

Bill No. SB 50-A

Amendment No. \_\_\_\_ Barcode 635010

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Effective upon this act becoming a law, subsections (15), (38), (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:

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

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

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

4           2. As to officers of a corporation who are actively  
5 engaged in the construction industry, no more than three  
6 officers may elect to be exempt from this chapter by filing  
7 written notice of the election with the department as provided  
8 in s. 440.05. ~~However, any exemption obtained by a corporate~~  
9 ~~officer of a corporation actively engaged in the construction~~  
10 ~~industry is not applicable with respect to any commercial~~  
11 ~~building project estimated to be valued at \$250,000 or~~  
12 ~~greater.~~

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

17  
18 Services are presumed to have been rendered to the corporation  
19 if the officer is compensated by other than dividends upon  
20 shares of stock of the corporation which the officer owns.

21           (c)1. "Employee" includes a sole proprietor or a  
22 partner who devotes full time to the proprietorship or  
23 partnership and, except as provided in this paragraph, elects  
24 to be included in the definition of employee by filing notice  
25 thereof as provided in s. 440.05. Partners or sole proprietors  
26 actively engaged in the construction industry are considered  
27 employees unless they elect to be excluded from the definition  
28 of employee by filing written notice of the election with the  
29 department as provided in s. 440.05. However, no more than  
30 three partners in a partnership that is actively engaged in  
31 the construction industry may elect to be excluded. A sole

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

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

15 (d) "Employee" does not include:

16 1. An independent contractor, if:

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

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

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

29 d. The independent contractor incurs the principal  
30 expenses related to the service or work that he or she  
31 performs or agrees to perform;

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

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

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

10 h. The independent contractor has continuing or  
11 recurring business liabilities or obligations; and

12 i. The success or failure of the independent  
13 contractor's business depends on the relationship of business  
14 receipts to expenditures.

15

16 However, the determination as to whether an individual  
17 included in the Standard Industrial Classification Manual of  
18 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
19 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
20 2448, or 2449, or a newspaper delivery person, is an  
21 independent contractor is governed not by the criteria in this  
22 paragraph but by common-law principles, giving due  
23 consideration to the business activity of the individual.

24 ~~Notwithstanding the provisions of this paragraph or any other~~  
25 ~~provision of this chapter, with respect to any commercial~~  
26 ~~building project estimated to be valued at \$250,000 or~~  
27 ~~greater, a person who is actively engaged in the construction~~  
28 ~~industry is not an independent contractor and is either an~~  
29 ~~employer or an employee who may not be exempt from the~~  
30 ~~coverage requirements of this chapter.~~

31 2. A real estate salesperson or agent, if that person

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1 | agrees, in writing, to perform for remuneration solely by way  
2 | of commission.

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

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

19 |           5. A person whose employment is both casual and not in  
20 | the course of the trade, business, profession, or occupation  
21 | of the employer.

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

29 |           a. Persons who serve in private nonprofit agencies and  
30 | who receive no compensation other than expenses in an amount  
31 | less than or equivalent to the standard mileage and per-diem

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

8           b. Volunteers participating in federal programs  
9 established under Pub. L. No. 93-113.

10           7. Any officer of a corporation who elects to be  
11 exempt from this chapter.

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

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

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

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1 revenues.

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

16           (38) "Catastrophic injury" means a permanent  
17 impairment constituted by:

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

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

22           (c) Severe brain or closed-head injury as evidenced  
23 by:

24           1. Severe sensory or motor disturbances;

25           2. Severe communication disturbances;

26           3. Severe complex integrated disturbances of cerebral  
27 function;

28           4. Severe episodic neurological disorders; or

29           5. Other severe brain and closed-head injury

30 conditions at least as severe in nature as any condition

31 provided in subparagraphs 1.-4.;

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1 (d) Second-degree or third-degree burns of 25 percent  
2 or more of the total body surface or third-degree burns of 5  
3 percent or more to the face and hands; or

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

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

12 (40) "Statement," for the purposes of ss. 440.105 and  
13 440.106, shall include the exact fraud statement language in  
14 s. 440.105(7). This requirement includes, but is not limited  
15 to, any notice, representation, statement, proof of injury,  
16 bill for services, diagnosis, prescription, hospital or doctor  
17 record, X ray, test result, or other evidence of loss, injury,  
18 or expense.

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

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

31 Section 2. Effective January 1, 2004, subsections (8),



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1 (15), and (16) of section 440.02, Florida Statutes, as amended  
2 by this act, are amended to read:

3 440.02 Definitions.--When used in this chapter, unless  
4 the context clearly requires otherwise, the following terms  
5 shall have the following meanings:

6 (8) "Construction industry" means for-profit  
7 activities involving ~~the carrying out of~~ any building,  
8 clearing, filling, excavation, or substantial improvement in  
9 the size or use of any structure or the appearance of any  
10 land. ~~When appropriate to the context, "construction" refers~~  
11 ~~to the act of construction or the result of construction.~~  
12 However, "construction" does shall not mean a homeowner's  
13 ~~landowner's~~ act of construction or the result of a  
14 construction upon his or her own premises, provided such  
15 premises are not intended to be sold, ~~or~~ resold, or leased by  
16 the owner within 1 year after the commencement of  
17 construction. The division may, by rule, establish standard  
18 industrial classification codes and definitions thereof which  
19 meet the criteria of the term "construction industry" as set  
20 forth in this section.

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

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

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

4           2. As to officers of a corporation who are ~~actively~~  
5 engaged in the construction industry, no more than three  
6 officers of a corporation or of any group of affiliated  
7 corporations may elect to be exempt from this chapter by  
8 filing written notice of the election with the department as  
9 provided in s. 440.05. Officers must be shareholders, each  
10 owning at least 10 percent of the stock of such corporation  
11 and listed as an officer of such corporation with the Division  
12 of Corporations of the Department of State, in order to elect  
13 exemptions under this chapter. For purposes of this  
14 subparagraph, the term "affiliated" means and includes one or  
15 more corporations or entities, any one of which is a  
16 corporation engaged in the construction industry, under the  
17 same or substantially the same control of a group of business  
18 entities which are connected or associated so that one entity  
19 controls or has the power to control each of the other  
20 business entities. The term "affiliated" includes, but is not  
21 limited to, the officers, directors, executives, shareholders  
22 active in management, employees, and agents of the affiliated  
23 corporation. The ownership by one business entity of a  
24 controlling interest in another business entity or a pooling  
25 of equipment or income among business entities shall be prima  
26 facie evidence that one business is affiliated with the other.

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

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

4 (c) "Employee" includes:

5 1. A sole proprietor or a partner who is not engaged  
 6 in the construction industry, devotes full time to the  
 7 proprietorship or partnership, and, ~~except as provided in this~~  
 8 ~~paragraph,~~ elects to be included in the definition of employee  
 9 by filing notice thereof as provided in s. 440.05. ~~Partners or~~  
 10 ~~sole proprietors actively engaged in the construction industry~~  
 11 ~~are considered employees unless they elect to be excluded from~~  
 12 ~~the definition of employee by filing written notice of the~~  
 13 ~~election with the department as provided in s. 440.05.~~

14 ~~However, no more than three partners in a partnership that is~~  
 15 ~~actively engaged in the construction industry may elect to be~~  
 16 ~~excluded. A sole proprietor or partner who is actively engaged~~  
 17 ~~in the construction industry and who elects to be exempt from~~  
 18 ~~this chapter by filing a written notice of the election with~~  
 19 ~~the department as provided in s. 440.05 is not an employee.~~  
 20 ~~For purposes of this chapter, an independent contractor is an~~  
 21 ~~employee unless he or she meets all of the conditions set~~  
 22 ~~forth in subparagraph (d)1.~~

23 2. All persons who are being paid by a construction  
 24 contractor as a subcontractor, unless the subcontractor has  
 25 validly elected an exemption as permitted by this chapter, or  
 26 has otherwise secured the payment of compensation coverage as  
 27 a subcontractor, consistent with s. 440.10, for work performed  
 28 by or as a subcontractor.

29 3. An independent contractor working or performing  
 30 services in the construction industry.

31 4. A sole proprietor who engages in the construction

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1 industry and a partner or partnership that is engaged in the  
2 construction industry.

3 (d) "Employee" does not include:

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

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

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

12 (II) The independent contractor holds or has applied  
13 for a federal employer identification number, unless the  
14 independent contractor is a sole proprietor who is not  
15 required to obtain a federal employer identification number  
16 under state or federal regulations;

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

20 (IV) The independent contractor holds one or more bank  
21 accounts in the name of the business entity for purposes of  
22 paying business expenses or other expenses related to services  
23 rendered or work performed for compensation;

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

28 (VI) The independent contractor receives compensation  
29 for work or services rendered on a competitive-bid basis or  
30 completion of a task or a set of tasks as defined by a  
31 contractual agreement, unless such contractual agreement

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1 ~~expressly states that an employment relationship exists. The~~  
2 ~~independent contractor maintains a separate business with his~~  
3 ~~or her own work facility, truck, equipment, materials, or~~  
4 ~~similar accommodations;~~

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

10       (I) The independent contractor performs or agrees to  
11 perform specific services or work for a specific amount of  
12 money and controls the means of performing the services or  
13 work.

14       (II) The independent contractor incurs the principal  
15 expenses related to the service or work that he or she  
16 performs or agrees to perform.

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

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

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

25       (VI) The independent contractor has continuing or  
26 recurring business liabilities or obligations.

27       (VII) The success or failure of the independent  
28 contractor's business depends on the relationship of business  
29 receipts to expenditures. The independent contractor holds or  
30 has applied for a federal employer identification number,  
31 unless the independent contractor is a sole proprietor who is

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1 ~~not required to obtain a federal employer identification~~  
2 ~~number under state or federal requirements;~~

3       c. Notwithstanding anything to the contrary in this  
4 subparagraph, an individual claiming to be an independent  
5 contractor has the burden of proving that he or she is an  
6 independent contractor for purposes of this chapter. The  
7 ~~independent contractor performs or agrees to perform specific~~  
8 ~~services or work for specific amounts of money and controls~~  
9 ~~the means of performing the services or work;~~

10       d. ~~The independent contractor incurs the principal~~  
11 ~~expenses related to the service or work that he or she~~  
12 ~~performs or agrees to perform;~~

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

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

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

22       h. ~~The independent contractor has continuing or~~  
23 ~~recurring business liabilities or obligations; and~~

24       i. ~~The success or failure of the independent~~  
25 ~~contractor's business depends on the relationship of business~~  
26 ~~receipts to expenditures.~~

27  
28 ~~However, the determination as to whether an individual~~  
29 ~~included in the Standard Industrial Classification Manual of~~  
30 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~  
31 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~

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1 ~~2448, or 2449, or a newspaper delivery person, is an~~  
2 ~~independent contractor is governed not by the criteria in this~~  
3 ~~paragraph but by common-law principles, giving due~~  
4 ~~consideration to the business activity of the individual.~~

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

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

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

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

27         6. A volunteer, except a volunteer worker for the  
28 state or a county, municipality, or other governmental entity.  
29 A person who does not receive monetary remuneration for  
30 services is presumed to be a volunteer unless there is  
31 substantial evidence that a valuable consideration was

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1 intended by both employer and employee. For purposes of this  
2 chapter, the term "volunteer" includes, but is not limited to:

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

13 b. Volunteers participating in federal programs  
14 established under Pub. L. No. 93-113.

15 7. Unless otherwise prohibited by this chapter, any  
16 officer of a corporation who elects to be exempt from this  
17 chapter. Such officer is not an employee for any reason under  
18 this chapter until the notice of revocation of election filed  
19 pursuant to s. 440.05 is effective.

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

28 9. An exercise rider who does not work for a single  
29 horse farm or breeder, and who is compensated for riding on a  
30 case-by-case basis, provided a written contract is entered  
31 into prior to the commencement of such activity which



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1 evidences that an employee/employer relationship does not  
2 exist.

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

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

25           12. Medicaid-enrolled clients under chapter 393 who  
26 are excluded from the definition of employment under s.  
27 443.036(21)(d)5. and served by Adult Day Training Services  
28 under the Home and Community-Based Medicaid Waiver program in  
29 a sheltered workshop setting licensed by the United States  
30 Department of Labor for the purpose of training and earning  
31 less than the federal hourly minimum wage.

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1           (16)(a) "Employer" means the state and all political  
 2 subdivisions thereof, all public and quasi-public corporations  
 3 therein, every person carrying on any employment, and the  
 4 legal representative of a deceased person or the receiver or  
 5 trustees of any person. "Employer" also includes employment  
 6 agencies, employee leasing companies, and similar agents who  
 7 provide employees to other persons. If the employer is a  
 8 corporation, parties in actual control of the corporation,  
 9 including, but not limited to, the president, officers who  
 10 exercise broad corporate powers, directors, and all  
 11 shareholders who directly or indirectly own a controlling  
 12 interest in the corporation, are considered the employer for  
 13 the purposes of ss. 440.105, ~~and~~ 440.106, and 440.107.

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

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

24           Section 3. Effective January 1, 2004, subsections (3),  
 25 (4), (6), (10), (11), and (12) of section 440.05, Florida  
 26 Statutes, are amended, present subsection (13) is renumbered  
 27 as subsection (11) and amended, and new subsections (12),  
 28 (13), (14), and (15) are added to that section, to read:

29           440.05 Election of exemption; revocation of election;  
 30 notice; certification.--

31           (3) Each ~~sole proprietor, partner, or officer of a~~

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

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

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

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

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

30 (10) Each ~~sole proprietor, partner, or~~ officer of a  
31 corporation who is actively engaged in the construction

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1 industry and who elects an exemption from this chapter shall  
2 maintain business records as specified by the division by  
3 rule, which rules must include the provision that any  
4 corporation with exempt officers ~~and any partnership actively~~  
5 engaged in the construction industry ~~with exempt partners~~ must  
6 maintain written statements of those exempted persons  
7 affirmatively acknowledging each such individual's exempt  
8 status.

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

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

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

21  
22 ~~A sole proprietor or partner shall produce, upon request by~~  
23 ~~the division, a copy of those documents together with a~~  
24 ~~statement by the sole proprietor or partner that the tax~~  
25 ~~records provided are true and accurate copies of what the sole~~  
26 ~~proprietor or partner has filed with the federal Internal~~  
27 ~~Revenue Service. The statement must be signed under oath by~~  
28 ~~the sole proprietor or partner and must be notarized. The~~  
29 ~~division shall issue a stop-work order under s. 440.107(5) to~~  
30 ~~any sole proprietor or partner who fails or refuses to produce~~  
31 ~~a copy of the tax records and affidavit required under this~~

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1 ~~paragraph to the division within 3 business days after the~~  
2 ~~request is made.~~

3 ~~(12) For those sole proprietors or partners that have~~  
4 ~~not been in business long enough to provide the information~~  
5 ~~required of an established business, the division shall~~  
6 ~~require such sole proprietor or partner to provide copies of~~  
7 ~~the most recently filed Federal Income Tax Form 1040. The~~  
8 ~~division shall establish by rule such other criteria to show~~  
9 ~~that the sole proprietor or partner intends to engage in a~~  
10 ~~legitimate enterprise within the construction industry and is~~  
11 ~~not otherwise attempting to evade the requirements of this~~  
12 ~~section. The division shall establish by rule the form and~~  
13 ~~format of financial information required to be submitted by~~  
14 ~~such employers.~~

15 ~~(11)(13)~~ Any corporate officer permitted by this  
16 chapter to claim claiming an exemption ~~under this section~~ must  
17 be listed on the records of this state's Secretary of State,  
18 Division of Corporations, as a corporate officer. ~~If the~~  
19 ~~person who claims an exemption as a corporate officer is not~~  
20 ~~so listed on the records of the Secretary of State, the~~  
21 ~~individual must provide to the division, upon request by the~~  
22 ~~division, a notarized affidavit stating that the individual is~~  
23 ~~a bona fide officer of the corporation and stating the date~~  
24 ~~his or her appointment or election as a corporate officer~~  
25 ~~became or will become effective. The statement must be signed~~  
26 ~~under oath by both the officer and the president or chief~~  
27 ~~operating officer of the corporation and must be notarized.~~  
28 The division shall issue a stop-work order under s. 440.107(1)  
29 to any corporation who employs a person who claims to be  
30 exempt as a corporate officer but who fails or refuses to  
31 produce the documents required under this subsection to the

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1 division within 3 business days after the request is made.

2 (12) Certificates of election to be exempt issued  
3 under subsection (3) shall apply only to the corporate officer  
4 named on the notice of election to be exempt and apply only  
5 within the scope of the business or trade listed on the notice  
6 of election to be exempt.

7 (13) Notices of election to be exempt and certificates  
8 of election to be exempt shall be subject to revocation if, at  
9 any time after the filing of the notice or the issuance of the  
10 certificate, the person named on the notice or certificate no  
11 longer meets the requirements of this section for issuance of  
12 a certificate. The department shall revoke a certificate at  
13 any time for failure of the person named on the certificate to  
14 meet the requirements of this section.

15 (14) An officer of a corporation who elects exemption  
16 from this chapter by filing a certificate of election under  
17 this section may not recover benefits or compensation under  
18 this chapter. For purposes of determining the appropriate  
19 premium for workers' compensation coverage, carriers may not  
20 consider any officer of a corporation who validly meets the  
21 requirements of this section to be an employee.

22 (15) Any corporate officer who is an affiliated person  
23 of a person who is delinquent in paying a stop-work order and  
24 penalty assessment order issued pursuant to s. 440.107, or  
25 owed pursuant to a court order, is ineligible for an election  
26 of exemption. The stop-work order and penalty assessment shall  
27 be in effect against any such affiliated person. As used in  
28 this subsection, the term "affiliated person" means:

29 (a) The spouse of such other person;

30 (b) Any person who directly or indirectly owns or  
31 controls, or holds with the power to vote, 10 percent or more



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1 of the outstanding voting securities of such other person;

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

6 (d) Any person or group of persons who directly or  
7 indirectly control, are controlled by, or are under common  
8 control with such other person;

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

11 (f) Any officer, director, trustee, partner, owner,  
12 manager, joint venturer, or employee of such other person or a  
13 person performing duties similar to persons in such positions;  
14 or

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

17 Section 4. Section 440.06, Florida Statutes, is  
18 amended to read:

19 440.06 Failure to secure compensation; effect.--Every  
20 employer who fails to secure the payment of compensation, as  
21 provided in s. 440.10, by failing to meet the requirements of  
22 ~~under this chapter as provided in s. 440.38~~ may not, in any  
23 suit brought against him or her by an employee subject to this  
24 chapter to recover damages for injury or death, defend such a  
25 suit on the grounds that the injury was caused by the  
26 negligence of a fellow servant, that the employee assumed the  
27 risk of his or her employment, or that the injury was due to  
28 the comparative negligence of the employee.

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

31 440.077 When a corporate ~~sole proprietor, partner, or~~

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1 officer rejects chapter, effect.--~~An A sole proprietor,~~  
2 ~~partner, or officer of a corporation who is permitted to elect~~  
3 ~~an exemption under this chapter actively engaged in the~~  
4 ~~construction industry~~ and who elects to be exempt from the  
5 provisions of this chapter may not recover benefits under this  
6 chapter.

7 Section 6. Subsection (4) of section 440.09, Florida  
8 Statutes, is amended and paragraph (e) is added to subsection  
9 (7) of that section, to read:

10 440.09 Coverage.--

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

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

29 (c) Upon the denial of benefits in accordance with  
30 this section, a judge of compensation claims shall have the  
31 jurisdiction to order any benefits payable to the employee to

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1 be paid into the court registry or an escrow account during  
2 the pendency of an appeal or until such time as the time in  
3 which to file an appeal has expired.

4 (7)

5 (e) As a part of rebutting any presumptions under  
6 paragraph (b), the injured worker must prove the actual  
7 quantitative amounts of the drug or its metabolites as  
8 measured on the initial and confirmation post-accident drug  
9 tests of the injured worker's urine sample and provide  
10 additional evidence regarding the absence of drug influence  
11 other than the worker's denial of being under the influence of  
12 a drug. No drug test conducted on a urine sample shall be  
13 rejected as to its results or the presumption imposed under  
14 paragraph (b) on the basis of the urine being bodily fluid  
15 tested.

16 Section 7. Effective January 1, 2004, subsection (1)  
17 of section 440.10, Florida Statutes, is amended to read:

18 440.10 Liability for compensation.--

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

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

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

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

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

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

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

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

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

13 (g) Subject to s. 440.38, any employer who has  
14 employees engaged in work in this state shall obtain a Florida  
15 policy or endorsement for such employees which utilizes  
16 Florida class codes, rates, rules, and manuals that are in  
17 compliance with and approved under the provisions of this  
18 chapter and the Florida Insurance Code. Failure to comply with  
19 this paragraph is a felony of the second degree, punishable as  
20 provided in s. 775.082, s. 775.083, or s. 775.084. The  
21 department shall adopt rules for construction industry and  
22 nonconstruction-industry employers with regard to the  
23 activities that define what constitutes being "engaged in  
24 work" in this state, using the following standards:

25 1. For employees of nonconstruction-industry employers  
26 who have their headquarters outside of Florida and also  
27 operate in Florida and who are routinely crossing state lines,  
28 but usually return to their homes each night, the employee  
29 shall be assigned to the headquarters' state. However, the  
30 construction industry employees performing new construction or  
31 alterations in Florida shall be assigned to Florida even if

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1 the employees return to their home state each night.

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

6 3. For construction contractors who maintain a  
7 permanent staff of employees and superintendents, if any of  
8 these employees or superintendents are assigned to a job that  
9 is located in Florida, either for the duration of the job or  
10 any portion thereof, their payroll shall be assigned to  
11 Florida rather than headquarters' state.

12 4. Employees who are hired for a specific project in  
13 Florida shall be assigned to Florida. For purposes of this  
14 section, a person is conclusively presumed to be an  
15 independent contractor if:

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

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

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

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

5 Section 8. Section 440.1025, Florida Statutes, is  
6 amended to read:

7 440.1025 ~~Consideration of public~~ Employer workplace  
8 safety program in rate-setting; program requirements;  
9 rulemaking.--

10 (1) For a public or private employer to be eligible  
11 for receipt of specific identifiable consideration under s.  
12 627.0915 for a workplace safety program in the setting of  
13 rates, the ~~public~~ employer must have a workplace safety  
14 program. At a minimum, the program must include a written  
15 safety policy and safety rules, and make provision for safety  
16 inspections, preventative maintenance, safety training,  
17 first-aid, accident investigation, and necessary  
18 recordkeeping. ~~For purposes of this section, "public employer"~~  
19 ~~means any agency within state, county, or municipal government~~  
20 ~~employing individuals for salary, wages, or other~~  
21 ~~remuneration.~~ The division may adopt promulgate rules for  
22 insurers to utilize in determining ~~public~~ employer compliance  
23 with the requirements of this section.

24 (2) The division shall publicize on the Internet, and  
25 shall encourage insurers to publicize, the availability of  
26 free safety consultation services and safety program  
27 resources.

28 Section 9. Section 440.103, Florida Statutes, is  
29 amended to read:

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

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

18 Section 10. Section 440.105, Florida Statutes, is  
19 amended to read:

20 440.105 Prohibited activities; reports; penalties;  
21 limitations.--

22 (1)(a) Any insurance carrier, any individual  
23 self-insured, any commercial or group self-insurance fund, any  
24 professional practitioner licensed or regulated by the  
25 Department of Health ~~Business and Professional Regulation~~,  
26 except as otherwise provided by law, any medical review  
27 committee as defined in s. 766.101, any private medical review  
28 committee, and any insurer, agent, or other person licensed  
29 under the insurance code, or any employee thereof, having  
30 knowledge or who believes that a fraudulent act or any other  
31 act or practice which, upon conviction, constitutes a felony



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1 or misdemeanor under this chapter is being or has been  
2 committed shall send to the Division of Insurance Fraud,  
3 Bureau of Workers' Compensation Fraud, a report or information  
4 pertinent to such knowledge or belief and such additional  
5 information relative thereto as the bureau may require. The  
6 bureau shall review such information or reports and select  
7 such information or reports as, in its judgment, may require  
8 further investigation. It shall then cause an independent  
9 examination of the facts surrounding such information or  
10 report to be made to determine the extent, if any, to which a  
11 fraudulent act or any other act or practice which, upon  
12 conviction, constitutes a felony or a misdemeanor under this  
13 chapter is being committed. The bureau shall report any  
14 alleged violations of law which its investigations disclose to  
15 the appropriate licensing agency and state attorney or other  
16 prosecuting agency having jurisdiction with respect to any  
17 such violations of this chapter. If prosecution by the state  
18 attorney or other prosecuting agency having jurisdiction with  
19 respect to such violation is not begun within 60 days of the  
20 bureau's report, the state attorney or other prosecuting  
21 agency having jurisdiction with respect to such violation  
22 shall inform the bureau of the reasons for the lack of  
23 prosecution.

24 (b) In the absence of fraud or bad faith, a person is  
25 not subject to civil liability for libel, slander, or any  
26 other relevant tort by virtue of filing reports, without  
27 malice, or furnishing other information, without malice,  
28 required by this section or required by the bureau, and no  
29 civil cause of action of any nature shall arise against such  
30 person:

31 1. For any information relating to suspected

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1 fraudulent acts furnished to or received from law enforcement  
2 officials, their agents, or employees;

3         2. For any information relating to suspected  
4 fraudulent acts furnished to or received from other persons  
5 subject to the provisions of this chapter; or

6         3. For any such information relating to suspected  
7 fraudulent acts furnished in reports to the bureau, or the  
8 National Association of Insurance Commissioners.

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

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

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

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

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

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

27         (b) It shall be unlawful for any insurance entity to  
28 revoke or cancel a workers' compensation insurance policy or  
29 membership because an employer has returned an employee to  
30 work or hired an employee who has filed a workers'  
31 compensation claim.

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

4 (a) It shall be unlawful for any employer to knowingly  
 5 fail to update applications for coverage as required by s.  
 6 440.381(1) and department ~~of Insurance~~ rules within 7 days  
 7 after the reporting date for any change in the required  
 8 information, or to post notice of coverage pursuant to s.  
 9 440.40.

10 (b) It is unlawful for any attorney or other person,  
 11 in his or her individual capacity or in his or her capacity as  
 12 a public or private employee, or for any firm, corporation,  
 13 partnership, or association to receive any fee or other  
 14 consideration or any gratuity from a person on account of  
 15 services rendered for a person in connection with any  
 16 proceedings arising under this chapter, unless such fee,  
 17 consideration, or gratuity is approved by a judge of  
 18 compensation claims or by the Deputy Chief Judge of  
 19 Compensation Claims.

20 (4) Whoever violates any provision of this subsection  
 21 commits insurance fraud, punishable as provided in paragraph  
 22 (f).

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

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

28 2. Make a deduction from the pay of any employee  
 29 entitled to the benefits of this chapter for the purpose of  
 30 requiring the employee to pay any portion of premium paid by  
 31 the employer to a carrier or to contribute to a benefit fund

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1 or department maintained by such employer for the purpose of  
2 providing compensation or medical services and supplies as  
3 required by this chapter.

4           3. Fail to secure payment of compensation if required  
5 to do so by this chapter.

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

7           1. To knowingly make, or cause to be made, any false,  
8 fraudulent, or misleading oral or written statement for the  
9 purpose of obtaining or denying any benefit or payment under  
10 this chapter.

11           2. To present or cause to be presented any written or  
12 oral statement as part of, or in support of, a claim for  
13 payment or other benefit pursuant to any provision of this  
14 chapter, knowing that such statement contains any false,  
15 incomplete, or misleading information concerning any fact or  
16 thing material to such claim.

17           3. To prepare or cause to be prepared any written or  
18 oral statement that is intended to be presented to any  
19 employer, insurance company, or self-insured program in  
20 connection with, or in support of, any claim for payment or  
21 other benefit pursuant to any provision of this chapter,  
22 knowing that such statement contains any false, incomplete, or  
23 misleading information concerning any fact or thing material  
24 to such claim.

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

27           5. To knowingly make any false, fraudulent, or  
28 misleading oral or written statement, or to knowingly omit or  
29 conceal material information, required by s. 440.185 or s.  
30 440.381, for the purpose of obtaining workers' compensation  
31 coverage or for the purpose of avoiding, delaying, or

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1 diminishing the amount of payment of any workers' compensation  
2 premiums.

3           6. To knowingly misrepresent or conceal payroll,  
4 classification of workers, or information regarding an  
5 employer's loss history which would be material to the  
6 computation and application of an experience rating  
7 modification factor for the purpose of avoiding or diminishing  
8 the amount of payment of any workers' compensation premiums.

9           7. To knowingly present or cause to be presented any  
10 false, fraudulent, or misleading oral or written statement to  
11 any person as evidence of compliance with s. 440.38, as  
12 evidence of eligibility for a certificate of exemption under  
13 s. 440.05.

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

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

21           (c) It shall be unlawful for any physician licensed  
22 under chapter 458, osteopathic physician licensed under  
23 chapter 459, chiropractic physician licensed under chapter  
24 460, podiatric physician licensed under chapter 461,  
25 optometric physician licensed under chapter 463, or any other  
26 practitioner licensed under the laws of this state to  
27 knowingly and willfully assist, conspire with, or urge any  
28 person to fraudulently violate any of the provisions of this  
29 chapter.

30           (d) It shall be unlawful for any person or  
31 governmental entity licensed under chapter 395 to maintain or

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1 operate a hospital in such a manner so that such person or  
2 governmental entity knowingly and willfully allows the use of  
3 the facilities of such hospital by any person, in a scheme or  
4 conspiracy to fraudulently violate any of the provisions of  
5 this chapter.

6 (e) It shall be unlawful for any attorney or other  
7 person, in his or her individual capacity or in his or her  
8 capacity as a public or private employee, or any firm,  
9 corporation, partnership, or association, to knowingly assist,  
10 conspire with, or urge any person to fraudulently violate any  
11 of the provisions of this chapter.

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

15 1. Is less than \$20,000, the offender commits a felony  
16 of the third degree, punishable as provided in s. 775.082, s.  
17 775.083, or s. 775.084.

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

21 3. Is \$100,000 or more, the offender commits a felony  
22 of the first degree, punishable as provided in s. 775.082, s.  
23 775.083, or s. 775.084.

24 (5) It shall be unlawful for any attorney or other  
25 person, in his or her individual capacity or in his or her  
26 capacity as a public or private employee or for any firm,  
27 corporation, partnership, or association, to unlawfully  
28 solicit any business in and about city or county hospitals,  
29 courts, or any public institution or public place; in and  
30 about private hospitals or sanitariums; in and about any  
31 private institution; or upon private property of any character

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1 whatsoever for the purpose of making workers' compensation  
 2 claims. Whoever violates any provision of this subsection  
 3 commits a felony of the second ~~third~~ degree, punishable as  
 4 provided in s. 775.082, s. 775.083, or s. 775.085.

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

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

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

29 Section 11. Subsection (3) of section 440.1051,  
 30 Florida Statutes, is amended to read:

31 440.1051 Fraud reports; civil immunity; criminal

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1 penalties.--

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

8 (3) A person who calls and, knowingly and falsely,  
9 reports workers' compensation fraud or who, in violation of  
10 subsection (2) retaliates against a person for making such  
11 report, ~~commits is guilty of a felony misdemeanor~~ of the third  
12 first degree, punishable as provided in s. 775.082, ~~or s.~~  
13 775.083, or s. 775.084 both.

14 Section 12. Section 440.107, Florida Statutes, is  
15 amended to read:

16 440.107 Department powers to enforce employer  
17 compliance with coverage requirements.--

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

26 (2) For the purposes of this section, "securing the  
27 payment of workers' compensation" means obtaining coverage  
28 that meets the requirements of this chapter and the Florida  
29 Insurance Code. However, if at any time an employer materially  
30 understates or conceals payroll, materially misrepresents or  
31 conceals employee duties so as to avoid proper classification



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1 for premium calculations, or materially misrepresents or  
2 conceals information pertinent to the computation and  
3 application of an experience rating modification factor, such  
4 employer shall be deemed to have failed to secure payment of  
5 workers' compensation and shall be subject to the sanctions  
6 set forth in this section. A stop-work order issued because an  
7 employer is deemed to have failed to secure the payment of  
8 workers' compensation required under this chapter because the  
9 employer has materially understated or concealed payroll,  
10 materially misrepresented or concealed employee duties so as  
11 to avoid proper classification for premium calculations, or  
12 materially misrepresented or concealed information pertinent  
13 to the computation and application of an experience rating  
14 modification factor shall have no effect upon an employer's or  
15 carrier's duty to provide benefits under this chapter or upon  
16 any of the employer's or carrier's rights and defenses under  
17 this chapter, including exclusive remedy. The department and  
18 its authorized representatives may enter and inspect any place  
19 of business at any reasonable time for the limited purpose of  
20 investigating compliance with workers' compensation coverage  
21 requirements under this chapter. Each employer shall keep true  
22 and accurate business records that contain such information as  
23 the department prescribes by rule. The business records must  
24 contain information necessary for the department to determine  
25 compliance with workers' compensation coverage requirements  
26 and must be maintained within this state by the business, in  
27 such a manner as to be accessible within a reasonable time  
28 upon request by the department. The business records must be  
29 open to inspection and be available for copying by the  
30 department at any reasonable time and place and as often as  
31 necessary. The department may require from any employer any

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1 ~~sworn or unsworn reports, pertaining to persons employed by~~  
2 ~~that employer, deemed necessary for the effective~~  
3 ~~administration of the workers' compensation coverage~~  
4 ~~requirements.~~  
5       (3) The department shall enforce workers' compensation  
6 coverage requirements, including the requirement that the  
7 employer secure the payment of workers' compensation, and the  
8 requirement that the employer provide the carrier with  
9 information to accurately determine payroll and correctly  
10 assign classification codes. In addition to any other powers  
11 under this chapter, the department shall have the power to:  
12       (a) Conduct investigations for the purpose of ensuring  
13 employer compliance.  
14       (b) Enter and inspect any place of business at any  
15 reasonable time for the purpose of investigating employer  
16 compliance.  
17       (c) Examine and copy business records.  
18       (d) Administer oaths and affirmations.  
19       (e) Certify to official acts.  
20       (f) Issue and serve subpoenas for attendance of  
21 witnesses or production of business records, books, papers,  
22 correspondence, memoranda, and other records.  
23       (g) Issue stop-work orders, penalty assessment orders,  
24 and any other orders necessary for the administration of this  
25 section.  
26       (h) Enforce the terms of a stop-work order.  
27       (i) Levy and pursue actions to recover penalties.  
28       (j) Seek injunctions and other appropriate relief. In  
29 ~~discharging its duties, the department may administer oaths~~  
30 ~~and affirmations, certify to official acts, issue subpoenas to~~  
31 ~~compel the attendance of witnesses and the production of~~

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1 ~~books, papers, correspondence, memoranda, and other records~~  
2 ~~deemed necessary by the department as evidence in order to~~  
3 ~~ensure proper compliance with the coverage provisions of this~~  
4 ~~chapter.~~

5       (4) The department shall designate representatives who  
6 may serve subpoenas and other process of the department issued  
7 under this section.

8       (5) The department shall specify by rule the business  
9 records that employers must maintain and produce to comply  
10 with this section.

11       ~~(6)(4)~~ If a person has refused to obey a subpoena to  
12 appear before the department or its authorized representative  
13 or and produce evidence requested by the department or to give  
14 testimony about the matter that is under investigation, a  
15 court has jurisdiction to issue an order requiring compliance  
16 with the subpoena if the court has jurisdiction in the  
17 geographical area where the inquiry is being carried on or in  
18 the area where the person who has refused the subpoena is  
19 found, resides, or transacts business. Failure to obey such a  
20 court order may be punished by the court as contempt, either  
21 civilly or criminally. Costs, including reasonable attorney's  
22 fees, incurred by the department to obtain an order granting,  
23 in whole or in part, a petition to enforce a subpoena or a  
24 subpoena duces tecum shall be taxed against the subpoenaed  
25 party.

26       ~~(7)(a)(5)~~ Whenever the department determines that an  
27 employer who is required to secure the payment to his or her  
28 employees of the compensation provided for by this chapter has  
29 failed to secure the payment of workers' compensation required  
30 by this chapter or to produce the required business records  
31 under subsection (5) within 5 business days after receipt of

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1 ~~the written request of the department do so~~, such failure  
2 shall be deemed an immediate serious danger to public health,  
3 safety, or welfare sufficient to justify service by the  
4 department of a stop-work order on the employer, requiring the  
5 cessation of all business operations ~~at the place of~~  
6 ~~employment or job site~~. If the department division makes such  
7 a determination, the department division shall issue a  
8 stop-work order within 72 hours. The order shall take effect  
9 when served upon the date of service upon the employer or, for  
10 a particular employer work site, when served at that work  
11 site, unless the employer provides evidence satisfactory to  
12 the department of having secured any necessary insurance or  
13 self-insurance and pays a civil penalty to the department, to  
14 be deposited by the department into the Workers' Compensation  
15 Administration Trust Fund, in the amount of \$100 per day for  
16 each day the employer was not in compliance with this chapter.  
17 In addition to serving a stop-work order at a particular work  
18 site which shall be effective immediately, the department  
19 shall immediately proceed with service upon the employer which  
20 shall be effective upon all employer work sites in the state  
21 for which the employer is not in compliance. A stop-work order  
22 may be served with regard to an employer's work site by  
23 posting a copy of the stop-work order in a conspicuous  
24 location at the work site. The order shall remain in effect  
25 until the department issues an order releasing the stop-work  
26 order upon a finding that the employer has come into  
27 compliance with the coverage requirements of this chapter and  
28 has paid any penalty assessed under this section. The  
29 department may require an employer who is found to have failed  
30 to comply with the coverage requirements of s. 440.38 to file  
31 with the department, as a condition of release from a

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1 stop-work order, periodic reports for a probationary period  
2 that shall not exceed 2 years that demonstrate the employer's  
3 continued compliance with this chapter. The department shall  
4 by rule specify the reports required and the time for filing  
5 under this subsection.

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

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

17 (d)1. In addition to any penalty, stop-work order, or  
18 injunction, the department shall assess against any employer  
19 who has failed to secure the payment of compensation as  
20 required by this chapter a penalty equal to 1.5 times the  
21 amount the employer would have paid in premium when applying  
22 approved manual rates to the employer's payroll during periods  
23 for which it failed to secure the payment of workers'  
24 compensation required by this chapter within the preceding  
25 3-year period or \$1,000, whichever is greater.

26 2. Any subsequent violation within 5 years after the  
27 most recent violation shall, in addition to the penalties set  
28 forth in this subsection, be deemed a knowing act within the  
29 meaning of s. 440.105.

30 (e) When an employer fails to provide business records  
31 sufficient to enable the department to determine the

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1 employer's payroll for the period requested for the  
2 calculation of the penalty provided in paragraph (d), for  
3 penalty calculation purposes, the imputed weekly payroll for  
4 each employee, corporate officer, sole proprietor, or partner  
5 shall be the statewide average weekly wage as defined in s.  
6 440.12(2) multiplied by 1.5.

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

13 (8)(6) In addition to the issuance of a stop-work  
14 order under subsection (7), the department may file a  
15 complaint in the circuit court in and for Leon County to  
16 enjoin any employer, who has failed to secure the payment of  
17 workers' compensation as required by this chapter, from  
18 employing individuals and from conducting business until the  
19 employer presents evidence satisfactory to the department of  
20 having secured the payment of workers' for compensation  
21 required by this chapter and pays a civil penalty assessed by  
22 to the department under this section, to be deposited by the  
23 department into the Workers' Compensation Administration Trust  
24 Fund, in the amount of \$100 per day for each day the employer  
25 was not in compliance with this chapter.

26 (9)(7) In addition to any penalty, stop-work order, or  
27 injunction, the department shall assess against any employer,  
28 who has failed to secure the payment of compensation as  
29 required by this chapter, a penalty in the following amount:

30 (a) An amount equal to at least the amount that the  
31 employer would have paid or up to twice the amount the

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1 ~~employer would have paid during periods it illegally failed to~~  
2 ~~secure payment of compensation in the preceding 3-year period~~  
3 ~~based on the employer's payroll during the preceding 3-year~~  
4 ~~period; or~~

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

15 ~~(10)(8)~~ The department may bring an action in circuit  
16 court to recover penalties assessed under this section,  
17 including any interest owed to the department pursuant to this  
18 section. In any action brought by the department pursuant to  
19 this section in which it prevails, the circuit court shall  
20 award costs, including the reasonable costs of investigation  
21 and a reasonable attorney's fee.

22 ~~(11)(9)~~ Any judgment obtained by the department and  
23 any penalty due pursuant to the service of a stop-work order  
24 or otherwise due under this section shall, until collected,  
25 constitute a lien upon the entire interest of the employer,  
26 legal or equitable, in any property, real or personal,  
27 tangible or intangible; however, such lien is subordinate to  
28 claims for unpaid wages and any prior recorded liens, and a  
29 lien created by this section is not valid against any person  
30 who, subsequent to such lien and in good faith and for value,  
31 purchases real or personal property from such employer or

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1 becomes the mortgagee on real or personal property of such  
2 employer, or against a subsequent attaching creditor, unless,  
3 with respect to real estate of the employer, a notice of the  
4 lien is recorded in the public records of the county where the  
5 real estate is located, and with respect to personal property  
6 of the employer, the notice is recorded with the Secretary of  
7 State.

8       ~~(12)(10)~~ Any law enforcement agency in the state may,  
9 at the request of the department, render any assistance  
10 necessary to carry out the provisions of this section,  
11 including, but not limited to, preventing any employee or  
12 other person from remaining at a place of employment or job  
13 site after a stop-work order or injunction has taken effect.

14       ~~(13)(11)~~ Agency action ~~Actions~~ by the department under  
15 this section, if contested, must be contested as provided in  
16 chapter 120. All ~~civil~~ penalties assessed by the department  
17 must be paid into the Workers' Compensation Administration  
18 Trust Fund. ~~The department shall return any sums previously~~  
19 ~~paid, upon conclusion of an action, if the department fails to~~  
20 ~~prevail and if so directed by an order of court or an~~  
21 ~~administrative hearing officer. The requirements of this~~  
22 ~~subsection may be met by posting a bond in an amount equal to~~  
23 ~~twice the penalty and in a form approved by the department.~~

24       ~~(14)(12)~~ If the department division finds that an  
25 employer who is certified or registered under part I or part  
26 II of chapter 489 and who is required to secure the payment of  
27 workers' the compensation under provided for by this chapter  
28 to his or her employees has failed to do so, the department  
29 ~~division~~ shall immediately notify the Department of Business  
30 and Professional Regulation.

31       Section 13. Subsection (1) of section 440.15, Florida



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1 Statutes, is amended to read:

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

5           (1) PERMANENT TOTAL DISABILITY.--

6           (a) In case of total disability adjudged to be  
7 permanent, 66 2/3 percent of the average weekly wages shall be  
8 paid to the employee during the continuance of such total  
9 disability.

10           (b) ~~Only~~ A catastrophic injury as defined in s.  
11 440.02(38) shall, in the absence of conclusive proof of a  
12 substantial earning capacity, constitute permanent total  
13 disability. In all other cases, no compensation shall be  
14 payable under paragraph (a) if the employee is engaged in, or  
15 is physically capable of engaging in at least sedentary  
16 employment. In order to obtain permanent total disability  
17 benefits, the employee must establish that he or she is not  
18 able uninterruptedly to engage in at least sedentary  
19 employment, within a 50-mile radius of the employee's  
20 residence, due to his or her physical limitation. Only  
21 claimants with catastrophic injuries or claimants who are  
22 incapable of engaging in employment, as described in this  
23 paragraph, are eligible for permanent total benefits. In no  
24 other case may permanent total disability be awarded.

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

28           (d) If an employee who is being paid compensation for  
29 permanent total disability becomes rehabilitated to the extent  
30 that she or he establishes an earning capacity, the employee  
31 shall be paid, instead of the compensation provided in

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1 paragraph (a), benefits pursuant to subsection (3). The  
2 department shall adopt rules to enable a permanently and  
3 totally disabled employee who may have reestablished an  
4 earning capacity to undertake a trial period of reemployment  
5 without prejudicing her or his return to permanent total  
6 status in the case that such employee is unable to sustain an  
7 earning capacity.

8 (e)1. The employer's or carrier's right to conduct  
9 vocational evaluations or testing by the employer's or  
10 carrier's chosen rehabilitation advisor or provider pursuant  
11 to s. 440.491 continues even after the employee has been  
12 accepted or adjudicated as entitled to compensation under this  
13 chapter and costs for such evaluations and testing shall be  
14 borne by the employer or carrier, respectively. This right  
15 includes, but is not limited to, instances in which such  
16 evaluations or tests are recommended by a treating physician  
17 or independent medical-examination physician, instances  
18 warranted by a change in the employee's medical condition, or  
19 instances in which the employee appears to be making  
20 appropriate progress in recuperation. This right may not be  
21 exercised more than once every calendar year.

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

27 3. ~~Pursuant to an order of the judge of compensation~~  
28 ~~claims,~~ The employer or carrier may withhold payment of  
29 benefits for permanent total disability or supplements for any  
30 period during which the employee willfully fails or refuses to  
31 appear without good cause for the scheduled vocational

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1 evaluation or testing.

2 (f)1. If permanent total disability results from  
3 injuries that occurred subsequent to June 30, 1955, and for  
4 which the liability of the employer for compensation has not  
5 been discharged under s. 440.20(11), the injured employee  
6 shall receive additional weekly compensation benefits equal to  
7 5 percent of her or his weekly compensation rate, as  
8 established pursuant to the law in effect on the date of her  
9 or his injury, multiplied by the number of calendar years  
10 since the date of injury. The weekly compensation payable and  
11 the additional benefits payable under this paragraph, when  
12 combined, may not exceed the maximum weekly compensation rate  
13 in effect at the time of payment as determined pursuant to s.  
14 440.12(2). Entitlement to these supplemental payments shall  
15 cease at age 62 if the employee is eligible for social security  
16 benefits under 42 U.S.C. ss. 402 and 423, whether or not the  
17 employee has applied for such benefits. These supplemental  
18 benefits shall be paid by the department out of the Workers'  
19 Compensation Administration Trust Fund when the injury  
20 occurred subsequent to June 30, 1955, and before July 1, 1984.  
21 These supplemental benefits shall be paid by the employer when  
22 the injury occurred on or after July 1, 1984. Supplemental  
23 benefits are not payable for any period prior to October 1,  
24 1974.

25 2.a. The department shall provide by rule for the  
26 periodic reporting to the department of all earnings of any  
27 nature and social security income by the injured employee  
28 entitled to or claiming additional compensation under  
29 subparagraph 1. Neither the department nor the employer or  
30 carrier shall make any payment of those additional benefits  
31 provided by subparagraph 1. for any period during which the

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1 | employee willfully fails or refuses to report upon request by  
 2 | the department in the manner prescribed by such rules.

3 |         b. The department shall provide by rule for the  
 4 | periodic reporting to the employer or carrier of all earnings  
 5 | of any nature and social security income by the injured  
 6 | employee entitled to or claiming benefits for permanent total  
 7 | disability. The employer or carrier is not required to make  
 8 | any payment of benefits for permanent total disability for any  
 9 | period during which the employee willfully fails or refuses to  
 10 | report upon request by the employer or carrier in the manner  
 11 | prescribed by such rules or if any employee who is receiving  
 12 | permanent total disability benefits refuses to apply for or  
 13 | cooperate with the employer or carrier in applying for social  
 14 | security benefits.

15 |         3. When an injured employee receives a full or partial  
 16 | lump-sum advance of the employee's permanent total disability  
 17 | compensation benefits, the employee's benefits under this  
 18 | paragraph shall be computed on the employee's weekly  
 19 | compensation rate as reduced by the lump-sum advance.

20 |         Section 14. Subsection (9) of section 440.185, Florida  
 21 | Statutes, is amended, and subsection (12) is added to that  
 22 | section, to read:

23 |         440.185 Notice of injury or death; reports; penalties  
 24 | for violations.--

25 |         (9) Any employer or carrier who fails or refuses to  
 26 | timely send any form, report, or notice required by this  
 27 | section shall be subject to an administrative fine by the  
 28 | department ~~a civil penalty~~ not to exceed ~~\$1,000~~ \$500 for each  
 29 | such failure or refusal. If, within 1 calendar year, an  
 30 | employer fails to timely submit to the carrier more than 10  
 31 | percent of its notices of injury or death, the employer shall

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1 be subject to an administrative fine by the department not to  
2 exceed \$2,000 for each such failure or refusal. However, any  
3 employer who fails to notify the carrier of the injury on the  
4 prescribed form or by letter within the 7 days required in  
5 subsection (2) shall be liable for the administrative fine  
6 ~~civil penalty~~, which shall be paid by the employer and not the  
7 carrier. Failure by the employer to meet its obligations under  
8 subsection (2) shall not relieve the carrier from liability  
9 for the administrative fine ~~civil penalty~~ if it fails to  
10 comply with subsections (4) and (5).

11 (12) Upon receiving notice of an injury from an  
12 employee under subsection (1), the employer or carrier shall  
13 provide the employee with a written notice, in the form and  
14 manner determined by the department by rule, of the  
15 availability of services from the Employee Assistance and  
16 Ombudsman Office. The substance of the notice to the employee  
17 shall include:

18 (a) A description of the scope of services provided by  
19 the office.

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

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

25 (d) Any other information regarding access to  
26 assistance that the department finds is immediately necessary  
27 for an injured employee.

28 Section 15. Subsections (2), (3), (4), (6), and (8) of  
29 section 440.20, Florida Statutes, are amended to read:

30 440.20 Time for payment of compensation and medical  
31 bills; penalties for late payment.--

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1           (2)(a) The carrier must pay the first installment of  
2 compensation for total disability or death benefits or deny  
3 compensability no later than the 14th calendar day after the  
4 employer receives notification ~~notice~~ of the injury or death,  
5 when disability is immediate and continuous for 8 calendar  
6 days or more after the injury. If the first 7 days after  
7 disability are nonconsecutive or delayed, the first  
8 installment of compensation is due on the 6th day after the  
9 first 8 calendar days of disability. The carrier shall  
10 thereafter pay compensation in biweekly installments or as  
11 otherwise provided in s. 440.15, unless the judge of  
12 compensation claims determines or the parties agree that an  
13 alternate installment schedule is in the best interests of the  
14 employee.

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

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

27           (4) If the carrier is uncertain of its obligation to  
28 provide all benefits or compensation, ~~it may initiate payment~~  
29 ~~without prejudice and without admitting liability.~~ the carrier  
30 shall immediately and in good faith commence investigation of  
31 the employee's entitlement to benefits under this chapter and

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

24 (6)(a) If any installment of compensation for death or  
25 dependency benefits, or compensation for disability benefits,  
26 ~~permanent impairment, or wage loss~~ payable without an award is  
27 not paid within 7 days after it becomes due, as provided in  
28 subsection (2), subsection (3), or subsection (4), there shall  
29 be added to such unpaid installment a ~~punitive~~ penalty of an  
30 amount equal to 20 percent of the unpaid installment ~~or \$5,~~  
31 which shall be paid at the same time as, but in addition to,

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1 ~~such installment of compensation. This penalty shall not apply~~  
2 ~~for late payments resulting, unless notice is filed under~~  
3 ~~subsection (4) or unless such nonpayment results~~ from  
4 conditions over which the employer or carrier had no control.  
5 When any installment of compensation payable without an award  
6 has not been paid within 7 days after it became due and the  
7 claimant concludes the prosecution of the claim before a judge  
8 of compensation claims without having specifically claimed  
9 additional compensation in the nature of a penalty under this  
10 section, the claimant will be deemed to have acknowledged  
11 that, owing to conditions over which the employer or carrier  
12 had no control, such installment could not be paid within the  
13 period prescribed for payment and to have waived the right to  
14 claim such penalty. However, during the course of a hearing,  
15 the judge of compensation claims shall on her or his own  
16 motion raise the question of whether such penalty should be  
17 awarded or excused. The department may assess without a  
18 hearing the ~~punitive~~ penalty against either the employer or  
19 the ~~insurance~~ carrier, depending upon who was at fault in  
20 causing the delay. The insurance policy cannot provide that  
21 this sum will be paid by the carrier if the department or the  
22 judge of compensation claims determines that the ~~punitive~~  
23 penalty should be paid ~~made~~ by the employer rather than the  
24 carrier. Any additional installment of compensation paid by  
25 the carrier pursuant to this section shall be paid directly to  
26 the employee by check or, if authorized by the employee, by  
27 direct deposit into the employee's account at a financial  
28 institution. ~~As used in this subsection, the term "financial~~  
29 ~~institution" means a financial institution as defined in s.~~  
30 ~~655.005(1)(h).~~

31 (b) For medical services provided on or after January



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1 1, 2004, the department shall require that all medical,  
 2 hospital, pharmacy, or dental bills properly submitted by the  
 3 provider, except for bills that are disallowed or denied by  
 4 the carrier or its authorized vendor in accordance with  
 5 department rule, are timely paid within 45 calendar days after  
 6 the carrier's receipt of the bill. The department shall impose  
 7 penalties for late payments or disallowances or denials of  
 8 medical, hospital, pharmacy, or dental bills that are below a  
 9 minimum 95 percent timely performance standard. The carrier  
 10 shall pay to the Workers' Compensation Administration Trust

11 Fund a penalty of:

12 1. Twenty-five dollars for each bill below the 95  
 13 percent timely performance standard, but meeting a 90 percent  
 14 timely standard.

15 2. Fifty dollars for each bill below a 90 percent  
 16 timely performance standard.

17 (8)(a) In addition to any other penalties provided by  
 18 this chapter for late payment, if any installment of  
 19 compensation is not paid when it becomes due, the employer,  
 20 carrier, or servicing agent shall pay interest thereon at the  
 21 rate of 12 percent per year from the date the installment  
 22 becomes due until it is paid, whether such installment is  
 23 payable without an order or under the terms of an order. The  
 24 interest payment shall be the greater of the amount of  
 25 interest due or \$5.

26 ~~(a) Within 30 days after final payment of compensation~~  
 27 ~~has been made, the employer, carrier, or servicing agent shall~~  
 28 ~~send to the department a notice, in accordance with a format~~  
 29 ~~and manner prescribed by the department, stating that such~~  
 30 ~~final payment has been made and stating the total amount of~~  
 31 ~~compensation paid, the name of the employee and of any other~~

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1 ~~person to whom compensation has been paid, the date of the~~  
 2 ~~injury or death, and the date to which compensation has been~~  
 3 ~~paid.~~

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

8 ~~(b)(c)~~ In order to ensure carrier compliance under  
 9 this chapter ~~and provisions of the Florida Insurance Code, the~~  
 10 office department shall monitor, audit, and investigate the  
 11 performance of carriers by conducting market conduct  
 12 examinations, as provided in s. 624.3161, and conducting  
 13 investigations, as provided in s. 624.317. The office  
 14 department shall require establish by rule minimum performance  
 15 standards for carriers to ensure that a minimum of 90 percent  
 16 of all compensation benefits are timely paid in accordance  
 17 with this section. The office department shall impose  
 18 penalties fine a carrier as provided in s. 440.13(11)(b) up to  
 19 \$50 for each late payments payment of compensation that are is  
 20 below a the minimum 95 90 percent timely payment performance  
 21 standard. The carrier shall pay to the Workers' Compensation  
 22 Administration Trust Fund a penalty of:

23 1. Fifty dollars per number of installments of  
 24 compensation below the 95 percent timely payment performance  
 25 standard and equal to or greater than a 90 percent timely  
 26 payment performance standard.

27 2. One hundred dollars per number of installments of  
 28 compensation below a 90 percent timely payment performance  
 29 standard.

30  
 31 This section does not affect the imposition of any penalties

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1 or interest due to the claimant. If a carrier contracts with a  
2 servicing agent to fulfill its administrative responsibilities  
3 under this chapter, the payment practices of the servicing  
4 agent are deemed the payment practices of the carrier for the  
5 purpose of assessing penalties against the carrier.

6 Section 16. Subsection (7) is added to section 440.38,  
7 Florida Statutes, to read:

8 440.38 Security for compensation; insurance carriers  
9 and self-insurers.--

10 (7) Any employer who meets the requirements of  
11 subsection (1) through a policy of insurance issued outside of  
12 this state must at all times, with respect to all employees  
13 working in this state, maintain the required coverage under a  
14 Florida endorsement using Florida rates and rules pursuant to  
15 payroll reporting that accurately reflects the work performed  
16 in this state by such employees.

17 Section 17. Subsections (2) and (6) of section  
18 440.381, Florida Statutes, are amended to read:

19 440.381 Application for coverage; reporting payroll;  
20 payroll audit procedures; penalties.--

21 (2) Submission of an application that contains false,  
22 misleading, or incomplete information provided with the  
23 purpose of avoiding or reducing the amount of premiums for  
24 workers' compensation coverage is a felony of the second  
25 degree, punishable as provided in s. 775.082, s. 775.083, or  
26 s. 775.084. The application must contain a statement that the  
27 filing of an application containing false, misleading, or  
28 incomplete information provided with the purpose of avoiding  
29 or reducing the amount of premiums for workers' compensation  
30 coverage is a felony of the third degree, punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084. The

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1 application must contain a sworn statement by the employer  
2 attesting to the accuracy of the information submitted and  
3 acknowledging the provisions of former s. 440.37(4). The  
4 application must contain a sworn statement by the agent  
5 attesting that the agent explained to the employer or officer  
6 the classification codes that are used for premium  
7 calculations.

8       (6)(a) If an employer understates or conceals payroll,  
9 or misrepresents or conceals employee duties so as to avoid  
10 proper classification for premium calculations, or  
11 misrepresents or conceals information pertinent to the  
12 computation and application of an experience rating  
13 modification factor, the employer, or the employer's agent or  
14 attorney, shall pay to the insurance carrier a penalty of 10  
15 times the amount of the difference in premium paid and the  
16 amount the employer should have paid and reasonable attorney's  
17 fees. The penalty may be enforced in the circuit courts of  
18 this state.

19       (b) If the department determines that an employer has  
20 materially understated or concealed payroll, has materially  
21 misrepresented or concealed employee duties so as to avoid  
22 proper classification for premium calculations, or has  
23 materially misrepresented or concealed information pertinent  
24 to the computation and application of an experience rating  
25 modification factor, the department shall immediately notify  
26 the employer's carrier of such determination. The carrier  
27 shall commence a physical onsite audit of the employer within  
28 30 days after receiving notification from the department. If  
29 the carrier fails to commence the audit as required by this  
30 section, the department shall contract with auditing  
31 professionals to conduct the audit at the carrier's expense. A

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1 copy of the carrier's audit of the employer shall be provided  
 2 to the department upon completion. The carrier is not required  
 3 to conduct the physical onsite audit of the employer as set  
 4 forth in this paragraph if the carrier gives written notice of  
 5 cancellation to the employer within 30 days after receiving  
 6 notification from the department of the material  
 7 misrepresentation, understatement, or concealment and an audit  
 8 is conducted in conjunction with the cancellation.

9           Section 18. Subsection (3) of section 440.42, Florida  
 10 Statutes, is amended to read:

11           440.42 Insurance policies; liability.--

12           (3) No contract or policy of insurance issued by a  
 13 carrier under this chapter shall expire or be canceled until  
 14 at least 30 days have elapsed after a notice of cancellation  
 15 has been sent to the department and to the employer in  
 16 accordance with the provisions of s. 440.185(7). For  
 17 cancellation due to nonpayment of premium, the insurer shall  
 18 mail notification to the employer at least 10 days prior to  
 19 the effective date of the cancellation. However, when  
 20 duplicate or dual coverage exists by reason of two different  
 21 carriers having issued policies of insurance to the same  
 22 employer securing the same liability, it shall be presumed  
 23 that only that policy with the later effective date shall be  
 24 in force and that the earlier policy terminated upon the  
 25 effective date of the latter. In the event that both policies  
 26 carry the same effective date, one of the policies may be  
 27 canceled instanter upon filing a notice of cancellation with  
 28 the department and serving a copy thereof upon the employer in  
 29 such manner as the department prescribes by rule. The  
 30 department may by rule prescribe the content of the notice of  
 31 retroactive cancellation and specify the time, place, and

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1 manner in which the notice of cancellation is to be served.

2           Section 19. Section 440.525, Florida Statutes, is  
3 amended to read:

4           440.525 Examination and investigation of carriers and  
5 claims-handling entities.--

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

13           (2) An examination may cover any period of the  
14 carrier's, third-party administrator's, servicing agent's, or  
15 other claims-handling entity's operations since the last  
16 previous examination. An investigation based upon a reasonable  
17 belief by the department that a material violation of this  
18 chapter has occurred may cover any time period, but may not  
19 predate the last examination by more than 5 years. The  
20 department may by rule establish procedures, standards, and  
21 protocols for examinations and investigations. If the  
22 department finds any violation of this chapter, it may impose  
23 administrative penalties pursuant to this chapter. If the  
24 department finds any self-insurer in violation of this  
25 chapter, it may take action pursuant s. 440.38(3).

26 Examinations or investigations by the department may address,  
27 but are not limited to addressing, patterns or practices of  
28 unreasonable delay in claims handling; timeliness and accuracy  
29 of payments and reports under ss. 440.13, 440.16, and 440.185;  
30 or patterns or practices of harassment, coercion, or  
31 intimidation of claimants. The department may also specify by

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1 rule the documentation to be maintained for each claim file.

2       (3) As to any examination or investigation conducted  
3 under this chapter, the department shall have the power to  
4 conduct onsite inspections of claims records and documentation  
5 of a carrier, third-party administrator, servicing agent, or  
6 other claims-handling entity, and conduct interviews, both  
7 sworn and unsworn, of claims-handling personnel. Carriers,  
8 third-party administrators, servicing agents, and other  
9 claims-handling entities shall make all claims records,  
10 documentation, communication, and correspondence available to  
11 department personnel during regular business hours. If any  
12 person fails to comply with a request for production of  
13 records or documents or fails to produce an employee for  
14 interview, the department may compel production or attendance  
15 by subpoena. The results of an examination or investigation  
16 shall be provided to the carrier, third-party administrator,  
17 servicing agent, or other claims-handling entity in a written  
18 report setting forth the basis for any violations that are  
19 asserted. Such report is agency action for purposes of chapter  
20 120, and the aggrieved party may request a proceeding under s.  
21 120.57 with regard to the findings and conclusion of the  
22 report.

23       (4) If the department finds that violations of this  
24 chapter have occurred, the department may impose an  
25 administrative penalty upon the offending entity or entities.  
26 For each offending entity, such penalties shall not exceed  
27 \$2,500 for each pattern or practice constituting nonwillful  
28 violation and shall not exceed an aggregate amount of \$10,000  
29 for all nonwillful violations arising out of the same action.  
30 If the department finds a pattern of practice that constitutes  
31 a willful violation, the department may impose an

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1 administrative penalty upon each offending entity not to  
 2 exceed \$20,000 for each willful pattern or practice. Such  
 3 finer shall not exceed \$100,000 for all willful violations  
 4 arising out of the same action. No penalty assessed under this  
 5 section may be recouped by any carrier in the rate base, the  
 6 premium, or any rate filing. Any administrative penalty  
 7 imposed under this section for a nonwillful violation shall  
 8 not duplicate an administrative penalty imposed under another  
 9 provision of this chapter or the Insurance Code. The  
 10 department may adopt rules to implement this section. The  
 11 department shall adopt penalty guidelines by rule to set  
 12 penalties under this chapter.

13 Section 20. Subsection (2) of section 627.162, Florida  
 14 Statutes, is amended to read:

15 627.162 Requirements for premium installments;  
 16 delinquency, collection, and check return charges; attorney's  
 17 fees.--

18 (2) Insurers providing workers' compensation coverage  
 19 under chapter 440 may charge the insured a delinquency and  
 20 collection fee on each installment in default for a period of  
 21 not less than 5 days in an amount not to exceed ~~\$25~~~~\$10~~ or 5  
 22 percent of the delinquent installment, whichever is greater.  
 23 Only one such delinquency and collection fee may be collected  
 24 on any such installment regardless of the period during which  
 25 it remains in default.

26 Section 21. Section 627.285, Florida Statutes, is  
 27 created to read:

28 627.285 Independent actuarial peer review of workers'  
 29 compensation rating organization.--The Financial Services  
 30 Commission shall at least once every other year contract for  
 31 an independent actuarial peer review and analysis of the



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1 ratemaking processes of any licensed rating organization that  
 2 makes rate filings for workers' compensation insurance and the  
 3 rating organization shall fully cooperate in the peer review.  
 4 The contract shall require submission of a final report to the  
 5 commission, the President of the Senate, and the Speaker of  
 6 the House of Representatives by February 1. The first report  
 7 shall be submitted by February 1, 2004. The costs of the  
 8 independent actuarial peer review shall be paid from the  
 9 Workers' Compensation Administration Trust Fund.

10           Section 22. Effective July, 1, 2003, paragraphs (b),  
 11 (c), and (d) of subsection (4) of section 627.311, Florida  
 12 Statutes, are amended to read

13           627.311 Joint underwriters and joint reinsurers.--

14           (4)

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

18           1. Three members appointed by the Financial Services  
 19 Commission. Each member appointed by the commission shall  
 20 serve at the pleasure of the commission;

21           2.1. Two ~~Five~~ of the 20 domestic insurers, as defined  
 22 in s. 624.06(1), having the largest voluntary direct premiums  
 23 written in this state for workers' compensation and employer's  
 24 liability insurance, which shall be elected by those 20  
 25 domestic insurers;

26           3.2. Two ~~Five~~ of the 20 foreign insurers as defined in  
 27 s. 624.06(2) having the largest voluntary direct premiums  
 28 written in this state for workers' compensation and employer's  
 29 liability insurance, which shall be elected by those 20  
 30 foreign insurers;

31           ~~3. One person, who shall serve as the chair, appointed~~

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1 ~~by the Insurance Commissioner;~~

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

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

6  
7 Each board member shall serve a 4-year term and may serve  
8 consecutive terms. A vacancy on the board shall be filled in  
9 the same manner as the original appointment for the unexpired  
10 portion of the term. The Financial Services Commission shall  
11 designate a member of the board to serve as chair. No board  
12 member shall be an insurer which provides service to the plan  
13 or which has an affiliate which provides services to the plan  
14 or which is serviced by a service company or third-party  
15 administrator which provides services to the plan or which has  
16 an affiliate which provides services to the plan. The minutes,  
17 audits, and procedures of the board of governors are subject  
18 to chapter 119.

19 (c) The operation of the plan shall be governed by a  
20 plan of operation that is prepared at the direction of the  
21 board of governors. The plan of operation may be changed at  
22 any time by the board of governors or upon request of the  
23 department. The plan of operation and all changes thereto are  
24 subject to the approval of the department. The plan of  
25 operation shall:

26 1. Authorize the board to engage in the activities  
27 necessary to implement this subsection, including, but not  
28 limited to, borrowing money.

29 2. Develop criteria for eligibility for coverage by  
30 the plan, including, but not limited to, documented rejection  
31 by at least two insurers which reasonably assures that

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1 insureds covered under the plan are unable to acquire coverage  
2 in the voluntary market. Any insured may voluntarily elect to  
3 accept coverage from an insurer for a premium equal to or  
4 greater than the plan premium if the insurer writing the  
5 coverage adheres to the provisions of s. 627.171.

6       3. Require notice from the agent to the insured at the  
7 time of the application for coverage that the application is  
8 for coverage with the plan and that coverage may be available  
9 through an insurer, group self-insurers' fund, commercial  
10 self-insurance fund, or assessable mutual insurer through  
11 another agent at a lower cost.

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

15       a. Establishing procedures for an insurer to use in  
16 notifying the plan of the insurer's desire to provide coverage  
17 to applicants to the plan or existing insureds of the plan and  
18 in describing the types of risks in which the insurer is  
19 interested. The description of the desired risks must be on a  
20 form developed by the plan.

21       b. Developing forms and procedures that provide an  
22 insurer with the information necessary to determine whether  
23 the insurer wants to write particular applicants to the plan  
24 or insureds of the plan.

25       c. Developing procedures for notice to the plan and  
26 the applicant to the plan or insured of the plan that an  
27 insurer will insure the applicant or the insured of the plan,  
28 and notice of the cost of the coverage offered; and developing  
29 procedures for the selection of an insuring entity by the  
30 applicant or insured of the plan.

31       d. Provide for a market-assistance plan to assist in

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1 the placement of employers. All applications for coverage in  
2 the plan received 45 days before the effective date for  
3 coverage shall be processed through the market-assistance  
4 plan. A market-assistance plan specifically designed to serve  
5 the needs of small good policyholders as defined by the board  
6 must be finalized by January 1, 1994.

7           5. Provide for policy and claims services to the  
8 insureds of the plan of the nature and quality provided for  
9 insureds in the voluntary market.

10           6. Provide for the review of applications for coverage  
11 with the plan for reasonableness and accuracy, using any  
12 available historic information regarding the insured.

13           7. Provide for procedures for auditing insureds of the  
14 plan which are based on reasonable business judgment and are  
15 designed to maximize the likelihood that the plan will collect  
16 the appropriate premiums.

17           8. Authorize the plan to terminate the coverage of and  
18 refuse future coverage for any insured that submits a  
19 fraudulent application to the plan or provides fraudulent or  
20 grossly erroneous records to the plan or to any service  
21 provider of the plan in conjunction with the activities of the  
22 plan.

23           9. Establish service standards for agents who submit  
24 business to the plan.

25           10. Establish criteria and procedures to prohibit any  
26 agent who does not adhere to the established service standards  
27 from placing business with the plan or receiving, directly or  
28 indirectly, any commissions for business placed with the plan.

29           11. Provide for the establishment of reasonable safety  
30 programs for all insureds in the plan. All insureds of the  
31 plan must participate in the safety program.

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1           12. Authorize the plan to terminate the coverage of  
2 and refuse future coverage to any insured who fails to pay  
3 premiums or surcharges when due; who, at the time of  
4 application, is delinquent in payments of workers'  
5 compensation or employer's liability insurance premiums or  
6 surcharges owed to an insurer, group self-insurers' fund,  
7 commercial self-insurance fund, or assessable mutual insurer  
8 licensed to write such coverage in this state; or who refuses  
9 to substantially comply with any safety programs recommended  
10 by the plan.

11           13. Authorize the board of governors to provide the  
12 services required by the plan through staff employed by the  
13 plan, through reasonably compensated service providers who  
14 contract with the plan to provide services as specified by the  
15 board of governors, or through a combination of employees and  
16 service providers.

17           14. Provide for service standards for service  
18 providers, methods of determining adherence to those service  
19 standards, incentives and disincentives for service, and  
20 procedures for terminating contracts for service providers  
21 that fail to adhere to service standards.

22           15. Provide procedures for selecting service providers  
23 and standards for qualification as a service provider that  
24 reasonably assure that any service provider selected will  
25 continue to operate as an ongoing concern and is capable of  
26 providing the specified services in the manner required.

27           16. Provide for reasonable accounting and  
28 data-reporting practices.

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

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

3           19. Provide for an annual report to the department on  
4 a date specified by the department and containing such  
5 information as the department reasonably requires.

6           20. Establish multiple rating plans for various  
7 classifications of risk which reflect risk of loss, hazard  
8 grade, actual losses, size of premium, and compliance with  
9 loss control. At least one of such plans must be a  
10 preferred-rating plan to accommodate small-premium  
11 policyholders with good experience as defined in  
12 sub-subparagraph 22.a.

13           21. Establish agent commission schedules.

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

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

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

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

29           d. Subplan "D" must include any employer, regardless  
30 of the length of time for which it has conducted business  
31 operations, which has an experience modification factor of

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1 1.10 or less and either employs 15 or fewer employees or is an  
2 organization that is exempt from federal income tax pursuant  
3 to s. 501(c)(3) of the Internal Revenue Code and receives more  
4 than 50 percent of its funding from gifts, grants, endowments,  
5 or federal or state contracts. The rate plan for subplan "D"  
6 shall be the same rate plan as the plan approved under ss.  
7 627.091-627.151 and each participant in subplan "D" shall pay  
8 the premium determined under such rate plan, plus a surcharge  
9 determined by the board to be sufficient to ensure that the  
10 plan does not compete with the voluntary market rate for any  
11 participant, but not to exceed 25 percent. However, the  
12 surcharge shall not exceed 10 percent for an organization that  
13 is exempt from federal income tax pursuant to s. 501(c)(3) of  
14 the Internal Revenue Code.

15 23. Provide for a depopulation program to reduce the  
16 number of insureds in subplan "D." If an employer insured  
17 through subplan "D" is offered coverage from a voluntary  
18 market carrier:

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

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

22 c. By issuance of a policy upon expiration or

23 cancellation of the policy under the subplan; or

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

26  
27 that employer is no longer eligible for coverage through the  
28 plan. The premium for risks assumed by the voluntary market  
29 carrier must be the same premium plus, for the first 2 years,  
30 the surcharge as determined in sub-subparagraph 22.d. A  
31 premium under this subparagraph, including surcharge, is

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1 deemed approved and is not an excess premium for purposes of  
2 s. 627.171.

3 24. Require that policies issued under subplan "D" and  
4 applications for such policies must include a notice that the  
5 policy issued under subplan "D" could be replaced by a policy  
6 issued from a voluntary market carrier and that, if an offer  
7 of coverage is obtained from a voluntary market carrier, the  
8 policyholder is no longer eligible for coverage through  
9 subplan "D." The notice must also specify that acceptance of  
10 coverage under subplan "D" creates a conclusive presumption  
11 that the applicant or policyholder is aware of this potential.

12 (d)1. The plan must be funded through actuarially  
13 sound premiums charged to insureds of the plan.

14 2. The plan may issue assessable policies only to  
15 those insureds in subplan "C-" and subplan "D." Subject to  
16 verification by the department, the board may levy assessments  
17 against insureds in subplan "C" or subplan "D," on a pro rata  
18 earned premium basis, to fund any deficits that exist in those  
19 subplans. Assessments levied against subplan "C" participants  
20 shall cover only the deficits attributable to subplan "C," and  
21 assessments levied against subplan "D" participants shall  
22 cover only the deficits attributable to subplan "D." In no  
23 event may the plan levy assessments against any person or  
24 entity, except as authorized by this paragraph. Those  
25 assessable policies must be clearly identified as assessable  
26 by containing, in contrasting color and in not less than  
27 10-point type, the following statements: "This is an  
28 assessable policy. If the plan is unable to pay its  
29 obligations, policyholders will be required to contribute on a  
30 pro rata earned premium basis the money necessary to meet any  
31 assessment levied."



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1           3. The plan may issue assessable policies with  
 2 differing terms and conditions to different groups within  
 3 subplans "C" and "D" the plan when a reasonable basis exists  
 4 for the differentiation.

5           4. The plan may offer rating, dividend plans, and  
 6 other plans to encourage loss prevention programs.

7           Section 23. Paragraphs (c) and (e) of subsection (3)  
 8 of section 921.0022, Florida Statutes, are amended to read:

9           921.0022 Criminal Punishment Code; offense severity  
 10 ranking chart.--

11 Florida	Felony		
12 Statute	Degree		Description
			(c) LEVEL 3
15 316.193(2)(b)	3rd		Felony DUI, 3rd conviction.
16 316.1935(2)	3rd		Fleeing or attempting to elude
			law enforcement officer in marked
			patrol vehicle with siren and
			lights activated.
20 319.30(4)	3rd		Possession by junkyard of motor
			vehicle with identification
			number plate removed.
23 319.33(1)(a)	3rd		Alter or forge any certificate of
			title to a motor vehicle or
			mobile home.
26 319.33(1)(c)	3rd		Procure or pass title on stolen
			vehicle.
28 319.33(4)	3rd		With intent to defraud, possess,
			sell, etc., a blank, forged, or
			unlawfully obtained title or
			registration.

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1	327.35(2)(b)	3rd	Felony BUI.
2	328.05(2)	3rd	Possess, sell, or counterfeit
3			fictitious, stolen, or fraudulent
4			titles or bills of sale of
5			vessels.
6	328.07(4)	3rd	Manufacture, exchange, or possess
7			vessel with counterfeit or wrong
8			ID number.
9	376.302(5)	3rd	Fraud related to reimbursement
10			for cleanup expenses under the
11			Inland Protection Trust Fund.
12	<u>440.105(3)b.</u>	<u>3rd</u>	<u>Receipt of fee or consideration</u>
13			<u>without approval by judge of</u>
14			<u>compensation claims.</u>
15	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers'</u>
16			<u>compensation fraud or retaliation</u>
17			<u>for making such a report.</u>
18	501.001(2)(b)	2nd	Tampers with a consumer product
19			or the container using materially
20			false/misleading information.
21	697.08	3rd	Equity skimming.
22	790.15(3)	3rd	Person directs another to
23			discharge firearm from a vehicle.
24	796.05(1)	3rd	Live on earnings of a prostitute.
25	806.10(1)	3rd	Maliciously injure, destroy, or
26			interfere with vehicles or
27			equipment used in firefighting.
28	806.10(2)	3rd	Interferes with or assaults
29			firefighter in performance of
30			duty.
31			

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1	810.09(2)(c)	3rd	Trespass on property other than
2			structure or conveyance armed
3			with firearm or dangerous weapon.
4	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
5			less than \$10,000.
6	812.0145(2)(c)	3rd	Theft from person 65 years of age
7			or older; \$300 or more but less
8			than \$10,000.
9	815.04(4)(b)	2nd	Computer offense devised to
10			defraud or obtain property.
11	817.034(4)(a)3.	3rd	Engages in scheme to defraud
12			(Florida Communications Fraud
13			Act), property valued at less
14			than \$20,000.
15	817.233	3rd	Burning to defraud insurer.
16	817.234(8)&(9)	3rd	Unlawful solicitation of persons
17			involved in motor vehicle
18			accidents.
19	817.234(11)(a)	3rd	Insurance fraud; property value
20			less than \$20,000.
21	817.505(4)	3rd	Patient brokering.
22	828.12(2)	3rd	Tortures any animal with intent
23			to inflict intense pain, serious
24			physical injury, or death.
25	831.28(2)(a)	3rd	Counterfeiting a payment
26			instrument with intent to defraud
27			or possessing a counterfeit
28			payment instrument.
29	831.29	2nd	Possession of instruments for
30			counterfeiting drivers' licenses
31			or identification cards.

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1	838.021(3)(b)	3rd	Threatens unlawful harm to public
2			servant.
3	843.19	3rd	Injure, disable, or kill police
4			dog or horse.
5	870.01(2)	3rd	Riot; inciting or encouraging.
6	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
7			cannabis (or other s.
8			893.03(1)(c), (2)(c)1., (2)(c)2.,
9			(2)(c)3., (2)(c)5., (2)(c)6.,
10			(2)(c)7., (2)(c)8., (2)(c)9.,
11			(3), or (4) drugs).
12	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
13			893.03(1)(c), (2)(c)1., (2)(c)2.,
14			(2)(c)3., (2)(c)5., (2)(c)6.,
15			(2)(c)7., (2)(c)8., (2)(c)9.,
16			(3), or (4) drugs within 200 feet
17			of university or public park.
18	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
19			893.03(1)(c), (2)(c)1., (2)(c)2.,
20			(2)(c)3., (2)(c)5., (2)(c)6.,
21			(2)(c)7., (2)(c)8., (2)(c)9.,
22			(3), or (4) drugs within 200 feet
23			of public housing facility.
24	893.13(6)(a)	3rd	Possession of any controlled
25			substance other than felony
26			possession of cannabis.
27	893.13(7)(a)8.	3rd	Withhold information from
28			practitioner regarding previous
29			receipt of or prescription for a
30			controlled substance.
31			

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1	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
2			controlled substance by fraud,
3			forgery, misrepresentation, etc.
4	893.13(7)(a)10.	3rd	Affix false or forged label to
5			package of controlled substance.
6	893.13(7)(a)11.	3rd	Furnish false or fraudulent
7			material information on any
8			document or record required by
9			chapter 893.
10	893.13(8)(a)1.	3rd	Knowingly assist a patient, other
11			person, or owner of an animal in
12			obtaining a controlled substance
13			through deceptive, untrue, or
14			fraudulent representations in or
15			related to the practitioner's
16			practice.
17	893.13(8)(a)2.	3rd	Employ a trick or scheme in the
18			practitioner's practice to assist
19			a patient, other person, or owner
20			of an animal in obtaining a
21			controlled substance.
22	893.13(8)(a)3.	3rd	Knowingly write a prescription
23			for a controlled substance for a
24			fictitious person.
25	893.13(8)(a)4.	3rd	Write a prescription for a
26			controlled substance for a
27			patient, other person, or an
28			animal if the sole purpose of
29			writing the prescription is a
30			monetary benefit for the
31			practitioner.

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1	918.13(1)(a)	3rd	Alter, destroy, or conceal
2			investigation evidence.
3	944.47		
4	(1)(a)1.-2.	3rd	Introduce contraband to
5			correctional facility.
6	944.47(1)(c)	2nd	Possess contraband while upon the
7			grounds of a correctional
8			institution.
9	985.3141	3rd	Escapes from a juvenile facility
10			(secure detention or residential
11			commitment facility).
12			(e) LEVEL 5
13	316.027(1)(a)	3rd	Accidents involving personal
14			injuries, failure to stop;
15			leaving scene.
16	316.1935(4)	2nd	Aggravated fleeing or eluding.
17	322.34(6)	3rd	Careless operation of motor
18			vehicle with suspended license,
19			resulting in death or serious
20			bodily injury.
21	327.30(5)	3rd	Vessel accidents involving
22			personal injury; leaving scene.
23	381.0041		
24	(11)(b)	3rd	Donate blood, plasma, or organs
25			knowing HIV positive.
26	<u>440.10(1)(a)</u>	<u>2nd</u>	<u>Failure to obtain workers'</u>
27			<u>compensation coverage.</u>
28	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the</u>
29			<u>purpose of making workers'</u>
30			<u>compensation claims.</u>
31			

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1	<u>440.381(2)</u>	2nd	<u>Submission of false, misleading,</u>
2			<u>or incomplete information with</u>
3			<u>the purpose of avoiding or</u>
4			<u>reducing workers' compensation</u>
5			<u>premiums.</u>
6	790.01(2)	3rd	Carrying a concealed firearm.
7	790.162	2nd	Threat to throw or discharge
8			destructive device.
9	790.163(1)	2nd	False report of deadly explosive
10			or weapon of mass destruction.
11	790.221(1)	2nd	Possession of short-barreled
12			shotgun or machine gun.
13	790.23	2nd	Felons in possession of firearms
14			or electronic weapons or devices.
15	800.04(6)(c)	3rd	Lewd or lascivious conduct;
16			offender less than 18 years.
17	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
18			offender 18 years or older.
19	806.111(1)	3rd	Possess, manufacture, or dispense
20			fire bomb with intent to damage
21			any structure or property.
22	812.0145(2)(b)	2nd	Theft from person 65 years of age
23			or older; \$10,000 or more but
24			less than \$50,000.
25	812.015(8)	3rd	Retail theft; property stolen is
26			valued at \$300 or more and one or
27			more specified acts.
28	812.019(1)	2nd	Stolen property; dealing in or
29			trafficking in.
30	812.131(2)(b)	3rd	Robbery by sudden snatching.
31			

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1	812.16(2)	3rd	Owning, operating, or conducting
2			a chop shop.
3	817.034(4)(a)2.	2nd	Communications fraud, value
4			\$20,000 to \$50,000.
5	817.234(11)(b)	2nd	Insurance fraud; property value
6			\$20,000 or more but less than
7			\$100,000.
8	817.568(2)(b)	2nd	Fraudulent use of personal
9			identification information; value
10			of benefit, services received,
11			payment avoided, or amount of
12			injury or fraud, \$75,000 or more.
13	817.625(2)(b)	2nd	Second or subsequent fraudulent
14			use of scanning device or
15			reencoder.
16	825.1025(4)	3rd	Lewd or lascivious exhibition in
17			the presence of an elderly person
18			or disabled adult.
19	827.071(4)	2nd	Possess with intent to promote
20			any photographic material, motion
21			picture, etc., which includes
22			sexual conduct by a child.
23	839.13(2)(b)	2nd	Falsifying records of an
24			individual in the care and
25			custody of a state agency
26			involving great bodily harm or
27			death.
28	843.01	3rd	Resist officer with violence to
29			person; resist arrest with
30			violence.
31			



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1	874.05(2)	2nd	Encouraging or recruiting another
2			to join a criminal street gang;
3			second or subsequent offense.
4	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
5			cocaine (or other s.
6			893.03(1)(a), (1)(b), (1)(d),
7			(2)(a), (2)(b), or (2)(c)4.
8			drugs).
9	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
10			cannabis (or other s.
11			893.03(1)(c), (2)(c)1., (2)(c)2.,
12			(2)(c)3., (2)(c)5., (2)(c)6.,
13			(2)(c)7., (2)(c)8., (2)(c)9.,
14			(3), or (4) drugs) within 1,000
15			feet of a child care facility or
16			school.
17	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
18			cocaine (or other s.
19			893.03(1)(a), (1)(b), (1)(d),
20			(2)(a), (2)(b), or (2)(c)4.
21			drugs) within 200 feet of
22			university or public park.
23	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver
24			cannabis or other drug prohibited
25			under s. 893.03(1)(c), (2)(c)1.,
26			(2)(c)2., (2)(c)3., (2)(c)5.,
27			(2)(c)6., (2)(c)7., (2)(c)8.,
28			(2)(c)9., (3), or (4) within
29			1,000 feet of property used for
30			religious services or a specified
31			business site.

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- 1 893.13(1)(f)1. 1st Sell, manufacture, or deliver
- 2 cocaine (or other s.
- 3 893.03(1)(a), (1)(b), (1)(d), or
- 4 (2)(a), (2)(b), or (2)(c)4.
- 5 drugs) within 200 feet of public
- 6 housing facility.
- 7 893.13(4)(b) 2nd Deliver to minor cannabis (or
- 8 other s. 893.03(1)(c), (2)(c)1.,
- 9 (2)(c)2., (2)(c)3., (2)(c)5.,
- 10 (2)(c)6., (2)(c)7., (2)(c)8.,
- 11 (2)(c)9., (3), or (4) drugs).

12 Section 24. Report to the Legislature regarding  
 13 outstanding enforcement issues.--The Department of Financial  
 14 Services shall, no later than January 1, 2004, provide a  
 15 report to the President of the Senate, the Speaker of the  
 16 House of Representatives, the minority leaders of the Senate  
 17 and the House of Representatives, and the chairs of the  
 18 standing committees of the Senate and the House of  
 19 Representatives having jurisdiction over insurance issues,  
 20 containing the following information:

21 (1) Any provision of chapter 440, Florida Statutes,  
 22 relating to workers' compensation carrier compliance and  
 23 enforcement, that the department finds it is unable to  
 24 enforce.

25 (2) Any administrative rule relating to workers'  
 26 compensation carrier compliance and enforcement that the  
 27 department finds it is unable to enforce.

28 (3) Any other impediment to enforcement of chapter  
 29 440, Florida Statutes, resulting from the transfer of  
 30 activities from the former Department of Labor and Employment  
 31 Security to the department or the reorganization of the former

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1 Department of Insurance into the department.

2           Section 25. (1) There is established a Joint Select  
3 Committee on Workers Compensation Rating Reform. The committee  
4 shall study the merits of requiring each workers' compensation  
5 insurer to individually file its expense and profit portion of  
6 a rate filing, while permitting each insurer to use a lost  
7 cost filing made by a licensed rating organization. The  
8 committee shall also study options for the current prior  
9 approval system for workers compensation rate filings,  
10 including, but not limited to, rate filing procedures that  
11 would promote greater competition and would encourage insurers  
12 to write workers' compensation coverage in the state while  
13 protecting employers from rates that are excessive,  
14 inadequate, or unfairly discriminatory.

15           (2) The committee shall be composed of three Senators  
16 appointed by the President of the Senate and three  
17 Representatives appointed by the Speaker of the House of  
18 Representatives. The appointed members of the committee shall  
19 elect a chair and vice chair. The Department of Financial  
20 Services shall provide information and assistance as requested  
21 by the committee.

22           (3) The committee shall issue its final report and  
23 recommendations to the President of the Senate and the Speaker  
24 of the House of Representatives by December 1, 2003. The  
25 committee shall terminate on December 1, 2003.

26           Section 26. The board of governors of the joint  
27 underwriting plan for workers' compensation insurance created  
28 by section 627.311(4), Florida Statutes, shall, by January 1,  
29 2005, submit a report to the President of the Senate, the  
30 Speaker of the House of Representatives, the minority party  
31 leaders of the Senate and the House of Representatives, and

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1 the chairs of the standing committees of the Senate and the  
2 House of Representatives having jurisdiction over matters  
3 relating to workers' compensation. The report shall include  
4 the board's findings and recommendations on the following  
5 issues:

6       (1) The number of policies and the aggregate premium  
7 of the workers' compensation joint underwriting plan, before  
8 and after enactment of this act, and projections for future  
9 policy and premium growth.

10       (2) Increases or decreases in availability of workers'  
11 compensation coverage in the voluntary market and the  
12 effectiveness of this act in improving the availability of  
13 workers' compensation coverage in the state.

14       (3) The board's efforts to depopulate the plan and the  
15 willingness of insurers in the voluntary market to avail  
16 themselves of depopulation incentives.

17       (4) Further actions that could be taken by the  
18 Legislature to improve availability of workers' compensation  
19 coverage in the voluntary and residual markets.

20       (5) Actions that the board has taken to restructure  
21 the joint underwriting plan and recommendations for  
22 legislative action to restructure the plan.

23       (6) Projected surpluses or deficits and possible means  
24 of providing funding to ensure the continued solvency of the  
25 plan.

26       (7) An independent actuarial review of all rates under  
27 the plan. The costs of the independent actuarial review shall  
28 be paid from the Workers' Compensation Administration Trust  
29 Fund, pursuant to a budget amendment approved by the  
30 Legislative Budget Commission. The board shall submit a plan  
31 for such review to the Legislative Budget Commission by

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1 October 1, 2003.

2       (8) Such other issues as the board determines are  
3 worthy of the Legislature's consideration.

4           Section 27. Subsections (1) and (2) of section  
5 443.1715, Florida Statutes, are amended to read:

6           443.1715 Disclosure of information; confidentiality.--

7           (1) RECORDS AND REPORTS.--Information revealing the  
8 employing unit's or individual's identity obtained from the  
9 employing unit or from any individual pursuant to the  
10 administration of this chapter, and any determination  
11 revealing such information, except to the extent necessary for  
12 the proper presentation of a claim or upon written  
13 authorization of the claimant who has a workers' compensation  
14 claim pending or is receiving compensation benefits, must be  
15 held confidential and exempt from the provisions of s.  
16 119.07(1) and s. 24(a), Art. I of the State Constitution. Such  
17 information may be made available only to public employees in  
18 the performance of their public duties, including employees of  
19 the Department of Education in obtaining information for the  
20 Florida Education and Training Placement Information Program  
21 and the Office of Tourism, Trade, and Economic Development in  
22 its administration of the qualified defense contractor tax  
23 refund program authorized by s. 288.1045 and the qualified  
24 target industry tax refund program authorized by s. 288.106.  
25 Except as otherwise provided by law, public employees  
26 receiving such information must retain the confidentiality of  
27 such information. Any claimant, or the claimant's legal  
28 representative, at a hearing before an appeals referee or the  
29 commission shall be supplied with information from such  
30 records to the extent necessary for the proper presentation of  
31 her or his claim. Any employee or member of the commission or

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1 any employee of the division, or any other person receiving  
2 confidential information, who violates any provision of this  
3 subsection commits a misdemeanor of the second degree,  
4 punishable as provided in s. 775.082 or s. 775.083. However,  
5 the division may furnish to any employer copies of any report  
6 previously submitted by such employer, upon the request of  
7 such employer, and may furnish to any claimant copies of any  
8 report previously submitted by such claimant, upon the request  
9 of such claimant, and the division is authorized to charge  
10 therefor such reasonable fee as the division may by rule  
11 prescribe not to exceed the actual reasonable cost of the  
12 preparation of such copies. Fees received by the division for  
13 copies as provided in this subsection must be deposited to the  
14 credit of the Employment Security Administration Trust Fund.

15 (2) DISCLOSURE OF INFORMATION.--

16 (a) Subject to such restrictions as the division  
17 prescribes by rule, information declared confidential under  
18 this section may be made available to any agency of this or  
19 any other state, or any federal agency, charged with the  
20 administration of any unemployment compensation law or the  
21 maintenance of a system of public employment offices, or the  
22 Bureau of Internal Revenue of the United States Department of  
23 the Treasury, or the Florida Department of Revenue and  
24 information obtained in connection with the administration of  
25 the employment service may be made available to persons or  
26 agencies for purposes appropriate to the operation of a public  
27 employment service or a job-preparatory or career education or  
28 training program. The division shall on a quarterly basis,  
29 furnish the National Directory of New Hires with information  
30 concerning the wages and unemployment compensation paid to  
31 individuals, by such dates, in such format and containing such

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1 information as the Secretary of Health and Human Services  
2 shall specify in regulations. Upon request therefor, the  
3 division shall furnish any agency of the United States charged  
4 with the administration of public works or assistance through  
5 public employment, and may furnish to any state agency  
6 similarly charged, the name, address, ordinary occupation, and  
7 employment status of each recipient of benefits and such  
8 recipient's rights to further benefits under this chapter.  
9 Except as otherwise provided by law, the receiving agency must  
10 retain the confidentiality of such information as provided in  
11 this section. The division may request the Comptroller of the  
12 Currency of the United States to cause an examination of the  
13 correctness of any return or report of any national banking  
14 association rendered pursuant to the provisions of this  
15 chapter and may in connection with such request transmit any  
16 such report or return to the Comptroller of the Currency of  
17 the United States as provided in s. 3305(c) of the federal  
18 Internal Revenue Code.

19 (b)1. The employer or the employer's workers'  
20 compensation carrier against whom a claim for benefits under  
21 chapter 440 has been made, or a representative of either, may  
22 request from the division records of wages of the employee  
23 reported to the division by any employer for the quarter that  
24 includes the date of the accident that is the subject of such  
25 claim and for subsequent quarters. The request must be made  
26 with the authorization or consent of the employee or any  
27 employer who paid wages to the employee subsequent to the date  
28 of the accident.

29 2. The employer or carrier shall make the request on a  
30 form prescribed by rule for such purpose by the division. Such  
31 form shall contain a certification by the requesting party

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1 that it is a party entitled to the information requested as  
2 authorized by this paragraph.

3 3. The division shall provide the most current  
4 information readily available within 15 days after receiving  
5 the request.

6 Section 28. Subsection (9) of section 626.989, Florida  
7 Statutes, is amended to read:

8 626.989 Investigation by department or Division of  
9 Insurance Fraud; compliance; immunity; confidential  
10 information; reports to division; division investigator's  
11 power of arrest.--

12 (9) In recognition of the complementary roles of  
13 investigating instances of workers' compensation fraud and  
14 enforcing compliance with the workers' compensation coverage  
15 requirements under chapter 440, the Department of Financial  
16 Services shall ~~Insurance is directed to~~ prepare and submit a  
17 joint performance report to the President of the Senate and  
18 the Speaker of the House of Representatives by November 1,  
19 2003, and then by January 1 of each year ~~November 1 every 3~~  
20 ~~years thereafter, describing the results obtained in achieving~~  
21 ~~compliance with the workers' compensation coverage~~  
22 ~~requirements and reducing the incidence of workers'~~  
23 ~~compensation fraud. The annual report must include, but need~~  
24 not be limited to:

25 (a) The total number of initial referrals received,  
26 cases opened, cases presented for prosecution, cases closed,  
27 and convictions resulting from cases presented for prosecution  
28 by the Bureau of Workers' Compensation Insurance Fraud by type  
29 of workers' compensation fraud and circuit.

30 (b) The number of referrals received from insurers and  
31 the Division of Workers' Compensation and the outcome of those



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1 referrals.

2       (c) The number of investigations undertaken by the  
3 office which were not the result of a referral from an insurer  
4 or the Division of Workers' Compensation.

5       (d) The number of investigations that resulted in a  
6 referral to a regulatory agency and the disposition of those  
7 referrals.

8       (e) The number and reasons provided by local  
9 prosecutors or the statewide prosecutor for declining  
10 prosecution of a case presented by the office by circuit.

11       (f) The total number of employees assigned to the  
12 office and the Division of Workers' Compliance unit delineated  
13 by location of staff assigned and the number and location of  
14 employees assigned to the office who were assigned to work  
15 other types of fraud cases.

16       (g) The average caseload and turnaround time by type  
17 of case for each investigator and division compliance  
18 employee.

19       (h) The training provided during the year to workers'  
20 compensation fraud investigators and the division's compliance  
21 employees.

22       Section 29. Section 626.9891, Florida Statutes, is  
23 amended to read:

24       626.9891 Insurer anti-fraud investigative units;  
25 reporting requirements; penalties for noncompliance.--

26       (1) Every insurer admitted to do business in this  
27 state who in the previous calendar year, at any time during  
28 that year, had \$10 million or more in direct premiums written  
29 shall:

30       (a) Establish and maintain a unit or division within  
31 the company to investigate possible fraudulent claims by

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1 insureds or by persons making claims for services or repairs  
2 against policies held by insureds; or

3 (b) Contract with others to investigate possible  
4 fraudulent claims for services or repairs against policies  
5 held by insureds.

6  
7 An insurer subject to this subsection shall file with the  
8 Division of Insurance Fraud of the department on or before  
9 July 1, 1996, a detailed description of the unit or division  
10 established pursuant to paragraph (a) or a copy of the  
11 contract and related documents required by paragraph (b).

12 (2) Every insurer admitted to do business in this  
13 state, which in the previous calendar year had less than \$10  
14 million in direct premiums written, must adopt an anti-fraud  
15 plan and file it with the Division of Insurance Fraud of the  
16 department on or before July 1, 1996. An insurer may, in lieu  
17 of adopting and filing an anti-fraud plan, comply with the  
18 provisions of subsection (1).

19 (3) Each insurers anti-fraud plans shall include:

20 (a) A description of the insurer's procedures for  
21 detecting and investigating possible fraudulent insurance  
22 acts;

23 (b) A description of the insurer's procedures for the  
24 mandatory reporting of possible fraudulent insurance acts to  
25 the Division of Insurance Fraud of the department;

26 (c) A description of the insurer's plan for anti-fraud  
27 education and training of its claims adjusters or other  
28 personnel; and

29 (d) A written description or chart outlining the  
30 organizational arrangement of the insurer's anti-fraud  
31 personnel who are responsible for the investigation and

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1 reporting of possible fraudulent insurance acts.

2 (4) Any insurer who obtains a certificate of authority  
3 after July 1, 1995, shall have 18 months in which to comply  
4 with the requirements of this section.

5 (5) For purposes of this section, the term "unit or  
6 division" includes the assignment of fraud investigation to  
7 employees whose principal responsibilities are the  
8 investigation and disposition of claims. If an insurer creates  
9 a distinct unit or division, hires additional employees, or  
10 contracts with another entity to fulfill the requirements of  
11 this section, the additional cost incurred must be included as  
12 an administrative expense for ratemaking purposes.

13 (6) Each insurer writing workers' compensation  
14 insurance shall report to the department, on or before August  
15 1 of each year, on its experience in implementing and  
16 maintaining an anti-fraud investigative unit or an anti-fraud  
17 plan. The report must include, at a minimum:

18 (a) The dollar amount of recoveries and losses  
19 attributable to workers' compensation fraud delineated by the  
20 type of fraud: claimant, employer, provider, agent, or other.

21 (b) The number of referrals to the Bureau of Workers'  
22 Compensation Fraud for the prior year.

23 (c) A description of the organization of the  
24 anti-fraud investigative unit, if applicable, including the  
25 position titles and descriptions of staffing.

26 (d) The rationale for the level of staffing and  
27 resources being provided for the anti-fraud investigative  
28 unit, which may include objective criteria such as number of  
29 policies written, number of claims received on an annual  
30 basis, volume of suspected fraudulent claims currently being  
31 detected, other factors, and an assessment of optimal caseload

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1 that can be handled by an investigator on an annual basis.

2 (e) The in-service education and training provided to  
3 underwriting and claims personnel to assist in identifying and  
4 evaluating instances of suspected fraudulent activity in  
5 underwriting or claims activities.

6 (f) A description of a public awareness program  
7 focused on the costs and frequency of insurance fraud and  
8 methods by which the public can prevent it.

9 (7) If an insurer fails to submit a final anti-fraud  
10 plan or otherwise fails to submit a plan, fails to implement  
11 the provisions of a plan or an anti-fraud investigative unit,  
12 or otherwise refuses to comply with the provisions of this  
13 section, the department may:

14 (a) Impose an administrative fine of not more than  
15 \$2,000 per day for such failure by an insurer, until the  
16 department deems the insurer to be in compliance;

17 (b) Impose upon the insurer a fraud detection and  
18 prevention plan that is deemed to be appropriate by the  
19 department and that must be implemented by the insurer; or

20 (c) Impose the provisions of both paragraphs (a) and  
21 (b).

22 (8) The department may adopt rules to administer this  
23 section.

24 Section 30. The amendments to sections 440.02 and  
25 440.15, Florida Statutes, which are made by this act shall not  
26 be construed to affect any determination of disability under  
27 section 112.18, section 112.181, or section 112.19, Florida  
28 Statutes.

29 Section 31. If any law amended by this act was also  
30 amended by a law enacted at the 2003 Regular Session of the  
31 Legislature, such laws shall be construed as if they had been

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1 enacted at the same session of the Legislature, and full  
2 effect shall be given to each if possible.

3 Section 32. Except as otherwise provided herein, this  
4 act shall take effect October 1, 2003.

5

6

7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 Delete everything before the enacting clause

10

11 and insert:

12

A bill to be entitled

13

An act relating to workers' compensation;

14

amending s. 440.02, F.S.; providing, revising

15

definitions; amending s. 440.05, F.S.; revising

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authorization to claim exemptions and

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requirements relating to submitting notice of

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election of exemption; specifying effect of

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exemption; providing a definition; amending s.

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440.06, F.S.; revising provisions relating to

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failure to secure compensation; amending s.

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440.077, F.S.; providing that a corporate

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officer electing to be exempt may not receive

24

benefits; amending s. 440.09, F.S.; providing

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definitions; revising provisions relating to

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drug testing; specifying effect of criminal

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acts; amending s. 440.10, F.S.; requiring

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subcontractors to provide evidence of workers'

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compensation coverage or proof of exemption to

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a contractor; deleting provisions relating to

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independent contractors; amending s. 440.1025,

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1 F.S.; revising requirements relating to  
 2 workplace safety programs; amending s. 440.103,  
 3 F.S.; providing conditions for applying for  
 4 building permits; amending s. 440.105, F.S.;  
 5 increasing criminal penalties for certain  
 6 violations; providing sanctions for violation  
 7 of stop-work orders and presentation of certain  
 8 false or misleading statements as evidence;  
 9 amending s. 440.1051, F.S.; increasing criminal  
 10 penalty for false reports; amending s. 440.107,  
 11 F.S.; providing additional powers to the  
 12 Department of Financial Services relating to  
 13 compliance and enforcement; providing a  
 14 definition; providing penalties; amending s.  
 15 440.15, F.S.; providing additional limitations  
 16 on compensation for permanent total disability;  
 17 providing a definition; amending s. 440.185,  
 18 F.S.; specifying duty of employer upon receipt  
 19 of notice of injury or death; increasing  
 20 penalties for noncompliance; amending s.  
 21 440.20, F.S.; revising provisions relating to  
 22 timely payment of compensation and medical  
 23 bills and penalties for late payment; amending  
 24 s. 440.38, F.S.; providing requirement for  
 25 employers with coverage provided by insurers  
 26 from outside the state; amending s. 440.381,  
 27 F.S.; providing criminal penalty for unlawful  
 28 applications; requiring on-site audits of  
 29 employers under certain circumstances; amending  
 30 s. 440.42, F.S.; revising provision relating to  
 31 notice of cancellation of coverage; amending s.

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1 440.525, F.S.; providing for the Office of  
2 Insurance Regulation of the Financial Services  
3 Commission to conduct examinations and  
4 investigations of claims-handling entities;  
5 providing penalties; providing for rules;  
6 amending s. 627.162, F.S.; revising delinquency  
7 and collection fee for late payment of premium  
8 installments; creating s. 627.285, F.S.;  
9 providing for annual actuarial peer review of  
10 rating organization processes; requiring a  
11 report; amending s. 627.311, F.S.; revising  
12 membership of the board of governors of the  
13 workers' compensation joint underwriting plan;  
14 requiring participation in safety programs;  
15 providing for an additional subplan within the  
16 joint underwriting plan for workers'  
17 compensation insurance; providing for rates,  
18 surcharges, and assessments; limiting  
19 assessment powers; amending s. 921.0022, F.S.;  
20 revising the offense severity ranking chart to  
21 reflect changes in penalties under the act;  
22 requiring a report to the Legislature from the  
23 Department of Financial Services regarding  
24 provisions of law relating to enforcement;  
25 establishing a Joint Select Committee on  
26 Workers' Compensation Rating Reform and  
27 specifying duties thereof; providing for  
28 termination of the committee; requiring the  
29 board of governors of the workers' compensation  
30 joint underwriting plan to submit a report to  
31 the Legislature; amending s. 443.1715, F.S.;

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1           revising provisions relating to records and  
2           reports; providing for disclosure of specified  
3           information; amending s. 625.989, F.S.;  
4           providing that the Department of Financial  
5           Services shall prepare an annual report  
6           relating to workers' compensation fraud and  
7           compliance; amending s. 626.9891, F.S.;  
8           amending reporting requirements for insurers;  
9           providing penalties for noncompliance;  
10          providing for rules; providing that amendments  
11          to ss. 440.02 and 440.15, F.S., do not affect  
12          certain disability, determination, and  
13          benefits; providing for construction of the act  
14          in pari materia with laws enacted during the  
15          Regular Session of the Legislature; providing  
16          effective dates.

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