



Journal of the Senate

Number 4—Special Session C

Thursday, November 4, 1993

CALL TO ORDER

The Senate was called to order by the President at 9:13 a.m. A quorum present—37:

Mr. President	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Jennings	Silver
Boczar	Dyer	Johnson	Sullivan
Brown-Waite	Foley	Jones	Turner
Burt	Forman	Kirkpatrick	Weinstein
Casas	Grant	Kiser	Wexler
Childers	Grogan	Kurth	Williams
Crenshaw	Harden	McKay	
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Scott	

Excused: Senator Bankhead until 9:20 a.m.; periodically, Senators Childers, Dantzler, Grant, Holzendorf, Jenne, Jennings, Kirkpatrick, Kiser, McKay and Scott; conferees on CS for SB 12-C; CS for HB's 33-C and 43-C and CS for HB 31-C.

PRAYER

The following prayer was offered by Joe Brown, Secretary of the Senate:

O Lord, we pray for the safe return of these Senators to their respective homes and families—no later than tomorrow. Amen.

PLEDGE

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

MOTIONS

On motions by Senator Kirkpatrick, the rules were waived and the following committees were granted permission to meet this day: the Conference Committee on Workers' Compensation from 9:30 a.m. until 10:00 a.m.; the Committee on Appropriations from 10:00 a.m. until 12:00 noon; the Committee on Corrections, Probation and Parole from 1:00 p.m. until 2:00 p.m.; the Select Committee on Juvenile Justice Reform from 5:15 p.m. until 7:00 p.m.; and the Committees on Natural Resources and Conservation; and Judiciary from 2:30 p.m. until 5:30 p.m. in lieu of 2:00 p.m.

On motion by Senator Beard, the rules were waived and the Committee on Corrections, Probation and Parole was granted permission to consider SB 44-C at the meeting this day.

RECESS

On motion by Senator Kirkpatrick, the Senate recessed at 9:20 a.m. to reconvene at 2:00 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 2:11 p.m. A quorum present—40:

President	Dantzler	Hargrett	Meadows
Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Scott
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Grogan	Kiser	Weinstein
Crenshaw	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams

MOTIONS

On motions by Senator Kirkpatrick, the rules were waived and the meeting of the Select Committee on Juvenile Justice Reform scheduled for this day was cancelled and the Select Committee on Governmental Reform was granted permission to meet November 5 at 8:30 a.m.

On motion by Senator Kirkpatrick, by two-thirds vote CS for CS for SB 10-C was established as the Special Order Calendar for this day.

On motion by Senator Kirkpatrick, the provisions of Rule 7.1 relating to two-hour notice of amendments to be considered by the Senate were waived for the evening session this day.

RECESS

On motion by Senator Kirkpatrick, the Senate recessed at 2:26 p.m. to reconvene at 5:00 p.m.

EVENING SESSION

The Senate was called to order by the President at 5:20 p.m. A quorum present—36:

Mr. President	Diaz-Balart	Hargrett	Meadows
Bankhead	Dudley	Holzendorf	Myers
Beard	Dyer	Jenne	Siegel
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Burt	Grant	Kirkpatrick	Turner
Casas	Grogan	Kiser	Weinstein
Crenshaw	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams

SPECIAL ORDER

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

CS for CS for SB 10-C—A bill to be entitled An act relating to weapons and firearms; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult, including community service in certain circumstances, and requiring the Department of Health and Rehabilitative Services to provide a community service plan; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; providing circumstances under which the court may order that the minor continue to be held in secure detention; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm.

sion of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; providing appropriations; providing effective dates.

—was read the second time by title.

Senator Dudley moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 4, before line 1, insert:

Section 1. Subsection (9) of section 39.045, Florida Statutes, is amended to read:

39.045 Oaths; records; confidential information.—

(9) Any other provisions of this chapter to the contrary notwithstanding, a law enforcement agency may release for publication the name and address of a child taken into custody if the child is 16 years of age or older and has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony, or the name and address of any child 16 years of age or older who has been found by a court to have committed at least three or more violations of law which, if committed by an adult, would be misdemeanors, or the name and address of any child who has been adjudicated guilty of a capital felony, life felony, or first degree felony, or a second degree felony involving violence against a person. *In addition, a law enforcement agency may release for publication the name and address of a child who has been convicted of any offense involving possession or use of a firearm.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 2, after the semicolon (;) insert: amending s. 39.045, F.S.; authorizing a law enforcement agency to release the name and address of a minor who has been adjudicated guilty of an offense involving possession or use of a firearm;

Senator Boczar moved the following amendment which failed:

Amendment 2—On page 14, strike all of lines 10-16, and insert:

Section 8. (1) There is hereby appropriated a lump sum of \$14,870,510 from the General Revenue Fund, and 94 additional positions are authorized, to the Department of Health and Rehabilitative Services. Of this amount, \$2,197,810 must be used for additional staffing for secure detention and case management for community service for delinquent youths; \$5,492,700 must be used to provide operational funding for 6 months for 359 additional residential commitment beds for moderate-risk and high-risk delinquents; and \$7,180,000 must be used for purchase of facilities to be used for approximately half of the 359 residential commitment beds.

Senator Crenshaw moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 14, between lines 9 and 10, insert:

Section 8. The Comptroller shall transfer the unencumbered cash balance in the Election Campaign Financing Trust Fund as of December 31, 1993, to the General Revenue Fund to offset the operating costs of juvenile justice detention facilities authorized by this act.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 3, line 5, after the semicolon (;) insert: directing the Comptroller to transfer funds from the Election Campaign Financing Trust Fund to the General Revenue Fund to offset the operating costs of facilities authorized by this act;

The vote was:

Yeas—27 Nays—11

Senator Dantzer moved the following amendment which failed:

Amendment 4—On page 10, lines 24, 25 and 29, strike “*serve a mandatory*” and insert: *may serve a*

SENATOR JONES PRESIDING

Senator Siegel moved the following amendment which was adopted:

Amendment 5—On page 6, line 29, after “*age*” insert: *who has not been convicted of a violation of this section*

RECONSIDERATION OF AMENDMENT

On motion by Senator Siegel, the Senate reconsidered the vote by which **Amendment 5** was adopted. **Amendment 5** was withdrawn.

Senator Sullivan moved the following amendment which was adopted:

Amendment 6—On page 7, line 15, after “*Knowingly*” insert: *and willfully*

Senator McKay moved the following amendment which failed:

Amendment 7—On page 7, strike all of lines 3, 4, 8, 9 and 10

The vote was:

Yeas—14 Nays—20

THE PRESIDENT PRESIDING

Senators Kurth, Bankhead, Wexler, Harden and Boczar offered the following amendment which was moved by Senator Kurth and adopted:

Amendment 8—On page 12, lines 12-15 and on page 14, lines 17-19, strike all of said lines; and on page 14, line 17, insert:

(2) There is hereby appropriated a lump sum of \$12,512,000 from the General Revenue Fund to the Department of Health and Rehabilitative Services for the construction and operation of additional juvenile commitment beds.

Senator Jones moved the following amendment:

Amendment 9 (with Title Amendment)—On page 7, strike lines 24 through 26, and insert: *appropriate, be required to participate in classes on parenting education which are approved by the Department of Health and Rehabilitative Services.*

And the title is amended as follows:

In title, on page 1, strike all of lines 24-27 and insert: an adult; authorizing the court to require that a parent participate in classes on parenting education;

Senators Dudley and Jones offered the following amendment to **Amendment 9** which was moved by Senator Dudley and adopted:

Amendment 9A—On page 1, strike line 14 and insert: *Health and Rehabilitative Services, upon the first conviction. Upon any subsequent conviction, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.*

Amendment 9 as amended was adopted.

On motion by Senator Silver, by two-thirds vote **CS for CS for SB 10-C** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—38 Nays—None

On motions by Senator Silver, by unanimous consent—

CS for CS for HB 91-C—A bill to be entitled An act relating to weapons and firearms; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term “minor”; requiring that the purchaser of a firearm be informed that it is

unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult, including community service in certain circumstances, and requiring the Department of Health and Rehabilitative Services to provide a community service plan; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; providing appropriations; providing effective dates.

—was taken up out of order and by two-thirds vote read the second time by title.

Senator Silver moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Subsection (9) of section 39.045, Florida Statutes, is amended to read:

39.045 Oaths; records; confidential information.—

(9) Any other provisions of this chapter to the contrary notwithstanding, a law enforcement agency may release for publication the name and address of a child taken into custody if the child is 16 years of age or older and has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony, or the name and address of any child 16 years of age or older who has been found by a court to have committed at least three or more violations of law which, if committed by an adult, would be misdemeanors, or the name and address of any child who has been adjudicated guilty of a capital felony, life felony, or first degree felony, or a second degree felony involving violence against a person. *In addition, a law enforcement agency may release for publication the name and address of a child who has been convicted of any offense involving possession or use of a firearm.*

Section 2. Section 790.17, Florida Statutes, is amended to read:

790.17 Furnishing weapons to minors under 18 years of age or persons of unsound mind and furnishing firearms to minors under 18 years of age prohibited, etc.—

(1) A person who ~~Whoever~~ sells, hires, barter, lends, transfers, or gives any minor under 18 years of age any pistol, dirk, electric weapon or device, or other ~~arm or~~ weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian of such minor, ~~or the person having charge of such minor,~~ or sells, hires, barter, lends, transfers, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person may not knowingly sell or transfer a firearm to a minor under 18 years of age except that a person may transfer ownership of a

firearm to a minor with permission of the parent or guardian. However, the parent or guardian must maintain possession of the firearm except pursuant to s. 790.22. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 790.175, Florida Statutes, is amended to read:

790.175 Transfer or sale of firearms; required warnings; penalties.—

(1) Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than ¼ inch in height:

"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) As used in this act, the term "minor" means any person under the age of 16.~~

Section 4. Section 790.18, Florida Statutes, is amended to read:

790.18 Sale or transfer of Selling arms to minors by dealers.—It is unlawful for any dealer in arms to sell or transfer to a minor ~~minors~~ any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device. ~~And every person who violates violating this section commits shall be guilty of a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or 775.084.~~

Section 5. Section 790.22, Florida Statutes, is amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices, ~~or firearms by minor child~~ under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, ~~or firearms as defined in s. 790.001~~ by any minor child under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or
2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(4)(a) Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm in violation of subsection (3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm in violation of subsection (3) may, if the court finds it appropriate, be required to participate in classes on parenting education which are approved by the Department of Health and Rehabilitative Services, upon the first conviction. Upon any subsequent conviction, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.

(c) At any time after this act becomes law, but no later than July 1, 1994, the district juvenile justice boards of the Department of Health and Rehabilitative Services shall establish appropriate community service programs to be available to circuit courts in implementing this subsection. The boards shall propose the implementation of a community service program in each circuit, and may submit a circuit plan, to be implemented upon approval of the court, at any time after this act becomes law.

(d) For the purposes of this section, community service may be provided on public property as well as on private property with the expressed permission of the property owner. Any community service provided on private property is limited to such things as removal of graffiti and restoration of vandalized property.

(5)(a) A minor who violates subsection (3) commits a misdemeanor of the first degree, and shall, in addition to any other penalty provided by law, be required to perform not less than 100 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense, the minor shall be required to perform not less than 250 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

(6) Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08(1)-(6).

(7) The provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm.

(8) Notwithstanding s. 39.042 or s. 39.044(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 39.044(5), if the court finds that the minor meets the criteria specified in s. 39.044(2), or if the court finds that the minor is a clear and present danger to himself or the community. An order placing a minor in secure detention because the minor is a clear and present danger to himself or the community must be in writing and specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention.

(9) Notwithstanding s. 39.043, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services, in addition to any other punishment provided by law, the court shall order:

(a) For a first offense, that the minor serve a mandatory period of detention of 5 days in a secure detention facility and perform not less than 100 hours of community service.

(b) For a second or subsequent offense, that the minor serve a mandatory period of detention of 10 days in a secure detention facility and perform not less than 250 hours of community service.

The minor shall receive credit for time served before adjudication.

(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):

(a) For a first offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which he would otherwise have become eligible.

(b) For a second or subsequent offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which he would otherwise have become eligible.

Section 6. Section 790.23, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 790.23, F.S., for present text.)

790.23 Felons and delinquents; possession of firearms or electric weapons or devices unlawful.—

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony or found to have committed a delinquent act that would be a felony if committed by an adult in the courts of this state;

(b) Convicted of or found to have committed a crime against the United States which is designated as a felony;

(c) Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year; or

(d) Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored, or to a person found to have committed a delinquent act that would be a felony if committed by an adult with respect to which the jurisdiction of the court pursuant to chapter 39 has expired.

(3) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (5) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.—

(5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

Section 8. The Department of Health and Rehabilitative Services shall prepare public service announcements for dissemination to parents throughout the state, of the provisions of this act.

Section 9. The Comptroller shall transfer the unencumbered cash balance in the Election Campaign Financing Trust Fund as of December 31, 1993, to the General Revenue Fund to offset the operating costs of juvenile justice detention facilities authorized by this act.

Section 10. (1) There is hereby appropriated a lump sum of \$2,197,810 from the General Revenue Fund and 94 additional full-time positions are authorized for the Juvenile Justice Program in the Department of Health and Rehabilitative Services. This shall be used for additional staffing for secure detention and case management for community service for delinquent youth.

(2) There is hereby appropriated a lump sum of \$12,512,000 from the General Revenue Fund to the Department of Health and Rehabilitative Services for the construction and operation of additional juvenile commitment beds.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect January 1, 1994.

And the title is amended as follows:

Strike everything before the enacting clause and insert: A bill to be entitled An act relating to weapons and firearms; amending s. 39.045, F.S.; authorizing a law enforcement agency to release the name and address of a minor who has been adjudicated guilty of an offense involving possession or use of a firearm; amending s. 790.17, F.S.; prohibiting

certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult; authorizing the court to require that a parent participate in classes on parenting education; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; providing circumstances under which the court may order that the minor continue to be held in secure detention; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; directing the Comptroller to transfer funds from the Election Campaign Financing Trust Fund to the General Revenue Fund to offset the operating costs of facilities authorized by this act; providing appropriations; providing effective dates.

WHEREAS, the love affair between juveniles and firearms has reached an all-time high here in Florida, and

WHEREAS, the courts, the Legislature, and law enforcement cannot be the sole solution to stem our rising juvenile crime statistics, and

WHEREAS, it is the will of the Legislature and all Floridians that parental involvement, accountability, and responsibility become the key to solving our existing broken juvenile criminal justice system, and

WHEREAS, it is the will of Floridians all across this great state of ours that juveniles who violate laws pertaining to the illegal use of firearms be dealt with in a swift and certain and severe manner, and

WHEREAS, it is time for the Governor, the President of the Senate, and the Speaker of the House of Representatives, along with the Republican leaders of the Senate and House of Representatives, to seek relief from our counterparts in the United States Congress by cutting the federally mandated ties that bind us from curing our juvenile crime problems here at home, as said laws prevent us from using stricter, harsher, and more certain penalties in detaining Florida's juveniles, NOW, THEREFORE,

On motion by Senator Silver, by two-thirds vote CS for CS for HB 91-C as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

CONFEREES ON CS FOR CS FOR HB 91-C APPOINTED

Senator Silver moved that in the event the House refused to concur in Senate Amendment 1 that a conference committee be appointed. The President appointed Senator Silver, Chairman; Senators Beard, Meadows, Myers, Siegel and Wexler; and alternates, Senators Bankhead and Kurth as conferees on CS for CS for HB 91-C. The action of the Senate was certified to the House.

On motions by Senator Burt, by two-thirds vote **SB 48-C** was withdrawn from the Committee on Commerce and by two-thirds vote placed on the Special Order Calendar.

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

SB 48-C—A bill to be entitled An act relating to supplemental corporate fees; amending s. 617.01225, F.S.; exempting certain nonprofit corporations from such fee; providing an effective date.

—was read the second time by title.

Senator Burt moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 1, strike all of lines 9-21 and insert:

Section 1. Subsection (1) of section 617.01225, Florida Statutes, as created by section 46 of chapter 93-281, Laws of Florida, is amended to read:

617.01225 Supplemental corporate fee.—

(1)(a) *Except as provided in paragraph (b), and in addition to any other taxes imposed by law, an annual supplemental corporate fee of \$138.75 is imposed on each business entity that is authorized to transact business in this state and is required to file an annual report with the Department of State under s. 617.1622.*

(b) *A nonprofit corporation that has an annual gross income of \$25,000 or less, which gross income does not include assessments as defined in chapter 718, chapter 719, or chapter 721 or assessments imposed or levied by homeowners' associations as referred to in chapter 617 or chapter 723, shall pay an annual supplemental corporate fee of \$38.75.*

And the title is amended as follows:

In title, on page 1, lines 3 and 4, strike “exempting certain nonprofit corporations from such fee;” and insert: decreasing the supplemental corporate fee that is paid by certain nonprofit corporations;

On motion by Senator Burt, by two-thirds vote **SB 48-C** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—40 Nays—None

On motions by Senator Kirkpatrick, by two-thirds vote **HCR 67-C** was withdrawn from the Committee on Rules and Calendar and by two-thirds vote placed on the Special Order Calendar.

On motion by Senator Kirkpatrick, the provisions of Rule 7.1 relating to two-hour notice of amendments to be considered by the Senate were waived.

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

HCR 67-C—A concurrent resolution providing for amendment of Joint Rule One, Joint Rules of the Senate and House of Representatives, relating to lobbyist registration and reporting; revising registration requirements; providing definitions; requiring committee appearance records; revising the method of registration; revising fees; revising reporting periods; providing categories, expenditure valuation procedures, and types of reports; revising exemptions from reporting; revising the method for requesting opinions regarding registration; providing for informal opinions; revising open records provisions; providing for records retention and inspection; providing for implementation.

—was read the second time in full.

Senator Kirkpatrick moved the following amendments which were adopted:

Amendment 1—On page 2, strike all of lines 15-17, and insert: *the goodwill of a member or employee of the Legislature.*

Amendment 2—On page 3, strike all of lines 16-31, and insert:

(a) *Response to an inquiry for information by any member, committee, or staff of the Legislature.*

(b) *An appearance in response to a legislative subpoena.*

(c) *Advice or services which arise out of a contractual obligation with the Legislature, a member, a committee, any staff, or any legislative entity to render the advice or services where such obligation is fulfilled through the use of public funds.*

(d) *Representation of a client before the House of Representatives or the Senate, or any member or committee*

Amendment 3—On page 4, strike all of lines 17-21, and insert:

(f) *A person employed by any executive, judicial, or*

Amendment 4—On page 18, strike line 13, and insert: *of a complaint based upon the personal knowledge of the complainant made pursuant to the Senate Rules or Rules of*

Senator Crenshaw moved the following amendment which was adopted:

Amendment 5 (with Title Amendment)—On page 8, lines 14-31, and on page 9, lines 1-20, strike all of said lines and insert:

(2) *Pursuant to the prohibition on the use of funds available to executive, judicial, or quasi-judicial departments for lobbying purposes, as set forth in s. 11.062, Florida Statutes, the Joint Legislative Management Committee may not accept funds appropriated to or otherwise available for use by such departments for the payment of a lobbyist registration fee.*

(3) *The following persons are exempt from paying the fee, provided they are designated in writing by the agency head or person designated in this subsection:*

(a) *Two employees of each department of the executive branch created under chapter 20, Florida Statutes.*

(b) *Two employees of the Game and Fresh Water Fish Commission.*

(c) *Two employees of the Executive Office of the Governor.*

(d) *Two employees of the Commission on Ethics.*

(e) *Two employees of the Florida Public Service Commission.*

(f) *Two employees of the judicial branch designated in writing by the Chief Justice of the Florida Supreme Court.*

~~(a) Any person who receives no compensation for his appearances other than reasonable reimbursement for his travel and meal expenses.~~

~~(b) Any governmental official elected in the State of Florida.~~

~~(c) Two employees of each state agency who are designated in writing by the head of the agency.~~

~~Persons who are not required to register under Joint Senate and House Rule 1.1, but who choose to do so, shall pay a processing fee of \$10.00 per house per biennium.~~

(4)(2) *The annual fee is up to \$50 per each house for a person to register to represent one principal and up to an additional \$10 per house for each additional principal that the person registers to represent. The amount of each fee shall be established annually by the Joint Legislative Management Committee. The fees set shall be adequate to ensure operation of the lobbyist registration and reporting operations of the Joint Legislative Management Committee. The fees collected by the Joint Legislative Management Committee under this joint policy shall be deposited in the State Treasury and credited to the appropriation for legislative expenses specifically to cover the costs incurred in administering this joint policy.*

And the title is amended as follows:

In title, on page 1, strike line 9, and insert: prohibiting the Joint Legislative Management Committee from accepting specified funds for the payment of lobbyist registration fees; revising fees; revising reporting periods;

On motion by Senator Kirkpatrick, **HCR 67-C** as amended was adopted and certified to the House. The vote on adoption was:

Yeas—40 Nays—None

REPORTS OF COMMITTEES

The Committee on Corrections, Probation and Parole recommends the following pass: SB 44-C

The Committee on Professional Regulation recommends the following pass: SB 42-C with 6 amendments

The bills contained in the foregoing reports were placed on the calendar.

The Committee on Appropriations recommends a committee substitute for the following: CS for SB 10-C

The bill with committee substitute attached was placed on the calendar.

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

MOTION TO INTRODUCE BILL

On motion by Senator Burt, by the required constitutional two-thirds vote of the Senate the following bill was admitted for introduction:

By Senators Burt, Kiser, Foley, Dudley, Myers, Jennings, Diaz-Balart, Siegel, Grant, Crist, Casas, Brown-Waite, Bankhead, Silver, Johnson, Kurth, Meadows, Weinstein, Turner, Beard, Boczar, Thomas, Childers, Crenshaw, Dantzer, Dyer, Forman, Grogan, Gutman, Harden, Hargrett, Holzendorf, Jenne, Jones, Kirkpatrick, McKay, Scott, Sullivan, Wexler and Williams—

SB 48-C—A bill to be entitled An act relating to supplemental corporate fees; amending s. 617.01225, F.S.; exempting certain nonprofit corporations from such fee; providing an effective date.

—was referred to the Committee on Commerce.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committees on Appropriations and Criminal Justice and Senator Silver—

CS for CS for SB 10-C—A bill to be entitled An act relating to weapons and firearms; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult, including community service in certain circumstances, and requiring the Department of Health and Rehabilitative Services to provide a community service plan; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; providing circumstances under which the court may order that the minor continue to be held in secure detention; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal

sanctions; providing for the secure detention of a minor charged with a violation of certain provisions of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; directing the Department of Health and Rehabilitative Services to prepare and disseminate public service announcements; providing appropriations; providing effective dates.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

FIRST READING

The Honorable Pat Thomas, President

I am directed to inform the Senate that the House of Representatives has passed HB 113-C; has passed as amended CS for CS for HB 91-C; has adopted as amended HCR 67-C and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committee on Corrections and Representative Smith—

HB 113-C—A bill to be entitled An act relating to technical clarifications and statutory conformance to correctional issues contained in the "Safe Streets Initiative of 1994"; amending s. 921.001, F.S.; deleting a sentencing selection provision; adding conditional medical release and emergency control release to the listing of authorized release from incarceration for persons convicted of crimes committed on or after January 1, 1994; amending s. 921.0011, F.S.; clarifying that control release includes emergency control release; amending s. 921.188, F.S.; authorizing local detention facilities for certain offenders; amending s. 947.1405, F.S.; providing the conditional release program for inmates convicted of crimes committed on or after January 1, 1994; providing an effective date.

—was referred to the Committee on Corrections, Probation and Parole.

By the Committees on Appropriations and Criminal Justice and Representative Martinez and others—

CS for CS for HB 91-C—A bill to be entitled An act relating to weapons and firearms; amending s. 790.17, F.S.; prohibiting certain transfer to a minor of a weapon, or electric weapon or device; prohibiting sale or transfer to a minor of a firearm and providing that a violation constitutes a third-degree felony; amending s. 790.175, F.S.; redefining the term "minor"; requiring that the purchaser of a firearm be informed that it is unlawful to store or leave a firearm within access of a minor or to knowingly sell or transfer a firearm to a minor or a person of unsound mind; amending s. 790.18, F.S.; prohibiting an arms dealer from selling or transferring a firearm or certain other weapons to a minor; increasing the penalty for a violation from a misdemeanor to a felony; amending s. 790.22, F.S.; prohibiting a minor from possessing a firearm; providing certain exceptions; prohibiting adults responsible for a minor from knowingly permitting the minor to unlawfully possess a firearm; providing penalties for a violation by an adult, including community service in certain circumstances, and requiring the Department of Health and Rehabilitative Services to provide a community service plan; providing penalties for a violation by a minor; requiring that a minor charged with certain offenses involving the use or possession of a firearm be detained in secure detention unless the state attorney authorizes the minor's release; providing for a hearing within a specified period; requiring the court to order a minimum mandatory period of secure detention in addition to other punishments provided by law if the minor is found to have committed certain offenses involving the use or possession of a firearm and is not committed to a residential commitment program of the Department of Health and Rehabilitative Services; providing for mandatory revocation or suspension of the driving privilege if a minor is found to have committed certain offenses involving the use or possession of a firearm; providing for enhanced penalties; providing for the seizure and disposal of a firearm used or possessed unlawfully by a minor; providing that such provisions are supplemental to certain other criminal sanctions; providing for the secure detention of a minor charged with a violation of certain provisions

of ch. 790, F.S., pending a court hearing; amending s. 790.23, F.S.; prohibiting felons, and juveniles found to have committed a delinquent act that would be a felony if committed by an adult, from using or possessing a firearm under certain conditions; providing exceptions; providing penalties; amending s. 790.25, F.S.; limiting authorization for possession in private conveyance to persons over 18; providing appropriations; providing effective dates.

(Taken up out of order and passed this day.)

MOTION TO INTRODUCE BILL

On motion by Senator Kirkpatrick, by the required constitutional two-thirds vote of the Senate the following bill was admitted for introduction:

By Representative Wallace—

HCR 67-C—A concurrent resolution providing for amendment of Joint Rule One, Joint Rules of the Senate and House of Representatives, relating to lobbyist registration and reporting; revising registration requirements; providing definitions; requiring committee appearance records; revising the method of registration; revising fees; revising reporting periods; providing categories, expenditure valuation procedures, and types of reports; revising exemptions from reporting; revising the method for requesting opinions regarding registration; providing for informal opinions; revising open records provisions; providing for records retention and inspection; providing for implementation.

—was referred to the Committee on Rules and Calendar.

RETURNING MESSAGES ON SENATE BILLS

The Honorable Pat Thomas, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 12-C and requests the concurrence of the Senate, or failing to concur, requests the Senate to appoint a committee of conference to meet with a like committee appointed from the House to resolve the differences between the houses.

The Speaker of the House of Representatives has appointed as conferees on the part of the House Representative Lippman, Chair; Representatives Mackey, Boyd, Burke, Hawkes and King, House Appointees; and Representatives Wallace, Graber and Warner, Alternatives.

John B. Phelps, Clerk

SB 12-C—A bill to be entitled An act relating to workers' compensation; amending s. 440.015, F.S.; revising the legislative intent; amending s. 440.02, F.S.; revising certain definitions; amending s. 440.05, F.S.; providing for election and revocation of election of an exemption; amending s. 440.055, F.S.; requiring notice of noncoverage at worksites under certain circumstances; amending s. 440.09, F.S.; providing for extent of workers' compensation coverage; requiring that injuries be established by medical evidence; clarifying compensation for subsequent injuries related to preexisting conditions; providing presumptions that intoxication or drug use caused certain injuries; amending s. 440.092, F.S.; excluding from certain travel benefits certain travel to and from work; amending s. 440.10, F.S.; deleting a requirement that contractors or subcontractors show proof of workers' compensation coverage before receiving a building permit; providing a penalty for employers who fail to secure required compensation; deleting a penalty; providing circumstances under which a person is presumed to be an independent contractor; amending s. 440.101, F.S.; clarifying legislative intent relating to drug-free workplaces; amending s. 440.102, F.S.; clarifying and amending drug-free workplace program provisions; providing definitions; amending notice provisions; providing employer requirements for employer eligibility for certain discounts; providing requirements for bidding for a contract with the state, a county, or a municipality; reassigning certain responsibilities of the Department of Health and Rehabilitative Services for setting testing standards and overseeing testing; requiring a carrier or insurer to pay for treatment that occurs before a denial of benefits and to give notice to health care providers; allowing random drug testing by a public employer; relieving employers of civil liability, as specified; providing for reassigning an employee who tests positive for drugs or is in a drug-rehabilitation program; creating s. 440.103, F.S.; requiring contractors, as a condition to receiving a building permit, to show proof of having secured compensation for their employees; providing for a certificate of such proof; creating s. 440.104, F.S.; providing for actions for damages by losers of competitive

biddings against certain winners of such biddings; specifying recovery of damages; providing for attorney's fees; providing exceptions; providing for joinder in such actions; barring certain actions under certain circumstances; creating s. 440.105, F.S.; prohibiting certain activities; providing penalties; creating s. 440.0151, F.S.; requiring that the Bureau of Workers' Compensation Insurance Fraud of the Division of Insurance Fraud of the Department of Insurance establish a toll-free telephone number to receive reports of workers' compensation fraud; providing civil immunity for persons who make such a report; providing criminal penalties; creating s. 440.1055, F.S.; providing for claims forms to carry a notice of penalty for including false or misleading information on a statement of claim, as defined; creating s. 440.106, F.S.; providing civil remedies under certain circumstances; authorizing the Division of Workers' Compensation of the Department of Labor and Employment Security; to impose certain penalties; creating s. 440.107, F.S.; providing powers of the division to enforce compliance with coverage requirements; authorizing the division to assess penalties; creating s. 440.108, F.S.; providing for duty to report for certain individuals; authorizing the Bureau of Workers' Compensation Insurance Fraud to investigate and report; amending s. 440.13, F.S.; revising provisions related to providing medical services and supplies; providing definitions; requiring employers to furnish medical treatment; providing for provider eligibility for payment; providing for authorizations for payments to providers; requiring health care providers to submit certain reports to carriers under certain circumstances; providing for independent medical examinations; providing for utilization review; providing for resolution of utilization and reimbursement disputes; providing for penalties for overutilization or certain violations of ch. 440, F.S.; providing for certification of expert medical advisors; requiring the division to contract with such advisors to provide peer review or medical consultation under certain circumstances; providing procedures for expert medical advisors; relieving such advisors of legal liability; requiring carriers to timely compensate such an advisor; providing penalties for failure to compensate; providing for audits by the division; providing for division jurisdiction; creating a three-member panel to adopt schedules of reimbursement allowances; providing for per diem reimbursement for hospital inpatient services; requiring the division to conduct a study of all phases of the health care delivery system; providing for managed care; providing for removal of physicians from certain lists; providing for payment of medical fees; providing for developing and implementing state practice parameters for outpatient services for workers' compensation claimants; creating s. 440.134, F.S., the "Workers' Compensation Managed Care Organization Act"; providing definitions; providing for the Department of Insurance to administer this section and to adopt and enforce rules; providing that a workers' compensation managed care organization, or WCMCO, is exempt from the Florida Insurance Code; providing that this section is exclusively applicable to WCMCOs; requiring a certificate of authority for owning, operating, or controlling a WCMCO or providing certain services; providing requirements for obtaining or renewing a certificate of authority; requiring an annual report; providing fees for licensure and license renewal; requiring a WCMCO to have a quality assurance program; providing requirements for changes of ownership; requiring notice of and prerequisites to expanding the WCMCO's geographic area; specifying the minimum net worth that a WCMCO must maintain; prohibiting certain ownership interests in or by a WCMCO; requiring such organization to disclose certain financial interests; providing for suspending, revoking, or refusing to renew certificates of authority and requiring notice thereof; providing for the maximum duration of suspension of a certificate, for obligations of the WCMCO during that period, and for reinstatement; providing obligations of carriers during suspension or revocation of a WCMCO's certificate of authority; providing for administrative fines; providing penalties for operating without a valid certificate of authority; providing for maintenance of and access to records; specifying other laws applicable to WCMCOs; requiring forms to be filed with and approved by the Department of Insurance; setting rate limits; providing for periodic examination; providing for the disposition of fees; prohibiting WCMCOs from transacting insurance business without authorization; providing penalties for a false or fraudulent application and for other violations of this section; requiring medical services and supplies to be provided in specified circumstances; providing that ch. 440, F.S., applies to certain health maintenance organizations under specified conditions; amending s. 440.135, F.S.; amending provisions relating to pilot programs for medical and remedial care; allowing such programs to combine other health insurance and workers' compensation insurance into 24-hour health insurance coverage; amending s. 440.15, F.S.; clarifying an employee's burden in proving permanent total disability; revising guidelines for payments to employees who are totally disabled; providing for continued vocational evaluations or testing under certain circum-

stances; requiring that notice of evaluations or testing be given to an employee; providing procedures for withholding payments from an employee who refuses evaluation or testing; requiring claimants to prove permanent total disability in certain circumstances; prohibiting findings of permanent total disability for sheltered employment under certain circumstances; excluding from benefits employees who refuse to apply for or cooperate with application for social security benefits; providing for establishment of a uniform permanent impairment rating schedule; providing for determinations of permanent impairment by certain persons; providing for supplemental benefits, which are regulated solely by this section; deleting provisions relating to wage-loss benefits; amending procedural requirements relating to benefits for temporary partial disability; providing for repayment of indemnity benefits for which there was no entitlement; providing for the coordination of benefits; amending s. 440.16, F.S.; increasing required amount for funeral expenses; amending s. 440.185, F.S.; clarifying procedures related to notice of injury or death; deleting a requirement that the division monitor certain provision of benefits; deleting provisions relating to an electronic reporting system; amending s. 440.19, F.S.; clarifying procedures for filing claims for benefits; providing for withdrawal of claims; providing for amending claims; providing conditions to a motion to dismiss; deleting a requirement that the division assist certain injured employees; deleting provisions relating to requiring a judge of compensation claims to mail claims to the division and requiring the division to facilitate the resolution of conflicts in workers' compensation cases; creating s. 440.191, F.S.; creating the Employee Assistance Office in the division; providing procedures, duties, and responsibilities of the office; amending s. 440.20, F.S.; amending conditions of payment of benefits; requiring the division to monitor carriers to assure timely payment; providing for fines; deleting a requirement that the division assess a fine under certain circumstances; prohibiting the payment of attorney's fees; amending provisions related to lump-sum payments; providing applicability of this section to all claims settlements after a specified date; amending s. 440.207, F.S.; amending requirements for workers' compensation system guide; amending s. 440.21, F.S.; deleting a penalty related to invalid employer-employee agreements; creating s. 440.211, F.S.; authorizing certain collective bargaining agreements; providing criteria; amending s. 440.25, F.S.; clarifying provisions requiring a pretrial hearing and a final hearing under certain circumstances; providing for mediation; providing procedures for expediting resolution of claims; amending procedures for resolution of claims; providing for uniform local rules for workers' compensation; amending s. 440.29, F.S.; requiring receipt into evidence by a judge of compensation claims of certain medical reports; amending s. 440.32, F.S.; providing for assessing costs and attorney's fees against an attorney who frivolously brings or maintains proceedings; amending s. 440.34, F.S.; amending limitations on attorney's fees that may be approved as reasonable for services to claimants and to defendants; prohibiting carriers from recouping attorney's fees by specified means; creating s. 440.345, F.S.; requiring reporting of attorney's fees to the division; amending s. 440.38, F.S.; revising and clarifying provisions requiring security for payments of compensation; reassigning certain oversight functions from the division to the Department of Insurance; providing for the revocation of an employer's right to self-insure and for alternatives to revocation; providing additional options for employer coverage; amending provisions for indemnity benefits; requiring specified life-insurance benefits; requiring carriers to maintain claims adjusters in this state; deleting a penalty for failure to comply; amending s. 440.381, F.S.; revising a penalty for understating payroll or misrepresenting employee duties; amending s. 440.385, F.S.; amending provisions regulating the Florida Self-Insurers Guaranty Association; reassigning certain functions from the Department of Labor and Employment Security to the Department of Insurance; amending s. 440.386, F.S.; assigning to the Department of Insurance certain functions relating to the insolvency of an individual self-insurer; creating s. 440.4416, F.S.; creating a state Workers' Compensation Advisory Council; providing for council duties, membership, meetings, and reimbursement; creating s. 440.4417, F.S.; creating a state Workers' Compensation Rules Advisory Council; providing for council duties, membership, meetings, and reimbursements; amending s. 440.45, F.S.; providing for nominations of judges of compensation claims by the Workers' Compensation Judicial Commission; providing qualifications for membership on the commission; providing that the Governor appoints commission members; providing that the judicial commission has the power to investigate and make recommendations to the Governor relating to the fitness for office of judges of compensation claims, and to impose sanctions; providing the Governor with power to remove such judges for specified causes; providing for review of the judicial commission's actions; placing restrictions on such a judge who vacates his judicial office; revising the duties of the Chief Judge; requir-

ing the Chief Judge to report to the judicial commission on the performance of each judge; amending ss. 440.56 and 442.115, F.S.; requiring a client of a help supply services company to include certain employees of that company in the client's employee safety training program; amending s. 440.49, F.S.; revising provisions relating to reemployment of injured workers and rehabilitation; focusing on limiting the liability for subsequent injury through the Special Disability Trust Fund; providing definitions; providing legislative intent; amending definitions; providing a deductible; providing for temporary compensation and medical benefits, and allowing partial reimbursement to the employer from the trust fund; providing for the effect that the employer's knowledge of a preexisting condition has upon his reimbursement; revising the list of compensable injuries; revising the criteria by which claims for reimbursement are accepted; providing for assessments to maintain the trust fund; providing for the applicable law for purposes of determining entitlement to reimbursement; creating s. 440.491, F.S.; providing for reemployment status reviews and reports; providing for reemployment assessments; providing for medical care coordination and reemployment services; providing for training and education; specifying provider qualifications; requiring the division to monitor selection of providers, provision of services, and carrier practices; restricting adjudications of permanent and total disability; amending s. 440.50, F.S.; providing for the funding of the Bureau of Workers' Compensation Fraud within the Department of Insurance from the Workers' Compensation Administration Trust Fund; amending ss. 440.51, 440.515, F.S.; providing for the Department of Insurance to assume certain administrative functions, including auditing self-insurers and maintaining confidential reports; amending s. 440.572, F.S.; correcting a cross-reference; amending s. 440.59, F.S.; requiring the Department of Labor and Employment Security to make an annual report on the administration of ch. 440, F.S., to specified officials; creating s. 440.593, F.S.; providing for the division to establish an electronic reporting system; providing for the division to periodically examine each carrier; creating the "Florida Occupational Safety and Health Act," consisting of ss. 442.001; 442.002, 442.003, 442.004, 442.005, 442.006, 442.007, 442.008, 442.009, 442.0105, 442.011, 442.012, 442.013, 442.014, 442.015, 442.016, 442.017, 442.018, 442.019, 442.0195, 442.021, 442.022, F.S.; creating s. 442.001, F.S.; providing a short title; creating s. 442.002, F.S.; providing definitions; creating s. 442.003, F.S.; providing legislative intent; transferring, amending, and renumbering s. 440.09(5), F.S., as s. 442.004, F.S.; providing for rulemaking governing safety inspections and consultations; transferring, amending, and renumbering s. 440.152, F.S., as s. 442.005, F.S.; providing for the division to make a continuous study of occupational diseases; repealing s. 440.46(2), (3), F.S., and transferring, amending, and renumbering s. 440.46(1), F.S., as s. 442.006, F.S.; authorizing the division to enter and inspect places of employment for purposes of compliance; providing a penalty for refusing to allow an inspection; creating s. 442.007, F.S.; providing employers' responsibilities for employees' safety; creating s. 442.008, F.S.; providing the division with the authority to investigate safety at places of employment and to prescribe means of preventing accidents and occupational diseases; creating s. 442.009, F.S.; providing the division and its representatives with a right of entry to make inspections; creating s. 442.0105, F.S.; requiring employers whose employees have a high frequency or severity of work-related injuries to implement a safety and health program, for division approval; providing for rulemaking; creating s. 442.011, F.S.; requiring carriers to provide safety consultations to their policyholders on request; requiring a report to the division; requiring the division to set out criteria for, and to approve, safety programs; creating s. 442.012, F.S.; requiring employers to establish workplace safety committees; requiring the division to adopt certain rules relating to committee membership and duties and to employer recordkeeping; requiring employees to receive their regular wages while engaged in committee activities; creating s. 442.013, F.S.; providing for employer penalties; creating s. 442.014, F.S.; providing for cooperation between the division and the Federal Government for specified purposes; creating s. 442.015, F.S.; providing penalties for certain employers who fail to implement a safety and health program; creating s. 442.016, F.S.; providing for paying the expenses of administering this chapter; creating s. 442.017, F.S.; providing a criminal penalty for an employer or owner that refuses to allow entry and inspections by division representatives; creating s. 442.018, F.S.; providing employees' rights and responsibilities; creating s. 442.019, F.S.; providing for compliance; creating s. 442.20, F.S.; prohibiting making false statements to carriers; creating s. 442.021, F.S.; providing penalties for carriers under certain circumstances; creating s. 442.022, F.S.; providing preemptive authority to the division to adopt certain rules; creating s. 442.023, F.S.; prohibiting certain acts; providing penalties; providing a statute of limitations; amending s. 489.115, F.S.; prescribing for contractors' continuing education cur-

ricula to contain information on workers' compensation and workplace safety; transferring the self-insurance regulatory functions of the Department of Labor and Employment Security to the Department of Insurance; preserving current administrative rules; providing that the validity of current legal actions is not affected by the transfer; authorizing group self-insurers who have certificates of authority under current law to receive certificates of authority under this act; creating s. 624.461, F.S.; defining the term "self-insurance fund"; amending s. 624.462, F.S.; prohibiting a commercial self-insurance fund from participating in the Florida Self-Insurance Fund Guaranty Association; transferring, amending, and renumbering s. 440.57, F.S., as s. 624.4621, F.S.; providing for group self-insurance funds; transferring administrative responsibilities from the division to the Department of Insurance; requiring participation in the Florida Self-Insurance Fund Guaranty Association; transferring, amending, and renumbering s. 440.575, F.S., as s. 624.4622, F.S.; providing for local government self-insurance funds; correcting cross-references; transferring, amending, and renumbering s. 440.571, F.S., as s. 624.46225, F.S.; correcting a cross-reference; amending ss. 624.463, 624.474, 624.476, 624.480, 624.482, 624.484, 624.486, 624.488, F.S.; replacing the term "commercial self-insurance fund" with the term "self-insurance fund" in provisions relating to the conversion of such a fund into a domestic mutual insurer, relating to such a fund's payment of dividends or refunds to its members, relating to allowing assessments to be made upon such funds for deficiencies, relating to impaired funds, relating to filing, approval, and disapproval of forms, relating to the making and use of rates, relating to the registration of the funds, relating to filing, approval, and disapproval of forms, relating to the registration of the fund's agent, relating to periodic examinations of the fund, and relating to the applicability of related laws to the funds; creating s. 624.4741, F.S.; providing venue in assessment actions brought by a self-insurance fund; transferring, amending, and renumbering s. 440.58, F.S., as s. 624.483, F.S.; reassigning, from the division to the Department of Insurance, certain duties relating to self-insurers' payments of delinquent premiums and assessments; transferring, amending, and renumbering s. 440.5705, F.S., as s. 624.487, F.S.; correcting cross-references to conform to this act; reassigning, from the Department of Labor and Employment Security to the Department of Insurance, duties relating to enforcing specified insurance provisions and rulemaking; amending s. 627.041, F.S.; amending the definition of the term "insurer" to include group self-insurance funds; creating s. 627.212, F.S.; providing for carriers voluntarily to impose a workplace safety program surcharge on certain policyholders or fund members; providing for rulemaking; amending s. 627.311, F.S.; providing for joint underwriters and joint reinsurers; providing purposes and requirements; providing for supervision of the joint underwriting plan by a board of governors; providing board members' qualifications and terms of office; requiring a plan of operation and prescribing contents of the plan; providing for funding the plan; providing qualifications necessary for insurance under the plan; requiring an independent actuarial certification; providing procedures in case of deficits; allowing the plan to retain excess premiums and assessments; providing liability for losses arising after a specified date; providing that plan losses are not to come from insurers; providing that the joint underwriting plan is not a state agency, except as specified; providing alternatives for paying premium taxes; amending s. 627.4133, F.S.; providing that workers' compensation and employer's liability insurance is subject to certain notice provisions; creating part V of ch. 631, F.S., the "Florida Self-Insurance Fund Guaranty Association Act," consisting of ss. 631.90, 631.905, 631.91, 631.915, 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95, 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985, 631.99, 631.995, F.S.; providing a title; providing purposes; providing for liberal construction; providing definitions; creating the association and fund; providing for an organizational meeting and a board of directors; providing powers and duties of the association; providing for assessments; requiring a plan of operation to be submitted to the department; specifying plan contents; providing for the prevention of insolvencies; providing for open association records and open meetings; providing immunity to the association and to the Department of Insurance; prohibiting certain advertisements or solicitations; providing powers of the Department of Insurance; providing liability of members of an impaired self-insurance fund for unpaid claims; providing for certain effects of paid claims; providing for a stay of proceedings and for reopening of default judgments; prohibiting an award of attorney's fees, except as specified; providing for assumption of liability relating to claimants covered by the Certified Pulpwood Dealers Self-Insurers Fund; requiring the district court of appeal to use the state video teleconferencing network to facilitate access to courts; amending s. 772.102, F.S., to include violations of ss. 440.106 and 440.107, F.S., as a criminal activity; amending s. 27.34, F.S., authorizing the Insurance Com-

missioner to contract with state attorneys to prosecute certain criminal violations and to contribute funds to pay salaries and expenses of assistant state attorneys; amending s. 628.161, F.S.; providing that certain self-insurer's funds may become mutual insurers, by meeting specified requirements and submitting a plan of reorganization to the Department of Insurance for its approval; providing that certain contingent liability of the self-insurer's fund members or former members is extinguished, as specified; repealing ss. 440.37, 440.38, 440.48, 440.56, F.S., relating to misrepresentation and fraudulent activity for the purpose of obtaining or denying workers' compensation benefits, relating to security for compensation, relating to an annual report of the administration of ch. 440, F.S., and relating to workplace safety rules and provisions; amending s. 628.6013, F.S., relating to converted self-insurance funds; providing a procedure for resolving maximum medical improvement or permanent impairment disputes; providing an effective date.

House Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

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

27.34 Salaries and other related costs of state attorneys' offices; limitations.—

(4) *Notwithstanding s. 27.25, the Insurance Commissioner may contract with the state attorney of any judicial circuit of the state, the statewide prosecutor, or the Justice Administration Commission for the prosecution of criminal violations of the Workers' Compensation Law and related crimes and may contribute funds for such purposes. Such funds may also be used for the training, expenses, and administrative costs of one or more assistant state attorneys or statewide prosecutors used in the prosecution of such crimes.*

2. Subsection (22) of section 287.057, Florida Statutes, is added to said section to read:

(22) *All contracts costing in excess of the amount provided in s. 287.017 for CATEGORY TWO shall contain a provision that the contractor shall continuously maintain security for the payment of compensation as required by ss. 440.10 and 440.38 during the term of the contract. This section shall take effect July 1, 1994.*

Section 3. Section 440.015, Florida Statutes, is amended 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 and to facilitate the worker's return to gainful reemployment 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, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The Division of Workers' Compensation shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

Section 4. Subsections (1), (8), (13), (14), (19), (24), and (31) and paragraphs (b), (c), and (e) of subsection (21) of section 440.02, Florida Statutes, are amended, and subsections (32), (33), (34), (35), and (36) are added to said section, 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, or a disease which manifests itself in the fear of or dislike for an individual because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status, shall be deemed not to be an injury by accident arising out of the employment. Where a preexisting 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.

(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 a reasonable degree of medical certainty probability. Medical opinion, findings, or other evidence establishing the possibility of improvement or deterioration of the employee's injury due to the passage of time alone shall not delay or otherwise affect the date of maximum medical improvement.

(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.

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

2. As to officers of a corporation who are actively engaged in the construction industry, no more than three officers may elect to be exempt from the provisions of this chapter by filing written notice of the election with the division as provided in s. 440.05.

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

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. Partners or sole proprietors actively engaged in the construction industry are considered employees unless they elect to be excluded from the definition of employee by filing written notice of the election with the division as provided in s. 440.05. However, no more than three partners in a partnership that is actively engaged in the construction industry may elect to be excluded. A sole proprietor or partner who is actively engaged in the construction industry and who elects to be exempt from the provisions of this chapter by filing a written notice of the election with the division as provided in s. 440.05 is not an employee. For purposes of this chapter, every independent contractor shall be deemed to be an employee unless that individual meets the criteria set forth in subparagraph (d)1.

(d) "Employee" does not include:

1. An independent contractor, if that individual meets all of the following conditions who is not subject to the control and direction of the employer as to his actual conduct, including:

a. He maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations.

b. He holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is

not required to obtain a federal employer identification number under state or federal requirements.

c. He performs or agrees to perform specific services or work for specific amounts of money and the independent contractor controls the means of performing the services or work.

d. He incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

e. He is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform and is or could be held liable for a failure to complete the work or service.

f. He receives compensation for work or service performed on a commission, per-job, or competitive-bid basis and not on any other basis.

g. He may realize a profit or suffer a loss in connection with performance of services.

h. He has continuing or recurring business liabilities or obligations.

i. He depends on the relationship of business receipts to expenditures for the success or failure of the independent contractor's business.

However, a determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, and 2449, and a newspaper delivery person is an independent contractor shall not be governed by the criteria in this subsection but by common law principles giving due consideration to the business activity of such individual.

~~2.a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesperson salesman or agent, provided that such person agrees in writing to perform if such service by such individual for such person or corporation is performed for remuneration solely by way of commission;~~

3.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; and

4.e. 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.

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

6.3. A volunteer, except a volunteer worker for the state or a county, city, or other governmental entity. 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; and

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

7.4. Any officer of a corporation who elects to be exempt from the provisions of this chapter.

8.5. A sole proprietor or officer of a corporation who actively engages in the construction industry, and a partner in a partnership that is actively engaged in the construction industry, who elects to be exempt

from the provisions of this chapter. Such sole proprietor, officer, or partner is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

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

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

(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. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders directly or indirectly owning a controlling interest in the corporation, shall be considered the employer for the purposes of ss. 440.105 and 440.106.

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

(21) "Self-insurer" means:

(b) Any employer who has secured payment of compensation through a group self-insurance fund self-insurer pursuant to s. 624.4621 440.57;

(c) Any group self-insurance fund self-insurer established pursuant to s. 624.4621 440.57;

(e) Any local government self-insurance fund pool established pursuant to s. 624.4622 440.575.

(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 any other concurrent employment where he is also subject to workers' compensation coverage and benefits 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 s. 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.

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

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

1. 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;

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

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

4.(d) That the individual self-insurer has sought protection under the United States Bankruptcy Code or has been brought under the jurisdic-

tion of a court of bankruptcy as a debtor pursuant to the United States Bankruptcy Code.

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

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

2. Has been adjudicated insolvent pursuant to the Federal Bankruptcy Law.

(32) "Agency" means the Agency for Health Care Administration.

(33) "Catastrophic injury" means a permanent impairment consisting of:

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

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

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

1. Severe sensory or motor disturbances;

2. Severe communication disturbances;

3. Severe complex integrated disturbances of cerebral function;

4. Severe episodic neurological disorders; or

5. Any other severe brain and closed head injury condition at least as severe in nature as any condition described in this paragraph;

(d) Second or third degree burns of 25 percent or greater of the total body surface or third degree burns of 5 percent or greater to the face and hands;

(e) Total or industrial blindness; or

(f) Any other compensable injury of a nature and severity which qualifies or would qualify an employee to receive disability income benefits under Title II, or supplemental security income benefits under Title XVI, of the Social Security Act as such act exists on July 1, 1992, without regard to any time limitations provided under such act.

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

(35) "Statement," for the purposes of ss. 440.105 and 440.106, includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor record, x-ray, test result, or other evidence of loss, injury, or expense.

(36) "Arising out of" means pertaining to occupational causation. An accidental injury or death arises out of employment if work performed in the course and scope of employment is the major contributing cause of the injury or death.

Section 5. Subsection (3) of section 440.05, Florida Statutes, is amended to read:

440.05 Election Notice of exemption; revocation of election; notice; certification or acceptance and waiver of exemption or acceptance.—

(3) Every sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects an exemption from the provisions of this chapter or who, after electing such exemption, revokes that exemption, shall mail a written notice to such effect to the division on a form prescribed by the division. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The election form must list the name, federal tax identification number, social security number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption. The form must identify each sole proprietorship, partnership, or corporation that employs the person electing seeking the exemp-

tion and must list the social security number or federal tax identification number of each such employer. In addition, the *election exemption* form must provide that the sole proprietor, partner, or officer electing an exemption is not entitled to benefits under this chapter, must provide that the *election exemption* does not exceed exemption limits for officers and partnerships set forth in s. 440.02, and must certify that any employees of the sole proprietor, partner, or officer electing an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt and a determination that the notice meets the requirements of this subsection, the division shall issue a certification of the election to the sole proprietor, partner, or officer. The certificate of election must list the names of the sole proprietorship, partnership, or corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new sole proprietorship, partnership, or corporation that is not listed on the certificate of election. A copy of the certificate of election shall be sent to each workers' compensation carrier identified in the request for exemption. The certification of the election is valid for 2 years or until the sole proprietor, partner, or officer revokes his election, whichever occurs first. Upon filing a notice of revocation of election, if the sole proprietor, partner, or officer is a subcontractor, he shall notify his contractor.

Section 6. Section 440.055, Florida Statutes, is amended to read:

440.055 *Notice of noncoverage at worksite Annual Employer affidavits.*—If an employer who employs fewer than four employees, who is permitted by law to elect not to secure payment of compensation under this chapter, and who elects chooses not to secure payment of compensation under this chapter, such employer shall post clear written notice at each worksite 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, and other persons performing services at the worksite, of their lack of entitlement to benefits under this chapter. An employer obligated to secure coverage under this chapter shall post notice at the worksite, in a form approved by the division, of the employee's rights and responsibilities under this chapter. The notice shall advise the employee of time limits for filing petitions and of the availability of assistance through the Employee Assistance and Ombudsman Office. Any employer who fails to post the notice of noncoverage at the worksite shall be subject to a penalty of \$100, to be assessed and collected by the division and deposited into the Workers' Compensation Administration Trust Fund. Such affidavit shall also contain the nature of the employer's business, the business address, and the telephone number.

Section 7. Section 440.075, Florida Statutes, is amended to read:

440.075 *Effect of exemption by When corporate officer, sole proprietor, or partner rejects chapter, effect.*—

(1) Every corporate officer who elects exemption from to reject this chapter by filing a certificate of election under s. 440.05 shall, in any action to recover damages for injury or death brought against the corporate employer, proceed as at common law, and the employer in the such suit may avail itself of all defenses that exist at common law.

(2) Every sole proprietor, partner, or officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 shall not recover any benefits or compensation under this chapter.

Section 8. Subsections (1), (2), (3), and (7) of section 440.09, Florida Statutes, are amended, and subsection (9) is added to said section, to read:

440.09 Coverage.—

(1) The employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an accidental injury or death arising out of work performed in the course and scope of employment. The injury, its occupational cause, and any resulting manifestations or disability shall be established to a reasonable degree of medical certainty and by objective medical findings. Mental or nervous injuries occurring as a manifestation of an injury compensable under this section shall be demonstrated by clear and convincing evidence. 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) An employee shall not be entitled to compensation or benefits under this chapter if he or she has suffered an injury, No compensation shall be payable in respect of the disability, or death that falls within the scope of 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 benefits payable under this chapter 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.

(7)(a) To ensure that the workplace is a drug-free 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, as defined in this chapter, which affected the employee to the extent that the employee's normal faculties were impaired, and the employer has not implemented a drug-free workplace pursuant to ss. 440.101 and 440.102, 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 employee has at the time of the injury a blood alcohol level equal to or greater than the level specified in s. 316.193, or if the employee has a positive confirmation of a drug as defined in this chapter, 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. No compensation shall be payable if the injury was occasioned primarily by the intoxication of, or by the influence of the drug upon, the employee. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. Blood serum is permitted to be used for testing purposes under this chapter; however, if this test is used, the presumptions under this section shall not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level which would have been obtained if the test were based on percent by weight of alcohol in the 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.

(c)(b) If the injured worker refuses to submit to a drug test for non-prescription 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 drugs a non-prescription controlled substance or alcohol.

(d)(e) 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.

(9) An employee shall not be entitled to compensation or benefits under this chapter if any administrative hearing officer, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the acts described in s. 440.105 for the purpose of securing workers' compensation benefits.

Section 9. Subsection (4) of section 440.092, Florida Statutes, is amended to read:

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

(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. This subsection applies to travel necessarily incident to performance of the employee's job responsibility but does not include travel to and from work as provided in subsection (2).~~

Section 10. Subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)(a) 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. ~~Every contractor or subcontractor, if required by rules requiring coverage according to the provisions of this chapter adopted by the Department of Labor and Employment Security, must, 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 or, if applicable, provide a written certificate of election issued under s. 440.05. 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.~~

(b) 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.

(c) A contractor may require a subcontractor to provide evidence of workers' compensation insurance or a copy of his certificate of election. A subcontractor electing to be exempt as a sole proprietor, partner, or officer of a corporation shall provide a copy of his certificate of election to his contractor.

(d)1. If 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.

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

(e) ~~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.~~

(e)(f) 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.

(f) If an employer willfully fails to secure compensation as required by this chapter, the division may assess against an employer a penalty not to exceed \$5,000 for each employee of that employer who the employer had classified as an independent contractor but who is found by the division to not meet the criteria in s. 440.02(13)(d).

Section 11. Section 440.101, Florida Statutes, is amended to read:

440.101 Legislative intent; drug-free workplaces.—

(1) 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.

(2) If an employer implements a drug-free workplace program in accordance with s. 440.102 which includes notice, education, and procedural requirements for 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 forfeits ~~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 ~~must~~ shall require the employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of taking drugs or alcohol in his or her body on or off the job and, if an the injured employee worker refuses to submit to a test for drugs or alcohol, the employee he forfeits his eligibility for medical and indemnity benefits.

Section 12. Section 440.102, Florida Statutes, is amended to read:

440.102 Drug-free workplace program requirements.—The following provisions 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)(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.

(b)(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, ~~which. The confirmation test must be different in scientific principle from that of the initial test procedure and. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.~~

(c)(e) "Drug" means alcohol, including a distilled spirit spirits, wine, a malt beverage beverages, or an and intoxicating liquor liquors; an amphetamine amphetamines; a cannabinoid cannabinoids; cocaine; phencyclidine (PCP); a hallucinogen hallucinogens; methaqualone; an opiate opiates; a barbiturate barbiturates; a benzodiazepine benzodiazepines; a synthetic narcotic narcotics; a designer drug drugs; or a metabolite of any of the substances listed in this paragraph herein. An employer may test an individual for any or all of such drugs.

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(28), that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(e)(b) "Drug test" or "test" means any chemical, biological, or physical

instrumental analysis administered, by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration, for the purpose of determining the presence or absence of a drug or its metabolites.

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

(g)(4) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(28) for employee assessment, counseling, and possible referral to an alcohol and drug rehabilitation program.

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

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

(j)(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, and may have begun work pending the results of the drug test. For a public employer, "job applicant" means only a person who has applied for a special-risk or safety-sensitive position.

(k) "Medical review officer" or "MRO" means a licensed physician, employed with or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

(l)(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.

(m) "Public employer" means any agency within state, county, or municipal government that employs individuals for a salary, wages, or other remuneration.

(n)(i) "Reasonable-suspicion 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, or been involved in 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.

(o) "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person.

(p) "Special-risk position" means, with respect to a public employer, a position that is required to be filled by a person who is certified under chapter 633 or chapter 943.

(q)(k) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration or the Agency for Health Care Administration.

(2) DRUG TESTING.—An employer may test an employee or job applicant for any drug described in paragraph (1)(c). In order to qualify as having established a drug-free workplace program which affords an employer the ability to qualify for the discounts provided under s. 627.0915 and deny medical and indemnity benefits, under this chapter all drug testing conducted by employers shall be in conformity with the standards and procedures established in this section and all applicable rules adopted pursuant to this section. However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer shall not be eligible for discounts under s. 627.0915. All employers qualifying for and receiving discounts provided under s. 627.0915 must be reported annually by the insurer to the division.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, prior to testing, an employer shall give all employees and job applicants for employment ~~must be given~~ a written policy statement from the employer which contains:

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

a.1. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing ~~reasonable-suspicion~~ or drug testing conducted on any other basis; ~~and~~

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

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

3.(e) A general statement concerning confidentiality.

4.(d) Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications to a medical review officer both before and after being tested.

5. A list ~~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 Agency for Health Care Administration 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.

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

7.(f) A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

8.(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 medical review officer employer within 5 working days after receiving written notification of the positive test result; that: if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to rules adopted by the Department of Labor and Employment Security.

9.(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.

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

11.(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.

12.(k) A statement notifying employees and job applicants of their right to consult with a medical review officer the testing laboratory for technical information regarding prescription or and nonprescription medication.

(b)(4) An employer not having a drug-testing drug-testing program shall ensure that at least 60 days elapse between a general one-time notice to all employees that a drug-testing drug-testing program is being implemented and the beginning of actual drug testing. An employer having a drug-testing drug-testing program in place prior to July 1, 1990, the effective date of this section is not required to provide a 60-day notice period.

(c)(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 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 employees or job applicants of the employer general public during regular business hours in the employer's personnel office or other suitable locations.

(4) TYPES OF TESTING.—

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

1.(a) Job applicant drug 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 refusing refusal to hire a the job applicant.

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

3.(c) Routine fitness-for-duty drug testing 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.

4.(d) Followup drug testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or a an alcohol and drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require followup testing. If followup testing is required, it must be conducted at least once a year for a 2-year period after completion of the program. Advance notice of a fol-

lowup testing date must not be given to the employee to be tested and on a quarterly, semiannual, or annual basis for up to 2 years thereafter.

(b) This subsection does not preclude a private employer from conducting random testing, or any other lawful testing, of employees for drugs.

(c) Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with division rule.

(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 must 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. The Such form must 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 test result results.

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

(d) Each initial drug test 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 or certified 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 or certified laboratory as described in subsection (9).

(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 Agency for Health Care Administration Department of Health and Rehabilitative Services.

(g) Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted conducts the confirmation test for a period of at least 210 days after the result results of the positive confirmation test was are mailed or otherwise delivered to the medical review officer 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 Agency for Health Care Administration 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 that which performed the test for the employer is 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 *medical review officer 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, an employee or job applicant may submit information to the employer explaining or contesting the test result results, and explaining why the result does not constitute a violation of the employer's policy.

(k) If the employee's or job applicant's explanation or challenge of the positive test result 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 result 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) An employer may not 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 and by a medical review officer.

(m) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures as established by the Agency for Health Care Administration 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 the employer requires of employees.

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

(p) An employer shall not 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. Unless otherwise provided by a collective bargaining agreement, an employer may select the employee assistance program or drug rehabilitation program if the employer pays the cost of the employee's participation in the program.

(q) If drug 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.

(r) All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under this section must be paid for by the carrier or self-insurer. However, the carrier or self-insurer must have given reasonable notice to all affected health care providers that payment for treatment, care, and attendance provided to the employee after a future date certain will be denied. A health care provider, as defined in s. 440.13(1)(j), that refuses, without good cause, to continue treatment, care, and attendance before the provider receives notice of benefit denial commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(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 or certified laboratories as described in subsection (9) may 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 scientifically accepted method approved by the Agency for Health Care

Administration or the United States Food and Drug Administration Department of Health and Rehabilitative Services as such technology becomes available in a cost-effective form.

(d) If an initial drug test of an employee or job applicant is confirmed as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is confirmed as positive in accordance with the provisions of this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws 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 is 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 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 does not shall be construed to operate retroactively, and does not nothing in this section shall abrogate the right of an employer under state law to conduct drug tests, or implement employee drug-testing 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 is shall not be barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, nothing in this paragraph does not shall abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section.

(g) Nothing in This section does not shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed 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 testing is 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. Such screening or testing need not be in compliance with the rules adopted by the Department of Labor and Employment Security and the Agency for Health Care Administration under s. 112.0455. A public employer may, through the use of an unbiased selection procedure, conduct random drug tests of employees occupying safety-sensitive or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration and the Department of Labor and Employment Security. If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.

(h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug testing.

(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 drug-testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or dis-

closed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter.

(b) Employers, laboratories, *medical review officers*, 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 *is authorized* 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 *is 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 *is shall* be inadmissible as evidence in any such criminal proceeding.

(d) *This subsection does not* Nothing herein shall be construed to prohibit *an the* employer, agent of *an the* employer, or laboratory conducting a drug test from having access to employee drug test information or using such 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~~ DRUG-TESTING STANDARDS FOR LABORATORIES.—

(a) A ~~laboratory~~ laboratory may not analyze initial or confirmation test drug specimens unless:

1. The laboratory is licensed and approved by the *Agency for Health Care Administration Department of Health and Rehabilitative Services* using criteria established by the *United States Department of Health and Human Services National Institute on Drug Abuse* as guidelines for modeling the state drug testing program pursuant to this section or the laboratory is certified by the *United States Department of Health and Human Services*.
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 *medical review officer employer* a written *positive confirmed* test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result *must shall*, at a minimum, state:

1. The name and address of the laboratory *that 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 *tests* 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.

A ~~report~~ report *must not 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 *Agency for Health Care Administration Department of Health and Rehabilitative Services* a monthly report with statistical information regarding the testing of employees and job applicants. The report *must shall* include information on the methods of *analysis analyses* conducted, the drugs tested for, the number of positive and negative results for both initial *tests* and confirmation tests, and any other information deemed appropriate by the *Agency for Health Care Administration Department of Health and Rehabilitative Services*. A ~~monthly report~~ monthly report *must not 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 the rules adopted by the *Agency for Health Care Administration Department of Health and Rehabilitative Services* pursuant to s. 112.0455 and criteria established by the *United States Department of Health and Human Services National Institute on Drug Abuse* as guidelines for modeling the state *drug-testing drug-testing* program, concerning, but not limited to:

- (a)1. Standards for *licensing drug-testing laboratories drug-testing* laboratory licensing and suspension and revocation of *such licenses a* license.
- (b)2. Body specimens and minimum specimen amounts *that which* are appropriate for drug testing.
- (c)3. Methods of analysis and procedures to ensure reliable *drug-testing drug-testing* results, including standards for initial tests and confirmation tests.
- (d)4. Minimum cutoff detection levels for *each drug drugs* or their metabolites *of such drug* for the purposes of determining a positive test result.
- (e)5. Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens *being* tested.
- (f)6. Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

(11) PUBLIC EMPLOYEES IN SAFETY-SENSITIVE OR SPECIAL-RISK POSITIONS.—

(a) *If an employee who is employed by a public employer in a safety-sensitive position enters an employee assistance program or drug rehabilitation program, the employer must assign the employee to a position other than a safety-sensitive position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.*

(b) *An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be*

allowed to continue to work in any special-risk or safety-sensitive position of the public employer, but may be assigned to a position other than a safety-sensitive position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

(12) *DENIAL OF BENEFITS.*—An employer shall deny an employee medical or indemnity benefits under this chapter, pursuant to this section.

(13) ~~(b)~~ *COLLECTIVE BARGAINING RIGHTS.*—This section does ~~shall not be construed to~~ eliminate the bargainable rights as provided in the collective bargaining process if applicable.

Section 13. Section 440.103, Florida Statutes, is created to read:

440.103 Building permits.—Except as otherwise provided in this chapter, every employer shall, as a condition to receiving a building permit, show proof to the authority that is issuing the permit that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation shall be evidenced by a certificate issued by the insurer which certificate shall show, on its face, whether or not coverage is secured under the minimum premium provisions of the rules of the National Council on Compensation Insurance. The words “minimum premium policy” or similar language may be typed, printed, stamped, or be handwritten, if legible.

Section 14. Section 440.104, Florida Statutes, is created to read:

440.104 Competitive bidder; civil actions.—

(1) Any person engaged in the construction industry, as provided in s. 440.02(7), who loses a competitive bid for a contract may bring an action for damages against another person who is awarded the contract for which the bid was made, if the person making the losing bid establishes that the winning bidder knowingly violated the provisions of s. 440.10, s. 440.105, or s. 440.38 while performing the work under the contract.

(2) To recover in an action brought under this section, a party must establish a violation of s. 440.105 or s. 440.38 by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover as liquidated damages 10 percent of the total amount bid on the contract by the person bringing the action, or \$5,000, whichever is greater.

(4) In any action under this section, the prevailing party shall be entitled to an award of reasonable attorney fees.

(5) An action under this section shall be commenced within 2 years of the performance of activities involving any building, clearing, filling, or execution contract, or the substantial improvement in the size or use of any structure, or the appearance of any land.

(6) No person shall be allowed to recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of s. 440.10, s. 440.105, or s. 440.38 at the time of making the bid on the contract; or

(b) Was in violation of s. 440.10, s. 440.105, or s. 440.38 with respect to any contract performed by the plaintiff within 1 year prior to making the bid on the contract.

(7)(a) Any person who loses a competitive bid may petition the court to join in a suit brought under this section by another person against the winning bidder on the same contract and shall be joined in such suit. In the event that more than one person is joined against the winning bidder and such persons prevail in the suit, the court shall enter judgment dividing damages recoverable under this section between the parties equally.

(b) Any person who receives notice of a suit filed under this section and fails, within 20 days of receipt of such notice, to petition the court to join as a party to the suit shall be barred from bringing a cause of action under this section against the winning bidder on the contract at issue. For purposes of this subsection, publication in accordance with s. 49.10 shall constitute sufficient notice.

Section 15. Section 440.105, Florida Statutes, is created to read:

440.105 Prohibited activities; penalties.—

(1)(a) Any insurance carrier, any individual self-insured, any commercial or group self-insurance fund, any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the insurance code, or any employee thereof, having knowledge or who believes that a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this chapter is being or has been committed shall send to the Division of Insurance Fraud, Bureau of Workers' Compensation Fraud, a report or information pertinent to such knowledge or belief and such additional information relative thereto as the bureau may require. The bureau shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under this chapter is being committed. The bureau shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violations of this chapter. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the bureau's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the bureau of the reasons for the lack of prosecution.

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

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

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

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

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

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

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

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

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

4. Violate a stop-work order issued by the division pursuant to s. 440.107.

(b) It shall be unlawful for any insurance entity to revoke or cancel a workers' compensation insurance policy or membership because an

employer has returned an employee to work or hired an employee who has filed a workers' compensation claim.

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

(a) It shall be unlawful for any employer to knowingly fail to update applications for coverage as required by s. 440.381(1) and Department of Insurance rules, or to post notice of coverage pursuant to s. 440.40.

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

(4) Whoever violates any provision of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

(b) It shall be unlawful for any person:

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

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

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

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

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

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

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

(c) It shall be unlawful for any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, optometric physician licensed under chapter 463, or any other practitioner licensed under the laws of this state to knowingly and willfully

assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

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

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

(f) It shall be unlawful for any attorney or other person, in his individual capacity or in his capacity as a public or private employee or for any firm, corporation, partnership, or association, to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims.

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

(6) For the purpose of the section, the term "statement" includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury or expense.

(7) All claim forms as provided for in this chapter shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information is guilty of a felony of the third degree." Each claimant shall personally sign the claim form and attest that he has reviewed, understands, and acknowledges the foregoing notice.

Section 16. Section 440.1051, Florida Statutes, is created to read:

440.1051 Fraud reports; civil immunity; criminal penalties.—

(1) The Bureau of Workers' Compensation Insurance Fraud of the Division of Insurance Fraud of the Department of Insurance shall establish a toll-free telephone number to receive reports of workers' compensation fraud committed by an employee, employer, insurance provider, physician, attorney, or other person.

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

(3) A person who calls and, knowingly and falsely, reports workers' compensation fraud or who, in violation of subsection (2) retaliates against a person for making such report, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or both.

Section 17. Section 440.106, Florida Statutes, is created to read:

440.106 Civil remedies; administrative penalties.—

(1) Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court finds probable cause to believe that an attorney has violated s. 440.105, such committee may forward to the appropriate state attorney a copy of the findings of probable cause and a copy of the report being filed in the matter.

(2) Whenever a physician, osteopath, chiropractor, podiatrist, or other practitioner is determined to have violated s. 440.105, the Board of Medical Examiners as set forth in chapter 458, the Board of Osteopathic Medical Examiners as set forth in chapter 459, the Board of Chiropractic as set forth in chapter 460, the Board of Podiatric Medicine as set forth in chapter 461, or other appropriate licensing authority, shall hold an administrative hearing to consider the imposition of administrative sanc-

tions as provided by law against said physician, osteopath, chiropractor, or other practitioner.

(3) Whenever any group or individual self-insurer, carrier, rating bureau, or agent or other representative of any carrier or rating bureau is determined to have violated s. 440.105, the Department of Insurance may revoke or suspend the authority or certification of any group or individual self-insurer, carrier, agent, or broker.

(4) The division shall report any contractor determined in violation of requirements of this chapter to the appropriate state licensing board for disciplinary action.

(5) The terms "violation" or "violated" shall include having been found guilty of or having pleaded guilty or nolo contendere to a felony or misdemeanor under the law of the United States of America or any state thereof or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

Section 18. Section 440.107, Florida Statutes, is created to read:

440.107 Division powers to enforce employer compliance with coverage requirements.—

(1) Whenever the division determines that an employer who is required to secure the payment to his employees of the compensation provided for by this chapter has failed to do so, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the division of a stop-work order on the employer, requiring the cessation of all business operations at the place of employment or job site. The order shall take effect upon the date of service upon the employer, unless the employer provides evidence satisfactory to the division of having secured any necessary insurance or self-insurance and pays a civil penalty to the division, to be deposited by the division into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.

(2) The division may file a complaint in the circuit court in and for Leon County to enjoin any employer, who has failed to secure compensation as required by this chapter, from employing individuals and from conducting business until the employer presents evidence satisfactory to the division of having secured payment for compensation and pays a civil penalty to the division, to be deposited by the division into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.

(3) In addition to any penalty, stop-work order, or injunction, the division may assess against any employer, who has failed to secure the payment of compensation as required by this chapter, a penalty in the amount of:

(a) Twice the amount the employer would have paid during periods it illegally failed to secure payment of compensation in the preceding 3-year period based on the employer's payroll during the preceding 3-year period; or

(b) One thousand dollars, whichever is greater.

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

(4) The division may bring an action in circuit court to recover penalties assessed under this section, including any interest owed to the division pursuant to this section. In any action brought by the division pursuant to this section in which it prevails, the circuit court shall award costs, including the reasonable costs of investigation and a reasonable attorney's fee.

(5) Any judgment obtained by the division and any penalty due pursuant to the service of a stop-work order or otherwise due under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; however, such lien is subordinate to claims for unpaid wages and any prior recorded liens, and a lien created by this section is not valid

against any person who, subsequent to such lien and in good faith and for value, purchases real or personal property from such employer or becomes the mortgagee on real or personal property of such employer, or against a subsequent attaching creditor, unless, with respect to real estate of the employer, a notice of the lien is recorded in the public records of the county where the real estate is located, and with respect to personal property of the employer, the notice is recorded with the Secretary of State.

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

(7) Actions by the division under this section must be contested as provided in chapter 120. All civil penalties assessed by the division must be paid into the Workers' Compensation Administration Trust Fund. The division shall return any sums previously paid, upon conclusion of an action if the division fails to prevail and if so directed by an order of court or an administrative hearing officer. The requirements of this subsection may be met by posting a bond in an amount equal to twice the penalty and in a form approved by the division.

Section 19. Subsection (1) of section 440.11, Florida Statutes, is amended 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 ~~does not exceed~~ exceeds 60 days imprisonment as set forth in s. 775.082. *The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the Board of County Commissioners.*

Section 20. Section 440.13, Florida Statutes, as amended by chapter 92-33, Laws of Florida, is amended to read:

(Substantial rewording of section. See s. 440.13, F.S., for present text.)

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

(1) DEFINITIONS.—

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

(b) "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties. Family members

may provide nonprofessional attendant care, but shall not be compensated under this chapter for care that falls within the scope of household duties and other services normally and gratuitously provided by family members. "Family member" means a spouse, father, mother, brother, sister, child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

(c) "Carrier" means, for purposes of this section, insurance carrier, self-insurance fund or individually self-insured employer, or servicing agent.

(d) "Case management" means a collaborative process that promotes quality care and cost-effective outcomes which enhance the physical, psychosocial, and vocational health of individuals, and includes assessing, planning, implementing, coordinating, and evaluating health-related service options.

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

(f) "Complaint" means any dissatisfaction expressed by an injured worker concerning an insurer's workers' compensation managed care arrangement.

(g) "Emergency services and care" means services and care as defined in chapter 395.

(h) "Grievance" means dissatisfaction with the medical care provided by an insurer's workers' compensation managed care arrangement health care providers, expressed in writing by an injured worker.

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

(j) "Health care provider" means a physician or any recognized practitioner who provides skilled services pursuant to a prescription or under the supervision or direction of a physician, who has been certified by the Agency for Health Care Administration, and who renders medical care or services pursuant to this chapter.

(k) "Independent medical examination" means a medical evaluation by a physician, upon request of the employer or carrier, of the injured employee's medical condition, work status, or impairment rating.

(l) "Instances of overutilization" means a specific inappropriate service or level of service provided to an injured employee.

(m) "Medically necessary" means any service or supply used to identify or treat an illness or injury which is appropriate to the patient's diagnosis and status of recovery and is consistent with the location of service and with the level of care provided. The service should be widely accepted among practicing health care providers, based on scientific criteria, and determined to be reasonably safe. The service shall 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.

(n) "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, or is a drug appearing on the schedule of drugs created pursuant to s. 465.025(6).

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

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

(q) "Physician" means a medical doctor or doctor of osteopathy licensed under chapter 458, a physician licensed under chapter 458, an osteopath licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatrist licensed under chapter 461, an optome-

trist licensed under chapter 463, or a dentist licensed under chapter 466, all of whom must be certified by the agency as a health care provider.

(r) "Reimbursement disputes" means any disagreement between a health care provider or a health care facility and carrier concerning payment for medical treatment.

(s) "Service area" means the agency-approved geographic area within which an insurer is authorized to offer a workers' compensation managed care arrangement.

(t) "Utilization control" means a systematic process of implementing measures which assure overall management and cost containment of services delivered.

(u) "Utilization review" means the evaluation of appropriateness in terms of both the level and the quality of health care and health services provided to a patient, including, but not limited to, evaluation of the appropriateness of treatment, hospitalization, or office visits, 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 as established by medical consultants with the same medical specialty or subspecialty as those providing the care under review, and which refers patterns and practices of overutilization to the division.

(v) "Workers' compensation managed care arrangement" means an arrangement under which a provider of health care, a health care facility, a group of providers of health care, a group of providers of health care and health care facilities, or a health maintenance organization licensed under part I of chapter 641 has entered into a written agreement, directly or indirectly with an insurer, through a community health purchasing alliance established pursuant to chapter 408 or through a workers' compensation community health purchasing alliance pursuant to this section, to provide and to manage appropriate remedial treatment, care, and attendance to injured workers in accordance with this chapter.

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

(a) Subject to the limitations specified elsewhere in this chapter, the employer shall furnish to the employee, solely through managed care arrangements, such medically necessary remedial treatment, and care and attendance for such period as the nature of the injury or process of recovery may require, including medicines, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus. Remedial treatment, care, and attendance, including work-hardening programs accredited by the Commission on Accreditation of Rehabilitation Facilities or pain management clinics, shall be considered as covered treatment only when such care is given based on a referral by a physician as defined in this chapter. Each facility shall maintain outcome data, including work status at discharges, total program charges, total number of visits, and length of stay. The department shall utilize such data and report to the President of the Senate and the Speaker of the House of Representatives regarding the efficacy and cost effectiveness of such programs, no later than October 1, 1994.

(b) The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The value of nonprofessional attendant 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.

(c) If the employer fails within a reasonable time to provide treatment or care required by this section after a specific request by the injured employee, the employee may obtain such treatment at the expense of the employer, provided that the treatment is compensable and medically necessary. However, the employee shall not be entitled to recover any amount personally expended for such treatment or service

unless, prior to obtaining such treatment, he has specifically requested the employer to furnish the same pursuant to ss. 440.185 and 440.19.

(d) Notwithstanding any provision of the Florida Workers' Compensation Reimbursement Manual, health care providers prescribing medicines as defined in this section may be identified by reference to an identification number issued by the Drug Enforcement Administration.

(e) If after initial examination and diagnosis, the physician determines that the employee will require treatment for the injury or condition beyond 30 days after the initial examination, the physician shall, within 14 days after the initial examination, submit to the carrier, in writing, a proposed treatment plan. Such plan shall apply to all treatments commencing more than 30 days after the initial examination. The physician shall not treat the employee beyond 30 days after the initial examination unless the carrier has approved the treatment plan or the carrier has failed to respond to the proposed plan within 14 days after receiving the proposed plan. The insurer shall review the course of treatment proposed by the physician to determine whether such treatment would be recognized by a reasonably prudent physician of the same training and licensure as being acceptable under similar conditions and circumstances. Such review must be in accordance with all applicable workers' compensation practice parameters and shall be performed by physicians with the same medical specialty or subspecialty as the physician whose case is being reviewed and who is employed by or under contract with the insurer who have taken a minimum 10-hour course provided by the insurer, which covers the subject areas of workers' compensation practice parameters, utilization review, and any other subject area pertinent to the analysis of the care and treatment rendered to the injured worker.

This subsection is designed only to assist the carrier and provider in agreeing upon an appropriate course of treatment and shall not be construed as a bar, waiver, or limitation of any kind upon the rights, duties, and obligations set forth in the sections of this chapter addressing compensability and utilization review. This subsection shall not apply to an emergency medical condition, as defined in chapter 395 or to emergency services and care as defined in chapter 395.

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(a) As a condition to eligibility for payment under this chapter, a health care provider who renders services through a managed care arrangement must be a certified health care provider and must receive authorization from the insurer prior to providing treatment. The foregoing shall not apply to emergency care and services. As a one-time prerequisite to obtaining certification, the agency shall require each physician to demonstrate proof of completion of a minimum 5-hour course, which may be by correspondence, which covers the subject areas of cost containment, utilization control, ergonomics, and the practice parameters adopted by the agency governing the physician's field of practice. The agency shall coordinate with the division, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Chiropractic Association, the Florida Podiatric Medical Association, the Florida Optometric Association, and the Florida Dental Association, to accomplish the provisions of this subsection. By no later than January 1, 1994, the agency shall adopt rules regarding the criteria and procedures for approval of courses and the filing of proof of completion by the physicians.

(b) A health care provider who renders emergency care and services must notify the insurer by the close of the third business day after it rendered such care. If the emergency care results in admission of the employee to a health care facility, the health care provider must notify the insurer by telephone within 24 hours of initial treatment. Emergency care and services shall not be compensable under this chapter unless the injury requiring emergency care arose as a result of an industrial accident. Pursuant to chapter 395, all licensed physicians and health care providers in this state shall be required to make their services available for emergency treatment of any employee eligible for workers' compensation benefits. To refuse to make such treatment available is cause for revocation of a license.

(c) No health care provider may refer the employee to another health care provider, diagnostic facility, therapy center, or other facility without the prior authorization from the insurer or the employer, if individually self-insured, except in cases where emergency care is rendered. Any referral must be to a health care provider who has been certified by the Agency for Health Care Administration unless such referral is for emergency treatment.

(d) Insurers shall respond, by telephone or in writing, to a request for authorization by the close of the third business day after receipt of the request. An insurer who fails to respond to a written request for authorization for referral for medical treatment by the close of the third business day after receipt of the request shall be deemed to consent to the medical necessity for such treatment. All such requests shall be made to the insurer. Notice to the insurer does not include notice to the employer.

(e) Insurers shall adopt procedures for receiving, reviewing, documenting, and responding to requests for authorization. Such procedures shall be for a health care provider certified pursuant to the requirements of this section.

(f) By accepting payment pursuant to this chapter for treatment rendered to an injured employee, a health care provider or facility shall be deemed to consent to the jurisdiction of the division as set forth in subsection (11) and to the submission of all records and other information concerning such treatment to the division in connection with a reimbursement dispute, audit, or review as provided by this section. Such health care provider or facility shall further agree to comply with any decision of the division rendered pursuant to this section.

(g) No claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, X-ray examinations or special diagnostic laboratory tests costing more than \$1,000 shall be valid and reimbursable unless such services shall have been expressly authorized by the insurer, or unless the insurer has failed to respond within 10 days to a request for authorization, or unless such services are required in an emergency. The insurer shall not refuse to authorize such consultation or procedure unless the health care provider or facility is not authorized or certified or unless an expert medical advisor has determined that the consultation or procedure is not medically necessary or otherwise compensable under this chapter.

(h) Notwithstanding anything in this chapter to the contrary, a sick or injured employee shall be entitled, at all times, to free, full, and absolute choice in the selection of the pharmacy or pharmacist dispensing and filling prescriptions for medicines required under this chapter. It is expressly forbidden for the department, an employer, or a carrier, or any agent or representative of the department, an employer, or a carrier to select the pharmacy or pharmacist which the sick or injured employee must use; condition coverage or payment on the basis of the pharmacy or pharmacist utilized; or to otherwise interfere in the selection by the sick or injured employee of a pharmacy or pharmacist.

(i) The provisions of s. 455.236 apply to referrals among health care providers treating injured workers.

(4) NOTICE OF TREATMENT TO CARRIER; FILING WITH DIVISION.—

(a) Any health care provider or facility providing necessary remedial treatment, care, or attendance to any injured worker shall submit treatment reports to the carrier in a format prescribed by the division. No claim for medical or surgical treatment shall be valid and enforceable, as against such employer or employee, unless, within 3 business days following the first treatment, the physician giving such treatment furnishes to the employer or carrier a preliminary notice of such injury and treatment and within 15 days thereafter furnishes to the employer or carrier a complete report, and subsequent thereto, furnishes progress reports, if requested by the employer or insurance carrier, at intervals of not less than 3 weeks apart or at less frequent intervals if requested on forms prescribed by the division.

(b) Each medical report or bill obtained or received by the employer, the carrier, or the injured employee, or the attorney for the employer, carrier, or injured employee, with respect to the remedial treatment or care of the injured employee, including any report of an examination, diagnosis, or disability evaluation, shall be filed with the Division of Workers' Compensation pursuant to rules adopted by the division. The health care provider or 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 facility shall provide to the division such additional information with respect to the remedial treatment, care, and attendance that the division may reasonably request.

(c) It is the policy for the administration of the workers' compensation system that there be reasonable access to medical information relat-

ing to the workplace injury by all parties to facilitate the self-executing features of the law. Notwithstanding the limitations in s. 455.241 and subject to the limitations in s. 381.004, 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 and the injured employee or his legal representative is given reasonable advance notice of the time and nature of the discussions. Any such discussions may be held without the consent or presence of any other party or his agent or representative. A health care provider or facility who willfully refuses to provide medical records or to discuss the medical condition of the injured employee, after a reasonable request is made for such information pursuant to this subsection, shall be subject by the division to one or more of the penalties set forth in paragraph (8)(b).

(5) INDEPENDENT MEDICAL EXAMINATIONS.—

(a) The right to conduct an independent medical examination includes, but is not limited to, instances in which the authorized treating physician has not provided current medical reports, instances in which overutilization by a health care provider or facility may have occurred, and instances in which the employee appears not to be making appropriate progress in recuperation.

(b) The employer or insurer has the right to schedule independent medical examinations with a health care provider of its choice. However, 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 insurer or employer and the employee so agree or unless an emergency exists. The employer or insurer shall be limited to one independent medical examination per year unless otherwise agreed to by the parties or ordered by the judge of compensation claims upon demonstration of good cause justifying an additional examination or instances of possible provider overutilization as deemed necessary.

(c) The insurer may, at its election, contact the claimant directly in writing to schedule a reasonable time for an independent medical examination. The insurer shall confirm within 5 days, the scheduling agreement in writing and notify claimant's counsel, if any, at least 7 days prior to the date upon which the independent medical examination is scheduled to occur. Attorneys representing claimants shall not be authorized to schedule independent medical evaluations under this subsection.

(d) If the employee fails to appear for the independent medical examination without good cause and fails to advise the physician at least 24 hours prior to the scheduled date for the examination that he cannot appear, the employee shall be barred from recovering compensation for any period during which he has refused to submit to such examination. The employee may appeal to a judge of compensation claims for reimbursement when the insurer withholds payment in excess of the authority granted by this section.

(6) UTILIZATION REVIEW.—Insurers shall review all bills, invoices, and other claims for payment submitted by health care providers or facilities in order to identify overutilization and billing errors, and may hire peer review consultants and, if needed, conduct independent medical evaluations to determine whether appropriate care was provided. Such consultants, including peer review organizations, shall be immune from liability in the execution of their functions under this subsection to the extent provided in s. 766.101. If an insurer finds that overutilization of medical services or a billing error has occurred, it shall disallow or adjust payment for such services or error without order of a judge of compensation claims or the division, provided that the insurer, in making its determination, has complied with this section and rules adopted by the division.

(7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

(a) Any health care provider, facility, insurer, or employer who elects to contest the disallowance or adjustment of payment by an insurer pursuant to subsection (6) shall petition the division to resolve same within 30 days of receipt of notice of disallowance or adjustment of payment. The petitioner must serve a copy of the petition on the insurer and on all affected parties by certified mail. The petition shall be accompanied by all documents and records which support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the divi-

sion within 10 days of the date of filing its petition shall constitute waiver of all objections set forth in the petition.

(b) The insurer shall submit to the division within 10 days of receipt of the petition all documentation substantiating the insurer's disallowance or adjustment. Failure of the insurer to submit the requested documentation to the division within 10 days shall constitute waiver of all objections to the petition.

(c) The division shall provide to the petitioner, the insurer, and the affected parties, a written determination of whether the insurer properly adjusted or disallowed payment within 60 days of receipt of all documentation. The division shall be guided by standards and policies set forth in this chapter, including all applicable reimbursement schedules, in rendering its determination.

(d) In the event that the division finds an improper disallowance or improper adjustment of payment by an insurer, the insurer shall reimburse the health care provider, facility, insurer, or employer within 30 days, subject to the penalties provided in this subsection.

(e) The division shall adopt rules to effect this subsection which may provide for consolidation of petitions filed by a petitioner and expansion of the timetable for rendering a determination upon a consolidated petition.

(f) An insurer that engages in a pattern or practice of arbitrarily or unreasonably disallowing or reducing payments to health care providers or facilities may be subject to one or more of the following penalties imposed by the division:

1. An administrative fine assessed by the division in an amount not to exceed \$5,000 per instance of improperly disallowing or reducing payments.
2. Award of the health care provider's or facility's costs, including a reasonable attorney's fee, for prosecuting the petition.

(8) PATTERN OR PRACTICE OF OVERUTILIZATION.—

(a) Insurers shall report to the division all instances of overutilization. The division shall determine whether a pattern or practice of overutilization exists.

(b) If the division determines that a health care provider or facility has engaged in a pattern or practice of overutilization or a violation of this chapter or rules adopted by the division, it may impose one or more of the following penalties:

1. An order of the division barring the provider or facility from payment under this chapter;
2. Deauthorization of care under review;
3. Denial of payment for care rendered in the future;
4. Decertification of a health care provider certified as an expert medical advisor pursuant to subsection (9) or of a rehabilitation provider certified pursuant to s. 440.49;
5. An administrative fine assessed by the division in an amount not to exceed \$5,000 per instance of overutilization or violation; or
6. Notification of and review by the appropriate licensing authority pursuant to s. 440.106(2).

(9) EXPERT MEDICAL ADVISORS.—

(a) The division shall certify expert medical advisors in each specialty to assist the division and the judges of compensation claims within the advisor's area of expertise as provided in this section. The division shall, in certifying, recertifying, or decertifying an expert medical advisor, consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost. The division shall require, at a minimum, specialized workers' compensation training or experience under the Florida workers' compensation system and board certification as a condition to certification or recertification.

(b) The division shall contract with expert medical advisors to provide peer review or medical consultation to the division or to a judge of compensation claims in connection with resolution of reimbursement disputes and evaluation of all health care and physician services rendered

pursuant to this chapter. Expert medical advisors contracting with the division shall, as a term of such contract, agree to provide consultation or services in accordance with the timetables set forth in this chapter and to abide by rules promulgated by the division, including, but not limited to, rules pertaining to procedures for review of the services rendered by health care providers and preparation of reports and recommendations for submission to the division.

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the judge of compensation claims upon its own motion, upon request of the division, or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier shall order the injured employee to be evaluated by an expert medical advisor. The opinion of the expert medical advisor shall be presumed correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

(d) The expert medical advisor shall complete its evaluation and issue its report to the division or to the judge of compensation claims within 45 days after receipt of all medical records. The expert medical advisor shall furnish a copy of the report to the carrier and to the employee.

(e) An expert medical advisor shall not be liable under any theory of recovery for evaluations performed under this section without a showing of fraud or malice. The protections of s. 766.101 shall 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 subsection.

(f) If the division or a judge of compensation claims determines that the services of a certified expert medical advisor are required to resolve a dispute under this section, the carrier shall compensate the advisor for its time in accordance with a schedule promulgated by the division. The division may assess a penalty not to exceed \$500 against any carrier that fails to timely compensate an advisor in accordance with this section.

(10) WITNESS FEES.—Any health care provider who gives a deposition shall be allowed a witness fee. The amount charged by such witness may not exceed \$200 per hour. This limitation does not apply to an expert witness who has never provided direct professional services to a party but has merely reviewed medical records and provided an expert opinion or has provided only direct professional services which were unrelated to the workers' compensation case.

(11) AUDITS BY DIVISION; JURISDICTION.—

(a) The Division of Workers' Compensation of the Department of Labor and Employment Security is authorized to investigate health care providers or facilities to determine whether providers or facilities are complying with this chapter and rules adopted by the division, whether the providers or facilities are engaging in overutilization, and whether providers or facilities are engaging in improper billing practices. If the division finds that a health care provider or facility has improperly billed, overutilized, or failed to comply with division rules, or the requirements of this chapter, it shall notify the provider or facility of same and may determine that the health care provider or facility shall not receive payment from the insurer or impose penalties as set forth in subsection (8) or other sections of this chapter. If the health care provider or facility has received payment from an insurer for services which were improperly billed or for overutilization, it shall return such payments to the insurer. The division may assess a penalty not to exceed \$500 for each overpayment that is not refunded within 30 days of notification of overpayment by the division or insurer.

(b) The division shall monitor and audit insurers to determine if medical bills are paid in accordance with this section and division rules. Any employer, if self-insured, or insurer found by the division not to be within 90 percent compliance as to the payment of medical bills after January 1, 1994, shall be assessed a fine not to exceed 1 percent of the prior year assessment levied against such entity pursuant to s. 440.51 for every quarter in which the entity fails to attain 90 percent compliance. Any insurer found not in compliance in subsequent consecutive quarters 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.

(c) The division shall have exclusive jurisdiction to render determinations involving reimbursement, and overutilization disputes subject to subsection (7) and overutilization determinations pursuant to subsection (8) arising subsequent to the effective date of this act.

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

(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 annually on a state-wide basis determine schedules of maximum reimbursement allowances for such medically necessary remedial treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, and durable medical equipment. Schedules for health care services shall differentiate as to allowances which are reasonable for discrete groupings at hospitals and which recognize differences in the cost of trauma care and emergency services and care. The maximum reimbursement allowances for in-patient hospital care may be based on a schedule of per diem rates or a schedule of reimbursements based on diagnostic related groups. By September 1 of each year, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospitals, ambulatory surgical centers, work-hardening programs, and pain programs effective January 1 of the next year. However, no individual maximum reimbursement allowance increase shall exceed the increase in the Consumer Price Index for the preceding 12 months. The decisions of the three-member panel are subject to review pursuant to chapter 120. Any health care provider or facility shall have standing to review any maximum reimbursement allowance that is applicable to such provider or facility. An individual physician, hospital, or ambulatory surgical center shall be reimbursed either the usual and customary charge for treatment, care, and attendance, the agreed-upon contract price, the amount negotiated through the managed care arrangement, or the maximum reimbursement allowance in the appropriate schedule, whichever is less.

(b) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price times 1.2 plus \$4.18 for the dispensing fee, except where the carrier has contracted for a lower amount.

(c) 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, ambulatory surgical center, work-hardening program, or pain program, shall not exceed the amounts provided by the schedules of maximum reimbursement allowances as determined by the panel; or amounts negotiated through the managed care arrangement, insurer, or employer; or as otherwise provided in this section. Until the three-member panel approves a schedule of maximum reimbursement allowances and it becomes effective, all compensable charges for treatment and care provided by hospitals licensed under chapter 395 shall be reimbursed at 75 percent of their usual and customary charges. In determining the schedules, the panel shall first approve the 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. 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. 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.

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.401, 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 effi-

ciency 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.

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

(d) The division shall conduct a study of all phases of the health care delivery system by using hospital patient data of workers whose date of accident was between January 1, 1992, and December 31, 1992. The data shall be collected using a common patient identifier. It shall be aggregated and analyzed to determine:

1. The types of cases presented in hospitals coded by a diagnostic related group using the existing Medicare grouper.
2. The average hospital charges per case, the average physician charges per case, the average charges for other types of facilities and providers per case.
3. The average number of visits per provider by case.

(13) **MANAGED CARE.**—The Agency for Health Care Administration shall adopt rules pertaining to certification, application, approval of application, utilization review, and any other subject or procedure necessary to effectuate the provisions of this subsection by January 1, 1994.

(a) The agency shall authorize an insurer to offer or utilize a workers' compensation managed care arrangement after the insurer files a completed application along with the payment of a \$1,000 application fee, and upon the agency's being satisfied that the applicant has the ability to provide quality of care consistent with the prevailing professional standards of care and the insurer and its workers' compensation managed care arrangement otherwise meets the requirements of this section. The authorization, unless sooner suspended or revoked, shall automatically expire 2 years after the date of issuance unless renewed by the insurer. The authorization shall be renewed upon application for renewal and payment of a renewal fee of \$1,000, provided that the insurer is in compliance with the requirements of this section and any rules adopted hereunder. An application for renewal of the authorization shall be made 90 days prior to expiration of the authorization, on forms provided by the agency. The renewal application shall not require the resubmission of any documents previously filed with the agency if such documents have remained valid and unchanged since their original filing.

(b) An insurer may not offer or utilize a workers' compensation managed care arrangement in this state until its managed care plan of operation has been approved by the agency and the insurer is authorized by the agency to offer or utilize a workers' compensation managed care arrangement.

(c) An insurer must file a proposed managed care plan of operation with the agency in a format prescribed by the agency. The plan of operation must contain evidence that all covered services are available and accessible, including a demonstration that:

1. Such services can be provided with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care must reflect usual practice in the local area. Geographic availability must reflect the usual travel times within the community.
2. The number of providers in the workers' compensation managed care arrangement service area are sufficient, with respect to current and expected workers to be served by the arrangement, either:
 - a. By delivery of all required medical services; or
 - b. Through the ability to make appropriate referrals.
3. There are written agreements with providers describing specific responsibilities.
4. Emergency care is available 24 hours a day and 7 days a week.
5. In the case of covered services, there are written agreements with providers prohibiting such providers from billing or otherwise seeking reimbursement from or recourse against any injured worker.

(d) The proposed managed care plan of operation must include:

1. A statement or map providing a clear description of the service area.
2. A description of the grievance procedure to be used.
3. A description of the quality assurance program which assures that the health care services provided to workers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the medical community. The program shall include, but not be limited to:
 - a. A written statement of goals and objectives that stresses health and return-to-work outcomes as the principal criteria for the evaluation of the quality of care rendered to injured workers.
 - b. A written statement describing how methodology has been incorporated into an ongoing system for monitoring of care that is individual case oriented and, when implemented, can provide interpretation and analysis of patterns of care rendered to individual patients by individual providers.
 - c. Written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services that should have been furnished have not been provided.
 - d. A written plan, which includes ongoing review, for providing review of physicians and other licensed medical providers.
 - e. Appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service.
 - f. Adequate methods of peer review and utilization review.
 - g. Provision for notice and a hearing for reimbursement and utilization review.
 - (I) A health care provider who is subject to a reimbursement review or utilization review must be given a notice that states:
 - (A) A reimbursement review or utilization review has been proposed against the health care provider.
 - (B) The reasons for the proposed review.
 - (C) The health care provider's right to request a hearing on the proposed review.
 - (D) A summary of the rights of the health care provider in the hearing.
 - (II) If the health care provider requests a hearing, the health care provider must be given a notice that states:
 - (A) The place, time, and date of the hearing, which may not be less than 30 days after the date of the notice.
 - (B) The names of the witnesses, if any, expected to testify at the hearing on behalf of the managed care arrangement.
 - (III) A hearing must be held before an arbitrator mutually acceptable to the health care provider and the managed care arrangement or before a hearing officer who is appointed by the managed care arrangement which is not in direct economic competition with the health care provider. The right to the hearing is forfeited if the health care provider fails, without good cause, to appear.
 - (IV) In the hearing, the health care provider may:
 - (A) Be represented by experts on reimbursement and utilization review of the health care provider's choice.
 - (B) Have a record made of the proceedings, with copies available upon payment of reasonable charges associated with the preparation thereof.
 - (C) Call, examine, and cross-examine witnesses, regardless of the admissibility of the testimony in a court of law.
 - (D) Submit a written statement at the close of the hearing.
 - (V) Upon completion of the hearing, the arbitrator or hearing officer shall issue a written recommendation, including a statement of the basis for the recommendation. The managed care arrangement shall issue a decision, including a statement of the basis for its decision.

(VI) If the health care provider disputes the decision, the provider may appeal to the Division of Workers' Compensation pursuant to the division's procedures for utilization and reimbursement dispute resolution.

(VII) If the managed care arrangement fails to provide for a hearing as required in this sub-subparagraph, the managed care arrangement may not use any related adverse determination in a reimbursement review or utilization review.

h. Availability of a process for aggressive medical care coordination, as well as a program involving cooperative efforts by the workers, the employer, and the workers' compensation managed care arrangement to promote early return to work for injured workers.

4. The written information proposed to be used by the insurer to comply with paragraph (g).

5. Written procedures to provide the insurer with timely medical records and information including, but not limited to, work status, work restrictions, date of maximum medical improvement, permanent impairment ratings, and other information as required.

6. Evidence that appropriate health care providers and administrative staff of the insurer's workers' compensation managed care arrangement have received training and education on the provisions of chapter 440 and the administrative rules that govern the provision of remedial treatment, care, and attendance of injured workers.

7. Written procedures and methods to prevent inappropriate or excessive treatment.

(e) An insurer must file any proposed changes to the plan of operation, except for changes to the list of providers, with the agency prior to implementing the changes. The changes are considered approved by the agency after 30 days unless specifically disapproved.

(f) An updated list of providers must be filed with the agency at least semiannually.

(g) An insurer must make full and fair disclosure in writing of the provisions, restrictions, and limitations of the workers' compensation managed care arrangement to affected workers, including at least:

1. A description, including address and phone number, of the providers, including primary care physicians, specialty physicians, hospitals, and other providers.

2. A description of coverage for emergency and urgently needed care provided within and outside the service area.

3. A description of limitations on referrals.

4. A description of the grievance procedure.

(h)1. A workers' compensation managed care arrangement must have and use procedures for hearing complaints and resolving written grievances from injured workers and health care providers. The procedures must be aimed at mutual agreement for settlement and may include arbitration procedures. Procedures provided herein are in addition to other procedures contained in chapter 440.

2. The grievance procedure must be described in writing and provided to the affected workers and health care providers.

3. At the time the workers' compensation managed care arrangement is implemented, the insurer must provide detailed information to workers and health care providers describing how a grievance may be registered with the insurer.

4. Grievances must be considered in a timely manner and must be transmitted to appropriate decisionmakers who have the authority to fully investigate the issue and take corrective action.

5. If a grievance is found to be valid, corrective action must be taken promptly.

6. All concerned parties must be notified of the results of a grievance.

7. The insurer must report annually, no later than March 31, to the agency regarding its grievance procedure activities for the prior calendar year. The report must be in a format prescribed by the agency and must

contain the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

(i) The agency may suspend the authority of an insurer to offer a workers' compensation managed care arrangement or order compliance within 60 days, if it finds that:

1. The insurer is in substantial violation of its contracts;

2. The insurer is unable to fulfill its obligations under outstanding contracts entered into with its employers;

3. The insurer knowingly utilizes a provider who is furnishing or has furnished health care services and who does not have an existing license or other authority to practice or furnish health care services in this state;

4. The insurer no longer meets the requirements for the authorization as originally issued; or

5. The insurer has violated any lawful rule or order of the agency or any provision of this section.

(j) Revocation of an insurer's authorization shall be for a period of 2 years. After 2 years, the insurer may apply for a new authorization by compliance with all application requirements applicable to first-time applicants.

(k) Suspension of an insurer's authority to offer a workers' compensation managed care arrangement shall be for such period, not to exceed 1 year, as is fixed by the agency. The agency shall, in its order suspending the authority of an insurer to offer workers' compensation managed care, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the insurer prior to reinstatement of its authority. The order of suspension is subject to rescission or modification by further order of the agency prior to the expiration of the suspension period. Reinstatement shall not be made unless requested by the insurer; however, the agency shall not grant reinstatement if it finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(l) Upon expiration of the suspension period, the insurer's authorization shall automatically be reinstated unless the agency finds that the causes of the suspension have not been rectified or that the insurer is otherwise not in compliance with the requirements of this part. If not so automatically reinstated, the authorization shall be deemed to have expired as of the end of the suspension period.

(m) If the agency finds that one or more grounds exist for the revocation or suspension of an authorization issued under this section, the agency may, in lieu of such revocation or suspension, impose a fine upon the insurer. With respect to any nonwillful violation, such fine shall not exceed \$2,500 per violation. In no event shall such fine exceed an aggregate amount of \$10,000 for all nonwillful violations arising out of the same action. With respect to any knowing and willful violation of a lawful order or rule of the agency or a provision of this section, the agency may impose a fine upon the insurer in an amount not to exceed \$20,000 for each such violation. In no event shall such fine exceed an aggregate amount of \$100,000 for all knowing and willful violations arising out of the same action.

(n) The agency shall immediately notify the Department of Insurance and the Department of Labor and Employment Security whenever it issues an administrative complaint or an order or otherwise initiates legal proceedings resulting in, or which may result in, suspension or revocation of an insurer's authorization.

(o) Nothing in this part shall be deemed to authorize any entity to transact any insurance business, assume risk, or otherwise engage in any other type of insurance unless it is authorized as an insurer or a health maintenance organization under a certificate of authority issued by the Department of Insurance under the provisions of the Florida Insurance Code.

(p) Annually, by January 1, the Agency for Health Care Administration shall prepare a report which compares costs of treatment and services provided by workers' compensation managed care arrangements and comparable treatment and services provided by other health care providers or facilities. The agency is authorized to require the reporting of any data necessary to accomplish the report. The report shall identify each workers' compensation managed care arrangement and clearly indicate whether it has provided medical services at reduced cost. The agency

may use relevant data from the pilot programs authorized pursuant to s. 440.135 in the preparation of its reports from the insurer or managed care arrangements.

(14) **WORKERS' COMPENSATION COMMUNITY HEALTH PURCHASING ALLIANCES.**—In order to assist in alleviating the rising costs of health care, the Agency for Health Care Administration is authorized to create a Workers' Compensation Community Health Purchasing Alliance, pursuant to the requirements of s. 408.700. The alliance is created to assist in the development of managed competition within workers' compensation, by acting as a broker between the insurer and the employer through managed care arrangements which specialize in the medical care of injured workers. The alliance may merge into any single alliance in any of the health planning districts, upon approval of the agency, based upon a showing by the alliance board members that the needs of the members of the workers' compensation community health purchasing alliance would be better served. In the event of such merger, at least 2 board members from the workers' compensation alliance shall serve on the board of the combined alliance. The provisions of this section shall become effective by January 1, 1994.

(15) **REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED TO RENDER MEDICAL CARE.**—Physicians or facilities authorized to provide remedial treatment, care, and attendance under this chapter shall be deauthorized from providing such remedial treatment, care, and attendance if the physician or facility is found, after reasonable investigation, to have:

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

(b) Exceeded the limits of his professional competence in rendering medical care under this chapter, or has made materially false statements regarding his qualifications in his application;

(c) Failed to transmit copies of medical reports to the employer or insurer; or has failed to submit full and truthful medical reports of all his findings to the employer or insurer as required under this chapter;

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

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

(f) Self-referred in violation of this chapter and the laws of this state.

(16) **PAYMENT OF MEDICAL FEES.**—

(a) Fees for medical services shall be payable only to a health care provider or facility authorized to render remedial treatment, care, or attendance under this chapter. Except as provided herein, no health care provider or facility shall collect or receive a fee from an injured employee within this state except as otherwise provided by this chapter. Such providers or facilities shall have recourse against the employer or insurer for payment of services rendered in accordance with the provisions of this chapter.

(b) Fees charged for remedial treatment, care, and attendance shall not exceed the applicable fee schedules promulgated under this chapter or the schedule amounts negotiated through managed care arrangements.

(c) Fees for pharmaceutical and pharmaceutical service shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower.

(17) **EMPLOYEE COPAYMENT.**—

(a) Notwithstanding any other provisions of this chapter, the employee shall be required to pay a copayment not to exceed \$20 for medical services received outside of the applicable practice parameter developed pursuant to this chapter. Where a practice parameter has not been developed or is not applicable, the agency shall develop a unique parameter for the injury sustained by the employee. In either event, the copayment shall not apply to an emergency medical condition, as defined in chapter 395, or emergency services and care, as defined in chapter 395,

provided to the employee. The employee may petition the chief judge of compensation claims to waive the requirements of this subsection if it can be demonstrated that the treatment is necessary and the copayment would cause significant financial hardship.

(b) Notwithstanding any other provision of this chapter, the employee shall be required to pay a copayment of \$20 for medical services received after determination of maximum medical improvement. The copayment shall not apply to emergency care provided to the employee.

(18) **PRACTICE PARAMETERS.**—

(a) By June 1, 1994, the agency, after consulting with the division, the Florida Medical Association, the Florida Chiropractic Association, the Florida Osteopathic Association, the Florida Podiatric Association, the Florida Optometric Association, and other health professional organizations and their respective boards, shall develop and implement state practice parameters for services applicable to workers' compensation claimants. These practice parameters shall be based on data collected from outpatient and inpatient facilities and other relevant sources.

(b) The Legislature finds and declares that an immediate danger to the public health, safety, or welfare exists if practice parameters are not established by June 1, 1994. These findings include, but are not limited to, the health of injured employees and the costs of the medical component of the workers' compensation system. Therefore, the agency is directed to initially adopt practice parameters by June 1, 1994, pursuant to s. 120.54(9). Notwithstanding the limitation in s. 120.54(9)(c), the practice parameters shall remain in effect until rules regarding such practice parameters are adopted by the agency.

(19) **HEALTH MAINTENANCE ORGANIZATION ARRANGEMENT WITH INSURERS.**—A health maintenance organization which has received certification pursuant to chapter 641 is entitled to enter into an arrangement with an insurance carrier, a self-insurance fund, or an individually self-funded employer to provide medical services.

Section 21. Subsection (1) of section 440.135, Florida Statutes, is amended 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. *Further, it is the intent of the Legislature to determine whether the total cost to an employer which provides a policy or plan of health insurance and a separate policy or plan of workers' compensation and employer's liability insurance for its employees can be reduced by combining both coverages under a policy or plan which provides 24-hour health insurance coverage as set forth herein.* 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 *evaluate the feasibility of implementing* ~~imple-~~ment 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.~~

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

~~(b)(e)~~ 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).

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

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

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

(f)(g) Initiating one or more pilot programs under which participating employers would provide a 24-hour health insurance policy to their employees under a single insurance policy or self-insured plan. The policy or plan shall provide a level of health insurance benefits which meets criteria established by the Department of Insurance but which provides medical benefits for at least occupational injuries and illnesses comparable to those required by this chapter and which may utilize deductibles and coinsurance provisions that require the employee to pay a portion of the actual medical care received by the employee, notwithstanding any other provisions of this chapter. The policy or plan may also provide indemnity benefits as provided for in this chapter. The premium for the 24-hour health insurance policy or self-insured plan shall be paid entirely by the employer, except as that portion of the premium which relates to dependent coverage.

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

Section 22. Subsections (1), (2), (3), (4), (5), (10), and (12) of section 440.15, Florida Statutes, are amended, and subsection (13) is added to said section, 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, 66²/₃ percent of the average weekly wages shall be paid to the employee during the continuance of such total disability.

(b) A catastrophic injury, as defined in this chapter, ~~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. ~~Only claimants with catastrophic injuries are eligible for permanent total benefits. In no other case may permanent total disability be awarded. 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. The employer or insurer's right to conduct vocational evaluations or testing pursuant to s. 440.49 shall continue even after the employee has been accepted or adjudicated as entitled to compensation under this section. This right includes, but is not limited to, instances where such evaluations or testing is recommended by a treating physician, instances warranted by a change in the employee's medical condition, or instances where the employee appears to be making appropriate progress in recuperation. This right shall not be exercised more than once every calendar year.

2. The insurer shall confirm the scheduling of the vocational evaluation or testing in writing, and notify employee's counsel, if any, at least 7 days prior to the date upon which vocational evaluation or testing is scheduled to occur.

3. The employer or insurer shall be authorized to withhold payment of benefits for permanent total disability or supplements for any period

during which the employee willfully fails or refuses to appear without good cause for the scheduled vocational evaluation or testing.

(f) If an employee is physically capable of performing sheltered employment, no finding of permanent total disability may be made for so long as such sheltered employment is made available to the employee.

(g)(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 insurer 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 or if any employee who is receiving permanent total disability benefits refuses to apply for or cooperate with the employer or insurer in applying for social security benefits.

~~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.~~

(h) If a claimant with a catastrophic injury has an impairment rating of 25 percent or less, the claimant shall have the burden of proving by clear and convincing evidence that he or she is permanently and totally disabled. No soft tissue impairment rating shall apply toward a permanent impairment rating.

(2) TEMPORARY TOTAL DISABILITY.—

(a) In case of disability total in character but temporary in quality, 66²/₃ percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 ~~260~~ weeks as provided in this subsection and s. 440.14(3), except as provided in s. 440.12(1). Once the employee reaches the maximum number of weeks, temporary disability benefits shall cease and the injured employee's permanent impairment shall be determined. Temporary total disability payments shall cease at retirement. However, at the expiration of 104 weeks, if the employee has not reached maximum medical improvement and is still undergoing a course of treatment being provided pursuant to an approved treatment plan, upon mutual agreement of the parties, with the concurrence of the medical care coordinator, or upon order of the judge of compensation claims, the temporary total disability benefits shall be extended and the determination of the injured employee's permanent impairment shall be delayed until the conclusion of the course of treatment or until the injured employee has been determined to have reached maximum medical improvement. "Retirement" means that a preponderance of the evidence supports a conclusion that an employee

has retired. The subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement but may be considered along with other evidence.

(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.

(d) The division shall, by rule, provide for the periodic reporting to the division, employer, or carrier of all earned income including income from social security, by the injured employee entitled to or claiming benefits for temporary total disability. The employer or carrier shall not be required to make any payment of benefits for temporary 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 rule. The rule shall require the claimant to personally sign the claim form and attest that he has reviewed, understands, and acknowledges the foregoing.

(3) PERMANENT IMPAIRMENT AND SUPPLEMENTAL 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.~~

1.2. 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.

2.3. The three-member panel, in cooperation with the division, shall establish and use a uniform permanent impairment disability rating schedule guide by January 1, 1991. This schedule 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 schedule must be based upon objective findings. The schedule 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 schedule or if the schedule is not effective 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. Determination of permanent impairment under this schedule must be done by a medical doctor licensed under chapter 458, a doctor of osteopathy licensed under chapter 459, a chiropractic physician licensed under chapter 460, or a podiatrist licensed under chapter 461, as appropriate, considering the nature of the injury. No other persons are authorized to render opinions regarding the existence of or the extent of permanent impairment. The overall final impairment rating sustained by the individual shall be the result of the physician's evaluation of permanent impairment as found in this schedule. If a permanent impairment is covered by this schedule, no assignment or rating of that permanent impairment at variance with this schedule is permissible. If a category applicable to the impairing condition cannot be found in this rule, then the category most closely resembling the impairment or the degree of impairment based on analogy should be chosen. Where a category represents the impairing condition, the impairment determinations shall not be based on the cumulation of lesser included categories. A permanent impairment rating for subjective complaints of pain alone without the use of the schedule is improper. The condition of subjective pain without objective findings, including headache without objective findings, will not be a ratable condition in terms of organic disorder. Mental and behavioral impairments may be rated separately.

3. All permanent impairment income benefits shall be based on an impairment rating using the impairment schedule referred to in subparagraph (3)(a)2. Permanent impairment income benefits are paid weekly at the rate of 66 2/3 percent of the employee's average weekly wage not to exceed the maximum weekly benefits under s. 440.12. An employee's entitlement to permanent impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earlier of:

a. The expiration of a period computed at the rate of 3 weeks for each percentage point of impairment up to and including 14 percent, up to a maximum of 12 weeks of permanent impairment income benefits; or

b. The death of the employee.

4. After the employee has been certified by a physician as having reached maximum medical improvement, the certifying physician shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in subparagraph (3)(a)2. If the permanent impairment is accompanied by evidence of mental, psychological, emotional, or behavioral injury or disorder, the impairment rating shall be modified by adding 1 percent to the body as a whole for the mental injury. No compensation shall be payable for the mental, psychological, behavioral, or emotional injury arising out of depression from being out of work. Competent medical testimony regarding a specific and permanent mental, psychological, emotional, or behavioral disorder which resulted from the injury shall be required to support an impairment modifier under this section. If the certification and evaluation are performed by a physician other than the employee's treating physician, the certification and evaluation shall be submitted to the treating physician and the treating physician shall indicate agreement or disagreement with the certification and evaluation. The certifying physician shall issue a written report to the employee and the insurer certifying that maximum medical improvement has been reached, stating the impairment rating, and providing any other information required by the division. If the employee has not been certified as having reached maximum medical improvement prior to the expiration of 104 weeks from the date temporary total disability benefits begin to accrue, the division shall notify the treating physician of the requirements of this section.

5. The insurer shall pay the employee impairment benefits for a period based on the impairment rating.

(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. For injuries occurring after January 1, 1994, the employee's eligibility for wage-loss benefits shall be determined in accordance with the schedule set forth in sub-subparagraph d., except:

(I) Employees with permanent impairment ratings of less than 15 percent of the body as a whole shall not be eligible for wage-loss benefits.

(II) There shall be offset against the employee's eligibility for wage-loss benefits the number of weeks of permanent impairment benefits paid to the employee pursuant to subparagraph (a)3.

f.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.~~

7.8. 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.

8.9. 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 resulting in decrease of earning capacity, the compensation shall be 66 2/3 percent of the difference between the injured employee's average weekly wages before the injury and his or her wage-earning capacity after the injury in the same or other employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding 104 weeks provided by this subsection and subsection (2). Once the injured employee reaches the maximum number of weeks, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined. 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. 440.13(2). The compensation shall be equal to 80 per-~~

~~cent 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 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 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 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 ~~three~~ ~~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) Except as otherwise provided in this section, the fact that an employee has suffered previous disability, impairment, anomaly, or disease, or received compensation therefor, shall not preclude him or her 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.

(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 paragraph (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.

(12) REPAYMENT.—*If an employee has received a sum as an indemnity benefit under any classification or category of benefits under this chapter to which he is not entitled, the employee is liable to repay that sum to the employer or the insurer and have that sum deducted from future benefits, regardless of the classification of benefits, payable to the employee under this chapter; however, in no case shall a partial payment of the total repayment be in excess of 20 percent of the amount of the biweekly payment.* **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.*

(13) COORDINATION OF BENEFITS.—

(a) *This subsection is applicable when weekly payments are made to an employee as a result of liability under this chapter with respect to the same time period for pension or retirement payments pursuant to*

a plan or program establishing or maintained by the employer, or to which the employer is required to contribute pursuant to a collective bargaining agreement, are also received or being received by the employee. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits shall be reduced by these amounts:

1. *The after-tax amount of the pension or retirement payments received or being received pursuant to a plan or program established or maintained by the same employer from whom indemnity for total or partial disability benefits are received, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.*

2. *The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a pension or retirement plan or program established or maintained by the same employer from whom benefits are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increase in a pension or retirement program shall not affect the coordination of these benefits.*

3. *The proportional amount, based on the ratio of the employer's contributions to the total contributions made to a qualified profit-sharing plan under section 401(a) of the Internal Revenue Code or any successor to section 401(a) of the Internal Revenue Code covering a profit-sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation from employment to the extent that benefits are vested under the plan.*

4. *The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 306 of the Internal Revenue Code are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increase in a pension or retirement program shall not affect the coordination of these benefits.*

(b) *To satisfy any remaining obligations, the employer shall pay or cause to be paid to the employee the balance due in weekly payments after the application of subsection (a).*

(c) *Within 30 days after the date of first payment of compensation benefits or 30 days after the date of application for any benefits under subsection (9), whichever is later, the employee shall provide the employer or carrier with a properly executed authority for release of information which shall be utilized by the employer or carrier with a properly executed authority entitlement and amount information from the appropriate source. The authority for release of information is effective for 1 year. Failure of the employee to provide a properly executed authority for release of information shall stay payment of compensation benefits to the employee until the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information shall stay payment of compensation benefits until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.*

(d) *Except as provided in paragraph (c), a credit or reduction of benefits otherwise payable for any week shall not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee and the employee has begun receiving the benefit payments.*

(e) *Except as otherwise provided in this subsection, any benefit payments under any fund, policy, plan, or program as specified in paragraph (9)(a) which the employee has received or is receiving, and during*

a period in which the employee was receiving unreduced compensation benefits, shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing dates of the notice of request for reimbursement shall stay payment of 25 percent of future weekly compensation payments. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate compensation benefits shall resume when the total amount of the overpayment has been withheld.

(f) The insurer taking a credit or making a reduction as provided in this section shall immediately report to the division the amount of any credit or reduction and furnish satisfactory proof of the basis for a credit or reduction.

(g) Nothing in this section shall be considered to compel an employee to apply for early or reduced pension or retirement benefits.

(h) As used in this section, "after-tax amount" means the gross amount of any benefits under paragraph (9)(a) reduced by the prorated weekly amount which would have been withheld from such wages, earnings, or salary under federal and state income tax laws, and under the Federal Insurance Contributions Act (FICA) relating to Social Security and Medicare taxes. In all cases, it is to be assumed that the amount withheld would be determined upon the basis of expected liability of such employee for tax for the taxable year in which such payments are made without regard to any itemized deductions but taking into account the maximum number of personal exemptions allowable. In determining the after-tax amount, the tables provided for in s. 440.12 shall be used. The gross amount of any benefit under paragraph (9)(a) shall be presumed to be the same as the average weekly wage for purposes of the table. The applicable percent of after-tax amount as provided in the table will be conclusive for determining the after-tax amount of benefits under paragraph (9)(a).

(i) This subsection does not apply to any payments received or to be received under a disability pension plan provided by the same employer which plan is in existence on March 1, 1994. Any disability pension plan entered into or renewed after March 1, 1994, may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this subsection.

(j) This subsection applies only to indemnity compensation payments resulting from personal injuries occurring on or after the effective date of this act. Any such payments made to an employee resulting from liability for a personal injury occurring before such date that have not been coordinated under this subsection as of the effective date of this subsection shall not be coordinated, shall not be considered to have created an overpayment of compensation benefits, and shall not be subject to reimbursement to the employer or insurer.

(k) If any portion of this subsection is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this subsection.

(l) When an employee who is receiving weekly payments or is entitled to weekly payments reaches or has reached or passed the age of 65, the weekly payments of each year following his or her 65th birthday shall be reduced by 20 percent of the weekly payments paid or payable at 65, so that on his or her seventieth birthday the weekly payments shall have been reduced to zero. This provision shall not apply to a person 65 years of age or over otherwise eligible and receiving weekly payments who is not eligible for benefits under the federal Social Security Act, 42 U.S.C. ss 301-1399f, or to a person whose payments under this chapter are coordinated under subsection (a).

Section 23. Paragraphs (b), (d), and (f) of subsection (1) and subsection (3) of section 440.151, Florida Statutes, are amended to read:

440.151 Occupational diseases.—

(1)

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

(d) No benefits payable under this chapter compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this Workers' Compensation Law would give right to compensation, arose subsequent to the beginning of the first compensable disability, save only to after-born children of a marriage existing at the beginning of such disability.

(f) No benefits payable under this chapter compensation shall be payable for disability or death resulting from tuberculosis arising out of and in the course of employment by the Division of Health of the Department of Health and Rehabilitative Services at a state tuberculosis hospital, or aggravated by such employment, when the employee had suffered from said disease at any time prior to the commencement of such employment.

(3) Except as hereinafter otherwise provided in this section, "Disability" means disability as defined in s. 440.02 the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease; and "disability" means the state of being so incapacitated.

Section 24. Paragraph (a) of subsection (1) of section 440.16, Florida Statutes, is amended 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:

(a) Actual funeral expenses not to exceed \$5,000 \$2,500.

Section 25. Subsections (2), (4), and (7) of section 440.185, Florida Statutes, are amended to read:

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

(2) Within 7 days after of actual knowledge of injury or death, the employer shall report such injury or death to the carrier and the employee, on a form prescribed by the division, providing the following information:

(a) The name, address, and business of the employer;

(b) The name, social security number, street, mailing address, telephone number, and occupation of the employee;

(c) The cause and nature of the injury or death;

(d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and

(e) Such other information as the division may require; and

(f) ~~On the copy of the form furnished to the employee, a clear and understandable summary statement of the rights, benefits, and obligations of injured workers under the Workers' Compensation Law, including an explanation of wage loss benefits and the eligibility conditions for such benefits.~~

The carrier or a self-insured employer shall, within 30 days after receipt of the form reporting the injury, mail the form containing the information required by this subsection to the division at its address in Tallahassee. However, the division may by rule provide for a different reporting system for those types of injuries which it determines should be reported in a different manner and for those cases which involve minor injuries requiring professional medical attention in which the employee does not lose more than 7 days of work as a result of the injury and is able to return to his job immediately after treatment and resume his regular work.

(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 insurer 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. ~~Annually 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, an insurer a carrier or third-party adminis-~~

trator 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 insurer 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 insurer 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.~~

(7) Every ~~insurer insurance carrier writing workers' compensation insurance for employment covered under this chapter~~ shall file written notice with the division within 21 days after the issuance of a policy or contract of insurance ~~such policy information as the division requires. The division may enter into contracts with entities that maintain or collect such policy data as an alternative to the foregoing filing requirement.~~ Notice of cancellation or expiration of a policy as set out in s. 440.42(2) shall be mailed to the division in accordance with rules promulgated by the division under chapter 120.

Section 26. Paragraph (e) of subsection (1) of section 440.19, Florida Statutes, is amended to read:

440.19 Time and procedure for filing claims.—

(1)

(e)1. ~~Any employee who has not received a benefit to which he believes he is entitled under this chapter shall serve by certified mail upon the employer, the employer's insurer, and the division in Tallahassee a claim for benefits that meets the requirements of this subsection. 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 *in its entirety* by the judge of compensation claims upon motion of any interested party unless the claimant is not represented by counsel. *The judge of compensation claims shall not entertain motions to amend claims pending resolution of a filed motion to dismiss. Amended claims must be filed with the division in Tallahassee prior to consideration by the judge of compensation claims.* 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. *Any said motion to dismiss is required to be served on or before the 40th day after receiving notice of the claim which has been filed with the division or the claim shall be deemed to be in compliance. This section applies irrespective of whether the claim for benefits has been totally controverted or is a medical-only claim.* 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 after the return receipt signed by the carrier or a self-insured employer, or after receipt of the acknowledged claim from the division, *whichever comes first*, the employer, if individually self-insured, 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 of \$500 for the first day after the 21 days in which the requested benefits are not paid or the Notice to Controvert is not filed and \$250 for each day thereafter. ~~pursuant to s. 440.195(9).~~

Section 27. Section 440.191, Florida Statutes, is created to read:

440.191 Employee Assistance and Ombudsman Office.—

(1)(a) In order to effect the self-executing features of the workers' compensation law, this chapter shall be construed wherever possible to permit injured employees and employers or the employer's insurer to resolve disagreements without undue expense, costly litigation, or delay in the provision of benefits. It shall be the duty of all who participate in the workers' compensation system, including, but not limited to, insurers, service providers, employers and employees, and the division, to attempt to resolve disagreements in good faith and to cooperate with efforts to resolve disagreements between the parties.

(b) Before a claim can be filed, at any time after the employee reports an injury arising out of his employment to the employer and the employer or the employer's insurer fails to respond or fails to provide benefits that the employee believes he is entitled to, the employee may contact the Employee Assistance and Ombudsman Office, Division of Workers' Compensation, to request assistance in resolving his complaint.

(c) Except as otherwise provided in this subsection, an employee shall not file a petition requesting any benefit under this chapter unless he or she has exhausted the procedures for informal resolution set forth in this section.

(d) If the employee has requested emergency services and care, as defined in chapter 395, the informal resolution procedures set forth in this section shall be waived and an emergency conference shall be held pursuant to s. 440.25.

(2)(a) The Employee Assistance and Ombudsman Office shall be a resource available to all employees who participate in the workers' compensation system and shall take all steps necessary to educate, and disseminate information to, employees and their employers.

(b) The Employee Assistance and Ombudsman Office shall provide to all persons who contact the office an informational brochure that explains the workers' compensation law, including benefit levels, time for filing claims, and procedures for filing claims.

(c) The Employee Assistance and Ombudsman Office shall investigate the dispute and attempt to facilitate an agreement between the employee and the insurer. The employee, the employer, and the insurer shall cooperate fully with the office and shall timely provide the office with any documents or other information that the office may require in connection with its efforts under this section.

(d) The office shall act as a liaison between injured workers, their employers, insurers, service providers, and attorneys to facilitate resolution of grievances and to assure open communication.

(e) The office shall maintain confidential records of each dispute in any format it deems appropriate. Such records may be accessed by a mediator.

(3) Mediation conferences.—

(a) If the parties have not reached an agreement within 15 days after the employee initially contacts the office, the office shall schedule a mediation conference and assign an ombudsman to assist the employee during the mediation. The conference shall be held within 30 days of the date the matter is referred for mediation. The office shall give the employee and other interested parties at least 15 days notice by mail of the mediation conference.

(b) All individuals or groups with a direct interest in the outcome of mediation shall attend the mediation conference and attempt in good faith to settle the claim. Any employer or representative of the employer or carrier who attends mediation must be familiar with the employee's claim and must have full authority to make decisions regarding the claim. The division may assess a penalty not to exceed \$500 against any party who repeatedly fails to cooperate or otherwise comply with the requirements of this subpart.

(d) A mediation conference shall be informal and shall not require the use of formal rules of evidence or procedure.

(e) The employee may retain an attorney to represent him at the mediation conference if the carrier represents that it will be represented by counsel at the conference.

(f) Participation in a mediation conference shall not preclude any party from filing a petition as permitted by this chapter, unless the parties consent to be bound by an agreement reached at mediation. If efforts to resolve the dispute through mediation fail, the ombudsman shall, at the employee's request, assist the employee in drafting a petition for benefits, explain the procedures for filing petitions, and provide the employee with a list prepared by The Florida Bar of attorneys who practice workers' compensation law. The Employee Assistance Office shall not represent employees before the judges of compensation claims.

(g) Negotiations, discussions, or any agreements in connection with a mediation conference shall not be admissible in a subsequent proceeding upon a petition for benefits. The mediator shall not be called in to testify or give deposition to resolve any claim at any hearing before a judge of compensation claims. The fact of requesting or accepting a settlement offer at the mediation conference shall not be admissible as evidence of liability in any collateral or subsequent proceeding on the case. Judges of compensation claims shall not be permitted to serve as mediators pursuant to this section.

(h) Files, reports, case summaries, notes, or other communications or materials relating to a mediation conference 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. 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 any 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.

Section 28. Subsection (1) and paragraph (c) of subsection (9) of section 440.20, Florida Statutes, are amended to read:

440.20 Payment of compensation.—

(1)(a) Compensation under this chapter shall be paid periodically, promptly in the usual manner, and directly to the person entitled thereto, without an award, except when liability to pay compensation is controverted by the employer.

(b) *Notwithstanding any other provision of this chapter, for each injury for which an employee files any claim under this chapter, the employer may pay, as a deductible under any workers' compensation insurance purchased by the employer, the first \$1,000 of the total amount payable under compensable claims related to such injury. An employer shall not be reimbursed for any amount paid under this paragraph. The rate base of any workers' compensation insurance offered pursuant to this chapter shall include the \$1,000 deductible provision authorized by this paragraph. Any amounts paid by an employer pursuant to this paragraph shall not apply to such employer's experience rating for injury.*

(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.

(c) *In order to ensure the timely payment of compensation benefits as required under this chapter, the division shall monitor the performance of all employers, carriers, and servicing agents. The division shall establish by rule minimum performance standards for all employers, carriers, and servicing agents to ensure that a minimum of 90 percent of all compensation benefits are timely paid. The division shall fine an employer, if self-insured, or carrier, as provided in s. 440.13(11)(b). 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.*

Section 29. Section 440.21, Florida Statutes, is amended to read:

440.21 Invalid agreements; penalty.—

(1) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, ~~and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.~~

(2) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

Section 30. Section 440.211, Florida Statutes, is created to read:

440.211 Authorization of collective bargaining agreements.—

(1) Subject to the limitations stated in subsection (2), the Division of Workers' Compensation shall recognize as valid and binding a provision in any collective bargaining agreement filed with the division between an individually self-insured employer or other employer upon consent of the employer's carrier and a recognized or certified exclusive bargaining representative establishing any of the following:

(a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter which may include, but is not limited to, conciliation, mediation, and arbitration. Arbitration held pursuant to this section shall be binding on the parties.

(b) A preferred provider that meets the requirements of s. 440.13.

(c) The use of a limited list of physicians to conduct independent medical examinations which the parties may agree shall be the exclusive source of independent medical examiners, pursuant to this chapter.

(d) A light duty, modified job or return-to-work program.

(e) A vocational rehabilitation or retraining program.

(2) Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this chapter. Any such agreement in violation of this provision shall be null and void.

Section 31. Section 440.25, Florida Statutes, is amended to read:

440.25 Procedure in respect to claims and hearings hearing requests.—

(1) A claim for compensation or other benefits shall may be filed with the division at its office in the City of Tallahassee at any time after a notice to controvert is filed by the employer or carrier or at any time after a specific benefit becomes due and is not provided, *subject to the informal dispute resolution procedures in s. 440.191.* The judge of compensation claims shall have full power and authority to hear and determine all questions presented in respect to such claims.

(2) *Within 10 days after such claim is filed, a pre-trial hearing concerning such claim shall be held.* Within 7 to 10 days after such a claim is filed, the division, in accordance with rules prescribed by it, shall notify the employer and any other person other than the claimant whom the division considers an interested party that a claim has been filed *and that a pre-trial hearing concerning such claim will be held. Such notice shall give the date, time, and location of the pre-trial hearing.* Such notice may be served personally upon the employer or other person or may be sent to such employer or person by mail.

(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 the *pre-trial* 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 claim for compensation or other benefits mediation conference shall state the reasons for requesting the mediation conference and the questions in dispute so that the responding or opposing parties may be notified of the purpose of the pre-trial hearing 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.~~

(c)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 paragraph (d) subparagraph 3, set a date for the final hearing that allows the parties at least 30 90 days to conduct discovery unless the parties consent to an earlier hearing date.

(d)3. The final hearing must be held and concluded within 45 120 days after the pretrial hearing. Continuances may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control.

(e)—~~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,~~

(e) 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 7 15 days' notice of such hearing, served upon the claimant and other interested parties by mail.

(f)(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 14 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 provisions of s. 440.13 shall apply 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 evi-

dence, ~~examined the claimant, or otherwise made such investigation as appropriate.~~ The report or testimony of ~~the expert medical advisor 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.

(g)(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.

(h)(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 14 ~~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.

(i) *The judge of compensation claims may require the appearance of the parties and counsel before him without written notice for an emergency conference where there is a bona fide emergency involving the health, safety, or welfare of an employee. An emergency conference under this section may result in the entry of an order or the rendering of an adjudication by the judge of compensation claims.*

(j) *To expedite dispute resolution and to enhance the self-executing features of the Workers' Compensation Law, the Chief Judge shall make provision by rule or order for the resolution of appropriate motions by judges of compensation claims without oral hearing upon submission of brief written statements in support and opposition, and for expedited discovery and docketing.*

(k) *To further expedite dispute resolution and to enhance the self-executing features of the system, those claims filed in accordance with s. 440.19 that involve a claim for benefits of \$5,000 or less shall, in the absence of compelling evidence to the contrary, be presumed to be appropriate for expedited resolution pursuant to this subparagraph; and any other claim filed in accordance with s. 440.19, upon the written agreement of both parties and application by either party, may similarly be resolved pursuant to this subparagraph. For purposes of expedited resolution pursuant to this subparagraph, the Chief Judge shall make provision by rule or order for expedited and limited discovery and expedited docketing in such cases. At least 15 days prior to hearing, the parties shall exchange and file with the judge a pretrial outline of all issues, defenses, and witnesses on a form promulgated by the Chief Judge; provided, in no event shall such hearing be held without 15 days' written notice to all parties. No pretrial hearing shall be held. The judge shall limit all argument and presentation of evidence at the hearing to a maximum of 30 minutes, and such hearings shall not exceed 30 minutes in length. Neither party shall be required to be represented by counsel, the employer or carrier may be represented by an adjuster or other qualified representative, the employer or carrier and any witness may appear at such hearing by telephone, and the rules of evidence shall be liberally construed in favor of allowing introduction of evidence.*

(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, ~~the appellant~~ ~~he~~ files with the judge of compensation claims a copy of the designation of the record on appeal, and a verified petition to be relieved of costs. A verified petition filed prior to the date of service of the notice of the estimated costs shall be deemed not timely filed. The verified petition relating to record costs shall contain a ~~detailed and sworn statement that the appellant is insolvent and a complete, detailed, and sworn financial affidavit showing of all the appellant's assets, liabilities, and income. Failure to state in the affidavit all assets and income, including marital assets and income, shall be grounds for denying the petition with prejudice. The division shall promulgate rules as may be required pursuant to this subsection, including forms for use in all petitions brought under this subsection.~~ 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 District Court of Appeal, First District, to find reversible error, and shall state with particularity the specific legal and factual grounds for his opinion. Failure to so affirm shall be grounds for denying the petition. A copy of the verified petition relating to record costs shall be served upon all interested parties, including the division and the Office of the General Counsel, Department of Labor and Employment Security ~~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 20 ~~12~~ days from the service date of 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 shall direct the division to pay ~~may provide for payment of~~ record costs and filing fees from the Workers' Compensation Trust Fund pending final disposition of the costs of appeal. ~~The division may transcribe or arrange for the transcription of the record in any proceeding for which it is ordered to pay the cost of the record. In the event the insolvency petition is denied, the judge of compensation claims may enter an order requiring the petitioner to reimburse the division for costs incurred in opposing the petition, including investigation and travel expenses.~~

(c) As a condition of filing a notice of appeal to the District Court of Appeal, First District, 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 District Court of Appeal, First District, affirms the award in any amount. Upon the failure of such employer to file such bond with the judge of compensation claims or the District Court of Appeal, First District, along with his notice of appeal, the District Court of Appeal, First District, shall dismiss the notice of appeal.

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

(6) An injured employee claiming or entitled to compensation shall submit to such physical examination by a certified expert medical advisor ~~fully qualified physician designated or approved by the division or the judge of compensation claims as the division or the judge of compensation claims may require.~~ The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination. Any interested party shall have the right in any case of death to require an autopsy, the cost thereof to be borne by the party requesting it; and the judge of compensation claims shall have authority to order and require an autopsy and may, in his discretion, withhold his findings and award until an autopsy is held.

Section 32. Subsection (4) is added to section 440.29, Florida Statutes, to read:

440.29 Procedure before the judge of compensation claims.—

(4) *All medical reports relating to the claimant and the subject accident shall be received into evidence by the judge of compensation claims upon proper motion. However, such records shall be made available to the opposing party at least 30 days prior to the final hearing. Nothing in this section limits any right of further discovery, including, but not limited to, depositions.*

Section 33. Section 440.32, Florida Statutes, is amended to read:

440.32 Cost in proceedings brought without reasonable ground.—

(1) If the judge of compensation claims or any court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the cost of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(2) *If the judge of compensation claims or any court having jurisdiction of proceedings in respect to any claims or defense under this chapter determines that a proceeding in respect thereto was maintained or continued frivolously or has been maintained for harassment, delay, or improper purposes, costs of such proceeding, including reasonable attorney's fees, shall be assessed against the offending attorney. In addition, an administrative penalty equal to the amount so assessed shall be assessed against the offending attorney, and said penalty shall be deposited into the Insurance Commissioner's prosecutorial account, created by s. 624.522 in the Insurance Commissioner's Regulatory Trust Fund, for use in the prosecution of workers' compensation-related crimes. In any case in which a penalty is assessed pursuant to this paragraph, a copy of the order assessing such penalty shall be forwarded to the appropriate grievance committee acting under the jurisdiction of the Supreme Court. Said penalties, fees, and costs awarded under this provision shall not be recouped from the party.*

Section 34. Section 440.34, Florida Statutes, is amended to read:

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

(1) No fee, gratuity, or other consideration shall be paid for services rendered ~~for a claimant~~ in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of compensation claims or court having jurisdiction over such proceedings. Except as provided by this subsection, any attorney's fee approved by a judge of compensation claims *for services rendered to a claimant* shall be equal to 20 ~~25~~ percent of the first \$5,000 of the amount of the benefits secured, 15 ~~20~~ percent of the next \$5,000 of the amount of the benefits secured, and 10 ~~15~~ percent of the remaining amount of the benefits secured.

(a) *However, in exceptional circumstances, the chief judge of compensation claims may award an extraordinary fee if the attorney petitions the chief judge pursuant to subsection (7) and shall consider the following factors in each case and may increase or decrease the attorney's fee if, in the his judgment of the chief judge, the circumstances of the particular case warrant such action upon consideration of the following factors:*

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

2.(b) The likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude employment of the lawyer by others or cause antagonisms with other clients.

3.(c) The fee customarily charged in the locality for similar legal services.

4.(d) The amount involved in the controversy and the benefits resulting to the claimant.

5.(e) The time limitation imposed by the claimant or the circumstances.

6.(f) The nature and length of the professional relationship with the claimant.

7.(g) The experience, reputation, and ability of the lawyer or lawyers performing services.

8.(h) The contingency or certainty of a fee.

(b) *A judge of compensation claims may award an extraordinary fee for a claim for benefits of \$5,000 or less, if the attorney petitions the judge of compensation claims and if, in the judgment of the judge of compensation claims, the circumstances of the particular case warrant such action, upon consideration of the factors in this subsection.*

(2) In awarding a reasonable claimant's attorney's fee, the judge of compensation claims shall consider only those benefits to the claimant that the attorney is responsible for securing. *In awarding a reasonable defense attorney's fee, the judge of compensation claims shall consider only work actually performed for the employer, or carrier, in connection with the proceeding and time reasonably spent in relation to the amount of benefits sought to be avoided.* 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 or indemnity 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 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. *In the situations set forth in paragraphs (a)-(d) of this subsection, the judge of compensation claims shall not approve a defense fee in an amount greater than the fee approved for the claimant's attorney.*

(4) In such cases in which the claimant is responsible for the payment of his own attorney's fees, such fees shall be a lien upon compensation payable to the claimant, notwithstanding the provisions of s. 440.22.

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the 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 court may direct.

~~(6) Any person:~~

~~(a) Who receives any fees or other consideration or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the judge of compensation claims or the court; or~~

~~(b) Who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation;~~

is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(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.

(7) If any attorney believes that they are entitled to a fee in excess of the statutory limits set forth in subsection (1), they may petition the Chief Judge of Compensation Claims for an extraordinary fee award. Such petitions may be filed with the office of the Chief Judge only after entry of an order approving or awarding an attorney's fee. The Chief Judge shall approve such petitions where standard and shall summarily deny petitions that do not demonstrate extraordinary circumstances. All petitioners shall pay a filing fee to defray the costs associated with petition review. The Chief Judge shall promulgate procedures applicable to the filing of and determinations upon such petitions.

Section 35. Subsections (1), (2), (3), and (4) of section 440.38, Florida Statutes, are amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.—For purposes of this section, "department" means the Department of Insurance.

(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 Department of Insurance division of his financial ability to pay such compensation and receiving an authorization from the department division to pay such compensation directly in accordance with the following provisions:

1. The department division may, as a condition to such authorization, require such employer to deposit in a depository designated by the department division either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the department division and subject to such conditions as the department division may prescribe, which shall include authorization to the department 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 department 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 department 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 department division. The department 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. In the event that the employer fails to maintain the financial strength and liquidity required in subparagraph 1., the department shall revoke the employer's authority to self-insure or, in lieu of revocation, the employer shall provide. 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 department division the certified opinion of an independent actuary who is a member of the American Academy 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 department shall, by rule, establish reasonable criteria as to what constitutes an acceptable actuarial opinion. The employer shall post security required by the department within 10 days from receipt of the notice of the intent to revoke. Failure to post such security shall result in revocation of the employer's authorization to self-insure. If the employer elects to post security and submit an actuarial opinion, it shall submit the actuarial opinion and any additional security deposit within 60 days of the receipt of the notice of the intent to revoke. The department

may extend the time for filing the actuarial opinion and posting additional security 20 days upon a showing of good cause. The employer shall thereafter annually provide such a certified actuarial opinion as requested by the department until such time as the employer demonstrates the required financial strength and liquidity meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted as required by the department 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 department division shall then revoke such employer's authorization to self-insure, and such failure by the employer to post security as may be required by the department to assure financial strength and liquidity 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 department 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 department 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 department 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 department 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 federally insured through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The total amount of all certificates from a single financial institution may not exceed the federally insured amount for a single depositor.

c. Irrevocable letters of credit, in a form and containing such terms as prescribed by the department, and in favor of the department 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 department division, or by a depository authorized by the department 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 department 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 department 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. 624.4622 440.575;

(e) *In accordance with s. 440.135, an employer, other than a local government unit, may elect coverage under the Workers' Compensation Law and retain the benefit of the exclusiveness of liability provided in s. 440.11 by obtaining a 24-hour health insurance policy from an authorized insurance carrier, or by participating in a fully or partially self-insured 24-hour health plan which is established or maintained by or for two or more employers, so long as the law of this state is not preempted by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, or any amendment to such law, which policy or plan shall provide such medical benefits for at least occupational injuries and illnesses comparable to those required by this chapter. A local government unit, as a single employer, in accordance with s. 440.135, may participate in the 24-hour health insurance coverage plan referenced in this paragraph. Any disputes and the remedies arising under policies issued under this section shall be governed by the terms and conditions of the policies and under the applicable provisions of the Florida Insurance Code and rules adopted under such code and other applicable provisions of the laws of this state. ~~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 or self-insured plan to secure payment of compensation as to medical benefits, the employer shall also obtain an insurance policy or policies which shall provide indemnity benefits as follows:~~*

1. *If indemnity benefits are provided only for occupational-related disability, then benefits must be comparable to those required by this chapter.*

2. *If indemnity benefits are provided for both occupational-related and nonoccupational-related disability, then benefits must be comparable to those required by this chapter.*

3. *The employer shall provide for each of its employee's life insurance with a death benefit of \$100,000.*

4. *Policies providing coverage under this subsection shall utilize prescribed and acceptable underwriting standards, forms, and policies approved by the Department of Insurance. In the event any insurance policy or policies providing coverage or coverages as provided above are canceled, terminated, or nonrenewed for any reason, the cancellation, termination, or nonrenewal shall not be effective until the insurer notifies the division and the Department of Insurance of the cancellation, termination, or nonrenewal, and until the division has actually received the notification. The division must be notified of replacement coverage under a workers' compensation and employer's liability insurance policy or plan by the employer prior to the effective date of the cancellation, termination, or nonrenewal; ~~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. 624.46225 440.571. The ~~department division~~ may adopt rules to implement this subsection.

(2)(a) ~~The department division~~ shall adopt rules by which businesses may become qualified to provide underwriting claims-adjusting, loss control, and safety engineering services to self-insurers.

(b) ~~The department division~~ shall adopt rules requiring self-insurers to file any reports necessary to fulfill the requirements of this chapter. Any self-insurer who fails to file any report as prescribed by the rules adopted by the ~~department division~~ shall be subject to a civil penalty not to exceed \$100 for each such failure.

(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 ~~department 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 department 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 ~~department division~~ and deposited into the Workers' Compensation Administration Trust Fund.

(4)(a) No carrier of insurance, including the parties to any mutual, reciprocal, or other association, shall write any compensation insurance under this chapter without a permit from the Department of Insurance. Such permit shall be given, upon application therefor, to any insurance or mutual or reciprocal insurance association upon the department's being satisfied of the solvency of such corporation or association and its ability to perform all its undertakings. The department may revoke any permit so issued for violation of any provision of this chapter.

(b) No carrier of insurance, including the parties to any mutual, reciprocal, or other association, shall write any compensation insurance under this chapter unless such carrier has a claims adjuster, either in-house or under contract, situated within this state. ~~Each insurer shall maintain a claims adjuster within this state during any period for which there are any open claims against such carrier arising under the compensation insurance written by the carrier. Individual self-insurers shall not be required to have their claims adjusters situated within this state.~~

~~(c) Any insurer, rating bureau, or agent or other representative or employee of any insurer or rating bureau failing to comply with, or who is guilty of a violation of, any of the provisions of this chapter or of any order or ruling of the Department of Insurance made hereunder is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In addition thereto, the license of any insurer, agent, or broker who is guilty of such violation may be revoked or suspended by the department.~~

Section 36. Subsections (1) and (3) of section 440.381, Florida Statutes, are amended 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.

(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 ~~audits~~ ~~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.

Section 37. Subsections (1) and (2), paragraphs (b) and (c) of subsection (3), the introductory paragraphs of subsections (4) and (5), subsection (6), paragraph (a) of subsection (8), and subsections (9) and (10) of section 440.385, Florida Statutes, are amended 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." For purposes of this section, "department" means the Department of Insurance. 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 ~~department 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 ~~department 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 ~~department 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 ~~department 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 ~~department 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 ~~Insurance Commissioner~~ ~~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 ~~commissioner 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 ~~commissioner 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 ~~Insurance Commissioner~~ ~~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.—

(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 ~~Department of Insurance~~ ~~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 ~~department division~~ concerning any applicant, which opinions shall be considered by the ~~department 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 ~~Insurance~~ ~~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 ~~Insurance Labor and Employment Security~~ pursuant to subsection (5), there shall be created an Insolvency Fund to be managed by the association.

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

(6) **POWERS AND DUTIES OF DEPARTMENT OF INSURANCE 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.

(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 ~~Insurance Labor and Employment Security~~ of any information indicating such condition.

(9) **EXAMINATION OF THE ASSOCIATION.**—The association shall be subject to examination and regulation by the Department of ~~Insurance 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 ~~Insurance Labor and Employment Security~~ or its representatives for any action taken by them in the performance of their powers and duties under this section.

Section 38. Paragraph (d) is added to subsection (1) of section 440.386, Florida Statutes, to read:

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

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

(d) For purposes of this section, "department" means the Department of Insurance.

Section 39. Subsection (8) is added to section 440.39, Florida Statutes, to read:

440.39 Compensation for injuries when third persons are liable.—

(8) No employer, as a condition of employment or contract, may require any employee or independent contractor to waive any part of this section.

Section 40. Section 440.4415, Florida Statutes, is created to read:

440.4415 Workers' Compensation Oversight Board.—

(1) There is created within the Department of Labor and Employment Security the Workers' Compensation Oversight Board. The board shall be composed of the following members, each of whom has knowledge of, or experience with, the workers' compensation system:

(a) Six 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. Two representatives of employers.

2. Four 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) Three 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 employers who employs at least 10 employees in Florida for which workers' compensation coverage is provided pursuant to this chapter, and who is a licensed general contractor actively engaged in the construction industry in this state.

2. A representative of employers who employs fewer than 10 employees in Florida for which workers' compensation coverage is provided pursuant to this chapter.

3. A representative of employees.

(c) Three 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 employers who employs fewer than 10 employees in Florida and who is a licensed general contractor actively engaged in the construction industry in this state for which workers' compensation coverage is provided pursuant to this chapter.

2. A representative of employers who employs at least 10 employees in Florida for which workers' compensation coverage is provided pursuant to this chapter.

3. A representative of employees.

(d) Additionally, the Insurance Commissioner and the Secretary of the Department of Labor and Employment Security shall be nonvoting ex officio members.

(e) The original appointments to the board shall be made on or before January 1, 1994. 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, three appointees of the Governor, two appointees of the President of the Senate, and two 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. The board shall have an organizational meeting on or before March 1, 1994, the time and place of such meeting to be determined by the Governor.

(f) Each member is accountable to the Governor for proper performance of his or her duties as a member of the board. The Governor may remove from office any member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or for pleading guilty or nolo contendere to, or having been adjudicated guilty of, a first degree misdemeanor or a felony.

(g) A vacancy shall occur upon failure of a member to attend four consecutive meetings of the board or 50 percent of the meetings of the board during a 12-month period, unless the board by majority votes to excuse the absence of such member.

(2) **POWERS AND DUTIES; ORGANIZATION.**—

(a) The board shall have all the powers necessary and convenient to carry out and effectuate the purposes of this section, including, but not limited to, the power to:

1. Conduct public hearings.

2. Prescribe qualifications for board employees.

3. Appear on its own behalf before other boards, commissions, or agencies of the state or Federal Government.

4. Make and execute contracts to the extent that such contracts are consistent with duties and powers set forth in this section and elsewhere in the law of this state.

(b) The board shall adopt bylaws, formulate workers' compensation legislation or amendments, review, advise, and appear before the Legislature in connection with legislation that impacts the workers' compensation system, advise the division on policy, administrative and legislative issues, and appear before other state or federal agencies in connection with matters impacting the workers' compensation system.

(c) The board shall select a chairman who shall serve for a period of 2 years and until a successor is elected and qualified. The chairman shall be the chief administrative officer of the board and shall have the authority to plan, direct, coordinate, and execute the powers and duties of the board.

(d) The board shall hold such meetings during the year as it deems necessary, except that the chairman, a quorum of the board, or the division may call meetings. The board shall maintain transcripts of each meeting. Such transcripts shall be available to any interested person in accordance with chapter 119.

(e) The board shall approve the bylaws or amendments thereto by unanimous vote. All other board actions or recommendations shall be approved by not less than a majority vote of employee representatives and majority vote of employer representatives, unless the bylaws otherwise provide.

(3) EXECUTIVE DIRECTOR; EXPENSES.—

(a) The board shall appoint an executive director to direct and supervise the administrative affairs and general management of the board who shall be subject to the provisions of part IV of chapter 110. The executive director may employ persons and obtain technical assistance as authorized by the board and shall attend all meetings of the board. Board employees shall be exempt from part II of chapter 110.

(b) In addition to per diem and travel expenses authorized by s. 112.061, board members shall receive compensation of \$50 for each full day allocable to business of the board. The board shall promulgate procedures defining "business" for purposes of receiving compensation. Such procedures shall require each member to maintain time records and submit such records to the executive director on a monthly basis. Failure to timely file such monthly record shall extinguish the member's entitlement to compensation for the subject period. Travel outside this state shall be approved by the secretary of the department. Expenses associated with the administration of this section shall be appropriated and paid for from the trust fund created by s. 440.50.

Section 41. Section 440.442, Florida Statutes, is amended to read:

440.442 Code of Judicial Conduct.—The Chief Judge and judges of compensation claims shall observe and abide by the Code of Judicial Conduct as provided in this section adopted by the Supreme Court of Florida as of July 1, 1978, as well as all amendments thereto that are hereafter adopted by the court, except for the provisions of subparagraph C of Canon 6. Any material violation of a canon of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of such Chief Judge, or judge of compensation claims or appeals commissioner by the Governor.

(1) A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.—An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective.

(2) A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.—

(a) A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his

office to advance the private interest of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

(3) A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY.—The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards with respect to adjudicative responsibilities apply:

(a) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(b) A judge should maintain order and decorum in proceedings before him.

(c) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE.—A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

(a) He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(b) He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(c) He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fundraising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(5) A JUDGE SHOULD REGULATE HIS EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES.—

(a) Avocational activities.—A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

(b) Civic and charitable activities.—A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

2. A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at any organization's fundraising events, but he may attend such events.

3. A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(c) Financial activities.—

1. A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

2. Subject to the requirements of subsection (1), a judge in an individual or corporate capacity may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business, except a closely held family business that does not conflict with subsection (1).

3. A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualifications.

4. A judge should not accept a gift, bequest, favor, or loan from anyone except as follows:

a. A judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

b. A judge may accept ordinary hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

c. A judge may accept any other gift, bequest, favor, or loan exceeding \$100 only if the donor is not a party or other person whose interests have recently come or may likely come before him in the immediate future.

5. A judge should make a reasonable effort to inform himself about the personal financial interests of members of his family residing in his household and shall report any gift, bequest, favor, or loan received thereby of which he has knowledge and which tends to reflect adversely on his impartiality, in the same manner as he reports compensation in Canon 6.

6. For the purposes of this section, "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

7. A judge is not required by this code to disclose his income, debts, or investments, except as provided in this code and Canons 3 and 6.

8. Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

(6) A JUDGE SHOULD CONDUCT FISCAL MATTERS IN A MANNER THAT WILL NOT GIVE THE APPEARANCE OF INFLUENCE OR IMPROPRIETY.—A judge should regularly file public reports as required by s. 8, Art. II of the State Constitution, and should publicly report gifts. Additional financial information shall be filed with the Judicial Qualifications Commission to ensure full financial disclosure.

(a) Compensation for quasi-judicial and extrajudicial services and reimbursement of expenses.—A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the impression of impropriety subject to the following restrictions:

1. Compensation.—Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

2. Expense reimbursement.—Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, to his spouse. Any payment in excess of such an amount is compensation.

(b) Public financial reporting.—

1. Income and assets.—A judge shall file such public report as may be required by law for all public officials to comply fully with the provisions of s. 8, Art. II of the State Constitution. The form for public financial disclosure shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed in the office of the Secretary of State on the date prescribed by law, and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

2. Gifts.—A judge shall file a public report of all gifts which are required to be disclosed under Canon 5C(4)(c) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed in the office of the Secretary of State on September 15, 1994, and on or before July 1 of each year thereafter. A copy shall be filed simultaneously with the Judicial Qualifications Commission.

Section 42. Subsections (1), (2), and (3) of section 440.45, Florida Statutes, are amended 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, at least one of which shall be a member of a minority group as defined in s. 288.703(3), 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 members electors, at least one of which shall be a member of a minority group as defined in s. 288.703(3), one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor; and five electors, at least one of which shall be a member of a minority group as defined in s. 288.703(3), 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. Beginning July 1, 1994, each member of the statewide nominating commission shall serve a term of 4 years, except as provided in this section. By July 1, 1994, the board and the Governor shall make appointments to the statewide nominating commission. By August 1, 1994, the members appointed by the board and by the Governor shall select and appoint the five elector members. Members who presently serve on the commission may be reappointed. Each of the five members appointed by the board shall be appointed for a 4-year term and for 4-year terms thereafter. Each of the five members appointed by the Governor shall be appointed for a 4-year term and for 4-year terms thereafter. Each of the five elector members shall be appointed for a 2-year term and for 4-year terms thereafter. One member of the commission shall be elected by the members to serve as chairman. Vacancies on the commission shall be filled for the unexpired portion of the term in the same manner as original appointments to the commission. If one attorney who is actively engaged in the practice of workers' compensation law is appointed to serve on the nominating commission, then a second practicing workers' compensation attorney must be appointed; one attorney must represent claimants and one must represent employers or carriers. The workers' compensation attorneys on the commission must always be equally balanced between claimant and defense attorneys. 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. A report by the commission regarding retention shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the judge, 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 may 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.

(3) The judges of compensation claims shall be within the Department of Labor and Employment Security under the secretary of that department. To assist the secretary in the administration of the judges of compensation claims, there shall be created the position of Chief Judge within the secretary's office. The Chief Judge is not subject to the provisions of subsection (1), subsection (2), subsection (4), or subsection (6), but shall be appointed directly by the Governor and shall have had 5 3 years' experience in the practice of law in this state. The Chief Judge shall have the authority to appoint such personnel as are necessary in the discharge of the his duties of the office. The personnel of the division shall cooperate with the Chief Judge in the discharge of the his duties of the office. The duties of the Chief Judge include, but are not limited to, the following:

(a) To be responsible for the coordination of the judges of compensation claims and to serve as liaison between the judges of compensation claims and the Division of Workers' Compensation of the Department of Labor and Employment Security, between the judges of compensation claims and the courts, and between all the aforementioned parties and the department.

(b) To serve as liaison for the judges of compensation claims, making certain that all requirements of personnel, office space, equipment, supplies, research material, law books, and court reporters are provided when needed.

(c) To supervise and review the performance and conduct of the judges of compensation claims and, to the extent permitted by the Florida Supreme Court, to promulgate uniform rules to govern judicial conduct, performance and procedures related to case disposition applicable to all judges of compensation claims. To determine the consensus of judges of compensation claims as relates to matters of concern to them and to present these views to the secretary on behalf of the judges of compensation claims.

(d) To act as liaison between the courts and the judges of compensation claims for the purpose of promoting the workers' compensation jurisprudence and improving the system of disposition of cases at the trial and appellate levels, including, but not limited to, discussions regarding amendments in procedural rules, guidelines for preparation of transcripts on appeal, and dissemination of case law decisions.

(e) To arrange for exchange between the judges of compensation claims and the division in matters of mutual interest, including, but not limited to, caseload distribution, case disposition, needed changes in forms used by the judges of compensation claims, and determination of reasons for delays in the issuing of orders.

(f) To serve as liaison with the Division of Workers' Compensation, the Workers' Compensation Section of The Florida Bar, the Workers'

Compensation Oversight Board, the Workers' Compensation Advisory Council, and the department.

(g) To serve as a pro hac vice judge of compensation claims in the various parts of the state.

(h) To assure a blind system of case assignment among judges of compensation claims within the various districts and to undertake appropriate measures to keep dockets current for the judges of compensation claims.

(i) To be responsible for the training and orientation of new judges of compensation claims.

(j) To ensure that administrative matters, including hearing delays, docket scheduling, review of joint petitions after entry by the judges of compensation claims, and all matters of case distribution, will be effectively handled in accordance with this chapter and to report any failure to follow clear provisions of the law and other flagrant violations in these matters directly to the secretary and the Governor. The Chief Judge may recommend that the Governor consider the removal of any judge of compensation claims for cause. In no event may the Chief Judge, in handling these duties, interfere in any way with the judicial discretion of any court, or the quasi-judicial discretion of the judges of compensation claims, in the independent decisions on matters before same for decision.

(k) Any and all other matters deemed which he deems necessary for the efficient handling of workers' compensation cases.

Section 43. Section 440.48, Florida Statutes, is amended to read:

440.48 *Division reports Annual report.*—

(1) Annually, on or before ~~October March~~ 15, the Department of Labor and Employment Security shall make 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, a report of the administration of this chapter for the preceding calendar year, including a detailed statement of the receipts of and expenditures from the fund established in s. 440.50, ~~a statement of the causes of the accidents leading to the injuries for which the awards were made, together with such recommendations as the department deems advisable.~~ The report shall include an analysis of all claims for which the employee lost more than 7 days from work in the last 10 years. This analysis shall include, but not be limited to, an analysis of all open and closed claims by date of accident, the type and duration of indemnity and medical benefits paid, the type, duration, and amount of indemnity and medical benefits anticipated to be paid on such claims, demographics of injured employees, cause of injury, accident type, body part affected, the number of litigated cases, amount of attorney's fees paid, and type and cost of any rehabilitation benefits provided.

(2) 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 of the various types of injury, and shall include an analysis of the causes of such injuries. The division shall make available to each employer and insurer in this state covered by the workers' compensation law the data relevant to its work force. The report shall also be made available to the insurers authorized to write workers' compensation insurance in this state.

(3) The division may obtain data for its reporting functions under this chapter by requiring insurers providing services under this chapter, including legal and administrative services, to file quarterly or annual compilations of aggregate data. It is the intent of this section to restrict and limit the number of filings required and the number of transactions processed by the division while assuring data integrity.

Section 44. Section 440.49, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 440.49, F.S., for present text.)

440.49 Reemployment of injured workers; rehabilitation.—

(1) DEFINITIONS.—As used in this section:

(a) "Suitable gainful employment" means employment or self-employment which is reasonably attainable in light of the employee's age, education, work history, transferrable skills, 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.

(b) "Reemployment assessment" means a written assessment performed by a qualified rehabilitation provider that includes a comprehensive review of the medical diagnosis, treatment, and prognosis, conferences with the employer, physician, and claimant and that recommends a cost-effective physical and vocational rehabilitation plan to assist the employee in returning to suitable gainful employment.

(c) "Medical care coordination" includes, but is not limited to, coordinating physical rehabilitation services such as medical, psychiatric, or therapeutic treatment for the injured employee, providing health training to the employee and family, and monitoring the employee's recovery. The purposes of medical care coordination are to minimize the disability and recovery period without jeopardizing medical stability, to assure that proper medical treatment and other restorative services are timely provided in a logical sequence, and to contain medical costs.

(d) "Vocational evaluation" means a review of the employee's physical and intellectual capabilities, aptitudes and achievements, and work-related behaviors to identify the most cost-effective means for the employee to return to suitable gainful employment.

(e) "Reemployment services" means services that include, but are not limited to, vocational counseling, job-seeking skills training, ergonomic job analysis, transferable skills analysis, selective job placement, labor market surveys, and arranging other services such as education or training, vocational and on-the-job, which may be needed by the employee to secure suitable gainful employment.

(f) "Qualified rehabilitation provider" means a rehabilitation nurse, rehabilitation counselor, vocational evaluator, rehabilitation facility, or agency approved by the division as qualified to provide reemployment assessments, medical care coordination, reemployment services, or vocational evaluations pursuant to this chapter.

(g) "Carrier" means group self-insurance funds or individual self-insureds authorized pursuant to this chapter and commercial funds or insurance entities authorized to write workers' compensation insurance pursuant to chapter 624.

(h) "Reemployment status review" means a review to determine whether an injured employee is at risk of not returning to work.

(2) INTENT.—It is the intent of this section to implement a systematic review by carriers of the factors which are predictive of longer-term disability and to encourage the provision of medical care coordination and reemployment services necessary to assist the employee in returning to work as soon as is medically feasible.

(3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

(a) When an employee who has suffered an injury compensable under this chapter is unemployed 60 days after the date of injury and is receiving benefits for temporary total disability, temporary partial disability, or wage loss, and has not yet been provided medical care coordination and reemployment services voluntarily by the carrier, the carrier shall determine whether such employee is likely to return to work and shall report its determination to the division. The carrier shall thereafter determine the reemployment status of the employee at 90-day intervals as long as the employee remains unemployed, is not receiving medical care coordination or reemployment services, and receiving the benefits specified above.

(b) If medical care coordination or reemployment services are voluntarily undertaken within 60 days of the date of injury, such services may continue to be provided as agreed by the employee and the carrier.

(4) REEMPLOYMENT ASSESSMENTS.—

(a) The carrier may require the employee to receive a reemployment assessment as it deems appropriate. However, the carrier is encouraged to obtain a reemployment assessment:

1. If the carrier determines that the employee is at risk of remaining unemployed.
2. In cases of catastrophic or serious injury.

(b) The carrier shall only authorize a qualified rehabilitation provider to provide the reemployment assessment.

The rehabilitation provider shall conduct its assessment and issue a report to the carrier, the employee, and the division within 30 days after the time such assessment is complete.

(c) If the rehabilitation provider recommends that the employee receive medical care coordination or reemployment services, the carrier shall advise the employee of the recommendation and determine whether the employee wishes to receive such services. The employee shall have 15 days after the date of receipt of the recommendation in which to agree to accept such services. If the employee elects to receive services, the carrier may refer the employee to a rehabilitation provider for such coordination or services within 15 days of receipt of the assessment report or notice of the employee's election, whichever is later.

(5) MEDICAL CARE COORDINATION AND REEMPLOYMENT SERVICES.—

(a) Once the carrier has assigned a case to a qualified rehabilitation provider for medical care coordination or reemployment services, the provider shall develop a reemployment plan which it shall submit to the carrier and employee for approval.

(b) If the rehabilitation provider concludes that training and education are necessary to return the employee to suitable gainful employment, or if the employee has not returned to suitable gainful employment within 180 days of referral for reemployment services or receives \$2,500 in reemployment services, whichever comes first, the carrier shall discontinue reemployment services and refer the employee to the division for a vocational evaluation. Notwithstanding any provision of chapter 289 or chapter 627, the cost of a reemployment assessment and the first \$2,500 in reemployment services to an injured employee shall not be treated as loss adjustment expense for workers' compensation ratemaking purposes.

(c) A carrier may voluntarily provide medical care coordination or reemployment services to the employee at intervals more frequent than those required in this section. For the purpose of monitoring reemployment, the carrier or the rehabilitation provider shall report to the division, in the manner prescribed by the division, the date of reemployment and wages of the employee. The carrier shall report its voluntary service activity to the division as required by rule. Voluntary services offered by the carrier for any of the following injuries shall be considered benefits for purposes of ratemaking: traumatic brain injury; spinal cord injury; amputation, including loss of an eye or eyes; burns of 5 percent or greater of the total body surface.

(d) If medical care coordination or reemployment services have not been undertaken as prescribed in paragraph (3)(b), a qualified rehabilitation service provider, facility, or agency that performs a reemployment assessment shall not provide medical care coordination or reemployment services for the employees it assesses.

(6) TRAINING AND EDUCATION.—

(a) Upon referral by the carrier of an injured employee as provided in this section, the division shall conduct a training and education screening to determine whether it should refer the employee for a vocational evaluation and, where appropriate, approve training and education or other vocational services for the employee. Formal training and education programs shall not be approved by the division unless it determines, after consideration of the reemployment assessment, pertinent reemployment status reviews or reports, and other relevant factors as it may prescribe by rule, that the reemployment plan is likely to result in return to suitable gainful employment. The division is authorized to expend moneys from the Workers' Compensation Administrative Trust Fund, established by s. 440.50, to secure appropriate training and education or other vocational services when necessary to satisfy the recommendation of a vocational evaluator. The division shall establish training and education standards pertaining to employee eligibility, course curricula and duration, and associated costs.

(b) When it appears that an employee who has attained maximum medical improvement requires training and education to obtain suitable gainful employment, the employer shall pay the employee additional temporary total compensation while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional period not to exceed 26 weeks, if such extended period is determined to be necessary and proper by a judge of

compensation claims. However, no carrier or employer shall be precluded from voluntarily paying additional temporary total disability compensation beyond such period. If an employee requires temporary residence at or near a facility or an institution providing training and education that is located more than 50 miles 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. An employee who refuses to accept training and education that is recommended by the vocational evaluator and deemed necessary by the division shall be subject to a 50-percent reduction in weekly compensation benefits, including wage-loss benefits, as determined pursuant to s. 440.15(3)(b).

(7) PROVIDER QUALIFICATIONS.—

(a) The division shall investigate and maintain a directory of each qualified public and private rehabilitation provider, facility, and agency, and shall establish by rule the minimum qualifications, credentials, and requirements that each rehabilitation service provider, facility, and agency must satisfy to be eligible for listing in the directory. Such minimum qualifications and credentials shall be based on those generally accepted within the service specialty for which the provider, facility, or agency is approved.

(b) The division shall impose a biennial application fee of \$25 for each listing in the directory, and all such fees shall be deposited in the Workers' Compensation Administrative Trust Fund.

(c) The division shall monitor and evaluate each rehabilitation service provider, facility, and agency qualified under this subsection to ensure its compliance with the minimum qualifications and credentials established by the division. The failure of a qualified rehabilitation service provider, facility, or agency to provide the division with information requested or access necessary for the division to satisfy its responsibilities under this subsection shall be grounds for disqualifying the provider, facility, or agency from further referrals.

(d) A qualified rehabilitation service provider, facility, or agency may not be authorized by an employer, carrier, or the division to provide any services, including expert testimony pursuant to this section in this state, unless such provider, facility, or agency is listed or has been approved for listing in the directory. This restriction does not apply to services provided outside this state pursuant to this section.

(e) The division, after consultation with representatives of employees, employers, carriers, rehabilitation providers, and qualified training and education providers, shall adopt rules governing professional practices and standards.

(8) CARRIER PRACTICES.—The division shall monitor the selection of providers and the provision of services by carriers pursuant to this section for consistency with legislative intent set forth in subsection (2).

(9) PERMANENT DISABILITY.—The judge of compensation claims shall not adjudicate an injured employee as permanently and totally disabled until or unless the carrier is given the opportunity to provide a reemployment assessment.

(10) LIMITATION OF LIABILITY FOR SUBSEQUENT INJURY THROUGH SPECIAL DISABILITY TRUST FUND.—

(a) Legislative intent.—Whereas it is often difficult for workers with disabilities to achieve employment or to become reemployed following an injury, and it is the desire of the Legislature to facilitate the return of these workers to the workplace, it is the purpose of this subsection to encourage the employment, reemployment, and accommodation of the physically disabled by reducing an employer's insurance premium for reemploying an injured worker and by protecting employers from excess liability for compensation and medical expense when an injury to a physically disabled worker merges with, aggravates, or accelerates his preexisting permanent physical impairment to cause a greater disability, permanent impairment, wage loss, or an increase in expenditures for temporary compensation or medical benefits 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 consid-

ered 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. "Preferred worker" means a worker who, because of a permanent impairment resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment.

2. "Preexisting permanent physical impairment" shall be limited to those conditions listed in paragraph (g)1.

3. "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. The preexisting permanent physical impairment is aggravated or accelerated as a result of the subsequent injury or occupational disease, or the preexisting impairment has contributed to the need for, medically or circumstantially, temporary compensation, medical, or attendant care and the employer has been required to pay, and has paid, temporary compensation, medical, or attendant-care benefits for the aggravated preexisting permanent physical impairment.

d. Death would not have been accelerated had the permanent physical impairment not existed.

(c) Preferred worker program.—The division shall issue identity cards to preferred workers upon request by qualified employees and shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification records and upon the employee's certification of employment.

(d) Deductible.—No reimbursement can be obtained for the first \$10,000 of benefits paid which otherwise qualify for reimbursement under this section. This deductible shall not apply to claims by employers for reimbursement under the provisions of paragraph (c).

(e) Permanent impairment, wage-loss benefits, permanent total disability, temporary benefits, medical benefits, or attendant care 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 (g), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (i) 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 (g), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (i) for 60 percent of all compensation for wage loss which the employer has been required to provide pursuant to s. 440.15(3)(b).

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 (g), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (i) for 60 percent of all compensation for permanent total disability.

4. Temporary compensation and medical benefits; aggravation or acceleration of preexisting condition or circumstantial causation.—If an employee who has a preexisting permanent physical impairment experiences an aggravation or acceleration of the preexisting permanent physical impairment as a result of an injury or occupational disease arising out of, and in the course of, his employment or suffers an injury as a result of a merger as defined in sub-subparagraph (b)3.a., the employer shall provide all benefits provided by this chapter but, subject to the limitations specified in paragraph (g), such employer shall be reimbursed by the Special Disability Trust Fund created by paragraph (i) for 50 percent of its payments for temporary, medical, and attendant-care benefits.

(f) When death results.—If death results from the subsequent permanent impairment pursuant to paragraph (e) 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 (g), such employer shall be reimbursed from the Special Disability Trust Fund created by this subsection for the last 60 percent of all compensation allowable and paid for such death and for 60 percent of the amount paid as funeral expenses.

(g) Employer knowledge.—No reimbursement shall be allowed under this subsection unless it is established that the preexisting permanent physical impairment was known to the employer prior to the occurrence of the subsequent injury or occupational disease. However, any employer, who has in writing asked the employee of the existence of a pre-existing permanent physical impairment and the employee has not disclosed it to the employer, shall be eligible for reimbursement under this subsection.

1. "Preexisting permanent physical impairment" is limited to:
 - a. Epilepsy.
 - b. Diabetes.
 - c. Cardiac disease.
 - d. Amputation of foot, leg, arm, or hand.
 - e. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 80 percent bilaterally.
 - f. Residual disability from poliomyelitis.
 - g. Cerebral palsy.
 - h. Multiple sclerosis.
 - i. Parkinson's disease.
 - j. Mensectomy.
 - k. Patellectomy.
 - l. Ruptured cruciate ligament.
 - m. Hemophilia.
 - n. Chronic osteomyelitis.
 - o. Surgical or spontaneous fusion 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. One or more back injuries resulting in disability over a total of 120 days, if substantiated by a doctor's opinion that there was a preexisting impairment to the claimant's back.

v. Total deafness.

w. 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.

x. Any permanent physical condition which, prior to the industrial accident or occupational disease, constitutes a 10-percent impairment of the body as a whole.

y. 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 attorney's 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 provided in s. 440.15.

(h) Reimbursement of employer.—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.

(i) 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.

(j) 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.

(k) 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.

Section 45. Paragraph (a) of subsection (1) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(e) and the funding of the Bureau of Workers' Compensation Fraud within the Department of Insurance. Such fund shall be administered by the division. 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.

Section 46. Paragraph (b) of subsection (6) of section 440.51, Florida Statutes, is amended to read:

440.51 Expenses of administration.—

(6)

(b) The Department of Insurance ~~division~~ may require from each self-insurer, at such time and in accordance with such regulations as the Department of Insurance ~~division~~ may prescribe, reports in respect to wages paid, the amount of premiums such self-insurer would have to pay if insured, and all payments of compensation made by such self-insurer during each prior period, and may determine the amounts paid by each self-insurer and the amounts paid by all self-insurers during such period. For the purposes of this section, the payroll records of each self-insurer shall be open to annual inspection and audit by the Department of Insurance ~~division~~ or its authorized representative, during regular business hours; and if any audit of such records of a self-insurer discloses a deficiency in the amounts reported to the Department of Insurance ~~division~~ or in the amounts paid to the Department of Insurance ~~division~~ by such self-insurer pursuant to this section, the Department of Insurance ~~division~~ may assess the cost of such audit against such self-insurer.

Section 47. Section 440.515, Florida Statutes, is amended to read:

440.515 Reports from self-insurers; confidentiality.—The Department of Insurance ~~division~~ shall maintain the reports filed in accordance with s. 440.51(6)(b) as confidential and exempt from the provisions of s. 119.07(1), and such reports shall be released only for bona fide research or educational purposes or after receipt of consent from the employer. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 48. Section 440.572, Florida Statutes, is amended 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)(f)(~~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 49. Section 440.593, Florida Statutes, is created to read:

440.593 Data collection by division; methods.—

(1) The division may collect any data, information, or forms required by this chapter by the use of a statistically valid sample of the data, information, or form, or by collecting summarized or compiled, non-case-specific data, pursuant to division rule.

(2) The division may require submission of data or information mandated by this chapter by compatible electronic format.

Section 50. Section 440.595, Florida Statutes, is created to read:

440.595 Pilot program for designated physicians.—

(1) It is the intent of this pilot to determine whether litigation can be avoided and costs reduced through the designation of physicians or health care facilities at accessible locations throughout the state to provide all medical opinions rendered in the provision or litigation of benefits under this chapter, other than opinions rendered by treating physicians.

(2) For purposes of this pilot:

(a) "Medical opinions" includes, but is not limited to, disability ratings and opinions provided by independent medical examiners, expert medical advisors, and health care providers that are not authorized to treat the injured employee, except that the term "medical opinions" shall not include treating physicians.

(b) "Participating parties" means those employers and employees that have agreed to participate in this pilot.

(3) By January 1, 1994, the division shall contract with health care providers through managed care arrangements in two or more counties of the state to provide all medical opinions under this chapter on behalf of participating parties. The division shall solicit the participation of employers and employees who reside or are located within a 100-mile radius of each designated health care group, facility, or organization.

Upon completion of the division's efforts to solicit participating parties, the pilot shall commence and run for a period of 1 year.

(4) All employers and employees who elect to participate shall be bound by rules promulgated by the division to effect this pilot and shall not be excused from participation in the pilot absent clear and convincing evidence of fraud or duress.

(5) The department shall make an interim report on or before November 1, 1994, and a final report subsequent to the termination of the pilot to the Oversight Board and the Governor on the activities, findings, and recommendations of the department relative to the pilot program. The department shall monitor, evaluate, and report the following information regarding the provision of services pursuant to the pilot program:

- (a) Cost savings.
- (b) Effectiveness.
- (c) Effect upon the litigation rate and length of time between the date of claim initiation and the date of resolution.
- (d) Complaints from injured workers, employers, carriers, medical providers, and judges of compensation claims.

(6) The division is authorized to promulgate all rules necessary to effect the purposes of this section, including but not limited to, emergency rules establishing pilot program organization and procedures. All salaries and expenses associated with this section shall be paid out of the fund established in s. 440.50.

Section 51. Section 440.5951, Florida Statutes, is created to read:

440.5951 Pilot program for legal assistance to injured workers.—

(1) It is the intent of the Legislature to determine whether the costs of the workers' compensation system can be effectively contained and benefits can be provided to injured workers on a more timely basis by providing injured workers an alternative to private legal counsel, while ensuring injured workers adequate legal representation at each critical stage of the system. Therefore, the Legislature authorizes the establishment of one or more pilot programs to be administered by the department. Each pilot program shall terminate 3 years after the first date of operation of the program, unless extended by act of the Legislature. In order to implement these programs, the department is authorized to:

- (a) Establish and maintain an Office of Legal Assistance within the Department of Labor and Employment Security to provide legal assistance to injured workers entitled to benefits pursuant to chapter 440, F.S.
- (b) Adopt rules implementing the organization and procedures of the Office of Legal Assistance or any other provision this section, and promulgate permanent rules as needed.
- (c) Collect attorneys' fees as awarded under this chapter and deposit them in the Workers' Compensation Administration Trust Fund.

(2) All salaries and other expenses associated with this pilot program shall be paid out of the fund established in s. 440.50.

(3) The department shall make an interim report on or before January 1, 1995, and each January 1st until the final report on or before the termination date specified in subsection (1), to the President of the Senate, the Speaker of the House of Representatives, the Majority and Minority Leaders of the Senate, the House of Representatives, and the Governor on the activities, findings, and recommendations of the department relative to the pilot program. The department shall monitor, evaluate, and report the following information regarding the provision of services pursuant to the pilot program:

- (a) Cost savings.
- (b) Effectiveness.
- (c) Effect upon timely provision of benefits to injured workers.
- (d) Complaints from injured workers, employers, carriers, medical providers, and judges of compensation claims.

Section 52. Section 442.001, Florida Statutes, is created to read:

442.001 Short Title.—This chapter may be cited as the "Florida Occupational Safety and Health Act."

Section 53. Section 442.002, Florida Statutes, is created to read:

442.002 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the definitions contained in s. 440.02 are incorporated herein by reference.

Section 54. Section 442.003, Florida Statutes, is created to read:

442.003 Legislative intent.—It is the intent of the Legislature to enhance occupational safety and health in the state through the implementation and maintenance of policies, procedures, practices, rules, and standards in an effort to reduce the incidence of employee accidents, occupational diseases, and fatalities compensable under chapter 440. The Legislature further intends that the Division of Safety of the Department of Labor and Employment Security develop a means by which it can identify individual employers with high frequency of work-related injuries; conduct safety inspections of employers; and assist employers in the development and implementation of safety and health programs. In addition, it is the intent of the Legislature that the Division of Safety of the Department of Labor and Employment Security administer the provisions of this chapter; provide assistance to employers, employees, and insurance carriers; and enforce the policies, rules, and standards set forth herein.

Section 55. Subsection (5) of section 440.09, Florida Statutes, is renumbered as section 442.004, Florida Statutes, and amended to read:

442.004 Rules.—

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

Section 56. Section 440.152, Florida Statutes, is renumbered as section 442.005, Florida Statutes.

Section 57. Subsection (1) of section 440.46, Florida Statutes, is renumbered as section 442.006, Florida Statutes, and amended to read:

442.006 Powers and duties of the division.—

(1)(a) The division shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this chapter, and shall make to the Legislature and employers and carriers such recommendations as it may deem proper as to the best means of preventing injuries. In making such studies and investigations, the division is authorized:

(a)1. To cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this chapter, or any agency or department of the state engaged in enforcing any laws to assure safety for employees.

(b)2. To permit any such agency or department to have access to the records of the division.

(2)(b) The division and its authorized representatives shall have the power and authority to enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and making inspections for the proper enforcement of this chapter. Any employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to permit investigation and inspection pursuant to this paragraph shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 58. Subsection (1) of section 440.56, Florida Statutes, is renumbered as section 442.007, Florida Statutes, and amended to read:

442.007 Safety; employer responsibilities.—

(1) Every employer as defined in s. 440.02 shall furnish employment which shall be safe for the employees therein, furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the life, health, and safety of such employees. As used in this section, the terms "safe" and "safety" as applied to any employment or place of employment shall mean such freedom from danger as is reasonably necessary for the protection of the life, health, and safety of employees or the public, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the employer by the provisions of

this ~~chapter section~~ or by the division under authority of this ~~chapter section~~ shall not include personal apparel and protective devices that replace personal apparel normally worn by employees during regular working hours.

Section 59. Subsection (2) of section 440.56, Florida Statutes, is renumbered as section 442.008, Florida Statutes, and amended to read:

442.008 Division authority.—

(2) The division shall have the power, jurisdiction, and authority:

(1)(a) To investigate and prescribe what safety devices, safeguards, or other means of protection shall be adopted for the prevention of accidents in every employment or place of employment, and to determine what suitable devices, safeguards, or other means of protection for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments, or places of employment, and to make, amend, or repeal reasonable rules for the prevention of accidents and the prevention of industrial or occupational diseases.

(2)(b) To ascertain, fix, and order such reasonable standards and rules for the construction, repair, and maintenance of places of employment as shall render them safe. Such rules and standards shall be adopted in accordance with chapter 120.

(3) To assist employers in the development and implementation of employee safety training programs by contracting with professional safety organizations.

Section 60. Subsection (3) of section 440.56, Florida Statutes, is renumbered as section 442.009, Florida Statutes, and amended to read:

442.009 Right of entry.—

(3) The division and its authorized representatives shall have the power and authority to enter at any reasonable time any place of employment for the purpose of examining any tool, appliance, or machinery used in such employment and of making inspections for the proper enforcement of this section. No employer or owner shall refuse to admit any member of the division or its authorized representatives to any place of employment.

Section 61. Section 442.010, Florida Statutes, is created to read:

*442.010 Employers with work-related injuries.—*The division shall develop a means by which it can identify individual employers whose employees have a high frequency of work-related injuries. The division shall develop safety and health programs for these employers. Insurers shall distribute these safety and health programs to the employers so identified by the division. Those employers identified by the division as having high frequency of work-related injuries shall implement a division-developed safety and health program. The division shall carry out safety inspections of those employers so identified to ensure compliance with the safety and health programs and to assist such employers in reducing the number of work-related injuries. The division may not assess penalties as the result of such inspections, except as provided by s. 442.013. Copies of any report made as the result of such an inspection must be provided to the employer. Employers may submit their own safety and health programs to the division for approval in lieu of using the division-developed safety and health program. The division must promptly review the program submitted and approve or disapprove it. Upon approval by the division, the program must be implemented by the employer. If the program is not approved or if a program is not submitted, the division-developed program shall be implemented by the employer. The division shall promulgate rules setting forth the criteria for safety and health programs.

Section 62. Subsection (5) of section 440.56, Florida Statutes, is renumbered as section 442.011, Florida Statutes, and amended to read:

442.011 Carrier consultations.—

(5) All insurance carriers writing workers' compensation insurance in this state and all employers qualifying as self-insurers under ss. 440.38 and 624.4621 440.57 shall provide safety consultations to each of their policyholders requesting such consultations. All such carriers and self-insurers shall inform their policyholders of the availability of such consultations and shall report annually on their safety and health programs and consultations to the division in such form and at such time as the division prescribes. The division shall be responsible for approving all safety and health programs. The division shall aid all insurance carriers

and self-insurers in establishing their safety programs by setting out ~~criteria guidelines~~ in an appropriate format.

Section 63. Subsection (6) of section 440.56, Florida Statutes, is renumbered as section 442.013, Florida Statutes, and amended to read:

442.013 Employer penalties.—

(6) If any employer violates or fails or refuses to comply with the provisions of this chapter, any reasonable rule adopted by the division, in accordance with chapter 120, for the prevention of injuries, accidents, or industrial or occupational diseases, or any lawful order of the division in connection with the provisions of this chapter, section or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division under pursuant to this chapter 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 \$5,000 \$1,000. Each day such violation, omission, failure, or refusal continues, after the employer has been given notice thereof in writing, constitutes as herein provided shall be deemed a continuing violation. However, and the total penalty for each violation may not exceed \$50,000 \$25,000. The division shall adopt rules requiring penalties commensurate with the frequency, and severity, or both, of safety violations. Any The hearing held under this section shall be held in the county in which 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 64. Subsection (8) of section 440.56, Florida Statutes, is renumbered as section 442.014, Florida Statutes, and amended to read:

442.014 Cooperation with Federal Government.—

(8) The division shall cooperate with the Federal Government so that duplicate inspections will be avoided yet assure safe places of employment for the citizens of this state.

Section 65. Subsection (9) of section 440.56, Florida Statutes, is renumbered as section 442.015, Florida Statutes, and amended to read:

442.015 Failure to implement safety and health programs; cancellations.—

(9) In the event that an employer which is found by the division to have high frequency or severity of work-related injuries fails to implement a safety and health training program, the carrier or self-insurer's fund which is providing coverage for such employer may cancel the contract for insurance with such employer. In the alternative, the carrier or fund may terminate any discount or deviation granted to such employer for the remainder of the term of the policy. In the event of such a cancellation of the policy or the discount or deviation, the carrier shall make such reports as are required by law.

Section 66. Section 442.016, Florida Statutes, is created to read:

*442.016 Expenses of administration.—*The total expenses of administration of this chapter shall be estimated annually and provided to the Division of Workers' Compensation of the Department of Labor and Employment Security for inclusion under s. 440.51. Such amounts as may be needed to administer this chapter shall be disbursed from the fund established pursuant to s. 440.50, in the manner provided in that section.

Section 67. Section 442.017, Florida Statutes, is created to read:

*442.017 Refusal to admit; penalty.—*The division and its authorized representatives may enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and conducting inspections for the proper enforcement of this chapter. Any employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to allow investigation and inspection pursuant to this section, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 68. Section 442.018, Florida Statutes, is created to read:

442.018 Employee rights and responsibilities.—

(1) Each employee of an employer covered under this chapter shall comply with rules adopted by the division and with reasonable workplace safety and health standards, rules, policies, procedures, and work prac-

tices established by the employer. An employee who knowingly fails to comply with the provisions of this subsection may be disciplined or discharged by the employer.

(2) An employer may not discharge, threaten to discharge, cause to be discharged, intimidate, coerce, otherwise discipline, or in any manner discriminate against any employee for any of the following reasons:

(a) The employee has requested information regarding safety and health, filed a complaint or suit, or instituted or caused to be instituted a proceeding under this chapter;

(b) The employee has testified or is about to testify in any proceeding in his own behalf, or on behalf of others, instituted pursuant to this chapter; or

(c) The employee has exercised any other right afforded pursuant to the provisions of this chapter.

(3) No pay, position, seniority, or other benefit shall be lost for exercising any right or for seeking compliance with any requirement of this chapter.

(4) The identity of any employee who is exercising or has exercised any right granted under this chapter shall be kept confidential by the division and is exempt from s. 119.07(1), until the identity is permitted to be made public under the laws of this state or pursuant to proceedings conducted under laws of this state. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 69. Section 442.019, Florida Statutes, is created to read:

442.019 Compliance.—Failure of an employer or insurer to comply with the provisions of this chapter or with any rules adopted under this chapter constitutes grounds for the division to seek remedies, including, but not limited to, injunctive relief, for compliance by making appropriate filings with the circuit court in and for Leon County.

Section 70. Section 442.020, Florida Statutes, is created to read:

442.020 False statements to insurers.—An employer who knowingly and willfully falsifies or conceals a material fact, makes a false, fictitious, or fraudulent statement or representation, makes or uses any false document knowing the document contains any false, fictitious, or fraudulent statement or entry to an insurer of workers' compensation insurance under this chapter commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 71. Section 442.021, Florida Statutes, is created to read:

442.021 Insurer penalties.—If any insurer violates or fails or refuses to comply with any provision of this chapter or any rule or order adopted under this chapter, the division may, in accordance with chapter 120, assess against the insurer a civil penalty for each violation, failure, or refusal. The penalty for each violation, failure, or refusal shall not be less than \$100 or more than \$5,000 for each day the violation, failure, or refusal continues after the insurer has been given written notice thereof. The cumulative penalty for each violation, failure, or refusal shall not exceed \$50,000. The division shall adopt rules providing for penalties for noncompliance, by insurers, with the provisions of this chapter.

Section 72. Section 442.022, Florida Statutes, is created to read:

442.022 Preemption authority.—The division may adopt rules prescribing occupational safety and health standards that preempt the standards, procedures, or practices of other state agencies or political subdivisions when the division conducts enforcement activities in any such state agency or political subdivision. The authority of the division to adopt such standards is exclusive, notwithstanding the delegation of rulemaking authority for safety standards to other agencies or political subdivisions elsewhere in the laws of this state.

Section 73. Section 442.023, Florida Statutes, is created to read:

442.023 Matters within jurisdiction of the Division of Safety; false, fictitious, or fraudulent acts, statements, and representations prohibited; penalty; statute of limitations.—A person may not, in any matter within the jurisdiction of the Division of Safety of the Department of Labor and Employment Security, knowingly and willfully falsify or conceal a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false document, knowing the same to contain any false, fictitious, or fraudulent statement or entry. A person who violates

this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The statute of limitations for prosecution of an act committed in violation of this section is 5 years after the date the act was committed.

Section 74. Paragraph (b) of subsection (4) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; renewals; continuing education.—

(4)

(b) Each certificateholder or registrant shall provide proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. *The board shall establish by rule that a portion of the required 14 hours must deal with the subject of workers' compensation and workplace safety.* The board shall by rule establish criteria for the approval of continuing education courses and providers and may by rule establish criteria for accepting alternative non-classroom continuing education on an hour-for-hour basis.

Section 75. (1) The self-insurance regulatory functions within the Department of Labor and Employment Security are hereby transferred by a type four transfer as defined in section 20.06(4), Florida Statutes, to the Department of Insurance.

(2) The administrative rules of the agencies involved in this reorganization that are in effect immediately prior to the effective date of this act shall remain in effect until specifically changed in the manner provided by law.

(3) This act shall not affect the validity of any judicial or administrative proceeding pending on the effective date of this act, and any agency to which are transferred the powers, duties, and function relating to the pending proceeding shall be substituted as a party in interest for that proceeding.

(4) All group self-insurers authorized pursuant to s. 440.57 on the date this act becomes a law shall receive a certificate of authority to operate a group self-insurer's fund pursuant to s. 624.4621, Florida Statutes.

Section 76. Section 624.461, Florida Statutes, is created to read:

624.461 Definition.—For the purposes of this act, "Self-insurance fund" shall mean both commercial self-insurance funds organized pursuant to s. 624.462 and group self-insurance funds organized pursuant to s. 624.4621. "Self-insurance fund" does not include a governmental self-insurance pool created pursuant to s. 768.28(14).

Section 77. Subsection (5) of section 624.462, Florida Statutes, is amended to read:

624.462 Commercial self-insurance funds.—

(5) A commercial self-insurance fund shall ~~not~~ participate in the Florida Group Self-Insurer's Insurance Guaranty Fund Association.

Section 78. Section 440.57, Florida Statutes, is renumbered as section 624.4621, Florida Statutes, and amended to read:

624.4621 440.57 Group self-insurance funds Pooling liabilities.—

(1) The ~~department division~~ shall adopt rules permitting two or more employers to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as a group self-insurer's fund, which shall be classified as a self-insurer, and each employer member of such approved group shall be known as a group self-insurer's fund member and shall be classified as a self-insurer as defined in this chapter. The agreement entered into under this section may provide that the pool will be liable for 80 percent, and the employer member will be liable for 20 percent, of the medical benefits due any employee for an injury compensable under this chapter up to the amount of \$5,000. One hundred percent of the medical benefits above \$5,000 due to an employee for one injury shall be paid by the pool. The agreement may also provide that each employer member will be responsible for up to the first \$500 of medical benefits due each of its employees for each injury. The claim shall be paid by the pool, regardless of its size, which shall be reimbursed by the employer for any amounts required to be paid by the employer under the agreement.

(2) The ~~department division~~ shall adopt rules:

(a) Requiring monetary reserves to be maintained by such self-insurers to insure their financial solvency; and

(b) Governing their organization and operation to assure compliance with such requirements.

(3) The ~~department division~~ shall promulgate rules implementing the reserve requirements in accordance with accepted actuarial techniques.

(4) Any self-insurer established under this section, except for self-insurers which are state or local governmental entities, shall be required to carry reinsurance in accordance with rules promulgated by the ~~department division~~.

(5) No dividend or premium refund of any self-insurer established under this section, otherwise earned, shall be made contingent upon continued membership in the fund, renewal of any policy, or the payment of renewal premiums for membership in the fund or on any policy issued by such self-insurer. Prior to making any dividend or premium refund, the group self-insurer shall submit to the ~~department division~~ the following information:

(a) An audited certified financial statement.

(b) An annual report of financial condition.

(c) A loss reserve review by a qualified actuary.

The required information listed in paragraphs (a)-(c) shall be submitted annually, no later than 7 months after the end of the group self-insurer's fund year. No request for such dividend or premium refund may be made prior to the filing of the required information. The request for such dividend or premium refund shall include a resolution of the board of trustees of the group self-insurer requesting approval of a specific amount to be distributed. Any dividend, premium refund, or premium discount or credit shall in no manner discriminate on the basis of continued coverage or continued membership in the group self-insurer. The ~~department division~~ shall review such request and shall issue a decision within 60 days of the filing. Failure to issue a decision within 60 days shall constitute an approval of such request. Any dividend or premium refund approved by the ~~department division~~ for distribution which cannot be paid to the applicable member or policyholder or former member or policyholder of the group self-insurer because the former member or policyholder cannot be reasonably located shall become the property of the group self-insurer.

(6) The ~~department division~~ may impose civil penalties not to exceed \$100 per occurrence for violations of the provisions of this chapter or rules adopted pursuant hereto.

(7) Premiums, contributions, and assessments received by a group self-insurer's fund are subject to ss. 624.509(1) and (2) and 624.5092, except that the tax rate shall be 1.6 percent of the gross amount of such premiums, contributions, and assessments.

(8) This section does not apply to any program, intergovernmental agreement, cooperative effort, consortium, or agency through which two or more governmental entities, without pooling their liabilities, administer the payment of workers' compensation to their respective employees.

(9) A group self-insurance fund shall participate in the Florida Group Self-Insurer's Guaranty Fund Association.

(10) By July 1, 1999, all group self-insurance funds organized pursuant to this subsection shall be in full compliance with ss. 624.464, 624.466, 624.468, and 624.469.

Section 79. Section 440.575, Florida Statutes, is renumbered as section 624.4622, Florida Statutes, and amended to read:

624.4622 440.575 Local government self-insurance funds 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 440, provided the local government pool that is created must:

(a) Have annual normal premiums in excess of \$5 million;

(b) Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary;

(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 ~~department division~~; and

(d) Have a governing body which is comprised entirely of local elected officials.

(2) A local government pool that meets the requirements of this section is not subject to the provisions of s. ~~624.4621 440.57~~ and is not required to file any report with the ~~department division~~ pursuant to s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. ~~624.4621 440.57~~. If any of the requirements of this section are not met, the local government pool is subject to the requirements of s. ~~624.4621 440.57~~.

Section 80. Section 440.571, Florida Statutes, is renumbered as section 624.46225, Florida Statutes, and is amended to read:

624.46225 440.571 Self-insured public utilities.—A self-insured public utility, as authorized by s. 440.38(1)(c)(~~b~~), may assume by contract the liabilities under this chapter of contractors and subcontractors, or each of them, employed by or on behalf of such public utility when performing work on or adjacent to property owned or used by the public utility.

Section 81. Section 624.463, Florida Statutes, is amended to read:

624.463 Conversion of ~~commercial~~ self-insurance fund.—

(1) A ~~commercial~~ self-insurance fund may become a domestic mutual insurer under a plan and procedure which are approved by the department.

(2) The department may not approve any plan or procedure unless:

(a) It is equitable to the ~~commercial~~ self-insurance fund members; and

(b) The requirements imposed as to the formation of domestic mutual insurers are satisfied.

Section 82. Section 624.473, Florida Statutes, is amended to read:

624.473 Dividends.—A ~~commercial~~ self-insurance fund shall obtain the approval of the department prior to paying any dividend or refund to its members. No such dividend or refund may be approved until 12 months after the last day of the fiscal year for which the dividend or refund is payable, or such later time as the department may require in accordance with sound actuarial principles.

Section 83. Subsection (1) of section 624.474, Florida Statutes, is amended to read:

624.474 Assessments.—

(1) The trustees of a self-insurance fund operating as a trust, or the corporate directors of a self-insurance fund operating as a corporation, may assess from time to time members of a ~~commercial~~ self-insurance fund liable therefor under the terms of their policies and pursuant to this section, or the department may assess the members in the event of liquidation of the fund.

Section 84. Section 624.4741, Florida Statutes, is created to read:

624.4741 Venue in assessment actions.—In any action brought by a group self-insurance fund or a commercial self-insurance fund to collect assessments levied pursuant to this chapter, venue shall lie where the fund maintains its principal place of business, or, if the department or the Florida Group Self-Insurance Guaranty Fund Association is a party to such action, in the circuit court of Leon County.

Section 85. Subsections (1) and (3) of section 624.476, Florida Statutes, are amended to read:

624.476 Impaired ~~commercial~~ self-insurance funds.—

(1) If the assets of a ~~commercial~~ self-insurance fund are at any time insufficient to comply with the requirements of law or to discharge its liabilities, other than any liability on account of funds contributed by the trustees or others, and to meet the required conditions of financial soundness, or if a judgment against the fund has remained unsatisfied for 30 days, its trustees shall forthwith make up the deficiency or levy an assessment upon the members for the amount needed to make up the deficiency, but subject to the limitation set forth in the trust agreement or the policy.

(3) Subject to the provisions of this section, any rehabilitation, liquidation, conservation, or dissolution of a ~~commercial~~ self-insurance fund shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under part I of chapter 631 governing the rehabilitation, liquidation, conservation, or dissolution of insurers.

Section 86. Subsection (1) of section 624.480, Florida Statutes, is amended to read:

624.480 Filing, approval, and disapproval of forms.—

(1) No basic insurance policy or application form where written application is required and is to be a part of the policy or contract or printed rider or endorsement form shall be issued by a ~~commercial~~ self-insurance fund unless the form has been filed with and approved by the department.

Section 87. Subsections (1), (8), (9), and (10) of section 624.482, Florida Statutes, are amended to read:

624.482 Making and use of rates.—

(1) With respect to all classes of insurance which a ~~commercial~~ self-insurance fund shall underwrite, the rates shall not be excessive, inadequate, or unfairly discriminatory. In determining what rates, including credits and surcharges, are excessive, inadequate, or unfairly discriminatory, the department shall apply the same standards applicable to other insurers regulated by the department.

(8) A ~~commercial~~ self-insurance fund shall be required to file its rates, including credits and surcharge schedules, with the department for approval pursuant to the standards of this section and the procedures of s. 624.480(2).

(9) Any ~~commercial~~ self-insurance fund may subscribe to, or be a member of, a rating organization as prescribed in s. 627.231. A rating organization shall not discriminate against a ~~commercial~~ self-insurance fund as to conditions of subscription or membership.

(10) Any ~~commercial~~ self-insurance fund which writes workers' compensation insurance and employer's liability insurance is subject to, and shall make all rate filings for workers' compensation insurance and employer's liability insurance in accordance with, ss. 627.091, 627.101, 627.111, 627.141, 627.151, 627.171, 627.191, and 627.211.

Section 88. Section 440.58, Florida Statutes, is renumbered as section 624.483, Florida Statutes, and amended to read:

624.483 ~~440.58~~ Self-insurer members; payment of delinquent premiums and assessments.—Upon petition of the trustees of the following self-insurers groups: Printing Industry Associates, Allied Gasoline Retailers Association, Florida Plumbing and Mechanical Contractors, Florida State Retailers Association, Automotive Industries of Florida, Florida Nurserymen and Growers Association, Florida Pest Control Association, Florida Wholesalers Association, Florida Electrical Contractors, Florida Home Builders, Florida Restaurant Association, and Florida Nursing Home Association, who entered into agreements with Robert F. Coleman of Florida, Inc., as servicing agent, or any other self-insurers groups similarly situated, the ~~department division~~ shall enter its order requiring the employer members and former members of said groups liable therefor to pay all delinquent premiums and all necessary assessments, such payments to be paid to the ~~department division~~ and by it disbursed to said trustees to be used for the payment of workers' compensation claims and related compensation expenses.

Section 89. Section 624.484, Florida Statutes, is amended to read:

624.484 Registration of agent.—A ~~commercial~~ self-insurance fund shall register with and designate the Insurance Commissioner as its agent solely for the purpose of receiving service of legal documents or process.

Section 90. Section 624.486, Florida Statutes, is amended to read:

624.486 Examination.—~~Commercial~~ Self-insurance funds licensed under ss. 624.460-624.488 shall be subject to periodic examination by the department in the same manner and subject to the same terms and conditions applicable to insurers under part II of this chapter.

Section 91. Section 440.5705, Florida Statutes, is renumbered as section 624.487, Florida Statutes, and amended to read:

624.487 ~~440.5705~~ Enforcement of specified insurance provisions; adoption of rules.—The department of ~~Labor and Employment Security~~ may enforce, with respect to group self-insurance funds established or operated pursuant to s. 624.4621 ~~440.57~~, the provisions of ~~s. 624.316, s. 624.424, s. 625.091, or s. 625.305 as they relate to workers' compensation insurers~~, and may adopt rules to implement the enforcement authority granted by this section.

Section 92. Section 624.488, Florida Statutes, is amended to read:

624.488 Applicability of related laws.—In addition to other provisions of the code cited in ss. 624.460-624.488:

(1) Sections 624.155, 624.308, 624.414, 624.415, and 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); and s. 624.501;

(2) Part II of chapter 625;

(3) Applicable sections of part VI of chapter 626; s. 626.9541(1)(a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o), (q), (u), (w), and (x); and ss. 626.9561-626.9641;

(4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418, 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, 627.428, 627.702, and 627.706; part XI of chapter 627; ss. 627.912, 627.913, and 627.918; and

(5) Section 628.361(2),

shall apply to ~~commercial~~ self-insurance funds. No section of the code not expressly and specifically cited in ss. 624.460-624.488 shall apply to ~~commercial~~ self-insurance funds.

Section 93. Section 624.522, Florida Statutes, is created to read:

624.522 Insurance Commissioner's prosecutorial account.—There is created in the Insurance Commissioner's Regulatory Trust Fund, the Insurance Commissioner's prosecutorial account to which shall be credited \$120,000 annually from the Workers' Compensation Administration Trust Fund pursuant to s. 440.50(1). Such funds shall be expended only to carry out the provisions of s. 27.34 as they relate to the prosecution of workers' compensation insurance related crimes. If at the end of any fiscal year a balance of such funds remains in the Insurance Commissioner's prosecutorial account, such balance shall be retained within the account and may be appropriated for any purpose specified in s. 27.34. The Insurance Commissioner shall submit a report accounting for the expenditure of such payments to the Governor and Legislative Appropriations Committees at the close of each fiscal year.

Section 94. Subsection (9) of section 627.041, Florida Statutes, is amended to read:

627.041 Definitions.—As used in this part:

(9) "Insurer," for purposes of ss. 627.091, 627.096, 627.101, 627.111, 627.141, 627.171, 627.191, 627.211, and 627.291, includes a commercial self-insurance fund as defined in s. ~~624.4621~~ ~~624.462~~.

Section 95. Section 627.0915, Florida Statutes, is amended to read:

627.0915 Rate filings; workers' compensation, and drug-free workplace, and safe 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 and implement a safety program approved by the Division of Safety pursuant to rules adopted by the Division of Safety of the Department of Labor and Employment Security. The plan must take effect January 1, ~~1994~~ ~~1992~~, must be actuarially sound, and must state the savings anticipated to result from such drug testing and safety programs program.

Section 96. Section 627.0916, Florida Statutes, is created to read:

627.0916 Agricultural horse farms.—Notwithstanding any other provision of this chapter to the contrary, any rates, rating schedules, or rating manuals for workers' compensation and employers' liability insurance filed with the Department of Insurance shall provide for the rates of an agricultural horse farm engaged in breeding and or training to be separated into the following three rate classifications and shall be proportioned according to payroll: breeding activity involving stallions; breeding activity not involving stallions including but not limited to boarding and foaling; and training.

Section 97. Section 627.092, Florida Statutes, is amended to read:

627.092 Workers' Compensation Administrator.—There is created within the Division of ~~Insurance Company Regulation~~ *Insurer Services* of the Department of Insurance the position of Workers' Compensation Administrator to monitor carrier practices in the field of workers' compensation.

Section 98. Subsection (5) is added to section 627.101, Florida Statutes, to read:

627.101 When filing becomes effective; workers' compensation and employer's liability insurances.—

(5) Any filing by an insurer or rating organization which increases any manual rate for workers' compensation coverage shall become effective not less than 30 days after issuance of the final order by the department.

Section 99. Section 627.212, Florida Statutes, is created to read:

627.212 Workplace safety program surcharge.—The department shall approve a rating plan for workers' compensation coverage insurance that provides for carriers voluntarily imposing up to a 10-percent surcharge on the premium of a policyholder or fund member if that policyholder or fund member has been identified by the Division of Safety within the Department of Labor and Employment Security as being required to have implemented a safety program and he has failed to either establish or maintain, either in whole or in part, a safety program. The division shall adopt rules prescribing the criteria for the employee safety programs.

Section 100. Subsection (4) of section 627.311, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

627.311 Joint underwriters and joint reinsurers.—

(Substantial rewording of subsection. See s. 627.311(4), F.S., for present text.)

(4)(a) For purposes of this subsection, "insurer" means a group self-insurers' fund authorized by s. 624.4621, a commercial self-insurance fund authorized by s. 624.462, an assessable mutual insurer authorized by s. 628.6011, and an insurer licensed to write workers' compensation and employer's liability insurance in this state.

(b) The department shall establish a joint underwriting association which shall operate as a nonprofit entity. The purpose of the association shall be to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance and who are in good faith entitled to but who are unable to purchase such insurance through the voluntary market. The association shall issue policies beginning January 1, 1994. The association shall have actuarially sound rates that contemplate a zero underwriting profit and a positive contingency factor to assure that the plan is self-supporting. The association shall operate subject to the supervision of a thirteen-member board of governors to be named by the Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives, the members of which shall serve at the will of the commissioner for terms of 4 years, except for the initial terms set forth in this paragraph. The board shall consist of three insurers licensed and writing workers' compensation and employer's liability insurance in this state, who shall serve initial terms of 2 years; three group self-insurers who shall serve initial terms of 3 years, one of which may be a commercial self-insurance fund or an assessable mutual insurer writing workers' compensation and employer's liability insurance in this state; three individual self-insurers who shall serve initial terms of 2 years; one employer representative who shall serve an initial term of 3 years; one agent representative who shall serve an initial term of 2 years; the consumer advocate appointed pursuant to s. 627.0613; and the commissioner, or an employee of the department designated by the commissioner, who shall serve a term of 4 years. The Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one board member representing insurers, group self-insurers, and individual self-insurers, as provided for in this section. The President of the Senate shall appoint the agent representative and the Speaker of the House of Representatives shall appoint the employer representative. The Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives are each required to appoint at least one member of a minority group, as defined in s. 288.703(3), as a board member. After such initial terms are served,

all terms shall be for 4 years. No board member shall be an insurance carrier which provides services to the association or which has an affiliate which provides services to the association, or a group self-insurers' fund, individual self-insurer, commercial self-insurance fund, or assessable mutual insurer, which provides services to the association or which has an affiliate which provides services to the association or which is serviced by a service company or third-party administrator which provides services to the association or which has an affiliate which provides services to the association. The minutes, audits, and procedures of the board of governors shall be subject to chapter 119.

(c) The operation of the joint underwriting association shall be governed by a plan of operation which shall be prepared at the direction of the board of governors. Such plan may be changed at any time by the board of governors or upon request of the department. Such plan and all changes thereto are subject to the approval of the department. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement the provisions of this subsection, including, but not limited to, the power to borrow money.

2. Develop criteria for eligibility for coverage by the association, including, but not limited to, documented rejection by at least two insurers prior to initial coverage by the association, to reasonably assure that insureds covered under the association are unable to acquire coverage in the voluntary market. Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the association premium, provided the insurer writing the coverage adheres to the provisions of s. 627.171. Any insurer may voluntarily elect to offer coverage to any plan insured for a premium less than the plan premium.

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the association and that coverage may be available through an insurer through another agent for less cost.

4. Establish programs to encourage insurers to provide coverage to applicants to the association and to existing insureds of the association including, but not limited to, the following:

a. Establish procedures for an insurer to notify the association of its desire to provide coverage to applicants to the association or existing insureds of the association and a description of the types of risks in which the insurer is interested. The description of the desired risks shall be on a form developed by the association.

b. Develop forms and procedures designed to provide an insurer with the information necessary for an insurer to determine whether it desires to write particular applicants to the association or insureds of the association.

c. Develop procedures for notice to the association and the applicant to the association or insured of the association that an insurer will insure the applicant or insured of the association, the cost for the coverage offered, and for the selection of an insuring entity by the applicant or insured of the association.

5. Provide for policy and claims services to the insureds of the association of the nature and quality provided for insureds in the voluntary market.

6. Provide for the review of applications for coverage with the association for reasonableness and accuracy utilizing, when available, historic information regarding the insured.

7. Provide for audit procedures for auditing insureds of the association based on reasonable business judgment that are designed to maximize the likelihood of the collection of the appropriate premiums by the association.

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

9. Establish service standards for agents submitting business to the association.

10. Establish criteria and procedures to prohibit any agent who does not adhere to the established services standards from placing business

with the association or receiving directly or indirectly any commissions for business placed with the association.

11. Provide for the establishment of reasonable safety programs for all insureds in the association.

12. Authorize the association to terminate the coverage of and refuse future coverage to any insured who fails to pay premiums or assessments when due; who has failed to pay workers' compensation or employer's liability insurance premiums or assessments to an insurer, and such payments are unpaid at the time of application; or who refuses to substantially comply with any safety programs recommended by the association.

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

14. Provide for service standards for service providers, methods of determining adherence to those service standards, incentives and disincentives for service, and procedures for terminating contracts for service providers failing to adhere to service standards.

15. Provide procedures for the selection of service providers and standards for qualification as a service provider that reasonably assure that any service provider selected will continue to operate as an ongoing concern and is capable of providing the specified services in the manner required, and actively writes workers' compensation insurance in this state.

16. Provide for reasonable accounting and data reporting practices.

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

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

19. Provide for an annual report to the department on a date specified by the department and containing such information as the department may reasonably require.

(d) The association shall be funded through actuarially sound premiums charged to insureds of the association. The association may issue assessable policies with terms and conditions as prescribed by the association to:

1. Any experience-rated employer that has been insured by the association for 2 years or more and which has an experience modification that increases premiums;

2. An employer that is not experience-rated that has been insured by the association for 2 years and has one or more lost time losses or a total of three losses during the prior 2 years; or

3. Any insured in the association with an annual premium in excess of the premium that would be charged to an insured with 5 employees earning weekly the statewide average weekly wage as determined by s. 440.12, multiplied by the average Florida manual rate.

The association may issue assessable policies with differing terms and conditions to different groups within the association when a reasonable basis exists for the differentiation. The association may offer rating, dividend plans, and other plans to encourage loss prevention programs.

(e) The association may initiate a rate change at any time it determines the rates for the association are excessive, inadequate, or unfairly discriminatory. No later than each December 1, the department shall approve actuarially sound rates for use by the association to assure that the association is self-funding.

(f) No later than June 1 of each year, the association shall obtain an independent actuarial certification of the results of the operations of the association for prior years, and shall furnish a copy of the certification to the department. If projected ultimate incurred losses and expenses and dividends for prior years, subsequent to the effective date of the association as set forth herein, exceed collected premiums, accrued net investment income, and prior assessments, for prior years, the certification is subject to review and approval by the department. The certification shall be approved unless the department finds by clear and convincing evi-

dence that the projected deficit is in error by more than 1 percent of aggregate statewide workers' compensation premiums for the prior year. If the department fails to object to the certification within 45 days after receipt of the certification, the certification shall be deemed approved.

(g) Whenever a deficit exists, the association shall, within 90 days, provide the department with a program to eliminate the deficit within a reasonable time. The deficit may be funded through increased premiums charged to insureds of the association for following years or through assessments if the association utilizes assessable policies.

(h) Any premium or assessments collected by the association in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the association and not paid to insureds of the association in conjunction with loss prevention or dividend programs shall be retained by the association for future use.

(i) Policies for insured shall be issued by the association.

(j) The association created under this subsection shall be liable only for payment for losses arising under policies issued by the association with dates of accidents occurring on or after January 1, 1994.

(k) Association losses are the sole and exclusive responsibility of the association and payment for such losses shall be funded through paragraphs (d) and (e) of this subsection and shall not come, directly or indirectly, from insurers.

(5) Each joint underwriting association created under this section is not a state agency, board, or commission.

(a) Each joint underwriting association created under this section is exempt from the tax on intangible personal property imposed in s. 199.032 and the corporate income tax imposed in chapter 220.

(b) Premiums written on behalf of or by any joint underwriting association created under this section are subject to premium taxes. Each joint underwriting association may elect to pay premium taxes on the premiums written on its behalf or may elect to have the member insurers to whom the premiums are allocated pay the premium tax as if the member insurer had written the policy. The joint underwriting association shall notify the member insurers and the Department of Revenue by January 15 of each year of its election for the same year.

(c) For purposes of this subsection, the term "premium" means the consideration for insurance by whatever name called, but does not include any assessment or surcharge received by the joint underwriting association as a result of apportioning losses or deficits of the association among member insurers.

Section 101. Subsection (1) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728, shall give the named insured at least 45 days' advance written notice of nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. The provisions of this section requiring 45 days' advance written notice of the renewal premium do not apply to ~~workers' compensation and employer's liability insurance~~. An insurer must furnish written notice of the renewal premium to an insured covered by a policy of ~~workers' compensation and employer's liability insurance~~ not later than the expiration date of the policy to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.

Section 102. Part XXII of chapter 627, Florida Statutes, consisting of sections 627.990, 627.991, and 627.992, Florida Statutes, is created to read:

PART XXII
WORKERS' COMPENSATION INSURANCE PURCHASING
ALLIANCE

627.990 Workers' Compensation Insurance Purchasing Alliance.— The Workers' Compensation Insurance Purchasing Alliance is created within the Department of Insurance to act as a broker between small

employers, as defined in s. 627.6699, and insurance underwriters who specialize in workers' compensation. The alliance shall be operated as a state-chartered non-profit organization pursuant to chapter 617.

627.991 Powers, duties, and responsibilities.—The alliance has the following powers, duties, and responsibilities:

- (1) Establish the conditions of alliance membership.
- (2) Provide to alliance members clear, uniform information on each workers' compensation policy offered by workers' compensation underwriters.
- (3) Request proposals for standard workers' compensation policies from workers' compensation underwriters. Such requests for proposals may be in a format specified by the alliance and may request any information necessary to provide alliance members with valid comparisons of the costs of policies available.
- (4) Develop a marketing plan to publicize the alliance to potential members and develop a plan to inform the public about the alliance and its services.
- (5) Establish administrative and accounting procedures for the operation of the alliance and member services and prepare an alliance budget which shall be funded from annual appropriations from the Workers' Compensation Administrative Trust Fund pursuant to chapter 216.

627.992 Alliance board.—The board of the alliance shall be composed of seven members who must be representative of alliance members and workers' compensation insurance underwriters. Board members shall be appointed by January 1, 1994, by the Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives, as follows:

- (1) Two representatives of small employers, including a member of the construction industry and one member of the workers' compensation insurance industry who is an individual self-insured, appointed by the Insurance Commissioner.
- (2) One representative of small employers and one member of the workers' compensation insurance industry representing a group self-insurance fund or an assessable mutual insurance company offering workers' compensation policies, appointed by the President of the Senate.
- (3) One representative of small employers and one member of the workers' compensation insurance industry representing a commercial carrier offering workers' compensation policies, appointed by the Speaker of the House of Representatives.
- (4) Each appointment is for a 2-year term.

Section 103. Part V of chapter 631, Florida Statutes, consisting of sections 631.90, 631.905, 631.91, 631.915, 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95, 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985, 631.99, and 631.995, Florida Statutes, is created to read:

PART V
FLORIDA GROUP SELF-INSURER'S
GUARANTY FUND ASSOCIATION

631.90 Title.—This part may be cited as the "Florida Group Self-Insurer's Guaranty Fund Association Act."

631.905 Purposes.—The purposes of this part are to:

- (1) Provide a mechanism for the payment of covered claims under chapter 440, to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a fund.
- (2) Assist in the detection and prevention of fund insolvencies.
- (3) Create a not-for-profit corporation to administer and supervise the operation of such association.
- (4) Assess the cost of such protection among the funds.
- (5) Provide for the prompt payment by the association of workers' compensation claims incurred by delinquent funds.

631.91 Construction.—The statutes controlling the association shall

be liberally construed to achieve that purpose. The association shall perform its functions under a plan of operation established by the board of directors and approved by the department.

631.915 Definitions.—As used in this part:

- (1) "Delinquent Fund" refers to a self-insurer's fund against which an order of rehabilitation or liquidation has been entered by a court of competent jurisdiction, with the department appointed as receiver, even if such order has not become final by the exhaustion of appellate review.
- (2) "Association" refers to the Florida Group Self-Insurer's Guaranty Fund Association.
- (3) "Self-insurance fund" means a group self-insurance fund authorized pursuant to s. 624.4621 or a commercial self-insurance fund writing workers' compensation insurance pursuant to s. 624.462, or an assessable mutual insurer authorized under s. 628.6011.
- (4) "Department" means the Department of Insurance.
- (5) "Commissioner" means the Commissioner of the Department of Insurance.
- (6) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by a self-insurer's fund, and the claimant or insured is a resident of this state at the time of the injury. "Covered claim" shall not include any claims resulting from dates of accident or losses incurred by a member self-insurance fund prior to the effective date of this act, or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. Member self-insurer's funds shall have no right of subrogation against the insured of any insolvent self-insurance fund.

631.92 Creation of association and fund.—There is created a non-profit corporation to be known as the "Florida Group Self-Insurer's Guaranty Fund Association Incorporated." All self-insurance funds shall be members of the association as a condition of their authority to provide workers' compensation coverage to their fund members. Further as a condition of such authority, a self-insurance fund shall be deemed to agree to reimburse the association for all funds advanced to the self-insurance fund and all claim payments the association makes on the insured's behalf if such self-insurance fund, having been placed in rehabilitation receivership, is subsequently rehabilitated. As provided in this section, the association shall perform its functions under a plan of operation and shall exercise its powers through a board of directors. The corporation shall have all those powers granted or permitted not-for-profit corporations, as provided in chapter 617, as well as such other powers granted in this section. Upon the adoption of a plan of operation for the association, there shall be created a Florida Group Self-Insurer's Fund to be managed by the association.

631.925 Organizational meeting.—The department shall give at least 30 days notice to all self-insurance funds of the time and place of the organizational meeting, which time and place shall be as determined by the department but not later than January 1, 1994. At the organizational meeting, each self-insurance fund shall be entitled to one vote, in person or by proxy. The self-insurance fund shall elect their five initial board members at the organizational meeting. If the self-insurance funds fail to elect their five board members at the organizational meeting, the commissioner shall appoint persons to the unfilled positions for a term of one year, after which term the positions shall be filled by persons elected by the self-insurance funds.

631.93 Board of directors.—

(1) The board of directors of the association shall be comprised of nine persons, four of which shall be appointed by the commissioner, and five of which shall be elected by the self-insurance funds. The commissioner may remove any board member for cause. Board members shall serve for a term of 4 years, provided, the terms of the initial board members may be staggered by the commissioner. No person may serve more than one consecutive term. A vacancy on the board shall be filled for the remaining period of the term.

(2) Members of the board may be reimbursed from the assets of the association for actual and reasonable out-of-pocket expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

The department may promulgate rules specifying reasonable and allowable expenses, which rule shall be binding upon the association.

631.935 Powers and duties of the association.—

(1) The association shall be obligated to the extent of the full amount of the covered claims existing:

(a) Prior to the adjudication of insolvency and arising within 30 days after the determination of insolvency;

(b) Before the policy expiration date if less than 30 days after the determination; or

(c) Before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination.

In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent self-insurer's funds under the policy from which the claim arises.

(2) The association shall be deemed the insurer to the extent of its obligation on the covered claims, and, to such extent, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. In no event shall the association be liable for any penalties or interest.

(3) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation.

(c) Sue or be sued, provided that service of process shall be made upon the person registered with the department as agent for the receipt of service of process.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part.

(4) No state funds of any kind shall be allocated or paid to said association.

(5) Any necessary and proper expenses incurred by a self-insurer's fund in the investigation, adjustment, compromise, settlement, denial, or handling of claims assigned to it shall, upon proper verification under the rules of the association, entitle the self-insurance fund to reimbursement. Any self-insurance fund whose employee serves on the staff of the association may set off from its assessment any necessary and proper expenses incurred by the self-insurance fund resulting from said service of its employee. A self-insurance fund which ceases to engage in business shall have no right to a refund of any assessment previously remitted.

631.94 Assessments.—

(1) For the purpose of providing the funds necessary to carry out the obligations, duties, and powers of the association, the board of directors shall assess all self-insurance funds in accordance with the plan of operation. Assessments shall be due not less than 30 days after written notice to the self-insurance fund. In no event shall such assessment in any one year exceed 2 percent of a self-insurance funds' net direct written premium in the calendar year immediately the preceding. The board of directors may impose more than one assessment in any one year, subject to the aggregate annual dollar limit on the assessment. The plan of operation shall provide for assessments in the proportion that each self-insurance fund's net direct written premiums bears to the total of said net direct written premiums received in this year. Assessment shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation.

(2) The department may temporarily defer, in whole or in part, the assessment of a self-insurance fund if, in the opinion of the department, payment of the assessment would endanger the ability of the self-insurance fund to fulfill its contractual obligations, the trustees of the fund determined to be endangered shall immediately levy an assessment

upon the members of that self-insurance fund in amount sufficient to pay the assessment to the association.

(3) The association may bring suit in the circuit courts of this state to collect any assessment that has not been deferred by the department.

(4) Failure for any reasons by any self-insurance fund to pay an assessment when due, which assessment has not been deferred by the department, shall be grounds for the department to bring action to suspend, revoke, or fine the self-insurance funds.

(5) In the event that any self-insurance fund refuses or is unable to pay its assessment, the association shall have standing and authority, including bringing of civil lawsuit, to collect the assessment against that self-insurance fund directly from members of that self-insurance fund. All persons and entities that are members of that self-insurance fund at the date of the assessment, or were members of that self-insurance fund at any time in the 3 years next preceding the notice of assessment, shall be liable in this regard, and in the proportion that premiums paid by that person or entity to that self-insurance fund bears to premiums paid to that self-insurance fund by all its members in that same period.

(6) All persons and entities that are members of that self-insurance fund at the date of the assessment, or were members of that self-insurance fund at any time in the 3 years next preceding the notice of assessment, shall be liable to the self-insurance fund for the assessment imposed on that self-insurance fund, and in that proportion that premiums paid by that person or entity to that self-insurance fund bears to premiums paid to that self-insurer's fund by all its members in that same period.

(7) The association shall assess the persons or entities who were members of the delinquent fund, for the assessment that would have been levied against the delinquent fund for its share of the assessment as if the assessment had not been caused by it, and each such person or entity shall be liable in the proportion that premiums paid by that person or entity to that self-insurance fund bears to premiums paid to that self-insurance fund by all its members in that same period. That association may bring suit in the courts of this state to collect such assessments.

(8) Assessments shall be included as an appropriate factor in the making of rates.

(9) If provided for in the plan of operation, assessments may be made in advance of actual need therefore, to the extent the board can predict the need therefore with reasonable accuracy, and may be made for administrative expense of maintaining a ready condition and association staff and facilities, even though no claims on the association are on hand or foreseen at the time of the assessment.

631.945 Plan of operation.—The board of directors shall prepare and submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing from the department. If the association fails to submit a plan of operation within 90 days of the appointment of the board, the department shall implement an interim plan of operation effective until the board submits a plan of operation acceptable to the department. The plan of operation shall be subject to review at periods required by the department. All self-insurer's funds shall comply with the approved plan of operation. The plan of operation shall, in addition to the requirements enumerated elsewhere in this part:

(1) Establish procedures for handling the assets of the association.

(2) Establish regular places and times for meeting of the board of directors.

(3) Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

(4) Establish procedures for levying and collecting assessments.

(5) Establish criteria and procedures under which funds may be advanced by the association to a delinquent fund in rehabilitation, to assist in its rehabilitation, and subject to repayment by said delinquent fund.

(6) Establish additional provisions necessary or proper for the execution of the power and duties of the association.

631.95 Prevention of insolvencies.—To aid in the detection and prevention of self-insurance fund insolvencies or impairments:

(1) The board of directors may make reports and recommendations to the department upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member self-insurance fund. Such reports and recommendations shall be confidential and exempt from the provisions of s. 119.07(1).

(2) It shall be the duty of the board of directors to notify the department of any information indicating that a member self-insurance fund may be insolvent or financially impaired.

(3) The board of directors may make recommendations to the department for the detection and prevention of self-insurance fund insolvencies.

631.955 Records of the association.—Except as otherwise provided herein, all records and meetings of the association or its representative in connection with the carrying out of its powers and duties under this section shall be subject to the provision of ss. 119.07(1) and 286.011. However, negotiations held between the self-insurance fund and the association are exempt from the provisions of s. 286.011 and related documents which reveal identifiable payroll and loss and individual claim information are confidential and exempt from the provisions of s. 119.07(1). These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

631.96 Immunity.—There shall be no liability on the part of, and no cause of action shall arise against, the association or its agents or employees, or members of the board of directors, or the department, for any action taken by them in the performance of their powers and duties under this section, unless such action was in bad faith or undertaken with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

631.965 Prohibited advertisement of solicitation.—No person shall make, publish, disseminate, advertise, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any print, television, or broadcast media, or in any circular, letter, pamphlet, or publication or any kind, a statement or announcement which uses the existence of the Florida Group Self-Insurer's Guaranty Fund Association to induce an employer to purchase membership in or insurance from a self-insurance fund.

631.97 Department powers.—The department shall be empowered to examine the books and records and to supervise the operations of, the association. By March 1 of each year, the board of directors shall cause a report to be filed with the department regarding the immediately preceding calendar year, detailing operations of the association over the prior year, and providing such financial and other information as the department may by rule require.

631.975 Liability of members of an impaired self-insurance fund for unpaid claims.—No provision of this part shall be construed to reduce the liability of a member of an impaired self-insurer's fund for the member's liability pursuant to the provisions of s. 624.4621 or s. 624.476.

631.98 Effect of paid claims.—

(1) Any person recovering under this section shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent self-insurance fund. The association shall have no cause of action against the insured of the insolvent self-insurance fund for any sums it has paid out except such causes of action as the insolvent self-insurance fund would have had if such sums had been paid by the insolvent self-insurance fund.

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

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer 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 self-insurance fund.

(4) Any release of the association and its insured must clearly state whether or not any claim filed with the receiver in excess of the liability of the association under s. 631.57 is waived.

631.985 Stay of proceedings; reopening of default judgments.—All proceedings in which the insolvent self-insurance fund 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 6 months, or such additional period from the date the insolvency is adjudicated, by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims; provided that such stay may be extended for a period of time greater than 6 months upon proper application to a court of competent jurisdiction. The association, either on its own behalf or on behalf of such insured, may apply to have any judgment, order, decision, verdict, or finding based on the default of the insolvent self-insurance fund or its failure to defend an insured 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 request is made by the association, the stay of proceedings may be shortened or waived.

631.99 Attorney's fees.—The provisions of s. 627.428 providing for an attorney's fee shall not be applicable to any claim presented to the association under the provisions of this part, except when the association denies by affirmative action, other than delay, a covered claim or a portion thereof.

631.995 Assumption of liability.—Notwithstanding the provisions of s. 631.935, the association shall assume the liability for the payment of the workers' compensation indemnity and medical benefits due to claimants covered by the Certified Pulpwood Dealers Self-Insurers Fund. The association shall assume the former members of the Certified Pulpwood Dealers pursuant to the provisions of this part.

Section 104. (1) On or before January 1, 1994, there is established within the Department of Labor and Employment Security, a legal counsel to represent the people of the state in any proceedings before the Department of Insurance relating to workers' compensation insurance, funded from moneys appropriated from the Workers' Compensation Administration Trust Fund. The legal counsel shall be an attorney admitted to practice in Florida and shall have experience in the practice of workers' compensation law. The legal counsel shall be authorized:

(a) To employ necessary support and actuarial personnel to carry out the official duties of the office.

(b) 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.

(c) 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.

(d) 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 an hearing examiner designated by the Department of Insurance, in the name of the state or its citizens.

(e) 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.

(f) To appear before the 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.

(2) 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 sued. 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.

Section 105. Workers' Compensation Small Employer Self-Insurance Trust Fund.—The Workers' Compensation Small Employer Self-Insurance Trust Fund is created within the Department of Insurance to provide workers' compensation coverage at a competitive price to small employers as defined in s. 627.6699, Florida Statutes.

(1) Rates.—The Insurance Commissioner shall establish rates for coverage offered by the fund which shall reflect actuarial projected loss ratios and earnings on investments of surplus.

(2) Coverage.—

(a) The Workers' Compensation Small Employer Self-Insurance Fund shall offer a standard workers' compensation policy which provides benefit levels established by chapter 440, Florida Statutes.

(b) The Workers' Compensation Small Employer Self-Insurance Fund shall also offer a 24-hour health insurance policy which would provide a single insurance policy for workers' compensation and health insurance. The 24-hour policy shall provide a level of health insurance benefits which meet criteria established by the Department of Insurance but which provides medical benefits for at least occupational injuries and illnesses comparable to those required by chapter 440, Florida Statutes. The 24-hour policy may utilize deductibles and coinsurance provisions that require the employee to pay a portion of the actual medical care received by the employee, notwithstanding any other provisions of chapter 440. The premium for the 24-hour health insurance policy shall be paid entirely by the employer, except that portion of the premium which relates to dependent coverage.

(3) Eligibility.—Eligibility to purchase workers' compensation coverage from the Workers' Compensation Small Employer Self-Insurance fund shall be limited to employers who are small employers as defined in s. 627.6699, Florida Statutes.

(4) Administration.—

(a) The Insurance Commissioner shall competitively bid a contract or contracts to administer such a fund, provide managed care services, case management, and claims management. The costs to administer such a fund shall be paid for from annual appropriations from the Workers' Compensation Administrative Trust Fund.

(b) The Insurance Commissioner shall develop a plan to market and administer such a fund by January 1 of each year. Such costs shall be paid from annual appropriations from the Workers' Compensation Administrative Trust Fund.

(c) The Insurance Commissioner shall hire the necessary staff to implement the provisions of this section from annual appropriations from the Workers' Compensation Administrative Trust Fund.

(5) Board of Trustees.—The Insurance Commissioner shall appoint a board of trustees to oversee the administration of the Small Employers Workers' Compensation Self-Insurance Trust Fund. The board of trustees shall be composed of five people, including two representatives of the workers' compensation insurance industry and one person representing a managed care arrangement.

Section 106. Paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is amended to read:

772.102 Definitions.—As used in this chapter, the term:

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 409.325, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

~~4.2.~~ Chapter 517, relating to securities transactions.

5.4. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

6.5. Chapter 550, relating to jai alai frontons.

7.6. Chapter 552, relating to the manufacture, distribution, and use of explosives.

8.7. Chapter 562, relating to beverage law enforcement.

9.8. Chapter 687, relating to interest and usurious practices.

10.9. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.

~~11.10.~~ Chapter 782, relating to homicide.

~~12.11.~~ Chapter 784, relating to assault and battery.

~~13.12.~~ Chapter 787, relating to kidnapping.

~~14.13.~~ Chapter 790, relating to weapons and firearms.

15.14. Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

~~16.15.~~ Chapter 806, relating to arson.

~~17.16.~~ Chapter 812, relating to theft, robbery, and related crimes.

~~18.17.~~ Chapter 815, relating to computer-related crimes.

19.18. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

20.19. Section 827.071, relating to commercial sexual exploitation of children.

21.20. Chapter 831, relating to forgery and counterfeiting.

~~22.21.~~ Chapter 832, relating to issuance of worthless checks and drafts.

~~23.22.~~ Section 836.05, relating to extortion.

~~24.23.~~ Chapter 837, relating to perjury.

25.24. Chapter 838, relating to bribery and misuse of public office.

~~26.25.~~ Chapter 843, relating to obstruction of justice.

27.26. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

~~28.27.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

29.28. Chapter 893, relating to drug abuse prevention and control.

~~30.29.~~ Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

~~31.30.~~ Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 107. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.325, relating to public assistance fraud.

4. Section 409.920, relating to Medicaid provider fraud.
5. Section 440.105 or s. 440.106, relating to workers' compensation.
- 6.5. Chapter 517, relating to sale of securities and investor protection.
- 7.6. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
- 8.7. Chapter 550, relating to jai alai frontons.
- 9.8. Chapter 552, relating to the manufacture, distribution, and use of explosives.
- 10.9. Chapter 562, relating to beverage law enforcement.
- 11.10. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
- 12.11. Chapter 687, relating to interest and usurious practices.
- 13.12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.
- 14.13. Chapter 782, relating to homicide.
- 15.14. Chapter 784, relating to assault and battery.
- 16.15. Chapter 787, relating to kidnapping.
- 17.16. Chapter 790, relating to weapons and firearms.
- 18.17. Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
- 19.18. Chapter 806, relating to arson.
- 20.19. Chapter 812, relating to theft, robbery, and related crimes.
- 21.20. Chapter 815, relating to computer-related crimes.
- 22.21. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
- 23.22. Section 827.071, relating to commercial sexual exploitation of children.
- 24.23. Chapter 831, relating to forgery and counterfeiting.
- 25.24. Chapter 832, relating to issuance of worthless checks and drafts.
- 26.25. Section 836.05, relating to extortion.
- 27.26. Chapter 837, relating to perjury.
- 28.27. Chapter 838, relating to bribery and misuse of public office.
- 29.28. Chapter 843, relating to obstruction of justice.
- 30.29. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
- 31.30. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
- 32.31. Chapter 893, relating to drug abuse prevention and control.
- 33.32. Chapter 896, relating to offenses related to financial transactions.
- 34.33. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.
- 35.34. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 108. Section 440.077, subsection (12) of section 440.20, section 440.37, section 440.43, subsection (4) of section 440.56, and section 440.59, Florida Statutes, are hereby repealed.

Section 109. The following are hereby appropriated for fiscal year 1993-1994 from the Workers' Compensation Administration Trust Fund:

- (1) To the Department of Insurance, 19 FTE and \$716,218 in salaries, benefits, expenses, and operating capital outlay.

- (2) To the Department of Labor and Employment Security, 133 FTE and \$5,575,852 in salaries, benefits, expenses, and operating capital outlay.

- (3) To the Agency for Health Care Administration, 16 FTE positions and \$1,214,887 in salaries and benefits, expenses, and operating capital outlay.

- (4) To the Department of Labor and Employment Security 18 FTE and \$975,000 to establish and operate a pilot program for legal assistance to injured workers.

Section 110. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, line 1, through page 19, line 25 strike all of said lines and insert: A bill to be entitled An act relating to workers' compensation; amending s. 27.34, F.S.; authorizing the Insurance Commissioner to contract with state attorneys to prosecute certain criminal violations and to contribute funds to pay salaries and expenses of certain assistant state attorneys for certain purposes; creating s. 287.044, F.S.; providing for compliance with chapter 440, F.S.; providing definitions; amending s. 287.057, F.S.; requiring certain contracts to contain certain payment security provisions; amending s. 440.015, F.S.; providing legislative intent; amending s. 440.02, F.S.; revising certain definitions; amending s. 440.05, F.S.; providing for election of exemption; providing for revocation of an election; amending s. 440.055, F.S.; requiring notices of noncoverage be posted at worksites; amending s. 440.075, F.S.; providing for effect of election of exemption; amending s. 440.09, F.S.; requiring an employer to pay compensation or furnish certain benefits under certain circumstances; providing criteria; revising coverage provisions related to injuries due to alcohol or drug abuse; denying an employee entitlement to certain benefits under certain circumstances; amending s. 440.092, F.S.; clarifying application of certain benefits provisions to traveling employees under certain circumstances; amending s. 440.10, F.S.; deleting a penalty; authorizing the Division of Workers' Compensation of the Department of Labor and Employment Security to assess a penalty against certain employers; amending s. 440.101, F.S.; revising legislative intent with regard to drug-free workplaces; amending s. 440.102, F.S.; revising provisions related to the drug-free workplace program; revising definitions; providing certain employers are ineligible for certain discounts; providing additional requirements for followup testing; providing for payment of medical treatments; providing a penalty; providing that certain screening and testing need not comply with certain rules; providing additional employer protection provisions; revising provisions relating to confidentiality of drug test results; adding provisions relating to public employees in safety-sensitive or special-risk positions; prohibiting an employer from refusing to deny certain benefits; creating s. 440.103, F.S.; requiring proof of secured compensation as a condition to receiving a building permit; creating s. 440.104, F.S.; providing for civil actions for competitive bidders; creating s. 440.105, F.S.; requiring reports of suspected fraudulent acts to the Bureau of Workers' Compensation Fraud; limiting liability; prohibiting certain activities; providing penalties; creating s. 440.0151, F.S.; requiring that the Bureau of Workers' Compensation Insurance Fraud of the Division of Insurance Fraud of the Department of Insurance establish a toll-free telephone number to receive reports of workers' compensation fraud; providing civil immunity for persons who make such a report; providing criminal penalties; creating s. 440.106, F.S.; providing for civil remedies, stop-work orders, and liens under certain circumstances; authorizing the division to bring certain actions; creating s. 440.107, F.S.; providing powers of the division to enforce certain employer compliance; authorizing the division to bring certain actions in circuit court; providing penalties; providing that certain judgments constitute liens under certain circumstances; providing for application of the Administrative Procedures Act; providing for disposition of penalties; authorizing law enforcement agencies to assist the division; amending s. 440.11, F.S.; expanding provisions with respect to exclusiveness of liability; amending s. 440.13, F.S.; providing definitions; requiring employers to provide certain medical services and supplies; providing for eligibility of providers; requiring notice of treatment to carriers; providing for independent medical examinations; providing for utilization review; providing for resolving utilization and reimbursement disputes; providing for certification of expert medical advisors; providing for witness fees; providing for audits by the division; providing for creation of a three-member panel; providing duties; providing for managed care; providing for a community health purchasing alliance; providing for removal of physicians from lists of those authorized to render medical care under

certain conditions; providing for payment of medical fees and employee copayment; providing practice parameters for outpatient services; amending s. 440.135, F.S.; providing legislative intent regarding certain pilot programs; providing for additional pilot programs; specifying criteria; amending s. 440.15, F.S.; revising criteria relating to total and permanent disability; requiring certain reports to the division of all earned income of certain temporarily totally disabled persons; requiring wage-loss and job-search information of temporarily partially disabled persons; providing for repayment of certain benefits under certain circumstances; providing for coordination of benefits; amending s. 440.151, F.S.; specifying application to benefits payable rather than compensation; amending s. 440.16, F.S.; revising certain provisions relating to compensation for death; amending s. 440.185, F.S.; revising certain provisions relating to notice of injury or death; deleting a requirement that the division forward certain files to a judge of compensation claims; amending s. 440.19, F.S.; providing additional claim filing requirements; creating s. 440.191, F.S.; creating the Employment Assistance and Ombudsman Office within the Division of Workers' Compensation; providing duties of the office; amending s. 440.20, F.S.; authorizing an employer to pay a deductible amount under certain circumstances; prohibiting reimbursement of such deductible; requiring rate bases to include such deductible; requiring the division to monitor the timely payment of compensation benefits; providing fines; amending s. 440.21, F.S.; deleting a penalty; creating s. 440.211, F.S.; providing for authorization of collective bargaining agreements; providing criteria; amending s. 440.25, F.S.; revising provisions relating to certain hearings held by a judge of compensation claims; revising procedures relating to such hearings; authorizing the division to adopt rules; amending s. 440.29, F.S.; requiring receipt of certain medical reports into evidence; amending s. 440.32, F.S.; expanding provisions with respect to assessment of costs in proceedings brought without reasonable grounds; providing an administrative penalty; amending s. 440.34, F.S.; providing for award of extraordinary fees under certain circumstances; revising criteria for awarding certain fees; deleting a penalty; amending s. 440.38, F.S.; revising provisions relating to securing the payment of compensation by employers; requiring the division to adopt rules; permitting employers to obtain coverage by use of a 24-hour health insurance policy; specifying certain coverages; deleting a penalty; amending s. 440.381, F.S.; requiring updating of certain insurance applications; amending s. 440.385, F.S.; revising provisions relating to the Florida Self-Insurers Guaranty Association; amending s. 440.386, F.S.; clarifying provisions with respect to individual self-insurers' insolvency; amending s. 440.39, F.S.; prohibiting a company from requiring a waiver of certain provisions; creating s. 440.4415, F.S.; creating the Workers' Compensation Oversight Board; providing for membership; duties and responsibilities; requiring the board to review the workers' compensation system and to submit a report to the Governor and the Legislature; specifying contents of the report; amending s. 440.442, F.S.; revising and expanding provisions with respect to the Code of Judicial Conduct; providing that commissioners appointed to the Workers' Compensation Appeals Commission shall observe and abide by the Code of Judicial Conduct; amending s. 440.45, F.S.; revising provisions relating to membership of the statewide nominating commission; requiring reports; amending s. 440.48, F.S.; requiring the department annually report to the Governor and the Legislature on administration of chapter 440, F.S.; requiring the division to complete a quarterly analysis of injuries resulting in claims; requiring the division to submit an annual closed claim report to the Governor and the Legislature; requiring the division to engage in certain continuous studies; amending s. 440.49, F.S.; revising provisions relating to reemployment of injured workers and rehabilitation; providing definitions; providing intent; providing for reemployment status reviews and reports; providing for reemployment assessments; providing for medical care coordination and reemployment services; providing for training and education; specifying provider qualifications; requiring the division to monitor selection of providers and provision of services; revising provisions related to limiting liability for subsequent injuries through the Special Disabilities Trust Fund; providing for a preferred worker program; providing for temporary compensation and medical benefits; revising the list of compensable injuries; amending s. 440.50, F.S.; authorizing the division to transfer certain amounts from the Workers' Compensation Administration Trust Fund to the Insurance Commissioner's Prosecutorial Account in the Insurance Commissioner's Regulatory Trust Fund; amending ss. 440.51 and 440.515, F.S., to conform; renumbering and amending ss. 440.57, 440.5705, 440.571, 440.575, and 440.58, F.S., to conform; amending s. 440.572, F.S.; correcting cross references; creating s. 440.593, F.S.; providing for data collection by the division; creating s. 440.595, F.S.; establishing a pilot program for designated physicians; requiring the department to make an interim report; creating the

"Florida Occupational Safety and Health Act," consisting of ss. 442.001, 442.002, 442.003, 442.004, 442.005, 442.006, 442.007, 442.008, 442.009, 442.010, 442.011, 442.012, 442.013, 442.014, 442.015, 442.016, 442.017, 442.018, 442.019, 442.020, 442.021, and 442.022, F.S.; renumbering and amending portions of ss. 440.09, 440.46, and 440.56, F.S.; renumbering s. 440.152, F.S.; providing a short title; providing definitions; providing legislative intent; authorizing the division to adopt rules; providing powers and duties of the division; providing employer responsibilities related to safety; providing for jurisdiction and authority of the division; providing for a right of entry; requiring the division to develop safety and health programs for certain employers; requiring safety consultations with policyholders under certain circumstances; providing criteria; authorizing the division to adopt rules related to such committees; providing penalties for employers who fail or refuse to comply with division rules; requiring the division to cooperate with the Federal Government; providing for cancellation of contracts of certain employers under certain circumstances; providing for expenses of administration; authorizing the division to enter and inspect places of employment for purposes of compliance; providing a penalty for refusing to admit; providing employees' rights and responsibilities; providing for compliance; prohibiting making false statements to carriers; providing penalties for carriers under certain circumstances; providing preemptive authority to the division to adopt certain rules; prohibiting certain acts; providing penalties; amending s. 489.115, F.S.; requiring the Construction Industry Licensing Board to specify by rule the content of certain continuing education courses under certain circumstances; providing for transfer of certain functions of the Department of Labor and Employment Security to the Department of Insurance; creating s. 624.461, F.S.; providing a definition; amending s. 624.462, F.S.; providing for participation by commercial self-insurance funds in the Florida Self-Insurer's Guaranty Fund Association; amending ss. 624.463, 624.473, 624.474, 624.476, 624.480, 624.482, 624.484, 624.486, and 624.488, F.S., to conform; creating s. 624.4741, F.S.; providing for venue in assessment actions; creating s. 624.522, F.S.; creating the Insurance Commissioner's prosecutorial account within the Insurance Commissioner's Regulatory Trust Fund; amending s. 627.041, F.S.; correcting a cross reference; amending s. 627.0915, F.S.; requiring the Department of Insurance to provide for giving consideration in setting rates to certain employers who implement certain safety programs; creating s. 627.0916, F.S.; providing for rates of agricultural horse farms; amending s. 627.092, F.S.; placing the Workers' Compensation Administrator within the Division of Insurer Services; amending s. 627.101, F.S.; requiring the department to publish certain approved filings; providing for effect and operation of certain filings; creating s. 627.212, F.S.; authorizing the department to approve certain workers' compensation coverage insurance rating plans; amending s. 627.311, F.S., relating to self-insurer participation in equitable apportionment; amending s. 627.4133, F.S.; excluding workers' compensation insurance from certain notice provisions; creating part XXII of chapter 627; creating the Workers' Compensation Insurance Purchasing Alliance within the Department of Insurance; providing powers, duties, and responsibilities of the alliance; providing for membership; creating part V of chapter 631, F.S.; creating the "Florida Group Self-Insurer's Fund Guaranty Association Act"; providing definitions; providing purposes; creating the Florida Group Self-insurer's Guaranty Fund Association, Incorporated; providing for a board of directors; providing powers and duties of the association; authorizing the board to make assessments; requiring the association to submit a plan of operation to the division; providing for preventing self-insurer's fund insolvencies or impairments; providing for public disclosure of certain records of the association; providing for confidentiality of certain reports and information of the association; providing for liability for unpaid claims; providing immunity; prohibiting certain advertisements or solicitations; providing for the establishment of a legal counsel in certain proceedings before the department; providing duties of the legal counsel; providing for assumption by the association of certain liabilities of the Certified Pulpwood Dealers Self-Insurers Fund; creating the Workers' Compensation Small Employer Self-Insurance Fund in the Department of Insurance; providing for coverage, eligibility, and administration of the fund; providing duties and responsibilities of the Insurance Commissioner; providing for a board of trustees; amending s. 772.102, F.S.; including certain activities relating to workers' compensation within a list of criminal activities; amending s. 895.02, F.S.; including certain activities relating to workers' compensation within a list of racketeering activities; repealing s. 440.077, F.S., relating to the effect of electing to be exempt; repealing s. 440.20(12), F.S., relating to lump-sum payments; repealing s. 440.37, F.S., relating to misrepresentation and fraudulent activities; repealing s. 440.43, F.S., relating to a penalty for failure to secure payment of compensation; repealing s. 440.56(4), F.S., relating to employers with work-related inju-

ries; repealing s. 440.59, F.S., relating to risk management reports; providing for appropriations; providing an effective date.

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, over the past several years, businesses have experienced dramatic increases in the cost of workers' compensation insurance coverage, and

WHEREAS, it is the sense of the Legislature that if the present crisis is not abated, many businesses will cease operating which, in the current recessionary climate, could cripple the employment market in the state, and

WHEREAS, health care costs are escalating at a far greater rate than the present rate of inflation, and

WHEREAS, due to the time it takes to develop actuarially sound loss experience data, comprehensive reform measures enacted by the Legislature in 1989 and 1990 are just beginning to evince savings to the workers' compensation system and cost-saving revisions contained in this act need time to be adequately reflected in the experience data upon which rates are predicated, and

WHEREAS, provisions contained in this act which profoundly enhance the rate-making process by establishing a more comprehensive rate base and requiring active participation by the Department of Labor and Employment Security and a public advocate will need time to be thoughtfully implemented, 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,

MOTION

On motion by Senator Childers, the Senate refused to concur in the House amendment and acceded to the request for a conference committee.

CONFEREES ON SB 12-C APPOINTED

The President appointed Senator Childers, Chairman; Senators Dantzer, Jennings and Scott; and alternates, Senators Jenne and Grant as conferees on SB 12-C. The action of the Senate was certified to the House.

RETURNING MESSAGES ON HOUSE BILLS

The Honorable Pat Thomas, President

I am directed to inform the Senate that the House of Representatives has refused to concur in Senate Amendment 1 to CS for HB 31-C and requests that the Senate recede. Should the Senate refuse to recede, the House requests that CS for HB 31-C be committed to the conference committee on CS for HB's 33-C and 43-C.

The Speaker has appointed the following Representatives to the conference committee: Representative Cosgrove, Chair; Representatives Geller, Schultz and Bainter, Appointees; Representatives Charles and Morroni, Alternates.

John B. Phelps, Clerk

CS for HB 31-C—A bill to be entitled An act relating to the Florida Hurricane Catastrophe Fund; creating s. 215.555, F.S.; providing findings and purpose; providing definitions; creating the Florida Hurricane Catastrophe Fund as a trust fund under the State Board of Administration; specifying uses of moneys in the fund; specifying applicability of other

laws; requiring the fund and specified insurers to enter into reimbursement contracts; specifying obligations of the fund under reimbursement contracts; requiring reports; providing for loans; requiring payment of reimbursement premium; providing for calculation of reimbursement premium; specifying accounting and regulatory treatment of reimbursement premium; requiring advance payment; providing circumstances for issuance of revenue bonds on behalf of the fund; specifying pledged revenues; authorizing units of local government to issue such bonds; requiring validation; authorizing emergency assessments; authorizing the fund to procure reinsurance; authorizing borrowing by the fund; authorizing the fund to expend certain moneys to support programs to mitigate hurricane losses; providing for appointment of an advisory council; providing for per diem and travel expenses; specifying applicability of s. 19, Art. III, State Constitution, to the fund; providing that violations constitute violations of the Insurance Code; providing for reversion of fund assets to the General Revenue Fund upon termination; providing for recommendations with respect to federal or multistate catastrophic funds; providing an exemption from the deduction required by s. 215.20(1), F.S.; amending s. 624.5091, F.S.; providing that retaliatory tax does not apply to premiums and assessments paid to the Florida Hurricane Catastrophe Fund; providing an effective date.

MOTION

On motion by Senator Holzendorf, the Senate refused to recede from **Senate Amendment 1 to CS for HB 31-C** and acceded to the request for a conference committee.

CONFEREES ON CS for HB 31-C APPOINTED

The President appointed Senator Holzendorf, Chairman; Senators Grant, Jenne and McKay; and alternates, Senators Kirkpatrick and Kiser as conferees on CS for HB 31-C. The action of the Senate was certified to the House.

The Honorable Pat Thomas, President

I am directed to inform the Senate that the House of Representatives has refused to concur in Senate Amendment 1 to CS for HB's 33-C and 43-C and requests that the Senate recede. Should the Senate refuse to recede, the House requests that a conference committee be appointed.

The Speaker has appointed the following Representatives to the conference committee: Representative Cosgrove, Chair; Representatives Geller, Schultz and Bainter, Appointees; Representatives Charles and Morroni, Alternates.

John B. Phelps, Clerk

CS for HB's 33-C and 43-C—A bill to be entitled An act relating to insurance; amending s. 624.307, F.S.; requiring the Department of Insurance to implement a program to encourage the entry of additional insurers into the Florida market; creating s. 624.3101, F.S.; prohibiting false or misleading financial statements; providing penalties; creating s. 624.3102, F.S.; providing immunity from civil liability for persons who provide the department with certain information about insurers; amending s. 624.316, F.S.; removing limitation of examination authority to domestic insurers; limiting acceptability of examination reports of foreign insurers; providing for conduct of examinations by independent examiners; specifying frequency of examinations of insurers; providing for adoption of rules; amending s. 624.407, F.S.; increasing the minimum surplus as to policyholders required for issuance of a certificate of authority as a property and casualty insurer; amending s. 624.408, F.S.; increasing the minimum surplus as to policyholders required for maintenance of a certificate of authority as a property and casualty insurer; amending s. 624.424, F.S.; requiring an insurer's annual statement to include a statement of opinion on reserves; limiting waivers of accounting requirements; creating s. 624.4243, F.S.; providing for computation and reporting of premium growth; specifying powers of the department; amending s. 624.610, F.S.; providing criteria for classification as an approved reinsurer; requiring a ceding insurer to conduct a due diligence inquiry with respect to an assuming reinsurer; revising criteria for a letter of credit used with respect to credit on financial statements for certain reinsurance; authorizing rules with respect to the letter of credit; authorizing use by the Department of Insurance of reinsurance consultants under certain conditions; providing procedures and requirements with respect thereto and regarding the reinsurance evaluation; providing for payment for evaluation costs; amending s. 625.305, F.S.; removing authority of the depart-

ment to waive certain investment restrictions; amending s. 626.7491, F.S.; specifying when an insurer is presumed to be producer-controlled; specifying application of certain provisions; providing exceptions; specifying producers from which insurers may accept business; amending s. 626.918, F.S.; increasing minimum surplus requirements for surplus lines insurers; creating s. 627.0629, F.S.; requiring residential property insurance rate filings to include rate differentials for properties on which certain fixtures have been installed; authorizing such rate filings to include factors reflecting the quality of particular building codes and enforcement thereof; providing for adoption and use of a standard hurricane loss exposure model; providing criteria for territories used in property insurance rate filings; amending s. 627.351, F.S.; revising provisions with respect to deficit assessments in the windstorm insurance risk apportionment plan; authorizing issuance of bonds on behalf of the plan; requiring insurers to purchase bonds in specified circumstances; providing circumstances under which a classification is immediately eligible for coverage in the Florida Property and Casualty Joint Underwriting Association; providing criteria for rates; activating coverage with respect to commercial coverages of residences; providing for legislative review; providing for termination; revising provisions with respect to deficit assessments; authorizing issuance of bonds on behalf of the association; requiring insurers to purchase bonds in specified circumstances; providing legislative intent with respect to the Residential Property and Casualty Joint Underwriting Association; providing criteria for rates; requiring rate filings; revising provisions relating to deficit assessments; authorizing issuance of bonds on behalf of the association; requiring insurers to purchase bonds in specified circumstances; providing for dissolution of the association; amending s. 627.4133, F.S.; specifying period for notice of nonrenewal, renewal premium, and cancellation; amending s. 627.701, F.S.; specifying powers of the department with respect to deductible provisions in certain policies; creating s. 627.7011, F.S.; requiring certain provisions to be offered with respect to homeowner's policies; providing for rejection or selection of alternative coverages; requiring notice; creating s. 627.7012, F.S.; authorizing the department to establish pools of qualified adjusters for use in emergencies; creating s. 627.7013, F.S.; providing findings and purpose; limiting cancellation or nonrenewal of policies that were subject to the moratorium contained in ch. 93-401, Laws of Florida; providing for future repeal; requiring insurers to submit exposure reduction plans to the department for approval; creating s. 627.7014, F.S.; requiring insurers to implement plans for the avoidance of certain concentrations of property insurance exposures; providing for reports; providing circumstances for submission of plans to the department; providing criteria for approval of order to resubmit; creating s. 627.7015, F.S.; requiring the department to adopt a mediation program for first-party claims under personal lines residential policies; providing purpose and scope; requiring notice; providing for payment of costs; requiring adoption of rules; providing for treatment as negotiations in anticipation of litigation; requiring negotiation in good faith; requiring participants to have the authority to settle; providing immunity for mediators; specifying effects of mediation; specifying time within which insured may rescind settlement; authorizing the department to delegate certain duties; amending s. 628.801, F.S.; specifying content and applicability of rules relating to insurance holding companies; amending s. 631.52, F.S.; specifying applicability of the Florida Insurance Guaranty Association Act; amending s. 631.54, F.S.; including certain surplus lines insurers as member insurers; amending s. 631.55, F.S.; requiring a separate account for surplus lines insurers; requiring the Department of Insurance to conduct a study of the classification of condominium association coverage; requiring reports; amending ss. 625.330 and 631.011, F.S.; correcting cross references; providing effective dates.

MOTION

On motion by Senator Childers, the Senate refused to recede from **Senate Amendment 1 to CS for HB's 33-C and 43-C** and acceded to the request for a conference committee.

CONFEREES ON CS FOR HB's 33-C AND 43-C APPOINTED

The President appointed Senator Holzendorf, Chairman; Senators Grant, Jenne and McKay; and alternates, Senators Kirkpatrick and Kiser as conferees on **CS for HB's 33-C and 43-C**. The action of the Senate was certified to the House.

ROLL CALLS ON SENATE BILLS

CS for CS for SB 10-C—Amendment 3

Yeas—27

Bankhead	Crist	Harden	Myers
Beard	Dantzler	Jennings	Scott
Brown-Waite	Diaz-Balart	Johnson	Siegel
Burt	Dudley	Kirkpatrick	Sullivan
Casas	Foley	Kiser	Weinstein
Childers	Grant	Kurth	Williams
Crenshaw	Gutman	McKay	

Nays—11

Mr. President	Forman	Jones	Turner
Boczar	Hargrett	Meadows	Wexler
Dyer	Jenne	Silver	

CS for CS for SB 10-C—Amendment 7

Yeas—14

Bankhead	Dyer	Kirkpatrick	Sullivan
Burt	Foley	Kiser	Williams
Crenshaw	Harden	Kurth	
Dudley	Jenne	McKay	

Nays—20

Beard	Diaz-Balart	Hargrett	Siegel
Boczar	Forman	Johnson	Silver
Brown-Waite	Grant	Jones	Turner
Casas	Grogan	Meadows	Weinstein
Crist	Gutman	Myers	Wexler

CS for CS for SB 10-C

Yeas—38

Mr. President	Dantzler	Holzendorf	Scott
Bankhead	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Jennings	Silver
Boczar	Dyer	Johnson	Sullivan
Brown-Waite	Foley	Jones	Turner
Burt	Forman	Kirkpatrick	Weinstein
Casas	Grant	Kurth	Wexler
Childers	Gutman	McKay	Williams
Crenshaw	Harden	Meadows	
Crist	Hargrett	Myers	

Nays—None

SB 48-C

Yeas—40

Mr. President	Dantzler	Hargrett	Meadows
Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Scott
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Grogan	Kiser	Weinstein
Crenshaw	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams

Nays—None

All Senators voting were recorded as co-sponsors of **SB 48-C**.

ROLL CALLS ON HOUSE BILLS

HCR 67-C

Yeas—40

Mr. President	Beard	Brown-Waite	Casas
Bankhead	Boczar	Burt	Childers

Crenshaw	Grant	Johnson	Scott
Crist	Grogan	Jones	Siegel
Dantzler	Gutman	Kirkpatrick	Silver
Diaz-Balart	Harden	Kiser	Sullivan
Dudley	Hargrett	Kurth	Turner
Dyer	Holzendorf	McKay	Weinstein
Foley	Jenne	Meadows	Wexler
Forman	Jennings	Myers	Williams

Nays—None

CS for CS for HB 91-C

Yeas—39

Mr. President	Dantzler	Holzendorf	Myers
Bankhead	Diaz-Balart	Jenne	Scott
Beard	Dudley	Jennings	Siegel
Boczar	Dyer	Johnson	Silver
Brown-Waite	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Turner
Casas	Grant	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crenshaw	Harden	McKay	Williams
Crist	Hargrett	Meadows	

Nays—None

CORRECTION AND APPROVAL OF JOURNAL

The Journal of November 3 was corrected and approved.

CO-SPONSORS

Senator Thomas—SB 38-C

RECESS

On motion by Senator Kirkpatrick, the Senate recessed at 7:41 p.m. for the purpose of holding committee meetings and conducting other Senate business until 10:00 a.m., Friday, November 5.