

## Committee Substitute for House Bill No. 1803

An act relating to workers' compensation; amending s. 61.14, F.S.; requiring a judge of compensation claims to consider the interests of the worker and the worker's family when approving settlements of workers' compensation claims; requiring appropriate recovery of any child support arrearage from such settlements; amending s. 61.30, F.S.; providing that gross income includes all workers' compensation benefits and settlements; amending s. 112.3145, F.S.; redefining the term "specified state employee" to include the Deputy Chief Judge of Compensation Claims; amending s. 120.65, F.S.; establishing requirements for the Deputy Chief Judge; amending s. 121.055, F.S.; including the Deputy Chief Judge in the Senior Management Service Class of the Florida Retirement System; conforming provisions to the transfer of the judges of compensation claims from the Department of Labor and Employment Security to the Division of Administrative Hearings; amending s. 381.004, F.S.; conforming provisions to the transfer of the judges of compensation claims to the Division of Administrative Hearings; amending s. 440.02, F.S.; revising a monetary limit in a definition; excluding certain sports officials from the definition of "employee"; excluding certain work done by state prisoners and county inmates from the definition of "employment"; amending s. 440.09, F.S.; excluding employees covered under the Defense Base Act from payment of benefits; creating s. 440.1025, F.S.; providing for consideration of a public employer workplace safety program in rate-setting; amending s. 440.105, F.S.; reclassifying the Chief Judge of Compensation Claims as the Deputy Chief Judge of Compensation Claims; amending s. 440.12, F.S.; providing for direct deposit of compensation payments; amending s. 440.13, F.S.; revising requirements for submission of certain medical reports and bills; granting rehabilitation providers access to medical records; revising provider eligibility requirements; amending s. 440.134, F.S.; requiring certain insurers to provide medically necessary remedial treatment, care, and attendance under certain circumstances; amending s. 440.14, F.S.; requiring an employee to provide certain information concerning concurrent employment; amending s. 440.185, F.S.; authorizing the division to contract with a private entity for collection of certain policy information; providing application; amending s. 440.192, F.S.; revising requirements and procedures for filing petitions for benefits; permitting judges to dismiss portions of a petition; specifying that dismissal of petitions is without prejudice; amending grounds for dismissal; redesignating the notice of denial as a response to petition; amending s. 440.20, F.S.; providing for payment of compensation by direct deposit under certain circumstances; providing procedural guidelines for certain carriers for certain purposes; revising lump-sum settlement requirements; amending s. 440.22, F.S.; excluding child support and alimony claims from general exemption of workers' compensation benefits from claims of creditors; amending s.

440.25, F.S.; revising mediation procedures; requiring written consent for additional continuances; authorizing the director of the Division of Administrative Hearings to employ mediators; requiring judges of compensation claims to file a report under certain circumstances; eliminating local rule adoption; removing the division's participation in indigency proceedings; conforming provisions to the reclassification of the Chief Judge as the Deputy Chief Judge; amending s. 440.29, F.S.; conforming provisions to the reclassification of the Chief Judge as the Deputy Chief Judge; amending s. 440.34, F.S.; providing for attorney's fees in a response to petition; amending s. 440.345, F.S.; revising reporting requirements; amending s. 440.38, F.S.; providing for the type of qualifying security deposit necessary to become a self-insured employer; providing requirements, procedures, and criteria; correcting a cross reference; amending s. 440.44, F.S.; revising record requirements; authorizing the director of the Division of Administrative Hearings to make expenditures relating to the Office of the Judges of Compensation Claims; requiring the office to maintain certain offices and personnel; conforming provisions to the transfer of the Office of the Judges of Compensation Claims to the Division of Administrative Hearings; amending s. 440.442, F.S.; deleting Code of Judicial Conduct requirements; providing for a Code of Judicial Conduct as adopted by the Florida Supreme Court; amending s. 440.45, F.S.; eliminating the Chief Judge position; creating the position of Deputy Chief Judge of Compensation Claims; conforming provisions to the transfer of the judges of compensation claims from the Department of Labor and Employment Security to the Division of Administrative Hearings within the Department of Management Services; requiring nominees for the judges of compensation claims to meet additional experience requirements; authorizing the director of the Division of Administrative Hearings to initiate and investigate complaints against the Deputy Chief Judge and judges of compensation claims and make recommendations to the Governor; revising reporting requirements; requiring the judicial nominating commission to consider whether judges of compensation claims have met certain requirements; providing procedures; authorizing the Governor to appoint certain judges of compensation claims; amending s. 440.47, F.S.; conforming provisions to the reclassification of the Chief Judge as the Deputy Chief Judge; providing that the director of the Division of Administrative Hearings must approve travel expenses; amending s. 440.59, F.S.; revising certain reporting requirements; deleting an injury reporting requirement; deleting an annual reporting requirement of the Chief Judge; amending s. 440.593, F.S.; providing the division with enforcement authority relating to electronic reporting; authorizing the division to assess a civil penalty; authorizing the division to adopt rules; amending ss. 489.114 and 489.510, F.S.; providing an exception to certain workers' compensation coverage evidence requirements; amending ss. 489.115 and 489.515, F.S.; revising certification and registration requirements for initial licensure; amending s. 627.0915, F.S.; eliminating references to the Division of Safety of the Department of Labor and Employment Security

in relation to rating plans' workplace safety programs; amending s. 627.311, F.S.; clarifying language with respect to joint underwriters' liability for monetary damages; amending s. 627.914, F.S.; revising the requirements for reports of information by workers' compensation insurers; deleting a reporting requirement for the Division of Workers' Compensation; transferring the Office of the Judges of Compensation Claims to the Division of Administrative Hearings; transferring certain positions from the Division of Workers' Compensation to the Office of Judges of Compensation Claims; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(8)(a) When reviewing and approving any lump-sum settlement under s. 440.20(11)(a) and (b), a judge of compensation claims must consider whether the settlement serves the interests of the worker and the worker's family, including, but not limited to, whether the settlement provides for appropriate recovery of any child-support arrearage.

(b) In accordance with ~~Notwithstanding~~ the provisions of s. 440.22, any compensation due or that may become due an employee under chapter 440 is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child or spousal support obligations.

Section 2. Paragraph (a) of subsection (2) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(2) Income shall be determined on a monthly basis for the obligor and for the obligee as follows:

(a) Gross income shall include, but is not limited to, the following items:

1. Salary or wages.
2. Bonuses, commissions, allowances, overtime, tips, and other similar payments.
3. Business income from sources such as self-employment, partnership, close corporations, and independent contracts. "Business income" means gross receipts minus ordinary and necessary expenses required to produce income.
4. Disability benefits.

5. All workers' worker's compensation benefits and settlements.
6. Unemployment compensation.
7. Pension, retirement, or annuity payments.
8. Social security benefits.
9. Spousal support received from a previous marriage or court ordered in the marriage before the court.
10. Interest and dividends.
11. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
12. Income from royalties, trusts, or estates.
13. Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
14. Gains derived from dealings in property, unless the gain is nonrecurring.

Section 3. Paragraph (b) of subsection (1) and subsection (4) of section 112.3145, Florida Statutes, are amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, the Deputy Chief Judge of Compensation Claims, a judge of compensation claims, an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. Each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

(4) Each elected constitutional officer, state officer, local officer, and specified state employee shall file a quarterly report of the names of clients represented for a fee or commission, except for appearances in ministerial matters, before agencies at his or her level of government. For the purposes of this part, agencies of government shall be classified as state-level agencies or agencies below state level. Each local officer shall file such report with the supervisor of elections of the county in which the officer is principally employed or is a resident. Each state officer, elected constitutional officer, and specified state employee shall file such report with the commission. The report shall be filed only when a reportable representation is made during the calendar quarter and shall be filed no later than the last day of each calendar quarter, for the previous calendar quarter. Representation before any agency shall be deemed to include representation by such officer or specified state employee or by any partner or associate of the professional firm of which he or she is a member and of which he or she has actual knowledge. For the purposes of this subsection, the term "representation before any agency" does not include appearances before any court or the Deputy Chief Judge Judges of Compensation Claims or judges of compensation claims or representations on behalf of one's agency in one's official capacity. Such term does not include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency or a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

Section 4. Subsection (1) of section 120.65, Florida Statutes, is amended to read:

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any

deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

Section 5. Paragraph (i) of subsection (1) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the “Senior Management Service Class,” which shall become effective February 1, 1987.

(1)

(i)1. Except as provided in subparagraph 2., effective July 1, 1999, participation in the Senior Management Service Class is compulsory for any member of the Florida Retirement System who is employed as the Deputy Chief Judge of Compensation Claims or as a judge of compensation claims with the Office of the Judges of Compensation Claims within the Division of Administrative Hearings ~~Department of Labor and Employment Security~~.

2. In lieu of participating in the Senior Management Service Class, the Deputy Chief Judge of Compensation Claims or a judge of compensation claims may participate in the Senior Management Service Optional Annuity Program established under subsection (6).

Section 6. Paragraph (e) of subsection (3) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.—

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(e) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative.

2. Any person, including third-party payors, designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative. The test subject may in writing authorize the disclosure of the test subject's HIV test results to third party payors, who need not be specifically identified, and to other persons to whom the test subject subsequently issues a general release of medical information. A general release without such prior written authorization is not sufficient to release HIV test results.

3. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee participates in the administration or provision of patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information. The department shall adopt a rule defining which persons have a need to know pursuant to this subparagraph.

4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment. For purposes of this subparagraph, health care providers shall include licensed health care professionals employed by or associated with state, county, or municipal detention facilities when such health care professionals are acting exclusively for the purpose of providing diagnoses or treatment of persons in the custody of such facilities.

5. The department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law.

6. A health facility or health care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to July 6, 1988, for the purpose of artificial insemination.

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews pursuant to chapters 395 and 766.

8. Authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information.

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and

future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

10. A person allowed access by order of a judge of compensation claims of the Division of ~~Administrative Hearings~~ Workers' Compensation of the Department of Labor and Employment Security. A judge of compensation claims shall not issue such order unless he or she finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means.

11. Those employees of the department or of child-placing or child-caring agencies or of family foster homes, licensed pursuant to s. 409.175, who are directly involved in the placement, care, control, or custody of such test subject and who have a need to know such information; adoptive parents of such test subject; or any adult custodian, any adult relative, or any person responsible for the child's welfare, if the test subject was not tested under subparagraph (b)2. and if a reasonable attempt has been made to locate and inform the legal guardian of a test result. The department shall adopt a rule to implement this subparagraph.

12. Those employees of residential facilities or of community-based care programs that care for developmentally disabled persons, pursuant to chapter 393, who are directly involved in the care, control, or custody of such test subject and who have a need to know such information.

13. A health care provider involved in the delivery of a child can note the mother's HIV test results in the child's medical record.

14. Medical personnel or nonmedical personnel who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties, or individuals who are the subject of the significant exposure as provided in subparagraphs (h)10., 11., and 13.



15. The medical examiner shall disclose positive HIV test results to the department in accordance with rules for reporting and controlling the spread of disease.

Section 7. Subsection (4), paragraph (d) of subsection (14), and paragraph (c) of subsection (16) of section 440.02, Florida Statutes, are amended to read:

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

(4) “Casual” as used in this section ~~refers~~ shall be taken to refer only to employments for when the work that is anticipated contemplated is to be completed in not exceeding 10 working days or less, without regard to the number of persons employed, and at a when the total labor cost of such work is less than \$500 \$100.

(14)

(d) “Employee” does not include:

1. An independent contractor, if:

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

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

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

e. The independent contractor 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 services;

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

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

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

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

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

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

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

4. 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, if 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 transportation service and is not paid by the hour or on some other time-measured basis.

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

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for 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, if 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 under Pub. L. No. 93-113.

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

8. 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.

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

(16)

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

1. Domestic servants in private homes.
2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, that who employs 5 or fewer regular employees and that who employs fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term "agricultural labor" includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.
3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08.
4. Labor under a sentence of a court to perform community services as provided in s. 316.193.

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

Section 8. Subsection (2) of section 440.09, Florida Statutes, is amended to read:

440.09 Coverage.—

(2) Benefits are not payable in respect of the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, the Defense Base Act, or the Jones Act.

Section 9. Section 440.1025, Florida Statutes, is created to read:

440.1025 Consideration of public employer workplace safety program in rate-setting; program requirements; rulemaking.—For a public employer to be eligible for receipt of specific identifiable consideration under s. 627.0915 for a workplace safety program in the setting of rates, the public employer must have a workplace safety program. At a minimum, the program must include a written safety policy and safety rules, and make provision for safety inspections, preventative maintenance, safety training, first-aid, accident investigation, and necessary record keeping. For purposes of this section, "public employer" means "any agency within state, county, or municipal government employing individuals for salary, wages, or other remuneration." The Division may promulgate rules for insurers to utilize in determining public employer compliance with the requirements of this section.

Section 10. Paragraph (b) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(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.

(b) ~~It is shall be~~ unlawful for any attorney or other person, in his or her individual capacity or in his or her 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 Deputy Chief Judge of Compensation Claims.

Section 11. Subsection (1) of section 440.12, Florida Statutes, is amended to read:

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

(1) No compensation shall be allowed for the first 7 days of the disability, except benefits provided for in s. 440.13. However, if the injury results in

disability of more than 21 days, compensation shall be allowed from the commencement of the disability. All weekly compensation payments, except for the first payment, shall be paid by check or, if authorized by the employee, deposited directly into the employee's account at a financial institution. As used in this subsection, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h).

Section 12. Paragraph (a) of subsection (3) and paragraphs (b) and (c) of subsection (4) of section 440.13, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of said section, to read:

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

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

(f) Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident. The employee shall be entitled to select another physician from among not fewer than three carrier-authorized physicians who are not professionally affiliated.

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(a) As a condition to eligibility for payment under this chapter, a health care provider who renders services must be a certified health care provider and must receive authorization from the carrier before providing treatment. This paragraph does not apply to emergency care. The division shall adopt rules to implement the certification of health care providers. ~~As a one-time prerequisite to obtaining certification, the division shall require each physician to demonstrate proof of completion of a minimum 5-hour course that covers the subject areas of cost containment, utilization control, ergonomics, and the practice parameters adopted by the division governing the physician's field of practice. The division shall coordinate with the Agency for Health Care Administration, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Chiropractic Association, the Florida Podiatric Medical Association, the Florida Optometric Association, the Florida Dental Association, and other health professional organizations and their respective boards as deemed necessary by the Agency for Health Care Administration in complying with this subsection. No later than October 1, 1994, the division shall adopt rules regarding the criteria and procedures for approval of courses and the filing of proof of completion by the physicians.~~

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

(b) Upon the request of the Division of Workers' Compensation, 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, and attendance of the injured employee, including any report of an examination, diagnosis,

or disability evaluation, must be filed with the Division of Workers' Compensation pursuant to rules adopted by the division. The health care provider shall also furnish to the injured employee or to his or her attorney, on demand, a copy of his or her 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 shall provide to the division ~~any additional~~ additional information about the remedial treatment, care, and attendance ~~which that~~ the division reasonably requests.

(c) It is the policy for the administration of the workers' compensation system that there be reasonable access to medical information by all parties to facilitate the self-executing features of the law. Notwithstanding the limitations in s. 456.057 and subject to the limitations in s. 381.004, upon the request of the employer, the carrier, an authorized qualified rehabilitation provider, or the attorney for the employer or carrier ~~either of them~~, the medical records of an injured employee must be furnished to those persons and the medical condition of the injured employee must be discussed with those persons, if the records and the discussions are restricted to conditions relating to the workplace injury. Any such discussions may be held before or after the filing of a claim without the knowledge, consent, or presence of any other party or his or her agent or representative. A health care provider 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).

Section 13. Paragraphs (a) and (b) of subsection (2) of section 440.134, Florida Statutes, are amended to read:

440.134 Workers' compensation managed care arrangement.—

~~(2)(a)(b)~~ ~~Effective January 1, 1997,~~ The employer ~~may shall~~, subject to the terms and limitations specified elsewhere in this section and chapter, furnish to the employee solely through managed care arrangements such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery requires.

~~(b)(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. No insurer may offer or utilize a managed care arrangement without such authorization. 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.

Section 14. Subsection (5) is added to section 440.14, Florida Statutes, to read:

440.14 Determination of pay.—

(5)(a) If the lost wages from concurrent employment are used in calculating the average weekly wage, the employee is responsible for providing information concerning the loss of earnings from the concurrent employment.

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

Section 15. Subsection (7) of section 440.185, Florida Statutes, is amended to read:

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

(7) Every carrier shall file with the division within 21 days after the issuance of a policy or contract of insurance such policy information as the division ~~requires~~ may require, including notice of whether the policy is a minimum premium policy. Notice of cancellation or expiration of a policy as set out in s. 440.42(3) shall be mailed to the division in accordance with rules ~~adopted~~ promulgated by the division under chapter 120. ~~The division may contract with a private entity for the collection of policy information required to be filed by carriers under this subsection and the receipt of notices of cancellation or expiration of a policy required to be filed by carriers under s. 440.42(3). The submission of policy information or notices of cancellation or expiration to the contracted private entity satisfies the filing requirements of this subsection and s. 440.42(3).~~

Section 16. Subsections (1), (2), (5), and (8) of section 440.192, Florida Statutes, are amended to read:

440.192 Procedure for resolving benefit disputes.—

(1) Subject to s. 440.191, any employee who has not received a benefit to which the employee believes she or he is entitled under this chapter shall file by certified mail, or by electronic means approved by the Deputy Chief Judge, with the Office of the Judges of Compensation Claims a petition for benefits which meets the requirements of this section. The division shall inform employees of the location of the Office of the Judges of Compensation Claims for purposes of filing a petition for benefits. The employee shall also serve copies of the petition for benefits by certified mail, or by electronic

~~means approved by the Deputy Chief Judge, upon the employer and, the employer's carrier, and the division in Tallahassee a petition for benefits that meets the requirements of this section. The Deputy Chief Judge shall refer the petitions to the judges of compensation claims. The division shall refer the petition to the Office of the Judges of Compensation Claims.~~

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

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

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

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

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

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

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

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

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

(i) The type or nature of treatment care or attendance sought and the justification for such treatment.

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

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

(5) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal



for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

(8) Within 14 days after receipt of a petition for benefits by certified mail, the carrier must either pay the requested benefits without prejudice to its right to deny within 120 days from receipt of the petition or file a response to petition notice of denial with the Office of the Judges of Compensation Claims division. The carrier must list all benefits requested but not paid and explain its justification for nonpayment in the response to petition notice of denial. A carrier that does not deny compensability in accordance with s. 440.20(4) is deemed to have accepted the employee's injuries as compensable, unless it can establish material facts relevant to the issue of compensability that could not have been discovered through reasonable investigation within the 120-day period. The carrier shall provide copies of the response notice to the filing party, employer, and claimant by certified mail.

Section 17. Paragraph (a) of subsection (1) and subsections (4), (6), and (11) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation; penalties for late payment.—

(1)(a) Unless it denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as required by ss. 440.14, 440.15, and 440.16, in accordance with the obligations set forth in such sections. If authorized by the employee, the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution. As used in this paragraph, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h). Compensation by direct deposit is considered paid on the date the funds become available for withdrawal by the employee.

(4) If the carrier is uncertain of its obligation to provide benefits or compensation, it may initiate payment without prejudice and without admitting liability. The carrier shall immediately and in good faith commence investigation of the employee's entitlement to benefits under this chapter and shall admit or deny compensability within 120 days after the initial provision of compensation or benefits as required under subsection (2) or s. 440.192(8). Upon commencement of payment as required under subsection (2) or s. 440.192(8), the carrier shall provide written notice to the employee that it has elected to pay all or part of the claim pending further investigation, and that it will advise the employee of claim acceptance or denial within 120 days. A carrier that fails to deny compensability within 120 days after the initial provision of benefits or payment of compensation as required under subsection (2) or s. 440.192(8) waives the right to deny compensability, unless the carrier can establish material facts relevant to the issue of compensability that it could not have discovered through reasonable investigation within the 120-day period. The initial provision of compensation or benefits, for purposes of this subsection, means the first installment of compensation or benefits to be paid by the carrier under subsection (2) or pursuant to a petition for benefits under s. 440.192(8).

(6) If any installment of compensation for death or dependency benefits, disability, permanent impairment, or wage loss payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a punitive penalty of an amount equal to 20 percent of the unpaid installment or \$5, which shall be paid at the same time as, but in addition to, such installment of compensation, unless notice is filed under subsection (4) or unless such nonpayment results from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The division may assess without a hearing the punitive penalty against either the employer or the insurance carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the division or the judge of compensation claims determines that the punitive penalty should be made by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution. As used in this subsection, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h).

(11)(a) When a claimant is not represented by counsel, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation expenses and any other benefits provided under this chapter, shall be allowed at any time in any case in which the employer or carrier has filed a written notice of denial within 120 days after the employer receives notice ~~date~~ of the injury, and the judge of compensation claims at a hearing to consider the settlement proposal finds a justiciable controversy as to legal or medical compensability of the claimed injury or the alleged accident. The employer or carrier may not pay any attorney's fees on behalf of the claimant for any settlement under this section unless expressly authorized elsewhere in this chapter. Upon the joint petition of all interested parties and after giving due consideration to the interests of all interested parties, the judge of compensation claims may enter a compensation order approving and authorizing the discharge of the liability of the employer for compensation and remedial treatment, care, and attendance, as well as rehabilitation expenses, by the payment of a lump sum. Such a compensation order so entered upon joint petition of all interested parties is not subject to modification or review under s. 440.28. If the settlement proposal together with supporting evidence is not approved by the judge of compensation claims, it shall be considered void. Upon approval of a lump-sum settlement under this subsection, the judge of compensation

claims shall send a report to the Chief Judge of the amount of the settlement and a statement of the nature of the controversy. The Chief Judge shall keep a record of all such reports filed by each judge of compensation claims and shall submit to the Legislature a summary of all such reports filed under this subsection annually by September 15.

(b) When a claimant is not represented by counsel, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation and rehabilitation expenses, and any other benefits provided under this chapter, may be allowed at any time in any case after the injured employee has attained maximum medical improvement. An employer or carrier may not pay any attorney's fees on behalf of the claimant for any settlement, unless expressly authorized elsewhere in this chapter. A compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under s. 440.28. However, a judge of compensation claims is not required to approve any award for lump-sum payment when it is determined by the judge of compensation claims that the payment being made is in excess of the value of benefits the claimant would be entitled to under this chapter. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary, in each case in which the parties have stipulated that a proposed final settlement of liability of the employer for compensation shall not be subject to modification or review under s. 440.28, to determine whether such final disposition will definitely aid the rehabilitation of the injured worker or otherwise is clearly for the best interests of the person entitled to compensation and, in her or his discretion, may have an investigation made by the Rehabilitation Section of the Division of Workers' Compensation. The joint petition and the report of any investigation so made will be deemed a part of the proceeding. An employer shall have the right to appear at any hearing pursuant to this subsection which relates to the discharge of such employer's liability and to present testimony at such hearing. The carrier shall provide reasonable notice to the employer of the time and date of any such hearing and inform the employer of her or his rights to appear and testify. ~~When the claimant is represented by counsel or when the claimant and carrier or employer are represented by counsel, final approval of the lump-sum settlement agreement, as provided for in a joint petition and stipulation, shall be approved by entry of an order within 7 days after the filing of such joint petition and stipulation without a hearing, unless the judge of compensation claims determines, in her or his discretion, that additional testimony is needed before such settlement can be approved or disapproved and so notifies the parties.~~ The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which such person is entitled to compensation shall, in the absence of special circumstances making such course improper, be determined in accordance with the most recent United States Life Tables published by the National Office of Vital Statistics of the United States Department of Health and Human Services. The probability of the happening of any other contingency affecting the amount or duration of the compensation, except the possibility of the remarriage of a surviving spouse, shall be disregarded. As a condition of approving a lump-sum payment to a surviving spouse, the judge of compensation claims, in the judge

of compensation claims' discretion, may require security which will ensure that, in the event of the remarriage of such surviving spouse, any unaccrued future payments so paid may be recovered or recouped by the employer or carrier. Such applications shall be considered and determined in accordance with s. 440.25.

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement requires approval by the judge of compensation claims only as to the attorney's fees paid to the claimant's attorney by the claimant. The parties need not submit any information or documentation in support of the settlement, except as needed to justify the amount of the attorney's fees. Neither the employer nor the carrier is responsible for any attorney's fees relating to the settlement and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after the date the judge of compensation claims mails the order approving the attorney's fees. Any order entered by a judge of compensation claims approving the attorney's fees as set out in the settlement under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with the requirements set forth in paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident.

(d) With respect to any lump-sum settlement under this subsection, a judge of compensation must consider at the time of the settlement, whether the settlement allocation provides for the appropriate recovery of child support arrearages.

(e)(e) This section applies to all claims that the parties have not previously settled, regardless of the date of accident.

Section 18. Section 440.22, Florida Statutes, is amended to read:

440.22 Assignment and exemption from claims of creditors.—No assignment, release, or commutation of compensation or benefits due or payable under this chapter except as provided by this chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, which exemption may not be waived. However, the exemption of workers' compensation claims from creditors does not extend to claims based on an award of child support or alimony.

Section 19. Subsections (1), (2), (3), and (4) and paragraph (b) of subsection (5) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

(1) Within 21 days after a petition for benefits is filed under s. 440.192, a mediation conference concerning such petition shall be held. Within 7 days

after such petition is filed, the judge of compensation claims shall notify the interested parties that a mediation conference concerning such petition will be held. Such notice shall give the date, time, and location of the mediation conference. Such notice may be served personally upon the interested parties or may be sent to the interested parties by mail. The claimant or the adjuster of the employer or carrier may, at the mediator's discretion, attend the mediation conference by telephone or, if agreed to by the parties, other electronic means.

(2) Any party who participates in 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. A mediation conference is required to be held unless this requirement is waived by the Deputy Chief Judge. No later than 3 days prior to the mediation conference, all parties must submit any applicable motions, including, but not limited to, a motion to waive the mediation conference, to the judge of compensation claims.

(3) 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 under 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 subsection and paragraphs (4)(a) and (b) 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 Director of the Division of Administrative Hearings Chief Judge shall select a mediator. The mediator shall be employed on a full-time basis by the Office of the Judges of Compensation Claims. A mediator must be a member of The Florida Bar for at least 5 years and must complete a mediation training program approved by the Director of the Division of Administrative Hearings Chief Judge. Adjunct mediators may be employed by the Office of the Judges of Compensation Claims on an as-needed basis and shall be selected from a list prepared by the Director of the Division of Administrative Hearings Chief Judge. An adjunct mediator must be independent of all parties participating in the mediation conference. An adjunct mediator must be a member of The Florida Bar for at least 5 years and must complete a mediation training program approved by the Director of the Division of Administrative Hearings Chief Judge. An adjunct mediator 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 employer may be represented by an attorney at the mediation conference if the employee is also represented by an attorney at the mediation conference.

(4)(a) If, on the 10th day following commencement of mediation, the questions in dispute have not been resolved, the judge of compensation claims shall hold a pretrial hearing. The judge of compensation claims shall give the interested parties at least 7 days' advance notice of the pretrial hearing by mail. At the pretrial hearing, the judge of compensation claims shall, subject to paragraph (b), set a date for the final hearing that allows the parties at least 30 days to conduct discovery unless the parties consent to an earlier hearing date.

(b) The final hearing must be held and concluded within 45 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. The written consent of the claimant must be obtained before any request is granted for an additional continuance after the initial continuance has been granted.

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

(d) The hearing shall be held in the county where the injury occurred, if the injury occurred in this state, unless otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury occurred. If the injury occurred without the state and is one for which compensation is payable under this chapter, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the state which will, in the discretion of the Deputy Chief Judge, be the most convenient for a hearing. The hearing shall be conducted by a judge of compensation claims, who shall, within ~~30~~ 14 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues determine the dispute in a summary manner. The judge of compensation claims may enter an abbreviated final order in cases in which compensability is not disputed. Either party may request separate findings of fact and conclusions of law. 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. The report or testimony of the expert medical advisor 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. No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties.

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

(f) Each judge of compensation claims is required to submit a special report to the Deputy Chief Judge in each contested workers' compensation case in which the case is not determined within ~~30~~ 14 days of final hearing or closure of the hearing record. Said form shall be provided by the director of the Division of Administrative Hearings ~~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.~~

~~(g) Judges of compensation claims shall adopt and enforce uniform local rules for workers' compensation.~~

~~(g)~~(h) Notwithstanding any other provision of this section, the judge of compensation claims may require the appearance of the parties and counsel before her or 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.

~~(h)~~(i) To expedite dispute resolution and to enhance the self-executing features of the Workers' Compensation Law, the Deputy 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.

~~(i)~~(j) To further expedite dispute resolution and to enhance the self-executing features of the system, those petitions filed in accordance with s. 440.192 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 under this paragraph; and any other claim filed in accordance with s. 440.192, upon the written agreement of both parties

and application by either party, may similarly be resolved under this paragraph. For purposes of expedited resolution pursuant to this paragraph, the Deputy 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 of compensation claims a pretrial outline of all issues, defenses, and witnesses on a form ~~adopted promulgated~~ by the Deputy 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 of compensation claims 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. The rules of evidence shall be liberally construed in favor of allowing introduction of evidence.

(5)

(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 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 sworn statement that the appellant is insolvent and a complete, detailed, and sworn financial affidavit showing 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 Office of the Judges of Compensation Claims division shall ~~adopt 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 she or 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 her or 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 the 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, in Tallahassee.~~ 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 an interested party within 20 days from the service date of the verified petition relating to record costs. 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 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.~~

Section 20. Subsection (2) of section 440.29, Florida Statutes, is amended to read:

440.29 Procedure before the judge of compensation claims.—

(2) Hearings before the judge of compensation claims shall be open to the public, and the Deputy Chief Judge is authorized to designate the manner in which particular types of hearings are recorded and reported and, when necessary, to contract for the reporting of such hearings. The Deputy Chief Judge shall arrange for the preparation of a record of the hearings and other proceedings before judges of compensation claims, as necessary, and is authorized to allow for the attendance of court reporters at hearings, for preparation of transcripts of testimony, for copies of any instrument, and for other reporting or recording services. The Deputy Chief Judge may charge the same fees allowed by law or court rule to reporters, persons preparing transcripts, or clerks of courts of this state for like services.

Section 21. Paragraph (b) of subsection (3) of section 440.34, Florida Statutes, is amended to read:

440.34 Attorney's fees; costs.—

(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 her or his own attorney's fees, except that a claimant shall be entitled to recover a reasonable attorney's fee from a carrier or employer:

(b) In any case in which the employer or carrier files a response to petition denying benefits ~~notice of denial~~ with the Office of the Judges of Compensation Claims ~~division~~ and the injured person has employed an attorney in the successful prosecution of the claim; or

In applying the factors set forth in subsection (1) to cases arising under paragraphs (a), (b), (c), and (d), the judge of compensation claims must only consider only 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).

Section 22. Section 440.345, Florida Statutes, is amended to read:

440.345 Reporting of attorney's fees.—All fees paid to attorneys for services rendered under this chapter shall be reported to the Office of the Judges of Compensation Claims division as the Office of the Judges of Compensation Claims division requires by rule. The Office of the Judges of Compensation Claims division shall annually summarize such data in a report to the Workers' Compensation Oversight Board.

Section 23. Paragraphs (b), (c), and (f) of subsection (1) of section 440.38, Florida Statutes, are amended to read:

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

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

(b) By furnishing satisfactory proof to the division of its financial ability to pay such compensation individually and on behalf of its subsidiary and affiliated companies with employees in this state and receiving an authorization from the division to pay such compensation directly in accordance with the following provisions:

1. ~~The division may, as a condition to such authorization, require an such employer to deposit with in a depository designated by the division a qualifying security deposit. The division shall determine the type and amount of the qualifying security deposit and shall either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the division and subject to such conditions as the division may prescribe conditions for the qualifying security deposit, which shall include authorization for to the division to call the qualifying security deposit in the case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter.~~ In addition, the division shall require, as a condition to authorization to self-insure, proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. Further, the division shall require such employer to carry reinsurance at levels that will ensure the actuarial soundness of such employer in accordance with rules promulgated by the division. The division may by rule require that, in the event of an individual self-insurer's insolvency, such qualifying security deposits ~~indemnity bonds, securities,~~ and reinsurance policies are ~~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 her or his own insurance.

2. If the employer fails to maintain the foregoing requirements, the division shall revoke the employer's authority to self-insure, unless the employer provides to the division the certified opinion of an independent actuary who is a member of the American Society of Actuaries as to the actuarial present value of the employer's determined and estimated future compensation payments based on cash reserves, using a 4-percent discount rate, and a qualifying security deposit equal to 1.5 times the value so certified. The

employer shall thereafter annually provide such a certified opinion until such time as the employer meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted at the time of each such annual report. Upon the failure of the employer to timely provide such opinion or to timely provide a security deposit in an amount equal to 1.5 times the value certified in the latest opinion, the division shall then revoke such employer's authorization to self-insure, and such failure shall be deemed to constitute an immediate serious danger to the public health, safety, or welfare sufficient to justify the summary suspension of the employer's authorization to self-insure pursuant to s. 120.68.

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

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

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

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

b.c. Irrevocable letters of credit in favor of the division issued by financial institutions located within this state, the deposits of which are insured through the Federal Deposit Insurance Corporation described in subparagraph b.

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

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

5. The qualifying security deposit shall be held by the division, ~~or by a depository authorized by the division,~~ exclusively for the benefit of workers' compensation claimants. The security shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of compensation under this chapter. No surety bond may be terminated, and no letter of credit ~~other qualifying security~~ may be allowed to expire ~~lapse~~, without 90 days' prior notice to the division and deposit by the self-insuring employer of some other qualifying security deposit of equal value within 10 business days after such notice. Failure to provide such notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the division to call or sue upon the surety bond, or to act with respect to ~~other pledged security in any manner necessary to preserve its value for the purposes intended by this section, including the exercise its of rights under a letter of credit.~~ Current self-insured employers must comply with this section on or before December 31, 2001, or upon the maturity of existing security deposits, whichever occurs later, 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. The division may specify by rule the amount of the qualifying security deposit required prior to authorizing an employer to self-insure and the amount of net worth required for an employer to qualify for authorization to self-insure;

(c) By entering into a contract with a public utility under an approved utility-provided self-insurance program as set forth in s. ~~624.46225~~ 440.571 in effect as of July 1, 1983. The division shall adopt rules to implement this paragraph;

(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. The division may adopt rules to administer ~~implement~~ this subsection.

Section 24. Subsections (3), (5), (6), and (7) of section 440.44, Florida Statutes, are amended to read:

440.44 Workers' compensation; staff organization.—

(3) EXPENDITURES.—The division and the director of the Division of Administrative Hearings ~~Chief Judge~~ shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books; for telephone services and WATS lines; for books of reference, periodicals, equipment, and supplies; and for printing and binding as may be necessary in the administration of this chapter. All expenditures in the administration of this chapter shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor

approved by the division or the director of the Division of Administrative Hearings Chief Judge.

(5) OFFICE.—The division and the Deputy Chief Judge shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of business under this chapter, at which office the official records and papers shall be kept. The office shall be furnished and equipped. The division, any judge of compensation claims, or the Deputy Chief Judge may hold sessions and conduct hearings at any place within the state. The Office of the Judges of Compensation Claims shall maintain the 17 district offices, 31 judges of compensation claims, and 31 mediators as they exist on June 30, 2001.

(6) SEAL.—The division ~~and~~, the judges of compensation claims, ~~and the Chief Judge~~ shall have a seal upon which shall be inscribed the words “State of Florida Department of Insurance Labor and Employment Security—Seal” and “Division of Administrative Hearings—Seal,” respectively.”

(7) DESTRUCTION OF OBSOLETE RECORDS.—The division is expressly authorized to provide by regulation for and to destroy obsolete records of the division ~~and commission.~~ The Division of Administrative Hearings is expressly authorized to provide by regulation for and to destroy obsolete records of the Office of the Judges of Compensation Claims.

Section 25. Section 440.442, Florida Statutes, is amended to read:

440.442 Code of Judicial Conduct.—The Deputy Chief Judge, and judges of compensation claims shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court provided in this section. Any material violation of a provision of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of the Deputy ~~such~~ Chief Judge, or judge of compensation claims 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 or herself 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 OR HER ACTIVITIES.—~~

~~(a) A judge should respect and comply with the law and should conduct himself or herself 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 or her personal relationships to influence his or her judicial conduct of judgment. A judge should not lend the prestige of the office to advance the private interest of others; nor convey or authorize~~

others to convey the impression that they are in a special position to influence him or her. A judge should not testify voluntarily as a character witness.

~~(3) A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY.—The judicial duties of a judge take precedence over all his or her other activities. The judicial duties include all the duties of 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. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.~~

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

~~(c) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he or she must deal in an official capacity, and should request similar conduct of lawyers, and of his or her staff, court officials, and others subject to his or her 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 or her judicial duties, may engage in the following quasi-judicial activities, if in doing so he or she does not cast doubt on his or her capacity to decide impartiality on any issue that may come before him or her:~~

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

~~(b) 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 may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.~~

~~(c) 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 and assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fundraising activities.~~

~~(d) 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 EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES.—~~

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

(b) ~~Civil and charitable activities.~~—A judge may not participate in civic and charitable activities that reflect adversely upon his or her impartiality or interfere with the performance of his or her duties. A judge may serve as an officer, director, trustee, or nonlegal advisory 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 her 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 civic organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge should not be a speaker or a guest of honor at any organization's fundraising events, but may attend such events.~~

3. ~~A judge should not give investment advice to such an organization, but 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 or her impartiality, interfere with the proper performance of his or her judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she 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 or her investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as the judge can do so without serious financial detriment, he or she should divest himself or herself 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 or her; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and 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 an 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;~~

~~e.—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 or her in the immediate future.~~

~~5.—A judge should make a reasonable effort to be informed about the personal financial interests of members of his or her family residing in the judge's household and shall report any gift, bequest, favor, or loan received thereby of which he or she has knowledge and which tends to reflect adversely on his or her impartiality, in the same manner as he or she reports compensation in subsection (6).~~

~~6.—For the purpose of this section, “member of his or her family residing in the judge's household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his or her family, who resides in the judge's household.~~

~~7.—A judge is not required by this section to disclose his or her income, debts, or investments, except as provided in subsections (3) and (6).~~

~~8.—Information required by a judge in which his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to his or her judicial duties.~~

~~(6) FISCAL MATTERS OF JUDGES.—Fiscal matters of a judge should be conducted 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.~~

~~(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 section, if the source of such payments does not give the appearance of influencing the judge in his or her 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 or her 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 reports 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 Commission on Ethics on the date prescribed by law.~~

~~2. Gifts: A judge shall file a public report of all gifts which are required to be disclosed under Canons 5D(5)(h) and 6B(2) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed in the office of the Commission on Ethics on or before July 1 of each year.~~

Section 26. Section 440.45, Florida Statutes, is amended to read:

440.45 Office of the Judges of Compensation Claims.—

(1)(a) There is hereby created the Office of the Judges of Compensation Claims within the Department of ~~Management Services Labor and Employment Security~~. The Office of the Judges of Compensation Claims shall be headed by the ~~Deputy~~ Chief Judge of Compensation Claims. The ~~Deputy Chief Judge~~ shall report to the director of the Division of Administrative Hearings. The ~~Deputy~~ Chief Judge shall be appointed by the Governor for a term of 4 years from a list of three names submitted by the statewide nominating commission created under subsection (2). The ~~Deputy~~ Chief Judge must demonstrate prior administrative experience and possess the same qualifications for appointment as a judge of compensation claims, and the procedure for reappointment of the ~~Deputy~~ Chief Judge will be the same as for reappointment of a judge of compensation claims. The office shall be a separate budget entity and the director of the Division of Administrative Hearings ~~Chief Judge~~ shall be its agency head for all purposes. The Department of ~~Management Services Labor and Employment Security~~ shall provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings ~~Chief Judge~~ but shall not direct, supervise, or control the Office of the Judges of Compensation Claims in any manner, including, but not limited to, personnel, purchasing, budgetary matters, or property transactions. The operating budget of the Office of the Judges of Compensation Claims shall be paid out of the Workers' Compensation Administration Trust Fund established in s. 440.50.

(b) The current term of the Chief Judge of Compensation Claims shall expire October 1, 2001. Effective October 1, 2001, the position of Deputy Chief Judge of Compensation Claims is created.

(2)(a) The Governor shall appoint full-time judges of compensation claims to conduct proceedings as required by this chapter or other law. No person may be nominated to serve as a judge of compensation claims unless he or she has been a member of The Florida Bar in good standing for the previous 5 years and is experienced knowledgeable in the practice of law of workers' compensation. No judge of compensation claims shall engage in the private practice of law during a term of office.

(b) Except as provided in paragraph (c), the Governor shall appoint a judge of compensation claims from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of the following:

1. Five members, at least one of whom must 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 engaged in the practice of law. On July 1, 1999, the term of office of each person appointed by the Board of Governors of The Florida Bar to the commission expires. The Board of Governors shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 4-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term;

2. Five electors, at least one of whom must 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. On July 1, 1999, the term of office of each person appointed by the Governor to the commission expires. The Governor shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each, beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term; and

3. Five electors, at least one of whom must be a member of a minority group as defined in s. 288.703(3), one of each who resides in the territorial jurisdictions of the district courts of appeal, selected and appointed by a majority vote of the other 10 members of the commission. On October 1, 1999, the term of office of each person appointed to the commission by its other members expires. A majority of the other members of the commission shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning October 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each, beginning October 1, 1999. Thereafter, each member shall be appointed for a 4-year term.

A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term. No attorney who appears before any judge of compensation claims more than four times a year is eligible to serve on the statewide nominating commission. The meetings and determinations of the nominating commission as to the judges of compensation claims shall be open to the public.

(c) Each 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 a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. Effective July 1, 2002, in determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of ss. 440.25(1) and

~~(4)(a)-(f), 440.34(2), and 440.442. If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office. The Governor shall review the commission's report and may reappoint the judge for an additional 4-year term. If the Governor does not reappoint the judge, the Governor shall inform the commission. The judge shall remain in office until the Governor has appointed a successor judge in accordance with paragraphs (a) and (b). If a vacancy occurs during a judge's unexpired term, the statewide nominating commission does not find the judge's performance is satisfactory, or the Governor does not reappoint the judge, the Governor shall appoint a successor judge for a term of 4 years in accordance with paragraph (b).~~

(d) The Governor may appoint any attorney who has at least 5 years of experience in the practice of law in this state to serve as a judge of compensation claims pro hac vice in the absence or disqualification of any full-time judge of compensation claims or to serve temporarily as an additional judge of compensation claims in any area of the state in which the Governor determines that a need exists for such an additional judge. However, an attorney who is so appointed by the Governor may not serve for a period of more than 120 successive days.

(e) The director of the Division of Administrative Hearings may receive or initiate complaints, conduct investigations, and dismiss complaints against the Deputy Chief Judge and the judges of compensation claims on the basis of the Code of Judicial Conduct. The director may recommend to the Governor the removal of the Deputy Chief Judge or a judge of compensation claims or recommend the discipline of a judge whose conduct during his or her term of office warrants such discipline. For purposes of this section, the term "discipline" includes reprimand, fine, and suspension with or without pay. At the conclusion of each investigation, the director shall submit preliminary findings of fact and recommendations to the judge of compensation claims who is the subject of the complaint. The judge of compensation claims has 20 days within which to respond to the preliminary findings. The response and the director's rebuttal to the response must be included in the final report submitted to the Governor.

~~(3) The Chief Judge shall select from among the full time judges of the office two or more judges to rotate as docketing judges. Docketing judges shall review all claims for benefits for consistency with the requirements of this chapter and the rules of procedure, including, but not limited to, specificity requirements, and shall dismiss any claim that fails to comport with such rules and requirements. The docketing judge shall not dismiss any claim with prejudice without offering the parties an opportunity to appear and present argument. The Chief Judge may as he or she deems appropriate expand the duties of the docketing judges to include resolution without hearing of other types of procedural and substantive matters, including resolution of fee disputes.~~

~~(3)(4) The Chief Judge shall have the discretion to require mediation and to designate qualified persons to act as mediators in any dispute pending before the judges of compensation claims and the division. The Deputy Chief~~

Judge shall ~~coordinate with the Director of the Division of Workers' Compensation to establish a mandatory mediation program to facilitate early and efficient resolution of disputes arising under this chapter and to establish training and continuing education for new and sitting judges.~~

~~(4)~~<sup>(5)</sup> The Office of the Judges of Compensation Claims shall adopt promulgate rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including, but not limited to, the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards, and other data necessary for the judicial nominating commission to review the performance of judges as required in paragraph (2)(c) performance indicators. The workers' compensation rules of procedure approved by the Supreme Court shall apply until the rules adopted promulgated by the Office of the Judges of Compensation Claims pursuant to this section become effective.

~~(5)~~<sup>(6)</sup> Not later than December 1 of each year, the Office of the Judges of Compensation Claims ~~and the Division of Workers' Compensation shall jointly issue a written report to the Governor, the House of Representatives, and the Senate, The Florida Bar, and the statewide nominating commission summarizing the amount, cost, and outcome of all litigation resolved in the previous fiscal prior year, summarizing the disposition of mediation conferences, the number of mediation conferences held, the number of continuances granted for mediations and final hearings, the number and outcome of litigated cases, the amount of attorney's fees paid in each case according to order year and accident year, and the number of final orders not issued within 30 days after the final hearing or closure of the hearing record, applications and motions for mediation conferences and recommending changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations. If the Deputy Chief Judge finds that judges generally are unable to meet a particular statutory requirement for reasons beyond their control, the Deputy Chief Judge shall submit such findings and any recommendations to the Legislature.~~

Section 27. Section 440.47, Florida Statutes, is amended to read:

440.47 Travel expenses.—The Deputy Chief Judge, judges of compensation claims, and employees of the department shall be reimbursed for travel expenses as provided in s. 112.061. Such expenses shall be sworn to by the person who incurred the same and shall be allowed and paid as provided in s. 440.50 upon the presentation of vouchers therefor approved by the director of the Division of Administrative Hearings Chief Judge or the department, whichever is applicable.

Section 28. Section 440.59, Florida Statutes, is amended to read:

440.59 Reporting requirements.—

(1) The department of ~~Labor and Employment Security~~ shall annually prepare 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 and 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 considers advisable. On or before September 15 of each year, the department shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation.

~~(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 for the various types of injury, and shall include an analysis of the causes of such injuries. The division shall distribute to each employer and self-insurer in the state covered by the Workers' Compensation Law the data relevant to its workforce. The report shall also be distributed to the insurers authorized to write workers' compensation insurance in the state.~~

~~(2)(3)~~ The division shall annually prepare a closed claim report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation on or before September 15 of each year. The closed claim report shall include, but not be limited to, an analysis of all claims closed during the preceding year as to the date of accident, age of the injured employee, occupation of the injured employee, type of injury, body part affected, type and duration of indemnity benefits paid, permanent impairment rating, medical benefits identified by type of health care provider, and type and cost of any rehabilitation benefits provided.

~~(3)(4)~~ The division shall prepare an annual report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation, on or before September 15 of each year. The annual report shall include a status report on all cases involving work-related injuries in the previous 10 years. The annual report shall include, but not be limited to, the number of open and closed cases, the number of cases receiving various types of benefits, and the cash and medical benefits paid between the date of injury and the evaluation date, ~~the number of litigated cases, and the amount of attorney's fees paid in each case.~~

~~(5) The Chief Judge must prepare an annual report summarizing the disposition of mediation conferences and must submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the~~

~~House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation, on or before September 15 of each year.~~

Section 29. Section 440.593, Florida Statutes, is amended to read:

440.593 Electronic reporting.—

(1) The division may establish by rule an electronic reporting system requiring or authorizing whereby an employer or carrier is required to submit required forms, reports, or other information electronically rather than by other means filing otherwise required forms or reports. The division may by rule establish different deadlines for submitting forms, reports, or reporting information to the division, or to its authorized agent, via the electronic reporting system than are otherwise required when reporting information by other means.

(2) The division may require any carrier to submit data electronically, either directly or through a third-party vendor, and may require any carrier or vendor submitting data to the division electronically to be certified by the division. The division may specify performance requirements for any carrier or vendor submitting data electronically.

(3) The division may revoke the certification of any carrier or vendor determined by the division to be in noncompliance with performance standards prescribed by rule for electronic submissions.

(4) The division may assess a civil penalty, not to exceed \$500 for each violation, as prescribed by rule.

(5) The division is authorized to adopt rules to administer this section.

Section 30. Section 489.114, Florida Statutes, is amended to read:

489.114 Evidence of workers' compensation coverage.—Except as provided in s. 489.115(5)(d), any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate, registration, or certificate of authority of the contractor, provide to the Construction Industry Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities

governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate, registration, or certificate of authority of the contractor under the provisions of s. 489.129.

Section 31. Paragraph (d) is added to subsection (5) of section 489.115, Florida Statutes, to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(5)

(d) An applicant for initial issuance of a certificate or registration shall submit as a prerequisite to qualifying for an exemption from workers' compensation coverage requirements under s. 440.05 an affidavit attesting to the fact that the applicant will obtain an exemption within 30 days after the date the initial certificate or registration is issued by the board.

Section 32. Section 489.510, Florida Statutes, is amended to read:

489.510 Evidence of workers' compensation coverage.—Except as provided in s. 489.515(3)(b), any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate or registration of the contractor, provide to the Electrical Contractors' Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate or registration of the contractor under the provisions of s. 489.533.

Section 33. Subsection (3) of section 489.515, Florida Statutes, is amended to read:

## 489.515 Issuance of certificates; registrations.—

(3)(a) As a prerequisite to the initial issuance or the renewal of a certificate or registration, the applicant shall submit an affidavit on a form provided by the board attesting to the fact that the applicant has obtained both workers' compensation insurance or an acceptable exemption certificate issued by the department and public liability and property damage insurance for the health, safety, and welfare of the public in amounts determined by rule of the board. The board shall by rule establish a procedure to verify the accuracy of such affidavits based upon a random audit method.

(b) An applicant for initial issuance of a certificate or registration shall submit as a prerequisite to qualifying for an exemption from workers' compensation coverage requirements under s. 440.05 an affidavit attesting to the fact that the applicant will obtain an exemption within 30 days after the date the initial certificate or registration is issued by the board.

Section 34. Section 627.0915, Florida Statutes, is amended to read:

627.0915 Rate filings; workers' compensation, drug-free workplace, and safe employers.—The Department of Insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that either implement a drug-free workplace program pursuant to rules adopted by the Division of Workers' Compensation of the Department of Labor and Employment Security or implement a safety program pursuant to provisions of the rating plan approved by the Division of Safety pursuant to rules adopted by the Division of Safety of the Department of Labor and Employment Security or implement both a drug-free workplace program and a safety program. ~~The Division of Safety may by rule require that the client of a help supply services company comply with the essential requirements of a workplace safety program as a condition for receiving a premium credit.~~ The plans must take effect ~~January 1, 1994,~~ must be actuarially sound, and must state the savings anticipated to result from such drug-testing and safety programs.

Section 35. Paragraph (p) of subsection (4) of section 627.311, Florida Statutes, is amended to read:

## 627.311 Joint underwriters and joint reinsurers.—

(4)

(p) Neither the plan nor any member of the board of governors is liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policies of the plan, unless:

1. The member breached or failed to perform her or his duties as a member; and

2. The member's breach of, or failure to perform, duties constitutes:

a. A violation of the criminal law, unless the member had reasonable cause to believe her or his conduct was not unlawful. A judgment or other



final adjudication against a member in any criminal proceeding for violation of the criminal law estops that member from contesting the fact that her or his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the member from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

b. A transaction from which the member derived an improper personal benefit, either directly or indirectly; or

c. Recklessness or any act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. For purposes of this subparagraph, the term "recklessness" means the acting, or omission to act, in conscious disregard of a risk:

(I) Known, or so obvious that it should have been known, to the member; and

(II) Known to the member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such act or omission.

Section 36. Effective July 1, 2001, section 627.914, Florida Statutes, is amended to read:

627.914 Reports of information by workers' compensation insurers required.—

(1) The department shall adopt ~~promulgate~~ rules and statistical plans that must which shall thereafter be used by each insurer and self-insurance fund as defined in s. 624.461 in the recording and reporting of loss, expense, and claims experience, in order that the experience of all insurers and self-insurance funds ~~self-insurers~~ may be made available at least annually in such form and detail as may be necessary to aid the department in determining whether Florida experience for workers' compensation insurance is sufficient for establishing rates.

~~(2) Any insurer authorized to write a policy of workers' compensation insurance shall transmit the following information to the department each year with its annual report, and such information shall be reported on a net basis with respect to reinsurance for nationwide experience and on a direct basis for Florida experience:~~

- ~~(a) Premiums written;~~
- ~~(b) Premiums earned;~~
- ~~(c) Dividends paid or credited to policyholders;~~
- ~~(d) Losses paid;~~
- ~~(e) Allocated loss adjustment expenses;~~

- ~~(f) The ratio of allocated loss adjustment expenses to losses paid;~~
- ~~(g) Unallocated loss adjustment expenses;~~
- ~~(h) The ratio of unallocated loss adjustment expenses to losses paid;~~
- ~~(i) The total of losses paid and unallocated and allocated loss adjustment expenses;~~
- ~~(j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;~~
- ~~(k) The number of claims outstanding as of December 31 of each year;~~
- ~~(l) The total amount of losses unpaid as of December 31 of each year;~~
- ~~(m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year; and~~
- ~~(n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year.~~
- ~~(3) A report of the information required in subsection (2) shall be filed no later than April 1 of each year and shall include the information for the preceding year ending December 31. All reports shall be on a calendar-accident year basis, and each calendar-accident year shall be reported at eight stages of development.~~

~~(2)(4) Each insurer and self-insurance fund authorized to write a policy of workers' compensation insurance shall transmit the following information for paragraphs (a), (b), (d), and (e) annually on both Florida experience and nationwide experience separately:~~

- ~~(a) Payrolls by classification.~~
- ~~(b) Manual premiums by classification.~~
- ~~(c) Standard premiums by classification.~~
- ~~(d) Losses by classification and injury type.~~
- ~~(e) Expenses.~~

A report of this information shall be filed no later than ~~July~~ April 1 of each year. All reports shall be filed in accordance with standard reporting procedures for insurers, which procedures have received approval by the department, and shall contain data for the most recent policy period available. A statistical or rating organization may be used by insurers and self-insurance funds to report the data required by this section. The statistical or rating organization shall report each data element in the aggregate only for insurers and self-insurance funds required to report under this section who elect

to have the ~~rating~~ organization report on their behalf. Such insurers and self-insurance funds shall be named in the report.

~~(3)~~(5) Individual self-insurers as defined ~~authorized to transact workers' compensation insurance as provided in s. 440.02 shall report only Florida data as prescribed in paragraphs (a)-(e) of subsection (2) (4) to the Division of Workers' Compensation of the Department of Labor and Employment Security.~~

(a) The Division of Workers' Compensation shall publish the dates and forms necessary to enable individual self-insurers to comply with this section.

~~(b) The Division of Workers' Compensation shall report the information collected under this section to the Department of Insurance in a manner prescribed by the department.~~

~~(b)~~(c) A statistical or rating organization may be used by individual self-insurers for the purposes of reporting the data required by this section and calculating experience ratings.

~~(4)~~(6) The department shall provide a summary of information provided pursuant to subsection ~~subsections (2) and (4)~~ in its annual report.

Section 37. (1) The Office of the Judges of Compensation Claims is transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Division of Administrative Hearings of the Department of Management Services.

(2) Four positions within the Division of Workers' Compensation of the Department of Labor and Employment Security responsible for coding or entering data contained within final orders issued by the judges of compensation claims are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services.

(3) Ten positions within the Division of Workers' Compensation of the Department of Labor and Employment Security responsible for receiving and preparing docketing orders for the petitions for benefits and for receiving and entering data related to the petitions for benefits are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services.

(4) Four positions within the Division of Workers' Compensation of the Department of Labor and Employment Security responsible for financial management, accounting, and budgeting for the Office of the Judges of Compensation Claims are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services.

Section 38. Except as otherwise provided herein, this act shall take effect October 1, 2001.

Approved by the Governor May 30, 2001.

Filed in Office Secretary of State May 30, 2001.