

By Senator Clary

7-970-98

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.05, F.S.; authorizing the
4 Division of Workers' Compensation of the
5 Department of Labor and Employment Security to
6 approve and revoke certificates of exemption;
7 amending s. 440.105, F.S.; providing penalties;
8 providing a time limitation for bringing an
9 action under s. 440.105(4), F.S.; amending s.
10 440.107, F.S.; authorizing the division to
11 obtain employer work records and issue
12 subpoenas to compel the attendance of witnesses
13 and the production of documents; providing
14 limited immunity for witnesses; providing a
15 penalty; providing an effective date.

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

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19 Section 1. Subsections (3) and (4) of section 440.05,
20 Florida Statutes, are amended, present subsections (5) and (6)
21 of that section are redesignated as subsections (6) and (7),
22 respectively, and a new subsection (5) is added to that
23 section, to read:

24 440.05 Election of exemption; revocation of election;
25 notice; certification.--

26 (3) Each sole proprietor, partner, or officer of a
27 corporation who is actively engaged in the construction
28 industry and who elects an exemption from this chapter or who,
29 after electing such exemption, revokes that exemption, must
30 mail a written notice to such effect to the division on a form
31 prescribed by the division. The notice of election to be

1 exempt from the provisions of this chapter must be notarized
2 and under oath. The election must list the name, federal tax
3 identification number, social security number, and all
4 certified or registered licenses issued pursuant to chapter
5 489 held by the person seeking the exemption. The form must
6 identify each sole proprietorship, partnership, or corporation
7 that employs the person electing the exemption and must list
8 the social security number or federal tax identification
9 number of each such employer. In addition, the election form
10 must provide that the sole proprietor, partner, or officer
11 electing an exemption is not entitled to benefits under this
12 chapter, must provide that the election does not exceed
13 exemption limits for officers and partnerships provided in s.
14 440.02, and must certify that any employees of the sole
15 proprietor, partner, or officer electing an exemption are
16 covered by workers' compensation insurance. Upon receipt of
17 the notice of the election to be exempt and a determination
18 that the notice meets the requirements of this subsection, the
19 division shall issue a certification of the election to the
20 sole proprietor, partner, or officer. The division may,
21 however, revoke the notice or cancel the certification of a
22 person who does not meet the requirements of s.
23 440.02(13)(d)1. defining independent contractor, or s.
24 440.02(13)(d)8., relating to sole proprietors, corporate
25 officers, and partners.The certificate of election must list
26 the names of the sole proprietorship, partnership, or
27 corporation listed in the request for exemption. A new
28 certificate of election must be obtained each time the person
29 is employed by a new sole proprietorship, partnership, or
30 corporation that is not listed on the certificate of election.
31 A copy of the certificate of election must be sent to each

1 workers' compensation carrier identified in the request for
2 exemption. ~~The certification of the election is valid until~~
3 ~~the sole proprietor, partner, or officer revokes her or his~~
4 ~~election.~~ Upon filing a notice of revocation of election, a
5 sole proprietor, partner, or officer who is a subcontractor
6 must notify her or his contractor.

7 (4) A notice given under subsection (1), subsection
8 (2), or subsection (3) is not effective until the division
9 determines that the notice meets the requirements of this
10 section or until 30 days after the date it is mailed to the
11 division in Tallahassee, whichever occurs first. However, if
12 an accident or occupational disease occurs less than 30 days
13 after the effective date of the insurance policy under which
14 the payment of compensation is secured or the date the
15 employer qualified as a self-insurer, such notice is effective
16 as of 12:01 a.m. of the day following the date it is mailed to
17 the division in Tallahassee.

18 (5) A certificate of election to be exempt which is
19 issued in accordance with subsection (3) must be in effect for
20 2 years after the effective date stated thereon. Both the
21 effective date and the expiration date must be listed on the
22 face of the certificate by the division in Tallahassee. A
23 certificate of election to be exempt may be revoked before its
24 expiration by the sole proprietor, partner, or officer for
25 whom it was issued or by the division for the reasons stated
26 in subsection (3).

27 Section 2. Section 440.105, Florida Statutes, is
28 amended to read:

29 440.105 Prohibited activities; penalties;
30 limitations.--
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1 (1)(a) Any insurance carrier, any individual
2 self-insured, any commercial or group self-insurance fund, any
3 professional practitioner licensed or regulated by the
4 Department of Business and Professional Regulation, except as
5 otherwise provided by law, any medical review committee as
6 defined in s. 766.101, any private medical review committee,
7 and any insurer, agent, or other person licensed under the
8 insurance code, or any employee thereof, having knowledge or
9 who believes that a fraudulent act or any other act or
10 practice which, upon conviction, constitutes a felony or
11 misdemeanor under this chapter is being or has been committed
12 shall send to the Division of Insurance Fraud, Bureau of
13 Workers' Compensation Fraud, a report or information pertinent
14 to such knowledge or belief and such additional information
15 relative thereto as the bureau may require. The bureau shall
16 review such information or reports and select such information
17 or reports as, in its judgment, may require further
18 investigation. It shall then cause an independent examination
19 of the facts surrounding such information or report to be made
20 to determine the extent, if any, to which a fraudulent act or
21 any other act or practice which, upon conviction, constitutes
22 a felony or a misdemeanor under this chapter is being
23 committed. The bureau shall report any alleged violations of
24 law which its investigations disclose to the appropriate
25 licensing agency and state attorney or other prosecuting
26 agency having jurisdiction with respect to any such violations
27 of this chapter. If prosecution by the state attorney or other
28 prosecuting agency having jurisdiction with respect to such
29 violation is not begun within 60 days of the bureau's report,
30 the state attorney or other prosecuting agency having
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1 jurisdiction with respect to such violation shall inform the
2 bureau of the reasons for the lack of prosecution.

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

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

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

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

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

22 (a) It is ~~shall be~~ unlawful for any employer to
23 knowingly:

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

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

30 3. Discharge, discipline, or take any other adverse
31 personnel action against any employee for disclosing

1 information to the division or any law enforcement agency
2 relating to any violation or suspected violation of any of the
3 provisions of this chapter or rules promulgated hereunder.

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

6 (b) It is ~~shall be~~ unlawful for any insurance entity
7 to revoke or cancel a workers' compensation insurance policy
8 or membership because an employer has returned an employee to
9 work or hired an employee who has filed a workers'
10 compensation claim.

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

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

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

28 (4)(a) Whoever violates any provision of this
29 subsection commits insurance fraud. If the value of any
30 property involved in violation of this subsection:

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1 1. Is less than \$20,000, the offender commits a felony
2 of the third degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 2. Is \$20,000 or more, but less than \$100,000, the
5 offender commits a felony of the second degree, punishable as
6 provided in s. 775.082, s. 775.083, or s. 775.084.

7 3. Is \$100,000 or more, the offender commits a felony
8 of the first degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084.

10 ~~(b)(a)~~ It is ~~shall be~~ unlawful for any employer to
11 knowingly:

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

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

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

24 ~~(c)(b)~~ It is ~~shall be~~ unlawful for any person:

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

29 2. To present or cause to be presented any written or
30 oral statement as part of, or in support of, a claim for
31 payment or ~~of~~ other benefit pursuant to any provision of this

1 chapter, knowing that such statement contains any false,
2 incomplete, or misleading information concerning any fact or
3 thing material to such claim.

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

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

14 5. To knowingly make any false, fraudulent, or
15 misleading oral or written statement, or to knowingly omit or
16 conceal material information, required by s. 440.185 or s.
17 440.381, for the purpose of obtaining workers' compensation
18 coverage or for the purpose of avoiding, delaying, or
19 diminishing the amount of payment of any workers' compensation
20 premiums.

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

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

30 (d)(c) It is ~~shall be~~ unlawful for any physician
31 licensed under chapter 458, osteopathic physician licensed

1 under chapter 459, chiropractic physician licensed under
2 chapter 460, podiatric physician licensed under chapter 461,
3 optometric physician licensed under chapter 463, or any other
4 practitioner licensed under the laws of this state to
5 knowingly and willfully assist, conspire with, or urge any
6 person to fraudulently violate any of the provisions of this
7 chapter.

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

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

21 (g)~~(f)~~ It is ~~shall be~~ unlawful for any attorney or
22 other person, in his or her individual capacity or in his or
23 her capacity as a public or private employee or for any firm,
24 corporation, partnership, or association, to unlawfully
25 solicit any business in and about city or county hospitals,
26 courts, or any public institution or public place; in and
27 about private hospitals or sanitariums; in and about any
28 private institution; or upon private property of any character
29 whatsoever for the purpose of making workers' compensation
30 claims.

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

4 (6) For the purpose of the section, the term:

5 (a) "Statement" includes, but is not limited to, any
6 notice, representation, statement, proof of injury, bill for
7 services, diagnosis, prescription, hospital or doctor records,
8 X ray, test result, or other evidence of loss, injury, or
9 expense.

10 (b) "Property" means property as defined in s.
11 812.012.

12 (c) "Value" means value as defined in s. 812.012.

13 (7) Notwithstanding any other provision of law, a
14 proceeding under subsection (4) may be commenced at any time
15 within 5 years after the cause of action accrues; however, in
16 such a proceeding, the period of limitation is tolled whenever
17 the defendant is continuously absent from this state or is
18 without a reasonably ascertainable place of residence or work
19 within this state, but such a period of limitation may not be
20 extended by more than 1 year. If a criminal prosecution,
21 action, or other proceeding is brought, or intervened in, to
22 punish, prevent, or restrain any violation of subsection (4),
23 the running of the period of limitation prescribed by this
24 section, which is based in whole or in part upon any matter
25 complained of in any such prosecution, action, or proceeding,
26 is tolled during the pendency of the prosecution, action, or
27 proceeding and for 2 years following the termination of the
28 prosecution, action, or proceeding.

29 (8)~~(7)~~ All claim forms ~~as~~ provided for in this chapter
30 must ~~shall~~ contain a notice that clearly states in substance
31 the following: "Any person who, knowingly and with intent to

1 injure, defraud, or deceive any employer or employee,
2 insurance company, or self-insured program, files a statement
3 of claim containing any false or misleading information is
4 guilty of a felony of the third degree." Each claimant shall
5 personally sign the claim form and attest that he or she has
6 reviewed, understands, and acknowledges the foregoing notice.

7 Section 3. Present subsections (1) through (7) of
8 section 440.107, Florida Statutes, are redesignated as
9 subsections (5) through (11), respectively, and new
10 subsections (1), (2), (3), and (4) are added to that section
11 to read:

12 440.107 Division powers to enforce employer compliance
13 with coverage requirements.--

14 (1) RECORDS AND REPORTS.--Each employer shall keep
15 true and accurate work records that contain such information
16 as the division prescribes by rules. The work records must be
17 open to inspection and be subject to being copied by the
18 division at any reasonable time and as often as necessary. The
19 division may require from any employer any sworn or unsworn
20 reports, pertaining to persons employed by that employer,
21 which the division considers necessary for the effective
22 administration of this chapter.

23 (2) OATHS AND WITNESSES.--In discharging the duties
24 imposed by this chapter, the division may administer oaths and
25 affirmations, certify to official acts, and issue subpoenas to
26 compel the attendance of witnesses and the production of
27 books, papers, correspondence, memoranda, and other records
28 that the division considers necessary as evidence in
29 connection with the administration of this chapter.

30 (3) SUBPOENAS.--If a person has refused to obey a
31 subpoena to appear before the division and produce evidence

1 requested by the division or to give testimony about the
2 matter that is under investigation, a court has jurisdiction
3 to issue an order requiring compliance with the subpoena if
4 the court has jurisdiction in the geographical area where the
5 inquiry is being carried on or in the area where the person
6 who has refused the subpoena is found, resides, or transacts
7 business. Failure to obey such a court order may be punished
8 by the court as contempt. Any person who without just cause
9 fails or refuses to attend and testify at a hearing, to answer
10 any lawful inquiry, or to produce books, papers,
11 correspondence, memoranda, and other records, if it is in his
12 or her power to do so, in obedience to a subpoena issued by
13 the division is guilty of a misdemeanor of the second degree,
14 punishable as provided in s. 775.082 or s. 775.083, and each
15 day such a violation continues is a separate offense.

16 (4) PROTECTION AGAINST SELF-INCRIMINATION.--A person
17 may not be excused from attending and testifying or from
18 producing books, papers, correspondence, memoranda, and other
19 records before the division in obedience to a subpoena issued
20 in any cause or proceeding before the division on the grounds
21 that the testimony or evidence, documentary or otherwise,
22 required of him or her may tend to incriminate him or her or
23 subject him or her to a penalty or forfeiture; however, an
24 individual may not be prosecuted or subjected to any penalty
25 or forfeiture on the basis of such testimony, books, papers,
26 correspondence, memoranda, or other records, or any evidence
27 derived therefrom, after having claimed his or her privilege
28 against self-incrimination, except that the person is not
29 immune from prosecution and punishment for perjury committed
30 in so testifying.

31 Section 4. This act shall take effect October 1, 1998.

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SENATE SUMMARY

Authorizes the Division of Workers' Compensation of the Department of Labor and Employment Security to approve and revoke certificates of exemption. Provides penalties for insurance fraud. Provides a time limitation for bringing an action under s. 440.105(4), F.S. Authorizes the division to obtain employer work records and issue subpoenas to compel the attendance of witnesses and the production of documents. Provides for limited immunity from prosecution based on such testimony or documents. Provides a penalty for failure to appear or to produce such documents.