

By Senator Campbell

33-1377-98

See HB 2141

1 A bill to be entitled
2 An act relating to workers' compensation;
3 creating the "Florida No-fault Workers'
4 Compensation and Employer Liability Act";
5 providing a short title; providing legislative
6 intent; authorizing election of provisions of
7 the act in lieu of application of chapter 440,
8 F.S.; providing for notice of election;
9 providing for revocation of election; providing
10 for notice to employees; specifying application
11 of certain definitions; specifying benefits
12 payable to employees; providing criteria;
13 providing for certain periodic medical
14 evaluations; specifying accidental death and
15 dismemberment insurance coverage; requiring
16 continuation of coverage for employees under
17 certain circumstances; specifying employer
18 duties to employees; providing for tort
19 exemptions; providing for employer's defenses;
20 providing for coworker immunity; providing for
21 notice of claims; limiting certain defenses by
22 employers under certain circumstances;
23 specifying procedures for filing and responding
24 to claims; limiting expert witness testimony
25 under certain circumstances; providing for
26 determination of comparative negligence under
27 certain circumstances; authorizing the
28 Department of Insurance to adopt rules
29 requiring proof of insurance or financial
30 responsibility; providing for implementation
31 and administration with reference to certain

1 provisions of the Workers' Compensation Law
2 relating to waiver of exemption, notice of
3 exemption or acceptance, and waiver of
4 exemption or acceptance, coverage, specified
5 activities within the course of employment,
6 drug-free workplaces, coercion of employees,
7 benefits as lien against assets,
8 misrepresentation, fraudulent activities,
9 security for benefits, compensation for
10 injuries when third parties are liable,
11 benefits notice, effect of unconstitutionality,
12 proceedings against the state, pooling
13 liabilities, self-insured public utilities,
14 local government pools, administrative
15 procedures, rulemaking, and coverage; providing
16 application to the Department of Insurance;
17 authorizing the department to adopt rules;
18 providing penalties; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Short title.--This act may be cited as the
24 "Florida No-fault Workers' Compensation and Employer Liability
25 Act."

26 Section 2. Legislative intent.--It is the intent of
27 the Legislature that this act be an optional alternative to
28 the provisions of the Workers' Compensation Law under chapter
29 440, Florida Statutes. The Legislature further intends that
30 this act form the basis for 24-hour health care, loss of
31 income protection, and accidental death and dismemberment

1 insurance for all workers of this state; that employers and
2 employees share in the cost of such system; and that employers
3 and employees share in the responsibility for safety in the
4 workplace. This act is based upon the mutual renunciation of
5 common law rights and defenses with respect to certain claims,
6 and the mutual acceptance of limitations on rights, claims,
7 and defenses in exchange for the benefits and protection of
8 this act. It is also the intent of the Legislature to set
9 forth the exclusive duties of employers to their employees and
10 to set forth and limit the defenses that employers may raise
11 in response to claims brought against them by their employees.

12 Section 3. Application.--Notwithstanding the
13 provisions of sections 440.03 and 440.38, Florida Statutes, or
14 any other provision of the laws of this state, any employer
15 may elect to be bound by this act as an alternative to and
16 instead of the provisions of chapter 440, Florida Statutes.
17 All employees of any employer who elects to be bound by this
18 act shall be bound and governed by this act.

19 Section 4. Notice of election.--Every employer who
20 elects to be bound by this act shall file a notice with the
21 Department of Insurance and provide proof of financial
22 responsibility pursuant to this act. After receiving such
23 notice, the department shall send to the employer a
24 confirmation of the date of receipt. The employer and
25 employees of the employer shall be governed by this act on the
26 60th day after the department receives the notice, unless the
27 employer has not provided proof of financial responsibility to
28 the department.

29 Section 5. Revocation of election.--Coverage under
30 this act shall continue until the employer revokes the
31 election or ceases doing business. However, the benefits

1 under this act shall continue for all employees for at least
2 180 days after the employer revokes the election or ceases
3 doing business.

4 Section 6. Notice to employees.--Each employer who
5 elects to be bound by this act shall provide notice to each
6 employee pursuant to rule adopted by the department. However,
7 failure to provide such notice shall not affect the
8 liabilities, responsibilities, or defenses of the employer or
9 claims of employees.

10 Section 7. Definitions.--The definitions contained in
11 section 440.02, Florida Statutes, apply to the provisions of
12 this act, unless the context clearly requires otherwise.

13 Section 8. Benefits payable to employees.--
14 (1) Under this act, employers shall provide and pay
15 for medical insurance benefits to their employees equal to or
16 greater than the standard health benefit plan developed by the
17 department pursuant to section 627.6699, Florida Statutes.
18 The benefits shall be payable for injury or illness, occurring
19 on or off the job, and regardless of fault. There shall be no
20 deductibles for employees, but employers may use and fund
21 deductibles to reduce insurance costs.

22 (a) Employers may charge employees up to the lesser of
23 25 percent of the premium cost or 6 percent of an employee's
24 wages and collect the employees' share through payroll
25 deductions.

26 (b) Employers and providers may elect to use managed
27 care systems, such as health maintenance organizations or
28 preferred provider organizations, to provide the benefits
29 under this act.

30 (2)(a) Under this act, employers shall provide and pay
31 for disability insurance benefits for their employees to cover

1 employee wage loss, due to injury or illness, occurring on or
2 off the job, and regardless of fault. The minimum disability
3 benefits under this act shall pay two-thirds of an employee's
4 wage loss for up to 24 consecutive months which is due to a
5 particular injury or illness and which results in 10 or more
6 days of lost work.

7 (b) If an employee is not able to perform the normal
8 duties of his regular job, but is able to perform other work
9 available and offered by his employee, the employee must
10 accept and perform the offered employment. The wages paid
11 shall be a credit toward the employer's obligation under this
12 section.

13 (c) Employers may charge employees up to the lesser of
14 25 percent of the premium cost or 2 percent of an employee's
15 wages and collect the employees' share through payroll
16 deductions.

17 (3) Employers or their insurance providers may require
18 periodic evaluations by a physician of an employee's
19 disability, medical condition, treatment, or prognosis, but an
20 employee may request an additional independent evaluation of
21 their own, to be paid for by the employer, if there is a
22 reduction in or denial of benefits.

23 (4) Under this act, employers shall provide and pay
24 for accidental death and dismemberment insurance coverage for
25 each employee in an amount which is not less than twice the
26 employee's annual wages, with a minimum of \$25,000 and a
27 maximum of \$200,000.

28 (5) Employers must continue an employee's insurance
29 coverage under this act for a period of 90 days after
30 termination of employment, and allow employees to extend and
31 pay for coverage for an additional 18 months thereafter.

1 Section 9. Except as provided in an employment
2 contract or an applicable collective bargaining agreement, an
3 employer is not obligated to provide or pay for any benefits
4 or compensation in excess of the amounts set forth in this act
5 unless the employee proves that the employer breached a duty
6 which caused loss, damage, injury, illness, or death to the
7 employee.

8 Section 10. Employer's exclusive duties to
9 employees.--Every employer has a duty to provide:

10 (1) A safe workplace.

11 (2) Sufficient coworkers to do the work.

12 (3) Safe and sufficient tools and equipment, unless
13 such tools and equipment are to be provided by the employee
14 under the terms of employment.

15 (4) Adequate safety instruction and warnings of
16 dangers in the workplace.

17 (5) Selection, training, and supervision of competent
18 coworkers.

19 Section 11. Tort exemption; limitation on right to
20 damages; punitive damages.--

21 (1) In any action of tort brought against the
22 employer, or against any person or organization legally
23 responsible for the employer's acts or omissions, an employee
24 may recover damages in tort for pain, suffering, mental
25 anguish, and inconvenience because of bodily injury, sickness,
26 or disease arising out of the employment only in the event
27 that the injury or disease consists in whole or in part of:

28 (a) Significant and permanent loss of an important
29 bodily function.

30 (b) Permanent injury within a reasonable degree of
31 medical probability, other than scarring or disfigurement.

1 (c) Significant and permanent scarring or
2 disfigurement.

3 (d) Death.

4 (2) When an employer, in a proceeding brought pursuant
5 to this act, questions whether the employee has met the
6 requirements of subsection (1), the employer may file an
7 appropriate motion with the court, and the court shall, on a
8 one-time basis only, 30 days before the date set for the trial
9 or the pretrial hearing, whichever is first, by examining the
10 pleadings and the evidence before it, ascertain whether the
11 employee will be able to submit some evidence that the
12 employee will meet the requirements of subsection (1). If the
13 court finds that the employee will not be able to submit such
14 evidence, then the court shall dismiss the employee's claim
15 without prejudice.

16 Section 12. Employer's defenses.--In response to any
17 claim filed by an employee against an employer for
18 compensation in excess of the benefits provided under this
19 act, an employer may not raise the defenses of assumption of
20 risk, contributory negligence, or injury caused by a fellow
21 servant. However, employers may raise one or more of the
22 following defenses:

23 (1) Comparative negligence;

24 (2) Intentional act of the employee to inflict
25 self-injury;

26 (3) Intentional act of a coemployee to injure the
27 employee, unless there is an independent act of negligence on
28 the part of the employer; or

29 (4) Substance abuse or intoxication on the part of the
30 employee, which contributes to the loss, injury, or illness.

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1 Section 13. Coworker immunity.--Except in the case of
2 intentional acts to injure, coworkers are immune from suits
3 for injuries caused to fellow employees, and the liability of
4 an employer shall not be reduced by a coworker's percentage of
5 fault.

6 Section 14. Notice of claims asserting fault.--Not
7 more than 180 days after a death, injury, or illness which
8 arises out of and in the course of employment and which is the
9 fault of the employer, an employee or his personal
10 representative must file a notice of claim asserting fault
11 with the employer. The employer shall deliver a copy of the
12 claim to the department and the employer's insurance provider
13 or self-insurance administrator. The notice of claim need not
14 be in any particular form and the only required information
15 shall be the employee's name, address, phone number, and
16 Social Security number; the employer's name, address, phone
17 number, and employer identification number, if available; and
18 the approximate date and a brief description of the incident
19 or basis of the claim. Failure to file a claim asserting
20 fault in accordance with this section bars the claim.

21 Notwithstanding the provisions of this section, an employer
22 may require employees to report any accident, injury, or
23 illness which occurs during the course and scope of employment
24 within 24 hours after the occurrence of such accident, injury,
25 or illness. However, a failure to comply with such reporting
26 requirement shall not be a bar to benefits or compensation but
27 may be raised as a defense to causation or negligent failure
28 to seek proper treatment.

29 Section 15. Response to claims.--Within 60 days after
30 receiving notice of a claim, the employer shall provide a
31 response to the employee and file its response with the

1 department, admitting or denying fault and setting forth any
2 defenses to be relied upon by the employer.

3 (1) If an employer admits fault, and raises no
4 defenses other than comparative negligence, substance abuse,
5 or intoxication, the employer shall be responsible on the
6 claim for 100 percent of the employee's reasonable medical and
7 rehabilitative expenses, 85 percent of the employee's past
8 wage loss and loss of capacity to earn in the future, and up
9 to a maximum of \$250,000 in noneconomic damages. However, an
10 employee's recovery shall be reduced by the employee's
11 percentage of comparative negligence or causation attributable
12 to substance abuse or intoxication.

13 (a) Within 60 days after receiving an employer's
14 response, the matter shall be referred to mandatory, binding
15 arbitration on the issues of comparative negligence or
16 causation due to substance abuse or intoxication.

17 (b) After the determination of comparative negligence
18 or causation due to substance abuse or intoxication, the
19 employee may demand mediation or arbitration or file suit
20 within 2 years thereafter, but the court shall order mediation
21 or nonbinding arbitration upon the request of either party.

22 (c) An employee shall be entitled to reasonable
23 attorney's fees and costs incurred after receiving an
24 employer's response.

25 (2) If an employer denies liability or raises defenses
26 other than comparative negligence or substance abuse or
27 intoxication, or fails to file a timely response to the notice
28 of claim, the employee may file suit to recover damages within
29 4 years thereafter. An employee who is the prevailing party
30 shall recover 100 percent of his or her attorney's fees and
31 costs incurred subsequent to the date of injury or loss.

1 (3) An employee may recover only that portion of
2 stress, psychiatric, or mental injuries which are the fault of
3 the employer and which arise out of and are attributable to
4 the course and scope of employment.

5 (4) Health, disability, wage continuation, or
6 accidental death and dismemberment benefits paid by or on
7 behalf of the employer and pertaining to injury or illness
8 which is the subject matter of an employee claim shall be an
9 offset and deducted from the claim prior to the calculation of
10 any percentage fault on the part of the employee.

11 (5) The employer shall pay the costs of any
12 arbitration under this act. Arbitration may be conducted by
13 any person mutually agreed upon by the parties. If the
14 parties cannot agree, the court may select a qualified
15 arbitrator from nominees submitted by the parties or refer the
16 matter to any recognized arbitration service or association.

17 Section 16. Expert witnesses.--No expert witness may
18 testify in any proceeding regarding a claim under this act
19 unless a written report is furnished to the opposing party at
20 least 30 days prior to the testimony being offered.

21 (1) The report must include the qualifications,
22 background, and experience of the expert; the specific facts
23 relied upon by the expert in forming their opinions; the
24 sources of information or facts, and authorities used by the
25 expert, whether or not relied upon in forming the opinions;
26 and the specific opinions to be offered by the expert in the
27 proceedings.

28 (2) The fact that an expert testifies to opinions that
29 may vary from those given in the written report shall not bar
30 their testimony, unless the court finds that there was an
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1 intentional attempt to deceive or that the variance is so
2 great that it undermines the fairness of the proceedings.

3 Section 17. Comparative negligence.--In any proceeding
4 to determine comparative negligence or fault attributable to
5 the employee for substance abuse or intoxication, the trier of
6 fact shall be bound by the following standards:

7 (1) If the employee is partly at fault and such fault
8 was a contributing cause to the loss, injury, or illness, but
9 the employee's fault was not equal to or greater than that of
10 the employer, the percentage of fault attributable to the
11 employee shall be 25 percent.

12 (2) If the employee is partly at fault and such fault
13 was a contributing cause to the loss, injury, or illness, and
14 the employee's fault was equal to, but not greater than, that
15 of the employer, the percentage of fault attributable to the
16 employee shall be 50 percent.

17 (3) If the employee is partly at fault and such fault
18 was a contributing cause to the loss, injury, or illness, and
19 the employee's fault was greater than that of the employer,
20 the percentage of fault attributable to the employee shall be
21 75 percent.

22 Section 18. Proof of insurance or financial
23 responsibility.--The department may adopt rules requiring an
24 employer to provide adequate insurance, an approved
25 self-insurance plan, or proof of financial responsibility to
26 meet their obligations under this act. Failure to comply with
27 the requirements of such rules or to provide benefit coverage
28 required by this act shall subject the employer to strict
29 liability in tort for any injuries or illnesses incurred by
30 employees during any such period of noncompliance and within
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1 the course of their employment, in addition to any other
2 penalties provided by law.

3 Section 19. Waiver of exemption.--

4 (1) Every employer having in his employment any
5 employee not included in the definition of the term "employee"
6 or excluded or exempted from the operation of this act may at
7 any time waive such exclusion or exemption and accept this act
8 by giving notice thereof as provided in section 10, and by so
9 doing be as fully protected and covered by this act as if such
10 exclusion or exemption had not been contained herein.

11 (2) When any policy or contract of insurance
12 specifically secures the benefits of this act to any person
13 not included in the definition of the term "employee" or whose
14 services are not included in the definition of the term
15 "employment" or who is otherwise excluded or exempted from the
16 operation of this act, the acceptance of such policy or
17 contract of insurance by the insured and the writing of same
18 by the carrier shall constitute a waiver of such exclusion or
19 exemption and an acceptance of this act with respect to such
20 person, notwithstanding any other provisions of this act.

21 Section 20. Notice of exemption or acceptance and
22 waiver of exemption or acceptance.--

23 (1) Every sole proprietor or partner who elects to be
24 included in the definition of the term "employee" or who,
25 after such election, revokes that election, shall mail to the
26 department in Tallahassee notice to such effect, in accordance
27 with a form to be prescribed by the department.

28 (2) No notice given pursuant to subsection (1) is
29 effective until 30 days after the date it is mailed to the
30 department in Tallahassee. However, if an accident or
31 occupational disease occurs less than 30 days after the

1 effective date of the insurance policy under which the payment
2 of benefits is secured or the date the employer qualified as a
3 self-insurer, such notice is effective as of 12:01 a.m. of the
4 day following the date it is mailed to the department in
5 Tallahassee.

6 (3) The department may assess a fee, not to exceed
7 \$50, with each request for election or renewal of election
8 under this section. The funds collected by the department
9 shall be used to administer this section and to audit the
10 businesses that pay the fee for compliance with any
11 requirements of this act.

12 Section 21. Coverage; other states or other
13 benefits.--

14 (1) Where an injury or illness occurs while the
15 employee is employed elsewhere than in this state, which would
16 entitle the employee or the employee's dependents to benefits
17 if it had happened in this state, the employee or his or her
18 dependents shall be entitled to benefits if the contract of
19 employment was made in this state, or the employment was
20 principally localized in this state. However, if an employee
21 shall receive compensation or damages under the laws of any
22 other state, nothing herein contained shall be construed so as
23 to permit a total compensation for the same injury greater
24 than is provided herein.

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

29 Section 22. Construction design professionals.--Except
30 as provided in this act, no construction design professional
31 who is retained to perform professional services on a

1 construction project, nor any employee of a construction
2 design professional in the performance of professional
3 services on the site of the construction project, shall be
4 liable for any injuries resulting from the employer's failure
5 to comply with safety standards on the construction project,
6 unless responsibility for safety practices is specifically
7 assumed by contracts. The immunity provided by this subsection
8 to any construction design professional shall not apply to the
9 negligent preparation of design plans or specifications.

10 Section 23. Employee intoxication or drug use.--

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

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

26 (3) The department shall provide by rule for the
27 authorization and regulation of drug testing policies,
28 procedures, and methods. Testing of injured employees shall
29 not commence until such rules are adopted.

30 Section 24. Drug-free workplaces.--Any employer who
31 elects to be bound by this act may also elect to operate under

1 chapter 440, Florida Statutes, pertaining to drug-free
2 workplaces.

3 Section 25. Coercion of employees.--No employer shall
4 discharge, threaten to discharge, intimidate, or coerce any
5 employee by reason of such employee's valid claim for benefits
6 under this act.

7 Section 26. Benefits; lien against assets.--Benefits
8 shall have the same preference of lien against the assets of
9 the carrier or employer without limit of an amount as is now
10 or may hereafter be allowed by law to the claimant for unpaid
11 wages or otherwise.

12 Section 27. Misrepresentation; fraudulent activities;
13 penalties.--

14 (1) Any person who willfully makes any false or
15 misleading statement or representation for the purpose of
16 obtaining or denying any benefit or payment under this act:

17 (a) Who presents or causes to be presented any written
18 or oral statement as part of, or in support of, a claim for
19 payment or other benefit pursuant to this act, knowing that
20 such statement contains any false or misleading information
21 concerning any fact or thing material to such claim; or

22 (b) Who prepares or makes any written or oral
23 statement that is intended to be presented to any employer,
24 insurance company, or self-insured program in connection with,
25 or in support of, any claim for payment or other benefit
26 pursuant to this act, knowing that such statement contains any
27 false or misleading information concerning any fact or thing
28 material to such claim,

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1 commits a felony of the third degree, punishable as provided
2 in section 775.082, Florida Statutes, section 775.083, Florida
3 Statutes, or section 775.084, Florida Statutes.

4 (2)(a) All claims forms as provided for in this act
5 shall contain a notice that clearly states in substance the
6 following: "Any person who, knowingly and with intent to
7 injure, defraud, or deceive any employer or employee,
8 insurance company, or self-insured program, files a statement
9 of claim containing any false or misleading information,
10 commits a felony of the third degree."

11 (b)1. Any physician licensed under chapter 458,
12 Florida Statutes, osteopath licensed under chapter 459,
13 Florida Statutes, chiropractor licensed under chapter 460,
14 Florida Statutes, or any other practitioner licensed under the
15 laws of this state who knowingly and willfully assists,
16 conspires with, or urges any person to fraudulently violate
17 any provision of this act, or any person who, due to such
18 assistance, conspiracy, or urging by said physician,
19 osteopath, chiropractor, or practitioner, knowingly and
20 willfully benefits from the proceeds derived from the use of
21 such fraud, commits a felony of the third degree, punishable
22 as provided in section 775.082, Florida Statutes, section
23 775.083, Florida Statutes, or section 775.084, Florida
24 Statutes. If a physician, osteopath, chiropractor, or other
25 practitioner is adjudicated guilty of a violation of this
26 subparagraph, the Board of Medicine as set forth in chapter
27 458, Florida Statutes, the Board of Osteopathic Medicine as
28 set forth in chapter 459, Florida Statutes, the Board of
29 Chiropractic as set forth in chapter 460, Florida Statutes, or
30 other appropriate licensing authority, whichever is
31 appropriate, shall hold an administrative hearing to consider

1 the imposition of administrative sanctions as provided by law
2 against said physician, osteopath, chiropractor, or other
3 practitioner.

4 2. Any attorney who knowingly and willfully assists,
5 conspires with, or urges any claimant to fraudulently violate
6 any provision of this act, or any person who, due to such
7 assistance, conspiracy, or urging on such attorney's part,
8 knowingly and willfully benefits from the proceeds derived
9 from the use of such fraud, commits a felony of the third
10 degree, punishable as provided in section 775.082, Florida
11 Statutes, section 775.083, Florida Statutes, or section
12 775.084, Florida Statutes.

13 3. No person or governmental unit licensed under
14 chapter 395, Florida Statutes, to maintain or operate a
15 hospital, and no administrator or employee of any such
16 hospital, shall knowingly and willfully allow the use of the
17 facilities of such hospital by any person in a scheme or
18 conspiracy to fraudulently violate any provision of this act.
19 Any hospital administrator or employee who violates this
20 subparagraph commits a felony of the third degree, punishable
21 as provided in section 775.082, Florida Statutes, section
22 775.083, Florida Statutes, or section 775.084, Florida
23 Statutes. Any adjudication of guilt for a violation of this
24 subparagraph, or the use of business practices demonstrating a
25 pattern indicating that the spirit of the law set forth in
26 this act is not being followed, shall be grounds for
27 suspension or revocation of the license to operate the
28 hospital or the imposition of an administrative penalty of up
29 to \$5,000 by the licensing agency as set forth in chapter 395,
30 Florida Statutes.

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1 (c) Any person damaged as a result of a violation of
2 any provision of this subsection, when there has been a
3 criminal adjudication of guilt, shall have a cause of action
4 to recover treble compensatory damages, plus all reasonable
5 investigation and litigation expenses, including attorney's
6 fees at the trial and appellate courts.

7 (d) For the purposes of this subsection, the term
8 "statement" includes, but is not limited to, any notice,
9 statement, proof of injury, bill for services, diagnosis,
10 prescription, hospital or doctor records, X-ray, test result,
11 or other evidence of loss, injury, or expense.

12 (e) The provisions of this subsection shall also apply
13 with respect to any employer, insurer, self-insurer, adjusting
14 firm, or agent or representative thereof who intentionally
15 injures, defrauds, or deceives any claimant with regard to any
16 claim. Such claimant shall have the right to recover the
17 damages provided in this subsection.

18 Section 28. Security for benefits; insurance carriers
19 and self-insurers.--

20 (1) Every employer shall secure the payment of
21 benefits under this act:

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

26 (b) By furnishing satisfactory proof to the department
27 of his financial ability to pay such benefits and receiving an
28 authorization from the department to pay such benefits
29 directly in accordance with the following provisions:

30 1. The department may, as a condition to such
31 authorization, require such employer to deposit in a

1 depository designated by the department either an indemnity
2 bond or securities, at the option of the employer, of a kind
3 and in an amount determined by the department and subject to
4 such conditions as the department may prescribe, which shall
5 include authorization to the department in the case of default
6 to sell any such securities sufficient to pay awards of
7 benefits or to bring suit upon such bonds, to procure prompt
8 payment of benefits under this act. In addition, the
9 department shall require, as a condition to authorization to
10 self-insure, proof that the employer has provided for
11 competent personnel with whom to deliver benefits and to
12 provide a safe working environment. Further, the department
13 shall require such employer to carry reinsurance at levels
14 that will ensure the actuarial soundness of such employer in
15 accordance with rules adopted by the department. The
16 department may by rule require that, in the event of an
17 individual self-insurer's insolvency, such indemnity bonds,
18 securities, and reinsurance policies shall be payable to the
19 appropriate guaranty fund. Any employer securing benefits in
20 accordance with the provisions of this paragraph shall be
21 known as a self-insurer and shall be classed as a carrier of
22 his own insurance.

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

1 employer shall thereafter annually provide such a certified
2 opinion until such time as the employer meets the requirements
3 of subparagraph 1. The qualifying security deposit shall be
4 adjusted at the time of each such annual report. Upon the
5 failure of the employer to timely provide such opinion or to
6 timely provide a security deposit in an amount equal to 1.5
7 times the value certified in the latest opinion, the
8 department shall then revoke such employer's authorization to
9 self-insure, and such failure shall be deemed to constitute an
10 immediate serious danger to the public health, safety, or
11 welfare sufficient to justify the summary suspension of the
12 employer's authorization to self-insure pursuant to section
13 120.68, Florida Statutes.

14 3. Upon the suspension or revocation of the employer's
15 authorization to self-insure, the employer shall provide to
16 the department the certified opinion of an independent actuary
17 who is a member of the American Society of Actuaries of the
18 actuarial present value of the determined and estimated future
19 benefit payments of the employer for claims incurred while the
20 member exercised the privilege of self-insurance, using a
21 discount rate of 4 percent. The employer shall provide such
22 an opinion at 6-month intervals thereafter until such time as
23 the latest opinion shows no remaining value of claims. With
24 each such opinion, the employer shall deposit with the
25 department a qualifying security deposit in an amount equal to
26 the value certified by the actuary. The department has a
27 cause of action against an employer, and against any successor
28 of the employer, who fails to timely provide such opinion or
29 who fails to timely maintain the required security deposit
30 with the department. The department shall recover a judgment
31 in the amount of the actuarial present value of the determined

1 and estimated future compensation payments of the employer for
2 claims incurred while the employer exercised the privilege of
3 self-insurance, together with attorney's fees. For purposes
4 of this section, the successor of an employer means any
5 person, business entity, or group of persons or business
6 entities, which holds or acquires legal or beneficial title to
7 the majority of the assets or the majority of the shares of
8 the employer.

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

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

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

21 c. Irrevocable letters of credit in favor of the
22 department issued by financial institutions described in
23 sub-subparagraph b.

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

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

28 5. The qualifying security deposit shall be held by
29 the department, or by a depository authorized by the
30 department, exclusively for the benefit claimants under this
31 act. The security shall not be subject to assignment,

1 execution, attachment, or any legal process whatsoever, except
2 as necessary to guarantee the payment of benefits under this
3 act. No surety bond may be terminated, and no other
4 qualifying security may be allowed to lapse, without 90 days'
5 prior notice to the department and deposit by the
6 self-insuring employer of other qualifying security of equal
7 value within 10 business days after such notice. Failure to
8 provide such notice or failure to timely provide qualifying
9 replacement security after such notice shall constitute
10 grounds for the department to call or sue upon the surety
11 bond, or to act with respect to other pledged security in any
12 manner necessary to preserve its value for the purposes
13 intended by this section, including the exercise of rights
14 under a letter of credit, the sale of any security at
15 then-prevailing market rates, or the withdrawal of any funds
16 represented by any certificate of deposit forming part of the
17 qualifying security deposit;

18 (c) By entering into a contract with a public utility
19 under an approved utility-provided self-insurance program, as
20 set forth in section 35. The department shall adopt rules to
21 implement this paragraph;

22 (d) By entering into an interlocal agreement with
23 other local governmental entities to create a local government
24 pool pursuant to section 36;

25 (e) By entering into a contract with an individual
26 self-insurer under an approved individual
27 self-insurer-provided self-insurance program as set forth in
28 section 35. The department may adopt rules to implement this
29 subsection.

30 (2)(a) The department shall adopt rules by which
31 businesses may become qualified to provide underwriting

1 claims-adjusting, loss control, and safety engineering
2 services to self-insurers.

3 (b) The department shall adopt rules requiring
4 self-insurers to file any reports necessary to fulfill the
5 requirements of this act. Any self-insurer who fails to file
6 any report as prescribed by the rules adopted by the
7 department shall be subject to a civil penalty not to exceed
8 \$1,000 for each such failure.

9 (3) The state and its boards, bureaus, departments,
10 and agencies and all of its political subdivisions which
11 employ labor shall be deemed self-insurers under the terms of
12 this act, unless they elect to procure and maintain insurance
13 to secure the benefits of this act to their employees; and
14 they are hereby authorized to pay the premiums for such
15 insurance.

16 Section 29. Compensation for injuries when third
17 persons are liable.--

18 (1) If an employee, subject to this act, is injured or
19 killed in the course of his employment by the negligence or
20 wrongful act of a third-party tortfeasor, such injured
21 employee or, in the case of his death, his dependents may
22 accept benefits under this act, and at the same time such
23 injured employee or his dependents or personal representatives
24 may pursue his remedy by action at law or otherwise against
25 such third-party tortfeasor. However, any benefits paid shall
26 be deducted from any claim for damages before the
27 determination of liability of the tortfeasor.

28 (2) There is no right of subrogation for benefits paid
29 under this act.

30 Section 30. Benefits notice.--Every employer who has
31 secured benefits under this act shall keep posted in a

1 conspicuous place or places, in and about his place or places
2 of business, typewritten or printed notices, in accordance
3 with a form prescribed by the department, stating that such
4 employer has secured the payment of benefits in accordance
5 with this act. Such notices shall contain the name and
6 address of the carrier, if any, with whom the employer has
7 secured payment of benefits and the date of the expiration of
8 the policy.

9 Section 31. Effect of unconstitutionality.--If any
10 part of this act is adjudged unconstitutional by the courts,
11 and such adjudication has the effect of invalidating any
12 payment of benefits under this act, the period intervening
13 between the time the injury was sustained and the time of such
14 adjudication shall not be computed as a part of the time
15 prescribed by law for the commencement of any action against
16 the employer in respect of such injury; but the amount of any
17 benefits paid under this act on account of such injury shall
18 be deducted from the amount of damages awarded in such action
19 in respect of such injury.

20 Section 32. Proceedings against state.--Any person
21 entitled to benefits by reason of the injury or death of an
22 employee of the state, its boards, bureaus, departments,
23 agencies, or subdivisions employing labor, may maintain
24 proceedings and actions at law against the state, its boards,
25 bureaus, departments, agencies, and subdivisions, for such
26 benefit, said proceedings and action at law to be in the same
27 manner as provided herein with respect to other employers.

28 Section 33. Pooling liabilities.--

29 (1) The department shall adopt rules permitting two or
30 more employers to enter into agreements to pool their
31 liabilities under this act for the purpose of qualifying as a

1 group self-insurer's fund, which shall be classified as a
2 self-insurer, and each employer member of such approved group
3 shall be known as a group self-insurer's fund member and shall
4 be classified as a self-insurer, as defined in this act.

5 (2) The department shall adopt rules:

6 (a) Requiring monetary reserves to be maintained by
7 such self-insurers to insure their financial solvency; and

8 (b) Governing their organization and operation to
9 assure compliance with such requirements.

10 (3) The department shall adopt rules implementing the
11 reserve requirements in accordance with accepted actuarial
12 techniques.

13 (4) Any self-insurer established under this section,
14 except for self-insurers which are state or local governmental
15 entities, shall be required to carry reinsurance in accordance
16 with rules adopted by the department.

17 (5) No dividend or premium refund of any self-insurer
18 established under this section, otherwise earned, shall be
19 made contingent upon continued membership in the fund, renewal
20 of any policy, or the payment of renewal premiums for
21 membership in the fund or on any policy issued by such
22 self-insurer. Prior to making any dividend or premium refund,
23 the group self-insurer shall submit to the department the
24 following information:

25 (a) An audited certified financial statement.

26 (b) An annual report of financial condition.

27 (c) A loss reserve review by a qualified actuary.

28
29 The required information listed in paragraphs (a)-(c) shall be
30 submitted annually, no later than 7 months after the end of
31 the group self-insurer's fund year. No request for such

1 dividend or premium refund may be made prior to the filing of
2 the required information. The request for such dividend or
3 premium refund shall include a resolution of the board of
4 trustees of the group self-insurer requesting approval of a
5 specific amount to be distributed. Any dividend, premium
6 refund, or premium discount or credit shall in no manner
7 discriminate on the basis of continued coverage or continued
8 membership in the group self-insurer. The department shall
9 review such request and shall issue a decision within 60 days
10 of the filing. Failure to issue a decision within 60 days
11 shall constitute an approval of such request. Any dividend or
12 premium refund approved by the department for distribution
13 which cannot be paid to the applicable member or policyholder
14 or former member or policyholder of the group self-insurer
15 because the former member or policyholder cannot be reasonably
16 located shall become the property of the group self-insurer.

17 (6) The department may impose a civil penalty, not to
18 exceed \$1,000 per occurrence, for any violation of this act or
19 rules adopted pursuant to this act.

20 (7) Premiums, contributions, and assessments received
21 by a group self-insurer's fund are subject to sections
22 624.509(1) and (2) and 624.5092, Florida Statutes, except that
23 the tax rate shall be 1.6 percent of the gross amount of such
24 premiums, contributions, and assessments.

25 (8) This section does not apply to any program,
26 intergovernmental agreement, cooperative effort, consortium,
27 or agency through which two or more governmental entities,
28 without pooling their liabilities, administer the payment of
29 workers' compensation to their respective employees.

30 Section 34. Self-insured public utilities.--A
31 self-insured public utility, as authorized by paragraph (1)(b)

1 of section 29, may assume by contract the liabilities under
2 this act of contractors and subcontractors, or each of them,
3 employed by or on behalf of such public utility when
4 performing work on or adjacent to property owned or used by
5 the public utility.

6 Section 35. Local government pools.--

7 (1) Any two or more local governmental entities may
8 enter into interlocal agreements for the purpose of securing
9 the payment of benefits under this act, provided the local
10 government pool that is created must:

11 (a) Maintain a continuing program of excess insurance
12 coverage and reserve evaluation to protect the financial
13 stability of the fund in an amount and manner determined by a
14 qualified and independent actuary.

15 (b) Submit annually an audited fiscal year-end
16 financial statement by an independent certified public
17 accountant within 6 months after the end of the fiscal year to
18 the department.

19 (c) Have a governing body which is comprised entirely
20 of local elected officials.

21 (2) A local government pool that meets the
22 requirements of this section is not subject to section 34 and
23 is not required to file any report with the department
24 pursuant to paragraph (2)(b) of section 29, which is uniquely
25 required of group self-insurer funds qualified under section
26 30. If any of the requirements of this section are not met,
27 the local government pool is subject to the requirements of
28 section 34.

29 Section 36. Administrative procedure; rulemaking
30 authority.--The department shall have the authority to adopt
31

1 rules to govern the performance of any programs, duties, or
2 responsibilities with which it is charged under this act.

3 Section 37. This act shall take effect January 1,
4 2000.

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7 LEGISLATIVE SUMMARY

8 Provides an alternative system of worker's compensation
9 to that provided under chapter 440, F.S. Authorizes
10 employers to elect to participate in such alternative
11 system in lieu of application of chapter 440, F.S. (See
12 bill for details.)
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