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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4523 (PCB FS 98-06)

RELATING TO: Workers' Compensation Compliance

SPONSOR(S): Committee on Financial Services and Representative Safley & others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
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I. SUMMARY:

Within the last year, reports by the Workers' Compensation Oversight Board and the Fourteenth Statewide Grand Jury have prompted the insurance industry, governmental entities, and employers to focus considerable attention on the related issues of workers' compensation fraud and noncompliance. The bill makes the following changes to Florida law:

Requires local government authorities to confirm compliance with workers' compensation coverage requirements as a condition to receiving each occupational license or building permit.

Increases the application fee for elections of exemption from workers' compensation and gives the Division of Workers' Compensation the authority to revoke exemptions.

Currently, persons meeting the 9 criteria specified in s. 440.02(13)(d)1., F.S., are considered to be independent contractors and not employees for purposes of chapter 440. This bill creates a process for independent contractors to register with the Division of Workers' Compensation.

Requires insurers to identify minimum premium policies and notify the Division of Workers' Compensation whenever a minimum premium policy is issued.

Increases criminal penalties and statute of limitations for workers' compensation fraud.

Modifies the Division of Workers' Compensation's discretion regarding noncompliance penalties and grants the Division investigatory and subpoena powers.

Modifies the burden in competitive bidder civil actions

Increases insurers' access to employer wage and payroll data.

Requires a joint performance report from the Division of Insurance Fraud and the Division of Workers' Compensation.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Within the last year, reports by the Workers' Compensation Oversight Board and the Fourteenth Statewide Grand Jury have prompted the insurance industry, governmental entities, and employers to focus considerable attention on the related problems of workers' compensation fraud and noncompliance.

Under chapter 440, employers are required to provide workers' compensation coverage for their employees. Employers secure workers' compensation coverage either by purchasing insurance or meeting the requirements to self-insure. An employer's failure to obtain the appropriate coverage for their employees is a civil violation of the coverage requirements, and if the employer's conduct is knowing or intentional, it may be criminal fraud as well.

Workers' compensation fraud is most frequently associated with efforts to obtain undeserved benefits or payments related to a claim, or efforts to unjustly reduce premiums for a policy. It is but one of several forms of insurance fraud, but one which presents a particular challenge to enforcement officials because of the variety of conduct and schemes it encompasses. It impacts the premiums employers pay, and carries negative consequences for insurer revenues, and insurer solvency.

According to the Department of Insurance, as illustrated in Table 1, workers' compensation insurance fraud is costing the industry hundreds of millions of dollars each year.

Table 1. Estimated Annual Losses in Florida From Insurance Fraud	
Description	Estimated Annual Losses
Total Workers' Compensation	\$500 million
- Claimant Fraud	\$100 million
- Other Fraud, including Premium Fraud	\$400 million

Source: Division of Insurance Fraud, Department of Insurance

Workers' compensation fraud encompasses conduct by individuals who participate in the system in a variety of capacities. The law addresses conduct by any of these participants which involves knowing intent to defraud the system in s. 440.105, F.S.

Claimant Fraud

Claimant fraud occurs when an injured employee or allegedly injured employee provides false information to, or conceals information from, the insurance carrier in order to obtain or retain workers' compensation benefits. The most prevalent form of claimant fraud involves claimants who conceal work activity while receiving benefits. According to estimates by the Department of Insurance, claimant fraud conduct accounted for as much as \$100 million in losses to the workers' compensation system in 1994, and

consumed the attention of 19 of 24 workers' compensation fraud investigators in the Department of Insurance.

Premium Fraud

Employer-related premium fraud involves the falsification of policy-related information by the employer or its agent. It can take the form of: (i) concealing payroll dollars; (ii) misclassifying the risk status of positions on the payroll; and (iii) falsifying insurance status when coverage is not obtained, which may include producing false insurance certificates.

Premium fraud can also occur when an insurer or its agent acts in collusion with an employer, or solicits employers to misrepresent premium-related information. The conduct can include: (i) understatement of claims/loss experience as reported by the employer; (ii) understatement of payroll; or (iii) offering coverage under unapproved policy forms.

Fraud Versus Noncompliance

In sifting out employer-related premium fraud, investigators must evaluate an employer's culpability through two different avenues: compliance or fraud. An employer's failure to obtain workers' compensation coverage does not alone reflect an intent to evade the law (e.g., the employer could be ignorant of the coverage requirements). In this instance the compliance enforcement process is invoked. The conduct does not constitute fraud, and is not a criminal violation.

Before an employer's conduct can be classified as fraud, state law requires proof that the employer knowingly or intentionally failed to obtain coverage. For prosecutors to establish probable cause to prosecute, they must show conduct by an employer or its agent, beyond the simple failure to obtain coverage, which reflects knowing intent to defraud an insurer. This is a "fraudulent insurance act" as defined in s. 626.989, F.S.

Investigation and enforcement of compliance with the workers' compensation coverage requirements is reported to be very difficult, especially in the construction industry where an employer's workforce can change from one week to the next depending on the size of a job. Moreover, preventing abuses in the exemption process likewise is equally challenging since the status of a person as an independent contractor or employee can change depending on the type of work being done. Lastly, conduct surrounding workers' compensation fraud is frequently committed in stealth, which makes its detection and prosecution particularly challenging.

The following agencies play a key role in the oversight and enforcement of workers' compensation compliance and fraud:

- the Department of Labor (DLES), Division of Workers' Compensation;
- the Department of Insurance (DOI), Division of Insurance Fraud;
- the Office of the Statewide Prosecutor;
- the various Offices of States Attorneys in the state's judicial circuits; and

- local government authorities through building permit departments.

In addition, insurers support anti-fraud efforts through the creation of special investigative units or anti-fraud plans.

DLES, Division of Workers' Compensation

The Division of Workers' Compensation is responsible for monitoring and enforcing employer compliance with workers' compensation coverage requirements. The Bureau of Compliance within the Division of Workers' Compensation employs 39 investigators who are responsible for conducting compliance investigations. The Division of Workers' Compensation is also responsible, through its Bureau of Monitoring and Auditing, for conducting audits of insurance carriers to ensure that they are making timely payments of benefits under chapter 440. However, the Division of Workers' Compensation does not audit insurance carriers for the purpose of determining appropriate levels of workers' compensation coverage.

The Division of Workers' Compensation is also a repository of a variety of information relating to the workers' compensation system. For instance, insurance carriers are required to file with the Division of Workers' Compensation injury reports received by employees, information on every policy issued, and notices of cancellation. Moreover, employees are required to file with the Division of Workers' Compensation applications for election of exemption from coverage, which lists all of the employers for which an exemption is elected.

If the Division of Workers' Compensation determines that an employer is not in compliance, the law permits the Division to:

- issue warnings or negotiate settlements;
- impose administrative sanctions such as stop-work orders, or financial penalties of either twice the premium amount the employer would have paid during the uncovered period for up to three years, or \$1,000, whichever is greater;
- seek judicial assistance through a circuit court injunction.

The Division of Workers' Compensation is only granted civil enforcement authority with respect to compliance. Therefore, if the Division of Workers' Compensation concludes that criminal intent to defraud exists, it must refer the case to the DOI, Division of Insurance Fraud.

DOI, Division of Insurance Fraud

The Division of Insurance Fraud is a fully staffed law enforcement agency, having broad investigatory and subpoena powers. The Division of Insurance Fraud employs 142 persons, of which 90 are sworn law enforcement officers trained to investigate insurance fraud. These law enforcement officers carry weapons and have the power to make arrests. In 1997, 454 arrests were made. According to the Division of Insurance Fraud, investigations are separated into four primary categories: workers' compensation fraud, medical fraud, claimant fraud, and agent fraud.

As part of the Division of Insurance Fraud, the Bureau of Workers' Compensation Fraud investigates and prosecutes workers' compensation fraud based on referrals from insurers or the DLES, Division of Workers' Compensation. In FY 1996-1997, the Division received 5,681 referrals. Of these referrals, 1,325 were related to workers' compensation. Of the 1,325 workers' compensation fraud referrals, approximately 80% were related to claims fraud while 20% were related to premium fraud. In FY 1996-1997, 132 workers' compensation related arrests were made, 15% of which were related to premium fraud. Therefore, in FY 1996-1997, approximately 1 arrest was made out of every 10 workers' compensation referrals.

The Division of Insurance Fraud refers confirmed cases of insurance fraud to the state attorney's office and the Office of the Statewide Prosecutor for criminal prosecution. Through the Prosecutorial Reimbursement Program, the Division of Insurance Fraud is authorized to reimburse the state attorney's office for overhead expenses incurred in prosecuting workers' compensation cases.

In addition to the responsibilities for investigating insurance fraud, the Department of Insurance is also responsible for ensuring that workers' compensation insurance carriers are auditing their employer-insureds' payroll and classification data so that the appropriate premium is charged for workers' compensation coverage.

Special Investigative Units

Pursuant to s. 626.9891, F.S., insurance companies admitted in Florida that have \$10 million or more in direct written premium, are required to establish or contract with a unit which purpose is to investigate fraudulent claims. These units are referred to as "special investigative units (SIU's)". In FY 1996-1997, 80% of the referrals received by the Division of Insurance Fraud were received by insurer SIU's.

Self Policing: Competitive Bidding Civil Suit

Pursuant to s. 440.104, F.S., construction businesses can sue each other if it is suspected that a competitor won a competitive bid by not obtaining proper workers' compensation coverage or by engaging in workers' compensation fraud. If a plaintiff is successful under this provision, damages can be assessed in the amount of 10% of the total amount bid on the contract by the plaintiff or \$5,000, whichever is greater.

ISSUES IDENTIFIED IN REPORTS AND INVESTIGATIONS

The Workers' Compensation Oversight Board (WCOB), created in s. 440.4416, F.S., is a 14-member board comprised of the Secretary of the Department of Labor and Employment Security and the Insurance Commissioner (both are non-voting members), and an equal number of representatives of employers and employees. The purpose of the WCOB is to create a forum for the consideration of workers' compensation issues. The WCOB also advises the Division of Workers' Compensation and the Legislature on matters that impact the workers' compensation system. In June 1997, the WCOB issued a report and recommendations regarding workers' compensation fraud and noncompliance.

In August 1997, the Office of the Statewide Prosecutor empaneled the Fourteenth Statewide Grand Jury to investigate insurance fraud, including workers' compensation

fraud, in Florida. On February 9, 1998, the Grand Jury released its report and recommendations.

The effectiveness of present compliance and fraud enforcement efforts has been challenged through both the WCOB Report and the Grand Jury Report. The following are criticisms and recommendations from the WCOB Report and/or the Grand Jury Report.

DLES, Division of Workers' Compensation Too Lenient on Employers Not in Compliance With Workers' Compensation Coverage Requirements

Both the WCOB Report and the Grand Jury Report criticize the Division of Workers' Compensation for being what they consider "too lenient" on employers found not to be in compliance with the workers compensation coverage requirements. Currently, s. 440.107, F.S., provides that when the Division finds an employer not in compliance, it may issue a stop-work order and, additionally, a penalty of twice the premium that the employer would have paid or \$1,000, whichever is greater. In the opinion of both the WCOB and Grand Jury, the Division of Workers' Compensation exercised more discretion than is authorized by statute by penalizing all first time offenders \$1,000, regardless of the amount of the premium evaded or the length of time without coverage. Moreover, the Grand Jury asserts that there is no support for the Division's practice of only issuing stop-work orders and larger penalties (twice the evaded premium) to second-time offenders. According to information provided by the Division of Workers Compensation, out of 2,188 compliance sanctions imposed in 1997, only 9 employers were penalized as second-time offenders.

Insufficient Insurance and Minimum Premium Policies

The Grand Jury also alleges that the Division of Workers' Compensation treats employers carrying insufficient insurance as being in compliance with workers' compensation coverage requirements. The Grand Jury asserts that the Division of Workers' Compensation considers having insufficient insurance as being in compliance because of the fact an insurance carrier is obligated to compensate any injured worker, regardless of the payroll figures actually reported to the insurance carrier or the premium paid.

This practice has resulted in many employers purchasing "minimum premium policies" in order to achieve compliance. According to the Grand Jury, "minimum premium policies," defined in the Report as "inexpensive policies sold to employers who report no payroll at the time of purchase", are used by unscrupulous employers as a tool for fraud. Under s. 440.103, F.S., these policies are supposed to be clearly labeled as a "minimum premium policy," but the Grand Jury Report noted that this provision is often ignored. The result is that an employer with 10 employees can purchase a "minimum premium policy," which on its face looks like any other policy, and convince Division of Workers' Compensation inspectors that it is in compliance.

Criminal Penalties for Workers' Compensation Fraud

Conduct constituting workers compensation fraud is listed in s. 440.105, F.S. This section treats workers' compensation fraud as a third degree felony regardless of the value of property or amount of premium involved. The statute of limitations for

bringing an action under s. 440.105, F.S., is 3 years. The WCOB Report points out that the criminal penalties for general theft in s. 812.014, F.S., are more severe than the penalty for insurance fraud if the value of property involved is greater than \$20,000. Under the general theft statute, the criminal penalty for theft increases as the value of the property stolen increases. Also, the statute of limitations for bringing an action under s. 812.014, F.S., is 5 years. The WCOB asserts that theft from insurance companies in the form of insurance fraud should not be treated differently than theft from any one else. As such, in order to provide a more appropriate deterrent, the WCOB Report recommends that the criminal penalty for workers compensation insurance fraud be increased to be consistent with the general theft statute. In addition, the WCOB recommends that the statute of limitations for bringing an action for insurance fraud be increased to 5 years to be commensurate with the general theft statute.

Auditing of Employers by Insurers

The Grand Jury Report states that there are 3 primary players involved in the enforcement of chapter 440: the DOI, Division of Insurance Fraud; the DLES, Division of Workers' Compensation; and private insurers. Pursuant to s. 440.381(3), F.S., insurers are required to conduct periodic audits of the employers that they insure. However, the Grand Jury Report indicates that the requirements of s. 440.381, F.S., are not strictly adhered to and that insurers are reluctant to conduct audits of their insureds for fear of losing business. Because workers' compensation rates are regulated, the Grand Jury opined that insurers who are overly rigid regarding audits might lose both legitimate and illegitimate business. As a result, many insurers rely on rate increases to cover their losses according to the Grand Jury.

Additionally, the Grand Jury found that insurers that do conduct audits are encountering problems in obtaining accurate information. Pursuant to s. 440.381(4), F.S., employers are required to provide their insurance carrier a copy of the quarterly earning report submitted to the Division of Unemployment Compensation under chapter 443. The Grand Jury found, however, that employers would often report different payroll figures to the Division of Unemployment Compensation than to their insurance carriers.

Abuse of Exemptions from Coverage Under Workers' Compensation

The WCOB and Grand Jury Reports attributed much of the workers' compensation fraud problem to the abuse of exemptions from the workers' compensation system. Under s. 440.05, F.S., corporate officers, partners, and sole proprietors may elect to be exempt from coverage under the workers' compensation system. Also, persons who attest that they are "independent contractors," do not need to be covered under workers' compensation. According to both the WCOB Report and Grand Jury Report, the Division of Workers' Compensation summarily approves applications for exemption without verifying the information provided on the exemption forms. This creates an opportunity for unscrupulous employers to avoid paying workers' compensation insurance for their employees by calling them "corporate officers" or by pressuring them to file for exemption as "independent contractors," when in reality they do not meet the requirements under s. 440.02(13)(d)1., F.S. Moreover, the Grand Jury Report notes as an additional problem that fact that the Division of

Workers' Compensation lacks the authority to revoke certificates of exemption once they are granted.

Claimant Fraud Consumes Most Resources for Enforcement

The WCOB Report reached the conclusion that the balance of resources for fraud enforcement heavily favors claimant fraud, despite the fact that losses from premium fraud far exceed those from claimant fraud.

The available data on claimant and premium fraud investigations and prosecutions, detailed in Table 2 below, seems to support this finding. Allegations of claimant fraud are more readily reported by a host of interested parties, including the Division of Workers' Compensation, the Division of Insurance Fraud, insurers, attorneys and employers. In addition, calls received by the Division of Insurance Fraud over the fraud hotline overwhelmingly relate to claimant fraud, as do the vast majority of referrals to the Division of Workers' Compensation and the Division of Insurance Fraud.

Table 2. Comparison of Enforcement Resources for Division of Insurance Fraud, Bureau of Workers' Compensation Fraud				
Description	Workers' Comp Total	Claimant Fraud	Premium Fraud	Time Period
Investigators	24	19	5	FY 96-97
Referrals	1,325	N/A	N/A	FY 96-97
Cases Opened	249	211*	38*	FY 96-97 * - Est.
Prosecutions	226	145	81	Cumulative since 1995
Hotline Calls	2,150	1,685	465	Cumulative since 1994

Source: Department of Insurance

Coordination of Compliance and Fraud Oversight is Inadequate

According to the Grand Jury Report, regulators and insurers indicate that the protocols for the transition of compliance investigations into fraud investigations are unclear. While the Division of Insurance Fraud views the Division of Workers' Compensation and insurers as the front line for monitoring in the fraud enforcement effort, the Division of Workers' Compensation staff at sees its mission as the verification of coverage, without scrutinizing the legitimacy of that coverage. Thus, it is unclear what circumstances would prompt a referral from Division of Workers; Compensation to the Division of Insurance Fraud.

Additionally, the role insurers actually play in fraud enforcement is unclear. The Legislature's requirement that SIU's be formed placed a responsibility on the industry to more vigorously police its business. Insurers are required to report fraud to the Division of Insurance Fraud, and enjoy anti-trust immunity in reporting this information. However, as discussed above, the Grand Jury concluded that insurers

are reluctant to conduct the required audits due to a fear of losing business, and that audit requirements are not strictly adhered to.

B. EFFECT OF PROPOSED CHANGES:

PCB FS 98-06, relating to workers' compensation compliance makes the following changes to Florida law:

Proof of Coverage as a Condition of Occupational License and Building Permit

Requires, as a condition of issuing, renewing, or transferring an occupational license, that local government authorities confirm that a person or business has (1) proof of workers' compensation coverage, proof of a certificate of exemption, proof of an independent contractor registration receipt, or written affirmation that workers' compensation coverage is not required and (2) no outstanding noncompliance penalties under s. 440.107, F.S.

Requires employers to present proof of workers' compensation coverage each time they apply for a building permit.

Certificates of Election of Exemption and Definitions

Defines the terms "corporate officer," "partner," and "sole proprietor."

Grants the Division of Workers' Compensation the authority to revoke certificates of exemption from workers' compensation coverage. Limits the validity of certificates of exemption to 2 years.

Increases the fee that accompanies notices of election of exemption from a current maximum of \$50 to a required \$100 for requests for exemption and \$50 for renewals of exemption. Provides a time for current certificate holders to reapply for new certificates of exemption and inclusion. Requires the Division of Workers' Compensation to send notice to certificate holders reminding them of the expiration date.

Independent Contractor Registration Receipts

Under current law, persons meeting the 9 criteria of s. 440.02(13)(d)1., F.S., are considered to be "independent contractors" and not "employees" for purposes of chapter 440. This bill creates a registration process for these persons operating businesses as independent contractors. Persons registering with the Division of Workers' Compensation pay an initial registration fee of \$100 and a renewal fee of \$50.

Identification and Notification of Minimum Premium Policies

Requires the Department of Insurance to ensure that insurance carriers identify minimum premium policies as such on the certificate of coverage. Permits the Department of Insurance to issue an administrative fine for a violation of this requirement.

Requires insurance carriers to notify the Division of Workers' Compensation within 21 days of issuance of a policy, whether such policy is a minimum premium policy.

Competitive Bidder Civil Bidder Statute

Modifies the competitive bidder civil suit provision to require plaintiffs to show that winning bidder knew or should have known of violation of workers' compensation statutes. Also increases the liquidated damages available to a successful plaintiff.

Increase Criminal Penalties and Statute of Limitations

Increases criminal penalties for workers' compensation fraud to be commensurate with the theft statute, section 812.014, F.S.

Increases the statute of limitations for bringing a criminal fraud action from the current 3 years to 5 years.

Division of Workers' Compensation Discretion Regarding Stop-Work Orders and Penalties

Requires the Division of Workers' Compensation to issue an order to show cause if it has reason to believe that an employer is not in compliance with workers' compensation coverage requirements. Employers have 24 hours to respond with proof of compliance with workers' compensation coverage. If the employer does not provide proof of coverage, the Division of Workers' Compensation shall issue a stop work-order.

Eliminates the Division of Workers' Compensation's discretion regarding assessment of noncompliance penalties for employers who have had a noncompliance violation within the previous 2 years.

Granting Investigatory and Subpoena Power to the Division of Workers' Compensation

Requires employers to maintain records relative to workers' compensation coverage and make them available to the Division of Workers' Compensation.

Grants investigatory, subpoena, and inspection power to the Division of Workers' Compensation for the purpose of enforcing compliance with the workers' compensation coverage requirements. Permits the Division of Workers' Compensation to seek enforcement of subpoenas in circuit court. Provides self-incrimination privilege and immunity. Specifies penalties for failing to comply with subpoena or without just cause failing to allow inspection of place of employment.

Protects Notices of Injury from Disclosure

Provides that notices of injury under s. 440.185, F.S., are considered medical records for purposes of s. 440.125, F.S.

Increase Insurance Carrier Access to Information for Audits of Employers

Permits an insurance carrier to require, as a condition of the issuance of a workers' compensation insurance policy, the consent of the employer to release certain employment and wage information maintained by the state pursuant to federal and state

unemployment compensation laws. Provides that the insurance carrier shall limit the use of such information to verifying that employers are in compliance with workers' compensation coverage requirements.

Joint Performance Report to the Legislature

Requires the Division of Workers' Compensation (DLES) and the Division of Insurance Fraud (DOI) to prepare and submit a joint performance report to the Legislature detailing the efforts made to reduce insurance fraud and increase compliance with workers' compensation coverage requirements.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill creates a registration process with the Division of Workers' Compensation for persons operating businesses as independent contractors. The Division of Workers' Compensation would be required to accept requests for registration and verify that persons are in compliance with s. 440.052, F.S.

The bill also grants investigatory and subpoena power to the Department of Labor and Employment Security, Division of Workers' Compensation for the purpose of ensuring compliance with the workers' compensation coverage requirements. However, this is not a new responsibility -- it is a grant of authority to carry out an existing responsibility.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill requires local government authorities to: (i) require proof of compliance with workers' compensation requirements, and (ii) ensure that there are no outstanding noncompliance penalties, before issuing an occupational license.

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

Yes. The bill establishes a fee for persons registering as independent contractors and increases the fee that accompanies an application for election of exemption from the workers' compensation system.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

- N/A

- (2) Who makes the decisions?

- N/A

- (3) Are private alternatives permitted?

- N/A

- (4) Are families required to participate in a program?

- N/A

- (5) Are families penalized for not participating in a program?

- N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

PCB FS 98-06 creates ss. 205.0531 and 440.052 F.S., and amends ss. 440.02, 440.05, 440.10, 440.103, 440.104, 440.105, 440.107, 440.185, 440.42, 626.989, and 627.413, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 205.0531, F.S. Currently, local government authorities may levy occupational license taxes for the privilege of engaging in or managing any business, profession, or occupation. Occupational licenses are valid for only one year and must be renewed. Local government authorities may not now issue an occupational license to persons engaging in the occupations of assisted living facilities, pharmacies, pest control, travel agencies, health studios, and telemarketing, unless the person presents a valid license from the appropriate regulatory agency.

This section would require local government authorities to confirm that applicants for an occupational license have (1) proof of workers' compensation coverage, proof of a certificate of exemption, proof of an independent contractor registration receipt, or written affirmation that no workers' compensation coverage is required, and (2) that there are no outstanding penalties for noncompliance with workers' compensation coverage requirements.

Section 2: Amends s. 440.02, F.S. Currently, chapter 440 does not contain definitions of the terms "corporate officer," "partner," or "sole proprietor." These terms are an integral part of the exemption process under s. 440.05, F.S., which permits "corporate officers," "partners," and "sole proprietors" to exempt themselves from coverage under chapter 440.

This section would define these three terms.

Section 3: Amends s. 440.05, F.S. Currently, corporate officers, partners, and sole proprietors may elect to be exempt from the workers' compensation system. In order to elect exemption, these persons are required to file a notice of election of exemption with the Division of Workers' Compensation along with a fee not to exceed \$50. Upon determining that the requirements for exemption are met, the Division of Workers' Compensation issues a certificate of election of exemption which is valid until the person revokes the exemption. Presently, the Division does not have the express authority to revoke certificates of election of exemption once they are issued.

This section would change current law by granting the Division of Workers' Compensation the authority to revoke certificates of exemption when it finds that a person is no longer entitled to an exemption. Upon revocation of a certificate of exemption, the Division is required to notify the insurance carriers and employers listed on the certificate of exemption. This section limits the validity of certificates of election of exemption and certificates to be included as an employee to 2 years and requires that the Division of Workers' Compensation list on each certificate of election of exemption or inclusion the effective date and the expiration date. This section mandates a fee of \$100 for requests for exemption and inclusion and a \$50 fee for renewals of exemption and inclusion. This section also provides a time frame for current certificate holders to apply for new certificates of exemption or inclusion.

Section 4: Creates s. 440.052, F.S. Under current law, persons who meet the 9 criteria of s. 440.02(13)(d)1., F.S., are considered to be "independent contractors" and not employees. As such, employers are not required to provide workers' compensation coverage for "independent contractors." The Division of Workers' Compensation has in the past required persons electing an exemption under s. 440.05, F.S. (which authorizes exemptions for "sole proprietors," "partners," and "corporate officers" who are considered "employees" under chapter 440), to also affirm on the exemption form, the BCM-204, that they meet the 9 criteria of an independent contractor. This has created a great deal of confusion over the exemption process because s. 440.05, F.S., does not require a person meet the independent contractor criteria in order to qualify for an exemption as a sole proprietor, partner, or corporate officer. At this time, the Division of Workers' Compensation indicates that it plans to remove the independent contractor affirmation from the BCM-204.

This section would require persons operating a business as "independent contractors" to register with the Division of Workers' Compensation and affirm that they (1) meet the requirements of the current law, s. 440.02(13)(d)1., F.S. and (2) that they knowingly forfeit the right to recover benefits under chapter 440, as is the case under current law. Under this section, as under current law, independent contractors must comply with the workers' compensation coverage requirements relative to its own employees. This section does not create an exemption from the workers' compensation system as does s. 440.05, F.S.; it creates a registration process that requires the Division of Workers' Compensation to verify that persons claiming to be independent contractors meet the requirements of s. 440.02(13)(d)1., F.S. The Division of Workers' Compensation would be required to issue a receipt which is current for 2 years. If persons receiving an independent contractor registration receipt experience a change in their status this section would required them to notify the Division of Workers' Compensation or be subject to civil penalty as provided in s. 440.107. This section would also require these registrants to pay a \$100 initial fee and a \$50 renewal fee.

Section 5: Amends s. 440.10, F.S. Currently, s. 440.10, F.S., provides that a person is conclusively presumed to be an independent contractor if the person provides (1) an affidavit to the general contractor stating that he or she meets the requirements of s. 440.02(13)(d)1., F.S., and (2) a valid certificate of workers's compensation coverage or a valid certificate of exemption.

This section would change current law by stating that a person is conclusively presumed to be an independent contractor if the person provides the general contractor with (1) a current independent contractor registration receipt, or (2) a valid certificate of workers' compensation coverage.

Section 6: Amends s. 440.103, F.S. Present s. 440.103, F.S., requires that an employer show proof of compliance with workers' compensation coverage requirements as a condition of receiving a building permit. Such proof can take the form of a certificate of insurance coverage, a valid certificate of exemption, or a copy of an employer's authority to self-insure. Section 440.103, F.S., requires that in cases where a minimum premium policy is presented as proof of coverage, the certificate of coverage must show on its face the words, "minimum premium policy" or similar language. However, no penalty is provided for the failure to identify a policy as a minimum premium policy. Moreover, the Grand Jury Report states that the Department of Insurance does not enforce this provision.

This section clarifies the requirement that employers must show proof of compliance with workers' compensation coverage requirements each time they apply for a building permit. This section also inserts a reference to s. 627.413(5), which requires that the insurance carrier ensure that "minimum premium policies" are identified as such on the certificates of coverage.

Section 7: Amends s. 440.104, F.S., which was created in 1993 as a means for the construction industry to monitor itself in the competitive bidding context. Presently, under s. 440.104, F.S., a person who loses a competitive bid for a contract may sue to recover damages from the winning bidder if the plaintiff can show that the winning bidder knowingly violated s. 440.10, s. 440.105, or s. 440.38, while performing work under the contract. Section 440.104(3), F.S., awards a prevailing plaintiff as liquidated damages 10 percent of the total amount bid on the contract by the plaintiff or \$5,000, whichever is greater.

This section would change the requirement that a plaintiff must prove a knowing violation of s. 440.10, s. 440.105, or s. 440.38. Under this section, a plaintiff may now prevail if it is shown that the winning bidder knew or should have known of a violation of s. 440.10, s. 440.105, or s. 440.38 while performing work under the contract. This section also increases the liquidated damages awarded to a prevailing plaintiff to 30 percent of the total amount bid on the contract by the plaintiff or \$15,000, whichever is greater.

Section 8: Amends s. 440.105, F.S. Currently, s. 440.105(4) prohibits employers, employees, physicians, attorneys, and other persons from engaging in certain knowing and fraudulent violations of chapter 440. For instance, it is a violation of s. 440.105(4), F.S., for a person to knowingly present a false statement as evidence of compliance with the coverage requirements of chapter 440. These prohibited activities constitute third degree felonies regardless of the amount of the claim or workers' compensation

premium involved in the prohibited act. Because violations of subsection (4) of s. 440.105 are third degree felonies, s. 775.15, F.S. provides that the statute of limitations for bringing an action under this subsection is 3 years.

This section would change the current law by clarifying that a violation of subsection (4) constitutes insurance fraud. This section also prohibits the presentation of false statements as evidence of eligibility for an exemption under s. 440.05, F.S., or as evidence of eligibility for an independent contractor registration receipt under s, 440.052, F.S. In addition, this section changes the penalties provided for violations of subsection (4). This section creates a sliding scale of increasing criminal penalties that is based on the value of the claim or workers' compensation premium involved in the violation of subsection (4). This sliding scale sets the criminal penalty in the same manner as the general theft statute, s. 812.014, F.S.: first degree felony if the value of the claim or premium is \$100,000 or over; second degree felony if the value of the claim or premium involved is \$20,000 or greater, but less than \$100,000; and third degree felony if the value of the claim or premium involved is less than \$20,000. This section also increases the statute of limitations for bringing an action under subsection (4) of s. 440.105, F.S., to 5 years, which is consistent with the general theft statutes.

Section 9: Amends s. 440.107, F.S. Under the current law, the Division of Workers' Compensation is charged with the responsibility of enforcing compliance with the coverage requirements under chapter 440. However, chapter 440 does not provide the Division of Workers' Compensation with the authority to issue subpoenas in the course of their investigations. When the Division of Workers' Compensation determines that an employer is not in compliance with workers' compensation coverage requirements, the law presently deems the noncompliance as an immediate serious danger to public health, safety, or welfare such that the Division of Workers' Compensation may serve a stop-work order on the employer. Additionally, the Division of Workers' Compensation is authorized to impose a penalty of twice the premium that the employer would have paid had it been in compliance or \$1,000, whichever is greater. According to the Grand Jury Report, the Division of Workers' Compensation exercised its discretion by adopting a policy of penalizing first-time offenders \$1,000 regardless of the amount of premium evaded and issuing stop-work orders and larger penalties only to second-time offenders.

This section would require employers to maintain and make available for inspection, work records relevant to compliance with workers' compensation coverage requirements. As recommended in both the WCOB Report and the Grand Jury Report, this section also grants investigatory and subpoena power to the Division of Workers' Compensation for the purpose of ensuring compliance with the workers' compensation coverage requirements.

In addition, this section would modify the process for the issuance of stop-work orders. This section requires that the Division of Workers' Compensation issue to an employer believed to be in noncompliance, an order to show cause why a stop-work order should not be served. The employer is given 24 hours to present proof to the satisfaction of the Division of Workers' Compensation of compliance with workers compensation coverage requirements. If the employer does not provide proof of compliance, the Division of Workers' Compensation is required to immediately serve a stop-work order. This section also eliminates the Division of Workers' Compensation's discretion regarding the assessment of civil penalties against employers who have been served a stop-work order for noncompliance within the previous 2 years.

Section 10: Amends s. 440.185, F.S. Section 440.185(2), F.S., requires employers to provide, on a form prescribed by the Division of Workers' Compensation, a notice of injury to their carrier within 7 days of the employee's injury. The carrier is then required to file this information with the Division of Workers' Compensation. In addition, s. 440.185(7) requires insurance carriers to provide to the Division of Workers' Compensation certain policy information each time a workers' compensation policy is issued.

This section would change current law by providing that notices of injury are deemed to be medical records for purposes of s. 440.125, F.S. As medical records, notices of injury would be protected from disclosure by the Division of Workers' Compensation. This section would also mandate that policy information provided by carriers to the Division of Workers' Compensation include notice of whether such policy is a minimum premium policy.

Section 11: Amends. 440.42, F.S., relating to insurance policies issued under chapter 440. Insurance carriers are required under s. 440.381, F.S., to conduct periodic audits of the employers it insures to verify the accuracy of the payroll and employee classification information for each employer. In addition, employers provide quarterly payroll reports to the Department of Labor and Employment Security, Division of Unemployment Compensation as required in chapter 443, and also provide a copy of this report to their insurance carrier as required in s. 440.381(4). However, there currently is no method whereby insurance carriers can access records held by the Division of Unemployment Compensation.

This section would permit insurance carriers to require, as a condition of issuing a workers' compensation insurance policy, that employers release certain employment and wage information maintained by the state pursuant to federal and state unemployment compensation laws. This section would give insurance carriers the ability to identify discrepancies in payroll information provided by employers by comparing it to information provided to the Division of Unemployment Compensation.

Section 12: Adds subsection (9) to s. 626.989, F.S. The DLES, Division of Workers' Compensation and the DOI, Division of Insurance Fraud have separate, but complementary roles regarding the related issues of enforcing compliance with workers' compensation coverage requirements and reducing workers' compensation fraud.

In recognition of the complementary roles played by the Division of Workers' Compensation and the Division of Insurance Fraud, this section requires these two Divisions to prepare and submit a joint performance report to the Legislature detailing the results obtained in increasing compliance with workers' compensation coverage requirements and reducing workers' compensation fraud.

Section 13: Adds subsection (5) to s. 627.413, F.S. Presently, s. 627.413, F.S., lists the elements that must be included in an insurance policy.

This section of the bill would require insurers to include on the certificate of coverage of any minimum premium policy, the words "minimum premium policy" or equivalent language. This section also provides that the Department of Insurance may impose an administrative fine if it finds a violation of this subsection.

Section 14: Provides that this act shall take effect October 1 of the year in which enacted, except as otherwise provided by law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

This bill will create an administrative cost for the Department of Labor and Employment Security, Division of Workers' Compensation in notifying holders of certificates of exemption of the requirements of the bill. The non-recurring effects are indeterminate at this time because it is not known what cost will be associated with sending notice to the 211,106 persons holding certificates of exemption.

2. Recurring Effects:

The recurring effects of the bill are indeterminate due to lack of specific data, but the bill would increase administrative costs for the Department of Labor and Employment Security associated with: (i) notification of carriers and employers when certificates of exemption are revoked, (ii) processing renewal of certificates of exemption and inclusion every 2 years, (iii) accepting and processing requests for registration as independent contractors, (iv) issuing orders to show cause when there is reasonable belief of noncompliance, (v) issuing subpoenas, and (vi) responding to carrier requests for unemployment compensation data. The bill would create an administrative cost for both the Department of Labor and Employment Security and the Department of Insurance in preparing the joint performance report for the Legislature of an indeterminate amount.

These administrative costs, however, would likely be offset by an increase in revenues due to: (i) increased fees for applications of exemption and inclusion as an employee, (ii) fees collected for renewals of certificates of exemption and inclusion, (iii) fees for persons registering and renewing as independent contractors, (iv) increased frequency and amount of civil noncompliance penalties, (v) and fees collected for responding to carrier requests for unemployment compensation data. The amount of the increase is indeterminate because it is not known how many people will be subject to the fee for election of exemption from, or inclusion in, the workers' compensation coverage requirements and the amount of civil penalties that might be imposed. Additionally, the number of persons who will register as independent contractors is not known.

3. Long Run Effects Other Than Normal Growth:

The bill increases criminal penalties associated with workers' compensation fraud. As a result, the bill should result in longer prison terms for persons convicted of workers' compensation fraud and, accordingly, increase costs of incarceration.

4. Total Revenues and Expenditures:

Due to lack of numerical data, the total revenue and expenditures cannot be determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The recurring effects of this bill are indeterminate, due to lack of data on the number of building permits and occupational licenses issued each year. However, the bill may result in a minimal increase of administrative costs for local governments in requiring occupational license applicants to show proof of workers' compensation coverage and no outstanding noncompliance penalties.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

This bill may create a cost for insurance carriers in identifying or stamping minimum premium policies. The bill also requires insurance carriers to notify the Division of Workers' Compensation of minimum premium policies issued, but this cost should be minimal in that insurance carriers are already required to provide policy information to the Division of Workers Compensation pursuant to s. 440.185(7), F.S.

2. Direct Private Sector Benefits:

This bill may increase compliance with workers' compensation coverage requirements, which would increase the total premiums paid into the workers' compensation system and possibly have a positive effect on overall rates. This bill may also increase the opportunity for employers in the construction industry to challenge a lost bid if there is suspicion of wrongdoing on the part of the winning bidder.

3. Effects on Competition, Private Enterprise and Employment Markets:

This bill may increase the use of the competitive bidder civil lawsuit.

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D. FISCAL COMMENTS:

Any offset of administrative costs for the Division of Workers' Compensation by revenues collected from the increased fee and renewal fee for elections of exemption, is dependent on the number of persons who continue to elect an exemption after the increase in fees.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

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