Coalition's Workers' Compensation Bill

A Bill Entitled an Act of Relating to Worker's Compensation

February 18, 2003

A bill to be entitled An act relating to workers' compensation;

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

Section 1. Subsection (1), paragraph (b) of subsection (14), and subsection (37) of section 440.02, Florida Statutes, are amended to read:

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

(1) "Accident" means only an unexpected or unusual event or result that happens suddenly. A mental or nervous injury due to stress, fright, or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual's race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment. If a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of

employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident

is compensable, with respect to death or permanent impairment. An injury or exposure caused by exposure to a toxic substance, including but not limited to fungus and mold, is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.

(8) "Construction industry" means any business that carries out for-profit activities involving ~~the carrying out of~~ any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land~~. When appropriate to the context, "construction" refers to the act of construction or the result of construction.~~ However, the term "construction" does ~~shall~~ not mean a landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold or resold, or leased by the owner within one year after the commencement of the construction. The division may, by rule, establish those standard industrial classification codes and their definitions which meet the criteria of the term “construction industry” as set forth in this section.

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

(15) (b) 2. As to officers of a corporation who are engaged in the construction industry, no more than three officers of a

corporation, or of any group of affiliated corporations may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05. Officers must be shareholders each owning at least ten percent of the stock of such corporation and be listed as an officer of such corporation with the Department of State, Division of Corporations at the time of requesting an exemption, in order to elect exemptions under this chapter. ~~However, any exemption obtained by a corporate officer of a corporation actively engaged in the construction industry is not applicable with respect to any commercial building project estimated to be valued at $250,000 or greater.~~

Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns. The term "affiliated" means and includes one or more corporations or entities, any one of which is a corporation ~~actively~~ engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliated" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

(c)1. "Employee" includes: ~~a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as provided in this paragraph, elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. Partners or sole proprietors actively engaged in the construction industry are~~

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

a. A sole proprietor or partner who is not engaged in the construction industry, who devotes full time to the proprietorship or partnership and, elects to be included in the definition of "employee" by filing notice thereof as provided in s. 440.05.

b. All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation covering the subcontractor consistent with section 440.10, for work performed by or as a sub-contractor.

c. An independent contractor working or performing services in the construction industry.

d. A sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.

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

(d) "Employee" does not include:

1. An independent contractor~~, if:~~ that is not engaged in the construction industry.

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

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

(2) 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 regulations;

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

(4) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of

paying business and/or other expenses related to services rendered or work performed for compensation;

(5) The independent contract performs work or is able to perform work for any entity in addition to or besides the employer at his own election without the necessity of completing an employment application and/or process; or

(6) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

b. If four of the above factors do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation in light of consideration of the following conditions:

(1) The independent contractor performs or agrees to perform specific services or work for specific amount of money and controls the means of performing the services or work;

(2) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;

(3) The independent contract is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform;

(4) The independent contractor receives compensation for work for services performed for a commission or on a per-job basis and not on any other basis;

(5) The independent contractor may realize a profit or suffer a loss in connection with performing work or services;

(6) The independent contractor has continuing or recurring business liabilities or obligations; and

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

Notwithstanding anything to the contrary herein, an individual claiming to be an independent contractor has the burden to prove that he or she is an independent contractor for purposes of this act.

~~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. Notwithstanding the provisions of this paragraph or any other provision of this chapter, with respect to any commercial building project estimated to be valued at $250,000 or greater, a person who is actively engaged in the construction industry is not an independent~~

~~contractor and is either an employer or an employee who may not be exempt from the coverage requirements of this chapter.~~

7. Unless otherwise prohibited by this chapter, any officer of a corporation who elects to be exempt from this chapter.

8. An ~~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, as otherwise permitted by 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.

(16) (a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105 and 440.106.

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

4. Persons performing ~~L~~labor under a sentence of a court to perform community services as provided in s. 316.193.

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

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

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

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

1. Severe sensory or motor disturbances;

2. Severe communication disturbances;

3. Severe complex integrated disturbances of cerebral function;

4. Severe episodic neurological disorders; or

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

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

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

~~(f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social~~

~~Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.~~

(41) “Specificity” means information on the Petition For Benefits sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period of benefits being requested and a detailed explanation of any benefits received that should be increased, decreased, changed, or otherwise modified. If for medical benefits, the specific details as to why such benefit is being requested; why such benefit is medically necessary, and why current treatment, if any, is not sufficient;

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

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

Section 2. Section 440.05 Florida Statutes is amended to read:

440.05 ELECTION OF EXEMPTION; REVOCATION OF ELECTION; NOTICE; CERTIFICATION.—

(3) Each ~~sole proprietor, partner, or~~ officer of a corporation who is ~~actively~~ engaged in the construction industry and who elects an

exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is submitted to the department by the ~~sole proprietor, partner, or~~ officer of a corporation where such officer is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, social security number, all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and, for corporate officers ~~and partners~~, the registration number of the corporation ~~or partnership~~ filed with the Division of Corporations of the Department of State along with a copy of the stock certificate evidencing the required ownership under this chapter. The notice of election to be exempt must identify each ~~sole proprietorship, partnership, or~~ corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the ~~sole proprietor, partner, or~~ officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers ~~and partnerships~~ provided in s. 440.02, and must certify that any employees of the ~~sole proprietor, partner, or~~ corporation whose officer is electing an exemption are covered by workers' compensation

insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the ~~sole proprietor, partner, or~~ officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name~~s~~ of the ~~sole proprietorship, partnership, or~~ corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new ~~sole proprietorship, partnership,~~ or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, ~~a sole proprietor, partner, or~~ an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight , 2 years from its issue date, as noted on the face of the exemption certificate. All construction industry certificates of

election to be exempt in effect as of October 1, 2003 shall expire no later than December 31, 2003. Any person who has received from the division a construction industry certificate of election to be exempt which is in effect on December 31, 2003 ~~1998~~, shall file a new notice of election to be exempt where permitted by this chapter ~~by the last day in his or her birth month following December 1, 1998~~ before January 1, 2004. A construction industry certificate of election to be exempt may be revoked before its expiration by the ~~sole proprietor, partner, or~~ officer for whom it was issued or by the department for the reasons stated in this section. ~~At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998~~, By July 1, 2003, the department shall send notice of the expiration date, changes in law for election of exemption, and an application for renewal to the certificate-holder at the address on the certificate.

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

(13) Any corporate officer permitted by this chapter to claim~~ing~~ an exemption ~~under this section~~ must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. ~~If the person who claims an exemption as a corporate officer is not so listed on the records of the Secretary of State, the~~

~~individual must provide to the division, upon request by the division, a notarized affidavit stating that the individual is a bona fide officer of the corporation and stating the date his or her appointment or election as a corporate officer became or will become effective. The statement must be signed under oath by both the officer and the president or chief operating officer of the corporation and must be~~ notarized. The division shall issue a stop-work order under s. 440.107(1) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the division within 3 business days after the request is made.

Section 3. Section 440.06, Florida Statutes, is amended to read:

440.06 Failure to secure compensation; effect.—

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

Section 4. Section 440.077, Florida Statutes, is amended to read:

440.077 When a ~~sole proprietor, partner, or~~ corporate officer rejects chapter, effect. –

An ~~sole proprietor, partner, or~~ officer of a corporation, who is permitted to elect an exemption under this chapter, ~~actively engaged~~

~~in the construction industry~~ and who elects to be exempt from the provisions of this chapter may not recover benefits under this chapter.

Section 5. Subsection (1) of section 440.09, Florida Statutes, is amended, and subsection (9) is added to said section, to read:

440.09 Coverage.--

(1) The employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment. The injury, its occupational cause, and any resulting manifestations or disability shall be established to a reasonable degree of medical certainty and by objective medical findings. Mental or nervous injuries occurring as a manifestation of an injury compensable under this section shall be demonstrated by clear and convincing evidence. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation shall be proven by clear and convincing evidence.

(a) This chapter does not require any compensation or benefits for any subsequent injury the employee suffers as a result of an original injury arising out of and in the course

of employment unless the original injury is the major contributing cause of the subsequent injury. The work related accident must be more than 50% responsible for the injury and subsequent disability or need for treatment in order for it to be the major contributing cause.

(b) If an injury arising out of and in the course of employment combines with a preexisting disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this chapter only to the extent that the injury arising out of and in the course of employment is and remains more than 50% responsible for the injury and therefore remains the major contributing cause of the disability or need for treatment.

(c) Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in s.440.15(6) shall for the purpose of this chapter be considered to be a death resulting from the accident causing the hernia.

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

Section 6. Paragraph (a) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

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

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

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

subcontractor have agreed in writing that the contractor will provide coverage.

~~(g) For purposes of this section, a person is conclusively presumed to be an independent contractor if:~~

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

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

~~A sole proprietor, partner, or~~ An officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 may not recover benefits or compensation under this chapter. ~~An independent contractor who provides the general contractor with both an affidavit stating that he or she meets the requirements of s. 440.02 and a certificate of exemption is not an employee under s. 440.02 and may not recover benefits under this chapter~~. For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any officer of a corporation who validly meets the requirements of this paragraph to be an employee.

Section 7. Section 440.104, Florida Statutes is amended to read:

440.104 COMPETITIVE BIDDER; CIVIL ACTIONS—

(6) A person may not recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff~~:~~

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

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

Section 8. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.--

(1) Except if an employer acts with the intent to cause injury or death, the liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including any vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation in accordance with s. 440.38 ~~as required by this chapter~~, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the

injury was due to the comparative negligence of the employee. The same immunities from

liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter.

Such fellow-employee immunities shall not be applicable to an

employee who acts, with respect to a fellow employee, with

willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death. Nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any ~~sole proprietor,~~ partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days' imprisonment as set forth in s. 775.082. The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the board of county commissioners. Intent includes only those actions or conduct of the employer where the employer actually intended that the

consequences of its actions or conduct would be injury or death. Proof of intent shall include only evidence of a deliberate and knowing intent to harm. In the event that an employee recovers damages from an employer either by judgment or settlement under this subsection, the workers' compensation carrier for the employer or the employer, if self-insured, shall have an offset against any workers' compensation benefits to which the employee would be entitled under this chapter and a lien against recovery for any benefits paid prior to the recovery pursuant to Chapter 440 after deduction for attorneys fees and taxable costs expended by the employee in the prosecution of the claim against the employer.

Section 9. Section 440.13, Florida Statutes, is amended to read:

440.13 MEDICAL SERVICES AND SUPPLIES; PENALTY FOR VIOLATIONS; LIMITATIONS.—

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

(m) "Medical~~ly~~ necessity" means any medical service or medical supply which is used to identify or treat an illness or injury, is appropriate to the patient's diagnosis and status of recovery, recommended to the self-insured employer or carrier in writing by an authorized treating physician, ~~and~~ is consistent with the location of service, the level of care provided, and the utilization review requirements consistent with this section ~~applicable practice parameters~~. The service should be widely accepted among practicing health care providers, based on scientific criteria, and determined to be reasonably safe. The service must not be of an experimental, investigative, or research in nature. ~~, except in those instances in~~

~~which prior approval of the Agency for Health Care Administration has been obtained. The Agency for Health Care Administration shall adopt rules providing for such approval on a case by case basis when the service or supply is show to have significant benefits to the recovery and well being of the patient.~~

(u) "Utilization review" means the evaluation of the appropriateness of both the level and the quality of health care and health services provided to a patient, including, but not limited to, evaluation of the appropriateness of treatment, hospitalization, or office visits based on medically accepted standards. Such evaluation must be accomplished by means of a system that identifies the utilization of medical services based on medically accepted standards~~ as established by medical consultants with qualification similar to those providing the care under review, and that refers patterns and practices of overutilization to the agency.~~ and that is accredited under the Utilization Review Accreditation Commission (URAC) for Workers Compensation Management Standards.

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

(b) The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The physician shall prescribe such care in writing. The employer/carrier is not responsible for attendant care until the time as such prescription for attendant care containing specific time periods for care, the level of care required and the type of assistance required, has been received in writing from the authorized treating physician by the self insured employer or carrier. The value of nonprofessional

attendant care provided by a family member must be determined as follows:

1. If the family member is not employed, the per-hour value equals the federal minimum hourly wage.

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

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

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

(5) INDEPENDENT MEDICAL EXAMINATIONS.--

(a) In any dispute concerning overutilization, medical benefits, compensability, or disability under this chapter, the carrier or the employee may select an independent medical examiner. If the parties agree, ~~T~~the examiner may be a health care provider treating or providing other care to the employee. An independent medical examiner may not render an opinion outside his or her area of expertise, as demonstrated by licensure and applicable practice parameters. The independent medical examiner may not provide follow up care unless both parties agree, when such recommendation for care is found to be medically necessary. Upon the written request of the employee for an employee independent medical examination, the carrier shall pay the cost of only one independent medical examination per accident. The cost of any additional independent medical examination shall be borne by the party requesting the additional independent medical examination. Only the costs of independent medical examinations and the costs of such depositions expressly relied upon by the judge of

compensation claims to award benefits in the final compensation order shall be taxable under s. 440.315.

(b) Each party is bound by his or her selection of an independent medical examiner and is entitled to an alternate examiner only if:

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

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

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

4. The parties agree to an alternate examiner.

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

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

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

The employee and the carrier may each submit into evidence, and the judge of compensation claims shall admit, the medical opinion of no more than one qualified independent medical examiner per specialty. In cases involving occupational disease or repetitive trauma, medical opinions are not admissible unless based on reliable scientific principles sufficiently established to have gained general acceptance in the pertinent area of specialty.

(6) UTILIZATION REVIEW.--

Carriers shall review all bills, invoices, and other claims for payment submitted by health care providers in order to identify overutilization and billing errors, ~~and~~ or may hire peer review consultants accredited by the Utilization Review Accredited Commission (URAC) for Workers Compensation to identify overutilization, billing errors, conduct prospective and retrospective reviews and conduct independent medical examinations and other recognized forms of utilization review. ~~or conduct independent medical evaluations.~~ Such consultants, including peer review organizations, are immune from liability in the execution of their functions under this subsection to the extent provided in s. 766.101. If a carrier finds that overutilization of medical services ~~or a billing error~~ has occurred, it must disallow or adjust payment for such services ~~or error~~ without order of a judge of compensation claims or the agency, if the carrier, in making its determination, has complied with this section and rules adopted by the agency.

(7) UTILIZATION ~~AND REIMBURSEMENT~~ DISPUTES.--

(a) Any health care provider, carrier, or employer who elects to contest the disallowance or adjustment of treatment or payment by a

carrier under subsection (6) must, within 30 days after receipt of notice of disallowance or adjustment of treatment or payment, petition the agency to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the agency results in dismissal of the petition.

(b) The carrier must submit to the agency within 10 days after receipt of the petition all documentation substantiating the carrier's disallowance or adjustment regarding utilization. Failure of the carrier to submit the requested documentation to the agency within 10 days constitutes a waiver of all objections to the petition.

(d) If the agency finds an improper disallowance or improper adjustment as a result of utilization review as defined herein of treatment or payment by an insurer, the insurer shall reimburse the health care provider, facility, insurer, or employer within 30 days, subject to the penalties provided in this subsection.

(e) The agency shall adopt rules to carry out this subsection that are consistent with this section. The rules may include but are not limited to provisions for consolidating petitions filed by a petitioner and expanding the timetable for rendering a determination upon a consolidated petition.

(8) PATTERN OR PRACTICE OF OVERUTILIZATION

(a) Carriers must report to the agency all instances of overutilization ~~including, but not limited to, all instances in which~~

~~the carrier disallows or adjusts payment~~. The agency shall determine whether a pattern or practice of overutilization exists.

Subsection (12) is substantially revised as follows:

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

(a) A five-member panel is created, consisting of the Insurance Commissioner, or the Insurance Commissioner's designee, and four members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers; the second member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees; effective September 1, 2003, the third member who shall be a Florida licensed physician and the fourth member, who shall be an accredited insurer actuary, the latter two both being experienced in the delivery of workers compensation medical services. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by any and all providers of medical services, including, but not limited to, chiropractors, physicians, hospitals, ambulatory surgical centers, as well as work-hardening programs, pain programs, and durable medical equipment providers.

(b) As of the effective date of this act through December 31, 2003, all compensable charges for hospital inpatient and outpatient care must be reimbursed at the current reimbursement rates published in the 1999 edition of the Florida Workers Compensation Reimbursement Manual for Hospitals, up to a total cost per hospital visit of $75,000

and above such threshold shall be reimbursed based on 75% of the usual and customary hospital charges as such charges were in effect on January 1, 2003.

(c) Effective January 1, 2004, the maximum reimbursement allowances for inpatient hospital care, outpatient surgical services and ambulatory surgical care shall be based on the most current reimbursement methodologies, models and values or weights used by the Federal Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration) with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. The Panel shall adopt the corresponding federal adopted applicable payment policies relating to coding, billing and reporting and may modify documentation requirements as necessary to comply with this section. In determining appropriate fees, the Panel shall also develop conversion factors or other adjustment factors on the most current reimbursement methodologies, models and values or weights used by the Federal Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration). Nothing herein shall limit the ability of an employer or insurer to negotiate and contract with any medical provider or hospital compensation rates less than those provided in the federal uniform maximum reimbursement allowances.

(d) Effective January 1, 2004, all outpatient medical treatment, performed at a hospital or other outpatient facility shall be paid at the lesser of (1) the workers compensation uniform schedule of maximum allowance reimbursement allowance, (2) 75% of the usual and customary charges, (3) an amount mutually negotiated between the

hospital or outpatient facility and the employer or insurer, or (4) the amount billed by the health care provider.

(e) Effective January 1, 2004, the five-member panel shall revise the uniform schedules of maximum reimbursement allowance applicable to physicians, and other health care providers. The uniform schedule shall include, but not be limited to office visits for evaluation and management services, inpatient or outpatient care in a hospital or ambulatory surgical center, physical therapy, work-hardening, and pain programs provided in an office, hospital outpatient or ambulatory setting; provided however that the health care provider and the employer or its insurer may contract with each other to pay an amount less than at the fee schedule amount. It is the intention and mandate of the Legislature that the health care provider professional fee for service reimbursements be raised, using the savings produced by a no less than a mandated 15% overall net reduction in costs from the hospital per diem schedule in effect on December 31, 2002. This statutorily mandated revision shall be applicable only to hospital and health care provider fee for service schedules to be effective on January 1, 2004, and shall continue in effect until and through December 31, 2005.

(f) Notwithstanding any provision in this subsection, hospital and medical services shall be billed by the provider to the insurer or employer using the provider's usual, customary, and reasonable charges, although reimbursement shall be limited to the uniform schedule as determined by this subsection or at a lesser amount mutually negotiated between the provider and the employer or insurer. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers'

compensation payments shall maintain and disclose upon request records verifying its usual and customary charges.

(g) The provider of any services, treatment, care instruction, training, or durable medical equipment for which an employer is responsible for payment mandated by this subsection agrees to be bound by the uniform schedule of maximum reimbursement allowances, and any dispute regarding the reasonableness of such allowance shall be resolved in accordance with paragraph 15 of this subsection. Neither the provider nor any employer nor insurance carrier may seek payment from the employee if the employer is responsible for payment under this subsection.

(h) Every two years at minimum after January 1, 2004, the five-member panel shall review, revise and adopt changes to schedules of maximum reimbursement allowance, based upon the most current reimbursement methodologies, models, and values or weight used by the Federal Medicare and Medicaid services consistent with subsection (c) of this section. The revisions shall take effect no later than June 1 of that biannual year and shall be published at least three months prior to the effective date.

(i) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $2.00 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lowest.

~~(a) A three-member panel is created, consisting of the Insurance Commissioner, or the Insurance Commissioner's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the agency. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges. Until the three-member panel approves a schedule of per diem rates for inpatient hospital care and it becomes effective, all compensable charges for hospital inpatient care must be reimbursed at 75 percent of their usual and customary charges. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. However, the maximum percentage of increase in the individual reimbursement allowance may not exceed the percentage of increase in the Consumer Price Index for the previous year. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed either the usual and customary charge for treatment, care, and attendance, the agreed-upon contract price, or the maximum reimbursement allowance in the appropriate schedule, whichever is less.~~

~~(b) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price times 1.2 plus $4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower.~~

~~(c) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. Until the three-member panel approves a uniform schedule of maximum reimbursement allowances and it becomes effective, all compensable charges for treatment, care, and attendance provided by physicians, ambulatory surgical centers, work-hardening programs, or pain programs shall be reimbursed at the lowest maximum reimbursement allowance across all 1992 schedules of maximum reimbursement allowances for the services provided regardless of the place of service. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving~~

~~workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:~~

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

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

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

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

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

~~1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally~~

~~recognized fee schedules and alternative methods of reimbursement to certified health care providers and health care facilities for inpatient and outpatient treatment and care.~~

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

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

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

~~The 3division shall provide data to the panel, including but not limited to, utilization trends in the workers' compensation health care delivery system. The 3division shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to s. 440.13(8). The 3division shall provide administrative support and service to the panel to the extent requested by the panel.~~

Subsection (15) PRACTICE PARAMETERS, is hereby repealed and recreated to be that of the following:

(15) MEDICAL FEE REIMBURSEMENT DISPUTES APPEALS.--

(a) The department has jurisdiction under this section to

resolve a dispute between a health service provider and an insurer or self-insured employer over the reasonableness of a fee charged by the health services provider for health services provided to an injured employee who claims benefits under this chapter. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this section are bound by the department's determination under this section on the reasonableness of the disputed fee.

(b) The Department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this section.

~~(15) PRACTICE PARAMETERS.--~~

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

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

~~(c) Procedures must be instituted which provide for the periodic review and revision of practice parameters based on the latest outcomes data, research findings, technological advancements, and clinical experiences, at least once every 3 years.~~

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

Section 10. Paragraph (d) of subsection (1), subsection (2), and paragraphs (c) and (d) of subsection (15) of section 440.134, Florida Statutes, are amended to read:

440.134 Workers' compensation managed care arrangement.—

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

(d) "Grievance" means a written complaint, other than a Petition for Benefits, filed by the injured worker pursuant to the requirements of the managed care arrangement expressing dissatisfaction with the insurer's workers' compensation managed care arrangement's refusal to provide medical care or dissatisfaction with the medical care

provided. ~~provided by an insurer's workers' compensation managed care arrangement health care providers, expressed in writing by an injured worker.~~

Section 11. Paragraph (a) of subsection (1) of section 440.14, Florida Statutes, is amended to read:

440.14 Determination of pay.--

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

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

(b) If the injured employee has not worked in such

employment during substantially the whole of 13 weeks immediately preceding the ~~injury~~ accident, the wages of a similar employee in the same employment who has worked substantially the whole of such 13 weeks shall be used in making the determination under the preceding paragraph.

(c) If an employee is a seasonal worker and the foregoing method cannot be fairly applied in determining the

average weekly wage, then the employee may use, instead of the 13 weeks immediately preceding the ~~injury~~ accident, the calendar year or the 52 weeks immediately preceding the ~~injury~~ accident. The employee will have the burden of proving that this method will be more reasonable and fairer than the method set forth in paragraphs (a) and (b) and, further, must document prior earnings with W-2 forms, written wage statements, or income tax returns. The employer shall have 30 days following the receipt of this written proof to adjust the compensation rate, including the making of any additional payment due for prior weekly payments, based on the lower rate compensation.

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

(e) If it is established that the injured employee was under 22 years of age when ~~injured~~ the accident occurred and that under normal conditions her or his wages should be expected to increase during the period of disability, the fact may

be considered in arriving at her or his average weekly wages.

(f) If it is established that the injured employee was a part-time worker ~~at the time of the injury~~ as of the date of the accident, that she or he had adopted part-time employment as a customary practice, and that under normal working conditions she or he probably would have remained a part-time worker during the period of disability, these factors shall be considered in arriving at her or his average weekly wages. For the purpose of this paragraph, term “part-time worker” means an individual who customarily works less than the full-time hours or full-time workweek of a similar employee in the same employment.

Section 12. Paragraph (b) is hereby created to read and

paragraphs(f) of subsection (1) and paragraph (a) of subsection (3) of section 440.15, Florida Statutes, are amended to read:

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

(1) PERMANENT TOTAL DISABILITY.—

(b) In the absence of conclusive proof of a substantial earning capacity, only a catastrophic injury as defined in s.440.02 (38)(a)-(e) shall be presumed to constitute permanent total disability. No compensation shall be payable under paragraph (a)above if the employee is engaged in, or is physically capable of engaging in any work, including sheltered employment. The burden is on the employee to establish that he or she is unable to work, even part-time work, as a

result of the industrial accident, if such work is available within a 50 mile radius of the employee's residence, or such greater distance as the judge determines to be reasonable under the circumstances. Such benefits shall be payable until the employee reaches his 70th birthdate; notwithstanding any age limits, if the accident occurred on or after the employee's 65th birthday, benefits shall be payable during the continuance of permanent total disability not to exceed 5 years following the determination of permanent total disability.

(f) 1. If permanent total disability results from injuries that occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under s. 440.20(11), the injured employee shall receive additional weekly compensation benefits equal

to 5 percent of her or his weekly compensation rate, as established pursuant to the law in effect on the date of her or his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable under this paragraph, when combined, may not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12(2). ~~entitlement to~~ These supplemental payments shall not be paid or payable after ~~cease at~~ age 62 ~~if the employee is eligible for social security benefits under 42 U.S.C. s.ss.402 and s. 423,~~ whether or not the employee has applied for or is eligible to apply for social security benefits under 42 U.S.C. s. 402 or s. 423.~~such benefits.~~ These supplemental benefits shall be paid by the division out of the Workers' Compensation Administration Trust Fund when the injury occurred subsequent to June 30, 1955, and before July 1, 1984. These supplemental benefits shall be paid by the employer

when the injury occurred on or after July 1, 1984. Supplemental benefits are not payable for any period prior to October 1, 1974.

(2) TEMPORARY TOTAL DISABILITY –

(b) Notwithstanding the provisions of paragraph (a), an employee who has sustained the loss of an arm, leg, hand, or foot, has been rendered a paraplegic, paraparetic, quadriplegic, or quadriparetic, or has lost the sight of both eyes shall be paid temporary total disability of 80 percent of her or his average weekly wage. The increased temporary total disability compensation provided for in this paragraph must not extend beyond 6 months from the date of the accident; however, such benefits are not due or payable if the employee is eligible for, entitled to, or collecting permanent total disability benefits. The compensation provided by this paragraph is not subject to the limits provided in s. 440.12(2), but instead is subject to a maximum weekly compensation rate of $700. If, at the conclusion of this period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraphs (a) and (c). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not paragraph (c).

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

(a) Impairment benefits.--

3. All impairment income benefits shall be based on an impairment rating using the impairment schedule referred to in subparagraph 2.

Impairment income benefits are paid biweekly ~~weekly~~ at a ~~the~~ rate equal to ~~of 50 percent of~~ the employee's compensation rate ~~average weekly temporary total disability benefit~~ not to exceed the maximum weekly benefit under s. 440.12. An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues until the earlier of:

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

b. The death of the employee.

Impairment benefits as defined by this subsection are only

payable for impairment ratings for physical impairments.

Impairment benefits for permanent psychiatric impairment are

limited to the payment of impairment benefits, as calculated

under Subparagraph 3, for a one percent (l%) permanent psychiatric impairment, resulting from the work injury.

4. After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in subparagraph 2. Compensation is not payable for the mental, psychological, or emotional injury arising out of depression from being out of work or from preexisting mental, psychological, or emotional conditions or due

to chronic pain which cannot be substantiated by objective medical findings. If the certification and evaluation are performed by a doctor other

than the employee's treating doctor, the certification and evaluation must be submitted to the treating doctor, and the treating doctor must indicate agreement or disagreement with the certification and evaluation. The certifying doctor shall issue a written report to the division, the employee, and the carrier certifying that maximum medical improvement has been reached, stating the impairment rating, and providing any other information required by the division. If the employee has not been certified as having reached maximum medical improvement before the expiration of 102 weeks after the date

temporary total disability benefits begin to accrue, the

carrier shall notify the treating doctor of the requirements

of this section.

Section 13. Paragraph (e) of subsection (1) and subsection (2) of section 440.151, Florida Statutes, are amended to read:

440.151 Occupational diseases.--

(1)

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

such employment. Both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation shall be proven by clear and convincing evidence.

(2) Whenever used in this section the term “occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially

higher in the particular trade, occupation, process, or employment than for the general public. "Occupational disease" means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the precise disease sustained by the employee.

Section 14. Subsections (1), (2), (5), (7), 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 serve 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~~ Office of the Judges of Compensation Claims shall inform employees of the location of the Office of 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 Office of Judges of Compensation Claims. The Deputy Chief Judge shall refer the Petitions to the presiding judges of compensation claims.

(2) Upon receipt of a petition, the Office of the Judges of Compensation Claims shall review each petition and shall dismiss each petition or any portion of the petition, upon its own motion. ~~or~~ A judge of compensation claims shall dismiss, upon its own motion or the motion of any party, a petition for benefits or any portion thereof 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 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 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) The 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 for mileage 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. If the employee is under the care of a physician for the injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) Specific explanation of any other disputed issue

that a judge of compensation claims will be called to rule

upon.

(k) Any other information and documentation the Deputy Chief

Judge may require by rule.

The dismissal of any petition or portion of the 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 file within B~~e 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 not asserted by a response to petition or motion to dismiss within 60 ~~30~~ days after receipt of the petition for benefits are thereby waived.

(7) Notwithstanding the provisions of s. 440.34, a judge of compensation claims may not award attorney's fees payable by the carrier for services expended or costs incurred prior to the filing of a petition ~~that does~~ not meeting ~~meet~~ the requirements of this section.

(8) Within ~~14~~ 30 days after receipt of a petition for benefits by certified mail, the carrier must either pay or deny the requested benefits ~~without prejudice to its right to deny within 120 days from receipt of the petition or~~ and file a response to petition ~~notice of denial~~ with the Office of the Judges of Compensation Claims ~~division The carrier must~~

listing 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.

(9) Unless stipulated to in writing by the parties, only claims which have been properly raised by a petition for benefits and have undergone mediation may be considered for adjudication by a judge of compensation claims.

Section 15. Subsection (11) of section 440.20, Florida Statutes, is amended to read:

(11) Time for payment of compensation; penalties for Late payment. –

(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 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.

(d)1. With respect to any lump-sum settlement under this subsection, a judge of compensation claims must consider at the time of the settlement, whether the settlement allocation provides for the appropriate recover of child support arrearages. Neither the employer nor the carrier has a duty to investigate or collect information regarding child support arrearages.

Section 16. Section 440.25, Florida Statutes, is amended to read:

440.25 Procedures for mediation and hearings.--

(1) Within 90 days after a petition for benefits is filed under s. 440.192, a mediation conference concerning such petition shall be held. Within 40 days, but not sooner than 30 days after such petition is filed, the judge of compensation claims shall notify the interested parties by order that a state mediation conference concerning such petition will be held unless the parties have notified the Office of the Judges of Compensation Claims that a private mediation has been held. Such order must give the date by which the mediation conference must be held if a state mediation has not been or will not be scheduled. Such order 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. A continuance may be granted 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. Any order granting a continuance must set forth the date of the rescheduled mediation conference. A mediation conference may not be used solely for the purpose of mediating attorney's fees.

(d) The final hearing shall be held within 210 days after receipt of the petition for benefits 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 outside the state and is one for which compensation is

payable under this chapter, then the final hearing may be held in the county of the employer's residence or place of business, or in any other county of the state that will, in the discretion of the Deputy Chief Judge, be the most convenient for a 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 from a claimant's attorney is granted for an additional continuance after the initial continuance has been granted. The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 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. 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 the final hearing, the claimant and employer may each present evidence with respect to the claims presented by the petition for benefits 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. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing is waived.

Section 17. Section 440.271, Florida Statutes is amended to read:

440.271 Appeal of order of ~~judge of compensation~~ Workers' Compensation Appeals Commission ~~claims~~.—

Review of any order of the Workers' Compensation Appeals Commission ~~a judge of compensation claims~~ entered pursuant to this chapter shall be subject to review only by notice of appeal to the District Court of Appeal~~,~~ in the appellate district in which the issues were decided before the judge of compensation claims. ~~First District.~~ Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders. The department shall be given notice of any proceedings pertaining to s.440.25, regarding indigency, or s. 440.49, regarding the Special Disability Trust Fund, and shall have the right to intervene in any proceedings.

Section 18. Subsection (4) of section 440.29, Florida Statutes, is amended to read:

440.29 Procedure before the judge of compensation claims.--

(4) All medical reports of authorized treating health care providers or independent medical examiners, whose medical opinion is

submitted under s. 440.13(5)(e), relating to the claimant and subject accident shall be received into evidence by the judge of compensation claims upon proper motion. However, such records must be served on the opposing party at least 30 days before the final hearing. This section does not limit any right of further discovery, including, but not limited to, depositions.

Section 19. Subsections (1) and (3) of section 440.315, Florida Statutes, is hereby created to read:

Section 440.315 is hereby created to read:

(1) All attorney's fees owed for services rendered to a claimant under this chapter shall be the sole responsibility of the claimant and shall be paid by the claimant in the amount equal to 20 percent of the first $5,000.00 of the amount of the benefits secured, 15 percent of the next $5,000.00 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years after the date. The term "benefits secured" means benefits obtained as a result of the claimant's attorney's legal services rendered in connection with a petition for benefits. As to any settlement under 440.20 (11)(c), the attorney's fee shall be paid by the claimant in an amount up to and including 15 percent of the settlement amount.

(2) Notwithstanding Section 440.315(1) a claimant shall be

entitled to recover a reasonable attorney's fee which shall be in an amount equal to the formula set out in Subsection (1), from an employer or carrier against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a petition for benefits seeking disability, permanent impairment, wage loss, or death benefits, or any other compensation benefit under Chapter 440 arising out of the same accident. If any attorney's fee is owed under this subsection, the Judge of Compensation Claims may approve an additional attorney's fee, not to exceed $1,000.00 per accident, based on a reasonable hourly rate, if the Judge of Compensation Claims expressly finds that the attorney's fee, based on benefits secured, fails to fairly compensate the attorney for disputed medical only claims as provided in this subsection and the circumstances of the particular case warrant such action.

(3). In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability at a final hearing, the employer/carrier shall be responsible for the claimant's attorney's fees based on the formula as set forth in subsection (1).

(4) In awarding a reasonable claimant's attorney's fee under

this section, the judge of compensation claims shall consider

only those benefits to the claimant that the attorney is responsible for securing. The amount, statutory basis, and type

of benefits obtained through legal representation shall be listed

on all attorney's fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" means benefits obtained as a result of the claimant's

attorney's legal services rendered in connection with the petition for benefits. However, such term does not include future medical benefits to be provided on any date more than 5 years after the date of the petition for benefits is filed.

(5) The Judge of Compensation Claims shall not approve a

compensation order, a joint stipulation for lump sum settlement, a stipulation or agreement between a claimant and his or her

attorney, or any other agreement related to benefits under this

Chapter that provides for an attorney's fee in excess of the amount permitted by this Section.

(6) Neither the employee, the employer, nor the carrier shall be responsible for attorney's fees, whether or not a petition for benefits is filed, for securing payment of a medical bill, when the claimant has, in fact, received the medical service, treatment, care or attendance for which the provider seeks payment. In such cases, the provider claiming such payment by way of a

petition or otherwise, shall be solely responsible for any attorney's fees for securing payment for services which have been provided to the claimant.

(7) Regardless of the date benefits were initially requested, any right to attorney's fees to be paid by the employer or carrier shall not attach under this subsection unless the basis for such fee exists as of the 30th day after the date the carrier or employer, if self insured, receives the petition.

Section 20. Subsection 2(b), (8) and (9) are added to section 440.39, Florida Statutes, to read:

440.39 Compensation for injuries when third persons are liable.—

(2) (b) The employer, or in the event the employer is insured against liability hereunder, its workers compensation carrier shall be entitled to subrogate to the rights of the employee on an employer's uninsured/underinsured (UI/UIM) motorist coverage under a commercial auto policy, to the extent of the amount of compensation benefits paid or to be paid as provided by this section.

(8) This section does not impose on the employer a duty to preserve evidence pertaining to third party actions arising out of the industrial accident unless the injured employee or claimant has placed the employer on specific written notice within 60 days of the industrial accident of the injured employee or claimant's desire that any item of evidence should be preserved.

(9) This section does not impose on the carrier a duty to preserve evidence pertaining to third party actions arising out of the industrial accident.

Section 21. Section 440.34, and subsection (3) of section 440.45, Florida Statutes, are repealed.

Section 22. Section 440.4416, Florida Statutes is created to read:

440.4416 Workers' Compensation Appeals Commission. –

(1) (a) 1. There is created under the Cabinet a Worker's Compensation Appeals Commission to consist of a presiding commissioner and four other commissioners, all to be appointed by the Governor after October 1, 2003, but before May 15, 2004 and all to serve full time. Each commissioner shall be selected by the Governor from a list of three commissioners nominated by the judges of each of the five district courts of appeal. The seats on the commission shall be numbered one through five. Nominations for the commissioner of seat one shall be made by the judges of the First District Court of Appeal. Nominations for the commissioner of seat two shall be made by all the judges of the Second District Court of Appeal. Nominations for the commissioner of seat three shall be made by all the judges of the Third District Court of Appeal. Nominations for the commissioner of seat four shall be made by all the judges of the Fourth District Court of Appeal. Nominations for the commissioner of seat five shall be made by all the judges of the Fifth District Court of Appeal. The commissioners shall elect a presiding commissioner from among their number by majority vote. Each commissioner shall have the qualifications required by law for judges of the district courts of appeal. In addition to these qualifications, the commissioners nominated by the judges from the five district courts of appeal shall be substantially experienced in the field of workers' compensation.

2. Each commissioner shall be appointed for a term of 4 years, but may be removed for cause by the Governor.

3. Each appeal from an order of a judge of compensation claims shall be considered by a commission panel which shall consist of two commissioners and the presiding commissioner.

4. Prior to the expiration of the term of office of a commissioner, the conduct of such commissioner shall be reviewed by the statewide nominating commission. A report of the statewide nominating commission regarding retention shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the commissioner. If the statewide nominating commission recommends retention, the Governor shall reappoint the commissioner. However, if the statewide nominating commission does not recommend retention, the judges of the respective District Courts of Appeal shall issue a report to the Governor which shall include a list of three candidates for appointment. In the event a vacancy occurs during an unexpired term of a commissioner on the Workers' Compensation Appeals Commission, the judges of the respective District Courts of Appeal shall nominate at least three candidates in accordance with the procedures set forth in this section.

5. The commission is subject to the Code of Judicial Conduct set forth in s. 440.442.

(b) The presiding commissioner may, by order filed in the records of the commission and with the approval of the Governor, appoint associate commissioners to serve as temporary commissioners of the commission. Such appointment may be made only of a currently

commissioned judge of compensation claims. This appointment shall be for such periods of time as not to cause an undue burden on the caseload in the judge's jurisdiction. Each associate commissioner appointed shall receive no additional pay during the appointment except for expenses incurred in the performance of the additional duties.

(c) The total salaries and benefits of all commissioners of the commission are to be paid from the trust fund created by s. 440.50. Notwithstanding any other provision of law, the commissioners shall be paid a salary equal to that paid under state law to the judges of district courts of appeal.

(2) (a) The commission is vested with all authority, powers, duties, and responsibilities relating to review of orders of judges of compensation claims in workers' compensation proceeding under chapter 440. The commission shall review by appeal final orders of the judges of compensation claims entered pursuant to chapter 440. The First District Court of Appeal shall retain jurisdiction over all workers' compensation proceedings pending before it on October 1, 2003. The commission may hold sessions and conduct hearings at any place within the state. A panel of three commissioners shall consider each case and the concurrence of two shall be necessary for a decision. Any commissioner may request an en banc hearing for review of a final order of a judge of compensation claims.

(b) The commission shall be located within the Department of Management Services but, in the performance of its powers and duties under chapter 440, shall not be subject to control, supervision, or direction by the department. The commission is not an agency for purposes of chapter 120.

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

(3) The commission shall make such expenditures, including expenditures for personnel services and rent at the seat of the government and elsewhere, for law books, reference materials, periodicals, furniture, equipment, and supplies, and for printing and binding, as may be necessary in exercising its authority and powers and carrying out is duties and responsibilities. Expenditures of the commission shall be allowed and paid from the request fund created by s. 440.50, upon the presentation of itemized vouchers therefore approved by the presiding commissioner.

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

(5) (a) The presiding commissioner shall exercise administrative supervision over the Workers' Compensation Appeals Commission shall have the power to:

1. Assign commissioners to hear appeals from final orders of judges of compensation claims.

2. Hire and assign clerks and staff.

3. Regulate the use of courtrooms.

4. Supervise dockets and calendars.

5. Do everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she presides.

(c) The presiding commissioner may appoint an executive assistant to perform such duties as the presiding judge may direct. The commission shall be authorized to employ research assistants or law clerks to assist the judges in performing their duties under this section.

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

(b) The commission shall appoint a clerk who shall hold office at the pleasure of the commission. Before entering upon discharge of his or her duties, the clerk shall give bond in the sum of $5,000 , payable to the Governor of this state, to be approved by a majority of the members of the commission conditioned upon the faithful discharge of the duties of the office, which bond shall be filed in the office of the Secretary of State.

(c) The clerk shall be paid an annual salary pursuant to chapter 25.

(d) The clerk is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the commission and paid from the annual appropriation

for the commission from the Workers' Compensation Administration Trust Fund.

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

(f) The clerk of the commission shall prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him or her, to the Comptroller who shall place the same of the credit of the Workers' Compensation Administration Trust Fund.

(7) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida Workers' Compensation Appeals Commission – Seal," and it all be judicially noticed.

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

(9) Commissioners shall be reimbursed for travel expenses as provided in s. 112.061.

(10) The practice and procedure before the commission and judges of compensation claims shall be governed by rules adopted by the

commission except to the extent that such rules conflict with the provisions of chapter 440.

Section 23. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 24. Section 440.34, Florida Statutes, is repealed.

Section 25. This act shall take effect October l, 2003.