarterly and paid~~
3376 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3377 ~~percent of the employee's average weekly wage and the average~~
3378 ~~wages the employee has earned per week are compared quarterly.~~
3379 ~~For purposes of this paragraph, if the employee is offered a~~
3380 ~~bona fide position of employment that the employee is capable of~~
3381 ~~performing, given the physical condition of the employee and the~~
3382 ~~geographic accessibility of the position, the employee's weekly~~
3383 ~~wages are considered equivalent to the weekly wages for the~~
3384 ~~position offered to the employee.~~

3385 ~~7. Supplemental benefits are payable at the rate of 80~~
3386 ~~percent of the difference between 80 percent of the employee's~~

Amendment No. (for drafter's use only)

3387 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3388 ~~weekly wages the employee has earned during the reporting~~
3389 ~~period, not to exceed the maximum weekly income benefit under s.~~
3390 ~~440.12.~~

3391 ~~8. The department may by rule define terms that are~~
3392 ~~necessary for the administration of this section and forms and~~
3393 ~~procedures governing the method of payment of supplemental~~
3394 ~~benefits for dates of accidents before January 1, 1994, and for~~
3395 ~~dates of accidents on or after January 1, 1994.~~

3396 ~~(c) Duration of temporary impairment and supplemental~~
3397 ~~income benefits. The employee's eligibility for temporary~~
3398 ~~benefits, impairment income benefits, and supplemental benefits~~
3399 ~~terminates on the expiration of 401 weeks after the date of~~
3400 ~~injury.~~

3401 (g) Notwithstanding paragraph (c), for accidents occurring
3402 on or after October 1, 2003, an employee's entitlement to
3403 impairment income benefits begins the day after the employee
3404 reaches maximum medical improvement or the expiration of
3405 temporary benefits, whichever occurs earlier, and continues for
3406 the following periods:

3407 1. Two weeks of benefits are to be paid to the employee
3408 for each percentage point of impairment from 1 percent up to and
3409 including 10 percent.

3410 2. For each percentage point of impairment from 11 percent
3411 up to and including 15 percent, 3 weeks of benefits are to be
3412 paid.

3413 3. For each percentage point of impairment from 16 percent
3414 up to and including 20 percent, 4 weeks of benefits are to be
3415 paid.

286063

Amendment No. (for drafter's use only)

3416 4. For each percentage point of impairment from 21 percent
3417 and higher, 6 weeks of benefits are to be paid.

3418 (4) TEMPORARY PARTIAL DISABILITY.--

3419 (a) Subject to subsection (7), in case of temporary
3420 partial disability, compensation shall be equal to 80 percent of
3421 the difference between 80 percent of the employee's average
3422 weekly wage and the salary, wages, and other remuneration the
3423 employee is able to earn post injury, as compared weekly;
3424 however, ~~the~~ weekly temporary partial disability benefits may
3425 not exceed an amount equal to 66 2/3 percent of the employee's
3426 average weekly wage at the time of accident injury. In order to
3427 simplify the comparison of the preinjury average weekly wage
3428 with the salary, wages, and other remuneration the employee is
3429 able to earn post injury, the department may by rule provide for
3430 payment of the initial installment of temporary partial
3431 disability benefits to be paid as a partial week so that payment
3432 for remaining weeks of temporary partial disability can ~~the~~
3433 ~~modification of the weekly comparison so as to coincide as~~
3434 ~~closely as possible with the post injury employer's work week~~
3435 ~~injured worker's pay periods~~. The amount determined to be the
3436 salary, wages, and other remuneration the employee is able to
3437 earn shall in no case be less than the sum actually being earned
3438 by the employee, including earnings from sheltered employment.
3439 Benefits shall be payable under this subsection only if overall
3440 maximum medical improvement has not been reached and the medical
3441 conditions resulting from the accident create restrictions on
3442 the injured employee's ability to return to work.

3443 (b) Within 5 business days after the carrier's knowledge
3444 of the employee's release to restricted work, the carrier shall

286063

Amendment No. (for drafter's use only)

3445 mail to the employee and employer an informational letter,
3446 adopted by department rule, explaining the employee's possible
3447 eligibility and responsibilities for temporary partial
3448 disability benefits.

3449 (c) When an employee returns to work with the restrictions
3450 resulting from the accident and is earning wages less than 80
3451 percent of the preinjury average weekly wage, the first
3452 installment of temporary partial disability benefits is due 7
3453 days after the last date of the post injury employer's first
3454 biweekly work week. Thereafter, payment for temporary partial
3455 benefits shall be paid biweekly no later than the 7th day
3456 following the last day of each biweekly work week.

3457 (d) If the employee is unable to return to work with the
3458 restrictions resulting from the accident and is not earning
3459 wages, salary, or other remuneration, temporary partial
3460 disability benefits shall be paid no later than the last day of
3461 each biweekly period. The employee shall notify the carrier
3462 within 5 business days after returning to work. Failure to
3463 notify the carrier of the establishment of an earning capacity
3464 in the required time shall result in a suspension or nonpayment
3465 of temporary partial disability benefits until the proper
3466 notification is provided.

3467 (e)~~(b)~~ Such benefits shall be paid during the continuance
3468 of such disability, not to exceed a period of 104 weeks, as
3469 provided by this subsection and subsection (2). Once the injured
3470 employee reaches the maximum number of weeks, temporary
3471 disability benefits cease and the injured worker's permanent
3472 impairment must be determined. If the employee is terminated
3473 from post injury employment based on the employee's misconduct,

Amendment No. (for drafter's use only)

3474 temporary partial disability benefits are not payable as
3475 provided for in this section. The department shall ~~may~~ by rule
3476 specify forms and procedures governing the method and time for
3477 ~~of~~ payment of temporary disability benefits for dates of
3478 accidents before January 1, 1994, and for dates of accidents on
3479 or after January 1, 1994.

3480 (5) SUBSEQUENT INJURY.--

3481 (a) The fact that an employee has suffered previous
3482 disability, impairment, anomaly, or disease, or received
3483 compensation therefor, shall not preclude her or him from
3484 benefits, as specified in paragraph (b), for a subsequent
3485 aggravation or acceleration of the preexisting condition or ~~not~~
3486 preclude benefits for death resulting therefrom, except that no
3487 benefits shall be payable if the employee, at the time of
3488 entering into the employment of the employer by whom the
3489 benefits would otherwise be payable, falsely represents herself
3490 or himself in writing as not having previously been disabled or
3491 compensated because of such previous disability, impairment,
3492 anomaly, or disease and the employer detrimentally relies on the
3493 misrepresentation. ~~Compensation for temporary disability,~~
3494 ~~medical benefits, and wage-loss benefits shall not be subject to~~
3495 ~~apportionment.~~

3496 (b) If a compensable injury, disability, or need for
3497 medical care ~~permanent impairment~~, or any portion thereof, is a
3498 result of aggravation or acceleration of a preexisting
3499 condition, or is the result of merger with a preexisting
3500 condition, only the disabilities and medical treatment
3501 associated with such compensable injury shall be payable under
3502 this chapter, excluding the degree of disability or medical

Amendment No. (for drafter's use only)

3503 conditions existing at the time of the impairment rating or at
3504 the time of the accident, regardless of whether the preexisting
3505 condition was disabling at the time of the accident or at the
3506 time of the impairment rating and without considering whether
3507 the preexisting condition would be disabling without the
3508 compensable accident impairment, an employee eligible to receive
3509 impairment benefits under paragraph (3)(a) shall receive such
3510 benefits for the total impairment found to result, excluding the
3511 degree of impairment existing at the time of the subject
3512 accident or injury or which would have existed by the time of
3513 the impairment rating without the intervention of the
3514 compensable accident or injury. The degree of permanent
3515 impairment or disability attributable to the accident or injury
3516 shall be compensated in accordance with this section,
3517 apportioning out the preexisting condition based on the
3518 anatomical impairment rating attributable to the preexisting
3519 condition. Medical benefits shall be paid apportioning out the
3520 percentage of the need for such care attributable to the
3521 preexisting condition paragraph (3)(a). As used in this
3522 paragraph, "merger" means the combining of a preexisting
3523 permanent impairment or disability with a subsequent compensable
3524 permanent impairment or disability which, when the effects of
3525 both are considered together, result in a permanent impairment
3526 or disability rating which is greater than the sum of the two
3527 permanent impairment or disability ratings when each impairment
3528 or disability is considered individually.

3529 ~~(6) OBLIGATION TO REHIRE. If the employer has not in good~~
3530 ~~faith made available to the employee, within a 100-mile radius~~
3531 ~~of the employee's residence, work appropriate to the employee's~~

286063

Amendment No. (for drafter's use only)

3532 ~~physical limitations within 30 days after the carrier notifies~~
3533 ~~the employer of maximum medical improvement and the employee's~~
3534 ~~physical limitations, the employer shall pay to the department~~
3535 ~~for deposit into the Workers' Compensation Administration Trust~~
3536 ~~Fund a fine of \$250 for every \$5,000 of the employer's workers'~~
3537 ~~compensation premium or payroll, not to exceed \$2,000 per~~
3538 ~~violation, as the department requires by rule. The employer is~~
3539 ~~not subject to this subsection if the employee is receiving~~
3540 ~~permanent total disability benefits or if the employer has 50 or~~
3541 ~~fewer employees.~~

3542 ~~(6)(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3543 employee refuses employment suitable to the capacity thereof,
3544 offered to or procured therefor, such employee shall not be
3545 entitled to any compensation at any time during the continuance
3546 of such refusal unless at any time in the opinion of the judge
3547 of compensation claims such refusal is justifiable. Time periods
3548 for the payment of benefits in accordance with this section
3549 shall be counted in determining the limitation of benefits as
3550 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3551 ~~(7)(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
3552 employee, when receiving compensation for temporary partial
3553 disability, leaves the employment of the employer by whom she or
3554 he was employed at the time of the accident for which such
3555 compensation is being paid, the employee shall, upon securing
3556 employment elsewhere, give to such former employer an affidavit
3557 in writing containing the name of her or his new employer, the
3558 place of employment, and the amount of wages being received at
3559 such new employment; and, until she or he gives such affidavit,
3560 the compensation for temporary partial disability will cease.

Amendment No. (for drafter's use only)

3561 The employer by whom such employee was employed at the time of
3562 the accident for which such compensation is being paid may also
3563 at any time demand of such employee an additional affidavit in
3564 writing containing the name of her or his employer, the place of
3565 her or his employment, and the amount of wages she or he is
3566 receiving; and if the employee, upon such demand, fails or
3567 refuses to make and furnish such affidavit, her or his right to
3568 compensation for temporary partial disability shall cease until
3569 such affidavit is made and furnished. If the employee leaves her
3570 or his employment while receiving temporary partial benefits
3571 without just cause as determined by the judge of compensation
3572 claims, temporary partial benefits shall be payable based on the
3573 deemed earnings of the employee as if she or he had remained
3574 employed.

3575 ~~(8)~~(9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
3576 employee becomes an inmate of a public institution, then no
3577 compensation shall be payable unless she or he has dependent
3578 upon her or him for support a person or persons defined as
3579 dependents elsewhere in this chapter, whose dependency shall be
3580 determined as if the employee were deceased and to whom
3581 compensation would be paid in case of death; and such
3582 compensation as is due such employee shall be paid such
3583 dependents during the time she or he remains such inmate.

3584 ~~(9)~~(10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3585 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3586 (a) Weekly compensation benefits payable under this
3587 chapter for disability resulting from injuries to an employee
3588 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
3589 be reduced to an amount whereby the sum of such compensation

Amendment No. (for drafter's use only)

3590 benefits payable under this chapter and such total benefits
3591 otherwise payable for such period to the employee and her or his
3592 dependents, had such employee not been entitled to benefits
3593 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
3594 exceed 80 percent of the employee's average weekly wage.
3595 However, this provision shall not operate to reduce an injured
3596 worker's benefits under this chapter to a greater extent than
3597 such benefits would have otherwise been reduced under 42 U.S.C.
3598 s. 424(a). This reduction of compensation benefits is not
3599 applicable to any compensation benefits payable for any week
3600 subsequent to the week in which the injured worker reaches the
3601 age of 62 years.

3602 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3603 to provide for a reduction or increase of the percentage of
3604 average current earnings that the sum of compensation benefits
3605 payable under this chapter and the benefits payable under 42
3606 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
3607 benefits provided in this subsection shall be reduced or
3608 increased accordingly. The department may by rule specify forms
3609 and procedures governing the method for calculating and
3610 administering the offset of benefits payable under this chapter
3611 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3612 department shall have first priority in taking any available
3613 social security offsets on dates of accidents occurring before
3614 July 1, 1984.

3615 (c) No disability compensation benefits payable for any
3616 week, including those benefits provided by paragraph (1)(f),
3617 shall be reduced pursuant to this subsection until the Social
3618 Security Administration determines the amount otherwise payable

286063

Amendment No. (for drafter's use only)

3619 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3620 has begun receiving such social security benefit payments. The
3621 employee shall, upon demand by the department, the employer, or
3622 the carrier, authorize the Social Security Administration to
3623 release disability information relating to her or him and
3624 authorize the Division of Unemployment Compensation to release
3625 unemployment compensation information relating to her or him, in
3626 accordance with rules to be adopted by the department
3627 prescribing the procedure and manner for requesting the
3628 authorization and for compliance by the employee. Neither the
3629 department nor the employer or carrier shall make any payment of
3630 benefits for total disability or those additional benefits
3631 provided by paragraph (1)(f) for any period during which the
3632 employee willfully fails or refuses to authorize the release of
3633 information in the manner and within the time prescribed by such
3634 rules. The authority for release of disability information
3635 granted by an employee under this paragraph shall be effective
3636 for a period not to exceed 12 months, such authority to be
3637 renewable as the department may prescribe by rule.

3638 (d) If compensation benefits are reduced pursuant to this
3639 subsection, the minimum compensation provisions of s. 440.12(2)
3640 do not apply.

3641 ~~(10)(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3642 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3643 COMPENSATION.--

3644 (a) No compensation benefits shall be payable for
3645 temporary total disability or permanent total disability under
3646 this chapter for any week in which the injured employee has
3647 received, or is receiving, unemployment compensation benefits.

Amendment No. (for drafter's use only)

3648 (b) If an employee is entitled to temporary partial
3649 benefits pursuant to subsection (4) and unemployment
3650 compensation benefits, such unemployment compensation benefits
3651 shall be primary and the temporary partial benefits shall be
3652 supplemental only, the sum of the two benefits not to exceed the
3653 amount of temporary partial benefits which would otherwise be
3654 payable.

3655 ~~(11)~~~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
3656 OFFICERS.--Any law enforcement officer as defined in s.
3657 943.10(1), (2), or (3) who, while acting within the course of
3658 employment as provided by s. 440.091, is maliciously or
3659 intentionally injured and who thereby sustains a job-connected
3660 disability compensable under this chapter shall be carried in
3661 full-pay status rather than being required to use sick, annual,
3662 or other leave. Full-pay status shall be granted only after
3663 submission to the employing agency's head of a medical report
3664 which gives a current diagnosis of the employee's recovery and
3665 ability to return to work. In no case shall the employee's
3666 salary and workers' compensation benefits exceed the amount of
3667 the employee's regular salary requirements.

3668 ~~(12)~~~~(13)~~ REPAYMENT.--If an employee has received a sum as
3669 an indemnity benefit under any classification or category of
3670 benefit under this chapter to which she or he is not entitled,
3671 the employee is liable to repay that sum to the employer or the
3672 carrier or to have that sum deducted from future benefits,
3673 regardless of the classification of benefits, payable to the
3674 employee under this chapter; however, a partial payment of the
3675 total repayment may not exceed 20 percent of the amount of the
3676 biweekly payment.

286063

Amendment No. (for drafter's use only)

3677 Section 19. Subsections (1), (2), and (3) of section
3678 440.151, Florida Statutes, are amended to read:
3679 440.151 Occupational diseases.--
3680 (1)(a) Where the employer and employee are subject to the
3681 provisions of the Workers' Compensation Law, the disablement or
3682 death of an employee resulting from an occupational disease as
3683 hereinafter defined shall be treated as the happening of an
3684 injury by accident, notwithstanding any other provisions of this
3685 chapter, and the employee or, in case of death, the employee's
3686 dependents shall be entitled to compensation as provided by this
3687 chapter, except as hereinafter otherwise provided; and the
3688 practice and procedure prescribed by this chapter shall apply to
3689 all proceedings under this section, except as hereinafter
3690 otherwise provided. Provided, however, that in no case shall an
3691 employer be liable for compensation under the provisions of this
3692 section unless such disease has resulted from the nature of the
3693 employment in which the employee was engaged under such
3694 employer, ~~and~~ was actually contracted while so engaged, and the
3695 nature of the employment was the major contributing cause of the
3696 disease. Major contributing cause must be shown by medical
3697 evidence only, as demonstrated by physical examination findings
3698 and diagnostic testing. ~~meaning by~~ "Nature of the employment"
3699 means that in ~~to~~ the occupation in which the employee was so
3700 engaged there is attached a particular hazard of such disease
3701 that distinguishes it from the usual run of occupations, or the
3702 incidence of such disease is substantially higher in the
3703 occupation in which the employee was so engaged than in the
3704 usual run of occupations. In claims for death under s. 440.16,
3705 death must occur ~~or, in case of death, unless death follows~~

286063

Amendment No. (for drafter's use only)

3706 ~~continuous disability from such disease, commencing within the~~
3707 ~~period above limited, for which compensation has been paid or~~
3708 ~~awarded, or timely claim made as provided in this section, and~~
3709 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
3710 causation and sufficient exposure to a specific harmful
3711 substance shown to be present in the workplace to support
3712 causation shall be proven by clear and convincing evidence.

3713 (b) No compensation shall be payable for an occupational
3714 disease if the employee, at the time of entering into the
3715 employment of the employer by whom the compensation would
3716 otherwise be payable, falsely represents herself or himself in
3717 writing as not having previously been disabled, laid off or
3718 compensated in damages or otherwise, because of such disease.

3719 (c) Where an occupational disease is aggravated by any
3720 other disease or infirmity, not itself compensable, or where
3721 disability or death from any other cause, not itself
3722 compensable, is aggravated, prolonged, accelerated or in anywise
3723 contributed to by an occupational disease, the compensation
3724 shall be payable only if the occupational disease is the major
3725 contributing cause of the injury. Any compensation shall be
3726 reduced and limited to such proportion only of the compensation
3727 that would be payable if the occupational disease were the sole
3728 cause of the disability or death as such occupational disease,
3729 as a causative factor, bears to all the causes of such
3730 disability or death, such reduction in compensation to be
3731 effected by reducing the number of weekly or monthly payments or
3732 the amounts of such payments, as under the circumstances of the
3733 particular case may be for the best interest of the claimant or
3734 claimants. Major contributing cause must be demonstrated by

286063

Amendment No. (for drafter's use only)

3735 medical evidence based on physical examination findings and
3736 diagnostic testing.

3737 (d) No compensation for death from an occupational disease
3738 shall be payable to any person whose relationship to the
3739 deceased, which under the provisions of this Workers'
3740 Compensation Law would give right to compensation, arose
3741 subsequent to the beginning of the first compensable disability,
3742 save only to afterborn children of a marriage existing at the
3743 beginning of such disability.

3744 (e) No compensation shall be payable for disability or
3745 death resulting from tuberculosis arising out of and in the
3746 course of employment by the Department of Health at a state
3747 tuberculosis hospital, or aggravated by such employment, when
3748 the employee had suffered from said disease at any time prior to
3749 the commencement of such employment.

3750 (2) Whenever used in this section the term "occupational
3751 disease" shall be construed to mean only a disease which is due
3752 to causes and conditions which are characteristic of and
3753 peculiar to a particular trade, occupation, process, or
3754 employment, and to exclude all ordinary diseases of life to
3755 which the general public is exposed, unless the incidence of the
3756 disease is substantially higher in the particular trade,
3757 occupation, process, or employment than for the general public.
3758 "Occupational disease" means only a disease for which there are
3759 epidemiological studies showing that exposure to the specific
3760 substance involved, at the levels to which the employee was
3761 exposed, may cause the precise disease sustained by the
3762 employee.

Amendment No. (for drafter's use only)

3763 (3) Except as hereinafter otherwise provided in this
3764 section, "disablement" means disability as described in s.
3765 440.02(13) ~~the event of an employee's becoming actually~~
3766 ~~incapacitated, partially or totally, because of an occupational~~
3767 ~~disease, from performing her or his work in the last occupation~~
3768 ~~in which injuriously exposed to the hazards of such disease; and~~
3769 ~~"disability" means the state of being so incapacitated.~~

3770 Section 20. Subsections (1) and (7) of section 440.16,
3771 Florida Statutes, are amended to read:

3772 440.16 Compensation for death.--

3773 (1) If death results from the accident within 1 year
3774 thereafter or follows continuous disability and results from the
3775 accident within 5 years thereafter, the employer shall pay:

3776 (a) Within 14 days after receiving the bill, actual
3777 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3778 (b) Compensation, in addition to the above, in the
3779 following percentages of the average weekly wages to the
3780 following persons entitled thereto on account of dependency upon
3781 the deceased, and in the following order of preference, subject
3782 to the limitation provided in subparagraph 2., but such
3783 compensation shall be subject to the limits provided in s.
3784 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
3785 than, but shall not exceed, for all dependents or persons
3786 entitled to compensation, 66 2/3 percent of the average wage:

3787 1. To the spouse, if there is no child, 50 percent of the
3788 average weekly wage, such compensation to cease upon the
3789 spouse's death.

3790 2. To the spouse, if there is a child or children, the
3791 compensation payable under subparagraph 1. and, in addition, 16

286063

Amendment No. (for drafter's use only)

3792 2/3 percent on account of the child or children. However, when
3793 the deceased is survived by a spouse and also a child or
3794 children, whether such child or children are the product of the
3795 union existing at the time of death or of a former marriage or
3796 marriages, the judge of compensation claims may provide for the
3797 payment of compensation in such manner as may appear to the
3798 judge of compensation claims just and proper and for the best
3799 interests of the respective parties and, in so doing, may
3800 provide for the entire compensation to be paid exclusively to
3801 the child or children; and, in the case of death of such spouse,
3802 33 1/3 percent for each child. However, upon the surviving
3803 spouse's remarriage, the spouse shall be entitled to a lump-sum
3804 payment equal to 26 weeks of compensation at the rate of 50
3805 percent of the average weekly wage as provided in s. 440.12(2),
3806 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
3807 exceeded, in which case the surviving spouse shall receive a
3808 lump-sum payment equal to the remaining available benefits in
3809 lieu of any further indemnity benefits. In no case shall a
3810 surviving spouse's acceptance of a lump-sum payment affect
3811 payment of death benefits to other dependents.

3812 3. To the child or children, if there is no spouse, 33 1/3
3813 percent for each child.

3814 4. To the parents, 25 percent to each, such compensation
3815 to be paid during the continuance of dependency.

3816 5. To the brothers, sisters, and grandchildren, 15 percent
3817 for each brother, sister, or grandchild.

3818 (c) To the surviving spouse, payment of postsecondary
3819 student fees for instruction at any area technical center
3820 established under s. 1001.44 for up to 1,800 classroom hours or

286063

Amendment No. (for drafter's use only)

3821 payment of student fees at any community college established
3822 under part III of chapter 1004 for up to 80 semester hours. The
3823 spouse of a deceased state employee shall be entitled to a full
3824 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3825 lieu of the payment of such fees. The benefits provided for in
3826 this paragraph shall be in addition to other benefits provided
3827 for in this section and shall terminate 7 years after the death
3828 of the deceased employee, or when the total payment in eligible
3829 compensation under paragraph (b) has been received. To qualify
3830 for the educational benefit under this paragraph, the spouse
3831 shall be required to meet and maintain the regular admission
3832 requirements of, and be registered at, such area technical
3833 center or community college, and make satisfactory academic
3834 progress as defined by the educational institution in which the
3835 student is enrolled.

3836 (7) Compensation under this chapter to aliens not
3837 residents (or about to become nonresidents) of the United States
3838 or Canada shall be the same in amount as provided for residents,
3839 except that dependents in any foreign country shall be limited
3840 to surviving spouse and child or children, or if there be no
3841 surviving spouse or child or children, to surviving father or
3842 mother whom the employee has supported, either wholly or in
3843 part, for the period of 1 year prior to the date of the injury,
3844 and except that the judge of compensation claims may, at the
3845 option of the judge of compensation claims, or upon the
3846 application of the insurance carrier, commute all future
3847 installments of compensation to be paid to such aliens by paying
3848 or causing to be paid to them one-half of the commuted amount of
3849 such future installments of compensation as determined by the

286063

Amendment No. (for drafter's use only)

3850 judge of compensation claims, and provided further that
3851 compensation to dependents referred to in this subsection shall
3852 in no case exceed \$75,000 ~~\$50,000~~.

3853 Section 21. Subsection (9) of section 440.185, Florida
3854 Statutes, is amended, and subsection (12) is added to said
3855 section, to read:

3856 440.185 Notice of injury or death; reports; penalties for
3857 violations.--

3858 (9) Any employer or carrier who fails or refuses to timely
3859 send any form, report, or notice required by this section shall
3860 be subject to an administrative fine by the department ~~a civil~~
3861 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
3862 refusal. If, within 1 calendar year, an employer fails to timely
3863 submit to the carrier more than 10 percent of its notices of
3864 injury or death, the employer shall be subject to an
3865 administrative fine by the department not to exceed \$2,000 for
3866 each such failure or refusal. However, any employer who fails to
3867 notify the carrier of the injury on the prescribed form or by
3868 letter within the 7 days required in subsection (2) shall be
3869 liable for the administrative fine ~~civil penalty~~, which shall be
3870 paid by the employer and not the carrier. Failure by the
3871 employer to meet its obligations under subsection (2) shall not
3872 relieve the carrier from liability for the administrative fine
3873 ~~civil penalty~~ if it fails to comply with subsections (4) and
3874 (5).

3875 (12) Upon receiving notice of an injury from an employee
3876 under subsection (1), the employer or carrier shall provide the
3877 employee with a written notice, in the form and manner
3878 determined by the department by rule, of the availability of

286063

Amendment No. (for drafter's use only)

3879 services from the Employee Assistance and Ombudsman Office. The
3880 substance of the notice to the employee shall include:

3881 (a) A description of the scope of services provided by the
3882 office.

3883 (b) A listing of the toll-free telephone number of, the
3884 email address, and the postal address of the office.

3885 (c) A statement that the informational brochure referred
3886 to in subsection (4) will be mailed to the employee within 3
3887 days after the carrier receives notice of the injury.

3888 (d) Any other information regarding access to assistance
3889 that the department finds is immediately necessary for an
3890 injured employee.

3891 Section 22. Subsections (1) and (2) of section 440.192,
3892 Florida Statutes, are amended, and subsection (9) is added to
3893 said section, to read:

3894 440.192 Procedure for resolving benefit disputes.—

3895 (1) ~~Subject to s. 440.191, Any employee may, for any~~
3896 ~~benefit that is ripe, due, and owing, who has not received a~~
3897 ~~benefit to which the employee believes she or he is entitled~~
3898 ~~under this chapter shall file by certified mail, or by~~
3899 ~~electronic means approved by the Deputy Chief Judge, with the~~
3900 ~~Office of the Judges of Compensation Claims a petition for~~
3901 ~~benefits which meets the requirements of this section and the~~
3902 ~~definition of specificity in s. 440.02. The department shall~~
3903 ~~inform employees of the location of the Office of the Judges of~~
3904 ~~Compensation Claims for purposes of filing a petition for~~
3905 ~~benefits. The employee shall also serve copies of the petition~~
3906 ~~for benefits by certified mail, or by electronic means approved~~
3907 ~~by the Deputy Chief Judge, upon the employer and the employer's~~

286063

Amendment No. (for drafter's use only)

3908 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
3909 judges of compensation claims.

3910 (2) Upon receipt, the Office of the Judges of Compensation
3911 Claims shall review each petition and shall dismiss each
3912 petition or any portion of such a petition, ~~upon the judge's own~~
3913 ~~motion or upon the motion of any party~~, that does not on its
3914 face specifically identify or itemize the following:

3915 (a) Name, address, telephone number, and social security
3916 number of the employee.

3917 (b) Name, address, and telephone number of the employer.

3918 (c) A detailed description of the injury and cause of the
3919 injury, including the location of the occurrence and the date or
3920 dates of the accident.

3921 (d) A detailed description of the employee's job, work
3922 responsibilities, and work the employee was performing when the
3923 injury occurred.

3924 (e) The time period for which compensation and the
3925 specific classification of compensation were not timely
3926 provided.

3927 (f) Date of maximum medical improvement, character of
3928 disability, and specific statement of all benefits or
3929 compensation that the employee is seeking.

3930 (g) All specific travel costs to which the employee
3931 believes she or he is entitled, including dates of travel and
3932 purpose of travel, means of transportation, and mileage and
3933 including the date the request for mileage was filed with the
3934 carrier and a copy of the request filed with the carrier.

Amendment No. (for drafter's use only)

3935 (h) Specific listing of all medical charges alleged
3936 unpaid, including the name and address of the medical provider,
3937 the amounts due, and the specific dates of treatment.

3938 (i) The type or nature of treatment care or attendance
3939 sought and the justification for such treatment. If the employee
3940 is under the care of a physician for an injury identified under
3941 paragraph (c), a copy of the physician's request, authorization,
3942 or recommendation for treatment, care, or attendance must
3943 accompany the petition.

3944 (j) Specific explanation of any other disputed issue that
3945 a judge of compensation claims will be called to rule upon.

3946

3947 The dismissal of any petition or portion of such a petition
3948 under this section is without prejudice and does not require a
3949 hearing.

3950 (9) A petition for benefits must contain claims for all
3951 benefits that are ripe, due, and owing on the date the petition
3952 is filed. Unless stipulated in writing by the parties, only
3953 claims which have been properly raised in a petition for
3954 benefits and have undergone mediation may be considered for
3955 adjudication by a judge of compensation claims.

3956 Section 23. Section 440.1926, Florida Statutes, is created
3957 to read:

3958 440.1926 Alternate dispute resolution; claim
3959 arbitration.--Notwithstanding any other provision of this
3960 chapter, the employer, carrier, and employee may mutually agree
3961 to seek consent from a judge of compensation claims to enter
3962 into binding claim arbitration in lieu of any other remedy
3963 provided for in this chapter to resolve all issues in dispute

286063

Amendment No. (for drafter's use only)

3964 regarding an injury. Arbitrations agreed to pursuant to this
3965 section shall be governed by chapter 682, the Florida
3966 Arbitration Code, except that, notwithstanding any provision in
3967 chapter 682, the term "court" shall mean a judge of compensation
3968 claims. An arbitration award in accordance with this section
3969 shall be enforceable in the same manner and with the same powers
3970 as any final compensation order.

3971 Section 24. Subsections (2), (3), (4), (6), and (8) and
3972 paragraph (d) of subsection (11) of section 440.20, Florida
3973 Statutes, are amended to read:

3974 440.20 Time for payment of compensation and medical bills;
3975 penalties for late payment.--

3976 (2)(a) The carrier must pay the first installment of
3977 compensation for total disability or death benefits or deny
3978 compensability no later than the 14th calendar day after the
3979 employer receives notification ~~notice~~ of the injury or death,
3980 when disability is immediate and continuous for 8 calendar days
3981 or more after the injury. If the first 7 days after disability
3982 are nonconsecutive or delayed, the first installment of
3983 compensation is due on the 6th day after the first 8 calendar
3984 days of disability. The carrier shall thereafter pay
3985 compensation in biweekly installments or as otherwise provided
3986 in s. 440.15, unless the judge of compensation claims determines
3987 or the parties agree that an alternate installment schedule is
3988 in the best interests of the employee.

3989 (b) The carrier must pay, disallow, or deny all medical,
3990 dental, pharmacy, and hospital bills submitted to the carrier in
3991 accordance with department rule no later than 45 calendar days
3992 after the carrier's receipt of the bill.

Amendment No. (for drafter's use only)

3993 (3) Upon making initial payment of indemnity benefits, or
3994 upon suspension or cessation of payment for any reason, the
3995 carrier shall immediately notify the injured employee, the
3996 employer, and the department that it has commenced, suspended,
3997 or ceased payment of compensation. The department may require
3998 such notification to the injured employee, employer, and the
3999 department in a ~~any~~ format and manner it deems necessary to
4000 obtain accurate and timely notification ~~reporting~~.

4001 (4) If the carrier is uncertain of its obligation to
4002 provide all benefits or compensation, ~~it may initiate payment~~
4003 ~~without prejudice and without admitting liability.~~ the carrier
4004 shall immediately and in good faith commence investigation of
4005 the employee's entitlement to benefits under this chapter and
4006 shall admit or deny compensability within 120 days after the
4007 initial provision of compensation or benefits as required under
4008 subsection (2) or s. 440.192(8). Additionally, the carrier shall
4009 initiate payment and continue the provision of all benefits and
4010 compensation as if the claim had been accepted as compensable,
4011 without prejudice and without admitting liability. Upon
4012 commencement of payment as required under subsection (2) or s.
4013 440.192 (8), the carrier shall provide written notice to the
4014 employee that it has elected to pay ~~all or part of~~ the claim
4015 pending further investigation, and that it will advise the
4016 employee of claim acceptance or denial within 120 days. A
4017 carrier that fails to deny compensability within 120 days after
4018 the initial provision of benefits or payment of compensation as
4019 required under subsection (2) or s. 440.192(8) waives the right
4020 to deny compensability, unless the carrier can establish
4021 material facts relevant to the issue of compensability that it

286063

Amendment No. (for drafter's use only)

4022 could not have discovered through reasonable investigation
4023 within the 120-day period. The initial provision of compensation
4024 or benefits, for purposes of this subsection, means the first
4025 installment of compensation or benefits to be paid by the
4026 carrier under subsection (2) or pursuant to a petition for
4027 benefits under s. 440.192(8).

4028 (6)(a) If any installment of compensation for death or
4029 dependency benefits, or compensation for disability benefits,
4030 ~~permanent impairment, or wage loss~~ payable without an award is
4031 not paid within 7 days after it becomes due, as provided in
4032 subsection (2), subsection (3), or subsection (4), there shall
4033 be added to such unpaid installment a ~~punitive~~ penalty of an
4034 amount equal to 20 percent of the unpaid installment ~~or \$5~~,
4035 which shall be paid at the same time as, but in addition to,
4036 such installment of compensation. This penalty shall not apply
4037 for late payments resulting ~~, unless notice is filed under~~
4038 ~~subsection (4) or unless such nonpayment results~~ from conditions
4039 over which the employer or carrier had no control. When any
4040 installment of compensation payable without an award has not
4041 been paid within 7 days after it became due and the claimant
4042 concludes the prosecution of the claim before a judge of
4043 compensation claims without having specifically claimed
4044 additional compensation in the nature of a penalty under this
4045 section, the claimant will be deemed to have acknowledged that,
4046 owing to conditions over which the employer or carrier had no
4047 control, such installment could not be paid within the period
4048 prescribed for payment and to have waived the right to claim
4049 such penalty. However, during the course of a hearing, the judge
4050 of compensation claims shall on her or his own motion raise the

286063

Amendment No. (for drafter's use only)

4051 question of whether such penalty should be awarded or excused.
4052 The department may assess without a hearing the ~~punitive~~ penalty
4053 against either the employer or the ~~insurance~~ carrier, depending
4054 upon who was at fault in causing the delay. The insurance policy
4055 cannot provide that this sum will be paid by the carrier if the
4056 department or the judge of compensation claims determines that
4057 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4058 than the carrier. Any additional installment of compensation
4059 paid by the carrier pursuant to this section shall be paid
4060 directly to the employee by check or, if authorized by the
4061 employee, by direct deposit into the employee's account at a
4062 financial institution. ~~As used in this subsection, the term~~
4063 ~~"financial institution" means a financial institution as defined~~
4064 ~~in s. 655.005(1)(h).~~

4065 (b) For medical services provided on or after January 1,
4066 2004, the department shall require that all medical, hospital,
4067 pharmacy, or dental bills properly submitted by the provider,
4068 except for bills that are disallowed or denied by the carrier or
4069 its authorized vendor in accordance with department rule, are
4070 timely paid within 45 calendar days after the carrier's receipt
4071 of the bill. The department shall impose penalties for late
4072 payments or disallowances or denials of medical, hospital,
4073 pharmacy, or dental bills that are below a minimum 95 percent
4074 timely performance standard. The carrier shall pay to the
4075 Workers' Compensation Administration Trust Fund a penalty of:

4076 1. Twenty-five dollars for each bill below the 95 percent
4077 timely performance standard, but meeting a 90 percent timely
4078 standard.

Amendment No. (for drafter's use only)

4079 2. Fifty dollars for each bill below a 90 percent timely
4080 performance standard.

4081 (8)(a) In addition to any other penalties provided by this
4082 chapter for late payment, if any installment of compensation is
4083 not paid when it becomes due, the employer, carrier, or
4084 servicing agent shall pay interest thereon at the rate of 12
4085 percent per year from the date the installment becomes due until
4086 it is paid, whether such installment is payable without an order
4087 or under the terms of an order. The interest payment shall be
4088 the greater of the amount of interest due or \$5.

4089 ~~(a) Within 30 days after final payment of compensation has~~
4090 ~~been made, the employer, carrier, or servicing agent shall send~~
4091 ~~to the department a notice, in accordance with a format and~~
4092 ~~manner prescribed by the department, stating that such final~~
4093 ~~payment has been made and stating the total amount of~~
4094 ~~compensation paid, the name of the employee and of any other~~
4095 ~~person to whom compensation has been paid, the date of the~~
4096 ~~injury or death, and the date to which compensation has been~~
4097 ~~paid.~~

4098 ~~(b) If the employer, carrier, or servicing agent fails to~~
4099 ~~so notify the department within such time, the department shall~~
4100 ~~assess against such employer, carrier, or servicing agent a~~
4101 ~~civil penalty in an amount not over \$100.~~

4102 (b)(e) In order to ensure carrier compliance under this
4103 chapter and ~~provisions of the Florida Insurance Code, the office~~
4104 ~~department shall monitor, audit, and investigate~~ the performance
4105 of carriers ~~by conducting market conduct examinations, as~~
4106 ~~provided in s. 624.3161, and conducting investigations, as~~
4107 ~~provided in s. 624.317. The office department shall require~~

286063

Amendment No. (for drafter's use only)

4108 ~~establish by rule minimum performance standards for carriers to~~
4109 ~~ensure that a minimum of 90 percent of all compensation benefits~~
4110 ~~are timely paid in accordance with this section.~~ The office
4111 ~~department shall impose penalties~~ fine a carrier as provided in
4112 ~~s. 440.13(11)(b) up to \$50 for each late payments~~ payment of
4113 ~~compensation that are is below a the minimum 95 90 percent~~
4114 timely payment performance standard. The carrier shall pay to
4115 the Workers' Compensation Administration Trust Fund a penalty
4116 of:

4117 1. Fifty dollars per number of installments of
4118 compensation below the 95 percent timely payment performance
4119 standard and equal to or greater than a 90 percent timely
4120 payment performance standard.

4121 2. One hundred dollars per number of installments of
4122 compensation below a 90 percent timely payment performance
4123 standard.

4124

4125 This section does not affect the imposition of any penalties or
4126 interest due to the claimant. If a carrier contracts with a
4127 servicing agent to fulfill its administrative responsibilities
4128 under this chapter, the payment practices of the servicing agent
4129 are deemed the payment practices of the carrier for the purpose
4130 of assessing penalties against the carrier.

4131 (11)

4132 (d)1. With respect to any lump-sum settlement under this
4133 subsection, a judge of compensation claims must consider at the
4134 time of the settlement, whether the settlement allocation
4135 provides for the appropriate recovery of child support
4136 arrearages. An employer or carrier does not have a duty to

286063

Amendment No. (for drafter's use only)

4137 investigate or collect information regarding child support
4138 arrearages.

4139 2. When reviewing any settlement of lump-sum payment
4140 pursuant to this subsection, judges of compensation claims shall
4141 consider the interests of the worker and the worker's family
4142 when approving the settlement, which must consider and provide
4143 for appropriate recovery of past due support.

4144 3. With respect to any lump-sum settlement under this
4145 subsection, any correspondence to a clerk of the circuit court
4146 of this state regarding child support documentation shall be
4147 exempt from any fees or costs ordinarily assessed by the clerk's
4148 office.

4149 Section 25. Section 440.25, Florida Statutes, is amended
4150 to read:

4151 440.25 Procedures for mediation and hearings.--

4152 (1) Forty days ~~Within 90 days~~ after a petition for
4153 benefits is filed under s. 440.192, ~~a mediation conference~~
4154 ~~concerning such petition shall be held. Within 40 days after~~
4155 ~~such petition is filed,~~ the judge of compensation claims shall
4156 notify the interested parties by order that a mediation
4157 conference concerning such petition has been scheduled ~~will be~~
4158 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4159 ~~Judges~~ of compensation claims that a private mediation has been
4160 held or is scheduled to be held. A mediation, whether private or
4161 public, shall be held within 130 days after the filing of the
4162 petition. Such order must give the date ~~by which~~ the mediation
4163 conference is to ~~must~~ be held. Such order may be served
4164 personally upon the interested parties or may be sent to the
4165 interested parties by mail. If multiple petitions are pending,

286063

Amendment No. (for drafter's use only)

4166 or if additional petitions are filed after the scheduling of a
4167 mediation, the judge of compensation claims shall consolidate
4168 all petitions into one mediation. The claimant or the adjuster
4169 of the employer or carrier may, at the mediator's discretion,
4170 attend the mediation conference by telephone or, if agreed to by
4171 the parties, other electronic means. A continuance may be
4172 granted upon the agreement of the parties or if the requesting
4173 party demonstrates to the judge of compensation claims that the
4174 reason for requesting the continuance arises from circumstances
4175 beyond the party's control. Any order granting a continuance
4176 must set forth the date of the rescheduled mediation conference.
4177 A mediation conference may not be used solely for the purpose of
4178 mediating attorney's fees.

4179 (2) Any party who participates in a mediation conference
4180 shall not be precluded from requesting a hearing following the
4181 mediation conference should both parties not agree to be bound
4182 by the results of the mediation conference. A mediation
4183 conference is required to be held unless this requirement is
4184 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~
4185 ~~the mediation conference, all parties must submit any applicable~~
4186 ~~motions, including, but not limited to, a motion to waive the~~
4187 ~~mediation conference, to the judge of compensation claims.~~

4188 (3)(a) Such mediation conference shall be conducted
4189 informally and does not require the use of formal rules of
4190 evidence or procedure. Any information from the files, reports,
4191 case summaries, mediator's notes, or other communications or
4192 materials, oral or written, relating to a mediation conference
4193 under this section obtained by any person performing mediation
4194 duties is privileged and confidential and may not be disclosed

286063

Amendment No. (for drafter's use only)

4195 without the written consent of all parties to the conference.
4196 Any research or evaluation effort directed at assessing the
4197 mediation program activities or performance must protect the
4198 confidentiality of such information. Each party to a mediation
4199 conference has a privilege during and after the conference to
4200 refuse to disclose and to prevent another from disclosing
4201 communications made during the conference whether or not the
4202 contested issues are successfully resolved. This subsection and
4203 paragraphs (4)(a) and (b) shall not be construed to prevent or
4204 inhibit the discovery or admissibility of any information that
4205 is otherwise subject to discovery or that is admissible under
4206 applicable law or rule of procedure, except that any conduct or
4207 statements made during a mediation conference or in negotiations
4208 concerning the conference are inadmissible in any proceeding
4209 under this chapter.

4210 (a)1- Unless the parties conduct a private mediation under
4211 paragraph (b) subparagraph 2-, mediation shall be conducted by a
4212 mediator selected by the Director of the Division of
4213 Administrative Hearings from among mediators employed on a full-
4214 time basis by the Office of the Judges of Compensation Claims. A
4215 mediator must be a member of The Florida Bar for at least 5
4216 years and must complete a mediation training program approved by
4217 the Deputy Chief Judge ~~Director of the Division of~~
4218 ~~Administrative Hearings~~. Adjunct mediators may be employed by
4219 the Office of the Judges of Compensation Claims on an as-needed
4220 basis and shall be selected from a list prepared by the Director
4221 of the Division of Administrative Hearings. An adjunct mediator
4222 must be independent of all parties participating in the
4223 mediation conference. An adjunct mediator must be a member of

286063

Amendment No. (for drafter's use only)

4224 The Florida Bar for at least 5 years and must complete a
4225 mediation training program approved by the Office of the Judges
4226 of Compensation Claims ~~Director of the Division of~~
4227 ~~Administrative Hearings~~. An adjunct mediator shall have access
4228 to the office, equipment, and supplies of the judge of
4229 compensation claims in each district.

4230 (b)2. With respect to any private mediation ~~occurring on~~
4231 ~~or after January 1, 2003~~, if the parties agree or if mediators
4232 are not available under paragraph (a), pursuant to notice from
4233 the judge of compensation claims, subparagraph 1. to conduct the
4234 required mediation within the period specified in this section,
4235 the parties shall hold a mediation conference at the carrier's
4236 expense within the 130-day ~~90-day~~ period set for mediation. The
4237 mediation conference shall be conducted by a mediator certified
4238 under s. 44.106. If the parties do not agree upon a mediator
4239 within 10 days after the date of the order, the claimant shall
4240 notify the judge in writing and the judge shall appoint a
4241 mediator under this subparagraph within 7 days. In the event
4242 both parties agree, the results of the mediation conference
4243 shall be binding and neither party shall have a right to appeal
4244 the results. In the event either party refuses to agree to the
4245 results of the mediation conference, the results of the
4246 mediation conference as well as the testimony, witnesses, and
4247 evidence presented at the conference shall not be admissible at
4248 any subsequent proceeding on the claim. The mediator shall not
4249 be called in to testify or give deposition to resolve any claim
4250 for any hearing before the judge of compensation claims. The
4251 employer may be represented by an attorney at the mediation

Amendment No. (for drafter's use only)

4252 conference if the employee is also represented by an attorney at
4253 the mediation conference.

4254 ~~(b) The parties shall complete the pretrial stipulations~~
4255 ~~before the conclusion of the mediation conference if the claims,~~
4256 ~~except for attorney's fees and costs, have not been settled and~~
4257 ~~if any claims in any filed petition remain unresolved. The judge~~
4258 ~~of compensation claims may impose sanctions against a party or~~
4259 ~~both parties for failing to complete the pretrial stipulations~~
4260 ~~before the conclusion of the mediation conference.~~

4261 (4)(a) If the parties fail to agree to ~~upon~~ written
4262 submission of pretrial stipulations ~~at the mediation conference,~~
4263 the judge of compensation claims shall conduct a live ~~order a~~
4264 ~~pretrial hearing to occur within 14 days after the date of~~
4265 ~~mediation ordered by the judge of compensation claims.~~ The judge
4266 of compensation claims shall give the interested parties at
4267 least 14 ~~7~~ days' advance notice of the pretrial hearing by mail.
4268 ~~At the pretrial hearing, the judge of compensation claims shall,~~
4269 ~~subject to paragraph (b), set a date for the final hearing that~~
4270 ~~allows the parties at least 60 days to conduct discovery unless~~
4271 ~~the parties consent to an earlier hearing date.~~

4272 (b) The final hearing must be held and concluded within 90
4273 days after the mediation conference is held, allowing the
4274 parties sufficient time to complete discovery. Except as set
4275 forth in this section, continuances may be granted only if the
4276 requesting party demonstrates to the judge of compensation
4277 claims that the reason for requesting the continuance arises
4278 from circumstances beyond the party's control. The written
4279 consent of the claimant must be obtained before any request from
4280 a claimant's attorney is granted for an additional continuance

286063

Amendment No. (for drafter's use only)

4281 after the initial continuance has been granted. Any order
4282 granting a continuance must set forth the date and time of the
4283 rescheduled hearing. A continuance may be granted only if the
4284 requesting party demonstrates to the judge of compensation
4285 claims that the reason for requesting the continuance arises
4286 from circumstances beyond the control of the parties. The judge
4287 of compensation claims shall report any grant of two or more
4288 continuances to the Deputy Chief Judge.

4289 (c) The judge of compensation claims shall give the
4290 interested parties at least 14 7 days' advance notice of the
4291 final hearing, served upon the interested parties by mail.

4292 (d) The final hearing shall be held within 210 days after
4293 receipt of the petition for benefits in the county where the
4294 injury occurred, if the injury occurred in this state, unless
4295 otherwise agreed to between the parties and authorized by the
4296 judge of compensation claims in the county where the injury
4297 occurred. However, the claimant may waive the timeframes within
4298 this section for good cause shown. If the injury occurred
4299 outside the state and is one for which compensation is payable
4300 under this chapter, then the final hearing may be held in the
4301 county of the employer's residence or place of business, or in
4302 any other county of the state that will, in the discretion of
4303 the Deputy Chief Judge, be the most convenient for a hearing.
4304 The final hearing shall be conducted by a judge of compensation
4305 claims, who shall, within 30 days after final hearing or closure
4306 of the hearing record, unless otherwise agreed by the parties,
4307 enter a final order on the merits of the disputed issues. The
4308 judge of compensation claims may enter an abbreviated final
4309 order in cases in which compensability is not disputed. Either

286063

Amendment No. (for drafter's use only)

4310 party may request separate findings of fact and conclusions of
4311 law. At the final hearing, the claimant and employer may each
4312 present evidence with respect to the claims presented by the
4313 petition for benefits and may be represented by any attorney
4314 authorized in writing for such purpose. When there is a conflict
4315 in the medical evidence submitted at the hearing, the provisions
4316 of s. 440.13 shall apply. The report or testimony of the expert
4317 medical advisor shall be admitted into evidence in a ~~made a part~~
4318 ~~of the record of the proceeding and shall be given the same~~
4319 ~~consideration by the judge of compensation claims as is accorded~~
4320 ~~other medical evidence submitted in the proceeding;~~ and all
4321 costs incurred in connection with such examination and testimony
4322 may be assessed as costs in the proceeding, subject to the
4323 provisions of s. 440.13. No judge of compensation claims may
4324 make a finding of a degree of permanent impairment that is
4325 greater than the greatest permanent impairment rating given the
4326 claimant by any examining or treating physician, except upon
4327 stipulation of the parties. Any benefit due but not raised at
4328 the final hearing which was ripe, due, or owing at the time of
4329 the final hearing is waived.

4330 (e) The order making an award or rejecting the claim,
4331 referred to in this chapter as a "compensation order," shall set
4332 forth the findings of ultimate facts and the mandate; and the
4333 order need not include any other reason or justification for
4334 such mandate. The compensation order shall be filed in the
4335 Office of the Judges of Compensation Claims at Tallahassee. A
4336 copy of such compensation order shall be sent by mail to the
4337 parties and attorneys of record at the last known address of
4338 each, with the date of mailing noted thereon.

286063

Amendment No. (for drafter's use only)

4339 ~~(f) Each judge of compensation claims is required to~~
4340 ~~submit a special report to the Deputy Chief Judge in each~~
4341 ~~contested workers' compensation case in which the case is not~~
4342 ~~determined within 30 days of final hearing or closure of the~~
4343 ~~hearing record. Said form shall be provided by the director of~~
4344 ~~the Division of Administrative Hearings and shall contain the~~
4345 ~~names of the judge of compensation claims and of the attorneys~~
4346 ~~involved and a brief explanation by the judge of compensation~~
4347 ~~claims as to the reason for such a delay in issuing a final~~
4348 ~~order.~~

4349 (f)~~(g)~~ Notwithstanding any other provision of this
4350 section, the judge of compensation claims may require the
4351 appearance of the parties and counsel before her or him without
4352 written notice for an emergency conference where there is a bona
4353 fide emergency involving the health, safety, or welfare of an
4354 employee. An emergency conference under this section may result
4355 in the entry of an order or the rendering of an adjudication by
4356 the judge of compensation claims.

4357 (g)~~(h)~~ To expedite dispute resolution and to enhance the
4358 self-executing features of the Workers' Compensation Law, the
4359 Deputy Chief Judge shall make provision by rule or order for the
4360 resolution of appropriate motions by judges of compensation
4361 claims without oral hearing upon submission of brief written
4362 statements in support and opposition, and for expedited
4363 discovery and docketing. Unless the judge of compensation
4364 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,
4365 each claim in a petition relating to the determination of the
4366 average weekly wage pay under s. 440.14 shall be resolved under
4367 this paragraph without oral hearing.

286063

Amendment No. (for drafter's use only)

4368 ~~(h)~~(i) To further expedite dispute resolution and to
4369 enhance the self-executing features of the system, those
4370 petitions filed in accordance with s. 440.192 that involve a
4371 claim for benefits of \$5,000 or less shall, in the absence of
4372 compelling evidence to the contrary, be presumed to be
4373 appropriate for expedited resolution under this paragraph; and
4374 any other claim filed in accordance with s. 440.192, upon the
4375 written agreement of both parties and application by either
4376 party, may similarly be resolved under this paragraph. A claim
4377 in a petition or \$5,000 or less for medical benefits only or a
4378 petition for reimbursement for mileage for medical purposes
4379 shall, in the absence of compelling evidence to the contrary, be
4380 resolved through the expedited dispute resolution process
4381 provided in this paragraph. For purposes of expedited resolution
4382 pursuant to this paragraph, the Deputy Chief Judge shall make
4383 provision by rule or order for expedited and limited discovery
4384 and expedited docketing in such cases. At least 15 days prior to
4385 hearing, the parties shall exchange and file with the judge of
4386 compensation claims a pretrial outline of all issues, defenses,
4387 and witnesses on a form adopted by the Deputy Chief Judge;
4388 provided, in no event shall such hearing be held without 15
4389 days' written notice to all parties. No pretrial hearing shall
4390 be held and no mediation scheduled unless requested by a party.
4391 The judge of compensation claims shall limit all argument and
4392 presentation of evidence at the hearing to a maximum of 30
4393 minutes, and such hearings shall not exceed 30 minutes in
4394 length. Neither party shall be required to be represented by
4395 counsel. The employer or carrier may be represented by an
4396 adjuster or other qualified representative. The employer or

286063

Amendment No. (for drafter's use only)

4397 carrier and any witness may appear at such hearing by telephone.
4398 The rules of evidence shall be liberally construed in favor of
4399 allowing introduction of evidence.

4400 ~~(i)~~~~(j)~~ A judge of compensation claims may, upon the motion
4401 of a party or the judge's own motion, dismiss a petition for
4402 lack of prosecution if a petition, response, motion, order,
4403 request for hearing, or notice of deposition has not been filed
4404 during the previous 12 months unless good cause is shown. A
4405 dismissal for lack of prosecution is without prejudice and does
4406 not require a hearing.

4407 ~~(j)~~~~(k)~~ A judge of compensation claims may not award
4408 interest on unpaid medical bills and the amount of such bills
4409 may not be used to calculate the amount of interest awarded.
4410 Regardless of the date benefits were initially requested,
4411 attorney's fees do not attach under this subsection until 30
4412 days after the date the carrier or self-insured employer
4413 receives the petition.

4414 (5)(a) Procedures with respect to appeals from orders of
4415 judges of compensation claims shall be governed by rules adopted
4416 by the Supreme Court. Such an order shall become final 30 days
4417 after mailing of copies of such order to the parties, unless
4418 appealed pursuant to such rules.

4419 (b) An appellant may be relieved of any necessary filing
4420 fee by filing a verified petition of indigency for approval as
4421 provided in s. 57.081(1) and may be relieved in whole or in part
4422 from the costs for preparation of the record on appeal if,
4423 within 15 days after the date notice of the estimated costs for
4424 the preparation is served, the appellant files with the judge of
4425 compensation claims a copy of the designation of the record on

286063

Amendment No. (for drafter's use only)

4426 appeal, and a verified petition to be relieved of costs. A
4427 verified petition filed prior to the date of service of the
4428 notice of the estimated costs shall be deemed not timely filed.
4429 The verified petition relating to record costs shall contain a
4430 sworn statement that the appellant is insolvent and a complete,
4431 detailed, and sworn financial affidavit showing all the
4432 appellant's assets, liabilities, and income. Failure to state in
4433 the affidavit all assets and income, including marital assets
4434 and income, shall be grounds for denying the petition with
4435 prejudice. The Office of the Judges of Compensation Claims shall
4436 adopt rules as may be required pursuant to this subsection,
4437 including forms for use in all petitions brought under this
4438 subsection. The appellant's attorney, or the appellant if she or
4439 he is not represented by an attorney, shall include as a part of
4440 the verified petition relating to record costs an affidavit or
4441 affirmation that, in her or his opinion, the notice of appeal
4442 was filed in good faith and that there is a probable basis for
4443 the District Court of Appeal, First District, to find reversible
4444 error, and shall state with particularity the specific legal and
4445 factual grounds for the opinion. Failure to so affirm shall be
4446 grounds for denying the petition. A copy of the verified
4447 petition relating to record costs shall be served upon all
4448 interested parties. The judge of compensation claims shall
4449 promptly conduct a hearing on the verified petition relating to
4450 record costs, giving at least 15 days' notice to the appellant,
4451 the department, and all other interested parties, all of whom
4452 shall be parties to the proceedings. The judge of compensation
4453 claims may enter an order without such hearing if no objection
4454 is filed by an interested party within 20 days from the service

286063

Amendment No. (for drafter's use only)

4455 date of the verified petition relating to record costs. Such
4456 proceedings shall be conducted in accordance with the provisions
4457 of this section and with the workers' compensation rules of
4458 procedure, to the extent applicable. In the event an insolvency
4459 petition is granted, the judge of compensation claims shall
4460 direct the department to pay record costs and filing fees from
4461 the Workers' Compensation Administration Trust Fund pending
4462 final disposition of the costs of appeal. The department may
4463 transcribe or arrange for the transcription of the record in any
4464 proceeding for which it is ordered to pay the cost of the
4465 record.

4466 (c) As a condition of filing a notice of appeal to the
4467 District Court of Appeal, First District, an employer who has
4468 not secured the payment of compensation under this chapter in
4469 compliance with s. 440.38 shall file with the notice of appeal a
4470 good and sufficient bond, as provided in s. 59.13, conditioned
4471 to pay the amount of the demand and any interest and costs
4472 payable under the terms of the order if the appeal is dismissed,
4473 or if the District Court of Appeal, First District, affirms the
4474 award in any amount. Upon the failure of such employer to file
4475 such bond with ~~the judge of compensation claims or~~ the District
4476 Court of Appeal, First District, along with the notice of
4477 appeal, the District Court of Appeal, First District, shall
4478 dismiss the notice of appeal.

4479 (6) An award of compensation for disability may be made
4480 after the death of an injured employee.

4481 ~~(7) An injured employee claiming or entitled to~~
4482 ~~compensation shall submit to such physical examination by a~~
4483 ~~certified expert medical advisor approved by the agency or the~~

Amendment No. (for drafter's use only)

4484 ~~judge of compensation claims as the agency or the judge of~~
4485 ~~compensation claims may require. The place or places shall be~~
4486 ~~reasonably convenient for the employee. Such physician or~~
4487 ~~physicians as the employee, employer, or carrier may select and~~
4488 ~~pay for may participate in an examination if the employee,~~
4489 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4490 ~~and no compensation shall be payable for any period during which~~
4491 ~~the employee may refuse to submit to examination. Any interested~~
4492 ~~party shall have the right in any case of death to require an~~
4493 ~~autopsy, the cost thereof to be borne by the party requesting~~
4494 ~~it; and the judge of compensation claims shall have authority to~~
4495 ~~order and require an autopsy and may, in her or his discretion,~~
4496 ~~withhold her or his findings and award until an autopsy is held.~~

4497 Section 26. Subsections (1), (2), and (3) of section
4498 440.34, Florida Statutes, are amended, and subsection (7) is
4499 added to said section, to read:

4500 440.34 Attorney's fees; costs.--

4501 (1) A fee, gratuity, or other consideration may not be
4502 paid for ~~services rendered for~~ a claimant in connection with any
4503 proceedings arising under this chapter, unless approved as
4504 reasonable by the judge of compensation claims or court having
4505 jurisdiction over such proceedings. ~~Except as provided by this~~
4506 ~~subsection,~~ Any attorney's fee approved by a judge of
4507 compensation claims for benefits secured on behalf of services
4508 ~~rendered to~~ a claimant must equal to 20 percent of the first
4509 \$5,000 of the amount of the benefits secured, 15 percent of the
4510 next \$5,000 of the amount of the benefits secured, 10 percent of
4511 the remaining amount of the benefits secured to be provided
4512 during the first 10 years after the date the claim is filed, and

286063

Amendment No. (for drafter's use only)

4513 5 percent of the benefits secured after 10 years. The judge of
4514 compensation claims shall not approve a compensation order, a
4515 joint stipulation for lump-sum settlement, a stipulation or
4516 agreement between a claimant and his or her attorney, or any
4517 other agreement related to benefits under this chapter that
4518 provides for an attorney's fee in excess of the amount permitted
4519 by this section. The judge of compensation claims is not
4520 required to approve any retainer agreement between the claimant
4521 and his or her attorney. The retainer agreement as to fees and
4522 costs may not be for compensation in excess of the amount
4523 allowed under this section. However, The judge of compensation
4524 claims shall consider the following factors in each case and may
4525 increase or decrease the attorney's fee if, in her or his
4526 judgment, the circumstances of the particular case warrant such
4527 action:

4528 ~~(a) The time and labor required, the novelty and~~
4529 ~~difficulty of the questions involved, and the skill requisite to~~
4530 ~~perform the legal service properly.~~

4531 ~~(b) The fee customarily charged in the locality for~~
4532 ~~similar legal services.~~

4533 ~~(c) The amount involved in the controversy and the~~
4534 ~~benefits resulting to the claimant.~~

4535 ~~(d) The time limitation imposed by the claimant or the~~
4536 ~~circumstances.~~

4537 ~~(e) The experience, reputation, and ability of the lawyer~~
4538 ~~or lawyers performing services.~~

4539 ~~(f) The contingency or certainty of a fee.~~

4540 (2) In awarding a ~~reasonable~~ claimant's attorney's fee,
4541 the judge of compensation claims shall consider only those

Amendment No. (for drafter's use only)

4542 benefits secured by ~~to the claimant that~~ the attorney is
4543 ~~responsible for securing.~~ An attorney is not entitled to
4544 attorney's fees for representation in any issue that was ripe,
4545 due, and owing and that reasonably could have been addressed,
4546 but was not addressed, during the pendency of other issues for
4547 the same injury. The amount, statutory basis, and type of
4548 benefits obtained through legal representation shall be listed
4549 on all attorney's fees awarded by the judge of compensation
4550 claims. For purposes of this section, the term "benefits
4551 secured" ~~means benefits obtained as a result of the claimant's~~
4552 ~~attorney's legal services rendered in connection with the claim~~
4553 ~~for benefits.~~ However, such term does not include future
4554 medical benefits to be provided on any date more than 5 years
4555 after the date the claim is filed. In the event an offer to
4556 settle an issue pending before a judge of compensation claims,
4557 including attorney's fees as provided for in this section, is
4558 communicated in writing to the claimant or the claimant's
4559 attorney at least 30 days prior to the trial date on such issue,
4560 for purposes of calculating the amount of attorney's fees to be
4561 taxed against the employer or carrier, the term "benefits
4562 secured" shall be deemed to include only that amount awarded to
4563 the claimant above the amount specified in the offer to settle.
4564 If multiple issues are pending before the judge of compensation
4565 claims, said offer of settlement shall address each issue
4566 pending and shall state explicitly whether or not the offer on
4567 each issue is severable. The written offer shall also
4568 unequivocally state whether or not it includes medical witness
4569 fees and expenses and all other costs associated with the claim.

Amendment No. (for drafter's use only)

4570 (3) If any party ~~the claimant~~ should prevail in any
4571 proceedings before a judge of compensation claims or court,
4572 there shall be taxed against the nonprevailing party ~~employer~~
4573 the reasonable costs of such proceedings, not to include ~~the~~
4574 attorney's fees ~~of the claimant~~. A claimant shall be
4575 responsible for the payment of her or his own attorney's fees,
4576 except that a claimant shall be entitled to recover a reasonable
4577 attorney's fee from a carrier or employer:

4578 (a) Against whom she or he successfully asserts a petition
4579 for medical benefits only, if the claimant has not filed or is
4580 not entitled to file at such time a claim for disability,
4581 permanent impairment, wage-loss, or death benefits, arising out
4582 of the same accident;

4583 (b) In any case in which the employer or carrier files a
4584 response to petition denying benefits with the Office of the
4585 Judges of Compensation Claims and the injured person has
4586 employed an attorney in the successful prosecution of the
4587 petition;

4588 (c) In a proceeding in which a carrier or employer denies
4589 that an accident occurred for which compensation benefits are
4590 payable, and the claimant prevails on the issue of
4591 compensability; or

4592 (d) In cases where the claimant successfully prevails in
4593 proceedings filed under s. 440.24 or s. 440.28.

4594
4595 Regardless of the date benefits were initially requested,
4596 attorney's fees shall not attach under this subsection until 30
4597 days after the date the carrier or employer, if self-insured,
4598 receives the petition. ~~In applying the factors set forth in~~

286063

Amendment No. (for drafter's use only)

4599 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~
4600 ~~and (d), the judge of compensation claims must only consider~~
4601 ~~only such benefits and the time reasonably spent in obtaining~~
4602 ~~them as were secured for the claimant within the scope of~~
4603 ~~paragraphs (a), (b), (c), and (d).~~

4604 (7) If an attorney's fee is owed under paragraph (3)(a),
4605 the judge of compensation claims may approve an alternative
4606 attorney's fee not to exceed \$1,500 only once per accident,
4607 based on a maximum hourly rate of \$150 per hour, if the judge of
4608 compensation claims expressly finds that the attorney's fee
4609 amount provided for in subsection (1), based on benefits
4610 secured, fails to fairly compensate the attorney for disputed
4611 medical-only claims as provided in paragraph (3)(a) and the
4612 circumstances of the particular case warrant such action.

4613 Section 27. Subsection (7) is added to section 440.38,
4614 Florida Statutes, to read:

4615 440.38 Security for compensation; insurance carriers and
4616 self-insurers.--

4617 (7) Any employer who meets the requirements of subsection
4618 (1) through a policy of insurance issued outside of this state
4619 must at all times, with respect to all employees working in this
4620 state, maintain the required coverage under a Florida
4621 endorsement using Florida rates and rules pursuant to payroll
4622 reporting that accurately reflects the work performed in this
4623 state by such employees.

4624 Section 28. Subsections (2) and (6) of section 440.381,
4625 Florida Statutes, are amended to read:

4626 440.381 Application for coverage; reporting payroll;
4627 payroll audit procedures; penalties.--

286063

Amendment No. (for drafter's use only)

4628 (2) Submission of an application that contains false,
4629 misleading, or incomplete information provided with the purpose
4630 of avoiding or reducing the amount of premiums for workers'
4631 compensation coverage is a felony of the second degree,
4632 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4633 The application must contain a statement that the filing of an
4634 application containing false, misleading, or incomplete
4635 information provided with the purpose of avoiding or reducing
4636 the amount of premiums for workers' compensation coverage is a
4637 felony of the third degree, punishable as provided in s.
4638 775.082, s. 775.083, or s. 775.084. The application must contain
4639 a sworn statement by the employer attesting to the accuracy of
4640 the information submitted and acknowledging the provisions of
4641 former s. 440.37(4). The application must contain a sworn
4642 statement by the agent attesting that the agent explained to the
4643 employer or officer the classification codes that are used for
4644 premium calculations.

4645 (6)(a) If an employer understates or conceals payroll, or
4646 misrepresents or conceals employee duties so as to avoid proper
4647 classification for premium calculations, or misrepresents or
4648 conceals information pertinent to the computation and
4649 application of an experience rating modification factor, the
4650 employer, or the employer's agent or attorney, shall pay to the
4651 insurance carrier a penalty of 10 times the amount of the
4652 difference in premium paid and the amount the employer should
4653 have paid and reasonable attorney's fees. The penalty may be
4654 enforced in the circuit courts of this state.

4655 (b) If the department determines that an employer has
4656 materially understated or concealed payroll, has materially

286063

Amendment No. (for drafter's use only)

4657 misrepresented or concealed employee duties so as to avoid
4658 proper classification for premium calculations, or has
4659 materially misrepresented or concealed information pertinent to
4660 the computation and application of an experience rating
4661 modification factor, the department shall immediately notify the
4662 employer's carrier of such determination. The carrier shall
4663 commence a physical onsite audit of the employer within 30 days
4664 after receiving notification from the department. If the carrier
4665 fails to commence the audit as required by this section, the
4666 department shall contract with auditing professionals to conduct
4667 the audit at the carrier's expense. A copy of the carrier's
4668 audit of the employer shall be provided to the department upon
4669 completion. The carrier is not required to conduct the physical
4670 onsite audit of the employer as set forth in this paragraph if
4671 the carrier gives written notice of cancellation to the employer
4672 within 30 days after receiving notification from the department
4673 of the material misrepresentation, understatement, or
4674 concealment and an audit is conducted in conjunction with the
4675 cancellation.

4676 Section 29. Subsection (3) of section 440.42, Florida
4677 Statutes, is amended to read:

4678 440.42 Insurance policies; liability.--

4679 (3) No contract or policy of insurance issued by a carrier
4680 under this chapter shall expire or be canceled until at least 30
4681 days have elapsed after a notice of cancellation has been sent
4682 to the department and to the employer in accordance with the
4683 provisions of s. 440.185(7). For cancellation due to nonpayment
4684 of premium, the insurer shall mail notification to the employer
4685 at least 10 days prior to the effective date of the

286063

Amendment No. (for drafter's use only)

4686 cancellation. However, when duplicate or dual coverage exists by
4687 reason of two different carriers having issued policies of
4688 insurance to the same employer securing the same liability, it
4689 shall be presumed that only that policy with the later effective
4690 date shall be in force and that the earlier policy terminated
4691 upon the effective date of the latter. In the event that both
4692 policies carry the same effective date, one of the policies may
4693 be canceled instanter upon filing a notice of cancellation with
4694 the department and serving a copy thereof upon the employer in
4695 such manner as the department prescribes by rule. The department
4696 may by rule prescribe the content of the notice of retroactive
4697 cancellation and specify the time, place, and manner in which
4698 the notice of cancellation is to be served.

4699 Section 30. Paragraph (a) of subsection (4) of section
4700 440.49, Florida Statutes, is amended to read:

4701 440.49 Limitation of liability for subsequent injury
4702 through Special Disability Trust Fund.--

4703 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4704 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4705 OTHER PHYSICAL IMPAIRMENT.--

4706 (a) *Permanent impairment.*--If an employee who has a
4707 preexisting permanent physical impairment incurs a subsequent
4708 permanent impairment from injury or occupational disease arising
4709 out of, and in the course of, her or his employment which merges
4710 with the preexisting permanent physical impairment to cause a
4711 permanent impairment, the employer shall, in the first instance,
4712 pay all benefits provided by this chapter; but, subject to the
4713 limitations specified in subsection (6), such employer shall be
4714 reimbursed from the Special Disability Trust Fund created by

Amendment No. (for drafter's use only)

4715 subsection (9) for 50 percent of all impairment benefits which
4716 the employer has been required to provide pursuant to s.
4717 440.15(3)~~(a)~~ as a result of the subsequent accident or
4718 occupational disease.

4719 Section 31. Subsection (6) of section 440.491, Florida
4720 Statutes, is amended to read:

4721 440.491 Reemployment of injured workers; rehabilitation.--

4722 (6) TRAINING AND EDUCATION.--

4723 (a) Upon referral of an injured employee by the carrier,
4724 or upon the request of an injured employee, the department shall
4725 conduct a training and education screening to determine whether
4726 it should refer the employee for a vocational evaluation and, if
4727 appropriate, approve training and education or other vocational
4728 services for the employee. The department may not approve formal
4729 training and education programs unless it determines, after
4730 consideration of the reemployment assessment, pertinent
4731 reemployment status reviews or reports, and such other relevant
4732 factors as it prescribes by rule, that the reemployment plan is
4733 likely to result in return to suitable gainful employment. The
4734 department is authorized to expend moneys from the Workers'
4735 Compensation Administration Trust Fund, established by s.
4736 440.50, to secure appropriate training and education at a
4737 community college established under part III of chapter 240 or
4738 at a vocational-technical school established under s. 230.63, or
4739 to secure other vocational services when necessary to satisfy
4740 the recommendation of a vocational evaluator. As used in this
4741 paragraph, "appropriate training and education" includes
4742 securing a general education diploma (GED), if necessary. The
4743 department shall establish training and education standards

286063

Amendment No. (for drafter's use only)

4744 pertaining to employee eligibility, course curricula and
4745 duration, and associated costs.

4746 (b) When ~~it appears that~~ an employee who has attained
4747 maximum medical improvement is unable to earn at least 80
4748 percent of the compensation rate and requires training and
4749 education to obtain suitable gainful employment, the employer or
4750 carrier shall pay the employee additional training and education
4751 temporary total compensation benefits while the employee
4752 receives such training and education for a period not to exceed
4753 26 weeks, which period may be extended for an additional 26
4754 weeks or less, if such extended period is determined to be
4755 necessary and proper by a judge of compensation claims. The
4756 benefits provided under this paragraph shall not be in addition
4757 to the 104 weeks as specified in s. 440.15(2). However, a
4758 carrier or employer is not precluded from voluntarily paying
4759 additional temporary total disability compensation beyond that
4760 period. If an employee requires temporary residence at or near a
4761 facility or an institution providing training and education
4762 which is located more than 50 miles away from the employee's
4763 customary residence, the reasonable cost of board, lodging, or
4764 travel must be borne by the department from the Workers'
4765 Compensation Administration Trust Fund established by s. 440.50.
4766 An employee who refuses to accept training and education that is
4767 recommended by the vocational evaluator and considered necessary
4768 by the department will forfeit any additional training and
4769 education benefits and any additional payment for lost wages
4770 under this chapter. The department shall adopt rules to
4771 implement this section, which shall include requirements placed
4772 upon the carrier to notify the injured employee of the

286063

Amendment No. (for drafter's use only)

4773 availability of training and education benefits as specified in
4774 this chapter. The department shall also include information
4775 regarding the eligibility for training and education benefits in
4776 informational materials specified in ss. 440.207 and 440.40 ~~is~~
4777 ~~subject to a 50 percent reduction in weekly compensation~~
4778 ~~benefits, including wage loss benefits, as determined under s.~~
4779 ~~440.15(3)(b).~~

4780 Section 32. Section 440.525, Florida Statutes, is amended
4781 to read:

4782 440.525 Examination and investigation of carriers and
4783 claims-handling entities.--

4784 (1) The department may examine, or investigate any each
4785 carrier, third-party administrator, servicing agent, or other
4786 claims-handling entity as often as is warranted to ensure that
4787 it is carriers are fulfilling its their obligations under this
4788 chapter the law. The examination may cover any period of the
4789 carrier's operations since the last previous examination.

4790 (2) An examination may cover any period of the carrier's,
4791 third-party administrator's, servicing agent's, or other claims-
4792 handling entity's operations since the last previous
4793 examination. An investigation based upon a reasonable belief by
4794 the department that a material violation of this chapter has
4795 occurred may cover any time period, but may not predate the last
4796 examination by more than 5 years. The department may by rule
4797 establish procedures, standards, and protocols for examinations
4798 and investigations. If the department finds any violation of
4799 this chapter, it may impose administrative penalties pursuant to
4800 this chapter. If the department finds any self-insurer in
4801 violation of this chapter, it may take action pursuant s.

286063

Amendment No. (for drafter's use only)

4802 440.38(3). Examinations or investigations by the department may
4803 address, but are not limited to addressing, patterns or
4804 practices of unreasonable delay in claims handling; timeliness
4805 and accuracy of payments and reports under ss. 440.13, 440.16,
4806 and 440.185; or patterns or practices of harassment, coercion,
4807 or intimidation of claimants. The department may also specify by
4808 rule the documentation to be maintained for each claim file.

4809 (3) As to any examination or investigation conducted under
4810 this chapter, the department shall have the power to conduct
4811 onsite inspections of claims records and documentation of a
4812 carrier, third-party administrator, servicing agent, or other
4813 claims-handling entity, and conduct interviews, both sworn and
4814 unsworn, of claims-handling personnel. Carriers, third-party
4815 administrators, servicing agents, and other claims-handling
4816 entities shall make all claims records, documentation,
4817 communication, and correspondence available to department
4818 personnel during regular business hours. If any person fails to
4819 comply with a request for production of records or documents or
4820 fails to produce an employee for interview, the department may
4821 compel production or attendance by subpoena. The results of an
4822 examination or investigation shall be provided to the carrier,
4823 third-party administrator, servicing agent, or other claims-
4824 handling entity in a written report setting forth the basis for
4825 any violations that are asserted. Such report is agency action
4826 for purposes of chapter 120, and the aggrieved party may request
4827 a proceeding under s. 120.57 with regard to the findings and
4828 conclusion of the report.

4829 (4) If the department finds that violations of this
4830 chapter have occurred, the department may impose an

286063

Amendment No. (for drafter's use only)

4831 administrative penalty upon the offending entity or entities.
4832 For each offending entity, such penalties shall not exceed
4833 \$2,500 for each pattern or practice constituting nonwillful
4834 violation and shall not exceed an aggregate amount of \$10,000
4835 for all nonwillful violations arising out of the same action. If
4836 the department finds a pattern of practice that constitutes a
4837 willful violation, the department may impose an administrative
4838 penalty upon each offending entity not to exceed \$20,000 for
4839 each willful pattern or practice. Such fines shall not exceed
4840 \$100,000 for all willful violations arising out of the same
4841 action. No penalty assessed under this section may be recouped
4842 by any carrier in the rate base, the premium, or any rate
4843 filing. Any administrative penalty imposed under this section
4844 for a nonwillful violation shall not duplicate an administrative
4845 penalty imposed under another provision of this chapter or the
4846 Insurance Code. The department may adopt rules to implement this
4847 section. The department shall adopt penalty guidelines by rule
4848 to set penalties under this chapter.

4849 Section 33. Subsection (2) of section 627.162, Florida
4850 Statutes, is amended to read:

4851 627.162 Requirements for premium installments;
4852 delinquency, collection, and check return charges; attorney's
4853 fees.--

4854 (2) Insurers providing workers' compensation coverage
4855 under chapter 440 may charge the insured a delinquency and
4856 collection fee on each installment in default for a period of
4857 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4858 percent of the delinquent installment, whichever is greater.
4859 Only one such delinquency and collection fee may be collected on

286063

Amendment No. (for drafter's use only)

4860 any such installment regardless of the period during which it
4861 remains in default.

4862 Section 34. Section 627.285, Florida Statutes, is created
4863 to read:

4864 627.285 Independent actuarial peer review of workers'
4865 compensation rating organization.--The Financial Services
4866 Commission shall at least once every other year contract for an
4867 independent actuarial peer review and analysis of the ratemaking
4868 processes of any licensed rating organization that makes rate
4869 filings for workers' compensation insurance and the rating
4870 organization shall fully cooperate in the peer review. The
4871 contract shall require submission of a final report to the
4872 commission, the President of the Senate, and the Speaker of the
4873 House of Representatives by February 1. The first report shall
4874 be submitted by February 1, 2004. The costs of the independent
4875 actuarial peer review shall be paid from the Workers'
4876 Compensation Administration Trust Fund.

4877 Section 35. Effective July, 1, 2003, paragraphs (b), (c),
4878 and (d) of subsection (4) of section 627.311, Florida Statutes,
4879 are amended to read

4880 627.311 Joint underwriters and joint reinsurers.--

4881 (4)

4882 (b) The operation of the plan is subject to the
4883 supervision of a 9-member ~~13-member~~ board of governors. The
4884 board of governors shall be comprised of:

4885 1. Three members appointed by the Financial Services
4886 Commission. Each member appointed by the commission shall serve
4887 at the pleasure of the commission;

Amendment No. (for drafter's use only)

4888 ~~2.1-~~ Two Five of the 20 domestic insurers, as defined in
4889 s. 624.06(1), having the largest voluntary direct premiums
4890 written in this state for workers' compensation and employer's
4891 liability insurance, which shall be elected by those 20 domestic
4892 insurers;

4893 ~~3.2-~~ Two Five of the 20 foreign insurers as defined in s.
4894 624.06(2) having the largest voluntary direct premiums written
4895 in this state for workers' compensation and employer's liability
4896 insurance, which shall be elected by those 20 foreign insurers;

4897 ~~3. One person, who shall serve as the chair, appointed by~~
4898 ~~the Insurance Commissioner;~~

4899 4. One person appointed by the largest property and
4900 casualty insurance agents' association in this state; and

4901 5. The consumer advocate appointed under s. 627.0613 or
4902 the consumer advocate's designee.

4903

4904 Each board member shall serve a 4-year term and may serve
4905 consecutive terms. A vacancy on the board shall be filled in the
4906 same manner as the original appointment for the unexpired
4907 portion of the term. The Financial Services Commission shall
4908 designate a member of the board to serve as chair. No board
4909 member shall be an insurer which provides service to the plan or
4910 which has an affiliate which provides services to the plan or
4911 which is serviced by a service company or third-party
4912 administrator which provides services to the plan or which has
4913 an affiliate which provides services to the plan. The minutes,
4914 audits, and procedures of the board of governors are subject to
4915 chapter 119.

Amendment No. (for drafter's use only)

4916 (c) The operation of the plan shall be governed by a plan
4917 of operation that is prepared at the direction of the board of
4918 governors. The plan of operation may be changed at any time by
4919 the board of governors or upon request of the department. The
4920 plan of operation and all changes thereto are subject to the
4921 approval of the department. The plan of operation shall:

4922 1. Authorize the board to engage in the activities
4923 necessary to implement this subsection, including, but not
4924 limited to, borrowing money.

4925 2. Develop criteria for eligibility for coverage by the
4926 plan, including, but not limited to, documented rejection by at
4927 least two insurers which reasonably assures that insureds
4928 covered under the plan are unable to acquire coverage in the
4929 voluntary market. Any insured may voluntarily elect to accept
4930 coverage from an insurer for a premium equal to or greater than
4931 the plan premium if the insurer writing the coverage adheres to
4932 the provisions of s. 627.171.

4933 3. Require notice from the agent to the insured at the
4934 time of the application for coverage that the application is for
4935 coverage with the plan and that coverage may be available
4936 through an insurer, group self-insurers' fund, commercial self-
4937 insurance fund, or assessable mutual insurer through another
4938 agent at a lower cost.

4939 4. Establish programs to encourage insurers to provide
4940 coverage to applicants of the plan in the voluntary market and
4941 to insureds of the plan, including, but not limited to:

4942 a. Establishing procedures for an insurer to use in
4943 notifying the plan of the insurer's desire to provide coverage
4944 to applicants to the plan or existing insureds of the plan and

286063

Amendment No. (for drafter's use only)

4945 in describing the types of risks in which the insurer is
4946 interested. The description of the desired risks must be on a
4947 form developed by the plan.

4948 b. Developing forms and procedures that provide an insurer
4949 with the information necessary to determine whether the insurer
4950 wants to write particular applicants to the plan or insureds of
4951 the plan.

4952 c. Developing procedures for notice to the plan and the
4953 applicant to the plan or insured of the plan that an insurer
4954 will insure the applicant or the insured of the plan, and notice
4955 of the cost of the coverage offered; and developing procedures
4956 for the selection of an insuring entity by the applicant or
4957 insured of the plan.

4958 d. Provide for a market-assistance plan to assist in the
4959 placement of employers. All applications for coverage in the
4960 plan received 45 days before the effective date for coverage
4961 shall be processed through the market-assistance plan. A market-
4962 assistance plan specifically designed to serve the needs of
4963 small good policyholders as defined by the board must be
4964 finalized by January 1, 1994.

4965 5. Provide for policy and claims services to the insureds
4966 of the plan of the nature and quality provided for insureds in
4967 the voluntary market.

4968 6. Provide for the review of applications for coverage
4969 with the plan for reasonableness and accuracy, using any
4970 available historic information regarding the insured.

4971 7. Provide for procedures for auditing insureds of the
4972 plan which are based on reasonable business judgment and are

Amendment No. (for drafter's use only)

4973 designed to maximize the likelihood that the plan will collect
4974 the appropriate premiums.

4975 8. Authorize the plan to terminate the coverage of and
4976 refuse future coverage for any insured that submits a fraudulent
4977 application to the plan or provides fraudulent or grossly
4978 erroneous records to the plan or to any service provider of the
4979 plan in conjunction with the activities of the plan.

4980 9. Establish service standards for agents who submit
4981 business to the plan.

4982 10. Establish criteria and procedures to prohibit any
4983 agent who does not adhere to the established service standards
4984 from placing business with the plan or receiving, directly or
4985 indirectly, any commissions for business placed with the plan.

4986 11. Provide for the establishment of reasonable safety
4987 programs for all insureds in the plan. All insureds of the plan
4988 must participate in the safety program.

4989 12. Authorize the plan to terminate the coverage of and
4990 refuse future coverage to any insured who fails to pay premiums
4991 or surcharges when due; who, at the time of application, is
4992 delinquent in payments of workers' compensation or employer's
4993 liability insurance premiums or surcharges owed to an insurer,
4994 group self-insurers' fund, commercial self-insurance fund, or
4995 assessable mutual insurer licensed to write such coverage in
4996 this state; or who refuses to substantially comply with any
4997 safety programs recommended by the plan.

4998 13. Authorize the board of governors to provide the
4999 services required by the plan through staff employed by the
5000 plan, through reasonably compensated service providers who
5001 contract with the plan to provide services as specified by the

286063

Amendment No. (for drafter's use only)

5002 board of governors, or through a combination of employees and
5003 service providers.

5004 14. Provide for service standards for service providers,
5005 methods of determining adherence to those service standards,
5006 incentives and disincentives for service, and procedures for
5007 terminating contracts for service providers that fail to adhere
5008 to service standards.

5009 15. Provide procedures for selecting service providers and
5010 standards for qualification as a service provider that
5011 reasonably assure that any service provider selected will
5012 continue to operate as an ongoing concern and is capable of
5013 providing the specified services in the manner required.

5014 16. Provide for reasonable accounting and data-reporting
5015 practices.

5016 17. Provide for annual review of costs associated with the
5017 administration and servicing of the policies issued by the plan
5018 to determine alternatives by which costs can be reduced.

5019 18. Authorize the acquisition of such excess insurance or
5020 reinsurance as is consistent with the purposes of the plan.

5021 19. Provide for an annual report to the department on a
5022 date specified by the department and containing such information
5023 as the department reasonably requires.

5024 20. Establish multiple rating plans for various
5025 classifications of risk which reflect risk of loss, hazard
5026 grade, actual losses, size of premium, and compliance with loss
5027 control. At least one of such plans must be a preferred-rating
5028 plan to accommodate small-premium policyholders with good
5029 experience as defined in sub-subparagraph 22.a.

5030 21. Establish agent commission schedules.

286063

Amendment No. (for drafter's use only)

5031 22. Establish four ~~three~~ subplans as follows:

5032 a. Subplan "A" must include those insureds whose annual
5033 premium does not exceed \$2,500 and who have neither incurred any
5034 lost-time claims nor incurred medical-only claims exceeding 50
5035 percent of their premium for the immediate 2 years.

5036 b. Subplan "B" must include insureds that are employers
5037 identified by the board of governors as high-risk employers due
5038 solely to the nature of the operations being performed by those
5039 insureds and for whom no market exists in the voluntary market,
5040 and whose experience modifications are less than 1.00.

5041 c. Subplan "C" must include all ~~other~~ insureds within the
5042 plan that are not eligible for subplan "A," subplan "B," or
5043 subplan "D."

5044 d. Subplan "D" must include any employer, regardless of
5045 the length of time for which it has conducted business
5046 operations, which has an experience modification factor of 1.10
5047 or less and either employs 15 or fewer employees or is an
5048 organization that is exempt from federal income tax pursuant to
5049 s. 501(c)(3) of the Internal Revenue Code and receives more than
5050 50 percent of its funding from gifts, grants, endowments, or
5051 federal or state contracts. The rate plan for subplan "D" shall
5052 be the same rate plan as the plan approved under ss. 627.091-
5053 627.151 and each participant in subplan "D" shall pay the
5054 premium determined under such rate plan, plus a surcharge
5055 determined by the board to be sufficient to ensure that the plan
5056 does not compete with the voluntary market rate for any
5057 participant, but not to exceed 25 percent. However, the
5058 surcharge shall not exceed 10 percent for an organization that

Amendment No. (for drafter's use only)

5059 is exempt from federal income tax pursuant to s. 501(c)(3) of
5060 the Internal Revenue Code.

5061 23. Provide for a depopulation program to reduce the
5062 number of insureds in subplan "D." If an employer insured
5063 through subplan "D" is offered coverage from a voluntary market
5064 carrier:

5065 a. During the first 30 days of coverage under the subplan;

5066 b. Before a policy is issued under the subplan;

5067 c. By issuance of a policy upon expiration or cancellation
5068 of the policy under the subplan; or

5069 d. By assumption of the subplan's obligation with respect
5070 to an in-force policy,

5071
5072 that employer is no longer eligible for coverage through the
5073 plan. The premium for risks assumed by the voluntary market
5074 carrier must be the same premium plus, for the first 2 years,
5075 the surcharge as determined in sub-subparagraph 22.d. A premium
5076 under this subparagraph, including surcharge, is deemed approved
5077 and is not an excess premium for purposes of s. 627.171.

5078 24. Require that policies issued under subplan "D" and
5079 applications for such policies must include a notice that the
5080 policy issued under subplan "D" could be replaced by a policy
5081 issued from a voluntary market carrier and that, if an offer of
5082 coverage is obtained from a voluntary market carrier, the
5083 policyholder is no longer eligible for coverage through subplan
5084 "D." The notice must also specify that acceptance of coverage
5085 under subplan "D" creates a conclusive presumption that the
5086 applicant or policyholder is aware of this potential.

Amendment No. (for drafter's use only)

5087 (d)1. The plan must be funded through actuarially sound
5088 premiums charged to insureds of the plan.

5089 2. The plan may issue assessable policies only to those
5090 insureds in subplan "C-" and subplan "D." Subject to
5091 verification by the department, the board may levy assessments
5092 against insureds in subplan "C" or subplan "D," on a pro rata
5093 earned premium basis, to fund any deficits that exist in those
5094 subplans. Assessments levied against subplan "C" participants
5095 shall cover only the deficits attributable to subplan "C," and
5096 assessments levied against subplan "D" participants shall cover
5097 only the deficits attributable to subplan "D." In no event may
5098 the plan levy assessments against any person or entity, except
5099 as authorized by this paragraph. Those assessable policies must
5100 be clearly identified as assessable by containing, in
5101 contrasting color and in not less than 10-point type, the
5102 following statements: "This is an assessable policy. If the plan
5103 is unable to pay its obligations, policyholders will be required
5104 to contribute on a pro rata earned premium basis the money
5105 necessary to meet any assessment levied."

5106 3. The plan may issue assessable policies with differing
5107 terms and conditions to different groups within subplans "C" and
5108 "D" the plan when a reasonable basis exists for the
5109 differentiation.

5110 4. The plan may offer rating, dividend plans, and other
5111 plans to encourage loss prevention programs.

5112 Section 36. Paragraphs (c) and (e) of subsection (3) of
5113 section 921.0022, Florida Statutes, are amended to read:

5114 921.0022 Criminal Punishment Code; offense severity
5115 ranking chart.--

286063

Amendment No. (for drafter's use only)

5116	(3) OFFENSE SEVERITY RANKING CHART		
	Florida	Felony	
	Statute	Degree	Description
5117			(c) LEVEL 3
5118	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
5119	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
5120	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
5121	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
5122	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
5123	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
5124	327.35(2)(b)	3rd	Felony BUI.
5125	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

286063

Amendment No. (for drafter's use only)

5126	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
5127	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
5128	<u>440.105(3)(b)</u>	<u>3rd</u>	<u>Receipt of fee or consideration without approval by judge of compensation claims.</u>
5129	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers' compensation fraud or retaliation for making such a report.</u>
5130	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
5131	697.08	3rd	Equity skimming.
5132	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
5133	796.05(1)	3rd	Live on earnings of a prostitute.
5134	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

5135

286063

Amendment No. (for drafter's use only)

5136	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5137	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5138	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5139	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5140	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5141	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
5142	817.233	3rd	Burning to defraud insurer.
5143	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5144	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5145	817.505(4)	3rd	Patient brokering.
	828.12(2)	3rd	Tortures any animal with intent to

286063

Amendment No. (for drafter's use only)

inflict intense pain, serious physical injury, or death.

5146

831.28(2)(a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

5147

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

5148

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

5149

843.19 3rd Injure, disable, or kill police dog or horse.

5150

870.01(2) 3rd Riot; inciting or encouraging.

5151

893.13(1)(a)2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

5152

893.13(1)(d)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of university or public park.

5153

286063

Amendment No. (for drafter's use only)

- 5154 893.13(1)(f)2. 3rd Sell, manufacture, or deliver s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) drugs
within 200 feet of public housing
facility.
- 5155 893.13(6)(a) 3rd Possession of any controlled substance
other than felony possession of
cannabis.
- 5156 893.13(7)(a)8. 3rd Withhold information from practitioner
regarding previous receipt of or
prescription for a controlled
substance.
- 5157 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled
substance by fraud, forgery,
misrepresentation, etc.
- 5158 893.13(7)(a)10. 3rd Affix false or forged label to package
of controlled substance.
- 5159 893.13(7)(a)11. 3rd Furnish false or fraudulent material
information on any document or record
required by chapter 893.
- 893.13(8)(a)1. 3rd Knowingly assist a patient, other
person, or owner of an animal in
obtaining a controlled substance
through deceptive, untrue, or

Amendment No. (for drafter's use only)

fraudulent representations in or
related to the practitioner's practice.

5160

893.13(8)(a)2. 3rd Employ a trick or scheme in the
practitioner's practice to assist a
patient, other person, or owner of an
animal in obtaining a controlled
substance.

5161

893.13(8)(a)3. 3rd Knowingly write a prescription for a
controlled substance for a fictitious
person.

5162

893.13(8)(a)4. 3rd Write a prescription for a controlled
substance for a patient, other person,
or an animal if the sole purpose of
writing the prescription is a monetary
benefit for the practitioner.

5163

918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

5164

944.47(1)(a)1.- 3rd Introduce contraband to correctional
2. facility.

5165

944.47(1)(c) 2nd Possess contraband while upon the
grounds of a correctional institution.

5166

985.3141 3rd Escapes from a juvenile facility
(secure detention or residential
commitment facility).

5167

286063

Amendment No. (for drafter's use only)

(e) LEVEL 5

5168	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
5169	316.1935(4)	2nd	Aggravated fleeing or eluding.
5170	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5171	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
5172	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5173			
5174	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5175	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5176	<u>440.381(2)</u>	<u>2nd</u>	<u>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.</u>
5177	790.01(2)	3rd	Carrying a concealed firearm.
5178			

286063

Amendment No. (for drafter's use only)

5179	790.162	2nd	Threat to throw or discharge destructive device.
5180	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5181	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5182	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
5183	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
5184	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5185	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5186	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5187	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.

286063

Amendment No. (for drafter's use only)

5188	812.131(2)(b)	3rd	Robbery by sudden snatching.
5189	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5190	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5191	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
5192	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.
5193	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
5194	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
5195	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
5196	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency

286063

Amendment No. (for drafter's use only)

involving great bodily harm or death.

5197

843.01 3rd Resist officer with violence to person;
resist arrest with violence.

5198

874.05(2) 2nd Encouraging or recruiting another to
join a criminal street gang; second or
subsequent offense.

5199

893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs).

5200

893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis
(or other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9., (3), or
(4) drugs) within 1,000 feet of a child
care facility or school.

5201

893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs) within 200 feet of university or
public park.

5202

893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis
or other drug prohibited under s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

286063

Amendment No. (for drafter's use only)

(2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

5203

893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.

5204

893.13(4)(b) 2nd Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

5205

5206 Section 37. Report to the Legislature regarding
 5207 outstanding enforcement issues.--The Department of Financial
 5208 Services shall, no later than January 1, 2004, provide a report
 5209 to the President of the Senate, the Speaker of the House of
 5210 Representatives, the minority leaders of the Senate and the
 5211 House of Representatives, and the chairs of the standing
 5212 committees of the Senate and the House of Representatives having
 5213 jurisdiction over insurance issues, containing the following
 5214 information:

5215 (1) Any provision of chapter 440, Florida Statutes,
 5216 relating to workers' compensation carrier compliance and
 5217 enforcement, that the department finds it is unable to enforce.

286063

Amendment No. (for drafter's use only)

5218 (2) Any administrative rule relating to workers'
5219 compensation carrier compliance and enforcement that the
5220 department finds it is unable to enforce.

5221 (3) Any other impediment to enforcement of chapter 440,
5222 Florida Statutes, resulting from the transfer of activities from
5223 the former Department of Labor and Employment Security to the
5224 department or the reorganization of the former Department of
5225 Insurance into the department.

5226 Section 38. Subsection (2) of section 946.523, Florida
5227 Statutes, is amended to read:

5228 946.523 Prison industry enhancement (PIE) programs.--

5229 (2) Notwithstanding any other law to the contrary,
5230 including s. 440.15(8)~~(9)~~, private sector employers shall
5231 provide workers' compensation coverage to inmates who
5232 participate in prison industry enhancement (PIE) programs under
5233 subsection (1). However, inmates are not entitled to
5234 unemployment compensation.

5235 Section 39. Paragraph (c) of subsection (5) of section
5236 985.315, Florida Statutes, is amended to read:

5237 985.315 Educational/technical and vocational work-related
5238 programs.--

5239 (5)

5240 (c) Notwithstanding any other law to the contrary,
5241 including s. 440.15(8)~~(9)~~, private sector employers shall
5242 provide juveniles participating in juvenile work programs under
5243 paragraph (b) with workers' compensation coverage, and juveniles
5244 shall be entitled to the benefits of such coverage. Nothing in
5245 this subsection shall be construed to allow juveniles to
5246 participate in unemployment compensation benefits.

286063

Amendment No. (for drafter's use only)

5247 Section 40. (1) There is established a Joint Select
5248 Committee on Workers' Compensation Rating Reform. The committee
5249 shall study the merits of requiring each workers' compensation
5250 insurer to individually file its expense and profit portion of a
5251 rate filing, while permitting each insurer to use a lost cost
5252 filing made by a licensed rating organization. The committee
5253 shall also study options for the current prior approval system
5254 for workers' compensation rate filings, including, but not
5255 limited to, rate filing procedures that would promote greater
5256 competition and would encourage insurers to write workers'
5257 compensation coverage in the state while protecting employers
5258 from rates that are excessive, inadequate, or unfairly
5259 discriminatory.

5260 (2) The committee shall be composed of three Senators
5261 appointed by the President of the Senate and three
5262 Representatives appointed by the Speaker of the House of
5263 Representatives. The appointed members of the committee shall
5264 elect a chair and vice chair. The Department of Financial
5265 Services shall provide information and assistance as requested
5266 by the committee.

5267 (3) The committee shall issue its final report and
5268 recommendations to the President of the Senate and the Speaker
5269 of the House of Representatives by December 1, 2003. The
5270 committee shall terminate on December 1, 2003.

5271 Section 41. The board of governors of the joint
5272 underwriting plan for workers' compensation insurance created by
5273 s. 627.311(4), Florida Statutes, shall, by January 1, 2005,
5274 submit a report to the President of the Senate, the Speaker of
5275 the House of Representatives, the minority party leaders of the

286063

Amendment No. (for drafter's use only)

5276 Senate and the House of Representatives, and the chairs of the
5277 standing committees of the Senate and the House of
5278 Representatives having jurisdiction over matters relating to
5279 workers' compensation. The report shall include the board's
5280 findings and recommendations on the following issues:

5281 (1) The number of policies and the aggregate premium of
5282 the workers' compensation joint underwriting plan, before and
5283 after enactment of this act, and projections for future policy
5284 and premium growth.

5285 (2) Increases or decreases in availability of workers'
5286 compensation coverage in the voluntary market and the
5287 effectiveness of this act in improving the availability of
5288 workers' compensation coverage in the state.

5289 (3) The board's efforts to depopulate the plan and the
5290 willingness of insurers in the voluntary market to avail
5291 themselves of depopulation incentives.

5292 (4) Further actions that could be taken by the Legislature
5293 to improve availability of workers' compensation coverage in the
5294 voluntary and residual markets.

5295 (5) Actions that the board has taken to restructure the
5296 joint underwriting plan and recommendations for legislative
5297 action to restructure the plan.

5298 (6) Projected surpluses or deficits and possible means of
5299 providing funding to ensure the continued solvency of the plan.

5300 (7) An independent actuarial review of all rates under the
5301 plan. The costs of the independent actuarial review shall be
5302 paid from the Workers' Compensation Administration Trust Fund,
5303 pursuant to a budget amendment approved by the Legislative

Amendment No. (for drafter's use only)

5304 Budget Commission. The board shall submit a plan for such review
5305 to the Legislative Budget Commission by October 1, 2003.

5306 (8) Such other issues as the board determines are worthy
5307 of the Legislature's consideration.

5308 Section 42. Subsections (1) and (2) of section 443.1715,
5309 Florida Statutes, are amended to read:

5310 443.1715 Disclosure of information; confidentiality.--

5311 (1) RECORDS AND REPORTS.--Information revealing the
5312 employing unit's or individual's identity obtained from the
5313 employing unit or from any individual pursuant to the
5314 administration of this chapter, and any determination revealing
5315 such information, except to the extent necessary for the proper
5316 presentation of a claim or upon written authorization of the
5317 claimant who has a workers' compensation claim pending or is
5318 receiving compensation benefits, must be held confidential and
5319 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
5320 of the State Constitution. Such information may be made
5321 available only to public employees in the performance of their
5322 public duties, including employees of the Department of
5323 Education in obtaining information for the Florida Education and
5324 Training Placement Information Program and the Office of
5325 Tourism, Trade, and Economic Development in its administration
5326 of the qualified defense contractor tax refund program
5327 authorized by s. 288.1045 and the qualified target industry tax
5328 refund program authorized by s. 288.106. Except as otherwise
5329 provided by law, public employees receiving such information
5330 must retain the confidentiality of such information. Any
5331 claimant, or the claimant's legal representative, at a hearing
5332 before an appeals referee or the commission shall be supplied

286063

Amendment No. (for drafter's use only)

5333 with information from such records to the extent necessary for
5334 the proper presentation of her or his claim. Any employee or
5335 member of the commission or any employee of the division, or any
5336 other person receiving confidential information, who violates
5337 any provision of this subsection commits a misdemeanor of the
5338 second degree, punishable as provided in s. 775.082 or s.
5339 775.083. However, the division may furnish to any employer
5340 copies of any report previously submitted by such employer, upon
5341 the request of such employer, and may furnish to any claimant
5342 copies of any report previously submitted by such claimant, upon
5343 the request of such claimant, and the division is authorized to
5344 charge therefor such reasonable fee as the division may by rule
5345 prescribe not to exceed the actual reasonable cost of the
5346 preparation of such copies. Fees received by the division for
5347 copies as provided in this subsection must be deposited to the
5348 credit of the Employment Security Administration Trust Fund.

5349 (2) DISCLOSURE OF INFORMATION.—

5350 (a) Subject to such restrictions as the division
5351 prescribes by rule, information declared confidential under this
5352 section may be made available to any agency of this or any other
5353 state, or any federal agency, charged with the administration of
5354 any unemployment compensation law or the maintenance of a system
5355 of public employment offices, or the Bureau of Internal Revenue
5356 of the United States Department of the Treasury, or the Florida
5357 Department of Revenue and information obtained in connection
5358 with the administration of the employment service may be made
5359 available to persons or agencies for purposes appropriate to the
5360 operation of a public employment service or a job-preparatory or
5361 career education or training program. The division shall on a

286063

Amendment No. (for drafter's use only)

5362 quarterly basis, furnish the National Directory of New Hires
5363 with information concerning the wages and unemployment
5364 compensation paid to individuals, by such dates, in such format
5365 and containing such information as the Secretary of Health and
5366 Human Services shall specify in regulations. Upon request
5367 therefor, the division shall furnish any agency of the United
5368 States charged with the administration of public works or
5369 assistance through public employment, and may furnish to any
5370 state agency similarly charged, the name, address, ordinary
5371 occupation, and employment status of each recipient of benefits
5372 and such recipient's rights to further benefits under this
5373 chapter. Except as otherwise provided by law, the receiving
5374 agency must retain the confidentiality of such information as
5375 provided in this section. The division may request the
5376 Comptroller of the Currency of the United States to cause an
5377 examination of the correctness of any return or report of any
5378 national banking association rendered pursuant to the provisions
5379 of this chapter and may in connection with such request transmit
5380 any such report or return to the Comptroller of the Currency of
5381 the United States as provided in s. 3305(c) of the federal
5382 Internal Revenue Code.

5383 (b)1. The employer or the employer's workers' compensation
5384 carrier against whom a claim for benefits under chapter 440 has
5385 been made, or a representative of either, may request from the
5386 division records of wages of the employee reported to the
5387 division by any employer for the quarter that includes the date
5388 of the accident that is the subject of such claim and for
5389 subsequent quarters. The request must be made with the
5390 authorization or consent of the employee or any employer who

286063

Amendment No. (for drafter's use only)

5391 paid wages to the employee subsequent to the date of the
5392 accident.

5393 2. The employer or carrier shall make the request on a
5394 form prescribed by rule for such purpose by the division. Such
5395 form shall contain a certification by the requesting party that
5396 it is a party entitled to the information requested as
5397 authorized by this paragraph.

5398 3. The division shall provide the most current information
5399 readily available within 15 days after receiving the request.

5400 Section 43. Subsection (9) of section 626.989, Florida
5401 Statutes, is amended to read:

5402 626.989 Investigation by department or Division of
5403 Insurance Fraud; compliance; immunity; confidential information;
5404 reports to division; division investigator's power of arrest.--

5405 (9) In recognition of the complementary roles of
5406 investigating instances of workers' compensation fraud and
5407 enforcing compliance with the workers' compensation coverage
5408 requirements under chapter 440, the Department of Financial
5409 Services shall ~~Insurance is directed to~~ prepare and submit a
5410 joint performance report to the President of the Senate and the
5411 Speaker of the House of Representatives by November 1, 2003, and
5412 then by January 1 of each year ~~November 1 every 3 years~~
5413 ~~thereafter, describing the results obtained in achieving~~
5414 ~~compliance with the workers' compensation coverage requirements~~
5415 ~~and reducing the incidence of workers' compensation fraud. The~~
5416 annual report must include, but need not be limited to:

5417 (a) The total number of initial referrals received, cases
5418 opened, cases presented for prosecution, cases closed, and
5419 convictions resulting from cases presented for prosecution by

286063

Amendment No. (for drafter's use only)

5420 the Bureau of Workers' Compensation Insurance Fraud by type of
5421 workers' compensation fraud and circuit.

5422 (b) The number of referrals received from insurers and the
5423 Division of Workers' Compensation and the outcome of those
5424 referrals.

5425 (c) The number of investigations undertaken by the office
5426 which were not the result of a referral from an insurer or the
5427 Division of Workers' Compensation.

5428 (d) The number of investigations that resulted in a
5429 referral to a regulatory agency and the disposition of those
5430 referrals.

5431 (e) The number and reasons provided by local prosecutors
5432 or the statewide prosecutor for declining prosecution of a case
5433 presented by the office by circuit.

5434 (f) The total number of employees assigned to the office
5435 and the Division of Workers' Compliance unit delineated by
5436 location of staff assigned and the number and location of
5437 employees assigned to the office who were assigned to work other
5438 types of fraud cases.

5439 (g) The average caseload and turnaround time by type of
5440 case for each investigator and division compliance employee.

5441 (h) The training provided during the year to workers'
5442 compensation fraud investigators and the division's compliance
5443 employees.

5444 Section 44. Section 626.9891, Florida Statutes, is amended
5445 to read:

5446 626.9891 Insurer anti-fraud investigative units; reporting
5447 requirements; penalties for noncompliance.--

Amendment No. (for drafter's use only)

5448 (1) Every insurer admitted to do business in this state
5449 who in the previous calendar year, at any time during that year,
5450 had \$10 million or more in direct premiums written shall:

5451 (a) Establish and maintain a unit or division within the
5452 company to investigate possible fraudulent claims by insureds or
5453 by persons making claims for services or repairs against
5454 policies held by insureds; or

5455 (b) Contract with others to investigate possible
5456 fraudulent claims for services or repairs against policies held
5457 by insureds.

5458

5459 An insurer subject to this subsection shall file with the
5460 Division of Insurance Fraud of the department on or before July
5461 1, 1996, a detailed description of the unit or division
5462 established pursuant to paragraph (a) or a copy of the contract
5463 and related documents required by paragraph (b).

5464 (2) Every insurer admitted to do business in this state,
5465 which in the previous calendar year had less than \$10 million in
5466 direct premiums written, must adopt an anti-fraud plan and file
5467 it with the Division of Insurance Fraud of the department on or
5468 before July 1, 1996. An insurer may, in lieu of adopting and
5469 filing an anti-fraud plan, comply with the provisions of
5470 subsection (1).

5471 (3) Each insurers anti-fraud plans shall include:

5472 (a) A description of the insurer's procedures for
5473 detecting and investigating possible fraudulent insurance acts;

5474 (b) A description of the insurer's procedures for the
5475 mandatory reporting of possible fraudulent insurance acts to the
5476 Division of Insurance Fraud of the department;

286063

Amendment No. (for drafter's use only)

5477 (c) A description of the insurer's plan for anti-fraud
5478 education and training of its claims adjusters or other
5479 personnel; and

5480 (d) A written description or chart outlining the
5481 organizational arrangement of the insurer's anti-fraud personnel
5482 who are responsible for the investigation and reporting of
5483 possible fraudulent insurance acts.

5484 (4) Any insurer who obtains a certificate of authority
5485 after July 1, 1995, shall have 18 months in which to comply with
5486 the requirements of this section.

5487 (5) For purposes of this section, the term "unit or
5488 division" includes the assignment of fraud investigation to
5489 employees whose principal responsibilities are the investigation
5490 and disposition of claims. If an insurer creates a distinct unit
5491 or division, hires additional employees, or contracts with
5492 another entity to fulfill the requirements of this section, the
5493 additional cost incurred must be included as an administrative
5494 expense for ratemaking purposes.

5495 (6) Each insurer writing workers' compensation insurance
5496 shall report to the department, on or before August 1 of each
5497 year, on its experience in implementing and maintaining an anti-
5498 fraud investigative unit or an anti-fraud plan. The report must
5499 include, at a minimum:

5500 (a) The dollar amount of recoveries and losses
5501 attributable to workers' compensation fraud delineated by the
5502 type of fraud: claimant, employer, provider, agent, or other.

5503 (b) The number of referrals to the Bureau of Workers'
5504 Compensation Fraud for the prior year.

Amendment No. (for drafter's use only)

5505 (c) A description of the organization of the anti-fraud
5506 investigative unit, if applicable, including the position titles
5507 and descriptions of staffing.

5508 (d) The rationale for the level of staffing and resources
5509 being provided for the anti-fraud investigative unit, which may
5510 include objective criteria such as number of policies written,
5511 number of claims received on an annual basis, volume of
5512 suspected fraudulent claims currently being detected, other
5513 factors, and an assessment of optimal caseload that can be
5514 handled by an investigator on an annual basis.

5515 (e) The in-service education and training provided to
5516 underwriting and claims personnel to assist in identifying and
5517 evaluating instances of suspected fraudulent activity in
5518 underwriting or claims activities.

5519 (f) A description of a public awareness program focused on
5520 the costs and frequency of insurance fraud and methods by which
5521 the public can prevent it.

5522 (7) If an insurer fails to submit a final anti-fraud plan
5523 or otherwise fails to submit a plan, fails to implement the
5524 provisions of a plan or an anti-fraud investigative unit, or
5525 otherwise refuses to comply with the provisions of this section,
5526 the department may:

5527 (a) Impose an administrative fine of not more than \$2,000
5528 per day for such failure by an insurer, until the department
5529 deems the insurer to be in compliance;

5530 (b) Impose upon the insurer a fraud detection and
5531 prevention plan that is deemed to be appropriate by the
5532 department and that must be implemented by the insurer; or

5533 (c) Impose the provisions of both paragraphs (a) and (b).

Amendment No. (for drafter's use only)

5534 (8) The department may adopt rules to administer this
5535 section.

5536 Section 45. Section 440.1925, Florida Statutes, is
5537 repealed.

5538 Section 46. Paragraph (h) of subsection (2) of section
5539 112.19, Florida Statutes, is amended to read:

5540 112.19 Law enforcement, correctional, and correctional
5541 probation officers; death benefits.--

5542 (2)

5543 (h)1. Any employer who employs a full-time law
5544 enforcement, correctional, or correctional probation officer
5545 who, on or after January 1, 1995, suffers a catastrophic injury,
5546 as defined in s. 440.02, Florida Statutes 2002, in the line of
5547 duty shall pay the entire premium of the employer's health
5548 insurance plan for the injured employee, the injured employee's
5549 spouse, and for each dependent child of the injured employee
5550 until the child reaches the age of majority or until the end of
5551 the calendar year in which the child reaches the age of 25 if
5552 the child continues to be dependent for support, or the child is
5553 a full-time or part-time student and is dependent for support.
5554 The term "health insurance plan" does not include supplemental
5555 benefits that are not part of the basic group health insurance
5556 plan. If the injured employee subsequently dies, the employer
5557 shall continue to pay the entire health insurance premium for
5558 the surviving spouse until remarried, and for the dependent
5559 children, under the conditions outlined in this paragraph.

5560 However:

5561 a. Health insurance benefits payable from any other source
5562 shall reduce benefits payable under this section.

286063

Amendment No. (for drafter's use only)

5563 b. It is unlawful for a person to willfully and knowingly
5564 make, or cause to be made, or to assist, conspire with, or urge
5565 another to make, or cause to be made, any false, fraudulent, or
5566 misleading oral or written statement to obtain health insurance
5567 coverage as provided under this paragraph. A person who violates
5568 this sub-subparagraph commits a misdemeanor of the first degree,
5569 punishable as provided in s. 775.082 or s. 775.083.

5570 c. In addition to any applicable criminal penalty, upon
5571 conviction for a violation as described in sub-subparagraph b.,
5572 a law enforcement, correctional, or correctional probation
5573 officer or other beneficiary who receives or seeks to receive
5574 health insurance benefits under this paragraph shall forfeit the
5575 right to receive such health insurance benefits, and shall
5576 reimburse the employer for all benefits paid due to the fraud or
5577 other prohibited activity. For purposes of this sub-
5578 subparagraph, "conviction" means a determination of guilt that
5579 is the result of a plea or trial, regardless of whether
5580 adjudication is withheld.

5581 2. In order for the officer, spouse, and dependent
5582 children to be eligible for such insurance coverage, the injury
5583 must have occurred as the result of the officer's response to
5584 fresh pursuit, the officer's response to what is reasonably
5585 believed to be an emergency, or an unlawful act perpetrated by
5586 another. Except as otherwise provided herein, nothing in this
5587 paragraph shall be construed to limit health insurance coverage
5588 for which the officer, spouse, or dependent children may
5589 otherwise be eligible, except that a person who qualifies under
5590 this section shall not be eligible for the health insurance
5591 subsidy provided under chapter 121, chapter 175, or chapter 185.

286063

Amendment No. (for drafter's use only)

5592 Section 47. Paragraph (g) of subsection (2) of section
5593 112.191, Florida Statutes, is amended to read:
5594 112.191 Firefighters; death benefits.--
5595 (2)
5596 (g)1. Any employer who employs a full-time firefighter
5597 who, on or after January 1, 1995, suffers a catastrophic injury,
5598 as defined in s. 440.02, Florida Statutes 2002, in the line of
5599 duty shall pay the entire premium of the employer's health
5600 insurance plan for the injured employee, the injured employee's
5601 spouse, and for each dependent child of the injured employee
5602 until the child reaches the age of majority or until the end of
5603 the calendar year in which the child reaches the age of 25 if
5604 the child continues to be dependent for support, or the child is
5605 a full-time or part-time student and is dependent for support.
5606 The term "health insurance plan" does not include supplemental
5607 benefits that are not part of the basic group health insurance
5608 plan. If the injured employee subsequently dies, the employer
5609 shall continue to pay the entire health insurance premium for
5610 the surviving spouse until remarried, and for the dependent
5611 children, under the conditions outlined in this paragraph.
5612 However:
5613 a. Health insurance benefits payable from any other source
5614 shall reduce benefits payable under this section.
5615 b. It is unlawful for a person to willfully and knowingly
5616 make, or cause to be made, or to assist, conspire with, or urge
5617 another to make, or cause to be made, any false, fraudulent, or
5618 misleading oral or written statement to obtain health insurance
5619 coverage as provided under this paragraph. A person who violates

Amendment No. (for drafter's use only)

5620 this sub-subparagraph commits a misdemeanor of the first degree,
5621 punishable as provided in s. 775.082 or s. 775.083.

5622 c. In addition to any applicable criminal penalty, upon
5623 conviction for a violation as described in sub-subparagraph b.,
5624 a firefighter or other beneficiary who receives or seeks to
5625 receive health insurance benefits under this paragraph shall
5626 forfeit the right to receive such health insurance benefits, and
5627 shall reimburse the employer for all benefits paid due to the
5628 fraud or other prohibited activity. For purposes of this sub-
5629 subparagraph, "conviction" means a determination of guilt that
5630 is the result of a plea or trial, regardless of whether
5631 adjudication is withheld.

5632 2. In order for the firefighter, spouse, and dependent
5633 children to be eligible for such insurance coverage, the injury
5634 must have occurred as the result of the firefighter's response
5635 to what is reasonably believed to be an emergency involving the
5636 protection of life or property, or an unlawful act perpetrated
5637 by another. Except as otherwise provided herein, nothing in this
5638 paragraph shall be construed to limit health insurance coverage
5639 for which the firefighter, spouse, or dependent children may
5640 otherwise be eligible, except that a person who qualifies for
5641 benefits under this section shall not be eligible for the health
5642 insurance subsidy provided under chapter 121, chapter 175, or
5643 chapter 185.

5644 Section 48. The amendments to ss. 440.02 and 440.15,
5645 Florida Statutes, which are made by this act shall not be
5646 construed to affect any determination of disability under s.
5647 112.18, s. 112.181, or s. 112.19, Florida Statutes.

Amendment No. (for drafter's use only)

5648 Section 49. If any law amended by this act was also
5649 amended by a law enacted at the 2003 Regular Session of the
5650 Legislature, such laws shall be construed as if they had been
5651 enacted at the same session of the Legislature, and full effect
5652 shall be given to each if possible.

5653 Section 50. Except as otherwise provided herein, this act
5654 shall take effect October 1, 2003.

5655

5656 ===== T I T L E A M E N D M E N T =====

5657 Remove the entire title

5658

5659 and insert:

5660 A bill to be entitled
5661 An act relating to workers' compensation; amending s.
5662 440.02, F.S.; providing, revising, and deleting
5663 definitions; amending s. 440.05, F.S.; revising
5664 authorization to claim exemptions and requirements
5665 relating to submitting notice of election of exemption;
5666 specifying effect of exemption; providing a definition;
5667 amending s. 440.06, F.S.; revising provisions relating to
5668 failure to secure compensation; amending s. 440.077, F.S.;
5669 providing that a corporate officer electing to be exempt
5670 may not receive benefits; amending s. 440.09, F.S.;
5671 revising provisions relating to compensation for
5672 subsequent injuries; providing definitions; revising
5673 provisions relating to drug testing; specifying effect of
5674 criminal acts; creating s. 440.093, F.S.; providing for
5675 compensability of mental and nervous injuries; amending s.
5676 440.10, F.S.; revising provisions relating to contractors

Amendment No. (for drafter's use only)

5677 and subcontractors with regard to liability for
5678 compensation; requiring subcontractors to provide evidence
5679 of workers' compensation coverage or proof of exemption to
5680 a contractor; deleting provisions relating to independent
5681 contractors; amending s. 440.1025, F.S.; revising
5682 requirements relating to workplace safety programs;
5683 amending s. 440.103, F.S.; providing conditions for
5684 applying for building permits; amending s. 440.105, F.S.;
5685 increasing criminal penalties for certain violations;
5686 providing sanctions for violation of stop-work orders and
5687 presentation of certain false or misleading statements as
5688 evidence; amending s. 440.1051, F.S.; increasing criminal
5689 penalty for false reports; amending s. 440.107, F.S.;
5690 providing additional powers to the Department of Financial
5691 Services relating to compliance and enforcement; providing
5692 a definition; providing penalties; amending s. 440.11,
5693 F.S.; providing exclusiveness of liability; revising
5694 provisions relating to employer and safety consultant
5695 immunity from liability; amending s. 440.13, F.S.;
5696 providing for practice parameters and treatment protocols;
5697 revising provisions relating to provider reimbursement;
5698 requiring revision of specified reimbursement schedules;
5699 providing for release of information; providing additional
5700 criteria for independent medical examinations; providing a
5701 definition; providing standards for medical care under ch.
5702 440, F.S.; providing penalties; amending s. 440.134, F.S.;
5703 revising provisions relating to managed care arrangements;
5704 revising definitions; providing for assignment of a
5705 medical care coordinator; amending s. 440.14, F.S.;

286063

Amendment No. (for drafter's use only)

5706 revising provisions relating to calculation of average
5707 weekly wage for injured employees; conforming cross
5708 references; amending s. 440.15, F.S.; providing additional
5709 limitations on compensation for permanent total
5710 disability; providing a definition; specifying impairment
5711 benefits and providing for partial reduction under certain
5712 circumstances; deleting provisions relating to
5713 supplemental benefits; amending s. 440.151, F.S.;
5714 specifying compensability of occupational disease;
5715 providing a definition; amending s. 440.16, F.S.;
5716 increasing the limits on the amount of certain benefits
5717 paid as compensation for death; amending s. 440.185, F.S.;
5718 specifying duty of employer upon receipt of notice of
5719 injury or death; increasing penalties for noncompliance;
5720 amending s. 440.192, F.S.; revising procedure for
5721 resolving benefit disputes; requiring a petition for
5722 benefits to include all claims which are ripe, due, and
5723 owing; providing that the Chief Judge, rather than the
5724 Deputy Chief Judge, shall refer petitions for benefits;
5725 creating s. 440.1926, F.S.; providing for alternative
5726 dispute resolution and arbitration of claims; amending s.
5727 440.20, F.S.; revising provisions relating to timely
5728 payment of compensation and medical bills and penalties
5729 for late payment; prohibiting the clerk of the circuit
5730 court from assessing certain fees or costs; amending s.
5731 440.25, F.S.; revising procedures for mediation and
5732 hearings; amending s. 440.34, F.S.; revising provisions
5733 relating to the award of attorney's fees; amending s.
5734 440.38, F.S.; providing requirement for employers with

286063

Amendment No. (for drafter's use only)

5735 coverage provided by insurers from outside the state;
5736 amending s. 440.381, F.S.; providing criminal penalty for
5737 unlawful applications; requiring on-site audits of
5738 employers under certain circumstances; amending s. 440.42,
5739 F.S.; revising provision relating to notice of
5740 cancellation of coverage; amending s. 440.49, F.S., to
5741 conform cross references; amending s. 440.491, F.S.;
5742 providing training and education requirements and benefits
5743 relating to reemployment of injured workers; providing for
5744 rules; amending s. 440.525, F.S.; providing for the Office
5745 of Insurance Regulation of the Financial Services
5746 Commission to conduct examinations and investigations of
5747 claims-handling entities; providing penalties; providing
5748 for rules; amending s. 627.162, F.S.; revising delinquency
5749 and collection fee for late payment of premium
5750 installments; creating s. 627.285, F.S.; providing for
5751 annual actuarial peer review of rating organization
5752 processes; requiring a report; amending s. 627.311, F.S.;
5753 revising membership of the board of governors of the
5754 workers' compensation joint underwriting plan; requiring
5755 participation in safety programs; providing for an
5756 additional subplan within the joint underwriting plan for
5757 workers' compensation insurance; providing for rates,
5758 surcharges, and assessments; limiting assessment powers;
5759 amending s. 921.0022, F.S.; revising the offense severity
5760 ranking chart to reflect changes in penalties under the
5761 act; requiring a report to the Legislature from the
5762 Department of Financial Services regarding provisions of
5763 law relating to enforcement; amending ss. 946.523 and

286063

Amendment No. (for drafter's use only)

5764 985.315, F.S., to conform cross references; establishing a
5765 Joint Select Committee on Workers' Compensation Rating
5766 Reform and specifying duties thereof; providing for
5767 termination of the committee; requiring the board of
5768 governors of the workers' compensation joint underwriting
5769 plan to submit a report to the Legislature; amending s.
5770 443.1715, F.S.; revising provisions relating to records
5771 and reports; providing for disclosure of specified
5772 information; amending s. 625.989, F.S.; providing that the
5773 Department of Financial Services shall prepare an annual
5774 report relating to workers' compensation fraud and
5775 compliance; amending s. 626.9891, F.S.; amending reporting
5776 requirements for insurers; providing penalties for
5777 noncompliance; providing for rules; repealing s. 440.1925,
5778 F.S., relating to procedure for resolving maximum medical
5779 improvement or permanent impairment disputes; amending ss.
5780 112.19 and 112.191, F.S., to conform references to changes
5781 made by the act; providing that amendments to ss. 440.02
5782 and 440.15, F.S., do not affect certain disability,
5783 determination, and benefits; providing for construction of
5784 the act in pari materia with laws enacted during the 2003
5785 Regular Session of the Legislature; providing effective
5786 dates.

5787