



Journal of the Senate

Number 1—Special Session B

Tuesday, January 22, 1991

At a Special Session of the Florida Legislature convened under Article III, Section 3(c), of the Constitution of the State, as revised in 1968, begun and held at the Capitol, in the City of Tallahassee, in the State of Florida.

CALL TO ORDER

The Senate was called to order by the President at 2:15 p.m. A quorum present—39:

Madam President	Davis	Jennings	Scott
Bankhead	Diaz-Balart	Johnson	Souto
Beard	Dudley	Kirkpatrick	Thomas
Brown	Forman	Kiser	Thurman
Bruner	Gardner	Kurth	Walker
Casas	Girardeau	Malchon	Weinstein
Childers	Gordon	McKay	Weinstock
Crenshaw	Grant	Meek	Wexler
Crotty	Grizzle	Myers	Yancey
Dantzler	Jenne	Plummer	

Excused: Senator Langley; Senator Meek at 6:30 p.m.

PRAYER

The following prayer was offered by Senator Brown:

Before I begin the prayer today I ask each of you to join me in a moment of silent prayer on behalf of our service people that are in harm's way in the Persian Gulf.

Oh God, we thank you for truth, and pray that as a body we may diligently pursue it. We thank you for love, and pray that as individuals we will share it with the whole of our hearts. We thank you, dear God, for hope, and pray that we will face the future always with confidence. We thank you, our Father, for faith, and pray that you will always give us eyes to see beyond the obvious. Help us today, dear Father, to differentiate the essential from the inconsequential. Help us to discipline ourselves for accomplishment and yet not neglect contemplation and reflection. Help us to walk in integrity, in humility and in compassion. As the God of Peace, dear Father, more than all, we pray that you will give peace to our world in these days of conflict. As the God of Comfort, we pray, dear God, that you will comfort those who are bereaved with loss of loved ones. And, as the God of Righteousness, we pray that you will bring this terrible war to a quick and just end. Be with us today in our deliberations that what we may do will be in accord with what your will would be. In your name we pray. Amen.

PLEDGE

Senator Meek led the Senate in the pledge of allegiance to the flag of the United States of America.

READING OF PROCLAMATIONS

By direction of the President, the following proclamations were read by the Secretary:

THE FLORIDA LEGISLATURE

JOINT PROCLAMATION

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

We, Gwen Margolis, President of the Florida Senate, and T. K. Wetherell, Speaker of the Florida House of Representatives, by virtue of the authority vested in us by Article III, Section 3(c), Florida Constitution, and Section 11.011, Florida Statutes, do hereby proclaim:

1. That the Legislature of the State of Florida is convened in Special Session pursuant to Article III, Section 3(c), Florida Constitution and Section 11.011, Florida Statutes, at the Capitol in Tallahassee, Florida at 2:00 p.m., on Tuesday the 22nd of January, 1991, for a period of six hours, ending at 8:00 p.m.

2. That the Legislature is convened for the sole and exclusive purpose of consideration of legislation:

Reenacting the provisions of Chapter 90-201, Laws of Florida, and providing for severability of the provisions of such law.

Amending the provisions of Section 440.02, Florida Statutes, as amended by Chapter 90-201, Laws of Florida, relating to the ability of certain sole proprietors, partners or corporate officers to elect coverage as employees for the purpose of workers' compensation insurance.

Amending provisions relating to the creation of the Industrial Relations Commission and the appointment of members thereto and the disciplining of persons appointed thereto.

Amending provisions relating to the creation, duties and funding of the Workers' Compensation Oversight Board and legal counsel.



Gwen Margolis
President, The Florida Senate
December 13, 1990



T. K. Wetherell
Speaker, The Florida House
of Representatives
December 11, 1990



Duly filed with and received by the Florida Department of State this 13th day of December, 1990

Jim Smith
Secretary of State

THE FLORIDA LEGISLATURE

AMENDED JOINT PROCLAMATION

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

We, Gwen Margolis, President of the Florida Senate, and T. K. Wetherell, Speaker of the Florida House of Representatives, by virtue of the authority vested in us by Article III, Section 3(c), Florida Constitution, and Section 11.011, Florida Statutes, do hereby proclaim:

1. That paragraph 2 of our Joint Proclamation filed December 13, 1990, is hereby amended to read:

That the Legislature is convened for the sole and exclusive purpose of consideration of legislation:

Reenacting the provisions of Chapter 90-201, Laws of Florida, and providing for severability of the provisions of such law.

Amending the provisions of Section 440.02, Florida Statutes, as amended by Chapter 90-201, Laws of Florida, relating to the ability of certain sole proprietors, partners or corporate officers to elect coverage as employees for the purpose of workers' compensation insurance.

Amending provisions relating to the creation of the Industrial Relations Commission and the appointment of members thereto and the disciplining of persons appointed thereto.

Amending provisions relating to the creation, duties and funding of the Workers' Compensation Oversight Board and legal counsel.

Amending Chapter 602, Florida Statutes, to provide for the severability of claims relating to costs and attorneys fees from claims for compensation for losses resulting from the Citrus Canker Eradication Program.

Increasing funding for the Citrus Canker Compensation Trust Fund.

2. Except as amended by this Proclamation, the Joint Proclamation filed December 13, 1990, is ratified and confirmed.

1. That paragraph 1 of our Amended Joint Proclamation filed January 16, 1991, is hereby amended to read:

That the Legislature is convened for the sole and exclusive purpose of consideration of legislation:

Reenacting the provisions of Chapter 90-201, Laws of Florida, and providing for severability of the provisions of such law.

Amending the provisions of Section 440.02, Florida Statutes, as amended by Chapter 90-201, Laws of Florida, relating to the ability of certain sole proprietors, partners or corporate officers to elect coverage as employees for the purpose of workers' compensation insurance.

Amending provisions relating to the creation of the Industrial Relations Commission and the appointment of members thereto and the disciplining of persons appointed thereto.

Amending provisions relating to the creation, duties and funding of the Workers' Compensation Oversight Board and legal counsel.

Amending Chapter 602, Florida Statutes, to provide for the severability of claims relating to costs and attorneys fees from claims for compensation for losses resulting from the Citrus Canker Eradication program.

Increasing funding for the Citrus Canker Compensation Trust Fund.

Matters related to management of the legislative lobby registration program.

Matters relating to salary and benefits of public employees called to active military service.

2. Except as amended by this Proclamation, the Joint Proclamation filed December 13, 1990, is ratified and confirmed.



Gwen Margolis
President, The Florida Senate
January 16, 1991



T. K. Wetherell
Speaker, The Florida House
of Representatives
January 14, 1991



Duly filed with and received by the Florida Department of State this 16th day of January, 1991

Jim Smith
Secretary of State



Gwen Margolis
President, The Florida Senate
January 22, 1991



T. K. Wetherell
Speaker, The Florida House
of Representatives
January 22, 1991



Duly filed with and received by the Florida Department of State this 22nd day of January, 1991

Jim Smith
Secretary of State

THE FLORIDA LEGISLATURE AMENDED JOINT PROCLAMATION

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE
AND THE FLORIDA HOUSE OF REPRESENTATIVES:

We, Gwen Margolis, President of the Florida Senate, and T. K. Wetherell, Speaker of the Florida House of Representatives, by virtue of the authority vested in us by Article III, Section 3(c), Florida Constitution, and Section 11.011, Florida Statutes, do hereby proclaim:

INTRODUCTION AND REFERENCE OF BILLS

First Reading

By Senator Dantzler—

SB 2-B—A bill to be entitled An act relating to citrus canker; amending s. 602.055, F.S.; providing an additional requirement for the payment of a claim by the Office of Citrus Canker Claims; amending s. 601.282, F.S.; revising the percentage proceeds from citrus excise taxes transferred to the Citrus Canker Eradication Trust Fund and the Citrus Canker Compensation Trust Fund; amending chapter 90-326, Laws of Florida, revising an appropriation from the Citrus Canker Compensation Trust Fund in the Department of Banking and Finance; providing an effective date.

—was referred to the Committee on Agriculture.

By Senator Girardeau—

SCR 4-B—A concurrent resolution setting forth joint policy governing the registration of lobbyists.

—was referred to the Committee on Rules and Calendar.

By Senators Forman, Margolis, Weinstein, Weinstock, Jenne, Dantzler, Kurth, Wexler, Walker, Yancey, Malchon, Brown, Gardner, Girardeau, Thurman, Davis, Meek, Beard, Scott, Johnson, Grizzle, Jennings, Casas, Grant, Crenshaw, Diaz-Balart, Bankhead, McKay, Myers, Crotty, Kiser, Thomas, Childers, Kirkpatrick and Souto—

SB 6-B—A bill to be entitled An act relating to military service; amending s. 115.09, F.S.; revising provisions with respect to leave to public officials for military service; amending s. 115.14, F.S.; authorizing employing authorities of employees of the state, counties, or municipalities, who are reservists called to active duty to supplement military pay under certain circumstances; providing for additional benefits; amending s. 121.111, F.S.; revising provisions with respect to credit for military service under the Florida Retirement System; providing for retroactive application; providing an effective date.

—was referred to the Committee on Personnel, Retirement and Collective Bargaining.

By the Committee on Commerce and Senators Jennings and Brown—

SB 8-B—A bill to be entitled An act relating to workers' compensation; reenacting s. 20.13(4), F.S., relating to the Division of Insurance Fraud of the Department of Insurance; reenacting and amending s. 20.171(2), (3), F.S., relating to the Department of Labor and Employment Security; repealing s. 20.171(5), F.S., relating to the Industrial Relations Commission; repealing s. 4, ch. 90-201, Laws of Florida, relating to a petition to the Supreme Court by The Florida Bar for adoption of rules; reenacting s. 442.20, F.S., relating to workplace safety; reenacting s. 7, ch. 90-201, Laws of Florida, relating to an appropriation to the department for a new Division of Safety; reenacting s. 440.015, F.S., relating to construction of the Workers' Compensation Law; reenacting and amending s. 440.02, F.S., relating to definitions applicable to the Workers' Compensation Law; deleting a reference to a repealed provision; providing conditions and procedures under which certain sole proprietors, partners, and officers may elect to be exempt from ch. 440, F.S.; amending s. 440.05, F.S.; prescribing requirements for submitting a notice of election to become exempt; requiring the Division of Workers' Compensation of the Department of Labor and Employment Security to issue a certification of the election to be exempt to such persons under specified circumstances; providing requirements for providing workers' compensation; providing registration requirements for subcontractors; providing a fee; reenacting s. 440.055, F.S., relating to annual employer affidavits; creating s. 440.077, F.S.; providing that such persons electing to be exempt may not receive benefits under ch. 440, F.S.; reenacting and amending s. 440.09, F.S., relating to coverage; deleting a reference to a repealed provision; reenacting s. 440.092, F.S., relating to compensability of injuries incurred in attending certain recreational and social activities, while going to or coming from work, while deviating from employment, and while traveling in connection with employment and for subsequent intervening accidents; reenacting and amending s. 440.10, F.S., relating to liability for compensation; requiring contractors and subcontractors to provide proof of secured compensation for employees or an exemption as a condition to obtaining building permits; requiring contractors and subcontractors engaging in public or private construction to secure and maintain compensation for employees under the Workers' Compensation Law; allowing contractors to require evidence of insurance or exemption; requiring a subcontractor to notify his contractor of his election of exemption; authorizing contractors and third-party payors to recover paid or payable benefits and interest thereon; reenacting s. 440.101, F.S., relating to legislative intent with respect to drug-free workplaces; reenacting and amending s. 440.102, F.S., relating to drug-free workplace programs; reenacting s. 440.11(1), F.S., relating to exclusiveness of liability; reenacting s. 440.12(1), F.S., relating to commencement of compensation; reenacting s. 440.13, F.S., relating to medical services and supplies and to violations and penalties relating thereto; reenacting s. 440.135, F.S., relating to pilot programs for medical and remedial care; reenacting s. 440.15, F.S., relating to compensation for disability; reenacting s. 440.16(1)(b), F.S., relating to compensation for death; reenacting s. 440.185(4), F.S., relating to provision of informational brochures to injured workers; reenacting s. 440.19(1), F.S., relating to time and procedure for filing claims; reenacting s. 440.20(9), (12), F.S., relating to payment of compensation;

reenacting s. 440.25(3), F.S., and reenacting and amending s. 440.25(4), F.S., relating to procedures for hearings and appeals; replacing references to the Industrial Relations Commission with references to the District Court of Appeal, First District; repealing s. 440.26, F.S., relating to presumptions in compensation proceedings; reenacting and amending s. 440.271, F.S., relating to appellate review of orders of judges of compensation claims; providing for appeal to the District Court of Appeal, First District, instead of the Industrial Relations Commission; repealing s. 440.272, F.S., relating to appellate review of orders of the Industrial Relations Commission; reenacting s. 440.34(2), (7), F.S., and reenacting and amending s. 440.34(3), (5), F.S., relating to attorney's fees and costs; deleting references to the Industrial Relations Commission; reenacting s. 440.37(4), F.S., relating to penalties for misrepresentation and fraud; reenacting s. 440.38(1), (3), (5), F.S., relating to security for compensation; reenacting s. 440.381, F.S., relating to applications for coverage and payroll reporting and auditing; reenacting s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association, Incorporated; reenacting s. 440.386, F.S., relating to insolvency of self-insurers; reenacting s. 440.39(3)(a), F.S., relating to third-party liability; reenacting s. 440.43, F.S., relating to penalties for failure to secure payment of compensation; repealing s. 440.44(8), (10), F.S., 1989, relating to an advisory council and a workers' compensation oversight board; repealing s. 440.4415, F.S., relating to the Workers' Compensation Oversight Board; reenacting s. 440.45(1), (2), F.S., relating to judges of compensation claims; reenacting s. 440.49, F.S., relating to rehabilitation of injured employees and the Special Disability Trust Fund; reenacting and amending s. 440.52, F.S., relating to registration of insurance carriers; requiring insurance carriers providing insurance under ch. 440, F.S., to notify a contractor upon cancellation or expiration of insurance; reenacting s. 440.56(6), F.S., relating to penalties for violation of safety rules; reenacting s. 440.572, F.S., relating to authorization of individual self-insurers to provide coverage; reenacting s. 440.575(1)(c), F.S., relating to local government pools; reenacting s. 440.59, F.S., relating to risk management reports; reenacting s. 440.591, F.S., relating to rulemaking authority; reenacting ss. 489.114, 489.510, F.S., relating to evidence of coverage of contractors and electrical contractors; reenacting s. 626.611(15), F.S., relating to denial, suspension, or revocation of, or refusal to renew, a license or appointment for fraudulent and dishonest practices; reenacting s. 626.869(5), F.S., relating to workers' compensation insurance adjuster continuing education course requirements; reenacting s. 627.0915, F.S., relating to consideration of drug-free workplace programs in the setting of rates; reenacting s. 627.1615, F.S., relating to discrimination against certain applicants for coverage; reenacting s. 627.162, F.S., relating to installment payment of premiums; reenacting and amending ss. 54, 55, ch. 90-201, Laws of Florida, relating to the Joint Select Committee on Workers' Compensation and alternative methods of compliance for self-insurers; continuing ch. 440, F.S., as amended, in effect after October 1, 1991, notwithstanding its scheduled repeal; reenacting s. 57, ch. 90-201, Laws of Florida, relating to reduction of rates; reenacting and amending s. 115, ch. 90-201, Laws of Florida, relating to an appropriation to the Department of Labor and Employment Security; revising such appropriation; reenacting ss. 116-117, 119-120, ch. 90-201, Laws of Florida, relating to appropriations to the Department of Insurance and the Department of Professional Regulation and severability; repealing s. 118, ch. 90-201, Laws of Florida, relating to an appropriation to the Joint Legislative Management Committee; providing for retroactive application; providing an effective date.

—was referred to the Committee on Commerce.

By Senator Diaz-Balart—

SB 10-B—A bill to be entitled An act relating to international affairs; reenacting s. 288.801, F.S., relating to legislative findings and intent; reenacting s. 288.802, F.S., relating to the principal international affairs officer of the state; reenacting s. 288.803, F.S., relating to creation of the Florida International Affairs Commission; reenacting s. 288.804, F.S., relating to duties of the commission; reenacting s. 288.805, F.S., relating to the strategic plan for international economic development; reenacting s. 288.806, F.S., relating to international business promotion grants; reenacting s. 288.807, F.S., relating to biennial reports; reenacting s. 288.808, F.S., relating to the Florida International Affairs Commission Trust Fund; reenacting s. 288.809, F.S., relating to the Florida International Affairs Foundation; reenacting s. 288.810, F.S., relating to the executive director of the commission; reenacting s. 288.811, F.S., relating to the Florida International Trade and Investment Council; reenacting s. 288.812, F.S., relating to the Florida International Tourism Advisory Council; reenacting s. 288.813, F.S., relating to the Agricultural Advisory Council of the Department of Agriculture and Consumer Services; reen-

acting s. 288.814, F.S., relating to the Florida International Council; reenacting s. 288.815, F.S., relating to international research; reenacting s. 288.816, F.S., relating to intergovernmental relations; reenacting s. 229.6054, F.S., relating to international education; reenacting s. 288.817, F.S., relating to international education liaison; reenacting s. 76(2) and (3), ch. 90-201, Laws of Florida, relating to feasibility studies conducted by the Board of Regents; reenacting s. 229.6053(1) and (3)(a) and (b), F.S., relating to the Florida Commission on International Education; reenacting s. 240.137, F.S., relating to linkage institutes between postsecondary institutions of Florida and foreign countries; reenacting s. 288.818, F.S., relating to the International Language Institute Advisory Council; reenacting s. 228.086(1) and (4)(e) and (g), F.S., relating to regional centers of excellence; reenacting s. 229.59(1), F.S., relating to educational improvement projects; reenacting s. 229.6056, F.S., relating to education outreach activities; reenacting s. 240.145(1), F.S., relating to the Postsecondary Education Planning Commission; reenacting s. 240.147(2), F.S., relating to duties of the commission; reenacting s. 187.201(1)(b), F.S., relating to educational policies of the State Comprehensive Plan; reenacting s. 229.6051, F.S., relating to cooperation of educational agencies with the Florida International Affairs Commission; reenacting s. 15.18, F.S., relating to international and cultural relations; reenacting s. 88, ch. 90-201, Laws of Florida, relating to duties of the Department of State; reenacting s. 89, ch. 90-201, Laws of Florida, relating to future repeal of ss. 15.185 and 15.20, F.S.; reenacting s. 288.819, F.S., relating to the Florida International Banking Advisory Council; reenacting s. 20.17(2)(c) and (4), F.S., relating to the Department of Commerce; reenacting and amending s. 92, ch. 90-201, Laws of Florida, relating to appointments to the Economic Development Advisory Council; correcting a cross-reference; reenacting s. 288.025, F.S., relating to the Division of International Trade and Development of the Department of Commerce; reenacting s. 288.03, F.S., relating to the Division of Economic Development of the Department of Commerce; reenacting s. 288.115, F.S., relating to expenses of the Department of Commerce; reenacting s. 288.118(1), F.S., relating to the export finance officer of the Division of International Trade and Development; reenacting s. 601.15(10)(h), F.S., relating to citrus marketing; reenacting and amending ss. 98-100, ch. 90-201, Laws of Florida, relating to future repeals; correcting cross-references; reenacting and amending s. 288.820, F.S., relating to implementation of specified provisions; clarifying a cross-reference; reenacting s. 288.8041, F.S., relating to duties of the Florida International Affairs Commission; reenacting s. 288.8032, F.S., relating to organization of the commission; reenacting s. 288.760, F.S., relating to export finance; reenacting s. 288.821, F.S., relating to the Florida International Tourism Promotion Council; reenacting and amending s. 288.822, F.S., relating to operation of foreign offices; correcting a cross-reference; reenacting s. 288.823, F.S., relating to the Florida Council of International Economic Advisors; reenacting s. 108, ch. 90-201, Laws of Florida, relating to amendment of s. 288.117, F.S., relating to international currency and barter exchanges; reenacting s. 109, ch. 90-201, Laws of Florida, relating to amendment of s. 288.121, F.S., relating to the Division of Tourism of the Department of Commerce; reenacting s. 288.824, F.S., relating to powers of the Governor; reenacting s. 288.825, F.S., relating to reports to the Florida International Affairs Commission; reenacting and amending s. 112, ch. 90-201, Laws of Florida, relating to future repeals; correcting cross-references; reenacting s. 288.123(1) and (2), F.S., relating to the Tourism Advisory Council; reenacting s. 288.826, F.S., relating to the Florida International Trade and Promotion Trust Fund; providing for review and repeal of ss. 288.821, 288.823, F.S.; reenacting s. 120, ch. 90-201, Laws of Florida, relating to severability; providing a retroactive effective date.

—was referred to the Committee on International Trade, Economic Development and Tourism.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Thomas, by two-thirds vote **SB 8-B** was withdrawn from the Committee on Commerce; **SCR 4-B** was withdrawn from the Committee on Rules and Calendar; **SB 2-B** was withdrawn from the Committee on Agriculture; **SB 6-B** was withdrawn from the Committee on Personnel, Retirement and Collective Bargaining; and **SB 10-B** was withdrawn from the Committee on International Trade, Economic Development and Tourism and by two-thirds vote established as a special order calendar.

SPECIAL ORDER

Consideration of **SB 8-B** was deferred.

MOTIONS

On motion by Senator Gardner, by two-thirds vote **SCR 4-B** was also referred to the Committee on Appropriations.

On motions by Senator Gardner, by two-thirds vote **SCR 4-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

SCR 4-B—A concurrent resolution setting forth joint policy governing the registration of lobbyists.

On motion by Senator Girardeau, by two-thirds vote **SCR 4-B** was read the second time in full.

Senator Johnson moved the following amendment which failed:

Amendment 1—On page 1, line 25, after “entity” insert: , not formed for or regularly engaged in the act of lobbying,

The vote was:

Yeas—18

Bankhead	Crotty	Jennings	Plummer
Beard	Dudley	Johnson	Scott
Bruner	Gordon	Kiser	Souto
Casas	Grant	McKay	
Crenshaw	Grizzle	Myers	

Nays—19

Brown	Gardner	Malchon	Weinstein
Childers	Girardeau	Meek	Weinstock
Dantzler	Jenne	Thomas	Wexler
Davis	Kirkpatrick	Thurman	Yancey
Forman	Kurth	Walker	

Senator Diaz-Balart moved the following amendment which failed:

Amendment 2—On page 1, lines 22-23 and lines 28-29, strike “and so declares during that appearance”

On motion by Senator Girardeau, **SCR 4-B** was adopted and certified to the House. The vote on adoption was:

Yeas—37

Madam President	Davis	Johnson	Thomas
Bankhead	Dudley	Kirkpatrick	Thurman
Beard	Forman	Kiser	Walker
Brown	Gardner	Kurth	Weinstein
Bruner	Girardeau	Malchon	Weinstock
Casas	Gordon	McKay	Wexler
Childers	Grant	Meek	Yancey
Crenshaw	Grizzle	Myers	
Crotty	Jenne	Plummer	
Dantzler	Jennings	Scott	

Nays—1

Diaz-Balart

Vote after roll call:

Yea—Souto

MOTIONS

On motion by Senator Gardner, by two-thirds vote **SB 8-B** was also referred to the Committee on Appropriations.

On motion by Senator Gardner, by two-thirds vote **SB 8-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

On motion by Senator Childers, by two-thirds vote—

SB 8-B—A bill to be entitled An act relating to workers' compensation; reenacting s. 20.13(4), F.S., relating to the Division of Insurance Fraud of the Department of Insurance; reenacting and amending s. 20.171(2), (3), F.S., relating to the Department of Labor and Employment

Security; repealing s. 20.171(5), F.S., relating to the Industrial Relations Commission; repealing s. 4, ch. 90-201, Laws of Florida, relating to a petition to the Supreme Court by The Florida Bar for adoption of rules; reenacting s. 442.20, F.S., relating to workplace safety; reenacting s. 7, ch. 90-201, Laws of Florida, relating to an appropriation to the department for a new Division of Safety; reenacting s. 440.015, F.S., relating to construction of the Workers' Compensation Law; reenacting and amending s. 440.02, F.S., relating to definitions applicable to the Workers' Compensation Law; deleting a reference to a repealed provision; providing conditions and procedures under which certain sole proprietors, partners, and officers may elect to be exempt from ch. 440, F.S.; amending s. 440.05, F.S.; prescribing requirements for submitting a notice of election to become exempt; requiring the Division of Workers' Compensation of the Department of Labor and Employment Security to issue a certification of the election to be exempt to such persons under specified circumstances; providing requirements for providing workers' compensation; providing registration requirements for subcontractors; providing a fee; reenacting s. 440.055, F.S., relating to annual employer affidavits; creating s. 440.077, F.S.; providing that such persons electing to be exempt may not receive benefits under ch. 440, F.S.; reenacting and amending s. 440.09, F.S., relating to coverage; deleting a reference to a repealed provision; reenacting s. 440.092, F.S., relating to compensability of injuries incurred in attending certain recreational and social activities, while going to or coming from work, while deviating from employment, and while traveling in connection with employment and for subsequent intervening accidents; reenacting and amending s. 440.10, F.S., relating to liability for compensation; requiring contractors and subcontractors to provide proof of secured compensation for employees or an exemption as a condition to obtaining building permits; requiring contractors and subcontractors engaging in public or private construction to secure and maintain compensation for employees under the Workers' Compensation Law; allowing contractors to require evidence of insurance or exemption; requiring a subcontractor to notify his contractor of his election of exemption; authorizing contractors and third-party payors to recover paid or payable benefits and interest thereon; reenacting s. 440.101, F.S., relating to legislative intent with respect to drug-free workplaces; reenacting and amending s. 440.102, F.S., relating to drug-free workplace programs; reenacting s. 440.11(1), F.S., relating to exclusiveness of liability; reenacting s. 440.12(1), F.S., relating to commencement of compensation; reenacting s. 440.13, F.S., relating to medical services and supplies and to violations and penalties relating thereto; reenacting s. 440.135, F.S., relating to pilot programs for medical and remedial care; reenacting s. 440.15, F.S., relating to compensation for disability; reenacting s. 440.16(1)(b), F.S., relating to compensation for death; reenacting s. 440.185(4), F.S., relating to provision of informational brochures to injured workers; reenacting s. 440.19(1), F.S., relating to time and procedure for filing claims; reenacting s. 440.20(9), (12), F.S., relating to payment of compensation; reenacting s. 440.25(3), F.S., and reenacting and amending s. 440.25(4), F.S., relating to procedures for hearings and appeals; replacing references to the Industrial Relations Commission with references to the District Court of Appeal, First District; repealing s. 440.26, F.S., relating to presumptions in compensation proceedings; reenacting and amending s. 440.271, F.S., relating to appellate review of orders of judges of compensation claims; providing for appeal to the District Court of Appeal, First District, instead of the Industrial Relations Commission; repealing s. 440.272, F.S., relating to appellate review of orders of the Industrial Relations Commission; reenacting s. 440.34(2), (7), F.S., and reenacting and amending s. 440.34(3), (5), F.S., relating to attorney's fees and costs; deleting references to the Industrial Relations Commission; reenacting s. 440.37(4), F.S., relating to penalties for misrepresentation and fraud; reenacting s. 440.38(1), (3), (5), F.S., relating to security for compensation; reenacting s. 440.381, F.S., relating to applications for coverage and payroll reporting and auditing; reenacting s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association, Incorporated; reenacting s. 440.386, F.S., relating to insolvency of self-insurers; reenacting s. 440.39(3)(a), F.S., relating to third-party liability; reenacting s. 440.43, F.S., relating to penalties for failure to secure payment of compensation; repealing s. 440.44(8), (10), F.S., 1989, relating to an advisory council and a workers' compensation oversight board; repealing s. 440.4415, F.S., relating to the Workers' Compensation Oversight Board; reenacting s. 440.45(1), (2), F.S., relating to judges of compensation claims; reenacting s. 440.49, F.S., relating to rehabilitation of injured employees and the Special Disability Trust Fund; reenacting and amending s. 440.52, F.S., relating to registration of insurance carriers; requiring insurance carriers providing insurance under ch. 440, F.S., to notify a contractor upon cancellation or expiration of insurance; reenacting s. 440.56(6), F.S., relating to penalties for violation of safety rules; reenacting s. 440.572, F.S., relat-

ing to authorization of individual self-insurers to provide coverage; reenacting s. 440.575(1)(c), F.S., relating to local government pools; reenacting s. 440.59, F.S., relating to risk management reports; reenacting s. 440.591, F.S., relating to rulemaking authority; reenacting ss. 489.114, 489.510, F.S., relating to evidence of coverage of contractors and electrical contractors; reenacting s. 626.611(15), F.S., relating to denial, suspension, or revocation of, or refusal to renew, a license or appointment for fraudulent and dishonest practices; reenacting s. 626.869(5), F.S., relating to workers' compensation insurance adjuster continuing education course requirements; reenacting s. 627.0915, F.S., relating to consideration of drug-free workplace programs in the setting of rates; reenacting s. 627.1615, F.S., relating to discrimination against certain applicants for coverage; reenacting s. 627.162, F.S., relating to installment payment of premiums; reenacting and amending ss. 54, 55, ch. 90-201, Laws of Florida, relating to the Joint Select Committee on Workers' Compensation and alternative methods of compliance for self-insurers; continuing ch. 440, F.S., as amended, in effect after October 1, 1991, notwithstanding its scheduled repeal; reenacting s. 57, ch. 90-201, Laws of Florida, relating to reduction of rates; reenacting and amending s. 115, ch. 90-201, Laws of Florida, relating to an appropriation to the Department of Labor and Employment Security; revising such appropriation; reenacting ss. 116-117, 119-120, ch. 90-201, Laws of Florida, relating to appropriations to the Department of Insurance and the Department of Professional Regulation and severability; repealing s. 118, ch. 90-201, Laws of Florida, relating to an appropriation to the Joint Legislative Management Committee; providing for retroactive application; providing an effective date.

—was read the second time by title.

Senators Johnson, Dudley, Davis, Myers, Kiser and McKay offered the following amendment which was moved by Senator Johnson and failed:

Amendment 1—On page 10, lines 7-31, page 11, lines 1-31, page 12, lines 1-31, page 13, lines 1-31, page 14, lines 1-31, page 15, lines 1-31, and page 16, lines 1-21, strike all of said lines and insert:

Section 2. Subsection (5) of section 20 171, Florida Statutes, 1990 Supplement, is reenacted to read:

20.171 Department of Labor and Employment Security.—There is created a Department of Labor and Employment Security.

(5)(a)1.a. There is created within the Department of Labor and Employment Security an Industrial Relations Commission to consist of a presiding judge and four other judges, all to be appointed by the Governor after February 1, 1991, but before March 15, 1991, and all to serve full time. Each appointee shall have the qualifications required by law for judges of the District Courts of Appeal. In addition to these qualifications, the judges of the Industrial Relations Commission shall be substantially experienced in the field of workers' compensation.

b. Initially, the Governor shall appoint two judges for terms of 4 years, two judges for terms of 3 years, and one judge for a term of 2 years. Thereafter, each full-time judge shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause.

c. The initial appointment process, retention process, and filling of vacancies of unexpired terms for the judges shall be by the Supreme Court Judicial Nominating Commission. The Supreme Court Judicial Nominating Commission shall submit a report to the Governor by January 1, 1991, of fifteen candidates for the initial five judge appointments. The Governor shall appoint the individual judges.

d. Prior to the expiration of the term of office of a judge, the conduct of such judge shall be reviewed by the Supreme Court Judicial Nominating Commission. A report of the Supreme Court Judicial Nominating Commission regarding retention shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the judge. If the Supreme Court Judicial Nominating Commission issues a favorable report, the Governor shall reappoint the judge. However, if the Supreme Court Judicial Nominating Commission issues an unfavorable report, the Supreme Court Judicial Nominating Commission shall commence the procedure for issuing a report to the Governor which shall include a list of three candidates for appointment. In the event a vacancy occurs during an unexpired term of a judge on the Industrial Relations Commission, then the Supreme Court Judicial Nominating Commission shall commence the procedure for issuing a report to the Governor which shall include a list of three candidates for appointment.

e. The Industrial Relations Commission judges are also subject to the jurisdiction of the Judicial Qualifications Commission during their term of office.

2. The presiding judge may by order filed in the records of the commission and with the approval of the Governor, appoint associate judges to serve as temporary judges of the commission. Such appointment may be made only of a currently commissioned judge of compensation claims. This appointment shall be for such periods of time as not to cause an undue burden on the caseload in the judge's jurisdiction. Each associate judge appointed shall receive no additional pay during the appointment except for expenses incurred in the performance of the additional duties.

3. The total salaries and benefits of all judges of the commission are to be paid from the trust fund created by s. 440.50. Notwithstanding any other provision of law, the judges shall be paid a salary equal to that paid under state law to the judges of District Courts of Appeal.

(b)1. The commission is vested with all authority, powers, duties, and responsibilities relating to review of orders of judges of compensation claims in workers' compensation proceedings under chapter 440. The Industrial Relations Commission shall review by appeal final orders of judges of compensation claims entered pursuant to chapter 440. The First District Court of Appeal shall retain jurisdiction over all workers' compensation proceedings pending before it on April 1, 1991. The commission may hold sessions and conduct hearings at any place within the state. Three judges shall consider each case and the concurrence of two shall be necessary to a decision. Any judge may request an en banc hearing for review of a final order of a judge of compensation claims.

2. The Industrial Relations Commission shall be within the Department of Labor and Employment Security but, in the performance of its powers and duties under chapter 440, shall not be subject to control, supervision, or direction by the Department of Labor and Employment Security. The commission is not an agency for purposes of chapter 120.

3. The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(c) The commission shall make such expenditures, including expenditures for personnel services and rent at the seat of government and elsewhere; for law books, reference materials, periodicals, furniture, equipment, and supplies; and for printing and binding, as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the commission shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the presiding judge.

(d) The commission may charge, in its discretion, for publications, subscriptions, and copies of records and documents. Such fees shall be deposited in the fund established in s. 440.50.

(e)1. The presiding judge shall exercise administrative supervision over the Industrial Relations Commission and over the judges and other officers of such courts.

2. The presiding judge of the Industrial Relations Commission shall have the power:

- a. To assign judges to hear appeals from final orders of judges of compensation claims.
- b. To hire and assign clerks and staff.
- c. To regulate use of courtrooms.
- d. To supervise dockets and calendars.
- e. To do everything necessary to promote the prompt and efficient administration of justice in the courts over which he presides.

3. The presiding judge shall be responsible to the Chief Justice of the Supreme Court for such information as may be required by the chief justice, including, but not limited to, caseload, status of dockets, and disposition of cases in the courts over which he presides.

4. The presiding judge shall be selected by a majority of the judges for a term of 2 years. The presiding judge may succeed himself for successive terms.

5. There may be an executive assistant to the presiding judge who shall perform such duties as the presiding judge may direct. Additionally, each judge may have research assistants or law clerks.

(f)1. The commission shall maintain and keep open during reasonable business hours a clerk's office, provided in the Capitol or some other suitable building in Leon County, for the transaction of its business. All books, papers, records, files, and the seal of the commission shall be kept at this office. The office shall be furnished and equipped by the commission.

2. The Industrial Relations Commission shall appoint a clerk who shall hold his office during the pleasure of the commission. Before entering upon the discharge of his duties, the clerk shall give bond in the sum of \$5,000 payable to the Governor or his successors in office, to be approved by a majority of the members of the commission conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the office of the Secretary of State.

3. The clerk shall be paid an annual salary to be determined in accordance with s. 25.382.

4. The clerk is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the commission and paid from the annual appropriation for the Industrial Relations Commission from the Workers' Compensation Administration Trust Fund.

5. The clerk, upon the filing of a certified copy of a notice of appeal or petition, shall charge and collect a filing fee of \$250 for each case docketed, and shall charge and collect for copying, certifying, or furnishing opinions, records, papers, or other instruments, and for other services the same service charges as provided in s. 28.24. The state or its agencies, when appearing as appellant or petitioner, is exempt from the filing fee required in this subsection.

6. The clerk of the Industrial Relations Commission is required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the state Comptroller who shall place the same to the credit of the Workers' Compensation Administration Trust Fund.

(g) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida Industrial Relations Commission—Seal"; and it shall be judicially noticed.

(h) The commission is expressly authorized to destroy obsolete records of the commission.

(i) Industrial Relations Commission judges shall be reimbursed for travel expenses as provided in s. 112.061.

(j) The practice and procedure before the commission and the judges of compensation claims shall be governed by rules adopted by the Supreme Court except to the extent that such rules conflict with the provisions of this chapter.

Section 3. The Florida Bar is hereby requested to petition on or before January 1, 1991, the Florida Supreme Court for the adoption of rules for matters pending before the Industrial Relations Commission and such other rules as may be required by this act to be adopted by the courts of the State of Florida.

(Renumber subsequent sections.)

The vote was:

Yeas—17

Bankhead	Dudley	Johnson	Scott
Beard	Gordon	Kiser	Yancey
Crenshaw	Grant	McKay	
Crotty	Grizzle	Myers	
Dantzler	Jennings	Plummer	

Nays—21

Madam President	Forman	Malchon	Weinstein
Brown	Gardner	Meek	Weinstock
Bruner	Girardeau	Souto	Wexler
Casas	Jenne	Thomas	
Childers	Kirkpatrick	Thurman	
Diaz-Balart	Kurth	Walker	

Senator Kiser moved the following amendment which failed:

Amendment 2—On page 18, line 9, through page 29, line 23, strike all of section 7 and insert:

Section 7. Section 440.02, Florida Statutes, 1990 Supplement, is reenacted to read:

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

(1) "Accident" means only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to stress, fright or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a pre-existing disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident shall be compensable, with respect to death or permanent impairment.

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

(3) "Carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462.

(4) "Casual" as used in this section shall be taken to refer only to employments when the work contemplated is to be completed in not exceeding 10 working days, without regard to the number of men employed, and when the total labor cost of such work is less than \$100.

(5) "Child" includes a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, halfbrothers and halvesisters, and brothers and sisters by adoption, but does not include married brothers or married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employees are under 18 years of age, or under 22 years of age if a full-time student in an accredited educational institution.

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

(7) "Construction industry" means for-profit activities involving the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction. However, "construction" shall not mean a landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold or resold.

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

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

(10) "Department" means the Department of Labor and Employment Security.

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

(12) "Division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.

(13)(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed.

(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. However, except as hereinafter provided, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of the election with the division as provided in s. 440.05. Services shall be presumed to have been rendered the corporation in cases when such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as hereinafter provided, elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. However, partners or sole proprietors actively engaged in the construction industry are considered employees in all instances whether or not the right of election is exercised.

(d) "Employee" does not include:

1. An independent contractor, who is not subject to the control and direction of the employer as to his actual conduct, except those independent contractors engaged in the construction industry, including:

a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission; and

b. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, provided a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment.

c. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, provided that the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for his transportation service and is not paid by the hour or on some other time-measured basis.

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

3. A volunteer, except a volunteer worker for the state or a county, city, or other governmental entity. Notwithstanding the provisions of s. 440.26, a person who does not receive monetary remuneration for his services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, in the event that such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the division.

b. Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter; however, no officer of a corporation engaged in the construction industry shall be exempted from coverage under this chapter.

(14) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

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

(b) "Employment" includes:

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

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

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

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

1. Domestic servants in private homes.

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

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

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

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

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

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

(17) "Injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eyeglasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.

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

(19) "Permanent impairment" means any anatomic or functional abnormality or loss, existing after the date of maximum medical improvement, which results from the injury.

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

(21) "Self-insurer" means:

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

(b) Any employer who has secured payment of compensation through a group self-insurer pursuant to s. 440.57;

(c) Any group self-insurer established pursuant to s. 440.57;

(d) A public utility as defined in s. 364.02 or s. 366.02 that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.571; or

(e) Any local government pool established pursuant to s. 440.575.

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

(23) "Time of injury" means the time of the occurrence of the accident resulting in the injury.

(24) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury and includes only the wages earned on the job where the employee is injured and does not include wages from outside or concurrent employment except in the case of a volunteer firefighter, together with the reasonable value of housing furnished to the employee by the employer which is the permanent year-round residence of the employee, and gratuities to the extent reported to the employer in writing as taxable income received in the course of employment from others than the employer and employer contributions for health insurance for the employee or the employee's dependents. However, housing furnished to migrant workers shall be included in wages unless provided after the time of injury. In employment in which an employee receives consideration for housing, the reasonable value of such housing compensation shall be the actual cost to the employer or based upon the Fair Market Rent Survey promulgated pursuant to section 8 of the Housing and Urban Development Act of 1974, whichever is less. However, if employer contributions for housing or health insurance are continued after the time of the injury, the contributions are not "wages" for the purpose of calculating an employee's average weekly wage.

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

(26) "Construction design professional" means an architect, professional engineer, landscape architect, or land surveyor, or any corporation, professional or general, that has a certificate to practice in the construction design field from the Florida Department of Professional Regulation.

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

(28) "Domestic individual self-insurer" means an individual self-insurer:

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

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

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

(29) "Foreign individual self-insurer" means an individual self-insurer:

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

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

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

(30) "Insolvent member" means an individual self-insurer which is a member of the Florida Self-Insurers Guaranty Association, Incorporated, or which was a member and has withdrawn pursuant to s. 440.385(1)(b), and which has been found insolvent, as defined in paragraph (31)(a), (b), or (c), by a court of competent jurisdiction in this or any other state, or meets the definition of paragraph (31)(d).

(31) "Insolvency" or "insolvent" means:

(a) That all assets of the individual self-insurer, if made immediately available, would not be sufficient to meet all the individual self-insurer's liabilities;

(b) That the individual self-insurer is unable to pay its debts as they become due in the usual course of business;

(c) That the individual self-insurer has substantially ceased or suspended the payment of compensation to its employees as required in this chapter; or

(d) That the individual self-insurer has sought protection under the United States Bankruptcy Code or has been brought under the jurisdiction of a court of bankruptcy as a debtor pursuant to the United States Bankruptcy Code.

Senators Dudley and Jenne offered the following amendment which was moved by Senator Dudley and adopted:

Amendment 3—On page 30, line 16, after the second comma (,) insert: *federal tax identification number*,

On motion by Senator Childers, by two-thirds vote **SB 8-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—37

Madam President	Diaz-Balart	Kirkpatrick	Thomas
Beard	Dudley	Kiser	Thurman
Brown	Forman	Kurth	Walker
Bruner	Gardner	Malchon	Weinstein
Casas	Girardeau	McKay	Weinstock
Childers	Grant	Meek	Wexler
Crenshaw	Grizzle	Myers	Yancey
Crotty	Jenne	Plummer	
Dantzler	Jennings	Scott	
Davis	Johnson	Souto	

Nays—1

Gordon

Vote after roll call:

Yea—Bankhead

On motion by Senator Thomas, the rules were waived and the Senate reverted to—

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed HB 5-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Harris—

HB 5-B—A bill to be entitled An act relating to citrus canker; amending s. 602.055, F.S.; providing an additional requirement for the payment of a claim by the Office of Citrus Canker Claims; amending s. 601.282, F.S.; revising the percentage proceeds from citrus excise taxes transferred to the Citrus Canker Eradication Trust Fund and the Citrus Canker Compensation Trust Fund; amending chapter 90-326, Laws of Florida, revising an appropriation from the Citrus Canker Compensation Trust Fund in the Department of Banking and Finance; providing an effective date.

—was referred to the Committee on Agriculture.

On motion by Senator Dantzler, by two-thirds vote **HB 5-B** was withdrawn from the Committee on Agriculture.

On motion by Senator Gardner, by two-thirds vote **HB 5-B** was also referred to the Committee on Appropriations.

On motion by Senator Gardner, by two-thirds vote **HB 5-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

On motions by Senator Dantzler, by two-thirds vote **HB 5-B** was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37

Madam President	Diaz-Balart	Kirkpatrick	Thomas
Bankhead	Dudley	Kiser	Thurman
Beard	Forman	Kurth	Walker
Brown	Gardner	Malchon	Weinstein
Bruner	Girardeau	McKay	Weinstock
Casas	Grant	Meek	Wexler
Childers	Grizzle	Myers	Yancey
Crenshaw	Jenne	Plummer	
Crotty	Jennings	Scott	
Dantzler	Johnson	Souto	

Nays—None

Vote after roll call:

Yea—Davis

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed HB 15-B, as amended, and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Lippman and others—

HB 15-B—A bill to be entitled An act relating to military service; amending s. 115.09, F.S.; revising provisions with respect to leave to public officials for military service; amending s. 115.14, F.S.; authorizing employing authorities of employees of the state, counties, or municipalities, who are reservists called to active duty to supplement military pay under certain circumstances; providing for additional benefits; amending s. 121.111, F.S.; revising provisions with respect to credit for military service under the Florida Retirement System; providing for retroactive application; providing an effective date.

—was referred to the Committee on Personnel, Retirement and Collective Bargaining.

On motion by Senator Forman, by two-thirds vote **HB 15-B** was withdrawn from the Committee on Personnel, Retirement and Collective Bargaining.

On motion by Senator Gardner, by two-thirds vote **HB 15-B** was also referred to the Committee on Appropriations.

On motion by Senator Gardner, by two-thirds vote **HB 15-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

On motions by Senator Forman, by two-thirds vote **HB 15-B** was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37

Madam President	Davis	Johnson	Thomas
Bankhead	Diaz-Balart	Kirkpatrick	Thurman
Beard	Dudley	Kurth	Walker
Brown	Gardner	Malchon	Weinstein
Bruner	Girardeau	McKay	Weinstock
Casas	Gordon	Meek	Wexler
Childers	Grant	Myers	Yancey
Crenshaw	Grizzle	Plummer	
Crotty	Jenne	Scott	
Dantzler	Jennings	Souto	

Nays—None

Vote after roll call:

Yea—Forman, Kiser

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed HB 9-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committee on Commerce and Representative Simon—

HB 9-B—A bill to be entitled An act relating to international affairs; reenacting s. 288.801, F.S., relating to legislative findings and intent; reenacting s. 288.802, F.S., relating to the principal international affairs officer of the state; reenacting s. 288.803, F.S., relating to creation of the Florida International Affairs Commission; reenacting s. 288.804, F.S., relating to duties of the commission; reenacting s. 288.805, F.S., relating to the strategic plan for international economic development; reenacting s. 288.806, F.S., relating to international business promotion grants; reenacting s. 288.807, F.S., relating to biennial reports; reenacting s. 288.808, F.S., relating to the Florida International Affairs Commission Trust Fund; reenacting s. 288.809, F.S., relating to the Florida International Affairs Foundation; reenacting s. 288.810, F.S., relating to the executive director of the commission; reenacting s. 288.811, F.S., relating to the Florida International Trade and Investment Council; reenacting s. 288.812, F.S., relating to the Florida International Tourism Advisory Council; reenacting s. 288.813, F.S., relating to the Agricultural Advisory Council of the Department of Agriculture and Consumer Services; reenacting s. 288.814, F.S., relating to the Florida International Council; reenacting s. 288.815, F.S., relating to international research; reenacting s. 288.816, F.S., relating to intergovernmental relations; reenacting s. 229.6054, F.S., relating to international education; reenacting s. 288.817, F.S., relating to international education liaison; reenacting s. 76(2) and (3), ch. 90-201, Laws of Florida, relating to feasibility studies conducted by the Board of Regents; reenacting s. 229.6053(1) and (3)(a) and (b), F.S., relating to the Florida Commission on International Education; reenacting s. 240.137, F.S., relating to linkage institutes between postsecondary institutions of Florida and foreign countries; reenacting s. 288.818, F.S., relating to the International Language Institute Advisory Council; reenacting s. 228.086(1) and (4)(e) and (g), F.S., relating to regional centers of excellence; reenacting s. 229.59(1), F.S., relating to educational improvement projects; reenacting s. 229.6056, F.S., relating to education outreach activities; reenacting s. 240.145(1), F.S., relating to the Postsecondary Education Planning Commission; reenacting s. 240.147(2), F.S., relating to duties of the commission; reenacting s. 187.201(1)(b), F.S., relating to educational policies of the State Comprehensive Plan; reenacting s. 229.6051, F.S., relating to cooperation of educational agencies with the Florida International Affairs Commission; reenacting s. 15.18, F.S., relating to international and cultural relations; reenacting s. 88, ch. 90-201, Laws of Florida, relating to duties of the Department of State; reenacting s. 89, ch. 90-201, Laws of Florida, relating to future repeal of ss. 15.185 and 15.20, F.S.; reenacting s. 288.819, F.S., relating to the Florida International Banking Advisory Council; reenacting s. 20.17(2)(c) and (4), F.S., relating to the Department of Commerce; reenacting and amending s. 92, ch. 90-201, Laws of Florida, relating to appointments to the Economic Development Advisory Council; correcting a cross reference; reenacting s. 288.025, F.S., relating to the Division of International Trade and Development of the Department of Commerce; reenacting s. 288.03, F.S., relating to the Division of Economic Development of the Department of Commerce; reenacting s. 288.115, F.S., relating to expenses of the Department of Commerce; reenacting s. 288.118(1), F.S., relating to the export finance officer of the Division of International Trade and Development; reenacting s. 601.15(10)(h), F.S., relating to citrus marketing; reenacting and amending ss. 98-100, ch. 90-201, Laws of Florida, relating to future repeals; correcting cross references; reenacting and amending s. 288.820, F.S., relating to implementation of specified provisions; clarifying a cross reference; reenacting s. 288.8041, F.S., relating to duties of the Florida International Affairs Commission; reenacting s. 288.8032, F.S., relating to organization of the commission; reenacting s. 288.760, F.S., relating to export finance; reenacting s. 288.821, F.S., relating to the Florida International Tourism Promotion Council; reenacting and amending s. 288.822, F.S., relating to operation of foreign offices; correcting a cross reference; reenacting s. 288.823, F.S., relating to the Florida Council of International Economic Advisors; reenacting s. 108, ch. 90-201, Laws of Florida, relating to amendment of s. 288.117, F.S., relating to international currency and barter exchanges; reenacting s. 109, ch. 90-201, Laws of Florida, relating to amendment of s. 288.121, F.S., relating to the Division of Tourism of the Department of Commerce; reenacting s. 288.824, F.S., relating to powers of the Governor; reenacting s. 288.825, F.S., relating to reports to the Florida International Affairs Commission; reenacting and amending s. 112, ch. 90-201, Laws of Florida, relating to future repeals; correcting cross references; reenacting s. 288.123(1) and (2), F.S., relating to the Tourism Advisory Council; reenacting s. 288.826, F.S., relating to the Florida International Trade and Promotion Trust Fund; providing for review and repeal of ss. 288.821 and 288.823, F.S.; reenacting s. 120, ch.

90-201, Laws of Florida, relating to severability; providing a retroactive effective date.

—was referred to the Committee on International Trade, Economic Development and Tourism.

On motion by Senator Diaz-Balart, by two-thirds vote **HB 9-B** was withdrawn from the Committee on International Trade, Economic Development and Tourism.

On motion by Senator Gardner, by two-thirds vote **HB 9-B** was also referred to the Committee on Appropriations.

On motion by Senator Gardner, by two-thirds vote **HB 9-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

On motion by Senator Diaz-Balart, by two-thirds vote **HB 9-B** was read the second time by title.

Senator Gardner moved the following amendments which were adopted:

Amendment 1—On page 98, between lines 4 and 5, insert:

Section 58. Notwithstanding any provisions to the contrary in this act, it is the intent of the Legislature not to expend in excess of the amounts appropriated for international trade programs by the Legislature, as amended by the Governor's vetoes and reductions made by the Administration Commission, during the 1990-1991 fiscal year.

Amendment 2—In title, on page 5, line 2, after the semicolon (;) insert: providing legislative intent regarding appropriations for international trade programs;

On motion by Senator Diaz-Balart, by two-thirds vote **HB 9-B** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—25

Madam President	Davis	Kirkpatrick	Weinstein
Bankhead	Diaz-Balart	Kurth	Weinstock
Brown	Forman	Malchon	Wexler
Casas	Girardeau	Meek	Yancey
Childers	Grant	Plummer	
Crenshaw	Grizzle	Souto	
Dantzler	Jenne	Thurman	

Nays—10

Beard	Gardner	Kiser	Walker
Bruner	Gordon	Myers	
Dudley	Johnson	Thomas	

Vote after roll call:

Yea—Scott

Yea to Nay—Dantzler

CONSIDERATION OF RESOLUTIONS

On motion by Senator Thomas, by unanimous consent—

By Senators Langley, Thomas, Jennings and Gardner—

SR 12-B—A resolution commending Sheriff John E. Polk of Seminole County, Florida.

WHEREAS, John E. Polk was born in Tampa, Florida, on December 3, 1931, and

WHEREAS, John E. Polk attended the public schools of Tampa and the University of Tampa and is a graduate of the FBI Academy and the National Sheriff's Institute, and

WHEREAS, John E. Polk has served with distinction and has gained statewide recognition in the Florida Highway Patrol, and

WHEREAS, John E. Polk was elected Sheriff of Seminole County in 1968 and subsequently reelected in 1972, 1976, 1980, 1984, and 1988, where he served as the head of an agency that grew from 35 employees to 500 employees, and

WHEREAS, Sheriff Polk, during his tenure as sheriff, formed a Vice Task Force which developed into the multi-police agency, City-County Investigative Bureau, and

WHEREAS, Sheriff Polk and Betty Simcoe, his Finance Director, advocated and supported the use of Medicare payments for payment of prisoners' hospital bills, which practice saved the taxpayers of Seminole County thousands of dollars annually, and

WHEREAS, Sheriff Polk was instrumental in requesting that a one-cent local sales tax be placed on the ballot, which tax was approved by the electors and was used to remodel and expand the Seminole County Jail to house 812 prisoners, and

WHEREAS, Sheriff Polk has served as a director, vice president, and president of the Florida Sheriffs Association and as Chairman of the Board of Managers of the Florida Sheriffs' Self-Insurance Fund, and

WHEREAS, Sheriff Polk was a motivating force behind the movement to make the sheriffs' departments of this state self-insured, and

WHEREAS, Sheriff Polk served on the state Criminal Justice Standards and Training Commission, and lobbied the Legislature and state executive agencies on numerous law enforcement issues such as gun control, contraband forfeiture, jails, statewide prosecutor, child abuse, and drunk drivers, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That Sheriff John E. Polk is commended for his outstanding accomplishments and distinguished service to the people of Seminole County and for his dedication to the goals and objectives of the Florida Sheriffs Association.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to Sheriff John E. Polk as a tangible token of the sentiments of the Florida Senate.

—was introduced out of order and read by title. On motion by Senator Jennings, **SR 12-B** was read the second time in full and adopted. The vote on adoption was:

Yeas—37

Madam President	Diaz-Balart	Kirkpatrick	Thomas
Bankhead	Dudley	Kiser	Thurman
Beard	Forman	Kurth	Walker
Brown	Gardner	Malchon	Weinstein
Bruner	Girardeau	McKay	Weinstock
Casas	Grant	Meek	Wexler
Childers	Grizzle	Myers	Yancey
Crenshaw	Jenne	Plummer	
Crotty	Jennings	Scott	
Dantzler	Johnson	Souto	

Nays—None

On motion by Senator Thomas, by unanimous consent—

By Senators Grant, Weinstein, Forman, Wexler, Diaz-Balart, Casas, Walker, Brown, Crenshaw, Jenne, Jennings, Childers, Bankhead, Dantzler, Souto, Thurman, Yancey, Gardner, Margolis, Dudley and Kiser—

SR 14-B—A resolution honoring Israel for its courage and restraint for not retaliating against Iraq for the missile attacks on Israel.

WHEREAS, Iraq, without provocation, attacked Israeli civilian targets with SCUD missiles, and

WHEREAS, Israel is a close democratic friend of the United States and a major non-NATO ally, and

WHEREAS, Iraq has threatened to burn half of Israel with chemical weapons, and

WHEREAS, Israel has exhibited exceptional restraint in the face of those repeated threats, and

WHEREAS, Israel has agreed to absorb this first strike and continues to support the implementation of United Nations Security Council Resolution 678 through the unprecedented international coalition of forces in the Persian Gulf, and

WHEREAS, every country has the right to defend itself, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That Iraq is condemned for its unprovoked attack on Israel.

BE IT FURTHER RESOLVED that the Senate expresses its profound remorse for the loss of life, casualties, and destruction; declares its heartfelt solidarity with the people of Israel; and commends the citizens of Israel for their brave composure and perseverance.

BE IT FURTHER RESOLVED that the Senate recognizes Israel's right to defend itself; reaffirms America's continued commitment to provide Israel with the means to maintain her freedom and security; and commends the Government of Israel for its restraint.

—was introduced out of order and read by title. On motion by Senator Grant, **SR 14-B** was read the second time in full and adopted. The vote on adoption was:

Yeas—38

Madam President	Diaz-Balart	Johnson	Souto
Bankhead	Dudley	Kirkpatrick	Thomas
Beard	Forman	Kiser	Thurman
Brown	Gardner	Kurth	Walker
Bruner	Girardeau	Malchon	Weinstein
Casas	Gordon	McKay	Weinstock
Childers	Grant	Meek	Wexler
Crenshaw	Grizzle	Myers	Yancey
Crotty	Jenne	Plummer	
Dantzler	Jennings	Scott	

Nays—None

RECESS

The Senate recessed at 5:10 p.m. to reconvene upon call of the President.

CALL TO ORDER

The Senate was called to order by the President at 7:18 p.m. A quorum present—34:

Madam President	Diaz-Balart	Kirkpatrick	Thomas
Beard	Dudley	Kiser	Thurman
Brown	Forman	Kurth	Walker
Bruner	Gardner	Malchon	Weinstein
Casas	Gordon	McKay	Weinstock
Childers	Grizzle	Myers	Wexler
Crotty	Jenne	Plummer	Yancey
Dantzler	Jennings	Scott	
Davis	Johnson	Souto	

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 8-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 8-B—A bill to be entitled An act relating to workers' compensation; reenacting s. 20.13(4), F.S., relating to the Division of Insurance Fraud of the Department of Insurance; reenacting and amending s. 20.171(2), (3), F.S., relating to the Department of Labor and Employment Security; repealing s. 20.171(5), F.S., relating to the Industrial Relations Commission; repealing s. 4, ch. 90-201, Laws of Florida, relating to a petition to the Supreme Court by The Florida Bar for adoption of rules; reenacting s. 442.20, F.S., relating to workplace safety; reenacting s. 7, ch. 90-201, Laws of Florida, relating to an appropriation to the department for a new Division of Safety; reenacting s. 440.015, F.S., relating to construction of the Workers' Compensation Law; reenacting and amending s. 440.02, F.S., relating to definitions applicable to the Workers' Compensation Law; deleting a reference to a repealed provision; providing conditions and procedures under which certain sole proprietors, partners, and officers may elect to be exempt from ch. 440, F.S.; amending s. 440.05, F.S.; prescribing requirements for submitting a notice of election to become exempt; requiring the Division of Workers' Compensation of the Department of Labor and Employment Security to issue a certification of the election to be exempt to such persons under specified circumstances; providing requirements for providing workers' compensation;

providing registration requirements for subcontractors; providing a fee; reenacting s. 440.055, F.S., relating to annual employer affidavits; creating s. 440.077, F.S.; providing that such persons electing to be exempt may not receive benefits under ch. 440, F.S.; reenacting and amending s. 440.09, F.S., relating to coverage; deleting a reference to a repealed provision; reenacting s. 440.092, F.S., relating to compensability of injuries incurred in attending certain recreational and social activities, while going to or coming from work, while deviating from employment, and while traveling in connection with employment and for subsequent intervening accidents; reenacting and amending s. 440.10, F.S., relating to liability for compensation; requiring contractors and subcontractors to provide proof of secured compensation for employees or an exemption as a condition to obtaining building permits; requiring contractors and subcontractors engaging in public or private construction to secure and maintain compensation for employees under the Workers' Compensation Law; allowing contractors to require evidence of insurance or exemption; requiring a subcontractor to notify his contractor of his election of exemption; authorizing contractors and third-party payors to recover paid or payable benefits and interest thereon; reenacting s. 440.101, F.S., relating to legislative intent with respect to drug-free workplaces; reenacting and amending s. 440.102, F.S., relating to drug-free workplace programs; reenacting s. 440.11(1), F.S., relating to exclusiveness of liability; reenacting s. 440.12(1), F.S., relating to commencement of compensation; reenacting s. 440.13, F.S., relating to medical services and supplies and to violations and penalties relating thereto; reenacting s. 440.135, F.S., relating to pilot programs for medical and remedial care; reenacting s. 440.15, F.S., relating to compensation for disability; reenacting s. 440.16(1)(b), F.S., relating to compensation for death; reenacting s. 440.185(4), F.S., relating to provision of informational brochures to injured workers; reenacting s. 440.19(1), F.S., relating to time and procedure for filing claims; reenacting s. 440.20(9), (12), F.S., relating to payment of compensation; reenacting s. 440.25(3), F.S., and reenacting and amending s. 440.25(4), F.S., relating to procedures for hearings and appeals; replacing references to the Industrial Relations Commission with references to the District Court of Appeal, First District; repealing s. 440.26, F.S., relating to presumptions in compensation proceedings; reenacting and amending s. 440.271, F.S., relating to appellate review of orders of judges of compensation claims; providing for appeal to the District Court of Appeal, First District, instead of the Industrial Relations Commission; repealing s. 440.272, F.S., relating to appellate review of orders of the Industrial Relations Commission; reenacting s. 440.34(2), (7), F.S., and reenacting and amending s. 440.34(3), (5), F.S., relating to attorney's fees and costs; deleting references to the Industrial Relations Commission; reenacting s. 440.37(4), F.S., relating to penalties for misrepresentation and fraud; reenacting s. 440.38(1), (3), (5), F.S., relating to security for compensation; reenacting s. 440.381, F.S., relating to applications for coverage and payroll reporting and auditing; reenacting s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association, Incorporated; reenacting s. 440.386, F.S., relating to insolvency of self-insurers; reenacting s. 440.39(3)(a), F.S., relating to third-party liability; reenacting s. 440.43, F.S., relating to penalties for failure to secure payment of compensation; repealing s. 440.44(8), (10), F.S., 1989, relating to an advisory council and a workers' compensation oversight board; repealing s. 440.4415, F.S., relating to the Workers' Compensation Oversight Board; reenacting s. 440.45(1), (2), F.S., relating to judges of compensation claims; reenacting s. 440.49, F.S., relating to rehabilitation of injured employees and the Special Disability Trust Fund; reenacting and amending s. 440.52, F.S., relating to registration of insurance carriers; requiring insurance carriers providing insurance under ch. 440, F.S., to notify a contractor upon cancellation or expiration of insurance; reenacting s. 440.56(6), F.S., relating to penalties for violation of safety rules; reenacting s. 440.572, F.S., relating to authorization of individual self-insurers to provide coverage; reenacting s. 440.575(1)(c), F.S., relating to local government pools; reenacting s. 440.59, F.S., relating to risk management reports; reenacting s. 440.591, F.S., relating to rulemaking authority; reenacting ss. 489.114, 489.510, F.S., relating to evidence of coverage of contractors and electrical contractors; reenacting s. 626.611(15), F.S., relating to denial, suspension, or revocation of, or refusal to renew, a license or appointment for fraudulent and dishonest practices; reenacting s. 626.869(5), F.S., relating to workers' compensation insurance adjuster continuing education course requirements; reenacting s. 627.0915, F.S., relating to consideration of drug-free workplace programs in the setting of rates; reenacting s. 627.1615, F.S., relating to discrimination against certain applicants for coverage; reenacting s. 627.162, F.S., relating to installment payment of premiums; reenacting and amending ss. 54, 55, ch. 90-201, Laws of Florida, relating to the Joint Select Committee on Workers' Compensation and alternative methods of compliance for self-insurers; continuing ch.

440, F.S., as amended, in effect after October 1, 1991, notwithstanding its scheduled repeal; reenacting s. 57, ch. 90-201, Laws of Florida, relating to reduction of rates; reenacting and amending s. 115, ch. 90-201, Laws of Florida, relating to an appropriation to the Department of Labor and Employment Security; revising such appropriation; reenacting ss. 116-117, 119-120, ch. 90-201, Laws of Florida, relating to appropriations to the Department of Insurance and the Department of Professional Regulation and severability; repealing s. 118, ch. 90-201, Laws of Florida, relating to an appropriation to the Joint Legislative Management Committee; providing for retroactive application; providing an effective date.

House Amendment 1—On page 9, line 27, strike everything after the enacting clause and insert:

Section 1. Subsection (4) of section 20.13, Florida Statutes, 1990 Supplement, is reenacted to read:

20.13 Department of Insurance.—There is created a Department of Insurance.

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

Section 2. Subsections (2), (3), and (5) of section 20.171, Florida Statutes, 1990 Supplement, are reenacted to read:

20.171 Department of Labor and Employment Security.—There is created a Department of Labor and Employment Security.

(2) The following divisions, and bureaus within the divisions, of the Department of Labor and Employment Security are established:

- (a) Division of Labor, Employment, and Training.
- (b) Division of Unemployment Compensation.
- (c) Division of Administrative Services.
- (d) Division of Workers' Compensation.
- (e) Division of Vocational Rehabilitation.
- (f) Division of Safety.

(3) The following commissions are established within the Department of Labor and Employment Security:

- (a) Public Employees Relations Commission.
- (b) Unemployment Appeals Commission.

(5)(a)1.a. There is created within the Department of Labor and Employment Security an Industrial Relations Commission to consist of a presiding judge and four other judges, all to be appointed by the Governor after February 1, 1991, but before March 15, 1991, and all to serve full time. Each appointee shall have the qualifications required by law for judges of the District Courts of Appeal. In addition to these qualifications, the judges of the Industrial Relations Commission shall be substantially experienced in the field of workers' compensation.

b. Initially, the Governor shall appoint two judges for terms of 4 years, two judges for terms of 3 years, and one judge for a term of 2 years. Thereafter, each full-time judge shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause.

c. The initial appointment process, retention process, and filling of vacancies of unexpired terms for the judges shall be by the Supreme Court Judicial Nominating Commission. The Supreme Court Judicial Nominating Commission shall submit a report to the Governor by January 1, 1991, of fifteen candidates for the initial five judge appointments. The Governor shall appoint the individual judges.

d. Prior to the expiration of the term of office of a judge, the conduct of such judge shall be reviewed by the Supreme Court Judicial Nominating Commission. A report of the Supreme Court Judicial Nominating Commission regarding retention shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the judge. If the Supreme Court Judicial Nominating Commission issues a favorable report, the Governor shall reappoint the judge. However, if the Supreme Court Judicial Nominating Commission issues an unfavorable report, the Supreme Court Judicial Nominating Commission shall commence the

procedure for issuing a report to the Governor which shall include a list of three candidates for appointment. In the event a vacancy occurs during an unexpired term of a judge on the Industrial Relations Commission, then the Supreme Court Judicial Nominating Commission shall commence the procedure for issuing a report to the Governor which shall include a list of three candidates for appointment.

e. The Industrial Relations Commission judges are also subject to the jurisdiction of the Judicial Qualifications Commission during their term of office.

2. The presiding judge may by order filed in the records of the commission and with the approval of the Governor, appoint associate judges to serve as temporary judges of the commission. Such appointment may be made only of a currently commissioned judge of compensation claims. This appointment shall be for such periods of time as not to cause an undue burden on the caseload in the judge's jurisdiction. Each associate judge appointed shall receive no additional pay during the appointment except for expenses incurred in the performance of the additional duties.

3. The total salaries and benefits of all judges of the commission are to be paid from the trust fund created by s. 440.50. Notwithstanding any other provision of law, the judges shall be paid a salary equal to that paid under state law to the judges of District Courts of Appeal.

(b)1. The commission is vested with all authority, powers, duties, and responsibilities relating to review of orders of judges of compensation claims in workers' compensation proceedings under chapter 440. The Industrial Relations Commission shall review by appeal final orders of judges of compensation claims entered pursuant to chapter 440. The First District Court of Appeal shall retain jurisdiction over all workers' compensation proceedings pending before it on April 1, 1991. The commission may hold sessions and conduct hearings at any place within the state. Three judges shall consider each case and the concurrence of two shall be necessary to a decision. Any judge may request an en banc hearing for review of a final order of a judge of compensation claims.

2. The Industrial Relations Commission shall be within the Department of Labor and Employment Security but, in the performance of its powers and duties under chapter 440, shall not be subject to control, supervision, or direction by the Department of Labor and Employment Security. The commission is not an agency for purposes of chapter 120.

3. The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(c) The commission shall make such expenditures, including expenditures for personnel services and rent at the seat of government and elsewhere; for law books, reference materials, periodicals, furniture, equipment, and supplies; and for printing and binding, as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the commission shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the presiding judge.

(d) The commission may charge, in its discretion, for publications, subscriptions, and copies of records and documents. Such fees shall be deposited in the fund established in s. 440.50.

(e)1. The presiding judge shall exercise administrative supervision over the Industrial Relations Commission and over the judges and other officers of such courts.

2. The presiding judge of the Industrial Relations Commission shall have the power:

- a. To assign judges to hear appeals from final orders of judges of compensation claims.
- b. To hire and assign clerks and staff.
- c. To regulate use of courtrooms.
- d. To supervise dockets and calendars.

e. To do everything necessary to promote the prompt and efficient administration of justice in the courts over which he presides.

3. The presiding judge shall be responsible to the Chief Justice of the Supreme Court for such information as may be required by the chief justice, including, but not limited to, caseload, status of dockets, and disposition of cases in the courts over which he presides.

4. The presiding judge shall be selected by a majority of the judges for a term of 2 years. The presiding judge may succeed himself for successive terms.

5. There may be an executive assistant to the presiding judge who shall perform such duties as the presiding judge may direct. Additionally, each judge may have research assistants or law clerks.

(f)1. The commission shall maintain and keep open during reasonable business hours a clerk's office, provided in the Capitol or some other suitable building in Leon County, for the transaction of its business. All books, papers, records, files, and the seal of the commission shall be kept at this office. The office shall be furnished and equipped by the commission.

2. The Industrial Relations Commission shall appoint a clerk who shall hold his office during the pleasure of the commission. Before entering upon the discharge of his duties, the clerk shall give bond in the sum of \$5,000 payable to the Governor or his successors in office, to be approved by a majority of the members of the commission conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the office of the Secretary of State.

3. The clerk shall be paid an annual salary to be determined in accordance with s. 25.382.

4. The clerk is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the commission and paid from the annual appropriation for the Industrial Relations Commission from the Workers' Compensation Administration Trust Fund.

5. The clerk, upon the filing of a certified copy of a notice of appeal or petition, shall charge and collect a filing fee of \$250 for each case docketed, and shall charge and collect for copying, certifying, or furnishing opinions, records, papers, or other instruments, and for other services the same service charges as provided in s. 28.24. The state or its agencies, when appearing as appellant or petitioner, is exempt from the filing fee required in this subsection.

6. The clerk of the Industrial Relations Commission is required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the state Comptroller who shall place the same to the credit of the Workers' Compensation Administration Trust Fund.

(g) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida Industrial Relations Commission—Seal"; and it shall be judicially noticed.

(h) The commission is expressly authorized to destroy obsolete records of the commission.

(i) Industrial Relations Commission judges shall be reimbursed for travel expenses as provided in s. 112.061.

(j) The practice and procedure before the commission and the judges of compensation claims shall be governed by rules adopted by the Supreme Court except to the extent that such rules conflict with the provisions of this chapter.

Section 3. Section 4 of chapter 90-201, Laws of Florida, is reenacted to read:

Section 4. The Florida Bar is hereby requested to petition on or before January 1, 1991, the Florida Supreme Court for the adoption of rules for matters pending before the Industrial Relations Commission and such other rules as may be required by this act to be adopted by the courts of the State of Florida.

Section 4. Section 442.20, Florida Statutes, 1990 Supplement, is reenacted to read:

442.20 Workplace safety.—

(1) The Division of Safety within the Department of Labor and Employment Security shall assist in making the workplace a safer place to work and decreasing the frequency and severity of on-the-job injuries.

(2) The Division of Safety shall have the authority to adopt rules for the purpose of assuring safe working conditions for all workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe working conditions, and by providing for education and training in the field of safety.

(3) The provisions of chapter 440 which pertain to workplace safety shall be applicable to the Division of Safety.

(4) The administrative rules of the Department of Labor and Employment Security pertaining to the function of the Bureau of Industrial Safety and Health which are in effect immediately before July 1, 1990, continue in effect as rules of the Division of Safety until specifically amended by the Department of Labor and Employment Security.

Section 5. Section 7 of chapter 90-201, Laws of Florida, is reenacted to read:

Section 7. There is hereby appropriated from the Workers' Compensation Administration Trust Fund to the Department of Labor and Employment Security for fiscal year 1990-1991 5 full-time equivalent positions and the sum of \$250,000 to create and fund the Division of Safety within the Department of Labor and Employment Security.

Section 6. Section 440.015, Florida Statutes, 1990 Supplement, is reenacted to read:

440.015 Legislative intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand.

Section 7. Section 440.02, Florida Statutes, 1990 Supplement, is reenacted to read:

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

(1) "Accident" means only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to stress, fright or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a pre-existing disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident shall be compensable, with respect to death or permanent impairment.

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

(3) "Carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462.

(4) "Casual" as used in this section shall be taken to refer only to employments when the work contemplated is to be completed in not exceeding 10 working days, without regard to the number of men employed, and when the total labor cost of such work is less than \$100.

(5) "Child" includes a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, halfbrothers and halvesisters, and brothers and sisters by adoption, but does not include married brothers or married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employees are under 18 years of age, or under 22 years of age if a full-time student in an accredited educational institution.

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

(7) "Construction industry" means for-profit activities involving the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction. However, "construction" shall not mean a landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold or resold.

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

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

(10) "Department" means the Department of Labor and Employment Security.

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

(12) "Division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.

(13)(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed.

(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. However, except as hereinafter provided, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of the election with the division as provided in s. 440.05. Services shall be presumed to have been rendered the corporation in cases when such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as hereinafter provided, elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. However, partners or sole proprietors actively engaged in the construction industry are considered employees in all instances whether or not the right of election is exercised.

(d) "Employee" does not include:

1. An independent contractor, who is not subject to the control and direction of the employer as to his actual conduct, except those independent contractors engaged in the construction industry, including:

a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission; and

b. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, provided a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment.

c. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, provided that the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for his transportation service and is not paid by the hour or on some other time-measured basis.

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

3. A volunteer, except a volunteer worker for the state or a county, city, or other governmental entity. Notwithstanding the provisions of s. 440.26, a person who does not receive monetary remuneration for his services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, in the event that such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the division.

b. Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter; however, no officer of a corporation engaged in the construction industry shall be exempted from coverage under this chapter.

(14) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

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

(b) "Employment" includes:

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

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

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

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

1. Domestic servants in private homes.

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

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

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

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

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

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

(17) "Injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eyeglasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.

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

(19) "Permanent impairment" means any anatomic or functional abnormality or loss, existing after the date of maximum medical improvement, which results from the injury.

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

(21) "Self-insurer" means:

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

(b) Any employer who has secured payment of compensation through a group self-insurer pursuant to s. 440.57;

(c) Any group self-insurer established pursuant to s. 440.57;

(d) A public utility as defined in s. 364.02 or s. 366.02 that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.571; or

(e) Any local government pool established pursuant to s. 440.575.

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

(23) "Time of injury" means the time of the occurrence of the accident resulting in the injury.

(24) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury and includes only the wages earned on the job where the employee is injured and does not include wages from outside or concurrent employment except in the case of a volunteer firefighter, together with the reasonable value of housing furnished to the employee by the employer which is the permanent year-round residence of the employee, and gratuities to the extent reported to the employer in writing as taxable income received in the course of employment from others than the employer and employer contributions for health insurance for the employee or the employee's dependents. However, housing furnished to migrant workers shall be included in wages unless provided after the time of injury. In employment in which an employee receives consideration for housing, the reasonable value of such housing compensation shall be the actual cost to the employer or based upon the Fair Market Rent Survey promulgated pursuant to section 8 of the Housing and Urban Development Act of 1974, whichever is less. However, if employer contributions for housing or health insurance are continued after the time of the injury, the contributions are not "wages" for the purpose of calculating an employee's average weekly wage.

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

(26) "Construction design professional" means an architect, professional engineer, landscape architect, or land surveyor, or any corporation, professional or general, that has a certificate to practice in the construction design field from the Florida Department of Professional Regulation.

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

(28) "Domestic individual self-insurer" means an individual self-insurer:

- (a) Which is a corporation formed under the laws of this state;
- (b) Who is an individual who is a resident of this state or whose primary place of business is located in this state; or
- (c) Which is a partnership whose principals are residents of this state or whose primary place of business is located in this state.

(29) "Foreign individual self-insurer" means an individual self-insurer:

- (a) Which is a corporation formed under the laws of any state, district, territory, or commonwealth of the United States other than this state;
- (b) Who is an individual who is not a resident of this state and whose primary place of business is not located in this state; or
- (c) Which is a partnership whose principals are not residents of this state and whose primary place of business is not located in this state.

(30) "Insolvent member" means an individual self-insurer which is a member of the Florida Self-Insurers Guaranty Association, Incorporated, or which was a member and has withdrawn pursuant to s. 440.385(1)(b), and which has been found insolvent, as defined in paragraph (31)(a), (b), or (c), by a court of competent jurisdiction in this or any other state, or meets the definition of paragraph (31)(d).

(31) "Insolvency" or "insolvent" means:

- (a) That all assets of the individual self-insurer, if made immediately available, would not be sufficient to meet all the individual self-insurer's liabilities;
- (b) That the individual self-insurer is unable to pay its debts as they become due in the usual course of business;
- (c) That the individual self-insurer has substantially ceased or suspended the payment of compensation to its employees as required in this chapter; or
- (d) That the individual self-insurer has sought protection under the United States Bankruptcy Code or has been brought under the jurisdiction of a court of bankruptcy as a debtor pursuant to the United States Bankruptcy Code.

Section 8. Section 440.055, Florida Statutes, 1990 Supplement, is reenacted to read:

440.055 Annual employer affidavits.—If an employer employs fewer than four employees and chooses not to secure payment of compensation under this chapter, such employer shall file, on an annual basis, an affidavit with the division stating that he has not secured payment of compensation under this chapter for his employees and shall provide clear written notice to all employees of their lack of entitlement to benefits under this chapter. Such affidavit shall also contain the nature of the employer's business, the business address, and the telephone number.

Section 9. Section 440.09, Florida Statutes, 1990 Supplement, is reenacted to read:

440.09 Coverage.—

(1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the disability or death results from an injury arising out of and in the course of employment. Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in s. 440.15(6) shall for the purpose of this chapter be considered as a death resulting from the accident causing the hernia. Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.

(2) No compensation shall be payable in respect of the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or the Jones Act.

(3) No compensation shall be payable if the injury was occasioned primarily by the intoxication of the employee; by the influence of any drugs, barbiturates, or other stimulants not prescribed by a physician, which affected the employee to such an extent that the employee's normal faculties were impaired; or by the willful intention of the employee to injure or kill himself, herself, or another. If there was at the time of the injury 0.10 percent or more by weight of alcohol in the employee's blood, or if the employee has a positive confirmation of a drug as defined in this act, it shall be presumed that the injury was occasioned primarily by the intoxication of, or by the influence of the drug upon, the employee. In the absence of a drug-free workplace program, this presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. However, if, prior to the accident, the employer had actual knowledge of and expressly acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the presumption specified in this subsection shall not apply.

(4) Where injury is caused by the knowing refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully promulgated by the division, and brought prior to the accident to his or her knowledge, or where injury is caused by the knowing refusal of the employee to use a safety appliance provided by the employer, the compensation as provided in this chapter shall be reduced 25 percent.

(5) The division shall adopt rules governing the manner, means, and frequency of safety inspections and consultations by all carriers and self-insurers.

(6) Except as provided in this chapter, no construction design professional who is retained to perform professional services on a construction project, nor any employee of a construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injuries resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter, unless responsibility for safety practices is specifically assumed by contracts. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(7)(a) To ensure that the workplace is a drug and alcohol free environment and to deter the use of drugs and alcohol at the workplace, if the employer has reason to suspect that the injury was occasioned primarily by the intoxication of the employee or by the use of any drug, which affected the employee to the extent that the employee's normal faculties were impaired, the employer may require the employee to submit to a test for the presence of any or all drugs or alcohol in his system.

(b) If the injured worker refuses to submit to a test for nonprescription controlled substances or alcohol, it shall be presumed in the absence of clear and convincing evidence to the contrary that the injury was occasioned primarily by the influence of a nonprescription controlled substance or alcohol.

(c) The division shall provide by rule for the authorization and regulation of drug testing policies, procedures, and methods. Testing of injured employees shall not commence until such rules are adopted.

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

Section 10. Section 440.092, Florida Statutes, 1990 Supplement, is reenacted to read:

440.092 Special requirements for compensability; deviation from employment; subsequent intervening accidents.—

(1) RECREATIONAL AND SOCIAL ACTIVITIES.—Recreational or social activities are not compensable unless such recreational or social activities are an expressly required incident of employment and produce a substantial direct benefit to the employer beyond improvement in employee health and morale that is common to all kinds of recreation and social life.

(2) **GOING OR COMING.**—An injury suffered while going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer provided transportation if such means of transportation was available for the exclusive personal use by the employee, unless the employee was engaged in a special errand or mission for the employer.

(3) **DEVIATION FROM EMPLOYMENT.**—An employee who is injured while deviating from the course of his employment, including leaving the employer's premises, is not eligible for benefits unless such deviation is expressly approved by the employer, or unless such deviation or act is in response to an emergency and designed to save life or property.

(4) **TRAVELING EMPLOYEES.**—An employee who is required to travel in connection with his employment who suffers an injury while in travel status shall be eligible for benefits under this chapter only if the injury arises out of and in the course of his employment while he is actively engaged in the duties of his employment, which shall include travel necessary to and from the place where such duties are to be performed and other activities reasonably required by the travel status.

(5) **SUBSEQUENT INTERVENING ACCIDENTS.**—Injuries caused by a subsequent intervening accident arising from an outside agency which are the direct and natural consequence of the original injury are not compensable unless suffered while traveling to or from a health care provider for the purpose of receiving remedial treatment for the compensable injury.

Section 11. Section 440.10, Florida Statutes, 1990 Supplement, is reenacted to read:

440.10 Liability for compensation.—

(1) Every employer coming within the provisions of this chapter, including any brought within the chapter by waiver of exclusion or of exemption, shall be liable for, and shall secure, the payment to his employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Except as otherwise provided herein, every contractor or subcontractor shall, as a condition to receiving a building permit, show proof that he has secured compensation for his employees under this chapter as provided in s. 440.38. Further, any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his employees under this chapter as provided in s. 440.38. In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment; and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment. In the event a contractor becomes liable for the payment of compensation to the employees of a subcontractor who has failed to secure such payment in violation of s. 440.38, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage. A subcontractor who knowingly presents or causes to be presented, any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with s. 440.38 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness of liability provisions of s. 440.11 from action at law or in admiralty on account of injury of such employee of another subcontractor.

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

Section 12. Section 440.101, Florida Statutes, 1990 Supplement, is reenacted to read:

440.101 Legislative intent; drug-free workplaces.—It is the intent of the Legislature to promote drug-free workplaces in order that employers in the state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug abuse by employees. It is further the intent of the Legislature

that drug abuse be discouraged and that employees who choose to engage in drug abuse face the risk of unemployment and the forfeiture of workers' compensation benefits. If an employer implements a drug-free workplace program which includes notice, education, and testing for drugs and alcohol pursuant to rules developed by the division, the employer may require the employee to submit to a test for the presence of drugs or alcohol and, if a drug or alcohol is found to be present in the employee's system at a level prescribed by rule adopted pursuant to this act, the employee may be terminated and shall forfeit his eligibility for medical and indemnity benefits upon exhaustion of the procedures prescribed in s. 440.102(5). However, a drug-free workplace program shall require the employer to notify all employees that it is a condition of employment to refrain from taking drugs on or off the job and if the injured worker refuses to submit to a test for drugs or alcohol, he forfeits his eligibility for medical and indemnity benefits.

Section 13. Section 440.102, Florida Statutes, 1990 Supplement, is reenacted to read:

440.102 Drug-free workplace program requirements.—The following shall apply to a drug-free workplace program implemented pursuant to rules adopted by the division:

(1) **DEFINITIONS.**—Except where the context otherwise requires, as used in this act:

(a) "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein.

(b) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.

(c) "Initial drug test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent, or shall use a more accurate scientifically accepted method approved by the Department of Health and Rehabilitative Services as such more accurate technology becomes available in a cost-effective form.

(d) "Confirmation test," "confirmed test," or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(e) "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

(f) "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test.

(g) "Employee" means any person who works for salary, wages, or other remuneration for an employer.

(h) "Employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law.

(i) "Prescription or nonprescription medication" means a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

(j) "Reasonable suspicion drug testing" means drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.

2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

3. A report of drug use, provided by a reliable and credible source, which has been independently corroborated.

4. Evidence that an individual has tampered with a drug test during his employment with the current employer.

5. Information that an employee has caused, or contributed to, an accident while at work.

6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

(k) "Specimen" means tissue, hair, or product of the human body capable of revealing the presence of drugs or their metabolites.

(l) "Employee assistance program" means an established program for employee assessment, counseling, and possible referral to an alcohol and drug rehabilitation program.

(2) DRUG TESTING.—All drug testing conducted by employers shall be in conformity with the standards established in this section and all applicable rules adopted pursuant to this section. However, employers shall not have a legal duty under this section to request an employee or job applicant to undergo drug testing.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—Prior to testing, all employees and job applicants for employment must be given a written policy statement from the employer which contains:

(a) A general statement of the employer's policy on employee drug use, which shall identify:

1. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

2. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

(b) A statement advising the employee or job applicant of the existence of this section.

(c) A general statement concerning confidentiality.

(d) Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Department of Health and Rehabilitative Services shall be available to employers through the Division of Workers' Compensation of the Department of Labor and Employment Security.

(e) The consequences of refusing to submit to a drug test.

(f) Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

(g) A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result pursuant to rules adopted by the Department of Labor and Employment Security.

(h) A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

(i) A list of all drugs for which the employer will test, described by brand names or common names, as applicable, as well as by chemical names.

(j) A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court.

(k) A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication.

(l) An employer not having a drug testing program shall ensure that at least 60 days elapse between a general one-time notice to all employees that a drug testing program is being implemented and the beginning of actual drug testing. An employer having a drug testing program in place prior to the effective date of this section is not required to provide a 60-day notice period.

(m) An employer shall include notice of drug testing on vacancy announcements for those positions for which drug testing is required. A notice of the employer's drug testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the general public during regular business hours in the employer's personnel office or other suitable locations.

(4) TYPES OF TESTING.—An employer is required to conduct the following types of drug tests in order to qualify for the discounts provided under s. 627.0915:

(a) Job applicant testing.—An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusal to hire the job applicant.

(b) Reasonable suspicion.—An employer must require an employee to submit to reasonable suspicion drug testing.

(c) Routine fitness for duty.—An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

(d) Follow-up testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, and on a quarterly, semiannual, or annual basis for up to 2 years thereafter.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(a) A sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.

(b) Specimen collection shall be documented, and the documentation procedures shall include:

1. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results.

2. A form for the employee or job applicant to provide any information he considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. Such form shall provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.

(c) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which will reasonably preclude specimen contamination or adulteration.

(d) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed laboratory as described in subsection (9).

(e) A specimen for a drug test may be taken or collected by any of the following persons:

1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.

2. A qualified person employed by a licensed laboratory.

(f) A person who collects or takes a specimen for a drug test conducted pursuant to this section shall collect an amount sufficient for two drug tests as determined by the Department of Health and Rehabilitative Services.

(g) Every specimen that produces a positive confirmed result shall be preserved by the licensed laboratory that conducts the confirmation test for a period of at least 210 days after the results of the positive confirmation test are mailed or otherwise delivered to the employer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Department of Health and Rehabilitative Services, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory which performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive confirmed test result from the testing laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant.

(i) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(j) Within 5 working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to an employer explaining or contesting the test results, and why the results do not constitute a violation of the employer's policy.

(k) If an employee's or job applicant's explanation or challenge of the positive test results is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the employer to the employee or job applicant; and all such documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.

(l) No employer may discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test.

(m) An employer who performs drug testing or specimen collection shall use chain-of-custody procedures as established by the Department of Health and Rehabilitative Services to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested.

(n) An employer shall pay the cost of all drug tests, initial and confirmation, which he requires of employees.

(o) An employee or job applicant shall pay the costs of any additional drug tests not required by the employer.

(p) No employer shall discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program.

(q) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.

(6) CONFIRMATION TESTING.—

(a) If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test.

(b) Only licensed laboratories as described in subsection (9) shall conduct confirmation drug tests.

(c) All positive initial tests shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate sci-

entifically accepted method approved by the Department of Health and Rehabilitative Services as such technology becomes available in a cost-effective form.

(7) EMPLOYER PROTECTION.—

(a) No employee or job applicant whose drug test result is confirmed as positive in accordance with the provisions of this section shall, by virtue of the result alone, be defined as a person having a "handicap" as cited in the 1973 Rehabilitation Act.

(b) An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section shall be considered to have discharged, disciplined, or refused to hire for cause.

(c) No physician-patient relationship is created between an employee or job applicant and an employer or any person performing or evaluating a drug test, solely by the establishment, implementation, or administration of a drug testing program.

(d) Nothing in this section shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(e) Nothing in this section shall be construed to operate retroactively, and nothing in this section shall abrogate the right of an employer under state law to conduct drug tests, or implement employee drug testing programs, prior to October 1, 1990; however, only those programs that meet the criteria outlined in this section qualify for reduced rates under s. 627.0915.

(f) If an employee or job applicant refuses to submit to a drug test, the employer shall not be barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, nothing in this paragraph shall abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section.

(g) Nothing in this section shall be construed to prohibit an employer from conducting medical screening or other tests required by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests.

(8) CONFIDENTIALITY.—The provisions of s. 119.07 to the contrary notwithstanding:

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the employer through a drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter.

(b) Employers, laboratories, employee assistance programs, drug and alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

1. The name of the person who is authorized to obtain the information.
2. The purpose of the disclosure.
3. The precise information to be disclosed.
4. The duration of the consent.
5. The signature of the person authorizing release of the information.

(c) Information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding.

(d) Nothing herein shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a drug test from having access to employee drug test information when consulting with legal counsel in connection with actions brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter.

(9) DRUG TESTING STANDARDS; LABORATORIES.—

(a) No laboratory may analyze initial or confirmation drug specimens unless:

1. The laboratory is licensed and approved by the Department of Health and Rehabilitative Services using criteria established by the National Institute on Drug Abuse as guidelines for modeling the state drug testing program pursuant to this section.

2. The laboratory has written procedures to ensure the chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(b) A laboratory shall disclose to the employer a written test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result shall, at a minimum, state:

1. The name and address of the laboratory which performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial and confirmation tests and the minimum cutoff levels of the tests.

5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.

No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

(c) The laboratory shall submit to the Department of Health and Rehabilitative Services a monthly report with statistical information regarding the testing of employees and job applicants. The report shall include information on the methods of analyses conducted, the drugs tested for, the number of positive and negative results for both initial and confirmation tests, and any other information deemed appropriate by the Department of Health and Rehabilitative Services. No monthly report shall identify specific employees or job applicants.

(d) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(10) RULES.—

(a) The Department of Labor and Employment Security shall adopt rules using rules adopted by the Department of Health and Rehabilitative Services pursuant to s. 112.0455 and criteria established by the National Institute on Drug Abuse as guidelines for modeling the state drug testing program, concerning, but not limited to:

1. Standards for drug testing laboratory licensing and suspension and revocation of a license.

2. Body specimens and minimum specimen amounts which are appropriate for drug testing.

3. Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests.

4. Minimum cutoff detection levels for drugs or their metabolites for the purposes of determining a positive test result.

5. Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested.

6. Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

(b) This section shall not be construed to eliminate the bargainable rights as provided in the collective bargaining process if applicable.

Section 14. Subsection (1) of section 440.11, Florida Statutes, 1990 Supplement, is reenacted to read:

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed exceeds 60 days imprisonment as set forth in s. 775.082.

Section 15. Subsection (1) of section 440.12, Florida Statutes, 1990 Supplement, is reenacted to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) No compensation shall be allowed for the first 7 days of the disability, except benefits provided for in s. 440.13. However, if the injury results in disability of more than 21 days, compensation shall be allowed from the commencement of the disability. All weekly compensation payments, except for the first payment, shall be paid by check.

Section 16. Section 440.13, Florida Statutes, 1990 Supplement, is reenacted to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

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

(a) "Health care facility" means any hospital licensed under chapter 395 and any health care institution licensed under chapter 400.

(b) "Health care provider" means a physician or any recognized practitioner who provides skilled services pursuant to the prescription of or under the supervision or direction of a physician.

(c) "Independent medical examination" means an objective medical or chiropractic evaluation of the injured employee's medical condition and work status.

(d) "Medically necessary" means any service or supply used to identify or treat an illness or injury which is appropriate to the patient's diagnosis, consistent with the location of service and with the level of care provided. The service should be widely accepted by the practicing peer group, should be based on scientific criteria, and should be determined to be reasonably safe. The service may not be of an experimental, investigative, or research nature, except in those instances in which prior approval of the division has been obtained. The division shall promulgate rules providing for such approval on a case-by-case basis when the procedure is shown to have significant benefits to the recovery and well-being of the patient.

(e) "Medicines" means drugs prescribed by an authorized health care provider and includes only generic drugs or single-source patented drugs for which there is no generic equivalent, unless the authorized health care provider writes or states that the brand name as defined in s. 465.025 is medically necessary.

(f) "Peer review" means an evaluation by a peer review committee, after utilization review, of the appropriateness, quality, and cost of health care and health services provided a patient, based on medically accepted standards.

(g) "Peer review committee" means a committee composed of physicians licensed under the same authority as the physician who rendered the services being reviewed.

(h) "Physician" means a physician licensed under chapter 458, an osteopath licensed under chapter 459, a chiropractor licensed under chapter 460, a podiatrist licensed under chapter 461, an optometrist licensed under chapter 463, or a dentist licensed under chapter 466.

(i) "Utilization review" means the evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. Such evaluation shall be accomplished by means of a system which identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the division for referral to a peer review committee or to obtain opinions and recommendations of expert medical consultants, with similar qualifications as those providing the care under review, recommended by the division and approved by the three-member panel referred to in paragraph (4)(a) to review individual cases for which administrative action may be deemed necessary. Utilization review also includes reviewing cases where medical costs exceed \$20,000, reviewing requests for sequential health care by different medical care providers, and reviewing disputes between health care providers and reimbursement sources concerning interpretation of the schedules of maximum reimbursement allowances and coding procedures under said allowances.

(2)(a) Subject to the limitations specified in s. 440.19(1)(b), the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance by a health care provider and for such period as the nature of the injury or the process of recovery may require, including medicines, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus. However, no health care provider may refer the employee to another health care provider, diagnostic facility, pain program, work hardening program, therapy center, or other facility without the prior authorization from the carrier or the employer if self-insured except in cases where emergency care is required.

(b) The right to conduct an independent medical examination includes, but is not limited to, instances when the authorized treating physician has not provided current medical reports; determining whether overutilization by a health care provider has occurred; whether a change in health care provider is necessary; or whether treatment is necessary or the employee appears not to be making appropriate progress in recuperation. The employer or carrier has the right to schedule an independent medical examination with a health care provider of its choice, at a reasonable time to assist in determining this status. The health care provider performing the independent medical examination shall not be the health care provider to provide the treatment or followup care, unless the carrier or self-insurer and the employee so agree or unless an emergency exists.

(c) Overutilization review shall be by physicians licensed under the same licensing chapter as the physician reviewed. Overutilization of health care shall be a basis for deauthorizing such care without order of the judge of compensation claims, provided a determination has been made as provided in this section and alternate medical care has been offered by the employer or carrier. Findings of overutilization as provided in this section shall presumptively establish, in the absence of substantial and compelling evidence to the contrary, that such treatment is not in the best interest of the injured employee. A physician shall be barred from payment under this chapter for treatment of injured employees upon three findings of overutilization. Any list of health care providers developed by a carrier, not including pharmacists, from which health care providers are selected to provide remedial treatment, care, and attendance shall include representation of each type of health care provider defined in s. 440.13(3)(d)1.d., Florida Statutes, 1981, and shall not discriminate against any of the types of health care providers as a class.

(d) If the employer fails to provide such treatment, care, and attendance after request by the injured employee, the employee may do so at the expense of the employer, the reasonableness and the necessity to be approved by a judge of compensation claims. The employee shall not be entitled to recover any amount personally expended for such treatment or service unless he has requested the employer to furnish the same and the employer has failed, refused, or neglected to do so or unless the nature of the injury required such treatment, nursing, and services and the employer or the superintendent or foreman thereof, having knowledge of such injury, has neglected to provide the same. Nor shall any claim for medical, surgical, or other remedial treatment be valid and enforceable unless, within 14 days following the first treatment, except in cases where first-aid only is rendered, within 14 days following the date of maximum medical improvement or the date of final treatment, and at such intervals as the division by regulation may prescribe, the health care provider or health care facility giving such treatment or treatments furnishes to the employer, or to the carrier if the employer is not self-insured, a report of such injury and treatment on forms prescribed by the division; however, a judge of compensation claims, for good cause, may excuse the failure of the health care provider or health care facility to furnish any report within the period prescribed and may order the payment to such employee of such remuneration for treatment or service rendered as the judge of compensation claims finds equitable. Along with such reports, the health care provider shall furnish a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained. The sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief; and that the treatment and services rendered were reasonable and necessary with respect to the bodily injury sustained."

(e) Each medical report or bill obtained or received by the employer, the carrier, or the injured employee, or the attorney for any of them, with respect to the remedial treatment, care, and attendance of the injured employee, including any report of an examination, diagnosis, or disability evaluation, shall be filed with the Division of Workers' Compensation by a deadline specified by the division and pursuant to rules adopted by the division. The health care provider or health care facility shall also furnish to the injured employee, or to his attorney, on demand, a copy of his office chart, records, and reports and may charge the injured employee an amount authorized by the division for the copies. Each such health care provider or health care facility shall provide to the division such additional information with respect to the remedial treatment, care, and attendance that the division may reasonably request as part of its investigation of a claim filed by an injured worker for benefits under this chapter. Notwithstanding the limitations in s. 455.241 and subject to the limitations in s. 381.609, upon the request of the employer, the carrier, the attorney for either of them, or the rehabilitation provider, the medical records of an injured employee shall be furnished to such persons and the medical condition of the injured employee shall be discussed with such persons, provided the records and the discussions are restricted to conditions relating to the workplace injury or to situations where the employer or carrier has reason to believe there is a probable basis for filing a claim against the Special Disability Trust Fund as a result of such injury and the employee or his attorney has been furnished a copy of such claim. No records so provided or discussions held pursuant to this exemption, or any information contained therein, shall be disclosed to any other person, nor shall the same be discoverable in any civil or criminal action.

(f) The employer shall provide appropriate professional or nonprofessional custodial care when the nature of the injury so requires and is per-

formed at the direction and control of a physician. A physician must state that home or custodial care is necessary as a result of the accident and must describe with a reasonable degree of particularity the nature and extent of the duties to be performed. Family members may not be paid for such care unless prescribed by a physician and may only be compensated for such services which go beyond the scope of household duties performed gratuitously by a family member. "Attendant or custodial care" means care usually rendered by trained professional attendants and beyond the scope of household duties.

(g) The value of nonprofessional attendant or custodial care provided by a family member shall be determined as follows:

1. If the family member is not employed, the per hour value shall be that of the federal minimum wage.

2. If the family member is employed and elects to leave that employment to provide attendant or custodial care, the per hour value of that care shall be at the per hour value of such family member's former employment, not to exceed the per hour value of such care available in the community at large. In no event shall a family member or a combination of family members providing nonprofessional attendant or custodial care pursuant to this paragraph be compensated for more than a total of 12 hours per day.

"Family member" is defined for purposes of this subsection to be a spouse, father, mother, brother, sister, child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

(h) The division shall adopt rules governing the manner, means, and requirements for utilization review by all carriers and self-insurers. The division shall also define the procedures to be followed by carriers and self-insurers who identify cases of overutilization or improper utilization. Failure to implement utilization review procedures by a carrier or self-insurer shall be grounds for certification to the Department of Insurance. The division shall also review utilization review procedures and findings during carrier practice audits to ensure that carriers and self-insurers have adequate utilization review programs and that such programs are actively implemented.

(i)1. The division shall conduct individual claimant reviews and random sample reviews of health care providers, and shall also resolve reimbursement disputes based on criteria to be established by rule. Upon receipt of a request for an individual claimant review based on a charge of overutilization or improper utilization, the division shall respond to the requesting party within 30 days. The response shall advise that either the division finds there is no basis for the requesting party's charge, or that the division has forwarded the request for review to the peer review committee and the division's medical consultant. If the peer review committee and medical consultant disagree, the division shall refer the review request to a second medical consultant. The two opinions in agreement shall determine the disposition of the review request.

2. Upon receipt of a request to resolve a reimbursement dispute, the division shall provide to the requesting party, the employer, and the carrier, within 60 days, a written determination of whether the employer or carrier properly complied with reimbursement policies of this chapter and the applicable schedule of maximum reimbursement allowances.

3.a. If there is disagreement in the opinions of the health care providers, if two health care providers have determined that there is no medical evidence to support the claimant's complaints or the need for additional medical treatment, or if two health care providers agree that the employee is able to return to work, then within 15 days after receipt of the written request of the injured employee, employer, or the carrier, the judge of compensation claims shall order the injured employee to be evaluated by an appropriate health care provider from a list provided by the division. The opinion of the health care provider shall be presumed correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The medical issues in the evaluation may include the following: whether the injured employee is able to perform any gainful employment temporarily or permanently; what physical restrictions, if any, would be imposed on the employee's employment; whether the injured employee has reached maximum medical improvement; the existence and extent of any permanent physical impairment; and the reasonableness and necessity of any medical treatment previously provided, or to be provided, to the injured employee. The health care provider appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. All indemnity benefits shall terminate during any period in which an employee fails to report to and cooperate with such evaluation.

b. There shall not be monetary liability on the part of, and no cause of action for damages shall arise against, a health care provider rendering an evaluation under this subsection, without a showing of fraud or malice.

c. Upon the completion of the evaluation by the health care provider, a report shall be sent to the judge of compensation claims within 30 days after the order appointing the health care provider. A copy of the report shall also be furnished to the carrier, self-insurer, or employer, if self-insured. For the purpose of determining entitlement to attorney's fees pursuant to s. 440.34, receipt of notice of the claim shall begin to run upon receipt of the medical report submitted by the evaluating health care provider by the carrier or by the employer, if self-insured.

(j) An employer, carrier, self-insurer, health care provider, or rehabilitation provider shall not refer, for medical care, rehabilitation, or other services under this chapter, an injured worker to any entity in which the employer, carrier, self-insurer, health care provider, or rehabilitation provider has a financial or ownership interest without disclosing to the employer and the employee in writing the nature of such interest prior to the referral.

(k) Any health care provider who gives a deposition shall be allowed a witness fee. The amount charged by such witness may not exceed \$200. This limitation does not apply to an expert witness who has never provided direct professional services to a party or has provided only direct professional services which were unrelated to the workers' compensation case.

(3) If an injured employee objects to the medical attendance furnished by the employer pursuant to subsection (2), it shall be the duty of the employer to select another physician to treat the injured employee unless a judge of compensation claims determines that a change in medical attendance is not for the best interests of the injured employee; however, a judge of compensation claims may at any time, for good cause shown, in the judge of compensation claims' discretion, order a change in such remedial attention, care, or attendance. It is unlawful for any employer or representative of any insurance company or insurer to coerce or attempt to coerce a sick or injured employee in the selection of a physician, surgeon, or other attendant or remedial treatment, nursing or hospital care, or any other service that the sick or injured employee may require; and any employer or representative of any insurance company or insurer who violates this provision is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The health care provider or health care facility providing services pursuant to this section shall be paid for the services solely by the employer or its insurance carrier, except for payments from third parties who have been determined to be liable for such payment. Subject to the provisions of paragraph (2)(d), the employee is not liable for payment for treatment or services provided pursuant to this section.

(4)(a) A three-member panel is created, consisting of the Insurance Commissioner and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine schedules of maximum reimbursement allowances for such medically necessary remedial treatment, care, and attendance. On or before January 1, 1991, the three-member panel shall adopt a schedule of maximum reimbursement allowances for physician charges, which shall provide that maximum reimbursement allowances shall not exceed 95 percent of the 50th percentile of the physician charges used to establish the 1988 Schedule of Maximum Reimbursement. The maximum reimbursement allowances of such schedule shall not be increased for at least 2 years following adoption. Subsequent schedules of maximum reimbursement for physician charges shall not exceed 95 percent of the 50th percentile of physician charges entered into the division's data base of medical charge data. An individual health care provider or physician shall be reimbursed either his usual and customary charge for treatment, care, and attendance or the maximum reimbursement allowance in the schedule, whichever is less.

(b) The three-member panel shall adopt a schedule of maximum reimbursement allowances for ambulatory surgical center charges pursuant to the following:

1. All ambulatory surgical centers shall submit charge data to the division on a form and in a manner prescribed by the division. The division shall enter such data into its data base of medical charge data.

2. The division shall identify those ambulatory surgical center charges which constitute 80 percent of the most frequently incurred charges, which shall be contained in the schedule of maximum reimbursement allowances for ambulatory surgical centers.

3. The division shall prepare arrays of ambulatory surgical center charges to be included in the schedule and shall identify the values for the 50th percentile.

4. The division shall submit the arrays to the three-member panel no later than March 1, 1991, and by March 1 of each subsequent year. The three-member panel shall review the arrays within 30 days of receipt and shall approve a schedule of maximum reimbursement allowances based on 80 percent of the 50th percentile, which will be effective July 1, 1991, and July 1 of each subsequent year.

5. Effective July 1, 1991, if the usual and customary charge is equal to or less than 80 percent of the 50th percentile, the reimbursement shall be at 80 percent of the 50th percentile or 80 percent of the usual and customary charge, whichever is less. If the usual and customary charge is greater than the amount represented by 80 percent of the 50th percentile, charges shall be reimbursed at 80 percent of the 50th percentile or 65 percent of the usual and customary charge, whichever is greater. Reimbursement of a compensable ambulatory surgical center charge not itemized in the schedule of maximum reimbursement allowances shall be at 70 percent of the ambulatory surgical center's usual and customary charge. Until the three-member panel approves a schedule of maximum reimbursement allowances, all medically necessary compensable ambulatory surgical center charges shall be reimbursed at 80 percent of their usual and customary charge.

(c) No later than August 1, 1990, all hospitals shall submit to the division the price list masters which were in effect on January 1, 1990. The division shall review a random sample of hospital charges received in order to determine at least 250 of the most frequently incurred hospital charges for treatment of injured employees pursuant to this chapter. The division shall prepare arrays of hospital charges from the price list masters for at least 250 of the most frequently incurred charges and shall identify the values for the 50th percentile. The division shall submit the arrays to the three-member panel no later than October 1, 1990. The three-member panel shall review the arrays within 30 days of receipt and shall approve a schedule of maximum reimbursement allowances based on 80 percent of the 50th percentile which will be effective January 1, 1991. Effective January 1, 1991, if the usual and customary charge is equal to or less than 80 percent of the 50th percentile, the reimbursement shall be at 80 percent of the 50th percentile or 80 percent of the usual and customary charges, whichever is less. If the usual and customary charge is greater than the amount represented by 80 percent of the 50th percentile, charges shall be reimbursed at 80 percent of the 50th percentile or 65 percent of the usual and customary charge, whichever is greater. Reimbursement of a compensable hospital charge not itemized in the schedule of maximum reimbursement allowances shall be at 70 percent of the hospital's usual and customary charge.

Notwithstanding the above, compensable charges for trauma centers, as defined in s. 395.031, and for emergency services and care, as defined in s. 395.0142, shall be reimbursed at 80 percent of the usual and customary charge from July 1, 1990, through December 31, 1991. Effective January 1, 1992, the schedule of maximum reimbursement allowances shall include at least 250 of the most frequently incurred charges for hospitals, emergency services and care, and trauma centers. Effective January 1, 1992, reimbursement of compensable charges for emergency services and care and trauma centers not itemized in the schedule of maximum reimbursement allowances shall be at 70 percent of the usual and customary charge. Until the three-member panel approves a schedule of maximum reimbursement allowances and it becomes effective, all medically necessary compensable hospital charges shall be reimbursed at 75 percent of their usual and customary charge. The division shall develop a data base of at least 250 of the most frequently incurred charges for hospitals, emergency services and care, and trauma centers contained in the schedule of maximum reimbursement allowances. Beginning July 1, 1991, and on an annual basis thereafter, the division shall develop arrays of at least 250 of the most frequently incurred charges contained in the schedule of maximum reimbursement allowances from charge data entered into the division's data base for the previous year, which shall include charge data for hospitals, trauma centers, and emergency services and care. The division shall enter the charge data into its data base of medical charge data to ensure accurate arrays. The three-member panel shall annually review the data arrays and shall approve a schedule of maximum reimbursement

allowances based on a maximum of 80 percent of the 50th percentile which shall not reflect an increase greater than the aggregate maximum allowable rate of increase as defined in s. 407.002(17), and which shall become effective the subsequent January 1. The three-member panel may develop two or more schedules of maximum reimbursement allowances based on groupings of hospitals providing like services. However, the maximum reimbursement allowances contained in the schedule of maximum reimbursement allowances for each group shall not exceed 80 percent of the 50th percentile of that group. Actual reimbursement of charges shall be as otherwise provided in this section.

(d) The three-member panel shall adopt a schedule of maximum reimbursement allowances for work hardening program charges and pain program charges pursuant to the following:

1. All work hardening centers and pain programs shall submit charge data to the division on a form and in a manner prescribed by the division. The division shall enter such data into its data base of medical charge data and identify those charges which constitute 80 percent of the most frequently incurred charges.

2. The division shall prepare arrays of the charge data for the most frequently incurred charges and submit them to the three-member panel no later than August 1, 1991. The three-member panel shall review the arrays within 30 days of receipt and shall approve a schedule of maximum reimbursement allowances which is reasonable and which provides for cost containment. Work hardening center charges and pain program charges shall be reimbursed at either the usual and customary charge or the maximum reimbursement allowance in the schedule, whichever is less.

3. The schedule of maximum reimbursement for work hardening centers and pain programs shall be effective no later than January 1, 1992. Reimbursement of a compensable charge not specifically itemized in the applicable schedule shall be at 70 percent of the usual and customary charge. Until the three-member panel adopts a schedule of maximum reimbursement allowances for pain programs and work hardening centers, all medically necessary charges for pain programs and work hardening centers shall be at 80 percent of the usual and customary charge.

(e) As to reimbursements for prescription medication, the maximum reimbursement amount for a prescription shall be the average wholesale price times 1.2 plus \$4.18 for the dispensing fee.

(f) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, shall not exceed the amounts provided by the schedules of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. In determining the schedules, the panel shall first approve the bodies of medical and hospital data which it finds representative of prevailing charges in the state for such treatment, care, and attendance in the state for similar treatment, care, and attendance of injured persons. In determining the schedule for hospitals after January 1, 1987, the panel shall approve and use charge data submitted by hospitals to the division and to the Health Care Cost Containment Board where applicable as representative of charges for the treatment, care, and attendance in the state of injured persons. Each health care provider, health care facility, ambulatory surgical center, hospital, pain program, or work hardening center receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the schedules of maximum reimbursement allowances, the panel shall consider the following:

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

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

b. The potential change in workers' compensation insurance premiums or costs attributable to the level of treatment, care, and attendance provided; and

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance.

The schedules of maximum reimbursement allowances shall be reasonable, shall promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and shall be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers.

(g) Definitions, policies, and procedures contained in the 1988 Edition of the Florida Workers' Compensation Reimbursement Manual and not revised, amended, or otherwise addressed by this act, shall remain in effect until a subsequent edition is promulgated by the division.

(h) The Division of Workers' Compensation of the Department of Labor and Employment Security is empowered to investigate health care providers and health care facilities to determine if they are in compliance with the rules adopted by the division or department or if they are requiring unjustified treatment, hospitalization, or office visits. If the division finds that a health care provider or health care facility has made such excessive charges or required such treatment, services, hospitalization, or visits, the health care provider or health care facility may not receive payment under this chapter from a carrier, employer, or employee for the excessive fees or unjustified treatment, hospitalization, or visits; furthermore, the health care provider or health care facility is liable to return to the carrier or self-insurer any such fees or charges already collected.

(i)1. The division shall develop and implement, or contract with a qualified entity to develop and implement, utilization review of the services rendered by a health care provider or a physician, which services are paid for in whole or in part pursuant to this chapter. Utilization review shall be accomplished either by request from any interested party or upon the request of the division. Findings of overutilization shall include deauthorization of the care under review or denial of payment for services rendered in the future, or both. During the utilization review process, the care under review shall continue. Utilization review under this section shall be exempt from the provisions of chapter 120.

2. The division shall contract with a private nonprofit foundation or nonprofit organization to provide peer review or utilization review, as appropriate, of health care and physician services rendered pursuant to this chapter. Under the terms of such contract, the foundation or organization shall establish and maintain a procedure by which a peer review committee shall review the services rendered by a health care provider, physician, or health care facility, which services are paid for in whole or in part pursuant to this chapter. Such review shall occur upon a determination by the division that information referred to it by the entity responsible for utilization review contains reliable information that a health care provider or health care facility is rendering services in a manner which may be inappropriate with respect to either the level or the quality of care. The report and recommendations of the peer review committee shall be submitted to the division for such action as may be necessary in accordance with this section.

3. By accepting payment pursuant to this chapter for remedial treatment rendered to an injured employee, a health care provider or health care facility shall be deemed to consent to submitting all necessary records and other information concerning such treatment to utilization review and peer review as provided by this section. Such health care provider shall further agree to comply with any decision of the division pursuant to subparagraph 4.

4. If it is determined that a physician improperly overutilized, or otherwise rendered or ordered, inappropriate medical treatment or services, or that the reimbursement for such treatment or services was inappropriate, the division may order the physician to show cause why he should not be required to repay the amount which was paid for the rendering or ordering of such treatment or services and shall inform him of his right to a hearing under the provisions of s. 120.57. If a hearing is not requested within 30 days of receipt of the order and the division director decides to proceed with the matter, a hearing shall be conducted, a prima facie case established, and a final order issued. If the final order, including judicial review if the order is appealed, is adverse to the physician, the division shall provide the licensing board of the physician with full documentation of such determination.

5. A health care facility may not improperly charge or overcharge a workers' compensation insurer or charge for services not provided for the purpose of obtaining additional reimbursement.

6. Violations of this section which are willful or which demonstrate a pattern of improperly charging or overcharging workers' compensation insurers constitute grounds for the division or department to impose a fine not to exceed \$5,000.

7. The referral by the entity responsible for the utilization review, the decision of the division to refer the matter to the peer review committee, the establishment by the foundation or organization of the procedures by which a peer review committee reviews the rendering of health care services, and the review proceedings, report, and recommendation of the peer review committee are not subject to the provisions of chapter 120.

8. The provisions of s. 766.101 apply to any officer, employee, or agent of the division and to any officer, employee, or agent of any entity with which the division has contracted pursuant to this section.

(5) The division shall audit employers, carriers, and self-insurers to determine if medical bills are paid in accordance with this section and division rules. Any employer, carrier, or self-insurer found by the division not to be within 90 percent compliance as to the payment of medical bills shall be assessed a fine of \$50 per incorrect bill. Within 60 days of the first audit, the division shall conduct a second audit for any employer found not to be in compliance, and if the employer is still not within 90 percent compliance, the division shall assess the employer \$100 per incorrect bill. Any employer found not in compliance by the second audit shall be required to implement a medical bill review program approved by the division, and shall be subject to appropriate licensing review by either the division or the Department of Insurance.

(6) An injured employee is entitled, as a part of his remedial treatment, care, and attendance, to reasonable actual cost of transportation to and from the doctor's office, hospital, or other place of treatment by the most economical means of transportation available and suitable in the individual case. When the employee is entitled to such reimbursement for transportation by private automobile, it shall be presumed, in the absence of proof, that the actual cost is the amount allowed by the state to employees for official travel.

Section 17. Section 440.135, Florida Statutes, 1990 Supplement, is reenacted to read:

440.135 Pilot programs for medical and remedial care in workers' compensation.—

(1) It is the intent of the Legislature to determine whether the costs of the workers' compensation system can be effectively contained by monitoring more closely the medical, hospital, and remedial care required by s. 440.13, while providing injured workers with more prompt and effective care and earlier restoration of earning capacity without diminution of the quality of such care. Therefore, the Legislature authorizes the establishment of one or more pilot programs to be administered by the Department of Insurance after consulting with the division. Each pilot program shall terminate 2 years after the first date of operation of the program, unless extended by act of the Legislature. In order to implement these pilot programs, the Department of Insurance shall consult with the division regarding:

(a) Initiating a pilot project basing reimbursement to hospitals on diagnostic related groups, if a study determines that it is cost effective and a statistically valid method for reimbursement.

(b) Establish alternate delivery systems using a health maintenance organization model, which includes physician fees, competitive bidding, or capitation models.

(c) Controlling and enhancing the selection of providers of medical, hospital, and remedial care and using the peer review and utilization review procedures in s. 440.13(1) to control the utilization of care by physicians providing treatment pursuant to s. 440.13(2)(a).

(d) Establishing, by agreement, appropriate fees for medical, hospital, and remedial care pursuant to this chapter.

(e) Promoting effective and timely utilization of medical, hospital, and remedial care by injured workers.

(f) Coordinating the duration of payment of disability benefits with determination made by qualified participating providers of medical, hospital, or remedial care.

(g) Other methods of monitoring reduced costs within the workers' compensation system while maintaining quality care.

(2) The Department of Insurance, after consulting with the division, may, without a bidding process, negotiate and enter into such contracts as may be necessary or appropriate in its judgment to implement the pilot program.

(3) The Department of Insurance may also accept grants and moneys from any source and may expend such grants and moneys for the purposes of the program.

(4) No provision of the pilot programs may vary the methods for calculating weekly payments for disability compensation under this chapter. Likewise, no provision of the pilot programs shall limit the right to a hearing under s. 440.25.

(5) The Department of Insurance shall make an interim report on or before December 1, 1991, and a final report on or before the termination date specified in subsection (1) to the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor, on the activities, findings, and recommendations of the Department of Insurance relative to the pilot programs. The Department of Insurance shall monitor, evaluate, and report the following information regarding physicians, hospitals, and other remedial care providers:

- (a) Cost savings.
- (b) Effectiveness.
- (c) Effect on earning capacity and indemnity payments.
- (d) Complaints from injured workers and providers.
- (e) Concurrent review of quality of care.
- (f) Other pertinent matters.

The information from the pilot programs shall be reported in a format to permit comparisons to other similar data.

Section 18. Section 440.15, Florida Statutes, 1990 Supplement, is reenacted to read:

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

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 $\frac{2}{3}$ percent of the average weekly wages shall be paid to the employee during the continuance of such total disability.

(b) Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof or paraplegia or quadriplegia shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts. In such other cases, no compensation shall be payable under paragraph (a) if the employee is engaged in, or is physically capable of engaging in, gainful employment; and the burden shall be upon the employee to establish that he is not able uninterruptedly to do even light work available within a 100-mile radius of the injured employee's residence due to physical limitation.

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

(d) If an employee who is being paid compensation for permanent total disability becomes rehabilitated to the extent that he establishes an earning capacity, he shall be paid, instead of the compensation provided in paragraph (a), wage-loss benefits pursuant to paragraph (3)(b). The division shall adopt rules to enable a permanently and totally disabled employee who may have reestablished an earning capacity to undertake a trial period of reemployment without prejudicing his return to permanent total status in the case that such employee is unable to sustain an earning capacity.

(e)1. In case of permanent total disability resulting from injuries which occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under the provisions of s. 440.20(12), the injured employee shall receive additional weekly compensation benefits equal to 5 percent of his weekly compensation rate, as established pursuant to the law in effect on the date of his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable pursuant to this paragraph, when combined, shall not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12(2). Entitlement to these supplemental

payments shall cease at age 62 if the employee is eligible for social security benefits under 42 U.S.C. ss. 402 and 423, whether or not the employee has applied for such benefits. These supplemental benefits shall be paid by the division out of the Workers' Compensation Administration Trust Fund when the injury occurred subsequent to June 30, 1955, and before July 1, 1984. These supplemental benefits shall be paid by the employer when the injury occurred on or after July 1, 1984. Supplemental benefits are not payable for any period prior to October 1, 1974.

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

b. The division shall provide by rule for the periodic reporting to the employer or carrier of all earnings of any nature and social security income by the injured employee entitled to or claiming benefits for permanent total disability. The employer or carrier shall not be required to make any payment of benefits for permanent total disability for any period during which the employee willfully fails or refuses to report upon request by the employer or carrier in the manner prescribed by such rules.

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

(2) TEMPORARY TOTAL DISABILITY.—

(a) In case of disability total in character but temporary in quality, 66 $\frac{2}{3}$ percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 260 weeks except as provided in s. 440.12(1).

(b) Notwithstanding the provisions of paragraph (a), an employee who has sustained the loss of an arm, leg, hand, or foot, has been rendered a paraplegic, paraparetic, quadriplegic, or quadriparetic, or has lost the sight of both eyes shall be paid temporary total disability of 80 percent of his average weekly wage. In no event should the increased temporary total disability compensation provided for in this paragraph extend beyond 6 months from the date of the accident. The compensation provided by this paragraph is not subject to the limits provided in s. 440.12(2), but instead is subject to a maximum weekly compensation rate of \$700. If, at the conclusion of this period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraphs (a) and (c). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not paragraph (c).

(c) Temporary total disability benefits paid pursuant to this subsection shall include such period as may be reasonably necessary for training in the use of artificial members and appliances, and shall include such period as the employee may be receiving training and education under a program pursuant to s. 440.49(1). Notwithstanding s. 440.02(8), the date of maximum medical improvement for purposes of paragraph (3)(b) shall be no earlier than the last day for which such temporary disability benefits are paid.

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

(a) Impairment benefits.—

1. In case of permanent impairment due to amputation, loss of 80 percent or more of vision of either eye, after correction, or serious facial or head disfigurement resulting from an injury other than an injury entitling the injured worker to permanent total disability benefits pursuant to subsection (1), there shall be paid to the injured worker the following:

a. Two hundred and fifty dollars for each percent of permanent impairment of the body as a whole from 1 percent through 10 percent; and

b. Five hundred dollars for each percent of permanent impairment of the body as a whole for that portion in excess of 10 percent.

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

3. The three-member panel, in cooperation with the division, shall establish and use a uniform disability rating guide by January 1, 1991. This guide shall be based on medically or scientifically demonstrable findings as well as the systems and criteria set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment; the Snellen Charts, published by American Medical Association Committee for Eye Injuries; and the Minnesota Department of Labor and Industry Disability Schedules. The guide shall be more comprehensive than the AMA Guides to the Evaluation of Permanent Impairment and shall expand the areas already addressed and address additional areas not currently contained in the guides. On August 1, 1979, and pending the adoption, by rule, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, 1988, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes hereof. For injuries after July 1, 1990, pending the adoption by division rule of a uniform disability rating guide, the Minnesota Department of Labor and Industry Disability Schedule shall be temporarily used unless that schedule does not address an injury. In such case, the Guides to the Evaluation of Permanent Impairment by the American Medical Association shall be used.

(b) Wage-loss benefits.—

1. Each injured worker who suffers a permanent impairment, which permanent impairment is determined pursuant to the schedule adopted in accordance with subparagraph (a)3., is not based solely on subjective complaints, and results in one or more work-related physical restrictions which are directly attributable to the injury, may be entitled to wage-loss benefits under this subsection, provided that such permanent impairment results in a work-related physical restriction which affects such employee's ability to perform the activities of his usual or other appropriate employment. Such benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in s. 440.12(2). Subject to the maximum compensation rate as set forth in s. 440.12(2), such wage-loss benefits shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn after reaching maximum medical improvement, as compared weekly; however, the weekly wage-loss benefits shall not exceed an amount equal to $66\frac{2}{3}$ percent of the employee's average weekly wage at the time of injury. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn after reaching maximum medical improvement, the division may by rule provide for the modification of the weekly comparison so as to coincide as closely as possible with the injured worker's pay periods. In determining the amount the employee is able to earn in any month after injury, commissions and similar irregular payments shall be allocated first to the week in which they are received, in an amount which when added to other earnings for such week does not exceed the employee's average weekly wage, and the balance in the same manner to the subsequent weeks until fully allocated, but not to exceed 52 weeks from the week that the commission or a similar irregular payment was received.

2. The amount determined to be the salary, wages, and other remunerations the employee is able to earn after reaching the date of maximum medical improvement shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the case of an employee who has not voluntarily limited his income or who has not failed to accept employment commensurate with his abilities or who was not terminated from employment due to his own misconduct, and who has made a good faith attempt to find employment after attaining maximum medical improvement but remains unemployed, it shall be presumed that the salary, wages, and other remuneration the employee is able to earn was zero for each week that the employee made a good faith attempt to find employment within his physical and vocational capabilities. Wage-loss forms and job search reports are to be mailed to the employer, carrier, or servicing agent within 14 days after the time benefits are due. Failure of an employee to timely request benefits and file the appropriate job search forms showing that he looked for a minimum of 5 jobs in each biweekly period (unless a judge of compensation claims determines fewer job searches are justified due to the availability of suitable employment) after the employee has knowledge that a

job search is required, whether he has been advised by the employer, carrier, servicing agent, or his attorney, shall result in benefits not being payable during the time that the employee fails to timely file his request for wage loss and the job search reports. However, beginning on the 13th week after the employee has attained maximum medical improvement, if an employee does not obtain and maintain employment, the employer may show that the salary, wages, and other remuneration the employee is able to earn is greater than zero by proving the existence of actual job openings within a reasonable geographical area which the employee is physically and vocationally capable of performing, in which case the amount the employee is able to earn may be deemed to be the amount the judge of compensation claims finds that the employee could earn in such jobs. The amount deemed shall be applied against the next three biweekly payments.

3. An injured worker requesting wage-loss benefits for any period during which such injured worker was unemployed shall have a duty to make reasonable and good faith efforts to obtain suitable gainful employment on a consistent basis. "Suitable gainful employment" means employment which is reasonably attainable in light of the individual's age, education, personal aptitudes, previous vocational experience, and physical abilities. For any such period, the employer may require the injured worker's request for wage-loss benefits to include verification of the injured worker's efforts to obtain suitable gainful employment, which verification shall be made on forms prescribed by the division. In determining whether the injured worker has made reasonable and good faith efforts to obtain suitable gainful employment, the judge of compensation claims shall consider the availability of suitable employment in the area of the injured worker's residence, the injured worker's access to transportation, and the effect of the injured worker's physical and mental impairments upon his ability to conduct job search activities. Unless otherwise provided under this section, an injured worker requesting wage-loss benefits for any period during which he shall have been unemployed shall not be entitled to such benefits if the injured worker failed or refused to make reasonable and good faith efforts to obtain suitable gainful employment during such period.

4. The right to wage-loss benefits shall terminate upon the occurrence of the earliest of the following:

a. As of the end of any 2-year period commencing at any time subsequent to the month when the injured employee reaches the date of maximum medical improvement, unless during such 2-year period wage-loss benefits shall have been payable during at least 3 consecutive months. This limitations period shall not be tolled or extended by the incarceration of the employee or by virtue of the employee becoming an inmate of a penal institution.

b. For injuries occurring on or before July 1, 1980, 350 weeks after the injured employee reaches the date of maximum medical improvement.

c. For injuries occurring after July 1, 1980, but before July 1, 1990, 525 weeks after the injured employee reaches maximum medical improvement.

d. For injuries occurring after June 30, 1990, the employee's eligibility for wage-loss benefits shall be determined according to the following schedule:

(I) Twenty-six weeks of eligibility for permanent impairment ratings up to and including 3 percent;

(II) Fifty-two weeks of eligibility for permanent impairment ratings greater than 3 and up to and including 6 percent;

(III) Seventy-eight weeks of eligibility for permanent impairment ratings greater than 6 and up to and including 9 percent;

(IV) One hundred four weeks of eligibility for permanent impairment ratings greater than 9 and up to and including 12 percent; and

(V) One hundred twenty weeks of eligibility for permanent impairment ratings greater than 12 percent and up to and including 13 percent; 135 weeks of eligibility for permanent impairment ratings greater than 13 percent and up to and including 14 percent; 150 weeks of eligibility for permanent impairment ratings greater than 14 and up to and including 15 percent; 170 weeks of eligibility for permanent impairment ratings greater than 15 percent and up to and including 16 percent; 190 weeks of eligibility for permanent impairment ratings greater than 16 percent and up to and including 17 percent; 210 weeks of eligibility for permanent impairment ratings greater than 17 percent and up to and including 18

percent; 230 weeks of eligibility for permanent impairment ratings greater than 18 percent and up to and including 19 percent; 250 weeks of eligibility for permanent impairment ratings greater than 19 percent and up to and including 20 percent; 275 weeks of eligibility for permanent impairment ratings greater than 20 percent and up to and including 21 percent; 300 weeks of eligibility for permanent impairment ratings greater than 21 percent and up to and including 22 percent; 325 weeks of eligibility for permanent impairment ratings greater than 22 percent and up to and including 23 percent; 350 weeks of eligibility for permanent impairment ratings greater than 23 percent and up to and including 24 percent; 364 weeks of eligibility for permanent impairment ratings greater than 24 percent.

e. In the case of an employee whose permanent impairment from the injury is at least 1 percent but no more than 20 percent of the body as a whole, the burden is on the employee to demonstrate that his postinjury earning capacity is less than his preinjury average weekly wage and is not the result of economic conditions or the unavailability of employment or of his own misconduct. In the case of an employee whose permanent impairment from the injury is 21 percent or more of the body as a whole, the burden is on the employer to demonstrate that the employee's postinjury earning capacity is the same or more than his preinjury wage.

5. Notwithstanding subparagraph 4., the right to wage-loss benefits shall terminate if, within a 2-year period, there are three occurrences of any of the following incidents:

- a. The employee voluntarily terminates his employment for reasons unrelated to his compensable injury.
- b. The employee refuses an offer of suitable or reasonable employment within his restrictions and abilities.
- c. The employee is terminated from employment due to his own misconduct as defined in s. 440.02(16).
- d. The employee voluntarily limits his income.

Each of the three occurrences must be in a different biweekly period. Additionally, for each of the above occurrences, the employee may be disqualified from receiving wage-loss benefits for 3 biweekly periods.

6. The right to wage-loss benefits shall terminate if an employee is convicted of conduct punishable under s. 775.082 or s. 775.083 or is subjected to imprisonment under chapter 316 which directly affects the employee's ability to perform the activities of his usual or other appropriate employment. For purposes of this subparagraph, "convicted" means an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or of nolo contendere; or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation.

7. If an employee is entitled to both wage-loss benefits and social security retirement benefits under 42 U.S.C. ss. 402 and 405, such social security retirement benefits shall be primary and the wage-loss benefits shall be supplemental only. The sum of the two benefits shall not exceed the amount of wage-loss benefits which would otherwise be payable. For the purposes of termination of wage-loss benefits pursuant to subparagraph 4.a., the term "payable" shall be construed to include payment of social security retirement benefits in lieu of wage-loss benefits. However, the reduction of wage-loss benefits under the provisions of this subparagraph is not applicable to any wage-loss benefits payable to an employee for any month subsequent to the month in which the employee reaches the age of 70 years.

8. Beginning with the 25th month after maximum medical improvement and for the purpose of determining wage-loss benefits, the total wages, salary, and other remuneration for the week in consideration shall be discounted as follows:

- a. For those injuries occurring on or after July 1, 1979, and on or before July 1, 1980, by a factor of 3 percent and compounded annually at 3 percent thereafter; and
- b. For those injuries occurring after July 1, 1980, by a factor of 5 percent and compounded annually at 5 percent thereafter.

However, with respect to any year in which the annual rate of inflation, calculated by using the national Consumer Price Index published by the United States Department of Labor, is less than the applicable discount factor, such rate shall be substituted for such discount factor for that year.

9. The division shall keep such records and conduct such investigations as are necessary to determine the feasibility of providing additional protection from inflation for workers entitled to wage-loss benefits and shall report its findings to the Legislature not later than February 1, 1988.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) In case of temporary partial disability, benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in s. 440.12(2). The compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn, as compared weekly; however, the weekly wage-loss benefits shall not exceed an amount equal to 66 $\frac{2}{3}$ percent of the employee's average weekly wage at the time of injury. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn, the division may by rule provide for the modification of the weekly comparison so as to coincide as closely as possible with the injured worker's pay periods. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment.

(b) Whenever a temporary partial wage-loss benefit as set forth in paragraph (a) may be payable, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury. It shall also be the burden of the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his industrial accident is due to physical limitation related to his accident and not because of economic conditions or the unavailability of employment or his own misconduct. In the event the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, or is terminated from employment due to his own misconduct, it shall be presumed, in the absence of substantial evidence to the contrary, that the salary, wages, and other remuneration that the employee was able to earn for such period that the employee voluntarily limited his income or failed to accept employment commensurate with his abilities or was terminated from employment due to his own misconduct is the amount which would have been earned if the employee had not limited his income or failed to accept appropriate employment or had not been terminated from employment due to his own misconduct. The amount deemed shall be applied against the next three biweekly payments. In the case of an employee who has not voluntarily limited his income or who has failed to accept employment commensurate with his abilities or who was not terminated from employment due to his own misconduct, and who has made a good faith attempt to find employment but remains unemployed, it shall be presumed that the salary, wages, and other remuneration the employee is able to earn was zero for each week that the employee made a good faith attempt to find employment within his physical and vocational capabilities. However, beginning on the 13th week after the employee has received the first payment of a temporary partial wage-loss benefit, if the employee does not obtain and maintain employment, the employer may show that the salary, wages, and other remuneration the employee is able to earn is greater than zero by proving the existence of actual job openings within a reasonable geographical area which the employee is physically and vocationally capable of performing, in which case the amount the employee is able to earn may be deemed to be the amount the judge of compensation claims finds that the employee could earn in such jobs. The amount deemed shall be applied against the next two biweekly payments.

(c) Such benefits shall be paid during the continuance of such disability, not to exceed a period of 260 weeks.

(5) SUBSEQUENT INJURY.—

(a) The fact that an employee has suffered previous disability, impairment, anomaly, or disease, or received compensation therefor, shall not preclude him from benefits for a subsequent aggravation or acceleration of the preexisting condition nor preclude benefits for death resulting therefrom, except that no benefits shall be payable if the employee, at the time of entering into the employment of the employer by whom the benefits would otherwise be payable, falsely represents himself in writing as not having previously been disabled or compensated because of such previous disability, impairment, anomaly, or disease. Compensation for temporary disability, medical benefits, and wage-loss benefits shall not be subject to apportionment.

(b) If a compensable permanent impairment, or any portion thereof, is a result of aggravation or acceleration of a preexisting condition, or is the result of merger with a preexisting impairment, an employee eligible to receive impairment benefits under paragraph (3)(a) shall receive such benefits for the total impairment found to result, excluding the degree of impairment existing at the time of the subject accident or injury or which would have existed by the time of the impairment rating without the intervention of the compensable accident or injury. The degree of permanent impairment attributable to the accident or injury shall be compensated in accordance with paragraph (3)(a). As used in this paragraph, "merger" means the combining of a preexisting permanent impairment with a subsequent compensable permanent impairment which, when the effects of both are considered together, result in a permanent impairment rating which is greater than the sum of the two permanent impairment ratings when each impairment is considered individually.

(c) If an employee receiving wage-loss benefits suffers a subsequent injury causing temporary disability, both wage-loss benefits and temporary disability benefits shall be payable during the duration of temporary disability. In calculating the amount of any wage-loss benefits due, the average weekly wage for the subsequent accident shall be deemed to be the salary, wages, and other remuneration the employee is able to earn. However, the total benefits payable shall not exceed the maximum compensation rate in effect for temporary disability at the time of the subsequent injury. Any reduction in benefits due to such limit shall be applied first to the wage-loss benefits payable as a result of the prior injury.

(d) If an employee receiving wage-loss benefits suffers a subsequent injury causing an additional compensable wage loss, benefits for each wage loss shall be payable. In calculating the amount of any wage-loss benefits due, the average weekly wage for the subsequent accident shall be deemed to be the salary, wages, and other remuneration the employee is able to earn. However, the total wage-loss benefits payable shall not exceed the maximum compensation rate in effect for permanent disability at the time of the subsequent injury. Any reduction in wage-loss benefits due to such limitation shall be applied first to the benefits payable as a result of the prior injury.

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

(7) **EMPLOYEE LEAVES EMPLOYMENT.**—If an injured employee, when receiving compensation for temporary partial disability, leaves the employment of the employer by whom he was employed at the time of the accident for which such compensation is being paid, he shall, upon securing employment elsewhere, give to such former employer an affidavit in writing containing the name of his new employer, the place of employment, and the amount of wages being received at such new employment; and, until he gives such affidavit, the compensation for temporary partial disability will cease. The employer by whom such employee was employed at the time of the accident for which such compensation is being paid may also at any time demand of such employee an additional affidavit in writing containing the name of his employer, the place of his employment, and the amount of wages he is receiving; and if the employee, upon such demand, fails or refuses to make and furnish such affidavit, his right to compensation for temporary partial disability shall cease until such affidavit is made and furnished.

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

(9) **EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.**—

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

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

(b) If the provisions of 42 U.S.C. s. 424(a) are amended to provide for a reduction or increase of the percentage of average current earnings that the sum of compensation benefits payable under this chapter and the benefits payable under 42 U.S.C. ss. 423 and 402 can equal, the amount of the reduction of benefits provided in this subsection shall be reduced or increased accordingly.

(c) No disability compensation benefits payable for any week, including those benefits provided by paragraph (1)(e), shall be reduced pursuant to this subsection until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. ss. 423 and 402 and the employee has begun receiving such social security benefit payments. The employee shall, upon demand by the division, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to him and authorize the Division of Unemployment Compensation to release unemployment compensation information relating to him, in accordance with rules to be promulgated by the division prescribing the procedure and manner for requesting the authorization and for compliance by the employee. Neither the division nor the employer or carrier shall make any payment of benefits for total disability or those additional benefits provided by paragraph (1)(e) for any period during which the employee willfully fails or refuses to authorize the release of information in the manner and within the time prescribed by such rules. The authority for release of disability information granted by an employee under this paragraph shall be effective for a period not to exceed 12 months, such authority to be renewable as the division may prescribe by rule.

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

(10) **EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT COMPENSATION.**—

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

(b) If an employee is entitled to both wage-loss benefits pursuant to subsection (3), or temporary partial benefits pursuant to subsection (4), and unemployment compensation benefits, such unemployment compensation benefits shall be primary and the wage-loss benefits or temporary partial benefits shall be supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits or temporary partial benefits which would otherwise be payable. For purposes of termination of wage-loss benefits pursuant to sub-subparagraph (3)(b)4.a., the term "payable" shall be construed to include payment of unemployment compensation benefits in lieu of income supplement benefits as provided in this subsection.

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

(12) **EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER AND PENSION DISABILITY BENEFITS PAYABLE BY A PUBLIC EMPLOYER.**—Where any person receives compensation under this chapter by reason of the disability of an employee of the state or any political subdivision of the state, and such person is also entitled to receive any sum, by reason of the same disability, from any pension

plan or other benefit fund with respect to which the same employer provides the majority of the current funding, nothing in this chapter shall be construed to prevent the reduction of pension benefits paid by said employer by the amount of workers' compensation payments paid by the employer. However, no such reduction may result in compensation benefits payable under this chapter and under the pension plan or other benefit fund which, in sum, total less than 100 percent of the money rate at which the service rendered by the employee was recompensed, excluding overtime, under the contract of hiring in force at the time of the employee's injury. Nothing in this subsection shall be construed to abrogate the terms of any contract of employment or the stated conditions of employment at the time of hiring.

Section 19. Paragraph (b) of subsection (1) of section 440.16, Florida Statutes, 1990 Supplement, is reenacted to read:

440.16 Compensation for death.—

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

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

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

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

3. To the child or children, if there is no spouse, 33 $\frac{1}{3}$ percent for each child.

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

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

Section 20. Subsection (4) of section 440.185, Florida Statutes, 1990 Supplement, is reenacted to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(4) Within 3 days after receipt of notice of injury from the employer or any other indication of a compensable injury which will result in the employee losing more than 7 days from work, the division shall mail to the injured worker an informational brochure as prescribed by the division which sets forth in clear and understandable language a summary statement of the rights, benefits, and obligations of injured workers and their employers under the Florida Workers' Compensation Law, together with an explanation of its operation. Within 3 days after receipt of a notice of injury from the employer or any other indication of a compensable injury which will result in the employee losing more than 7 days from work, a carrier or third-party administrator shall mail to the employer an informational brochure as prescribed by the division which sets forth in clear and understandable language a summary statement of the rights,

benefits, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. The division shall monitor the furnishing of benefits by the employer or carrier to ascertain that correct benefits are being furnished in cases accepted as compensable injuries. Upon receipt of a request for assistance by the injured worker, the employer, or carrier, or upon its own motion, the division shall be empowered to compel all parties to participate in any conferences held by the division to resolve the issues giving rise to the request for assistance. In the event of controversy or the filing of a claim, the division shall attempt to resolve the claim. If the division determines that it cannot establish the relevant facts necessary to resolve the issues in a claim, the division may curtail its investigation and promptly forward the file to the appropriate judge of compensation claims for any requested hearing on the claim. In either event, the division shall forward the file to the appropriate judge of compensation claims no later than 15 days prior to the date set for such final hearing.

Section 21. Subsection (1) of section 440.19, Florida Statutes, 1990 Supplement, is reenacted to read:

440.19 Time and procedure for filing claims.—

(1)(a) The right to compensation for disability, rehabilitation, impairment, or wage loss under this chapter shall be barred unless a claim therefor which meets the requirements of paragraph (e) is filed within 2 years after the time of injury, except that, if payment of compensation has been made or remedial treatment or rehabilitative services have been furnished by the employer on account of such injury, a claim may be filed within 2 years after the date of the last payment of compensation or after the date of the last remedial treatment or rehabilitative services furnished by the employer. This limitations period shall not be tolled or extended by the failure of the employer or carrier to file a notice of injury or any other report or notice required to be filed under this chapter or by the failure of the division, the employer, or the carrier to furnish to the employee or other claimant informational materials required under this chapter, unless such omission by the employer or carrier was intentional and done to deprive the employee of benefits due under this chapter.

(b) All rights for remedial attention under this section shall be barred unless a claim therefor which meets the requirements of paragraph (e) is filed with the division within 2 years after the time of injury, except that, if payment of compensation has been made or remedial attention or rehabilitative services have been furnished by the employer without an award on account of such injury, a claim may be filed within 2 years after the date of the last payment of compensation or within 2 years after the date of the last remedial attention or rehabilitative services furnished by the employer; and all rights for remedial attention or rehabilitative services under this section pursuant to the terms of an award shall be barred unless a further claim therefor is filed with the division within 2 years after the entry of such award, except that, if payment of compensation has been made or remedial attention or rehabilitative services have been furnished by the employer under the terms of the award, a further claim may be filed within 2 years after the date of the last payment of compensation or within 2 years after the date of the last remedial attention or rehabilitative services furnished by the employer. However, no statute of limitations shall apply to the right for remedial attention relating to the insertion or attachment of a prosthetic device to any part of the body. Any claim for reimbursement by a provider of remedial attention shall be subject to the limitations of this paragraph. This limitations period shall not be tolled or extended by the failure of the employer or carrier to file a notice of injury or any other report or notice required to be filed under this chapter or by the failure of the division, the employer, or the carrier to furnish the employee or other claimant informational materials required under this chapter, unless such omission by the employer or carrier was intentional and done to deprive the employee of benefits due under this chapter.

(c) For purposes of this section, "remedial treatment or attention" means the provision of skilled services provided by a physician or any recognized health care provider as defined in s. 440.13.

(d) The right to compensation for death under this chapter shall be barred unless a claim therefor which meets the requirements of paragraph (e) is filed within 2 years after the death, except that, if payment of compensation has been made without an award on account of such death, a claim may be filed within 2 years after the date of the last payment. This limitations period shall not be tolled or extended by the failure of the employer or carrier to file a notice of injury or any other report

or notice required to be filed under this chapter or by the failure of the division, the employer, or the carrier to furnish the employee or other claimant informational materials required under this chapter, unless such omission by the employer or carrier was intentional and done to deprive the employee of benefits due under this chapter.

(e)1. Such claim shall be filed with the division at its Tallahassee office and shall contain the names and addresses of the employer and employee, the social security number of the employee, and a statement of the time, date, place, nature, and cause of the injury, or such equivalent information as will put the division, the employer, and the carrier or servicing agent on notice with respect to the identity of the parties, and shall contain the specific details of the benefits alleged to be due and the basis for those benefits, including:

- a. The time period for which compensation was not timely provided.
- b. The number of weeks of disability claimed.
- c. The type and source of rehabilitation sought.
- d. The details of travel costs not paid, including:
 - (I) Specific dates and purposes of the travel.
 - (II) Means of transportation.
 - (III) Mileage.

e. The details of medical charges not paid, including the name and address of the medical provider and the amounts due and the specific dates of treatment or service.

f.(I) The type or nature of medical treatment sought.

(II) The basis and necessity for any medical treatment sought that is in addition to that which is being provided at the time of filing the claim.

(III) The basis and necessity for a request for a change of physician.

(IV) A detailed description of the need for and medical necessity of attendant care.

g. The details of any defect in the calculation of the average weekly wage and the details and basis therefor.

h. A detailed description of the percentage of permanent impairment and corresponding entitlement to increased wage-loss benefits in excess of that which is or has been voluntarily paid by the employer or carrier together with the medical care provider who has diagnosed any increased impairment.

i. Any other benefit, penalty, attorney's fee, or allowance provided by law deemed due at the time of filing of the claim but not being furnished.

The division shall acknowledge receipt of the claim to the filing party with copies of the claim and acknowledgment to the claimant, employer, and carrier.

2. A claim may contain a claim for both past benefits and continuing benefits in any benefit category, but is limited to those in default and ripe, due, and owing on the date the claim is filed.

3. The legislative intent of this paragraph is to avoid needless litigation or delay in benefits by requiring claimants to provide the employer, carrier, self-insurance fund, or servicing agent with sufficient detailed information to facilitate a timely and informed decision with respect to a claim for benefits.

4. Any claim, or portion thereof, not in compliance with this subsection shall be dismissed by the judge of compensation claims upon motion of any interested party unless the claimant is not represented by counsel. If the claimant is not represented by counsel, the division shall assist the claimant in filing a claim meeting the requirements of this section. Any such motion to dismiss shall state with particularity why the claim is not in compliance. When any claim is dismissed pursuant to this subsection, the claimant shall be allowed 60 days from the date of the order of dismissal in which to file an amended claim regardless of any other limitation in this chapter.

5. Notwithstanding the provisions of s. 440.34, a judge of compensation claims shall not award an attorney's fee or penalties based on a claim for benefits that does not satisfy the requirements of this subsection.

6. The division shall assist injured employees who are not represented by counsel in preparing a claim that meets the specificity requirements of this subsection, but shall not act as an advocate in pursuing the claim before the judge of compensation claims.

7. Within 21 days of receipt of the acknowledged claim from the division, the employer or carrier must either pay the requested benefits or file a Notice to Controvert with the division, with copies to the filing party, employer, and claimant. The Notice to Controvert must specifically list all benefits requested but not paid as well as the reasons those benefits are not being provided. An employer or carrier who fails to comply with this provision shall be assessed a penalty pursuant to s. 440.185(9).

(f) Any judge of compensation claims receiving a claim for compensation in any form shall, immediately upon receipt of such claim, mail such claim to the division at its office in Tallahassee.

(g) In no event and under no circumstances shall any of the rights of employees under the Workers' Compensation Law be prejudiced or lost by failure or delay of judges of compensation claims in mailing claims in any form to the division in Tallahassee.

(h) To facilitate the earliest possible resolution of conflicts in workers' compensation cases, it shall be the responsibility of the division to take a proactive stance in the prevention and resolution of disputed issues. Upon receipt by the division of notice of disputed issues, whether received formally or informally, or of a claim for benefits filed under this chapter, the division shall, in accordance with its rules, ascertain whether the disputed issues can be resolved without a hearing. Upon determining that disputed issues can be resolved without a hearing, the division shall make or cause to be made such investigation as is considered necessary with respect to the disputed issues, which shall include a written dispute resolution report of whether requested benefits, services, or treatment are due and owing. Copies of the dispute resolution report shall be provided to the claimant, employer, and carrier and shall be made a part of the division file. Upon a finding by the division that benefits, services, or treatment are due and owing, it shall be the responsibility of the division to assist the requesting party in securing payment or provision of the same. Upon a finding by the division that benefits, services, or treatment are not due and owing, it shall be the responsibility of the division to inform the requesting party of the same. Any such decision by the division shall be advisory. At any mediation conference or hearing before the judge of compensation claims, the decision of the division shall not be res judicata, but shall be included in the division case file and may be considered by the general or special master, or by the judge of compensation claims in reaching any decision.

Section 22. Subsections (9) and (12) of section 440.20, Florida Statutes, 1990 Supplement, are reenacted to read:

440.20 Payment of compensation.—

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

(a) Within 30 days after final payment of compensation has been made, the employer, carrier, or servicing agent shall send to the division a notice, in accordance with a form prescribed by the division, stating that such final payment has been made and stating the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid.

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

(c) The division shall also assess the employer, carrier, or servicing agent a fine of \$50 for every installment of compensation not paid when it becomes due. Such fines shall be deposited by the division in the fund created by s. 440.50.

(12)(a) It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he receive disability or wage-loss payments periodically. Lump-sum

payments in exchange for the employer's or carrier's release from liability for future payments of compensation, death benefits, and rehabilitation expenses other than for medical expenses shall be allowed only under special circumstances, as when the claimant can demonstrate that lump-sum payments will definitely aid in his rehabilitation or are otherwise clearly in his best interests and that lump-sum payments will avoid undue expense or undue hardship to any party, or that such claimant has removed himself or is about to remove himself from the state. In no case may a lump-sum payment be allowed in exchange for the release of an employer's or carrier's liability for future medical expenses and training and education. In no case may a lump-sum settlement be allowed until 3 months after the date of maximum medical improvement has been reached; provided that such 3-month period shall be waived with respect to nonresident aliens of the United States or Canada. However, no such alien thus exempted shall be eligible for a lump-sum settlement under this exception more than one time in any 48-month period. Upon the approval of a lump-sum settlement under this paragraph, the judge of compensation claims shall send a report to the Chief Judge of the amount of the settlement, the amount of the attorney's fees, the amount of the benefits payable to the injured employee upon which the attorney's fees are payable, and the statutory basis for the payment of the attorney's fees.

(b) Notwithstanding the provisions of paragraph (a), a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation and rehabilitation expenses, but not training and educational expenses, shall be allowed at any time in any case in which the employer or carrier has initially filed a written notice to controvert and denied that a compensable accident or injury occurred for which compensation and medical and rehabilitation expenses are payable, and the judge of compensation claims at a hearing to consider the settlement proposal finds a justiciable controversy as to legal or medical compensability of the claimed injury or the alleged accident. In such event, and upon the joint petition of all interested parties and after giving due consideration to the interests of all interested parties, the judge of compensation claims may enter a compensation order approving and authorizing the discharge of the liability of the employer for compensation and remedial treatment, care, and attendance, as well as rehabilitation expenses, but not training and educational expenses, by the payment of a lump sum. Such a compensation order so entered upon joint petition of all interested parties is not subject to modification or review under s. 440.28. If the settlement proposal together with supporting evidence is not approved by the judge of compensation claims, it shall be considered null and void. If the employer or carrier initially accepts the case as compensable or provides any benefits to the employee or his dependents, this paragraph does not apply. Notwithstanding the provisions of s. 440.34(3)(c), a claimant shall be responsible for the payment of his own attorney's fees in any case settled under this subsection. Upon approval of a lump-sum settlement under this subsection, the judge of compensation claims shall send a report to the Chief Judge of the amount of the settlement and a statement of the nature of the controversy. The Chief Judge shall keep a record of all such reports filed by each judge of compensation claims and shall submit to the Legislature a summary of all such reports filed under this subsection annually by March 1.

(c) Notwithstanding the provisions of paragraph (a) or paragraph (b), a lump-sum payment in exchange for the employer's or carrier's release from liability for future payments of compensation, death benefits, rehabilitation expenses, including training and educational expenses and medical expenses shall be allowed when the claimant has reached maximum medical improvement, has been assigned a permanent impairment rating from 1 through 5 percent, and has not received any medical treatment for at least 3 months. In no case may a lump-sum settlement be allowed until 3 months after the date of maximum medical improvement has been reached. The lump-sum payment shall be equal to an amount determined by multiplying the claimant's weekly compensation rate by a factor of 3, then multiplying that product by the number of permanent impairment rating points assigned. Notwithstanding the provision of s. 440.34(3)(c), a claimant shall be responsible for the payment of his own attorney's fees in any case settled under this subsection. Upon approval of a lump-sum settlement under this subsection, the judge of compensation claims shall send a report to the Chief Judge of the amount of the settlement and a statement of the nature of the controversy. The Chief Judge shall keep a record of all such reports filed by each judge of compensation claims and shall submit to the Legislature a summary of all such reports filed under this subsection annually by March 1.

(d) Upon the application of any party in interest or upon joint petition of all interested parties, and after giving due consideration to the interests of all interested parties, if a judge of compensation claims finds that a lump-sum payment in exchange for release from liability is proper under paragraph (a), the judge of compensation claims may enter a compensation order requiring that the liability of the employer for compensation be discharged by the payment of a lump sum equal to the present value of all future payments of compensation, computed at 8-percent true discount compounded annually, or requiring that the employer make advance payment of a part of the compensation for which the employer is liable by the payment of a lump sum equal to the present value of such part of the compensation, computed at 8-percent true discount compounded annually. A compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under s. 440.28. However, nothing in this subsection shall be construed to mean that a judge of compensation claims is required to approve any award for lump-sum payment when it is determined by the judge of compensation claims that the payment being made is in excess of the value of benefits the claimant would be entitled to under this chapter. The judge of compensation claims shall make or cause to be made such investigations as he considers necessary, in each case in which the parties have stipulated that a proposed final settlement of liability of the employer for compensation shall not be subject to modification or review under s. 440.28, to determine whether such final disposition will definitely aid the rehabilitation of the injured worker or otherwise is clearly for the best interests of the person entitled to compensation and, in his discretion, may have an investigation made by the Rehabilitation Section of the Division of Workers' Compensation. The joint petition and the report of any investigation so made will be deemed a part of the proceeding. A judge of compensation claims, in his discretion, may hear testimony relating to a proposed stipulation for settlement under this subsection without having in hand the division file; however, he may in no event enter an order thereon without first having reviewed the division file. An employer shall have the right to appear at any hearing pursuant to this subsection which relates to the discharge of such employer's liability and to present testimony at such hearing. The carrier shall provide reasonable notice to the employer of the time and date of any such hearing and inform him of his rights to appear and testify. When the claimant is represented by counsel or when the claimant and carrier or employer are represented by counsel, final approval of the lump-sum settlement agreement, as provided for in a joint petition and stipulation, shall be approved by entry of an order within 7 days of the filing of such joint petition and stipulation without a hearing, unless the judge of compensation claims determines, in his discretion, that additional testimony is needed before such settlement can be approved or disapproved and so notifies the parties. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which such person is entitled to compensation shall, in the absence of special circumstances making such course improper, be determined in accordance with the most recent United States Life Tables published by the National Office of Vital Statistics of the United States Department of Health and Human Services. The probability of the happening of any other contingency affecting the amount or duration of the compensation, except the possibility of the remarriage of a surviving spouse, shall be disregarded. As a condition of approving a lump-sum payment to a surviving spouse, the judge of compensation claims, in the judge of compensation claims' discretion, may require security which will ensure that, in the event of the remarriage of such surviving spouse, any unaccrued future payments so paid may be recovered or recouped by the employer or carrier. Such applications shall be considered and determined in accordance with s. 440.25 and the rules of procedure adopted by the Supreme Court.

Section 23. Subsections (3) and (4) of section 440.25, Florida Statutes, 1990 Supplement, are reenacted to read:

440.25 Procedure in respect to claims and hearing requests.—

(3)(a) The division or judge of compensation claims shall make or cause to be made such investigation as is considered necessary in respect to the claim; and, upon request by any interested party, the judge of compensation claims shall order all parties to attend either a mediation conference or a hearing thereof. Any party who requests a mediation conference shall not be precluded from requesting a hearing following the mediation conference should both parties not agree to be bound by the results of the mediation conference.

(b)1. If the request in paragraph (a) is for a mediation conference, an application for a mediation conference shall state the reasons for request-

ing the mediation conference and the questions in dispute so that the responding or opposing parties may be notified of the purpose of the mediation conference. Such mediation conference shall be conducted informally and does not require the use of formal rules of evidence or procedure. Any information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation conference pursuant to this section obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the conference. Any research or evaluation effort directed at assessing the mediation program activities or performance must protect the confidentiality of such information. Each party to a mediation conference has a privilege during and after the conference to refuse to disclose and to prevent another from disclosing communications made during the conference whether or not the contested issues are successfully resolved. This paragraph shall not be construed to prevent or inhibit the discovery or admissibility of any information that is otherwise subject to discovery or that is admissible under applicable law or rule of procedure, except that any conduct or statements made during a mediation conference or in negotiations concerning the conference are inadmissible in any proceeding under this chapter. The Chief Judge shall select a judge of compensation claims, a general master, or a special master to serve as the mediator. The general master shall be employed on a full-time basis by the office of the Chief Judge. The rate of compensation for a general master shall be at 60 percent of the salary of a judge of compensation claims. A general master must be a member of The Florida Bar and have 3 years' experience in the practice of workers' compensation law in this state. The special master shall be selected from a list prepared by the Chief Judge. The special master must be independent of all parties participating in the mediation conference. A special master must be a member of The Florida Bar and have 3 years' experience in the practice of workers' compensation law in this state. The rate of compensation for a special master shall be \$250 per day plus travel and per diem expenses. The special master shall have access to the office, equipment, and supplies of the judge of compensation claims in each district. In the event both parties agree, the results of the mediation conference shall be binding and neither party shall have a right to appeal the results. In the event either party refuses to agree to the results of the mediation conference, the results of the mediation conference as well as the testimony, witnesses, and evidence presented at the conference shall not be admissible at any subsequent proceeding on the claim. The mediator shall not be called in to testify or give deposition to resolve any claim for any hearing before the judge of compensation claims. The fact of requesting or accepting an offer to mediate shall not be admissible as evidence of liability in any collateral or subsequent proceeding on the claim. The employer may be represented by an attorney at the mediation conference if the employee is also represented by an attorney at the mediation conference. Any judge who serves as a mediator shall not be permitted to preside at a hearing involving the same claim pursuant to paragraph (c). If a request for mediation is filed, the mediation conference must be held within 45 days after it is filed and the judge, general master, or special master shall give the claimant and other interested parties at least 15 days' notice of such conference, served upon the claimant and other interested parties by mail.

2. The judge of compensation claims shall hold a pretrial hearing on a claim no earlier than 30 days after the date of filing of the request for hearing and no later than 60 days after such date. The judge of compensation claims shall give the claimant and all other interested parties at least 15 days' advance notice of the hearing by mail. At the pretrial hearing, the judge of compensation claims shall, subject to subparagraph 3., set a date for the final hearing that allows the parties at least 90 days to conduct discovery unless the parties consent to an earlier hearing date.

3. The final hearing must be held and concluded within 120 days after the pretrial hearing. Continuances may be granted only if the requesting party demonstrates that the reason for requesting the continuance arises from circumstances beyond the party's control.

(c) If the request in paragraph (a) is for a hearing, an application for a hearing concerning a claim shall refer to the claim previously filed and state the reasons for requesting a hearing and the questions in dispute which the applicant expects the judge of compensation claims to hear and determine, so that the responding or opposing parties may be notified of the purpose of the hearing. Any application for a hearing not in compliance with this paragraph shall be subject to dismissal upon motion of any interested party. If a request for a hearing is filed, the judge of compensation claims shall hold a hearing within 90 days after it is filed and shall give the claimant and other interested parties at least 15 days' notice of such hearing, served upon the claimant and other interested parties by mail.

(d) The hearing shall be held in the county where the injury occurred, if the injury occurred in this state, unless otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury occurred. If the injury occurred without the state and is one for which compensation is payable under this chapter, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the state which will at the time of forwarding the file for hearing, in the discretion of the Chief Judge, be the most convenient for a hearing. Subsequent to the forwarding of the file to such county, the parties and the judge of compensation claims may agree to transfer such file to a county that is deemed most convenient for a hearing. The hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after such hearing, unless otherwise agreed by the parties, determine the dispute in a summary manner. At such hearing, the claimant and employer may each present evidence in respect of such claim and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the judge of compensation claims may designate a disinterested doctor to submit a report or to testify in the proceeding, after such doctor has reviewed the medical reports and evidence, examined the claimant, or otherwise made such investigation as appropriate. The report or testimony of any doctor so designated by the judge of compensation claims shall be made a part of the record of the proceeding and shall be given the same consideration by the judge of compensation claims as is accorded other medical evidence submitted in the proceeding; and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of s. 440.13(4)(a). No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties.

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

(f) Each judge of compensation claims is required to submit a special report to the Chief Judge in each contested workers' compensation case in which the case is not determined within 30 days of final hearing. Said form shall be provided by the Chief Judge and shall contain the names of the judge of compensation claims and of the attorneys involved and a brief explanation by the judge of compensation claims as to the reason for such a delay in issuing a final order. The Chief Judge shall compile these special reports into an annual public report to the Governor, the Secretary of Labor and Employment Security, the Legislature, The Florida Bar, and the appellate district judicial nominating commissions.

(4)(a) Beginning on October 1, 1979, procedures with respect to appeals from orders of judges of compensation claims shall be governed by rules adopted by the Supreme Court. Such an order shall become final 30 days after mailing of copies of such order to the parties, unless appealed pursuant to such rules.

(b) An appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in s. 57.081(1) and may be relieved in whole or in part from the costs for preparation of the record on appeal if, within 15 days after the date notice of the estimated costs for the preparation is served, he files with the judge of compensation claims a verified petition to be relieved of costs. The verified petition relating to record costs shall contain a detailed and sworn statement of all the appellant's assets, liabilities, and income. The appellant's attorney, or the appellant if he is not represented by an attorney, shall include as a part of the verified petition relating to record costs an affidavit or affirmation that, in his opinion, the notice of appeal was filed in good faith and that there is a probable basis for the Industrial Relations Commission to find reversible error. A copy of the verified petition relating to record costs shall be served upon the division in Tallahassee and upon all other interested parties. The judge of compensation claims shall promptly conduct a hearing on the verified petition relating to record costs, giving at least 15 days' notice to the appellant, the division, and all other interested parties, all of whom shall be parties to the proceedings. The judge of compensation claims may enter an order without such hearing if no objection is filed by the division or by an interested party within

12 days from the date the verified petition relating to record costs is filed. Such proceedings shall be conducted in accordance with the provisions of this section and with the workers' compensation rules of procedure, to the extent applicable. In the event an insolvency petition is granted, the judge of compensation claims may provide for payment of record costs and filing fees from the Workers' Compensation Trust Fund pending final disposition of the costs of appeal.

(c) As a condition of filing a notice of appeal to the Industrial Relations Commission, an employer who has not secured the payment of compensation under this chapter in compliance with s. 440.38 shall file with his notice of appeal a good and sufficient bond, as provided in s. 59.13, conditioned to pay the amount of the demand and any interest and costs payable under the terms of the order if the appeal is dismissed, or if the Industrial Relations Commission affirms the award in any amount. Upon the failure of such employer to file such bond with the judge of compensation claims or the Industrial Relations Commission along with his notice of appeal, the Industrial Relations Commission shall dismiss the notice of appeal.

Section 24. Section 26 of chapter 90-201, Laws of Florida, is reenacted to read:

Section 26. Section 440.26, Florida Statutes, is hereby repealed.

Section 25. Section 440.271, Florida Statutes, 1990 Supplement, is reenacted to read:

440.271 Appeal of order of judge of compensation claims.—Review of any order of a judge of compensation claims entered pursuant to this chapter shall be by appeal to the Industrial Relations Commission. Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders. The division shall be given notice of any proceedings pertaining to s. 440.25, regarding indigency, or s. 440.49, regarding the Special Disability Trust Fund, and shall have the right to intervene in any proceedings.

Section 26. Section 440.272, Florida Statutes, 1990 Supplement, is reenacted to read:

440.272 Review of orders of Industrial Relations Commission.—Orders of the Industrial Relations Commission shall be subject to review by appeal to the District Court of Appeal, First District. The petition shall be filed in accordance with rules of procedure prescribed by the Supreme Court of Florida for review of such orders. The division shall have the right to intervene in any such review. An award of compensation benefits by the Industrial Relations Commission shall be entitled to expedited disposition within the time and the manner prescribed by the Florida Rules of Appellate Procedure. Any benefits which are awarded by a judge of compensation claims which are reversed on review by the Industrial Relations Commission shall be withheld pending the outcome of an appeal to the District Court of Appeal, First District.

Section 27. Subsections (2), (3), (5), and (7) of section 440.34, Florida Statutes, 1990 Supplement, are reenacted to read:

440.34 Attorney's fees; costs; penalty for violations.—

(2) In awarding a reasonable attorney's fee, the judge of compensation claims shall consider only those benefits to the claimant that the attorney is responsible for securing. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney's fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" means benefits obtained as a result of the claimant's attorney's legal services rendered in connection with the claim for benefits. However, such term does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed.

(3) If the claimant should prevail in any proceedings before a judge of compensation claims, the Industrial Relations Commission, or court, there shall be taxed against the employer the reasonable costs of such proceedings, not to include the attorney's fees of the claimant. A claimant shall be responsible for the payment of his own attorney's fees, except that a claimant shall be entitled to recover a reasonable attorney's fee from a carrier or employer:

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

(b) In any case in which the employer or carrier fails or refuses to pay a claim filed with the division which meets the requirements of s. 440.19(1)(e) on or before the 21st day after receiving notice of the claim, and the injured person has employed an attorney in the successful prosecution of his claim; or

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

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

In applying the factors set forth in subsection (1) to cases arising under paragraphs (a), (b), (c), and (d) of this subsection, the judge of compensation claims shall only consider such benefits and the time reasonably spent in obtaining them as were secured for the claimant within the scope of paragraphs (a), (b), (c), and (d) of this subsection.

(5) If any proceedings are had for review of any claim, award, or compensation order before the Industrial Relations Commission or any court, the commission or court may award the injured employee or dependent an attorney's fee to be paid by the employer or carrier, in its discretion, which shall be paid as the commission or court may direct.

(7) No judge of compensation claims shall enter an order approving the contents of a retainer agreement that permits the escrowing of any portion of the employee's compensation until benefits have been secured.

Section 28. Subsection (4) of section 440.37, Florida Statutes, 1990 Supplement, is reenacted to read:

440.37 Misrepresentation; fraudulent activities; penalties.—

(4) Any person who knowingly makes any false or misleading statement or representation, whether written or oral, required by s. 440.381 for the purpose of avoiding or diminishing the amount of the payment of any workers' compensation premiums to a carrier or self-insurance fund commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 29. Subsections (1), (3), and (5) of section 440.38, Florida Statutes, 1990 Supplement, are reenacted to read:

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

(1) Every employer shall secure the payment of compensation under this chapter:

(a) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state;

(b) By furnishing satisfactory proof to the division of his financial ability to pay such compensation and receiving an authorization from the division to pay such compensation directly in accordance with the following provisions:

1. The division may, as a condition to such authorization, require such employer to deposit in a depository designated by the division either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the division and subject to such conditions as the division may prescribe, which shall include authorization to the division in the case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. In addition, the division shall require, as a condition to authorization to self-insure, proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. Further, the division shall require such employer to carry reinsurance at levels that will ensure the actuarial soundness of such employer in accordance with rules promulgated by the division. The division may by rule require that, in the event of an individual self-insurer's insolvency, such indemnity bonds, securities, and reinsurance policies shall be payable to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of his own insurance.

2. If the employer fails to maintain the foregoing requirements, the division shall revoke the employer's authority to self-insure, unless the

employer provides to the division the certified opinion of an independent actuary who is a member of the American Society of Actuaries as to the actuarial present value of the employer's determined and estimated future compensation payments based on cash reserves, using a 4-percent discount rate, and a qualifying security deposit equal to 1.5 times the value so certified. The employer shall thereafter annually provide such a certified opinion until such time as the employer meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted at the time of each such annual report. Upon the failure of the employer to timely provide such opinion or to timely provide a security deposit in an amount equal to 1.5 times the value certified in the latest opinion, the division shall then revoke such employer's authorization to self-insure, and such failure shall be deemed to constitute an immediate serious danger to the public health, safety, or welfare sufficient to justify the summary suspension of the employer's authorization to self-insure pursuant to s. 120.68.

3. Upon the suspension or revocation of the employer's authorization to self-insure, the employer shall provide to the division and to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385 the certified opinion of an independent actuary who is a member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the member exercised the privilege of self-insurance, using a discount rate of 4 percent. The employer shall provide such an opinion at 6-month intervals thereafter until such time as the latest opinion shows no remaining value of claims. With each such opinion, the employer shall deposit with the division a qualifying security deposit in an amount equal to the value certified by the actuary. The association has a cause of action against an employer, and against any successor of the employer, who fails to timely provide such opinion or who fails to timely maintain the required security deposit with the division. The association shall recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the employer exercised the privilege of self-insurance, together with attorney's fees. For purposes of this section, the successor of an employer means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the employer.

4. A qualifying security deposit shall consist, at the option of the employer, of:

a. Surety bonds, in a form and containing such terms as prescribed by the division, issued by a corporation surety authorized to transact surety business by the Department of Insurance, and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property-Liability, are not less than "A" and "V", respectively.

b. Certificates of deposit with financial institutions, the deposits of which are insured through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

c. Irrevocable letters of credit in favor of the division issued by financial institutions described in sub-subparagraph b.

d. Direct obligations of the United States Treasury backed by the full faith and credit of the United States.

e. Securities issued by this state and backed by the full faith and credit of this state.

5. The qualifying security deposit shall be held by the division, or by a depository authorized by the division, exclusively for the benefit of workers' compensation claimants. The security shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of compensation under this chapter. No surety bond may be terminated, and no other qualifying security may be allowed to lapse, without 90 days' prior notice to the division and deposit by the self-insuring employer of other qualifying security of equal value within 10 business days after such notice. Failure to provide such notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the division to call or sue upon the surety bond, or to act with respect to other pledged security in any manner necessary to preserve its value for the purposes intended by this section, including the exercise of rights under a letter of credit, the sale of any security at then prevailing market rates, or the withdrawal of any funds represented by any certificate of deposit forming part of the qualifying security deposit;

(c) By entering into a contract with a public utility under an approved utility-provided self-insurance program as set forth in s. 440.571 in effect as of July 1, 1983. The division shall adopt rules to implement this paragraph;

(d) By entering into an interlocal agreement with other local governmental entities to create a local government pool pursuant to s. 440.575;

(e) By obtaining a 24-hour health insurance policy which shall provide medical benefits required by this chapter and which shall meet criteria established by the Department of Insurance by rule. The 24-hour health insurance policy may provide for health care by a health maintenance organization or a preferred provider organization. The premium for such 24-hour health insurance policy shall be paid entirely by the employer. The 24-hour health insurance policy may utilize deductibles and coinsurance provisions that require the employee to pay a portion of the actual medical care received by the employee. In the event an employer obtains a 24-hour health insurance policy to secure payment of compensation as to medical benefits, the employer shall also obtain an insurance policy which shall provide indemnity benefits, so that the total coverage afforded by both the 24-hour health insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by this chapter; or

(f) By entering into a contract with an individual self-insurer under an approved individual self-insurer-provided self-insurance program as set forth in s. 440.571. The division may adopt rules to implement this subsection.

(3)(a) The license of any stock company or mutual company or association or exchange authorized to do insurance business in the state shall for good cause, upon recommendation of the division, be suspended or revoked by the Department of Insurance. No suspension or revocation shall affect the liability of any carrier already incurred.

(b) The division shall suspend or revoke any authorization to a self-insurer for good cause. No suspension or revocation shall affect the liability of any self-insurer already incurred.

(c) Violation of s. 440.381 by a self-insurance fund shall result in the imposition of a fine not to exceed \$1,000 per audit if the self-insurance fund fails to act on said audits by correcting errors in employee classification or accepted applications for coverage where it knew employee classifications were incorrect. Such fines shall be levied by the division and deposited into the Workers' Compensation Administration Trust Fund.

(5) All insurance carriers authorized to write workers' compensation insurance in this state shall make available, at the written request of the employer, an insurance policy containing deductibles in the amount of \$500, \$1,000, \$1,500, \$2,000, and \$2,500 per claim and a coinsurance provision per claim. Any amount of coinsurance shall bind the carrier to pay 80 percent, and the employer to pay 20 percent, of the benefits due to an employee for an injury compensable under this chapter of the amount of benefits above the deductible, up to the limit of \$21,000. One hundred percent of the benefits above the amount of any deductible and coinsurance, as the case may be, due to an employee for one injury shall be paid solely by the carrier. Regardless of any coinsurance or deductible amount, the claim shall be paid by the applicable carrier, which shall then be reimbursed by the employer for any coinsurance or deductible amounts paid by the carrier. No insurance carrier shall be required to offer a deductible or coinsurance to any employer if, as a result of a credit investigation, the carrier determines that the employer is not sufficiently financially stable to be responsible for payment of such deductible or coinsurance amounts.

Section 30. Section 440.381, Florida Statutes, 1990 Supplement, is reenacted to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(1) Applications by an employer to a carrier for coverage required by s. 440.38 shall be made on a form prescribed by the Department of Insurance. The Department of Insurance shall adopt rules by January 1, 1991, for applications for coverage required by s. 440.38. The rules shall provide that an application include information on the employer, the type of business, past and prospective payroll, estimated revenue, previous workers' compensation experience, employee classification, employee names, and any other information necessary to enable a carrier to accurately underwrite the applicant. The rules shall also require that an employer update an application monthly to reflect any change in the required application information.

(2) The application or application update shall contain a statement that the filing of an application or application update containing false, misleading, or incomplete information with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application shall contain a sworn statement by the employer attesting to the accuracy of the information submitted and acknowledging the provisions of s. 440.37(4).

(3) The Department of Insurance and the Department of Labor and Employment Security shall establish by rule minimum requirements for audits of payroll and classifications in order to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors have been reviewed and that the accuracy of classification of employees has been verified. The rules shall provide that employers in all classes other than the construction class be audited not less frequently than biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. In no event shall employers in the construction class, generating more than the amount of premium required to be experience rated, be audited less than annually. The annual audits required for construction classes shall consist of a physical onsite audit for the years 1991-1993. Payroll verification audit rules shall include, but not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees.

(4) Each employer shall submit a copy of the quarterly earning report required by chapter 443 at the end of each quarter to the carrier and submit self-audits supported by the quarterly earnings reports required by chapter 443 and the rules of the Division of Unemployment Compensation. Such reports shall include a sworn statement by an officer or principal of the employer attesting to the accuracy of the information contained in the report.

(5) Employers shall make available all records necessary for the payroll verification audit and permit the auditor to make a physical inspection of the employer's operation. If the employer fails upon request of the auditor to provide access to the documents specified in this section and the carrier cannot complete the audit as a result, the employer shall pay \$500 to the carrier to defray the costs of the audits.

(6) If an employer intentionally understates payroll or misrepresents employee duties so as to avoid proper classification for premium calculations, the employer shall pay, in addition to any additional premium due resulting from an audit, a 12-percent penalty on the amount underpaid. The penalty shall be paid to the carrier.

(7) If an employee suffering a compensable injury was not reported as earning wages on the last quarterly earnings report filed with the Division of Unemployment Compensation before the accident, the employer shall indemnify the carrier for all workers' compensation benefits paid to or on behalf of the employee unless the employer establishes that the employee was hired after the filing of the quarterly report, in which case the employer and employee shall attest to the fact that the employee was employed by the employer at the time of the injury. It shall be the responsibility of the Division of Workers' Compensation to collect all necessary data so as to enable it to notify the carrier of the name of an injured worker who was not reported as earning wages on the last quarterly earnings report. The division is hereby authorized to release such records to the carrier which will enable the carrier to seek reimbursement as provided under this subsection. Failure of the employer to indemnify the insurer within 21 days after demand by the insurer shall constitute grounds for the insurer to immediately cancel coverage. Any action for indemnification brought by the carrier shall be cognizable in the circuit court having jurisdiction where the employer or carrier resides or transacts business. The insurer shall be entitled to a reasonable attorney's fee if it recovers any portion of the benefits paid in such action.

(8) If an employer fails to provide reasonable access to payroll records for a payroll verification audit, the employer shall pay a premium to the carrier or self-insurer not to exceed three times the most recent estimated annual premium.

Section 31. Section 440.385, Florida Statutes, 1990 Supplement, is reenacted to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(1) CREATION OF ASSOCIATION.—

(a) There is created a nonprofit corporation to be known as the "Florida Self-Insurers Guaranty Association, Incorporated," hereinafter referred to as "the association." Upon incorporation of the association, all individual self-insurers as defined in ss. 440.02(21)(a) and 440.38(1)(b), other than individual self-insurers which are public utilities or governmental entities, shall be members of the association as a condition of their authority to individually self-insure in this state. The association shall perform its functions under a plan of operation as established and approved under subsection (5) and shall exercise its powers and duties through a board of directors as established under subsection (2). The corporation shall have those powers granted or permitted corporations not for profit, as provided in chapter 617.

(b) A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of such termination. However, the withdrawing member shall continue to be bound by the provisions of this section relating to the period of his membership and any claims charged pursuant thereto. The withdrawing member who is a member on or after January 1, 1991, shall also be required to provide to the division upon withdrawal, and at 12-month intervals thereafter, satisfactory proof that it continues to meet the standards of s. 440.38(1)(b)1. in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member satisfies the division that there is no remaining value to claims incurred while the withdrawing member was self-insured. If during this reporting period the withdrawing member fails to meet the standards of s. 440.38(1)(b)1., the withdrawing member who is a member on or after January 1, 1991, shall thereupon, and at 6-month intervals thereafter, provide to the division and the association the certified opinion of an independent actuary who is a member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the member for claims incurred while the member was a self-insurer, using a discount rate of 4 percent. With each such opinion, the withdrawing member shall deposit with the division security in an amount equal to the value certified by the actuary and of a type that is acceptable for qualifying security deposits under s. 440.38(1)(b). The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the division. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees. For purposes of this section, the successor of a withdrawing member means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

(2) BOARD OF DIRECTORS.—The board of directors of the association shall consist of nine persons and shall be organized as established in the plan of operation. With respect to initial appointments, the Secretary of Labor and Employment Security shall, by July 15, 1982, approve and appoint to the board persons who are experienced with self-insurance in this state and who are recommended by the individual self-insurers in this state required to become members of the association pursuant to the provisions of paragraph (1)(a). In the event the secretary finds that any person so recommended does not have the necessary qualifications for service on the board and a majority of the board has been appointed, the secretary shall request the directors thus far approved and appointed to recommend another person for appointment to the board. Each director shall serve for a 4-year term and may be reappointed. Appointments other than initial appointments shall be made by the Secretary of Labor and Employment Security upon recommendation of members of the association. Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director shall be reimbursed for expenses incurred in carrying out the duties of the board on behalf of the association.

(3) POWERS AND DUTIES.—

(a) Upon creation of the Insolvency Fund pursuant to the provisions of subsection (4), the association is obligated for payment of compensation under this chapter to insolvent members' employees resulting from incidents and injuries existing prior to the member becoming an insolvent member and from incidents and injuries occurring within 30 days after the member has become an insolvent member, provided the incidents giving rise to claims for compensation under this chapter occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, and provided the employee makes timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Such obligation includes only that amount due the injured worker or workers of the insolvent member under this chapter. In no event is the association obligated to a claimant in an amount in excess of the obligation of the insolvent member. The association shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the association be liable for any penalties or interest.

(b) The association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the association.
2. Borrow funds necessary to effect the purposes of this section in accord with the plan of operation.
3. Sue or be sued.
4. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this section.
5. Purchase such reinsurance as is determined necessary pursuant to the plan of operation.
6. Review all applicants for membership in the association. Prior to a final determination by the Division of Workers' Compensation as to whether or not to approve any applicant for membership in the association, the association may issue opinions to the division concerning any applicant, which opinions shall be considered by the division prior to any final determination.
7. Charge fees to any member of the association to cover the actual costs of examining the financial and safety conditions of that member.
8. Charge an applicant for membership in the association a fee sufficient to cover the actual costs of examining the financial condition of the applicant.

(c)1. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the Department of Labor and Employment Security, upon certification of the board of directors, shall levy assessments based on the annual normal premium each employer would have paid had he not been self-insured. Every assessment shall be made as a uniform percentage of the figure applicable to all individual self-insurers, provided that the assessment levied against any self-insurer in any one year shall not exceed 1 percent of the annual normal premium during the calendar year preceding the date of the assessment. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each employer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. The association shall levy assessments against any newly admitted member of the association so that the basis of contribution of any newly admitted member is the same as previously admitted members, provision for which shall be contained in the plan of operation.

2. If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

3. No state funds of any kind shall be allocated or paid to the association or any of its accounts except those state funds accruing to the association by and through the assignment of rights of an insolvent employer.

(4) **INSOLVENCY FUND.**—Upon the adoption of a plan of operation or the adoption of rules by the Department of Labor and Employment Security pursuant to subsection (5), there shall be created an Insolvency Fund to be managed by the association.

(a) The Insolvency Fund is created for purposes of meeting the obligations of insolvent members incurred while members of the association and after the exhaustion of any bond, as required under this chapter. However, if such bond, surety, or reinsurance policy is payable to the Florida Self-Insurers Guaranty Association, the association shall commence to provide benefits out of the Insolvency Fund and be reimbursed from the bond, surety, or reinsurance policy. The method of operation of the Insolvency Fund shall be defined in the plan of operation as provided in subsection (5).

(b) The department shall have the authority to audit the financial soundness of the Insolvency Fund annually.

(c) The department may offer certain amendments to the plan of operation to the board of directors of the association for purposes of assuring the ongoing financial soundness of the Insolvency Fund and its ability to meet the obligations of this section.

(d) The department actuary may make certain recommendations to improve the orderly payment of claims.

(5) **PLAN OF OPERATION.**—By September 15, 1982, the board of directors shall submit to the Department of Labor and Employment Security a proposed plan of operation for the administration of the association and the Insolvency Fund.

(a) The purpose of the plan of operation shall be to provide the association and the board of directors with the authority and responsibility to establish the necessary programs and to take the necessary actions to protect against the insolvency of a member of the association. In addition, the plan shall provide that the members of the association shall be responsible for maintaining an adequate Insolvency Fund to meet the obligations of insolvent members provided for under this act and shall authorize the board of directors to contract and employ those persons with the necessary expertise to carry out this stated purpose.

(b) The plan of operation, and any amendments thereto, shall take effect upon approval in writing by the department. If the board of directors fails to submit a plan by September 15, 1982, or fails to make required amendments to the plan within 30 days thereafter, the department shall promulgate such rules as are necessary to effectuate the provisions of this subsection. Such rules shall continue in force until modified by the department or superseded by a plan submitted by the board of directors and approved by the department.

(c) All member employers shall comply with the plan of operation.

(d) The plan of operation shall:

1. Establish the procedures whereby all the powers and duties of the association under subsection (3) will be performed.
2. Establish procedures for handling assets of the association.
3. Establish the amount and method of reimbursing members of the board of directors under subsection (2).
4. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent employer shall be deemed notice to the association or its agent, and a list of such claims shall be submitted periodically to the association or similar organization in another state by the receiver or liquidator.
5. Establish regular places and times for meetings of the board of directors.
6. Establish procedures for records to be kept of all financial transactions of the association and its agents and the board of directors.
7. Provide that any member employer aggrieved by any final action or decision of the association may appeal to the department within 30 days after the action or decision.
8. Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the department.

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(e) The plan of operation may provide that any or all of the powers and duties of the association, except those specified under subparagraphs (d)1. and 2., be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation of powers or duties under this subsection shall take effect only with the approval of both the board of directors and the department and may be made only to a corporation, association, or organization which extends protection which is not substantially less favorable and effective than the protection provided by this section.

(6) POWERS AND DUTIES OF DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY.—

(a) The department shall:

1. Notify the association of the existence of an insolvent employer not later than 3 days after it receives notice of the determination of insolvency.

2. Upon request of the board of directors, provide the association with a statement of the annual normal premiums of each member employer.

(b) The department may:

1. Require that the association notify the member employers and any other interested parties of the determination of insolvency and of their rights under this section. Such notification shall be by mail at the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

2. Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this state. As an alternative, the department may levy a fine on any member employer failing to pay an assessment when due. Such fine shall not exceed 5 percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

3. Revoke the designation of any servicing facility if the department finds that claims are being handled unsatisfactorily.

(7) EFFECT OF PAID CLAIMS.—

(a) Any person who recovers from the association under this section shall be deemed to have assigned his rights to the association to the extent of such recovery. Every claimant seeking the protection of this section shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent member. The association shall have no cause of action against the employee of the insolvent member for any sums the association has paid out, except such causes of action as the insolvent member would have had if such sums had been paid by the insolvent member. In the case of an insolvent member operating on a plan with assessment liability, payments of claims by the association shall not operate to reduce the liability of the insolvent member to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent member shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority against the assets of the insolvent member equal to that to which the claimant would have been entitled in the absence of this section. The expense of the association or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

(c) The association shall file periodically with the receiver or liquidator of the insolvent member statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent member.

(8) PREVENTION OF INSOLVENCIES.—To aid in the detection and prevention of employer insolvencies:

(a) Upon determination by majority vote that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the Department of Labor and Employment Security of any information indicating such condition.

(b) The board of directors may, upon majority vote, request that the department determine the condition of any member employer which the board in good faith believes may no longer be qualified to be a member of the association. Within 30 days of the receipt of such request or, for good cause shown, within a reasonable time thereafter, the department shall make such determination and shall forthwith advise the board of its findings. Each request for a determination shall be kept on file by the department, but the request shall not be open to public inspection prior to the release of the determination to the public.

(c) It shall also be the duty of the department to report to the board of directors when it has reasonable cause to believe that a member employer may be in such a financial condition as to be no longer qualified to be a member of the association.

(d) The board of directors may, upon majority vote, make reports and recommendations to the department upon any matter which is germane to the solvency, liquidation, rehabilitation, or conservation of any member employer. Such reports and recommendations shall not be considered public documents.

(e) The board of directors may, upon majority vote, make recommendations to the department for the detection and prevention of employer insolvencies.

(f) The board of directors shall, at the conclusion of any member's insolvency in which the association was obligated to pay covered claims, prepare a report on the history and cause of such insolvency, based on the information available to the association, and shall submit such report to the department.

(9) EXAMINATION OF THE ASSOCIATION.—The association shall be subject to examination and regulation by the Department of Labor and Employment Security. No later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the department.

(10) IMMUNITY.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member employer, the association or its agents or employees, the board of directors, or the Department of Labor and Employment Security or its representatives for any action taken by them in the performance of their powers and duties under this section.

(11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT JUDGMENTS.—All proceedings in which an insolvent employer is a party, or is obligated to defend a party, in any court or before any quasi-judicial body or administrative board in this state shall be stayed for up to 6 months, or for such additional period from the date the employer becomes an insolvent member, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member. The association, either on its own behalf or on behalf of the insolvent member, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

(12) LIMITATION ON CERTAIN ACTIONS.—Notwithstanding any other provision of this chapter, a covered claim, as defined herein, with respect to which settlement is not effected and pursuant to which suit is not instituted against the insured of an insolvent member or the association within 1 year after the deadline for filing claims with the receiver of the insolvent member, or any extension of the deadline, shall thenceforth be barred as a claim against the association.

(13) CORPORATE INCOME TAX CREDIT.—Any sums acquired by a member by refund, dividend, or otherwise from the association shall be payable within 30 days of receipt to the Department of Revenue for deposit with the Treasurer to the credit of the General Revenue Fund. All provisions of chapter 220 relating to penalties and interest on delinquent corporate income tax payments apply to payments due under this subsection.

Section 32. Section 440.386, Florida Statutes, 1990 Supplement, is reenacted to read:

440.386 Individual self-insurers' insolvency; conservation; liquidation.—

(1) JURISDICTION OF DELINQUENCY PROCEEDING VENUE; CHANGE OF APPEAL.—

(a) The circuit court shall have original jurisdiction in any delinquency proceeding under this section, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this section.

(b) The venue of a delinquency proceeding or summary proceeding against a domestic or foreign individual self-insurer shall be in the Circuit Court of Leon County.

(c) An appeal shall be to the District Court of Appeal, First District, from an order granting or refusing liquidation or conservation and from every order in a delinquency proceeding having the character of a final order as to the particular portion of the proceeding embraced therein.

(2) COMMENCEMENT OF DELINQUENCY PROCEEDING.—

the department may commence any such proceeding by application to the court for an order directing the individual self-insurer to show cause why the department should not have the relief prayed for. The Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to commence such proceedings, and upon receipt of such petition, the department shall commence such proceeding. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the claimants, creditors, stockholders, members, subscribers, or public may require. The Florida Self-Insurers Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings which pertain to an adjudication of insolvency of a member individual self-insurer.

(3) GROUNDS FOR LIQUIDATION.—The department may apply to the court for an order appointing a receiver and directing the receiver to liquidate the business of a domestic individual self-insurer if such individual self-insurer is insolvent. Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to apply to the court for such order. Upon receipt of such petition, the department shall apply to the court for such order.

(4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-INSURERS.—

(a) The department may apply to the court for an order appointing a receiver or ancillary receiver, and directing the receiver to conserve the assets within this state, of a foreign individual self-insurer if such individual self-insurer is insolvent. Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to apply for such order, and, upon receipt of such petition, the department shall apply to the court for such order.

(b) An order to conserve the assets of an individual self-insurer shall require the receiver forthwith to take possession of the property of the receiver within the state and to conserve it, subject to the further direction of the court.

(5) PROCEDURE IN LIQUIDATIONS OF INDIVIDUAL SELF-INSURER BY COURT.—

(a) In proceedings to liquidate the assets and business of an individual self-insurer, the court shall have power:

1. To issue injunctions.
2. To appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct.
3. To take such other proceedings as may be requisite to preserve the individual self-insurer assets, wherever situated, and carry on the business of the individual self-insurer until a full hearing can be held.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the individual self-insurer. Such liquidating receiver or receivers shall have authority, sub-

ject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the individual self-insurer, wherever situated, either at public or private sale. The assets of the individual self-insurer or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the individual self-insurer, and any remaining assets or proceeds shall be distributed among its owners or shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to the receiver's attorneys in the proceeding and to direct the payment thereof out of the assets of the individual self-insurer or the proceeds of any sale or disposition of such assets.

(d) A receiver of an individual self-insurer appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such individual self-insurer. The court appointing such receiver shall have exclusive jurisdiction of the individual self-insurer and its property, wherever situated.

(e) The circuit court shall have jurisdiction to appoint an ancillary receiver for the assets and business of such individual self-insurer, to serve ancillary to the receiver for the assets and business of the individual self-insurer acting under orders of a court having jurisdiction to appoint such a receiver for the individual self-insurer, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Such court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this state, and the business, of a foreign individual self-insurer doing business in this state, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this state, and its business, even though no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when deemed appropriate by such circuit court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such individual self-insurer.

(6) QUALIFICATIONS OF RECEIVERS.—A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct, with such sureties as the court may require.

(7) FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS.—In proceedings to liquidate the assets and business of an individual self-insurer, the court may require all creditors of the individual self-insurer to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the offer, as the last day for filing of claims, and shall prescribe the notice of the date so fixed that shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the individual self-insurer. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

(8) DISCONTINUANCE OF DELINQUENCY PROCEEDINGS.—The liquidation of the assets and business or other delinquency proceedings of an individual self-insurer may be discontinued at any time during the proceedings when it is established that cause for the delinquency proceeding no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the individual self-insurer all its remaining property and assets.

(9) VOIDABLE TRANSFERS.—

(a) Any transfer of, or lien upon, the property of an individual self-insurer which is made or created within 4 months prior to the granting of an order to show cause under this section with the intent of giving to any creditor a preference or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such individual self-insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such individual self-insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the court.

(c) The receiver in any proceeding under this section may avoid any transfer of or lien upon the property of an individual self-insurer which any creditor, stockholder, or subscriber of such individual self-insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

(10) TRANSFERS PRIOR TO PETITION.—

(a) Every transfer made or suffered and every obligation incurred by an individual self-insurer within 1 year prior to the filing of a successful petition in any delinquency proceeding under this section, upon a showing by the receiver that the same was incurred without fair consideration, or with actual intent to hinder, delay, or defraud either then existing or future creditors, shall be fraudulent and voidable. However, every such transfer or obligation incurred or suffered within 6 months prior to the filing of the above petition shall be presumed void and fraudulent, with the burden of proof upon the obligee or transferee to show otherwise. This paragraph shall not apply to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, but any purchaser, lienor, or obligee who in good faith has given a valuable consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as a security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b) Transfers shall be deemed to have been made or suffered, or obligations incurred, when perfected according to the following criteria:

1. A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

2. A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the individual self-insurer could obtain rights superior to the rights of the transferee.

3. A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

4. Any transfer not perfected prior to the filing of a petition in a delinquency proceeding shall be deemed to be made immediately before the filing of a successful petition.

Subparagraphs 1.-4. apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(c) The transferor or obligor individual self-insurer shall record and preserve adequate official memoranda by corporate minutes which shall fully reflect all transactions involving transfers as contemplated by this section of real property or securities of any type and, in the case of all other property or assets, any transfer out of the individual self-insurer's ordinary course of business. Any person, firm, or corporation, or any officer, director, or employee thereof, who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000. Each instance of such violation shall be considered a separate offense.

(d) The personal liability of the officers or directors of an insolvent individual self-insurer shall be subject to the provisions of chapter 607 and the penalties provided therein.

(e) Every transaction of the individual self-insurer with a reinsurer or an excess insurer within 1 year prior to the filing of the petition shall be voidable upon a showing that such transaction was made without fair consideration or with intent to hinder, delay, or defraud either then existing or future creditors notwithstanding the provisions of subsection (1).

(11) TRANSFERS AFTER PETITION.—

(a) After the original petition is filed in any delinquency proceeding, a transfer of any of the real property of the individual self-insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for, or order in, any delinquency proceeding with the clerk of the circuit court in the county where any real property in question is located is constructive notice of the commencement of a delinquency proceeding. The exercise by a court of the United States or any state with jurisdiction to authorize or effect a judicial sale of real property of the individual self-insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(b) After the original petition for a delinquency proceeding has been filed and before an order of conservation or liquidation is granted:

1. A transfer of any of the property of the individual self-insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.

2. A person indebted to the individual self-insurer or holding property of the individual self-insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the individual self-insurer or upon his order, with the same effect as if the petition were not pending.

(c) A person having actual knowledge of the pending delinquency proceeding shall be deemed not to act in good faith.

(d) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as elsewhere provided in this subsection, any transfer by or in behalf of the individual self-insurer after the date of filing of the original petition in any delinquency proceeding requesting the appointment of a receiver by any person other than the receiver is not valid against the receiver.

(e) Nothing in this section shall impair the negotiability of currency or negotiable instruments.

(12) JUDGMENT OF INVOLUNTARY DISSOLUTION; ENTRY; FILING.—

(a) In proceedings to liquidate the assets and business of an individual self-insurer which is a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

(b) In case the court shall enter a judgment dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the judgment to be filed with the Department of State. No fee shall be charged by the Department of State for the filing thereof.

(13) GUARANTY FUND; ORDERS OF COURT.—Any delinquency order issued pursuant to this section shall authorize and direct the receiver to coordinate the operation of the receivership with the operation of the Florida Self-Insurers Guaranty Association, Incorporated. Such authorization shall include, but not be limited to, release of copies of any of the following:

(a) Workers' compensation claims files, records, or documents pertaining to workers' compensation claims on file with the insolvent individual self-insurer.

(b) Workers' compensation claims filed with the receiver.

Section 33. Paragraph (a) of subsection (3) of section 440.39, Florida Statutes, 1990 Supplement, is reenacted to read:

440.39 Compensation for injuries when third persons are liable.—

(3)(a) In all claims or actions at law against a third-party tortfeasor, the employee, or his dependents or those entitled by law to sue in the event he is deceased, shall sue for the employee individually and for the use and benefit of the employer, if a self-insurer, or employer's insurance carrier, in the event compensation benefits are claimed or paid; and such suit may be brought in the name of the employee, or his dependents or those entitled by law to sue in the event he is deceased, as plaintiff or, at the option of such plaintiff, may be brought in the name of such plaintiff and for the use and benefit of the employer or insurance carrier, as the case may be. Upon suit being filed, the employer or the insurance carrier, as the case may be, may file in the suit a notice of payment of compensation and medical benefits to the employee or his dependents, which notice shall constitute a lien upon any judgment or settlement recovered to the extent that the court may determine to be their pro rata share for compensation and medical benefits paid or to be paid under the provisions of this law, less their pro rata share of all court costs expended by the plaintiff in the prosecution of the suit including reasonable attorney's fees for the plaintiff's attorney. In determining the employer's or carrier's pro rata share of those costs and attorney's fees, the employer or carrier shall have deducted from its recovery a percentage amount equal to the percentage of the judgment or settlement which is for costs and attorney's fees. Subject to this deduction, the employer or carrier shall recover from the judgment or settlement, after costs and attorney's fees incurred by the employee or dependent in that suit have been deducted, 100 percent of what it has paid and future benefits to be paid, except, if the employee or dependent can demonstrate to the court that he did not recover the full value of damages sustained, the employer or carrier shall recover from the judgment or settlement, after costs and attorney's fees incurred by the employee or dependent in that suit have been deducted, a percentage of what it has paid and future benefits to be paid equal to the percentage that the employee's net recovery is of the full value of the employee's damages; provided, the failure by the employer or carrier to comply with the duty to cooperate imposed by subsection (7) may be taken into account by the trial court in determining the amount of the employer's or carrier's recovery, and such recovery may be reduced, as the court deems equitable and appropriate under the circumstances, including as a mitigating factor whether a claim or potential claim against a third party is likely to impose liability upon the party whose cooperation is sought, if it finds such a failure has occurred. The burden of proof will be upon the employee. The determination of the amount of the employer's or carrier's recovery shall be made by the judge of the trial court upon application therefor and notice to the adverse party. Notice of suit being filed shall be served upon the employer and compensation carrier and upon all parties to the suit or their attorneys of record by the employee. Notice of payment of compensation benefits shall be served upon the employee and upon all parties to the suit or their attorneys of record by the employer and compensation carrier. However, if a migrant worker prevails under a private cause of action under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) 96 Stat. 2583, as amended, 29 U.S.C. s. 1801 et seq. (1962 ed. and Supp. V), any recovery by the migrant worker under this act shall be offset 100 percent against any recovery under AWPA.

Section 34. Section 440.43, Florida Statutes, 1990 Supplement, is reenacted to read:

440.43 Penalty for failure to secure payment of compensation.—Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and upon a complaint of the division being filed in the circuit court of the county in which said employer may be doing business, such employer may be enjoined from employing individuals and from conducting business until such payment for compensation has been secured. However, the employer, upon written notice from the division, shall show evidence that such compensation was secured for all employees at the time of receipt of such written notice. If such employer fails to show evidence that workers' compensation insurance was secured for all employees at the time of receipt of such written notice, the division shall assess a penalty of \$500, and if coverage is not secured within 96 hours thereafter, an additional \$100 shall be assessed for each day that such employer fails to comply. Such fines are to be deposited in the Workers' Compensation Administration Trust Fund. Any contractor found not to have secured coverage shall be reported by the division to the appropriate state licensing board for disciplinary action. This section shall not affect any other liability of the employer under this chapter.

Section 35. Section 37 of chapter 90-201, Laws of Florida, is reenacted to read:

Section 37. Subsections (8) and (10) of section 440.44, Florida Statutes, as amended by chapter 89-289, Laws of Florida, are hereby repealed.

Section 36. Section 440.4415, Florida Statutes, 1990 Supplement, is reenacted to read:

440.4415 Workers' Compensation Oversight Board; legal counsel.—

(1) There is created within the Legislative Branch the Workers' Compensation Oversight Board. It is the desire of the Legislature that the Governor participate in the appointment process of members of the oversight board, and the Legislature accordingly delegates to the Governor a limited authority with respect to the oversight board by authorizing him to participate in the selection of members. The board shall be composed of the following members:

(a) Ten members selected by the Governor, none of whom shall be a member of the Legislature at the time of appointment, consisting of the following:

1. A representative of a carrier which writes workers' compensation insurance in Florida.
2. A representative of a self-insurer which writes workers' compensation insurance in Florida.
3. An attorney licensed to practice in Florida who is experienced in the area of workers' compensation.
4. An academician who is recognized for achievement in workers' compensation.
5. Three representatives of employers who employ at least 10 employees in Florida for which workers' compensation coverage is provided pursuant to this chapter, at least one of which employers is a licensed general contractor actively engaged in the construction industry in this state.
6. Three representatives of employees, one of whom must be a representative of an employee's union whose members are covered by workers' compensation pursuant to this chapter.

(b) Five members selected by the President of the Senate, none of whom shall be members of the Legislature at the time of appointment, consisting of:

1. A representative of a carrier which writes workers' compensation insurance in Florida.
2. An attorney licensed to practice in Florida who is certified in workers' compensation and primarily represents employers.
3. A representative of a health care provider which provides medical care in Florida pursuant to this chapter.
4. A representative of an employer.
5. A representative of employees.

(c) Five members selected by the Speaker of the House of Representatives, none of whom shall be members of the Legislature at the time of appointment, consisting of:

1. A representative of a self-insurer which writes workers' compensation insurance in Florida and which is sponsored by an association comprised primarily of licensed contractors.
2. A representative of a health care provider which provides medical care in Florida pursuant to this chapter.
3. An attorney licensed to practice in Florida who is certified in workers' compensation and primarily represents injured employees.
4. A representative of employees.
5. A representative of employers which employ fewer than 10 employees in Florida for whom workers' compensation coverage is provided pursuant to this chapter.

(d) Six nonvoting ex officio members. Two of these members shall be selected by the Speaker of the House of Representatives and two shall be selected by the President of the Senate, all of whom shall be members of

the Legislature at the time of appointment. Additionally, the Insurance Commissioner and the secretary of the Department of Labor and Employment Security shall be nonvoting ex officio members.

The original appointments to the board shall be made on or before August 1, 1990. Vacancies in the membership of the board shall be filled in the same manner as the original appointments. Except as to ex officio members of the board, five appointees of the Governor, three appointees of the President of the Senate, and three appointees of the Speaker of the House of Representatives shall serve for terms of 2 years, and the remaining appointees shall serve for terms of 4 years. Thereafter, all members shall serve for terms of 4 years; except that a vacancy shall be filled by appointment for the remainder of the term. Members shall serve without compensation, but shall be reimbursed for per diem and travel expenses in accordance with s. 112.061. The board shall have an organizational meeting on or before August 15, 1990. The board shall elect a chairman from its membership at the organizational meeting. Thereafter, the board shall meet at the call of its chairman and at least on a quarterly basis. None of the members of the Workers' Compensation Oversight Board created pursuant to s. 440.44 shall serve on the oversight board created pursuant to this section unless reappointed by the Governor, the President of the Senate, or the Speaker of the House of Representatives.

(2) The board shall review the performance of the workers' compensation system, issuing a report of its findings and conclusions on or before January 1 of each year to the Governor, the Secretary of Labor and Employment Security, the Commissioner of Insurance, the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of both houses as to the status of the workers' compensation system. In the performance of such responsibility, the board shall have the authority to:

- (a) Make recommendations relating to the adoption of rules and needed legislation.
- (b) Develop recommendations regarding the method and form of statistical data collection.
- (c) Monitor the performance of the workers' compensation system in the implementation of legislative directives.
- (d) Monitor the operations of the division and the Department of Insurance regarding the administration of the workers' compensation system.

(3) The board shall, with the assistance of the legal counsel, submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of both houses on or before March 1, 1991, which shall address the following areas:

- (a) An analysis of the Florida Assigned Risk Rating Plan relative to the implementation of the Joint Underwriting Plan for the purpose of providing workers' compensation insurance to employers.
- (b) The reserving requirements of carriers and self-insurers in order to determine if the reserving practices are satisfactory so as to ensure financial stability while providing the lowest possible cost to employers for workers' compensation coverage.
- (c) The rate filing process and whether open competition would be more beneficial than the present system of permitting insurers to subscribe to a rating organization for the purpose of making a rate filing with the Department of Insurance.
- (d) Appropriate performance standards for the division in order to ensure that maximum levels of productivity and efficiency are attained.
- (e) An analysis of the present regulation of self-insurance funds as defined in s. 440.57.
- (f) An analysis of the efficacy of creating a guaranty fund for self-insurance funds.
- (g) An analysis of the present regulatory procedure for carriers and self-insurance funds to make application for deviations and discounts.
- (h) An analysis of workplace safety requirements and procedures in order to reduce the incidents of on-the-job accidents.

(i) The effect of the cost of workers' compensation insurance on the ability of Florida to compete with other states and jurisdictions to attract new business development to the state, particularly in the major industries of tourism, construction, and international trade.

(j) The effect of the cost of workers' compensation insurance on the economic development of the state due to the financial resources expended by employers to secure such coverage, which resources are diverted from the production of goods and services, as well as the effect on the economic development of the state as a result of employers which choose to leave the state due to the cost of obtaining workers' compensation insurance.

(4) The division and other state agencies shall cooperate with the board and shall provide information and staff support as reasonably necessary and required by the board.

(5) The chairman of the oversight board is authorized to employ an executive director who shall have significant experience in workers' compensation insurance, and other professional and clerical personnel, who shall be exempt from the provision of part II of chapter 110 relating to the Career Service System, and to incur expenses related to the operation of the commission, to assign workers, and to otherwise expend funds appropriated to the board for carrying out all official duties. The board and the legal counsel shall be assigned, for administrative purposes, to the Joint Legislative Management Committee and shall be subject to the established policies and procedures of the Administrative Services Division of the Joint Legislative Management Committee. The executive director shall manage the daily operations and affairs of the board.

(6) On or before September 1, 1990, the Joint Legislative Auditing Committee shall appoint a legal counsel by majority vote of the members of the committee. The legal counsel shall be an attorney admitted to practice in the State of Florida and shall have the duty to provide legal representation for the people of the state in any proceedings before the Department of Insurance relating to workers' compensation insurance and in any proceedings pertaining to the schedules of reimbursement determined by the three-member panel pursuant to s. 440.13. Salaries and expenses of the office of the legal counsel shall be set by the Joint Legislative Auditing Committee, and shall be paid from moneys appropriated for such purpose from the Workers' Compensation Administration Trust Fund. The legal counsel shall be authorized to employ necessary support and actuarial personnel and to expend funds appropriated to the board for carrying out his official duties. The legal counsel shall serve for 2 years and may be reappointed by the Joint Legislative Auditing Committee. The legal counsel shall have the following duties:

(a) To recommend to the Department of Insurance, by petition, the commencement of any proceedings or action, or to appear, in the name of the state or its citizens, in any proceedings or action before the Department of Insurance relating to workers' compensation insurance premiums or rates and urge therein the adoption of any positions which he deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the Department of Insurance, and to utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the Department of Insurance which shall be reviewable by summary procedure in the circuit courts of this state.

(b) To have access to and use of all files, records, and data of the Department of Insurance available to any other attorney representing parties in a proceeding before the department.

(c) In any workers' compensation premium or rate proceeding in which he has participated as a party, to seek review of any determination, finding, or order of the Department of Insurance, or of any hearing examiner designated by the Department of Insurance, in the name of the state or its citizens.

(d) To prepare and issue reports and recommendations to the Department of Insurance, the Governor, and the Legislature on any matter or subject within the jurisdiction of the department relating to workers' compensation insurance premiums and rates, and to make such recommendations as he deems appropriate for legislation relative to workers' compensation insurance premiums and rates.

(e) To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the Department of Insurance relating to workers' compensation insurance premium or rate proceedings, in the name of the state or its citizens.

(f) To appear before the three-member panel as created in s. 440.13 in any matter pertaining to the adoption of schedules of maximum reimbursement allowances.

(7) The Department of Insurance shall furnish the legal counsel with copies of the initial pleadings in all workers' compensation insurance rating proceedings before the department and, if the legal counsel intervenes as a party in any proceeding, he shall be served with copies of all subsequent pleadings, exhibits, and prepared testimony, if used. Upon filing notice of intervention, the legal counsel shall serve all interested parties with copies of such notice and all of his subsequent pleadings and exhibits.

(8) All costs and expenses incurred by the members and employees of the board shall be paid from disbursements from the Workers' Compensation Administrative Trust Fund. The board shall be physically located in Tallahassee.

(9) The board shall be authorized to make recommendations to the Joint Legislative Auditing Committee regarding applicants for the appointment or reappointment of the legal counsel.

Section 37. Subsections (1) and (2) of section 440.45, Florida Statutes, 1990 Supplement, are reenacted to read:

440.45 Judges of compensation claims; Chief Judge.—

(1) The Governor shall appoint as many full-time judges of compensation claims to the workers' compensation trial courts as may be necessary to effectually perform the duties prescribed for them under this chapter. The Governor shall initially appoint a judge of compensation claims from a list of at least three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of the following: five members, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law; five electors, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor; and five electors, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, and who are not members of The Florida Bar, selected and appointed by a majority vote of the other ten members of the commission. The meetings and determinations of the nominating commission as to the judges of compensation claims shall be open to the general public. No person shall be nominated or appointed as a full-time judge of compensation claims who has not had 5 years' experience in the practice of law in this state; and no judge of compensation claims shall engage in the private practice of law during a term of office. The Governor may appoint any former judge of compensation claims to serve as a judge of compensation claims pro hac vice to complete the proceedings on any claim with respect to which the judge of compensation claims had heard testimony and which remained pending at the time of the expiration of the judge of compensation claims' term of office. However, no former judge of compensation claims shall be appointed to serve as a judge of compensation claims pro hac vice for a period to exceed 60 successive days.

(2) Each full-time judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of the term of office of the judge of compensation claims, the conduct of such judge of compensation claims shall be reviewed by the statewide nominating commission, which commission shall determine whether such judge of compensation claims shall be retained in office. Evaluation forms to be considered by the commission shall be prepared by the Chief Judge, shall be completed anonymously by each attorney within 45 days from the date of any hearing in which he has participated, and shall be forwarded to the statewide nominating commission. Included in the evaluation shall be questions relating to timeliness of decisions; diligence, availability, and punctuality; neutrality and objectivity regarding legal issues; knowledge and application of law; courtesy toward litigants, witnesses, and lawyers; judicial demeanor; and willingness to ignore irrelevant considerations such as race, sex, religion, politics, identity of lawyers, or parties. A report of the decision shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the judge of compensation claims. If the statewide nominating commission votes not to retain the judge of compensation claims, the judge of compensation claims shall not be reappointed but shall remain in office until a successor is appointed and qualified. If the statewide nominating commission votes to retain the judge of compensation claims in office, then the Governor shall reappoint the judge of compensation claims for a term of 4 years. Judges of compensation claims shall be subject to the jurisdiction of the Judicial Qualifications Commission.

Section 38. Section 440.49, Florida Statutes, 1990 Supplement, is reenacted to read:

440.49 Rehabilitation of injured employees; Special Disability Trust Fund.—

(1) REHABILITATION OF INJURED EMPLOYEES.—

(a) When an employee has suffered an injury covered by this chapter and it appears that the injury will preclude the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to appropriate training and education. Upon request by the employee, the employer, or the carrier, the division shall provide such injured employee with appropriate training and education for suitable gainful employment and may cooperate with federal and state agencies for training and education and with any public or private agency cooperating with such federal and state agencies in the training and education of such injured employees. Within 10 days of the request, the division shall respond by assigning a public or private evaluator to conduct an evaluation to determine if training and education are appropriate, unless the injured employee and the employer/carrier have agreed upon an evaluator to conduct the evaluation and included the evaluator's name in the request. Within 30 days of the assignment, the evaluator shall submit the results of the evaluation to the division, employer, and employee. Any contracts entered into for this purpose shall be exempt from the competitive bidding requirements of chapter 287. The division shall establish a blind rotation system for the selection of the evaluators in the appropriate geographic area, except in the community college districts served by Miami-Dade Community College, Florida Community College at Jacksonville, and Indian River Community College. Until October 1, 1991, 50 percent of the evaluations in those districts shall be assigned to the community college in the district and the other 50 percent to other evaluators in the district who are selected by a blind rotation system. Thereafter, the method of selecting the evaluator shall be consistent statewide. Based on the results of the evaluation, the division is authorized to expend moneys from the Workers' Compensation Administration Trust Fund established by s. 440.50, for the purpose of assisting such injured employees to obtain appropriate training and education, if necessary. Such expenditures shall only be made in accordance with rules promulgated by the division establishing standards for eligibility and types, duration, and direct cost of training and educational programs to be made available. All hearings arising under this subsection shall be conducted by a judge of compensation claims pursuant to s. 440.25. However, no judge of compensation claims shall assume jurisdiction to approve or disapprove training and education under this provision until the division has advised all parties as to the training and education program it may propose if such training and education program is to be funded out of the fund established by s. 440.50. The division shall be a party to all hearings involving any claims made against the fund established by s. 440.50. For purposes of this section only, "suitable gainful employment" means employment or self-employment which is reasonably attainable in light of the individual's age, education, previous occupation, and injury and which offers an opportunity to restore the individual as soon as practicable and as nearly as possible to his average weekly earnings at the time of injury. If any voluntary vocational rehabilitation services or training and education services are voluntarily provided to the employee by the employer or carrier, those services shall be reported to the division within such time as the division may prescribe by rule, so that the division may perform utilization review of such services. Neither the employer, carrier, or injured employee is required to furnish or accept voluntary vocational rehabilitation services. As used in this subsection, the term "voluntary vocational rehabilitation services" means services helpful to restore injured employees to suitable gainful employment. Voluntary vocational rehabilitation within the Workers' Compensation Act includes two major interrelated types of services, medical care coordination and vocational services coordination. "Medical care coordination" includes, but is not limited to, coordinating physician and mental restoration services, such as medical, psychiatric, or therapeutic treatment for the injured employee, providing health teaching to the employee and family, and monitoring the employee's recovery process to maximize recovery, minimize the disability, and prevent complications. The purpose of medical care coordination is to minimize the recovery period without jeopardizing medical stability, to assure that proper medical treatment and other restorative services are received in a timely and sequential manner, so as to assist in the containment of medical costs. "Vocational services coordination" includes, but is not limited to, vocational services needed by the injured employee to secure suitable gainful employment. Such services include counseling for adjustment to disability, vocational counseling, vocational and functional

capacity assessments, job seeking skills training, self-employment assistance, and selective job placement, arranging other services such as education or training (vocational and on-the-job) which may be needed by the employee, and monitoring the employee's progress toward attainment of the identified vocational goal. For the purpose of this subsection, "selective job placement" means a process by which a provider directly assists the injured employee in securing suitable employment by matching the needs and abilities of the injured employee with the requirements and demands of specific jobs. These voluntary services shall be considered loss adjustment expenses of the employer or carrier and not benefits to the employee, including, but not limited to, the purposes of ratemaking.

(b)1. The Division of Workers' Compensation shall continuously study the issue of education and training and rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities and agencies, both public and private. The division shall establish by rule the minimum qualifications, standards, and requirements which must be met in order to be listed in the directory of qualified training and education and rehabilitation service providers, facilities, and agencies. Such minimum qualifications, standards, and requirements shall be based on those generally accepted within the various specific fields for which the provider, facility, or agency is to be approved. A biennial application fee of \$25 shall be charged for a listing in the directory, and all such fees shall be deposited in the Workers' Compensation Administration Trust Fund. The division has the authority to monitor and evaluate qualified training and education or rehabilitation service providers, facilities, and agencies to ensure their continued compliance with the minimum qualifications, standards, and requirements established pursuant to this subparagraph. The failure of a training and education or rehabilitation service provider, facility, or agency to provide the division with information requested or access necessary for it to carry out this monitoring and evaluation function shall be grounds for removing the provider, facility, or agency from the directory.

2. A training and education or rehabilitation service provider, facility, or agency shall prepare an individualized written rehabilitation plan on all compensable workers' compensation cases which require three or more counseling sessions, vocational evaluations, training, work evaluations, or placement. Prior to implementing any plan, the plan shall be signed by the carrier or employer, if self-insured, and the employee as verification of acceptance of the plan. The plan shall be filed electronically with the division and copies furnished to all interested parties. Progress reports shall be filed electronically every 30 days with the division and within 30 days of the completion of the plan. Funding for electronic reporting equipment for the division shall be from the Workers' Compensation Administration Trust Fund established by s. 440.50.

3. A training and education or rehabilitation service provider, facility, or agency may not be authorized by any employer, carrier, or the division to provide any training and education or rehabilitation services in this state to an injured worker unless such provider, facility, or agency is listed or has been approved for listing in the directory as being qualified to provide the specific service to be authorized. However, Miami-Dade Community College, Florida Community College at Jacksonville, and Indian River Community College shall be authorized to conduct evaluations of injured employees until October 1, 1991, regardless of whether or not they are listed in the directory. Thereafter, they will have to be listed in the directory to be an authorized provider. This paragraph does not apply to training and education or rehabilitation services provided outside this state and does not apply to the services of a training and education or rehabilitation service provider, facility, or agency unless such provider, facility, or agency is included in the definition of same contained in subparagraph 4. Job placement services provided by private employment agencies under this subsection are exempt from this subparagraph if those services are limited to job placement.

4. As used in this paragraph, the term:

a. "Private employment agency" means any person, firm, or corporation which, for hire or for profit, undertakes to secure employment or help, or through the medium of a card, circular, pamphlet, or other medium whatsoever, or through the display of a sign or bulletin, or by any other holding out to the public, offers to secure employment or help or give information as to where employment or help may be secured.

b. "Qualified training and education or rehabilitation service providers, facilities, and agencies" means training and education or rehabilitation service providers, facilities, and agencies which are listed in the division directory of qualified training and education or rehabilitation service providers, facilities, and agencies.

c. "Training and education or rehabilitation service providers, facilities, and agencies" means nurses licensed pursuant to chapter 464, vocational rehabilitation counselors, and public and private agencies, companies, and corporations which provide to injured workers, pursuant to this section, training and educational or vocational rehabilitation services including vocational retraining, testing, counseling, evaluation, and job placement services. The term includes self-insured employers or carriers, their employees or wholly owned subsidiaries when they provide such services wholly in-house to the injured workers of the self-insured employer or carrier's insureds. Such in-house services shall be subject to s. 440.20(16). The term does not include the Department of Labor and Employment Security or the Department of Health and Rehabilitative Services or the employees of either department. The term does not include physicians licensed under chapter 458, osteopaths licensed under chapter 459, chiropractors licensed under chapter 460, podiatrists licensed under chapter 461, psychologists licensed under chapter 490, or hospitals.

(c) Prior to entering an order adjudicating an injured employee to be permanently and totally disabled, the judge of compensation claims shall first determine whether there is a reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education.

(d) When it appears that training and education are necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to be paid by the employer additional compensation for temporary total disability during such period as the employee may be receiving training and education under a program pursuant to this section for a period not to exceed 26 weeks, which period may be extended for an additional period not to exceed 26 additional weeks, if such extended period is determined to be necessary and proper by the judge of compensation claims. However, no carrier or employer shall be precluded from continuing such additional temporary total disability compensation beyond such period voluntarily. If training and education require residence at or near a facility or an institution and away from the employee's customary residence, the reasonable cost of board, lodging, or travel shall be borne by the division from the Workers' Compensation Administration Trust Fund established by s. 440.50. Refusal to accept training and education as deemed necessary by the judge of compensation claims shall result in a 50-percent reduction in weekly compensation, including wage-loss benefits as determined pursuant to s. 440.15(3)(b), for each week of the period of refusal.

(e) The division, after consultation with representatives of employees, employers, carriers, training and education service providers, and rehabilitation providers, shall adopt rules governing practices and standards for training and education and rehabilitation service providers which reflect the generally accepted standards for such providers.

(2) LIMITATION OF LIABILITY FOR SUBSEQUENT INJURY THROUGH SPECIAL DISABILITY TRUST FUND.—

(a) Legislative intent.—It is the purpose of this subsection to encourage the employment of the physically handicapped by protecting employers from excess liability for compensation and medical expense when an injury to a handicapped worker merges with his preexisting permanent physical impairment to cause a greater disability, permanent impairment, or wage loss than would have resulted from the injury alone. The division shall inform all employers of the existence and function of the fund and shall interpret eligibility requirements liberally. However, this subsection shall not be construed to create or provide any benefits for injured employees or their dependents not otherwise provided by this chapter. The entitlement of an injured employee or his dependents to compensation under this chapter shall be determined without regard to this subsection, the provisions of which shall be considered only in determining whether an employer or carrier who has paid compensation under this chapter is entitled to reimbursement from the Special Disability Trust Fund.

(b) Definitions.—As used in this subsection:

1. "Permanent physical impairment" means any permanent condition due to previous accident or disease or any congenital condition which is, or is likely to be, a hindrance or obstacle to employment, but not due to the natural aging process.

2. "Merger" describes or means that:

a. Had the permanent physical impairment not existed, the subsequent accident or occupational disease would not have occurred;

b. The permanent disability, permanent impairment, or wage loss resulting from the subsequent accident or occupational disease is materially and substantially greater than that which would have resulted had the permanent physical impairment not existed and the employer has been required to pay, and has paid, permanent total disability, permanent impairment, or wage-loss benefits for that materially and substantially greater disability; or

c. Death would not have been accelerated had the permanent physical impairment not existed.

3. "Excess permanent compensation" means that compensation for permanent impairment, wage-loss benefits, or permanent total disability or death benefits for which the employer or carrier is otherwise entitled to reimbursement from the Special Disability Trust Fund.

(c) Permanent impairment, wage loss, or permanent total disability after other physical impairment.—

1. Permanent impairment.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impairment to cause a permanent impairment, the employer shall, in the first instance, pay all benefits provided by this chapter; but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for 60 percent of all impairment benefits which the employer has been required to provide pursuant to s. 440.15(3)(a) as a result of the subsequent accident or occupational disease.

2. Wage loss.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impairment to cause a wage loss, the employer shall, in the first instance, pay all benefits provided by this chapter; but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for 60 percent of all compensation for wage loss which the employer has been required to provide pursuant to s. 440.15(3)(b) during the first 5 years after the date of maximum medical improvement and for 75 percent of all compensation for wage loss which the employer has been required to provide after the 5-year period following the date of maximum medical improvement.

3. Permanent total disability.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impairment to cause permanent total disability, the employer shall, in the first instance, pay all benefits provided by this chapter; but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for all compensation for permanent total disability which is in excess of the first 175 weeks of permanent total disability compensation. Upon a determination that a merger has caused permanent total disability, the employer shall be immediately reimbursed from the Special Disability Trust Fund for all excess compensation paid for temporary disability and remedial treatment subject to the limitations of paragraphs (e) and (f).

(d) When death results.—If death results from the subsequent permanent impairment contemplated in paragraph (c) within 1 year after the subsequent injury, or within 5 years after the subsequent injury when disability has been continuous since the subsequent injury, and it is determined that the death resulted from a merger, the employer shall, in the first instance, pay the funeral expenses and the death benefits prescribed by this chapter; but, subject to the limitations specified in paragraph (f), he shall be reimbursed from the Special Disability Trust Fund created by this subsection for the last 75 percent of all compensation allowable and paid for such death and for 75 percent of the amount paid as funeral expenses.

(e) Reimbursement for compensation paid for temporary disability or medical benefits.—Subject to the limitations specified in paragraph (f), and when the preexisting permanent physical impairment has contributed to the need, either medically or circumstantially, for temporary disability and remedial treatment, care, and attendance, an employer enti-

led to reimbursement from the Special Disability Trust Fund for compensation paid for permanent impairment, wage loss, permanent total disability, or death shall be reimbursed from such fund for 50 percent of the first \$10,000 paid as compensation for temporary disability and remedial treatment, care, and attendance pursuant to s. 440.13, for the same injury; thereafter, the employer shall be reimbursed from such fund for all sums paid by the employer as compensation for temporary disability and remedial treatment, care, and attendance pursuant to s. 440.13 which are in excess of \$10,000.

(f) Reimbursement limitations.—

1. No reimbursement shall be allowed under this subsection unless it is established that the employer reached an informed conclusion prior to the occurrence of the subsequent injury or occupational disease that the preexisting physical condition is permanent and is, or is likely to be, a hindrance or obstacle to employment. However, when the employer establishes that he knew of the preexisting permanent physical impairment prior to the subsequent accident or occupational disease, or the employer has reemployed an employee who subsequently suffers an injury that results in a permanent physical impairment, and the records of the employer establish that the employee had a preexisting permanent physical impairment, and such records were in the employer's possession prior to the subsequent accident, there shall be a conclusive presumption that the employer considered the condition to be permanent and to be, or likely to be, a hindrance or obstacle to employment, when the condition is one of the following:

- a. Epilepsy.
- b. Diabetes.
- c. Cardiac disease.
- d. Marie-Strumpell disease.
- e. Amputation of foot, leg, arm, or hand.
- f. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 75 percent bilaterally.
- g. Residual disability from poliomyelitis.
- h. Cerebral palsy.
- i. Multiple sclerosis.
- j. Parkinson's disease.
- k. Vascular disorder.

1. Psychoneurotic disability following confinement for treatment in a recognized medical or mental institution for a period in excess of 6 months.

- m. Hemophilia.
- n. Chronic osteomyelitis.
- o. Ankylosis of a major weight-bearing joint.
- p. Hyperinsulinism.
- q. Muscular dystrophy.
- r. Thrombophlebitis.
- s. Herniated intervertebral disk.
- t. Surgical removal of an intervertebral disk or spinal fusion.
- u. Total deafness.
- v. Mental retardation, provided the employee's intelligence quotient is such that he falls within the lowest 2 percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

w. Any permanent physical condition which, prior to the industrial accident or occupational disease, constitutes a 20-percent impairment of a member or of the body as a whole.

x. Obesity, provided the employee is 30 percent or more over the average weight designated for his or her height and age in the Table of Average Weight of Americans by Height and Age prepared by the Society of Actuaries using data from the 1979 Build and Blood Pressure Study.

2. The Special Disability Trust Fund shall not be liable for any costs, interest, penalties, or attorneys' fees.

3. An employer's or carrier's right to apportionment or deduction pursuant to ss. 440.02(1), 440.15(5)(b), and 440.151(1)(c) shall not preclude reimbursement from such fund, except when the merger comes within the definition of sub-subparagraph (b)2.b. and such apportionment or deduction relieves the employer or carrier from providing the materially and substantially greater permanent disability benefits otherwise contemplated in said paragraphs.

4. For purposes of this subsection only, the costs for rehabilitation required to be provided by subsection (1) shall be considered remedial attendance and shall be reimbursed in accordance with the formula contained in paragraph (e) if it has been determined that a merger has occurred which entitles the employer or carrier to reimbursement for excess permanent compensation.

(g) Reimbursement of employer.—Except for reimbursement claimed pursuant to paragraph (k), the right to reimbursement as provided in this subsection shall be barred unless written notice of claim of the right to such reimbursement is filed by the employer or carrier entitled to such reimbursement with the division at Tallahassee within 2 years after the date the employee last reached maximum medical improvement, or within 2 years after the date of the first payment of compensation for permanent total disability, wage loss, or death, whichever is later. The notice of claim shall contain such information as the division by rule may require; and the employer or carrier claiming reimbursement shall furnish such evidence in support of the claim as the division reasonably may require. For notice of claims on the Special Disability Trust Fund filed on or after July 1, 1978, the Special Disability Trust Fund shall, within 120 days of receipt of notice that a carrier has paid, been required to pay, or accepted liability for excess compensation, serve notice of the acceptance of the claim for reimbursement. Failure of the Special Disability Trust Fund to serve the notice shall be deemed a denial by the Special Disability Trust Fund of the claim for reimbursement. If the Special Disability Trust Fund through its representative denies or controverts the claim, the right to such reimbursement shall be barred unless an application for a hearing thereon is filed with the division at Tallahassee within 60 days after notice to the employer or carrier of such denial or controversion. When such application for a hearing is timely filed, the claim shall be heard and determined in accordance with the procedure prescribed in s. 440.25, to the extent that such procedure is applicable, and in accordance with the workers' compensation rules of procedure. In such proceeding on a claim for reimbursement, the Special Disability Trust Fund shall be made the party respondent, and no findings of fact made with respect to the claim of the injured employee or the dependents for compensation, including any finding made or order entered pursuant to s. 440.20(12), shall be *res judicata*. The Special Disability Trust Fund may not be joined or made a party to any controversy or dispute between an employee and the dependents and the employer or between two or more employers or carriers without the written consent of the fund. When it has been determined that an employer or carrier is entitled to reimbursement in any amount, the employer or carrier shall be reimbursed periodically every 6 months from the Special Disability Trust Fund for the compensation and medical benefits paid by the employer or carrier for which the employer or carrier is entitled to reimbursement, upon filing request therefor and submitting evidence of such payment in accordance with rules prescribed by the division.

(h) Special Disability Trust Fund.—

1. There is established in the State Treasury a special fund to be known as the "Special Disability Trust Fund," which shall be available only for the purposes stated in this subsection; and the assets thereof may not at any time be appropriated or diverted to any other use or purpose. The Treasurer shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state. The Treasurer is authorized to disburse moneys from such fund only when approved by the division and upon the order of the Comptroller. The Treasurer shall deposit any moneys paid into such fund into such depository banks as the division may designate and is authorized to invest any portion of the fund which, in the opinion of the division, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the Treasurer shall be collected by him and placed to the credit of such fund.

2. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The division shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of \$100,000, is equal to the sum of disbursements from the fund during the immediate past 3 calendar years. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and self-insurers. The net premiums collected by the companies on workers' compensation premiums in this state and the amount of premiums a self-insurer, if insured, would have to pay in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each insurance company and self-insurer to the division for the Special Disability Trust Fund in accordance with such regulations as the division may prescribe. The Treasurer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(i) Division administration of fund; claims; advisory committee; expenses.—The division shall administer the Special Disability Trust Fund with authority to allow, deny, compromise, controvert, and litigate claims made against it and to designate an attorney to represent it in proceedings involving claims against the fund, including negotiation and consummation of settlements, hearings before judges of compensation claims, and judicial review. The division or the attorney designated by it shall be given notice of all hearings and proceedings involving the rights or obligations of such fund and shall have authority to make expenditures for such medical examinations, expert witness fees, depositions, transcripts of testimony, and the like as may be necessary to the proper defense of any claim. The division shall appoint an advisory committee composed of representatives of management, compensation insurance carriers, and self-insurers to aid it in formulating policies with respect to conservation of the fund, who shall serve without compensation for such terms as specified by it, but be reimbursed for travel expenses as provided in s. 112.061. All expenditures made in connection with conservation of the fund, including the salary of the attorney designated to represent it and necessary travel expenses, shall be allowed and paid from the Special Disability Trust Fund as provided in this subsection upon the presentation of itemized vouchers therefor approved by the division.

(j) Effective dates.—The provisions of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to July 1, 1955; and the provisions of paragraphs (e) and (f) of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to July 1, 1963.

(k) Reimbursement to subsequent employer of permanently injured worker.—If an employee incurs a permanent impairment from injury or occupational disease arising out of, and in the course of, his employment and has been unemployed as a result of his injury or disease for 2 consecutive years, the employer who then employs such an employee shall be reimbursed from the fund for 50 percent of the employee's wages, not to exceed the maximum compensation rate as provided in s. 440.12, up to a period of 6 months. Any subsequent employer seeking reimbursement under this paragraph shall file a notice of claim in conformance with the rules adopted by the division within 6 months of the date of hire by the subsequent employer.

Section 39. Section 440.52, Florida Statutes, 1990 Supplement, is reenacted to read:

440.52 Registration of insurance carriers; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write such compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the division and pay a registration fee of \$100. This shall be deposited by the division in the fund created by s. 440.50.

(2) If the division finds, after due notice and a hearing at which the insurance carrier is entitled to be heard in person or by counsel and present evidence, that the insurance carrier has repeatedly failed to comply with its obligations under this chapter, the division may request the Department of Insurance to suspend or revoke the authorization of such insurance carrier to write workers' compensation insurance under this chapter. Such suspension or revocation shall not affect the liability of any such insurance carrier under policies in force prior to the suspension or revocation.

(3) In addition to the penalties in subsection (2), violation of s. 440.381 by an insurance carrier shall result in the imposition of a fine not to exceed \$1,000 per audit, if the insurance carrier fails to act on said audits by correcting errors in employee classification or accepted applications for coverage where it knew employee classifications were incorrect. Such fines shall be levied by the Department of Insurance, and deposited into the Insurance Commissioner's Regulatory Trust Fund.

Section 40. Subsection (6) of section 440.56, Florida Statutes, 1990 Supplement, is reenacted to read:

440.56 Safety rules and provisions; penalty.—

(6) If any employer violates or fails or refuses to comply with any reasonable rule adopted by the division, in accordance with chapter 120, for the prevention of accidents or industrial or occupational diseases or any lawful order of the division in connection with the provisions of this section or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division pursuant to this section for the prevention of accidents or industrial or occupational diseases, the division, after notice and hearing in accordance with chapter 120, may assess against such employer a civil penalty of not less than \$100 nor more than \$1,000. Each day such violation, omission, failure, or refusal continues after the employer has been given notice thereof in writing as herein provided shall be deemed a continuing violation, and the penalty may not exceed \$25,000. The division shall adopt rules requiring penalties commensurate with the frequency and severity of safety violations. The hearing shall be held in the county where the violation, omission, failure, or refusal is alleged to have occurred, unless otherwise agreed to by the employer and authorized by the division.

Section 41. Section 440.572, Florida Statutes, 1990 Supplement, is reenacted to read:

440.572 Authorization for individual self-insurer to provide coverage.—An individual self-insurer having a net worth of not less than \$250,000,000 as authorized by s. 440.38(1)(e) may assume by contract the liabilities under this chapter of contractors and subcontractors, or each of them, employed by or on behalf of such individual self-insurer when performing work on or adjacent to property owned or used by the individual self-insurer by the division. The net worth of the individual self-insurer shall include the assets of the self-insurer's parent company and its subsidiaries, sister companies, affiliated companies, and other related entities, located within the geographic boundaries of the state.

Section 42. Paragraph (c) of subsection (1) of section 440.575, Florida Statutes, 1990 Supplement, is reenacted to read:

440.575 Local government pools.—

(1) Any two or more local governmental entities may enter into inter-local agreements for the purpose of securing the payment of benefits under this chapter, provided the local government pool that is created must:

(c) Submit annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year to the division; and

Section 43. Section 440.59, Florida Statutes, 1990 Supplement, is reenacted to read:

440.59 Risk management report.—

(1) The Division of Workers' Compensation of the Department of Labor and Employment Security shall complete on a quarterly basis an analysis of the previous quarter's injuries which resulted in workers' compensation claims. The analysis shall be broken down by risk classification, shall show for each such risk classification the frequency and severity for the various types of injury, and shall include an analysis of the causes of such injuries. The division shall distribute to each employer and

self-insurer in the state covered by the Workers' Compensation Law the data relevant to its work force. The report shall also be distributed to the insurers authorized to write workers' compensation insurance in the state.

(2) The division shall also annually prepare a closed claim report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Majority and Minority Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation on or before March 1 of each year. The closed claim report shall include, but not be limited to, an analysis of all claims closed during the preceding year as to the date of accident, age of the injured employee, occupation of the injured employee, type of injury, body part affected, type and duration of indemnity benefits paid, permanent impairment rating, medical benefits identified by type of health care provider, and type and cost of any rehabilitation benefits provided.

(3) The division shall also prepare an annual report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Majority and Minority Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation, on or before March 1 of each year. The annual report shall include a status report on all cases involving work-related injuries in the previous 10 years. The annual report shall include, but not be limited to, the number of open and closed cases, the number of cases receiving various types of benefits, the cash and medical benefits paid between the date of injury and the evaluation date, the number of litigated cases, and the amount of attorney's fees paid in each case.

Section 44. Section 440.591, Florida Statutes, 1990 Supplement, is reenacted to read:

440.591 Administrative procedure; rulemaking authority.—The division shall have the authority to adopt rules to govern the performance of any programs, duties, or responsibilities with which it is charged under this chapter.

Section 45. Section 489.114, Florida Statutes, 1990 Supplement, is reenacted to read:

489.114 Evidence of workers' compensation coverage.—Any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate or registration of the contractor, provide to the Construction Industry Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate or registration of the contractor under the provisions of s. 489.129.

Section 46. Section 489.510, Florida Statutes, 1990 Supplement, is reenacted to read:

489.510 Evidence of workers' compensation coverage.—Any person, business organization, or qualifying agent engaged in the business of electrical contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate or registration of the electrical contractor, provide to the Electrical Contractors' Licensing Board, as provided by board rule, evidence of workers'

compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate or registration of the contractor under the provisions of s. 489.533.

Section 47. Subsection (15) of section 626.611, Florida Statutes, 1990 Supplement, is reenacted to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, solicitor's, adjuster's, service representative's, managing general agent's, or claims investigator's license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any agent, solicitor, adjuster, service representative, managing general agent, or claims investigator, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(15) Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440 containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

Section 48. Subsection (5) of section 626.869, Florida Statutes, 1990 Supplement, is reenacted to read:

626.869 License, adjusters.—

(5) Any person holding a license and appointment and who engages in adjusting workers' compensation insurance shall certify to the department every 2 years, at least 90 days prior to the renewal date of his appointment, the fact that the licensee has completed a course of instruction designed to inform the licensee as to the current workers' compensation laws of this state, so as to enable him to engage in such business as a workers' compensation insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and the workers' compensation laws of this state. In order to qualify as an eligible course under this subsection, the course shall:

(a) Consist of 24 hours of classroom instruction in the workers' compensation laws and practices of this state, 2 hours of which shall relate to ethics, with the course outline approved by the department. It is not required that the 24 hours of classroom instruction take place in one course.

(b) Be taught at a school training facility or other location approved by the department.

(c) Be taught by instructors with at least 5 years of experience in the area of workers' compensation, general lines of insurance, or other persons approved by the department. However, a member of The Florida Bar shall be exempt from the 5 years' experience requirement.

(d) Furnish the attendee a certificate of completion. The sponsor of the course shall send a copy of the certificate of completion to the department.

Section 49. Section 627.0915, Florida Statutes, 1990 Supplement, is reenacted to read:

627.0915 Rate filings; workers' compensation and drug-free workplace employers.—The Department of Insurance shall approve a rating plan for workers' compensation insurance that gives specific identifiable consideration in the setting of rates to employers that implement a drug-

free workplace program pursuant to rules adopted by the Division of Workers' Compensation of the Department of Labor and Employment Security. The plan must take effect January 1, 1992, must be actuarially sound, and must state the savings anticipated to result from such drug testing program.

Section 50. Section 627.1615, Florida Statutes, 1990 Supplement, is reenacted to read:

627.1615 Workers' compensation applicant discrimination.—Insurers shall not refuse to provide workers' compensation coverage on the basis of the applicant's premium volume.

Section 51. Section 627.162, Florida Statutes, 1990 Supplement, is reenacted to read:

627.162 Requirements for premium installments.—Insurers providing workers' compensation coverage under chapter 440 shall provide, upon request of the employer, policies providing for the payment of premiums by installment for policies with annual premiums exceeding \$1,000.

Section 52. Sections 54, 55, 56, 57, and 58 of chapter 90-201, Laws of Florida, are reenacted to read:

Section 54. Section 38 of chapter 89-289, Laws of Florida, is amended to read:

Section 38. (1) Joint Select Committee on Workers' Compensation.—

(a) The Joint Select Committee on Workers' Compensation is created to review the workers' compensation system and the administration thereof. By January 1, 1991, the committee shall submit a report to the Speaker of the House of Representatives and the President of the Senate, which shall contain any recommended legislative changes that will stabilize or reduce rates while promoting equitable benefits for injured workers.

(b) The committee shall be composed of the following members:

1. Three members of the Senate appointed by the President of the Senate.

2. Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) The committee is authorized to contract for services necessary to prepare the report required by this section and the sum of \$250,000 is appropriated from the Workers' Compensation Administration Trust Fund for that purpose. *Any remaining unexpended balance as of June 30, 1990, is to be carried forward into the next fiscal year and an additional sum of \$100,000 is appropriated from the Workers' Compensation Administration Trust Fund.*

(d) Appropriate staff from the Legislature, the Department of Labor and Employment Security, and the Department of Insurance shall assist the committee in the development and preparation of the report.

(e) *The committee shall have the authority to perform the following activities:*

1. *Monitor the implementation of the 1989 and 1990 legislation.*

2. *Work in conjunction with the Workers' Compensation Oversight Board in all matters within the jurisdiction of the Board.*

3. *Perform research and examine alternative systems which may include travel to other jurisdictions regarding claims arising from industrial accidents.*

4. *Prepare reports to the Governor, the Speaker of the House of Representatives, the President of the Senate, the Majority and Minority Leaders of the House of Representatives and the Senate on any matters pertaining to the Workers' Compensation system which may include legislative recommendations pertaining to chapter 440 and other related statutes.*

5. *Examine the cost of workers' compensation insurance on the capacity of the state to promote economic development.*

6. *Participate in any legal action on behalf of the Florida Legislature which challenges the constitutionality of chapter 89-289, Laws of Florida, or this act or any provision thereof and to retain such personnel, consultants, and attorneys as may be necessary and proper in the furtherance of its duties. The legal counsel created pursuant to s. 440.4415, shall be authorized to participate in any such legal proceedings.*

(2) This section shall take effect upon this act becoming a law.

Section 55. Any employer who is a self-insurer on the effective date of this act and who fails to meet the requirements of s. 440.38(1)(b)1., may elect to provide the reports and post security in accordance with the terms of s. 440.38(1)(b)2., as a condition of continuing to exercise the privilege of self-insurance.

Section 56. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, chapter 440, Florida Statutes, shall not stand repealed on October 1, 1991, and shall continue in full force and effect as amended herein.

Section 57. It is the intent of the Legislature that the cost of workers' compensation insurance be reduced to employers who are required to maintain such coverage. In view of the fact that, effective January 1, 1989, a 28.8 percent average premium increase was approved, and in view of the fact that, effective January 1, 1990, a 36.7 percent average premium increase was approved, on September 1, 1990, rates for workers' compensation insurance shall be reduced by each insurer as defined in s. 624.03, commercial self-insurance fund as defined in s. 624.462, and group self-insurer as defined in s. 440.02. The September 1, 1990, rate reduction for each such insurer, commercial self-insurance fund, and group self-insurer shall be 25 percent of the rates that were effective on January 1, 1990, and such revised rates shall remain in effect until January 1, 1992. The 25 percent rate reduction reflects the estimated 30 percent reduction in the cost of benefits that will result from the enactment of this bill and the increase in medical costs that has occurred since January 1, 1990. There shall be no exceptions to the requirements of this provision, unless the Department of Insurance or the Department of Labor and Employment Security finds that the use of the revised rates by a particular insurer, commercial self-insurance fund, or group self-insurer will result in rates which are inadequate to the extent that the continued use of such rates jeopardizes the solvency of the insurer, commercial self-insurance fund or group self-insurer. Any new or renewal workers' compensation insurance policy entered into on or after September 1, 1990, shall reflect the 25 percent reduction in rates for the required coverage under this act. The Department of Insurance and the Department of Labor and Employment Security shall adopt rules pertaining to the applicability of this section to the unexpired term of all workers' compensation insurance policies in existence on September 1, 1990. Any insurer, commercial self-insurance fund, or group self-insurer which has an approved deviation or discount in existence on or before September 1, 1990, shall discontinue use of such deviation or discount as of September 1, 1990, with regard to all insureds. No insurer, commercial self-insurance fund, or group self-insurer shall make written application to the Department of Insurance or to the Department of Labor and Employment Security for permission to file a uniform percentage decrease below the revised rates effective as of September 1, 1990.

Section 58. Section 440.4415, Florida Statutes, is repealed on October 1, 1995.

Section 53. Sections 115, 116, 117, 118, 119, and 120 of chapter 90-201, Laws of Florida, are reenacted to read:

Section 115. There is hereby appropriated from the Workers' Compensation Administration Trust Fund to the Department of Labor and Employment Security for fiscal year 1990-1991 188 full-time equivalent positions and the sum of \$8,979,014 to implement the provisions of this act.

Section 116. There is hereby appropriated from the Workers' Compensation Administration Trust Fund to the Department of Insurance for fiscal year 1990-1991 11 full-time equivalent positions and the sum of \$665,351 to fund the Bureau of Workers' Compensation Insurance Fraud.

Section 117. There is hereby appropriated to the Department of Professional Regulation from the Professional Regulation Trust Fund for the fiscal year 1990-1991 the sum of \$144,145 and 5 full-time equivalent positions to administer the provisions of this act.

Section 118. There is hereby appropriated to the Joint Legislative Management Committee from the Workers' Compensation Administration Trust Fund for the fiscal year 1990-1991 the sum of \$601,564 and 7 full-time equivalent positions to administer the provisions of this act.

Section 119. There is hereby appropriated from the Insurance Commissioner's Regulatory Trust Fund to the Department of Insurance the

sum of \$285,145, and 4 full-time equivalent positions are authorized for the department, for fiscal year 1990-1991 to fund the medical care pilot projects provided by this act.

Section 120. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 54. This act shall take effect upon becoming a law and shall operate retroactively to July 1, 1990, except that section 1, relating to amendments to section 20.13, Florida Statutes, shall operate retroactively to October 1, 1990. In the event that such retroactive application is held by a court of last resort to be unconstitutional, the act shall apply prospectively from the date the act becomes a law.

House Amendment 2—On page 6, line 25, through page 9, line 23, strike all of said lines and insert:

WHEREAS, in 1988, the Florida Legislature enacted the Florida Economic Development Act, which called for the development of a comprehensive strategy for economic growth and international development, and

WHEREAS, the act created a Florida Economic Growth and International Development Commission, the purpose of which was to develop a strategy for the acceleration of economic growth and international development within Florida, and

WHEREAS, the Florida Economic Growth and International Development Commission held public hearings and prepared an in-depth report of economic problems in the State of Florida, and

WHEREAS, the report of the Florida Economic Growth and International Development Commission expressly finds that Florida's reputation as a high cost workers' compensation state is at odds with a favorable economic development climate, and that Florida's workers' compensation laws are inadvertent barriers to economic growth, and

WHEREAS, the Florida Chamber of Commerce also conducted an analytically based objective assessment of Florida's current competitive position, and

WHEREAS, the Florida Chamber of Commerce published a report entitled "Cornerstone," which identifies creative new strategic directions for Florida's economic future, and

WHEREAS, "Cornerstone" finds that the increasing transaction cost of workers' compensation insurance is a critical negative factor which adversely impacts on the overall business climate in our state, and

WHEREAS, the "Cornerstone" strongly recommends the reform of workers' compensation laws which place Florida at a competitive disadvantage relative to other states, and

WHEREAS, the Legislature finds that there is a financial crisis in the workers' compensation insurance industry, causing severe economic problems for Florida's business community and adversely impacting Florida's ability to attract new business development to the state, and

WHEREAS, the Legislature finds that businesses are faced with dramatic increases in the cost of workers' compensation insurance coverage, and

WHEREAS, a report to the Joint Select Committee on Workers' Compensation of the Florida Legislature revealed that the rates for workers' compensation insurance are 54 percent higher than the nationwide average, 75 percent higher than the average of all states in the southeastern United States, and 60 percent higher than the average of those states contiguous to Florida, and

WHEREAS, such report also indicated that Florida has experienced one of the highest rates of increase in premiums for workers' compensation insurance anywhere in the United States during the last 5 years, and

WHEREAS, such report also indicated that the present level of medical benefit payments under the Florida Workers' Compensation Law is 42 percent higher than the nationwide average level of such benefit payments, 38 percent higher than the southern United States' average level of such benefit payments, and 38 percent higher than the average level of such benefit payments in states contiguous to Florida, and

WHEREAS, such report also indicated that the present level of indemnity benefit payments under the Florida Workers' Compensation Law is 31 percent higher than the nationwide average level of such benefit payments, 60 percent higher than the southern United States' average level of such benefit payments, and 106 percent higher than the average level of such benefit payments in states contiguous to Florida, and

WHEREAS, the reductions in benefits provided in this act are necessary to ensure rates that allow employers to continue to comply with the statutory requirement of providing workers' compensation coverage but are nonetheless calculated to provide an adequate level of compensation to injured employees, and

WHEREAS, it is the sense of the Legislature that if the present crisis is not abated, many businesses will cease operating and numerous jobs will be lost in the State of Florida, and

WHEREAS, the Legislature believes it is necessary to avoid the workers' compensation crisis, to maintain economic prosperity, and to protect the employee's right to benefits if injured on the job, and

WHEREAS, the Legislature finds that there is an overpowering public necessity for reform of the current workers' compensation system in order to reduce the cost of workers' compensation insurance while protecting the rights of employees to benefits for on-the-job injuries, and

WHEREAS, the Legislature finds that the reforms contained in this act are the only alternative available that will meet the public necessity of maintaining a workers' compensation system which provides adequate coverage to injured employees at a cost that is affordable to employers, and

WHEREAS, the magnitude of these compelling economic problems demands immediate, dramatic, and comprehensive legislative action, NOW, THEREFORE,

House Amendment 3—In title, strike everything before the enactment clause and insert:

A bill to be entitled An act relating to workers' compensation; reenacting s. 20.13(4), F.S., relating to the Division of Insurance Fraud of the Department of Insurance; reenacting s. 20.171(2), (3), and (5), F.S., relating to the Department of Labor and Employment Security and the Industrial Relations Commission; reenacting s. 4, ch. 90-201, Laws of Florida, relating to a petition to the Supreme Court for adoption of rules; reenacting s. 442.20, F.S., relating to workplace safety; reenacting s. 7, ch. 90-201, Laws of Florida, relating to an appropriation; reenacting s. 440.015, F.S., relating to construction of the Workers' Compensation Law; reenacting s. 440.02, F.S., relating to definitions; reenacting s. 440.055, F.S., relating to employer affidavits; reenacting s. 440.09, F.S., relating to coverage; reenacting s. 440.092, F.S., relating to recreational and social activities, going to or coming from work, deviation from employment, traveling employees, and subsequent intervening accidents; reenacting s. 440.10, F.S., relating to liability for compensation; reenacting s. 440.101, F.S., relating to legislative intent with respect to drug-free workplaces; reenacting s. 440.102, F.S., relating to drug-free workplace programs; reenacting s. 440.11(1), F.S., relating to exclusiveness of liability; reenacting s. 440.12(1), F.S., relating to commencement of compensation; reenacting s. 440.13, F.S., relating to medical services and supplies; reenacting s. 440.135, F.S., relating to pilot programs for medical and remedial care; reenacting s. 440.15, F.S., relating to compensation for disability; reenacting s. 440.16(1)(b), F.S., relating to compensation for death; reenacting s. 440.185(4), F.S., relating to informational brochures; reenacting s. 440.19(1), F.S., relating to time and procedure for filing claims; reenacting s. 440.20(9) and (12), F.S., relating to payment of compensation; reenacting s. 440.25(3) and (4), F.S., relating to procedures for hearings and appeals; reenacting s. 26, ch. 90-201, Laws of Florida, relating to the repeal of s. 440.26, F.S., relating to presumptions; reenacting s. 440.271, F.S., relating to appellate review of orders of judges of compensation claims; reenacting s. 440.272, F.S., relating to appellate review of orders of the Industrial Relations Commission; reenacting s. 440.34(2), (3), (5), and (7), F.S., relating to attorney's fees and costs; reenacting s. 440.37(4), F.S., relating to penalties for misrepresentation and fraud; reenacting s. 440.38(1), (3), and (5), F.S., relating to security for compensation; reenacting s. 440.381, F.S., relating to applications for coverage and payroll reporting and auditing; reenacting s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association; reenacting s. 440.386, F.S., relating to insolvency; reenacting s. 440.39(3)(a), F.S., relating to third-party liability; reenacting s. 440.43, F.S., relating to penalties for failure to secure payment of compensation; reenacting s. 37, ch. 90-201;

Laws of Florida, relating to the repeal of s. 440.44(8) and (10), F.S., relating to an advisory council and the Workers' Compensation Oversight Board; reenacting s. 440.4415, F.S., relating to the Workers' Compensation Oversight Board; reenacting s. 440.45(1) and (2), F.S., relating to judges of compensation claims; reenacting s. 440.49, F.S., relating to rehabilitation of injured employees and the Special Disability Trust Fund; reenacting s. 440.52, F.S., relating to registration of insurance carriers; reenacting s. 440.56(6), F.S., relating to penalties for violation of safety rules; reenacting s. 440.572, F.S., relating to authorization of individual self-insurers to provide coverage; reenacting s. 440.575(1)(c), F.S., relating to local government pools; reenacting s. 440.59, F.S., relating to risk management reports; reenacting s. 440.591, F.S., relating to rulemaking authority; reenacting ss. 489.114 and 489.510, F.S., relating to evidence of coverage of contractors; reenacting s. 626.611(15), F.S., relating to fraudulent and dishonest practices; reenacting s. 626.869(5), F.S., relating to workers' compensation insurance adjuster course requirements; reenacting s. 627.0915, F.S., relating to rate filings; reenacting s. 627.1615, F.S., relating to discrimination against certain applicants for coverage; reenacting s. 627.162, F.S., relating to installment payment of premiums; reenacting ss. 54-58, ch. 90-201, Laws of Florida, relating to the Joint Select Committee on Workers' Compensation, alternative methods of compliance with the act, rate reductions, and future review and repeal; reenacting ss. 115-120, ch. 90-201, Laws of Florida, relating to appropriations and severability; providing a retroactive effective date.

On motions by Senator Childers, the Senate concurred in the House amendments.

SB 8-B passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33

Madam President Davis	Kiser	Thurman
Bankhead	Diaz-Balart	Kurth
Beard	Forman	Malchon
Brown	Gardner	McKay
Bruner	Grizzle	Myers
Casas	Jenne	Plummer
Childers	Jennings	Scott
Crotty	Johnson	Souto
Dantzler	Kirkpatrick	Thomas

Nays—1

Gordon

Vote after roll call:

Yea—Crenshaw, Grant

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed as amended HB 11-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committee on Commerce and Representatives Simon and Johnson—

HB 11-B—A bill to be entitled An act relating to workers' compensation; amending s. 440.02, F.S., relating to definitions applicable to the Workers' Compensation Law; deleting a reference to a repealed provision; providing conditions and procedures under which certain sole proprietors, partners, and officers may elect to be exempt from ch. 440, F.S.; amending s. 440.05, F.S.; prescribing requirements for submitting a notice of election to become exempt; requiring the Division of Workers' Compensation of the Department of Labor and Employment Security to issue a certification of the election to be exempt to such persons under specified circumstances; providing registration requirements for subcontractors; providing a fee; creating s. 440.077, F.S.; providing that such persons electing to be exempt may not receive benefits under ch. 440, F.S.; reenacting and amending s. 440.10, F.S., relating to liability for compensation; requiring contractors and subcontractors to provide proof of secured compensation for employees or an exemption as a condition to obtaining building permits; requiring contractors and subcontractors engaging in public or private construction to secure and maintain compensation for employees under the Workers' Compensation Law; allowing

contractors to require evidence of insurance or exemption; requiring a subcontractor to notify his contractor of his election of exemption; authorizing contractors and third-party payors to recover paid or payable benefits and interest thereon; reenacting and amending s. 440.52, F.S., relating to registration of insurance carriers; requiring insurance carriers providing insurance under ch. 440, F.S., to notify a contractor upon cancellation or expiration of insurance; repealing s. 20.171(5), F.S., relating to creation of the Industrial Relations Commission; repealing s. 4, ch. 90-201, Laws of Florida, relating to adoption of rules by the Supreme Court; repealing s. 440.4415, F.S., relating to the creation of the Workers' Compensation Oversight Board and legal counsel; repealing s. 118, ch. 90-201, Laws of Florida, relating to an appropriation for the oversight board and legal counsel; directing the Division of Statutory Revision of the Joint Legislative Management Committee to prepare reviser's bills to conform the Florida Statutes to the repeal of provisions relating to the Industrial Relations Commission and the Workers' Compensation Oversight Board and legal counsel; providing an effective date.

—was referred to the Committee on Commerce.

On motion by Senator Childers, by two-thirds vote **HB 11-B** was withdrawn from the Committee on Commerce.

On motions by Senator Childers, by unanimous consent **HB 11-B** was taken up instanter and by two-thirds vote read the second time by title, and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36

Madam President	Dantzler	Jennings	Scott
Bankhead	Davis	Johnson	Souto
Beard	Diaz-Balart	Kirkpatrick	Thomas
Brown	Dudley	Kiser	Thurman
Bruner	Forman	Kurth	Walker
Casas	Gardner	Malchon	Weinstein
Childers	Grant	McKay	Weinstock
Crenshaw	Grizzle	Myers	Wexler
Crotty	Jenne	Plummer	Yancey

Nays—1

Gordon

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has adopted SCR 4-B.

John B. Phelps, Clerk

The bill contained in the foregoing message was ordered enrolled.

MOTION

On motion by Senator Thomas, the rules were waived and the Committee on Appropriations Subcommittee C was granted permission to meet January 24 from 5:00 p.m. until 7:00 p.m.

ADJOURNMENT

On motion by Senator Thomas, the Senate adjourned sine die at 7:25 p.m.