

By the Committees on Ways and Means, Banking and Insurance and
Senator Clary

301-2076-98

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; defining the terms
4 "corporate officer," "partner," and "sole
5 proprietor," as used in ch. 440, F.S.; amending
6 s. 440.05, F.S.; authorizing the Division of
7 Workers' Compensation of the Department of
8 Labor and Employment Security to approve and
9 revoke certificates of exemption; specifying
10 requirements for notices of election to be
11 exempt; providing for renewal of exemption
12 certificates; requiring notice on election
13 forms that providing false information is a
14 felony; revising fees for exemptions and
15 specifying use of fees by the division;
16 amending s. 440.09, F.S.; conforming references
17 to judges of compensation claims and
18 administrative law judges; amending s. 440.10,
19 F.S.; revising documentation establishing
20 conclusive presumption of independent
21 contractor status and ineligibility for
22 workers' compensation benefits; amending s.
23 440.103, F.S.; revising the documentation that
24 must be filed by an employer that obtains a
25 building permit; specifying requirements for
26 certificates of coverage; amending s. 440.104,
27 F.S.; revising the cause of action and remedies
28 available to losers of competitive bidding
29 against persons who violate certain provisions;
30 increasing recoverable damages; amending s.
31 440.105, F.S.; providing penalties; providing a

1 time limitation for bringing an action under s.
2 440.105(4), F.S.; amending s. 440.107, F.S.;
3 providing legislative findings related to
4 noncompliance with workers' compensation
5 coverage requirements; authorizing the division
6 to enter and inspect places of business for
7 investigating compliance; requiring employers
8 to maintain records required by the division by
9 rule; authorizing the division to require sworn
10 reports from employers, to administer oaths,
11 and to issue subpoenas to enforce compliance;
12 providing penalties for refusal to obey a
13 subpoena; amending s. 440.45, F.S.; revising
14 term of office, qualifications, and method of
15 nomination for the Chief Judge of the Office of
16 the Judges of Compensation Claims; providing
17 for expiration of term of office for members of
18 the statewide nominating commission for judges
19 of compensation claims; providing for new
20 appointments to the nominating commission and
21 staggered terms; revising the procedures for
22 nominating commission regarding performance of
23 sitting judges and regarding nominations of
24 applicants; providing for expiration of the
25 term of office and reappointment of the Chief
26 Judge of Compensation Claims; amending s.
27 627.413, F.S.; specifying notice requirements
28 for minimum premium policies; requiring the
29 division to notify certain persons of certain
30 requirements of this act; providing an
31 appropriation; providing an effective date.

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

2

3 Section 1. Section 440.02, Florida Statutes, is
4 amended to read:

5 440.02 Definitions.--When used in this chapter, unless
6 the context clearly requires otherwise, the following terms
7 shall have the following meanings:

8 (1) "Accident" means only an unexpected or unusual
9 event or result that happens suddenly. A mental or nervous
10 injury due to stress, fright, or excitement only, or
11 disability or death due to the accidental acceleration or
12 aggravation of a venereal disease or of a disease due to the
13 habitual use of alcohol or controlled substances or narcotic
14 drugs, or a disease that manifests itself in the fear of or
15 dislike for an individual because of the individual's race,
16 color, religion, sex, national origin, age, or handicap is not
17 an injury by accident arising out of the employment. If a
18 preexisting disease or anomaly is accelerated or aggravated by
19 an accident arising out of and in the course of employment,
20 only acceleration of death or acceleration or aggravation of
21 the preexisting condition reasonably attributable to the
22 accident is compensable, with respect to death or permanent
23 impairment.

24 (2) "Adoption" or "adopted" means legal adoption prior
25 to the time of the injury.

26 (3) "Carrier" means any person or fund authorized
27 under s. 440.38 to insure under this chapter and includes a
28 self-insurer, and a commercial self-insurance fund authorized
29 under s. 624.462.

30 (4) "Casual" as used in this section shall be taken to
31 refer only to employments when the work contemplated is to be

1 completed in not exceeding 10 working days, without regard to
2 the number of persons employed, and when the total labor cost
3 of such work is less than \$100.

4 (5) "Child" includes a posthumous child, a child
5 legally adopted prior to the injury of the employee, and a
6 stepchild or acknowledged child born out of wedlock dependent
7 upon the deceased, but does not include married children
8 unless wholly dependent on the employee. "Grandchild" means a
9 child as above defined of a child as above defined. "Brother"
10 and "sister" include stepbrothers and stepsisters, half
11 brothers and half sisters, and brothers and sisters by
12 adoption, but does not include married brothers or married
13 sisters unless wholly dependent on the employee. "Child,"
14 "grandchild," "brother," and "sister" include only persons who
15 at the time of the death of the deceased employees are under
16 18 years of age, or under 22 years of age if a full-time
17 student in an accredited educational institution.

18 (6) "Compensation" means the money allowance payable
19 to an employee or to his or her dependents as provided for in
20 this chapter.

21 (7) "Construction industry" means for-profit
22 activities involving the carrying out of any building,
23 clearing, filling, excavation, or substantial improvement in
24 the size or use of any structure or the appearance of any
25 land. When appropriate to the context, "construction" refers
26 to the act of construction or the result of construction.
27 However, "construction" shall not mean a landowner's act of
28 construction or the result of a construction upon his or her
29 own premises, provided such premises are not intended to be
30 sold or resold.

31

1 (8) "Corporate officer or officer of a corporation"
2 means any person who fills an office provided for in the
3 corporate charter or articles of incorporation filed with the
4 Division of Corporations of the Department of State or as
5 permitted or required by chapter 607.

6 (9)~~(8)~~ "Date of maximum medical improvement" means the
7 date after which further recovery from, or lasting improvement
8 to, an injury or disease can no longer reasonably be
9 anticipated, based upon reasonable medical probability.

10 (10)~~(9)~~ "Death" as a basis for a right to compensation
11 means only death resulting from an injury.

12 (11)~~(10)~~ "Department" means the Department of Labor
13 and Employment Security.

14 (12)~~(11)~~ "Disability" means incapacity because of the
15 injury to earn in the same or any other employment the wages
16 which the employee was receiving at the time of the injury.

17 (13)~~(12)~~ "Division" means the Division of Workers'
18 Compensation of the Department of Labor and Employment
19 Security.

20 (14)~~(13)~~(a) "Employee" means any person engaged in any
21 employment under any appointment or contract of hire or
22 apprenticeship, express or implied, oral or written, whether
23 lawfully or unlawfully employed, and includes, but is not
24 limited to, aliens and minors.

25 (b) "Employee" includes any person who is an officer
26 of a corporation and who performs services for remuneration
27 for such corporation within this state, whether or not such
28 services are continuous.

29 1. Any officer of a corporation may elect to be exempt
30 from this chapter by filing written notice of the election
31 with the division as provided in s. 440.05.

1 2. As to officers of a corporation who are actively
2 engaged in the construction industry, no more than three
3 officers may elect to be exempt from this chapter by filing
4 written notice of the election with the division as provided
5 in s. 440.05.

6 3. An officer of a corporation who elects to be exempt
7 from this chapter by filing a written notice of the election
8 with the division as provided in s. 440.05 is not an employee.

9
10 Services are presumed to have been rendered to the corporation
11 if the officer is compensated by other than dividends upon
12 shares of stock of the corporation which the officer owns.

13 (c) "Employee" includes a sole proprietor or a partner
14 who devotes full time to the proprietorship or partnership
15 and, except as provided in this paragraph, elects to be
16 included in the definition of employee by filing notice
17 thereof as provided in s. 440.05. Partners or sole proprietors
18 actively engaged in the construction industry are considered
19 employees unless they elect to be excluded from the definition
20 of employee by filing written notice of the election with the
21 division as provided in s. 440.05. However, no more than three
22 partners in a partnership that is actively engaged in the
23 construction industry may elect to be excluded. A sole
24 proprietor or partner who is actively engaged in the
25 construction industry and who elects to be exempt from this
26 chapter by filing a written notice of the election with the
27 division as provided in s. 440.05 is not an employee. For
28 purposes of this chapter, an independent contractor is an
29 employee unless he or she meets all of the conditions set
30 forth in subparagraph (d)1.

31 (d) "Employee" does not include:

- 1 1. An independent contractor, if:
- 2 a. The independent contractor maintains a separate
- 3 business with his or her own work facility, truck, equipment,
- 4 materials, or similar accommodations;
- 5 b. The independent contractor holds or has applied for
- 6 a federal employer identification number, unless the
- 7 independent contractor is a sole proprietor who is not
- 8 required to obtain a federal employer identification number
- 9 under state or federal requirements;
- 10 c. The independent contractor performs or agrees to
- 11 perform specific services or work for specific amounts of
- 12 money and controls the means of performing the services or
- 13 work;
- 14 d. The independent contractor incurs the principal
- 15 expenses related to the service or work that he or she
- 16 performs or agrees to perform;
- 17 e. The independent contractor is responsible for the
- 18 satisfactory completion of work or services that he or she
- 19 performs or agrees to perform and is or could be held liable
- 20 for a failure to complete the work or services;
- 21 f. The independent contractor receives compensation
- 22 for work or services performed for a commission or on a
- 23 per-job or competitive-bid basis and not on any other basis;
- 24 g. The independent contractor may realize a profit or
- 25 suffer a loss in connection with performing work or services;
- 26 h. The independent contractor has continuing or
- 27 recurring business liabilities or obligations; and
- 28 i. The success or failure of the independent
- 29 contractor's business depends on the relationship of business
- 30 receipts to expenditures.
- 31

1 | However, the determination as to whether an individual
2 | included in the Standard Industrial Classification Manual of
3 | 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
4 | 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
5 | 2448, or 2449, or a newspaper delivery person, is an
6 | independent contractor is governed not by the criteria in this
7 | paragraph but by common-law principles, giving due
8 | consideration to the business activity of the individual.
9 | 2. A real estate salesperson or agent, if that person
10 | agrees, in writing, to perform for remuneration solely by way
11 | of commission.
12 | 3. Bands, orchestras, and musical and theatrical
13 | performers, including disk jockeys, performing in licensed
14 | premises as defined in chapter 562, if a written contract
15 | evidencing an independent contractor relationship is entered
16 | into before the commencement of such entertainment.
17 | 4. An owner-operator of a motor vehicle who transports
18 | property under a written contract with a motor carrier which
19 | evidences a relationship by which the owner-operator assumes
20 | the responsibility of an employer for the performance of the
21 | contract, if the owner-operator is required to furnish the
22 | necessary motor vehicle equipment and all costs incidental to
23 | the performance of the contract, including, but not limited
24 | to, fuel, taxes, licenses, repairs, and hired help; and the
25 | owner-operator is paid a commission for transportation service
26 | and is not paid by the hour or on some other time-measured
27 | basis.
28 | 5. A person whose employment is both casual and not in
29 | the course of the trade, business, profession, or occupation
30 | of the employer.
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1 6. A volunteer, except a volunteer worker for the
2 state or a county, municipality, or other governmental entity.
3 A person who does not receive monetary remuneration for
4 services is presumed to be a volunteer unless there is
5 substantial evidence that a valuable consideration was
6 intended by both employer and employee. For purposes of this
7 chapter, the term "volunteer" includes, but is not limited to:

8 a. Persons who serve in private nonprofit agencies and
9 who receive no compensation other than expenses in an amount
10 less than or equivalent to the standard mileage and per diem
11 expenses provided to salaried employees in the same agency or,
12 if such agency does not have salaried employees who receive
13 mileage and per diem, then such volunteers who receive no
14 compensation other than expenses in an amount less than or
15 equivalent to the customary mileage and per diem paid to
16 salaried workers in the community as determined by the
17 division; and

18 b. Volunteers participating in federal programs
19 established under Pub. L. No. 93-113.

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

22 8. A sole proprietor or officer of a corporation who
23 actively engages in the construction industry, and a partner
24 in a partnership that is actively engaged in the construction
25 industry, who elects to be exempt from the provisions of this
26 chapter. Such sole proprietor, officer, or partner is not an
27 employee for any reason until the notice of revocation of
28 election filed pursuant to s. 440.05 is effective.

29 9. An exercise rider who does not work for a single
30 horse farm or breeder, and who is compensated for riding on a
31 case-by-case basis, provided a written contract is entered

1 into prior to the commencement of such activity which
2 evidences that an employee/employer relationship does not
3 exist.

4 10. A taxicab, limousine, or other passenger
5 vehicle-for-hire driver who operates said vehicles pursuant to
6 a written agreement with a company which provides any
7 dispatch, marketing, insurance, communications, or other
8 services under which the driver and any fees or charges paid
9 by the driver to the company for such services are not
10 conditioned upon, or expressed as a proportion of, fare
11 revenues.

12 (15)~~(14)~~ "Employer" means the state and all political
13 subdivisions thereof, all public and quasi-public corporations
14 therein, every person carrying on any employment, and the
15 legal representative of a deceased person or the receiver or
16 trustees of any person. If the employer is a corporation,
17 parties in actual control of the corporation, including, but
18 not limited to, the president, officers who exercise broad
19 corporate powers, directors, and all shareholders who directly
20 or indirectly own a controlling interest in the corporation,
21 are considered the employer for the purposes of ss. 440.105
22 and 440.106.

23 (16)~~(15)~~(a) "Employment," subject to the other
24 provisions of this chapter, means any service performed by an
25 employee for the person employing him or her.

26 (b) "Employment" includes:

27 1. Employment by the state and all political
28 subdivisions thereof and all public and quasi-public
29 corporations therein, including officers elected at the polls.

30 2. All private employments in which four or more
31 employees are employed by the same employer or, with respect

1 to the construction industry, all private employment in which
2 one or more employees are employed by the same employer.

3 3. Volunteer firefighters responding to or assisting
4 with fire or medical emergencies whether or not the
5 firefighters are on duty.

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

8 1. Domestic servants in private homes.

9 2. Agricultural labor performed on a farm in the
10 employ of a bona fide farmer, or association of farmers, who
11 employs 5 or fewer regular employees and who employs fewer
12 than 12 other employees at one time for seasonal agricultural
13 labor that is completed in less than 30 days, provided such
14 seasonal employment does not exceed 45 days in the same
15 calendar year. The term "farm" includes stock, dairy, poultry,
16 fruit, fur-bearing animals, fish, and truck farms, ranches,
17 nurseries, and orchards. The term "agricultural labor"
18 includes field foremen, timekeepers, checkers, and other farm
19 labor supervisory personnel.

20 3. Professional athletes, such as professional boxers,
21 wrestlers, baseball, football, basketball, hockey, polo,
22 tennis, jai alai, and similar players, and motorsports teams
23 competing in a motor racing event as defined in s. 549.08.

24 4. Labor under a sentence of a court to perform
25 community services as provided in s. 316.193.

26 (17)~~(16)~~ "Misconduct" includes, but is not limited to,
27 the following, which shall not be construed in pari materia
28 with each other:

29 (a) Conduct evincing such willful or wanton disregard
30 of an employer's interests as is found in deliberate violation

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1 or disregard of standards of behavior which the employer has
2 the right to expect of the employee; or

3 (b) Carelessness or negligence of such a degree or
4 recurrence as to manifest culpability, wrongful intent, or
5 evil design, or to show an intentional and substantial
6 disregard of an employer's interests or of the employee's
7 duties and obligations to the employer.

8 (18)~~(17)~~ "Injury" means personal injury or death by
9 accident arising out of and in the course of employment, and
10 such diseases or infection as naturally or unavoidably result
11 from such injury. Damage to dentures, eyeglasses, prosthetic
12 devices, and artificial limbs may be included in this
13 definition only when the damage is shown to be part of, or in
14 conjunction with, an accident. This damage must specifically
15 occur as the result of an accident in the normal course of
16 employment.

17 (19)~~(18)~~ "Parent" includes stepparents and parents by
18 adoption, parents-in-law, and any persons who for more than 3
19 years prior to the death of the deceased employee stood in the
20 place of a parent to him or her and were dependent on the
21 injured employee.

22 (20) "Partner" means any person who is a member of a
23 partnership that is formed by two or more persons to carry on
24 as coowners of a business with the understanding that there
25 will be a proportional sharing of the profits and losses
26 between them. For the purposes of this chapter, a partner is a
27 person who participates fully in the management of the
28 partnership and who is personally liable for its debts.

29 (21)~~(19)~~ "Permanent impairment" means any anatomic or
30 functional abnormality or loss determined as a percentage of
31

1 the body as a whole, existing after the date of maximum
2 medical improvement, which results from the injury.

3 (22)~~(20)~~ "Person" means individual, partnership,
4 association, or corporation, including any public service
5 corporation.

6 (23)~~(21)~~ "Self-insurer" means:

7 (a) Any employer who has secured payment of
8 compensation pursuant to s. 440.38(1)(b) or (6) as an
9 individual self-insurer;

10 (b) Any employer who has secured payment of
11 compensation through a group self-insurance fund under s.
12 624.4621;

13 (c) Any group self-insurance fund established under s.
14 624.4621;

15 (d) A public utility as defined in s. 364.02 or s.
16 366.02 that has assumed by contract the liabilities of
17 contractors or subcontractors pursuant to s. 440.571; or

18 (e) Any local government self-insurance fund
19 established under s. 624.4622.

20 (24) "Sole proprietor" means a natural person who owns
21 a form of business in which that person owns all the assets of
22 the business and is solely liable for all the debts of the
23 business.

24 (25)~~(22)~~ "Spouse" includes only a spouse substantially
25 dependent for financial support upon the decedent and living
26 with the decedent at the time of the decedent's injury and
27 death, or substantially dependent upon the decedent for
28 financial support and living apart at that time for
29 justifiable cause.

30 (26)~~(23)~~ "Time of injury" means the time of the
31 occurrence of the accident resulting in the injury.

1 (27)~~(24)~~ "Wages" means the money rate at which the
2 service rendered is recompensed under the contract of hiring
3 in force at the time of the injury and includes only the wages
4 earned and reported for federal income tax purposes on the job
5 where the employee is injured and any other concurrent
6 employment where he or she is also subject to workers'
7 compensation coverage and benefits, together with the
8 reasonable value of housing furnished to the employee by the
9 employer which is the permanent year-round residence of the
10 employee, and gratuities to the extent reported to the
11 employer in writing as taxable income received in the course
12 of employment from others than the employer and employer
13 contributions for health insurance for the employee or the
14 employee's dependents. However, housing furnished to migrant
15 workers shall be included in wages unless provided after the
16 time of injury. In employment in which an employee receives
17 consideration for housing, the reasonable value of such
18 housing compensation shall be the actual cost to the employer
19 or based upon the Fair Market Rent Survey promulgated pursuant
20 to s. 8 of the Housing and Urban Development Act of 1974,
21 whichever is less. However, if employer contributions for
22 housing or health insurance are continued after the time of
23 the injury, the contributions are not "wages" for the purpose
24 of calculating an employee's average weekly wage.

25 (28)~~(25)~~ "Weekly compensation rate" means and refers
26 to the amount of compensation payable for a period of 7
27 consecutive days, including any Saturdays, Sundays, holidays,
28 and other nonworking days which fall within such period of 7
29 consecutive days. When Saturdays, Sundays, holidays, or other
30 nonworking days immediately follow the first 7 days of
31 disability or occur at the end of a period of disability as

1 the last day or days of such period, such nonworking days
2 constitute a part of the period of disability with respect to
3 which compensation is payable.

4 (29)~~(26)~~ "Construction design professional" means an
5 architect, professional engineer, landscape architect, or
6 surveyor and mapper, or any corporation, professional or
7 general, that has a certificate to practice in the
8 construction design field from the Department of Business and
9 Professional Regulation.

10 (30)~~(27)~~ "Individual self-insurer" means any employer
11 who has secured payment of compensation pursuant to s.
12 440.38(1)(b) as an individual self-insurer.

13 (31)~~(28)~~ "Domestic individual self-insurer" means an
14 individual self-insurer:

15 (a) Which is a corporation formed under the laws of
16 this state;

17 (b) Who is an individual who is a resident of this
18 state or whose primary place of business is located in this
19 state; or

20 (c) Which is a partnership whose principals are
21 residents of this state or whose primary place of business is
22 located in this state.

23 (32)~~(29)~~ "Foreign individual self-insurer" means an
24 individual self-insurer:

25 (a) Which is a corporation formed under the laws of
26 any state, district, territory, or commonwealth of the United
27 States other than this state;

28 (b) Who is an individual who is not a resident of this
29 state and whose primary place of business is not located in
30 this state; or

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1 (c) Which is a partnership whose principals are not
2 residents of this state and whose primary place of business is
3 not located in this state.

4 (33)~~(30)~~ "Insolvent member" means an individual
5 self-insurer which is a member of the Florida Self-Insurers
6 Guaranty Association, Incorporated, or which was a member and
7 has withdrawn pursuant to s. 440.385(1)(b), and which has been
8 found insolvent, as defined in paragraph(34)(a)~~(31)(a)~~,
9 paragraph(34)(b)~~(31)(b)~~, or paragraph(34)(c)~~(31)(c)~~, by a
10 court of competent jurisdiction in this or any other state, or
11 meets the definition of paragraph(34)(d)~~(31)(d)~~.

12 (34)~~(31)~~ "Insolvency" or "insolvent" means:

13 (a) With respect to an individual self-insurer:

14 1. That all assets of the individual self-insurer, if
15 made immediately available, would not be sufficient to meet
16 all the individual self-insurer's liabilities;

17 2. That the individual self-insurer is unable to pay
18 its debts as they become due in the usual course of business;

19 3. That the individual self-insurer has substantially
20 ceased or suspended the payment of compensation to its
21 employees as required in this chapter; or

22 4. That the individual self-insurer has sought
23 protection under the United States Bankruptcy Code or has been
24 brought under the jurisdiction of a court of bankruptcy as a
25 debtor pursuant to the United States Bankruptcy Code.

26 (b) With respect to an employee claiming insolvency
27 pursuant to s. 440.25(5), a person is insolvent who:

28 1. Has ceased to pay his or her debts in the ordinary
29 course of business and cannot pay his or her debts as they
30 become due; or

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1 2. Has been adjudicated insolvent pursuant to the
2 federal bankruptcy law.

3 (35)~~(32)~~ "Arising out of" pertains to occupational
4 causation. An accidental injury or death arises out of
5 employment if work performed in the course and scope of
6 employment is the major contributing cause of the injury or
7 death.

8 (36)~~(33)~~ "Soft-tissue injury" means an injury that
9 produces damage to the soft tissues, rather than to the
10 skeletal tissues or soft organs.

11 (37)~~(34)~~ "Catastrophic injury" means a permanent
12 impairment constituted by:

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

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

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

19 1. Severe sensory or motor disturbances;

20 2. Severe communication disturbances;

21 3. Severe complex integrated disturbances of cerebral
22 function;

23 4. Severe episodic neurological disorders; or

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

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

30 (e) Total or industrial blindness; or

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1 (f) Any other injury that would otherwise qualify
2 under this chapter of a nature and severity that would qualify
3 an employee to receive disability income benefits under Title
4 II or supplemental security income benefits under Title XVI of
5 the federal Social Security Act as the Social Security Act
6 existed on July 1, 1992, without regard to any time
7 limitations provided under that act.

8 (38)~~(35)~~ "Insurer" means a group self-insurers' fund
9 authorized by s. 624.4621, an individual self-insurer
10 authorized by s. 440.38, a commercial self-insurance fund
11 authorized by s. 624.462, an assessable mutual insurer
12 authorized by s. 628.6011, and an insurer licensed to write
13 workers' compensation and employer's liability insurance in
14 this state. The term "carrier," as used in this chapter, means
15 an insurer as defined in this subsection.

16 (39)~~(36)~~ "Statement," for the purposes of ss. 440.105
17 and 440.106, includes, but is not limited to, any notice,
18 representation, statement, proof of injury, bill for services,
19 diagnosis, prescription, hospital or doctor record, X ray,
20 test result, or other evidence of loss, injury, or expense.

21 Section 2. Section 440.05, Florida Statutes, is
22 amended to read:

23 440.05 Election of exemption; revocation of election;
24 notice; certification.--

25 (1) Each corporate officer who elects not to accept
26 the provisions of this chapter or who, after electing such
27 exemption, revokes that exemption shall mail to the division
28 in Tallahassee notice to such effect in accordance with a form
29 to be prescribed by the division.

30 (2) Each sole proprietor or partner who elects to be
31 included in the definition of "employee" or who, after such

1 election, revokes that election must mail to the division in
2 Tallahassee notice to such effect, in accordance with a form
3 to be prescribed by the division.

4 (3) Each sole proprietor, partner, or officer of a
5 corporation who is actively engaged in the construction
6 industry and who elects an exemption from this chapter or who,
7 after electing such exemption, revokes that exemption, must
8 mail a written notice to such effect to the division on a form
9 prescribed by the division. The notice of election to be
10 exempt from the provisions of this chapter must be notarized
11 and under oath. The notice of election to be exempt which is
12 submitted to the division by the sole proprietor, partner, or
13 officer of a corporation must list the name, federal tax
14 identification number, social security number, ~~and~~ all
15 certified or registered licenses issued pursuant to chapter
16 489 held by the person seeking the exemption, a copy of
17 relevant documentation as to employment status filed with the
18 IRS as specified by the division, a copy of the relevant
19 occupational license in the primary jurisdiction of the
20 business, and, for corporate officers and partners, the
21 registration number of the corporation or partnership filed
22 with the Division of Corporations of the Department of State.
23 The notice of election to be exempt ~~form~~ must identify each
24 sole proprietorship, partnership, or corporation that employs
25 the person electing the exemption and must list the social
26 security number or federal tax identification number of each
27 such employer and the additional documentation required by
28 this section. In addition, the notice of election to be exempt
29 ~~form~~ must provide that the sole proprietor, partner, or
30 officer electing an exemption is not entitled to benefits
31 under this chapter, must provide that the election does not

1 exceed exemption limits for officers and partnerships provided
2 in s. 440.02, and must certify that any employees of the sole
3 proprietor, partner, or officer electing an exemption are
4 covered by workers' compensation insurance. Upon receipt of
5 the notice of the election to be exempt, receipt of all
6 application fees, and a determination by the division that the
7 notice meets the requirements of this subsection, the division
8 shall issue a certification of the election to the sole
9 proprietor, partner, or officer, unless the division
10 determines that the information contained in the notice is
11 invalid. The division shall revoke a certificate of election
12 to be exempt from coverage upon a determination by the
13 division that the person does not meet the requirements for
14 exemption or that the information contained in the notice of
15 election to be exempt is invalid. The certificate of election
16 must list the names of the sole proprietorship, partnership,
17 or corporation listed in the request for exemption. A new
18 certificate of election must be obtained each time the person
19 is employed by a new sole proprietorship, partnership, or
20 corporation that is not listed on the certificate of election.
21 A copy of the certificate of election must be sent to each
22 workers' compensation carrier identified in the request for
23 exemption. ~~The certification of the election is valid until~~
24 ~~the sole proprietor, partner, or officer revokes her or his~~
25 ~~election.~~ Upon filing a notice of revocation of election, a
26 sole proprietor, partner, or officer who is a subcontractor
27 must notify her or his contractor.

28 (4) The notice of election to be exempt from the
29 provisions of this chapter must contain a notice that clearly
30 states in substance the following: "Any person who, knowingly
31 and with intent to injure, defraud, or deceive the division or

1 any employer or employee, insurance company, or purposes
2 program, files a notice of election to be exempt containing
3 any false or misleading information is guilty of a felony of
4 the third degree." Each person filing a notice of election to
5 be exempt shall personally sign the notice and attest that he
6 or she has reviewed, understands, and acknowledges the
7 foregoing notice.

8 (5)~~(4)~~ A notice given under subsection (1), subsection
9 (2), or subsection (3) shall become effective when issued by
10 the division or 30 days after an application for an exemption
11 is received by the division, whichever occurs first ~~is not~~
12 ~~effective until 30 days after the date it is mailed to the~~
13 ~~division in Tallahassee.~~ However, if an accident or
14 occupational disease occurs less than 30 days after the
15 effective date of the insurance policy under which the payment
16 of compensation is secured or the date the employer qualified
17 as a self-insurer, such notice is effective as of 12:01 a.m.
18 of the day following the date it is mailed to the division in
19 Tallahassee.

20 (6) A construction industry certificate of election to
21 be exempt which is issued in accordance with this section must
22 be in effect for 2 years after the effective date stated
23 thereon. Both the effective date and the expiration date must
24 be listed on the face of the certificate by the division. The
25 construction industry certificate must expire at midnight, 2
26 years from its issue date, as noted on the face of the
27 exemption certificate. Any person who has received from the
28 division a construction industry certificate of election to be
29 exempt which is in effect on December 31, 1998, shall file a
30 new notice of election to be exempt by the last day in his or
31 her birth month following December 1, 1998. A construction

1 industry certificate of election to be exempt may be revoked
2 before its expiration by the sole proprietor, partner, or
3 officer for whom it was issued or by the division for the
4 reasons stated in this section.

5 (7)(5) Any contractor responsible for compensation
6 under s. 440.10 may register in writing with the workers'
7 compensation carrier for any subcontractor and shall
8 thereafter be entitled to receive written notice from the
9 carrier of any cancellation or nonrenewal of the policy.

10 (8)(a)(6) The division may assess a fee, not to exceed
11 \$50, with each request for a nonconstruction election or
12 renewal of election under this section.

13 (b) The division must assess a fee of \$50, with each
14 request for a construction industry certificate of election to
15 be exempt or renewal of election to be exempt under this
16 section.

17 (c) The funds collected by the division shall be used
18 to administer this section, and to audit the businesses that
19 pay the fee for compliance with any requirements of this
20 chapter, and to enforce compliance with the provisions of this
21 chapter.

22 Section 3. Subsection (4) of section 440.09, Florida
23 Statutes, is amended to read:

24 440.09 Coverage.--

25 (4) An employee shall not be entitled to compensation
26 or benefits under this chapter if any judge of compensation
27 claims, administrative law judge hearing officer, court, or
28 jury convened in this state determines that the employee has
29 knowingly or intentionally engaged in any of the acts
30 described in s. 440.105 for the purpose of securing workers'
31 compensation benefits.

1 Section 4. Paragraph (g) of subsection (1) of section
2 440.10, Florida Statutes, is amended to read:

3 440.10 Liability for compensation.--

4 (1)

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

7 1. The independent contractor provides the general
8 contractor with a sworn ~~an~~ affidavit stating that he or she
9 meets all the requirements of s. 440.02(14)(d). Such sworn
10 affidavit shall read as follows: "Under penalty of perjury, I
11 declare that I meet all the requirements of an independent
12 contractor under s. 440.02(14)(d), Florida Statutes, and that
13 the above is true and correct"~~s. 440.02(13)(d)~~; and

14 2. The independent contractor provides the general
15 contractor with a valid certificate of workers' compensation
16 insurance covering each employee of the independent contractor
17 ~~or a valid certificate of exemption issued by the division.~~

18
19 A sole proprietor, ~~independent contractor,~~ partner, or officer
20 of a corporation who elects exemption from this chapter by
21 filing a certificate of election under s. 440.05, or an
22 independent contractor who provides a sworn affidavit stating
23 that he or she meets all the requirements of s. 440.02(14)(d)
24 may not recover benefits or compensation under this chapter.
25 For the purposes of this chapter, carriers must recognize the
26 sufficiency of the sworn affidavit provided by the independent
27 contractor under this section, and may not consider any such
28 person as an employee in determining the appropriate premium
29 for workers' compensation coverage.

30 Section 5. Section 440.103, Florida Statutes, is
31 amended to read:

1 440.103 Building permits; identification of minimum
2 premium policy.--Except as otherwise provided in this chapter,
3 every employer shall, as a condition to receiving a building
4 permit, show proof that it has secured compensation for its
5 employees under this chapter as provided in ss. 440.10 and
6 440.38. Such proof of compensation must be evidenced by a
7 certificate of coverage issued by the carrier, a valid
8 exemption certificate approved by the division, a sworn
9 affidavit from an independent contractor attesting that he or
10 she meets all the independent contractor requirements of s.
11 440.02(14)(d), or a copy of the employer's authority to
12 self-insure. As provided in s. 627.413, each certificate of
13 coverage must show, on its face, whether or not coverage is
14 secured under the minimum premium provisions of rules adopted
15 by rating organizations licensed by the Department of
16 Insurance the National Council of Compensation Insurers rules.
17 The words "minimum premium policy" or equivalent similar
18 language shall ~~may~~ be typed, printed, stamped, or legibly
19 handwritten.

20 Section 6. Subsections (1), (2), and (3) of section
21 440.104, Florida Statutes, are amended to read:

22 440.104 Competitive bidder; civil actions.--
23 (1) Any person engaged in the construction industry,
24 as provided in s. 440.02(7), who loses a competitive bid for a
25 contract shall have a cause of ~~may bring an~~ action for damages
26 against the ~~another~~ person ~~who is~~ awarded the contract for
27 which the bid was made, if the person making the losing bid
28 establishes that the winning bidder knew or should have known
29 that he or she was in violation ~~knowingly violated the~~
30 ~~provisions~~ of s. 440.10, s. 440.105, or s. 440.38 while
31 performing the work under the contract.

1 (2) To recover in an action brought under this
2 section, a party must establish a violation of s. 440.10, s.
3 440.105, or s. 440.38 by a preponderance of the evidence.

4 (3) Upon establishing that the winning bidder knew or
5 should have known of the violation ~~occurred~~, the person shall
6 recover as liquidated damages 30 ~~10~~ percent of the total
7 amount bid on the contract by the person bringing the action,
8 or \$15,000 ~~\$5,000~~, whichever is greater.

9 Section 7. Section 440.105, Florida Statutes, is
10 amended to read:

11 440.105 Prohibited activities; penalties;
12 limitations.--

13 (1)(a) Any insurance carrier, any individual purposes,
14 any commercial or group self-insurance fund, any professional
15 practitioner licensed or regulated by the Department of
16 Business and Professional Regulation, except as otherwise
17 provided by law, any medical review committee as defined in s.
18 766.101, any private medical review committee, and any
19 insurer, agent, or other person licensed under the insurance
20 code, or any employee thereof, having knowledge or who
21 believes that a fraudulent act or any other act or practice
22 which, upon conviction, constitutes a felony or misdemeanor
23 under this chapter is being or has been committed shall send
24 to the Division of Insurance Fraud, Bureau of Workers'
25 Compensation Fraud, a report or information pertinent to such
26 knowledge or belief and such additional information relative
27 thereto as the bureau may require. The bureau shall review
28 such information or reports and select such information or
29 reports as, in its judgment, may require further
30 investigation. It shall then cause an independent examination
31 of the facts surrounding such information or report to be made

1 to determine the extent, if any, to which a fraudulent act or
2 any other act or practice which, upon conviction, constitutes
3 a felony or a misdemeanor under this chapter is being
4 committed. The bureau shall report any alleged violations of
5 law which its investigations disclose to the appropriate
6 licensing agency and state attorney or other prosecuting
7 agency having jurisdiction with respect to any such violations
8 of this chapter. If prosecution by the state attorney or other
9 prosecuting agency having jurisdiction with respect to such
10 violation is not begun within 60 days of the bureau's report,
11 the state attorney or other prosecuting agency having
12 jurisdiction with respect to such violation shall inform the
13 bureau of the reasons for the lack of prosecution.

14 (b) In the absence of fraud or bad faith, a person is
15 not subject to civil liability for libel, slander, or any
16 other relevant tort by virtue of filing reports, without
17 malice, or furnishing other information, without malice,
18 required by this section or required by the bureau, and no
19 civil cause of action of any nature shall arise against such
20 person:

21 1. For any information relating to suspected
22 fraudulent acts furnished to or received from law enforcement
23 officials, their agents, or employees;

24 2. For any information relating to suspected
25 fraudulent acts furnished to or received from other persons
26 subject to the provisions of this chapter; or

27 3. For any such information relating to suspected
28 fraudulent acts furnished in reports to the bureau, or the
29 National Association of Insurance Commissioners.

30
31

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

4 (a) It is ~~shall be~~ unlawful for any employer to
5 knowingly:

6 1. Coerce or attempt to coerce, as a precondition to
7 employment or otherwise, an employee to obtain a certificate
8 of election of exemption pursuant to s. 440.05.

9 2. Discharge or refuse to hire an employee or job
10 applicant because the employee or applicant has filed a claim
11 for benefits under this chapter.

12 3. Discharge, discipline, or take any other adverse
13 personnel action against any employee for disclosing
14 information to the division or any law enforcement agency
15 relating to any violation or suspected violation of any of the
16 provisions of this chapter or rules promulgated hereunder.

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

19 (b) It is ~~shall be~~ unlawful for any insurance entity
20 to revoke or cancel a workers' compensation insurance policy
21 or membership because an employer has returned an employee to
22 work or hired an employee who has filed a workers'
23 compensation claim.

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

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

31

1 (b) It is ~~shall be~~ unlawful for any attorney or other
2 person, in his or her individual capacity or in his or her
3 capacity as a public or private employee, or for any firm,
4 corporation, partnership, or association to receive any fee or
5 other consideration or any gratuity from a person on account
6 of services rendered for a person in connection with any
7 proceedings arising under this chapter, unless such fee,
8 consideration, or gratuity is approved by a judge of
9 compensation claims or by the Chief Judge of Compensation
10 Claims.

11 (4)(a) Whoever violates any provision of this
12 subsection commits insurance fraud. If the value of any
13 property involved in violation of this subsection:

14 1. Is less than \$20,000, the offender commits a felony
15 of the third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

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

20 3. Is \$100,000 or more, the offender commits a felony
21 of the first degree, punishable as provided in s. 775.082, s.
22 775.083, or s. 775.084.

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

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

28 2. Make a deduction from the pay of any employee
29 entitled to the benefits of this chapter for the purpose of
30 requiring the employee to pay any portion of premium paid by
31 the employer to a carrier or to contribute to a benefit fund

1 or department maintained by such employer for the purpose of
2 providing compensation or medical services and supplies as
3 required by this chapter.

4 3. Fail to secure payment of compensation if required
5 to do so by this chapter.

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

7 1. To knowingly make, or cause to be made, any false,
8 fraudulent, or misleading oral or written statement for the
9 purpose of obtaining or denying any benefit or payment under
10 this chapter.

11 2. To present or cause to be presented any written or
12 oral statement as part of, or in support of, a claim for
13 payment or ~~of~~ other benefit pursuant to any provision of this
14 chapter, knowing that such statement contains any false,
15 incomplete, or misleading information concerning any fact or
16 thing material to such claim.

17 3. To prepare or cause to be prepared any written or
18 oral statement that is intended to be presented to any
19 employer, insurance company, or purposes program in connection
20 with, or in support of, any claim for payment or other benefit
21 pursuant to any provision of this chapter, knowing that such
22 statement contains any false, incomplete, or misleading
23 information concerning any fact or thing material to such
24 claim.

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

27 5. To knowingly make any false, fraudulent, or
28 misleading oral or written statement, or to knowingly omit or
29 conceal material information, required by s. 440.185 or s.
30 440.381, for the purpose of obtaining workers' compensation
31 coverage or for the purpose of avoiding, delaying, or

1 diminishing the amount of payment of any workers' compensation
2 premiums.

3 6. To knowingly misrepresent or conceal payroll,
4 classification of workers, or information regarding an
5 employer's loss history which would be material to the
6 computation and application of an experience rating
7 modification factor for the purpose of avoiding or diminishing
8 the amount of payment of any workers' compensation premiums.

9 7. To knowingly present or cause to be presented any
10 false, fraudulent, or misleading oral or written statement to
11 any person as evidence of compliance with s. 440.38 or as
12 evidence of eligibility for a certificate of exemption under
13 s. 440.05.

14 ~~(d)(c)~~ It is ~~shall be~~ unlawful for any physician
15 licensed under chapter 458, osteopathic physician licensed
16 under chapter 459, chiropractic physician licensed under
17 chapter 460, podiatric physician licensed under chapter 461,
18 optometric physician licensed under chapter 463, or any other
19 practitioner licensed under the laws of this state to
20 knowingly and willfully assist, conspire with, or urge any
21 person to fraudulently violate any of the provisions of this
22 chapter.

23 ~~(e)(d)~~ It is ~~shall be~~ unlawful for any person or
24 governmental entity licensed under chapter 395 to maintain or
25 operate a hospital in such a manner so that such person or
26 governmental entity knowingly and willfully allows the use of
27 the facilities of such hospital by any person, in a scheme or
28 conspiracy to fraudulently violate any of the provisions of
29 this chapter.

30 ~~(f)(e)~~ It is ~~shall be~~ unlawful for any attorney or
31 other person, in his or her individual capacity or in his or

1 her capacity as a public or private employee, or any firm,
2 corporation, partnership, or association, to knowingly assist,
3 conspire with, or urge any person to fraudulently violate any
4 of the provisions of this chapter.

5 (g)~~(f)~~ It is ~~shall be~~ unlawful for any attorney or
6 other person, in his or her individual capacity or in his or
7 her capacity as a public or private employee or for any firm,
8 corporation, partnership, or association, to unlawfully
9 solicit any business in and about city or county hospitals,
10 courts, or any public institution or public place; in and
11 about private hospitals or sanitariums; in and about any
12 private institution; or upon private property of any character
13 whatsoever for the purpose of making workers' compensation
14 claims.

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

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

19 (a) "Statement" includes, but is not limited to, any
20 notice, representation, statement, proof of injury, bill for
21 services, diagnosis, prescription, hospital or doctor records,
22 X ray, test result, or other evidence of loss, injury, or
23 expense.

24 (b) "Property" means property as defined in s.
25 812.012.

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

27 (7) Notwithstanding any other provision of law, a
28 proceeding under subsection (4) may be commenced at any time
29 within 5 years after the cause of action accrues; however, in
30 such a proceeding, the period of limitation is tolled whenever
31 the defendant is continuously absent from this state or is

1 without a reasonably ascertainable place of residence or work
2 within this state, but such a period of limitation may not be
3 extended by more than 1 year. If a criminal prosecution,
4 action, or other proceeding is brought, or intervened in, to
5 punish, prevent, or restrain any violation of subsection (4),
6 the running of the period of limitation prescribed by this
7 section, which is based in whole or in part upon any matter
8 complained of in any such prosecution, action, or proceeding,
9 is tolled during the pendency of the prosecution, action, or
10 proceeding and for 2 years following the termination of the
11 prosecution, action, or proceeding.

12 (8)(7) All claim forms ~~as~~ provided for in this chapter
13 must ~~shall~~ contain a notice that clearly states in substance
14 the following: "Any person who, knowingly and with intent to
15 injure, defraud, or deceive any employer or employee,
16 insurance company, or purposes program, files a statement of
17 claim containing any false or misleading information is guilty
18 of a felony of the third degree." Each claimant shall
19 personally sign the claim form and attest that he or she has
20 reviewed, understands, and acknowledges the foregoing notice.

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

26 440.107 Division powers to enforce employer compliance
27 with coverage requirements.--

28 (1) The Legislature finds that the failure of an
29 employer to comply with the workers' compensation coverage
30 requirements under chapter 440 poses an immediate danger to
31 public health, safety, and welfare. The Legislature authorizes

1 the division to secure employer compliance with the workers'
2 compensation coverage requirements and authorizes the division
3 to conduct investigations for the purpose of ensuring employer
4 compliance.

5 (2) The division and its authorized representatives
6 may enter and inspect any place of business at any reasonable
7 time for the limited purpose of investigating compliance with
8 workers' compensation coverage requirements under this
9 chapter. Each employer shall keep true and accurate business
10 records that contain such information as the division
11 prescribes by rule. The business records must contain
12 information necessary for the division to determine compliance
13 with workers' compensation coverage requirements and must be
14 maintained within this state by the business, in such a manner
15 as to be accessible within a reasonable time upon request by
16 the division. The business records must be open to inspection
17 and be available for copying by the division at any reasonable
18 time and place and as often as necessary. The division may
19 require from any employer any sworn or unsworn reports,
20 pertaining to persons employed by that employer, deemed
21 necessary for the effective administration of the workers'
22 compensation coverage requirements.

23 (3) In discharging its duties, the division may
24 administer oaths and affirmations, certify to official acts,
25 issue subpoenas to compel the attendance of witnesses and the
26 production of books, papers, correspondence, memoranda, and
27 other records deemed necessary by the division as evidence in
28 order to ensure proper compliance with the coverage provisions
29 of this chapter.

30 (4) If a person has refused to obey a subpoena to
31 appear before the division or its authorized representative

1 and produce evidence requested by the division or to give
2 testimony about the matter that is under investigation, a
3 court has jurisdiction to issue an order requiring compliance
4 with the subpoena if the court has jurisdiction in the
5 geographical area where the inquiry is being carried on or in
6 the area where the person who has refused the subpoena is
7 found, resides, or transacts business. Failure to obey such a
8 court order may be punished by the court as contempt.

9 Section 9. Section 440.45, Florida Statutes, is
10 amended to read:

11 440.45 Office of the Judges of Compensation Claims.--

12 (1) There is hereby created the Office of the Judges
13 of Compensation Claims within the Department of Labor and
14 Employment Security. The Office of the Judges of Compensation
15 Claims shall be headed by a Chief Judge ~~who shall serve at the~~
16 ~~pleasure of the Governor and Cabinet.~~ The Chief Judge shall
17 be appointed by the Governor for a term of 4 years and
18 ~~confirmed by the Cabinet~~ from a list of three ~~two~~ names
19 submitted by the statewide nominating commission created under
20 subsection (2) each of the District Court Judicial Nominating
21 ~~Commissions created by s. 2, Art. V of the State Constitution~~
22 ~~and s. 43.29.~~ The Chief Judge must possess the same
23 qualifications for appointment as a judge of compensation
24 claims, and the procedure for reappointment of the Chief Judge
25 will be the same as for reappointment of a judge of
26 compensation claims.The office shall be a separate budget
27 entity and the Chief Judge shall be its agency head for all
28 purposes. The Department of Labor and Employment Security
29 shall provide administrative support and service to the office
30 to the extent requested by the Chief Judge but shall not
31 direct, supervise, or control the Office of the Judges of

1 Compensation Claims in any manner, including but not limited
2 to personnel, purchasing, budgetary matters, or property
3 transactions. The operating budget of the Office of the Judges
4 of Compensation Claims shall be paid out of the Workers'
5 Compensation Administration Trust Fund established in s.
6 440.50.

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

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

21 1. Five ~~5~~ members, at least one of whom must be a
22 member of a minority group as defined in s. 288.703(3), one of
23 each who resides in each of the territorial jurisdictions of
24 the district courts of appeal, appointed by the Board of
25 Governors of The Florida Bar from among The Florida Bar
26 members who are engaged in the practice of law. On July 1,
27 1999, the term of office of each person appointed by the Board
28 of Governors of The Florida Bar to the commission expires. The
29 Board of Governors shall appoint members who reside in the
30 odd-numbered district court of appeal jurisdictions to 4-year
31 terms each, beginning July 1, 1999, and members who reside in

1 the even-numbered district court of appeal jurisdictions to
2 2-year terms each, beginning July 1, 1999. Thereafter, each
3 member shall be appointed for a 4-year term;

4 2. Five ~~5~~ electors, at least one of whom must be a
5 member of a minority group as defined in s. 288.703(3), one of
6 each who resides in each of the territorial jurisdictions of
7 the district courts of appeal, appointed by the Governor. On
8 July 1, 1999, the term of office of each person appointed by
9 the Governor to the commission expires. The Governor shall
10 appoint members who reside in the odd-numbered district court
11 of appeal jurisdictions to 2-year terms each, beginning July
12 1, 1999, and members who reside in the even-numbered district
13 court of appeal jurisdictions to 4-year terms each, beginning
14 July 1, 1999. Thereafter, each member shall be appointed for a
15 4-year term; and

16 3. Five ~~5~~ electors, at least one of whom must be a
17 member of a minority group as defined in s. 288.703(3), one of
18 each who resides in the territorial jurisdictions of the
19 district courts of appeal, selected and appointed by a
20 majority vote of the other 10 members of the commission. On
21 October 1, 1999, the term of office of each person appointed
22 to the commission by its other members expires. A majority of
23 the other members of the commission shall appoint members who
24 reside in the odd-numbered district court of appeal
25 jurisdictions to 2-year terms each, beginning October 1, 1999,
26 and members who reside in the even-numbered district court of
27 appeal jurisdictions to 4-year terms each, beginning October
28 1, 1999. Thereafter, each member shall be appointed for a
29 4-year term.

30
31

1 A vacancy occurring on the commission shall be filled by the
2 original appointing authority for the unexpired balance of the
3 term.No attorney who appears before any judge of compensation
4 claims more than four times a year is eligible to serve on the
5 statewide nominating commission. The meetings and
6 determinations of the nominating commission as to the judges
7 of compensation claims shall be open to the ~~general~~ public.
8 (c) Each judge of compensation claims shall be
9 appointed for a term of 4 years, but during the term of office
10 may be removed by the Governor for cause. Prior to the
11 expiration of a judge's term of office, the statewide
12 nominating commission shall review the judge's conduct and
13 determine whether the judge's performance is satisfactory. If
14 the judge's performance is deemed satisfactory,the commission
15 shall report its finding to the Governor no later than 6
16 months prior to the expiration of the judge's term of office.
17 The Governor shall review the commission's report and may
18 reappoint the judge for an additional 4-year term. If the
19 Governor does not reappoint the judge, the Governor shall
20 inform the commission. The judge shall remain in office until
21 the Governor has appointed a successor judge in accordance
22 with paragraphs (a) and (b).~~The report of the commission~~
23 ~~shall include a list of three candidates for appointment. The~~
24 ~~candidates shall include the judge whose term is expiring, if~~
25 ~~that judge desires reappointment and the judge's performance~~
26 ~~is satisfactory upon review by the commission.~~If a vacancy
27 occurs during a judge's unexpired term, the statewide
28 nominating commission does not find the judge's performance is
29 satisfactory, or the governor does not reappoint the judge,
30 the commission shall issue a report to the Governor shall
31 appoint a successor judge for a term of 4 years in accordance

1 ~~with paragraph (b) which includes a list of three candidates~~
2 ~~for appointment. The Governor shall review the commission's~~
3 ~~report, and may select one of the listed candidates. If no~~
4 ~~candidate is selected, the Governor shall so inform the~~
5 ~~commission, which shall within 2 months issue a report to the~~
6 ~~Governor which includes a list of three different candidates~~
7 ~~for appointment.~~

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

22 (4) The Chief Judge shall have the discretion to
23 require mediation and to designate qualified persons to act as
24 mediators in any dispute pending before the judges of
25 compensation claims and the division. The Chief Judge shall
26 coordinate with the Director of the Division of Workers'
27 Compensation to establish a mandatory mediation program to
28 facilitate early and efficient resolution of disputes arising
29 under this chapter and to establish training and continuing
30 education for new and sitting judges.

31

1 (5) The Office of the Judges of Compensation Claims
2 shall promulgate rules to effect the purposes of this section.
3 Such rules shall include procedural rules applicable to
4 workers' compensation claim resolution and uniform criteria
5 for measuring the performance of the office, including but not
6 limited to the number of cases assigned and disposed, the age
7 of pending and disposed cases, timeliness of decisionmaking,
8 extraordinary fee awards and other performance indicators. The
9 workers' compensation rules of procedure approved by the
10 Supreme Court shall apply until the rules promulgated by the
11 Office of the Judges of Compensation Claims pursuant to this
12 section become effective.

13 (6) Not later than December 1 of each year, the Office
14 of the Judges of Compensation Claims and the Division of
15 Workers' Compensation shall jointly issue a written report to
16 the Governor, the House of Representatives, and the Senate
17 summarizing the amount, cost, and outcome of all litigation
18 resolved in the prior year, summarizing the disposition of
19 applications and motions for mediation conferences and
20 recommending changes or improvements to the dispute resolution
21 elements of the Workers' Compensation Law and regulations.

22 Section 10. On July 1, 1999, the term of office of the
23 Chief Judge of Compensation Claims expires. The statewide
24 nominating commission is directed to submit a list of three
25 names to the Governor pursuant to section 440.45(1), Florida
26 Statutes, by March 1, 1999.

27 Section 11. The revised process for nomination and
28 appointment of judges of compensation claims, as provided in
29 the amendments to section 440.45(2)(c), Florida Statutes,
30 shall take effect on July 1, 1999.

31

1 Section 12. Any member of the statewide nominating
2 commission whose term of office expires as a result of the
3 amendment of section 440.45, Florida Statutes, by this act is
4 eligible for reappointment.

5 Section 13. Subsection (5) is added to section
6 627.413, Florida Statutes, to read:

7 627.413 Contents of policies, in general;
8 identification.--

9 (5) Any policy that is a minimum premium policy issued
10 by an insurer pursuant to the minimum premium provisions of
11 rules adopted by rating organizations licensed by the
12 department shall have typed, printed, stamped, or legibly
13 handwritten on the certificate the words "minimum premium
14 policy" or equivalent language. The department may impose an
15 administrative fine pursuant to s. 624.4211 if the department
16 finds any violation of this subsection.

17 Section 14. Effective July 1, 1998, the Division of
18 Workers' Compensation shall notify all persons holding a
19 construction industry certificate of election of exemption of
20 the requirements of section 440.05, Florida Statutes, as
21 amended by this act.

22 Section 15. There is hereby appropriated to the
23 Department of Labor and Employment Security from the Workers'
24 Compensation Administration Trust Fund for the fiscal year
25 1998-1999, 15 positions and \$1,100,000 to carry out the
26 provisions of this act. This section shall take effect July
27 1, 1998.

28 Section 16. Except as otherwise provided in this act,
29 this act shall take effect January 1, 1999.

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31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for SB 1406

4 Changes effective date to January 1, 1999. This provides the
5 Division of Workers' Compensation (Division) and affected
6 parties greater lead-time to adjust to the new law.

7 Requires the Division to notify persons holding a certificate
8 of election to be exempt of the requirements of s. 440.05
(fees, filing and renewal provisions for exemptions).
Effective date: July 1, 1998.

9 Amends s. 440.05 (Election of Exemptions, etc.) to provide
10 that the 2-year renewable certificate of election to be exempt
11 from workers' compensation coverage applies only to
12 construction (not non-construction), sole proprietors,
13 partners and corporate officers. Establishes fees for
14 construction exemption and biennial renewal to be \$50
(currently \$100 in the bill). Persons who have elected to be
included for workers compensation purposes and persons who
file for non-construction exemptions would not be affected
under this bill.

15 Amends s. 440.10 (Liability for Compensation) to require a
16 perjury statement on a sworn affidavit that the independent
17 contractor presents to the general contractor to attest he/she
18 meets all requirements of s. 440.02(13)(d) (definition of
19 independent contractor).

20 Amends s. 440.103 (Building Permits) to provide that
21 independent contractors may, as a condition to receiving a
22 permit, present a sworn "affidavit" attesting she/he meets the
23 definition of an independent contractor for workers'
24 compensation purposes.

25 Amends s. 440.103 to require that the words "minimum premium
26 policy" or the equivalent thereof must be typed, printed,
27 stamped or legibly handwritten on such insurance policies.

28 Amends s. 440.104 (Competitive Bids; Civil Actions) to allow a
29 plaintiff to prevail if it is shown that the winning bidder in
30 a competitive bidding situation "knew or should have known" of
31 a violation of s. 440.10, 440.105, or s. 440.38. Also,
increases the liquidated damages awarded to a prevailing
plaintiff to 30 percent of the total amount bid on a contract
by the plaintiff or \$15,000, whichever is greater.

Appropriates \$1.1 million from the Workers' Compensation Trust
Fund for FY 1998-99 for 15 FTEs to the Division effective
July 1, 1998.

Amends s. 440.10(1)(g) (Liability for Compensation) to state
that carriers must recognize the sufficiency of the sworn
affidavit provided by the independent contractor under s.
440.10(1)(g)1, and may not consider any such person as an
employee in determining the appropriate premium for worker's
compensation coverage.