

By the Committee on Banking and Insurance; and Senator Simpson

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1 A bill to be entitled
2 An act relating to workers' compensation system
3 administration; amending s. 440.05, F.S.; deleting a
4 required item to be listed on a notice of election to
5 be exempt; revising specified rules regarding the
6 maintenance of business records by an officer of a
7 corporation; removing the requirement that the
8 Department of Financial Services issue a specified
9 stop-work order; amending s. 440.107, F.S.; requiring
10 that the department allow an employer who has not
11 previously been issued an order of penalty assessment
12 to receive a specified credit to be applied to the
13 penalty; prohibiting the application of a specified
14 credit unless the employer provides specified
15 documentation and proof of payment to the department
16 within a specified period; requiring the department to
17 reduce the final assessed penalty by a specified
18 percentage for employers who have not been previously
19 issued a stop-work order or order of penalty
20 assessment; revising the penalty calculation for the
21 imputed weekly payroll for an employee; amending s.
22 440.13, F.S.; eliminating the certification
23 requirements when an expert medical advisor is
24 selected by a judge of compensation claims; providing
25 requirements for the selection of an expert medical
26 advisor; amending s. 440.185, F.S.; deleting the
27 requirement that employers notify the department
28 within 24 hours of any injury resulting in death;
29 amending s. 440.49, F.S.; revising definitions;
30 revising the requirements for filing a claim; deleting
31 the preferred worker program; deleting the
32 notification fees on certain filed claims which

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33 supplement the Special Disability Trust Fund;
34 conforming cross-references; amending s. 440.52, F.S.;
35 deleting a fee for certain registration of insurance
36 carriers; amending ss. 440.021, 440.42, 440.50, and
37 624.4626, F.S.; conforming cross-references; providing
38 an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Subsections (1), (2), (3), (5), (10), and (11)
43 of section 440.05, Florida Statutes, are amended to read:

44 440.05 Election of exemption; revocation of election;
45 notice; certification.—

46 (1) Each corporate officer who elects not to accept the
47 provisions of this chapter or who, after electing such
48 exemption, revokes that exemption shall submit mail to the
49 department ~~in Tallahassee~~ notice to such effect in accordance
50 with a form to be prescribed by the department.

51 (2) Each sole proprietor or partner who elects to be
52 included in the definition of "employee" or who, after such
53 election, revokes that election must submit mail to the
54 department ~~in Tallahassee~~ notice to such effect, in accordance
55 with a form to be prescribed by the department.

56 ~~(3) Each officer of a corporation who is engaged in the~~
57 ~~construction industry and who elects an exemption from this~~
58 ~~chapter or who, after electing such exemption, revokes that~~
59 ~~exemption must submit a notice to such effect to the department~~
60 ~~on a form prescribed by the department.~~ The notice of election
61 to be exempt must be electronically submitted to the department

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62 by the officer of a corporation who is allowed to claim an
63 exemption as provided by this chapter and must list the name,
64 ~~federal tax identification number~~, date of birth, driver license
65 number or Florida identification card number, and all certified
66 or registered licenses issued pursuant to chapter 489 held by
67 the person seeking the exemption, the registration number of the
68 corporation filed with the Division of Corporations of the
69 Department of State, and the percentage of ownership evidencing
70 the required ownership under this chapter. The notice of
71 election to be exempt must identify each corporation that
72 employs the person electing the exemption and must list the
73 social security number or federal tax identification number of
74 each such employer and the additional documentation required by
75 this section. In addition, the notice of election to be exempt
76 must provide that the officer electing an exemption is not
77 entitled to benefits under this chapter, must provide that the
78 election does not exceed exemption limits for officers provided
79 in s. 440.02, and must certify that any employees of the
80 corporation whose officer elects an exemption are covered by
81 workers' compensation insurance. Upon receipt of the notice of
82 the election to be exempt, receipt of all application fees, and
83 a determination by the department that the notice meets the
84 requirements of this subsection, the department shall issue a
85 certification of the election to the officer, unless the
86 department determines that the information contained in the
87 notice is invalid. The department shall revoke a certificate of
88 election to be exempt from coverage upon a determination by the
89 department that the person does not meet the requirements for
90 exemption or that the information contained in the notice of

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91 election to be exempt is invalid. The certificate of election
92 must list the name of the corporation listed in the request for
93 exemption. A new certificate of election must be obtained each
94 time the person is employed by a new or different corporation
95 that is not listed on the certificate of election. A notice ~~copy~~
96 of the certificate of election must be sent to each workers'
97 compensation carrier identified in the request for exemption.
98 Upon filing a notice of revocation of election, an officer who
99 is a subcontractor or an officer of a corporate subcontractor
100 must notify her or his contractor. Upon revocation of a
101 certificate of election of exemption by the department, the
102 department shall notify the workers' compensation carriers
103 identified in the request for exemption.

104 (5) A notice given under subsection (1), subsection (2), or
105 subsection (3) shall become effective when issued by the
106 department or 30 days after it ~~an application for an exemption~~
107 is received by the department, whichever occurs first. However,
108 if an accident or occupational disease occurs less than 30 days
109 after the effective date of the insurance policy under which the
110 payment of compensation is secured or the date the employer
111 qualified as a self-insurer, such notice is effective as of
112 12:01 a.m. of the day following the date it is submitted ~~mailed~~
113 to the department ~~in Tallahassee~~.

114 (10) Each officer of a corporation who is actively engaged
115 in the construction industry and who elects an exemption from
116 this chapter shall maintain business records as specified by the
117 department by rule, ~~which rules must include the provision that~~
118 ~~any corporation with exempt officers engaged in the construction~~
119 ~~industry must maintain written statements of those exempted~~

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120 ~~persons affirmatively acknowledging each such individual's~~
121 ~~exempt status.~~

122 (11) Any corporate officer permitted by this chapter to
123 claim an exemption must be listed on the records of this state's
124 Secretary of State, Division of Corporations, as a corporate
125 officer. ~~The department shall issue a stop-work order under s.~~
126 ~~440.107(7) to any corporation who employs a person who claims to~~
127 ~~be exempt as a corporate officer but who fails or refuses to~~
128 ~~produce the documents required under this subsection to the~~
129 ~~department within 3 business days after the request is made.~~

130 Section 2. Paragraphs (d) and (e) of subsection (7) of
131 section 440.107, Florida Statutes, are amended to read:

132 440.107 Department powers to enforce employer compliance
133 with coverage requirements.-

134 (7)

135 (d)1. In addition to any penalty, stop-work order, or
136 injunction, the department shall assess against any employer who
137 has failed to secure the payment of compensation as required by
138 this chapter a penalty equal to 2 times the amount the employer
139 would have paid in premium when applying approved manual rates
140 to the employer's payroll during periods for which it failed to
141 secure the payment of workers' compensation required by this
142 chapter within the preceding 2-year period or \$1,000, whichever
143 is greater.

144 a. For employers who have not been previously issued a
145 stop-work order or order of penalty assessment, the department
146 must allow the employer to receive a credit for the initial
147 payment of the estimated annual workers' compensation policy
148 premium, as determined by the carrier, to be applied to the

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149 penalty. Before applying the credit to the penalty, the employer
150 must provide the department with documentation reflecting that
151 the employer has secured the payment of compensation pursuant to
152 s. 440.38 and proof of payment to the carrier. In order for the
153 department to apply a credit for an employer that has secured
154 workers' compensation for leased employees by entering into an
155 employee leasing contract with a licensed employee leasing
156 company, the employer must provide the department with a written
157 confirmation, by a representative from the employee leasing
158 company, of the dollar or percentage amount attributable to the
159 initial estimated workers' compensation expense for leased
160 employees, and proof of payment to the employee leasing company.
161 The credit may not be applied unless the employer provides the
162 documentation and proof of payment to the department within 28
163 days after service of the stop-work order or first order of
164 penalty assessment upon the employer.

165 b. For employers who have not been previously issued a
166 stop-work order or order of penalty assessment, the department
167 must reduce the final assessed penalty by 25 percent if the
168 employer has complied with administrative rules adopted pursuant
169 to subsection (5) and has provided such business records to the
170 department within 10 business days after the employer's receipt
171 of the written request to produce business records.

172 c. The \$1,000 penalty shall be assessed against the
173 employer even if the calculated penalty after the credit and 25
174 percent reduction have ~~has~~ been applied is less than \$1,000.

175 2. Any subsequent violation within 5 years after the most
176 recent violation shall, in addition to the penalties set forth
177 in this subsection, be deemed a knowing act within the meaning

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178 of s. 440.105.

179 (e) When an employer fails to provide business records
180 sufficient to enable the department to determine the employer's
181 payroll for the period requested for the calculation of the
182 penalty provided in paragraph (d), for penalty calculation
183 purposes, the imputed weekly payroll for each employee,
184 corporate officer, sole proprietor, or partner shall be the
185 statewide average weekly wage as defined in s. 440.12(2)
186 multiplied by 1.5 ~~2~~.

187 Section 3. Paragraph (a) of subsection (7) and paragraphs
188 (a), (c), and (f) of subsection (9) of section 440.13, Florida
189 Statutes, are amended to read:

190 440.13 Medical services and supplies; penalty for
191 violations; limitations.—

192 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

193 (a) Any health care provider, ~~carrier, or employer~~ who
194 elects to contest the disallowance or adjustment of payment by a
195 carrier under subsection (6) must, within 45 days after receipt
196 of notice of disallowance or adjustment of payment, petition the
197 department to resolve the dispute. The petitioner must serve a
198 copy of the petition on the carrier and on all affected parties
199 by certified mail. The petition must be accompanied by all
200 documents and records that support the allegations contained in
201 the petition. Failure of a petitioner to submit such
202 documentation to the department results in dismissal of the
203 petition.

204 (9) EXPERT MEDICAL ADVISORS.—

205 (a) The department shall certify expert medical advisors in
206 each specialty to assist the department ~~and the judges of~~

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207 ~~compensation claims~~ within the advisor's area of expertise as
208 provided in this section. The department shall, in a manner
209 prescribed by rule, in certifying, recertifying, or decertifying
210 an expert medical advisor, consider the qualifications,
211 training, impartiality, and commitment of the health care
212 provider to the provision of quality medical care at a
213 reasonable cost. As a prerequisite for certification or
214 recertification, the department shall require, at a minimum,
215 that an expert medical advisor have specialized workers'
216 compensation training or experience under the workers'
217 compensation system of this state and board certification or
218 board eligibility.

219 (c) If there is disagreement in the opinions of the health
220 care providers, if two health care providers disagree on medical
221 evidence supporting the employee's complaints or the need for
222 additional medical treatment, or if two health care providers
223 disagree that the employee is able to return to work, the
224 department may, and the judge of compensation claims shall, upon
225 his or her own motion or within 15 days after receipt of a
226 written request by either the injured employee, the employer, or
227 the carrier, order the injured employee to be evaluated by an
228 expert medical advisor. The injured employee and the employer or
229 carrier may agree on the health care provider to serve as an
230 expert medical advisor. If the parties do not agree, the judge
231 of compensation claims shall select an expert medical advisor
232 from the department's list of certified expert medical advisors.
233 If a certified medical advisor within the relevant medical
234 specialty is unavailable, the judge of compensation claims shall
235 appoint any otherwise qualified health care provider to serve as

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236 an expert medical advisor without obtaining the department's
237 certification. The opinion of the expert medical advisor is
238 presumed to be correct unless there is clear and convincing
239 evidence to the contrary as determined by the judge of
240 compensation claims. The expert medical advisor appointed to
241 conduct the evaluation shall have free and complete access to
242 the medical records of the employee. An employee who fails to
243 report to and cooperate with such evaluation forfeits
244 entitlement to compensation during the period of failure to
245 report or cooperate.

246 (f) If the department or a judge of compensation claims
247 orders the services of an ~~a-certified~~ expert medical advisor to
248 resolve a dispute under this section, the party requesting such
249 examination must compensate the advisor for his or her time in
250 accordance with a schedule adopted by the department. If the
251 employee prevails in a dispute as determined in an order by a
252 judge of compensation claims based upon the expert medical
253 advisor's findings, the employer or carrier shall pay for the
254 costs of such expert medical advisor. If a judge of compensation
255 claims, upon his or her motion, finds that an expert medical
256 advisor is needed to resolve the dispute, the carrier must
257 compensate the advisor for his or her time in accordance with a
258 schedule adopted by the department. The department may assess a
259 penalty not to exceed \$500 against any carrier that fails to
260 timely compensate an advisor in accordance with this section.

261 Section 4. Subsection (3) of section 440.185, Florida
262 Statutes, is amended to read:

263 440.185 Notice of injury or death; reports; penalties for
264 violations.-

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265 ~~(3) In addition to the requirements of subsection (2), the~~
266 ~~employer shall notify the department within 24 hours by~~
267 ~~telephone or telegraph of any injury resulting in death.~~
268 ~~However, this special notice shall not be required when death~~
269 ~~results subsequent to the submission to the department of a~~
270 ~~previous report of the injury pursuant to subsection (2).~~

271 Section 5. Paragraph (b) of subsection (2), paragraph (c)
272 of subsection (4), paragraph (c) of subsection (6), paragraphs
273 (c) and (d) of subsection (7), subsection (8), and paragraph (d)
274 of subsection (9) of section 440.49, Florida Statutes, are
275 amended to read:

276 440.49 Limitation of liability for subsequent injury
277 through Special Disability Trust Fund.—

278 (2) DEFINITIONS.—As used in this section, the term:

279 ~~(b) "Preferred worker" means a worker who, because of a~~
280 ~~permanent impairment resulting from a compensable injury or~~
281 ~~occupational disease, is unable to return to the worker's~~
282 ~~regular employment.~~

283
284 In addition to the definitions contained in this subsection, the
285 department may by rule prescribe definitions that are necessary
286 for the effective administration of this section.

287 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
288 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
289 OTHER PHYSICAL IMPAIRMENT.—

290 (c) *Temporary compensation and medical benefits;*
291 *aggravation or acceleration of preexisting condition or*
292 *circumstantial causation.*—If an employee who has a preexisting
293 permanent physical impairment experiences an aggravation or

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294 acceleration of the preexisting permanent physical impairment as
295 a result of an injury or occupational disease arising out of and
296 in the course of her or his employment, or suffers an injury as
297 a result of a merger as defined in paragraph (2) (b) ~~(2) (e)~~, the
298 employer shall provide all benefits provided by this chapter,
299 but, subject to the limitations specified in subsection (7), the
300 employer shall be reimbursed by the Special Disability Trust
301 Fund created by subsection (9) for 50 percent of its payments
302 for temporary, medical, and attendant care benefits.

303 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

304 (c) An employer's or carrier's right to apportionment or
305 deduction pursuant to ss. 440.02(1), 440.15(5)(b), and
306 440.151(1)(c) does not preclude reimbursement from such fund,
307 except when the merger comes within the definition of paragraph
308 (2) (b) ~~(2) (e)~~ and such apportionment or deduction relieves the
309 employer or carrier from providing the materially and
310 substantially greater permanent disability benefits otherwise
311 contemplated in those paragraphs.

312 (7) REIMBURSEMENT OF EMPLOYER.—

313 (c) A proof of claim must be filed on each notice of claim
314 on file as of June 30, 1997, within 1 year after July 1, 1997,
315 or the right to reimbursement of the claim shall be barred. A
316 notice of claim on file on or before June 30, 1997, may be
317 withdrawn and refiled if, at the time refiled, the notice of
318 claim remains within the limitation period specified in
319 paragraph (a). Such refiling shall not toll, extend, or
320 otherwise alter in any way the limitation period applicable to
321 the withdrawn and subsequently refiled notice of claim. ~~Each~~
322 ~~proof of claim filed shall be accompanied by a proof of claim~~

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323 ~~fee as provided in paragraph (9) (d).~~ The Special Disability
324 Trust Fund shall, within 120 days after receipt of the proof of
325 claim, serve notice of the acceptance of the claim for
326 reimbursement. This paragraph shall apply to all claims
327 notwithstanding the provisions of subsection (12).

328 ~~(d) Each notice of claim filed or refiled on or after July~~
329 ~~1, 1997, must be accompanied by a notification fee as provided~~
330 ~~in paragraph (9) (d).~~ A proof of claim must be filed within 1
331 year after the date the notice of claim is filed or refiled,
332 ~~accompanied by a proof-of-claim fee as provided in paragraph~~
333 ~~(9) (d),~~ or the claim shall be barred. ~~The notification fee shall~~
334 ~~be waived if both the notice of claim and proof of claim are~~
335 ~~submitted together as a single filing.~~ The Special Disability
336 Trust Fund shall, within 180 days after receipt of the proof of
337 claim, serve notice of the acceptance of the claim for
338 reimbursement. This paragraph shall apply to all claims
339 notwithstanding the provisions of subsection (12).

340 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~
341 ~~or administrator shall issue identity cards to preferred workers~~
342 ~~upon request by qualified employees and the Department of~~
343 ~~Financial Services shall reimburse an employer, from the Special~~
344 ~~Disability Trust Fund, for the cost of workers' compensation~~
345 ~~premium related to the preferred workers payroll for up to 3~~
346 ~~years of continuous employment upon satisfactory evidence of~~
347 ~~placement and issuance of payroll and classification records and~~
348 ~~upon the employee's certification of employment. The Department~~
349 ~~of Financial Services and the Department of Education may by~~
350 ~~rule prescribe definitions, forms, and procedures for the~~
351 ~~administration of the preferred worker program. The Department~~

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352 of Education may by rule prescribe the schedule for submission
353 of forms for participation in the program.

354 (8)~~(9)~~ SPECIAL DISABILITY TRUST FUND.—

355 ~~(d) The Special Disability Trust Fund shall be supplemented~~
356 ~~by a \$250 notification fee on each notice of claim filed or~~
357 ~~refiled after July 1, 1997, and a \$500 fee on each proof of~~
358 ~~claim filed in accordance with subsection (7). Revenues from the~~
359 ~~fee shall be deposited into the Special Disability Trust Fund~~
360 ~~and are exempt from the deduction required by s. 215.20. The~~
361 ~~fees provided in this paragraph shall not be imposed upon any~~
362 ~~insurer which is in receivership with the department.~~

363 Section 6. Subsection (1) of section 440.52, Florida
364 Statutes, is amended to read:

365 440.52 Registration of insurance carriers; notice of
366 cancellation or expiration of policy; suspension or revocation
367 of authority.—

368 (1) Each insurance carrier who desires to write workers'
369 ~~such~~ compensation insurance in compliance with this chapter
370 shall be required, before writing such insurance, to register
371 with the department and ~~pay a registration fee of \$100. This~~
372 ~~shall be deposited by the department in the fund created by s.~~
373 ~~440.50.~~

374 Section 7. Section 440.021, Florida Statutes, is amended to
375 read:

376 440.021 Exemption of workers' compensation from chapter
377 120.—Workers' compensation adjudications by judges of
378 compensation claims are exempt from chapter 120, and no judge of
379 compensation claims shall be considered an agency or a part
380 thereof. Communications of the result of investigations by the

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381 department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt
382 from chapter 120. In all instances in which the department
383 institutes action to collect a penalty or interest which may be
384 due pursuant to this chapter, the penalty or interest shall be
385 assessed without hearing, and the party against which such
386 penalty or interest is assessed shall be given written notice of
387 such assessment and shall have the right to protest within 20
388 days of such notice. Upon receipt of a timely notice of protest
389 and after such investigation as may be necessary, the department
390 shall, if it agrees with such protest, notify the protesting
391 party that the assessment has been revoked. If the department
392 does not agree with the protest, it shall refer the matter to
393 the judge of compensation claims for determination pursuant to
394 s. 440.25(2)-(5). Such action of the department is exempt from
395 the provisions of chapter 120.

396 Section 8. Subsection (3) of section 440.42, Florida
397 Statutes, is amended to read:

398 440.42 Insurance policies; liability.-

399 (3) No contract or policy of insurance issued by a carrier
400 under this chapter shall expire or be canceled until at least 30
401 days have elapsed after a notice of cancellation has been sent
402 to the department and to the employer in accordance with the
403 provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due
404 to nonpayment of premium, the insurer shall mail notification to
405 the employer at least 10 days prior to the effective date of the
406 cancellation. However, when duplicate or dual coverage exists by
407 reason of two different carriers having issued policies of
408 insurance to the same employer securing the same liability, it
409 shall be presumed that only that policy with the later effective

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410 date shall be in force and that the earlier policy terminated
411 upon the effective date of the latter. In the event that both
412 policies carry the same effective date, one of the policies may
413 be canceled instanter upon filing a notice of cancellation with
414 the department and serving a copy thereof upon the employer in
415 such manner as the department prescribes by rule. The department
416 may by rule prescribe the content of the notice of retroactive
417 cancellation and specify the time, place, and manner in which
418 the notice of cancellation is to be served.

419 Section 9. Paragraph (b) of subsection (1) of section
420 440.50, Florida Statutes, is amended to read:

421 440.50 Workers' Compensation Administration Trust Fund.—

422 (1)

423 (b) The department is authorized to transfer as a loan an
424 amount not in excess of \$250,000 from such special fund to the
425 Special Disability Trust Fund established by s. 440.49(8) ~~s.~~
426 ~~440.49(9)~~, which amount shall be repaid to the said special fund
427 in annual payments equal to not less than 10 percent of moneys
428 received for the ~~such~~ Special Disability Trust Fund.

429 Section 10. Subsection (2) of section 624.4626, Florida
430 Statutes, is amended to read:

431 624.4626 Electric cooperative self-insurance fund.—

432 (2) A self-insurance fund that meets the requirements of
433 this section is subject to the assessments set forth in ss.
434 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not
435 subject to any other provision of s. 624.4621 and is not
436 required to file any report with the department under s.
437 440.38(2)(b) which is uniquely required of group self-insurer
438 funds qualified under s. 624.4621.

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Section 11. This act shall take effect October 1, 2016.