

By Senator Campbell

33-96-99

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

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

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

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

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

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

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

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

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

1 must continue for all employees for at least 180 days after  
2 the employer revokes the election or ceases doing business.

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

9       Section 7. Definitions.--

10       (1) As used in this act, the term "department" means  
11 the Department of Labor and Employment Security.

12       (2) The definitions contained in section 440.02,  
13 Florida Statutes, apply to this act.

14       Section 8. Benefits payable to employees.--

15       (1) Under this act, employers shall provide to their  
16 employees and shall pay for medical insurance benefits that  
17 are equal to or greater than those provided under the standard  
18 health benefit plan developed by the Department of Insurance  
19 under section 627.6699, Florida Statutes. The benefits must  
20 be payable for injury or illness, occurring on or off the job,  
21 and regardless of fault. There shall be no deductibles for  
22 employees, but employers may use and fund deductibles to  
23 reduce insurance costs.

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

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

1           (2)(a) Under this act, employers shall provide and pay  
2 for disability insurance benefits for their employees to cover  
3 employee wage loss, due to injury or illness, occurring on or  
4 off the job, and regardless of fault. The minimum disability  
5 benefits that must be paid under this act are equal to  
6 two-thirds of an employee's wage loss for up to 24 consecutive  
7 months which wage loss is due to a particular injury or  
8 illness that results in 10 or more days of lost work.

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

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

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

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

30           (5) Employers must continue an employee's insurance  
31 coverage under this act for a period of 90 days after

1 termination of employment and must allow employees to extend  
2 and pay for coverage for an additional 18 months thereafter.

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

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

12       (1) A safe workplace.

13       (2) Sufficient coworkers to do the work.

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

17       (4) Adequate safety instruction and warnings of  
18 dangers in the workplace.

19       (5) Selection, training, and supervision of competent  
20 coworkers.

21       Section 11. Tort exemption; limitation on right to  
22 damages; punitive damages.--

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

30       (a) Significant and permanent loss of an important  
31 bodily function.

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

3           (c) Significant and permanent scarring or  
4 disfigurement.

5           (d) Death.

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

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

25           (1) Comparative negligence;

26           (2) Intentional act of the employee to inflict  
27 self-injury;

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

31

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

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

8           Section 14. Notice of claims asserting fault.--Not  
9 more than 180 days after a death, injury, or illness that  
10 arises out of and in the course of employment and that is the  
11 fault of the employer, an employee or his or her personal  
12 representative must file a notice of claim asserting such  
13 fault. The employer shall deliver a copy of the claim to the  
14 Department of Labor and Employment Security and to the  
15 employer's insurance provider or self-insurance administrator.  
16 The notice of claim need not be in any particular form, and  
17 the only required information is the employee's name, address,  
18 phone number, and Social Security number; the employer's name,  
19 address, phone number, and employer identification number, if  
20 available; and the approximate date and a brief description of  
21 the incident or basis of the claim. Failure to file a notice  
22 of claim asserting fault in accordance with this section bars  
23 the claim. Notwithstanding any provision of this section, an  
24 employer may require employees to report any accident, injury,  
25 or illness that occurs during the course and scope of  
26 employment within 24 hours after the occurrence of such an  
27 accident, injury, or illness. However, a failure to comply  
28 with this reporting requirement is not a bar to benefits or  
29 compensation but may be raised as a defense applicable to  
30 causation or negligent failure to seek proper treatment.

31



1           Section 15. Response to claims.--Within 60 days after  
2 receiving notice of a claim, the employer must provide a  
3 response to the employee and must file with the Department of  
4 Labor and Employment Security its response, admitting or  
5 denying fault and setting forth any defenses to be relied upon  
6 by the employer.

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

17           (a) Within 60 days after receiving an employer's  
18 response, the matter must be referred to mandatory, binding  
19 arbitration on the issues of comparative negligence or  
20 causation due to substance abuse or intoxication.

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

26           (c) An employee is entitled to reasonable attorney's  
27 fees and costs incurred after receiving an employer's  
28 response.

29           (2) If an employer denies liability or raises defenses  
30 other than comparative negligence or substance abuse or  
31 intoxication, or fails to file a timely response to the notice

1 of claim, the employee may file suit to recover damages within  
2 4 years thereafter. An employee who is the prevailing party  
3 shall recover 100 percent of his or her attorney's fees and  
4 costs incurred subsequent to the date of injury or loss.

5 (3) An employee may recover damages for only that  
6 portion of stress, psychiatric injuries, or mental injuries  
7 which is the fault of the employer and which arises out of and  
8 is attributable to the course and scope of employment.

9 (4) Health, disability, wage continuation, or  
10 accidental death and dismemberment benefits paid by or on  
11 behalf of the employer and pertaining to injury or illness  
12 that is the subject matter of an employee claim must be an  
13 offset to and must be deducted from the claim before any  
14 percentage fault on the part of the employee is calculated.

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

22 Section 16. Expert witnesses.--An expert witness may  
23 not testify in any proceeding regarding a claim under this act  
24 unless a written report is furnished to the opposing party at  
25 least 30 days before the testimony of the expert witness is  
26 offered.

27 (1) The report must include the qualifications,  
28 background, and experience of the expert; the specific facts  
29 relied upon by the expert in forming his or her opinions; the  
30 sources of the expert's information or facts, and the  
31 authorities used by the expert, whether or not relied upon in

1 forming the opinions; and the specific opinions to be offered  
2 by the expert in the proceedings.

3 (2) The fact that an expert testifies to opinions that  
4 vary from those given in the written report does not bar the  
5 expert's testimony, unless the court finds that there was an  
6 intentional attempt to deceive or that the variance is so  
7 great that it undermines the fairness of the proceedings.

8 Section 17. Comparative negligence.--In any proceeding  
9 to determine comparative negligence or fault attributable to  
10 the employee for substance abuse or intoxication, the trier of  
11 fact is bound by the following standards:

12 (1) If the employee is partly at fault and such fault  
13 was a contributing cause to the loss, injury, or illness, but  
14 the employee's fault was not equal to or greater than that of  
15 the employer, the percentage of fault which must be attributed  
16 to the employee is 25 percent.

17 (2) If the employee is partly at fault and such fault  
18 was a contributing cause to the loss, injury, or illness, and  
19 the employee's fault was equal to but not greater than that of  
20 the employer, the percentage of fault which must be attributed  
21 to the employee is 50 percent.

22 (3) If the employee is partly at fault and such fault  
23 was a contributing cause to the loss, injury, or illness, and  
24 the employee's fault was greater than that of the employer,  
25 the percentage of fault which must be attributed to the  
26 employee is 75 percent.

27 Section 18. Proof of insurance or financial  
28 responsibility.--The Department of Labor and Employment  
29 Security may adopt rules requiring an employer to provide  
30 adequate insurance, an approved self-insurance plan, or proof  
31 of financial responsibility to meet the employer's obligations

1 under this act. Failure to comply with such rules or to  
2 provide benefit coverage required by this act subjects the  
3 employer to strict liability in tort for any injuries or  
4 illnesses incurred by employees during any such period of  
5 noncompliance and within the course of their employment, in  
6 addition to any other penalties provided by law.

7 Section 19. Waiver of exemption.--

8 (1) Each employer who has in her or his employment any  
9 employee who is not included in the definition of the term  
10 "employee" or who is excluded or exempted from the operation  
11 of this act may at any time waive such exclusion or exemption  
12 and accept this act by giving notice thereof as provided in  
13 section 10, and by so doing is as fully protected and covered  
14 by this act as if such an exclusion or exemption were not  
15 contained in this act.

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

26 Section 20. Notice of exemption or acceptance and  
27 waiver of exemption or acceptance.--

28 (1) Every sole proprietor or partner who elects to be  
29 included in the definition of the term "employee" or who,  
30 after such election, revokes that election, shall mail to the  
31 Department of Labor and Employment Security in Tallahassee

1 notice to that effect, in accordance with a form to be  
2 prescribed by the department.

3 (2) Notice given under subsection (1) is ineffective  
4 until 30 days after the date it is mailed to the department in  
5 Tallahassee. However, if an accident or occupational disease  
6 occurs less than 30 days after the effective date of the  
7 insurance policy under which the payment of benefits is  
8 secured or the date the employer qualified as a self-insurer,  
9 that notice is effective as of 12:01 a.m. of the day following  
10 the date it is mailed to the department in Tallahassee.

11 (3) The department may assess a fee of no more than  
12 \$50, which must accompany each request for election or renewal  
13 of election under this section. The proceeds of this fee  
14 which are collected by the department must be used to  
15 administer this section and to audit the businesses that pay  
16 the fee for compliance with this act.

17 Section 21. Coverage; other states or other  
18 benefits.--

19 (1) If an injury or illness occurs while the employee  
20 is employed outside this state, and the injury or illness  
21 would entitle the employee or the employee's dependents to  
22 benefits if it had happened in this state, the employee or his  
23 or her dependents are entitled to benefits if the contract of  
24 employment was made in this state or the employment was  
25 principally localized in this state. However, this subsection  
26 does not authorize an employee who receives compensation or  
27 damages under the laws of any other state to receive  
28 compensation for the same injury in an amount greater than is  
29 provided under this act.

30 (2) Benefits are not payable under this act in respect  
31 to the disability or death of any employee covered by the

1 Federal Employer's Liability Act, the Longshoremen's and  
2 Harbor Worker's Compensation Act, or the Jones Act.

3       Section 22. Construction design professionals.--Except  
4 as provided in this act, neither a construction design  
5 professional who is retained to perform professional services  
6 on a construction project, nor any employee of a construction  
7 design professional in the performance of professional  
8 services on the site of the construction project, is liable  
9 for any injuries resulting from the employer's failure to  
10 comply with safety standards on the construction project,  
11 unless responsibility for safety practices is specifically  
12 assumed by contract. The immunity provided by this subsection  
13 to any construction design professional is inapplicable to the  
14 negligent preparation of design plans or specifications.

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

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

25       (2) If the injured worker refuses to submit to a test  
26 for nonprescription controlled substances or alcohol, it is  
27 presumed in the absence of clear and convincing evidence to  
28 the contrary that the injury was occasioned primarily by the  
29 influence of a nonprescription controlled substance or  
30 alcohol.

31

1           (3) The Department of Labor and Employment Security  
2 shall provide by rule for the authorization and regulation of  
3 drug testing policies, procedures, and methods. Testing of  
4 injured employees may not commence until such rules are  
5 adopted.

6           Section 24. Drug-free workplaces.--Any employer who  
7 elects to be bound by this act may also elect to operate under  
8 chapter 440, Florida Statutes, pertaining to drug-free  
9 workplaces.

10           Section 25. Coercion of employees.--An employer may  
11 not discharge, threaten to discharge, intimidate, or coerce  
12 any employee by reason of the employee's valid claim for  
13 benefits under this act.

14           Section 26. Benefits; lien against assets.--Benefits  
15 have the same preference of lien against the assets of the  
16 carrier or employer without limit of an amount as is now or  
17 may hereafter be allowed by law to the claimant for unpaid  
18 wages or otherwise.

19           Section 27. Misrepresentation; fraudulent activities;  
20 penalties.--

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

24           (a) Who presents or causes to be presented any written  
25 or oral statement as part of, or in support of, a claim for  
26 payment or other benefit pursuant to this act, knowing that  
27 the statement contains any false or misleading information  
28 concerning any fact or thing material to such claim; or

29           (b) Who prepares or makes any written or oral  
30 statement that is intended to be presented to any employer,  
31 insurance company, or self-insured program in connection with,

1 or in support of, any claim for payment or other benefit  
2 pursuant to this act, knowing that the statement contains any  
3 false or misleading information concerning any fact or thing  
4 material to such claim,

5  
6 commits a felony of the third degree, punishable as provided  
7 in section 775.082, Florida Statutes, section 775.083, Florida  
8 Statutes, or section 775.084, Florida Statutes.

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

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



1 458, Florida Statutes, the Board of Osteopathic Medicine as  
2 set forth in chapter 459, Florida Statutes, the Board of  
3 Chiropractic as set forth in chapter 460, Florida Statutes, or  
4 other appropriate licensing authority, whichever is  
5 appropriate, shall hold an administrative hearing to consider  
6 the imposition of administrative sanctions as provided by law  
7 against the physician, osteopath, chiropractor, or other  
8 practitioner.

9       2. Any attorney who knowingly and willfully assists,  
10 conspires with, or urges any claimant to fraudulently violate  
11 any provision of this act, or any person who, due to such  
12 assistance, conspiracy, or urging on such an attorney's part,  
13 knowingly and willfully benefits from the proceeds derived  
14 from the use of such fraud, commits a felony of the third  
15 degree, punishable as provided in section 775.082, Florida  
16 Statutes, section 775.083, Florida Statutes, or section  
17 775.084, Florida Statutes.

18       3. Neither a person or governmental unit licensed  
19 under chapter 395, Florida Statutes, to maintain or operate a  
20 hospital, nor an administrator or employee of any such  
21 hospital, shall knowingly and willfully allow the use of the  
22 facilities of such a hospital by any person in a scheme or  
23 conspiracy to fraudulently violate any provision of this act.  
24 Any hospital administrator or employee who violates this  
25 subparagraph commits a felony of the third degree, punishable  
26 as provided in section 775.082, Florida Statutes, section  
27 775.083, Florida Statutes, or section 775.084, Florida  
28 Statutes. Any adjudication of guilt for a violation of this  
29 subparagraph, or the use of business practices demonstrating a  
30 pattern indicating that the spirit of the law set forth in  
31 this act is not being followed, constitutes grounds for

1 suspension or revocation of the license to operate the  
2 hospital or the imposition of an administrative penalty of up  
3 to \$5,000 by the licensing agency as set forth in chapter 395,  
4 Florida Statutes.

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

11 (d) As used in this subsection, the term "statement"  
12 includes, but is not limited to, any notice, statement, proof  
13 of injury, bill for services, diagnosis, prescription,  
14 hospital or doctor records, X-ray, test result, or other  
15 evidence of loss, injury, or expense.

16 (e) This subsection also applies with respect to any  
17 employer, insurer, self-insurer, adjusting firm, or agent or  
18 representative thereof who intentionally injures, defrauds, or  
19 deceives any claimant with regard to any claim. Such a  
20 claimant has the right to recover damages as provided in this  
21 subsection.

22 Section 28. Security for benefits; insurance carriers  
23 and self-insurers.--

24 (1) Every employer must secure the payment of benefits  
25 under this act:

26 (a) By insuring and keeping insured the payment of  
27 such benefits with any stock company or mutual company, or  
28 association or exchange, that is authorized to do business in  
29 the state;

30 (b) By furnishing to the Department of Labor and  
31 Employment Security satisfactory proof of the employer's

1 financial ability to pay such benefits and receiving an  
2 authorization from the department to pay such benefits  
3 directly in accordance with the following provisions:

4 1. The department may, as a condition to the  
5 authorization, require the employer to deposit in a depository  
6 designated by the department either an indemnity bond or  
7 securities, at the option of the employer, of a kind and in an  
8 amount determined by the department and subject to the  
9 conditions as the department prescribes, which must include  
10 authorization to the department in the case of default to sell  
11 any such securities as necessary to obtain amounts sufficient  
12 to pay awards of benefits or to bring suit upon such bonds, to  
13 procure prompt payment of benefits under this act.

14 Furthermore, the department shall require, as a condition to  
15 authorization to self-insure, proof that the employer has  
16 provided for competent personnel with whom to deliver benefits  
17 and to provide a safe working environment. In addition, the  
18 department shall require the employer to carry reinsurance at  
19 levels that will ensure the actuarial soundness of the  
20 employer in accordance with rules adopted by the department.  
21 The department may by rule require that, if an individual  
22 self-insurer becomes insolvent, such indemnity bonds,  
23 securities, and reinsurance policies are payable to the  
24 appropriate guaranty fund. Any employer who secures benefits  
25 in accordance with this paragraph shall be known as a  
26 self-insurer and shall be classed as a carrier of his or her  
27 own insurance.

28 2. If the employer fails to conform to the  
29 requirements set forth in subparagraph 1., the department  
30 shall revoke the employer's authority to self-insure, unless  
31 the employer provides to the department the certified opinion

1 of an independent actuary who is a member of the American  
2 Society of Actuaries as to the actuarial present value of the  
3 employer's determined and estimated future benefit payments  
4 based on cash reserves, using a 4-percent discount rate, and a  
5 qualifying security deposit equal to 1.5 times the value so  
6 certified. The employer shall thereafter annually provide  
7 such a certified opinion until such time as the employer meets  
8 the requirements of subparagraph 1. The qualifying security  
9 deposit must be adjusted at the time of each such annual  
10 report. Upon the failure of the employer to timely provide  
11 such opinion or to timely provide a security deposit in an  
12 amount equal to 1.5 times the value certified in the latest  
13 opinion, the department shall then revoke the employer's  
14 authorization to self-insure, and such a failure must be  
15 deemed to constitute an immediate serious danger to the public  
16 health, safety, or welfare sufficient to justify the summary  
17 suspension of the employer's authorization to self-insure  
18 pursuant to section 120.68, Florida Statutes.

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

1 cause of action against an employer, and against any successor  
2 of the employer, who fails to timely provide such opinion or  
3 who fails to timely maintain the required security deposit  
4 with the department. The department shall recover a judgment  
5 in the amount of the actuarial present value of the determined  
6 and estimated future compensation payments of the employer for  
7 claims incurred while the employer exercised the privilege of  
8 self-insurance, together with attorney's fees. As used in  
9 this section, the term "successor of an employer" means any  
10 person, business entity, or group of persons or business  
11 entities which holds or acquires legal or beneficial title to  
12 the majority of the assets or the majority of the shares of  
13 the employer.

14 4. A qualifying security deposit must consist, at the  
15 option of the employer, of:

16 a. Surety bonds, in a form and containing such terms  
17 as prescribed by the department, issued by a corporation  
18 surety authorized to transact surety business by the  
19 department, and having policyholders' and financial ratings,  
20 as reported in A.M. Best's Insurance Reports,  
21 Property-Liability, of not less than "A" and "V,"  
22 respectively.

23 b. Certificates of deposit with financial  
24 institutions, the deposits of which are insured through the  
25 Federal Deposit Insurance Corporation or the Federal Savings  
26 and Loan Insurance Corporation.

27 c. Irrevocable letters of credit in favor of the  
28 department issued by financial institutions described in  
29 sub-subparagraph b.

30 d. Direct obligations of the United States Treasury  
31 backed by the full faith and credit of the United States.

1           e. Securities issued by this state and backed by the  
2 full faith and credit of this state.

3           5. The qualifying security deposit shall be held by  
4 the department, or by a depository authorized by the  
5 department, exclusively for the benefit claimants under this  
6 act. The security is not subject to assignment, execution,  
7 attachment, or any legal process whatsoever, except as  
8 necessary to guarantee the payment of benefits under this act.

9 A surety bond may not be terminated, nor may any other  
10 qualifying security be allowed to lapse, without 90 days'  
11 prior notice to the department and deposit by the  
12 self-insuring employer of other qualifying security of equal  
13 value within 10 business days after such notice. Failure to  
14 provide such notice or failure to timely provide qualifying  
15 replacement security after such notice constitutes grounds for  
16 the department to call or sue upon the surety bond, or to act  
17 with respect to other pledged security in any manner necessary  
18 to preserve its value for the purposes intended by this  
19 section, including the exercise of rights under a letter of  
20 credit, the sale of any security at then-prevailing market  
21 rates, or the withdrawal of any funds represented by any  
22 certificate of deposit forming part of the qualifying security  
23 deposit;

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

28           (d) By entering into an interlocal agreement with  
29 other local governmental entities to create a local government  
30 pool pursuant to section 36;

31

1           (e) By entering into a contract with an individual  
2 self-insurer under an approved individual  
3 self-insurer-provided self-insurance program as set forth in  
4 section 35. The department may adopt rules to implement this  
5 subsection.

6           (2)(a) The department shall adopt rules by which  
7 businesses may become qualified to provide underwriting  
8 claims-adjusting, loss control, and safety engineering  
9 services to self-insurers.

10           (b) The department shall adopt rules requiring  
11 self-insurers to file any reports necessary to fulfill the  
12 requirements of this act. Any self-insurer who fails to file  
13 any report as prescribed by the rules adopted by the  
14 department is subject to a civil penalty in an amount not to  
15 exceed \$1,000 for each such failure.

16           (3) The state and its boards, bureaus, departments,  
17 and agencies and all of its political subdivisions that employ  
18 labor are considered to be insurers under the terms of this  
19 act, unless they elect to procure and maintain insurance to  
20 secure the benefits of this act to their employees; and they  
21 are hereby authorized to pay the premiums for such insurance.

22           Section 29. Compensation for injuries when third  
23 persons are liable.--

24           (1) If an employee who is subject to this act is  
25 injured or killed in the course of his employment by the  
26 negligence or wrongful act of a third-party tortfeasor, the  
27 injured employee or, if the employee dies, his or her  
28 dependents may accept benefits under this act, and the injured  
29 employee or the deceased employee's dependents or personal  
30 representatives may pursue a remedy by action at law or  
31 otherwise against the third-party tortfeasor. However, any

1 benefits paid must be deducted from any claim for damages  
2 before the liability of the tortfeasor is determined.

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

5 Section 30. Benefits notice.--Every employer who has  
6 secured benefits under this act shall keep posted in a  
7 conspicuous place or places, in and about her or his place or  
8 places of business, typewritten or printed notices, in  
9 accordance with a form prescribed by the Department of Labor  
10 and Employment Security, stating that the employer has secured  
11 the payment of benefits in accordance with this act. Such  
12 notices must contain the name and address of the carrier, if  
13 any, with whom the employer has secured payment of benefits  
14 and the date of the expiration of the policy.

15 Section 31. Effect of unconstitutionality.--If any  
16 part of this act is adjudged unconstitutional by the courts,  
17 and such adjudication has the effect of invalidating any  
18 payment of benefits under this act, the period between the  
19 time the injury was sustained and the time of such  
20 adjudication must not be computed as a part of the time  
21 prescribed by law for the commencement of any action against  
22 the employer in respect of such injury; but the amount of any  
23 benefits paid under this act on account of the injury must be  
24 deducted from the amount of damages awarded in an action in  
25 respect of the injury.

26 Section 32. Proceedings against state.--Any person  
27 entitled to benefits by reason of the injury or death of an  
28 employee of the state, its boards, bureaus, departments,  
29 agencies, or subdivisions employing labor may maintain  
30 proceedings and actions at law against the state, its boards,  
31 bureaus, departments, agencies, and subdivisions for the



1 benefits, which proceedings and action at law must be in the  
2 same manner as provided in this act with respect to other  
3 employers.

4 Section 33. Pooling liabilities.--

5 (1) The Department of Labor and Employment Security  
6 shall adopt rules permitting two or more employers to enter  
7 into agreements to pool their liabilities under this act for  
8 the purpose of qualifying as a group self-insurer's fund,  
9 which shall be classified as a self-insurer, and each employer  
10 member of such approved group shall be known as a group  
11 self-insurer's fund member and shall be classified as a  
12 self-insurer, as defined in this act.

13 (2) The department shall adopt rules:

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

16 (b) Governing their organization and operation to  
17 assure compliance with such requirements.

18 (3) The department shall adopt rules implementing the  
19 reserve requirements in accordance with accepted actuarial  
20 techniques.

21 (4) Any self-insurer established under this section,  
22 except a self-insurer that is a state or local governmental  
23 entity, is required to carry reinsurance in accordance with  
24 rules adopted by the department.

25 (5) A dividend or premium refund of any self-insurer  
26 established under this section, otherwise earned, must not be  
27 made contingent upon continued membership in the fund, renewal  
28 of any policy, or the payment of renewal premiums for  
29 membership in the fund or on any policy issued by such  
30 self-insurer. Before making any dividend or premium refund,  
31 the group self-insurer must submit to the department:

- 1           (a) An audited certified financial statement.  
2           (b) An annual report of financial condition.  
3           (c) A loss reserve review by a qualified actuary.  
4

5 The required information listed in paragraphs (a)-(c) must be  
6 submitted annually, no later than 7 months after the end of  
7 the group self-insurer's fund year. A request for such a  
8 dividend or premium refund may not be made before the required  
9 information has been filed. The request for such a dividend  
10 or premium refund must include a resolution of the board of  
11 trustees of the group self-insurer requesting approval of a  
12 specific amount to be distributed. Any dividend, premium  
13 refund, or premium discount or credit must not discriminate on  
14 the basis of continued coverage or continued membership in the  
15 group self-insurer. The department shall review such a  
16 request and shall issue a decision within 60 days after the  
17 filing. Failure to issue a decision within 60 days  
18 constitutes approval of the request. Any dividend or premium  
19 refund approved by the department for distribution which  
20 cannot be paid to the applicable member or policyholder or  
21 former member or policyholder of the group self-insurer  
22 because the former member or policyholder cannot be reasonably  
23 located becomes the property of the group self-insurer.

24           (6) The department may impose a civil penalty, not to  
25 exceed \$1,000 per occurrence, for any violation of this act or  
26 rules adopted under this act.

27           (7) Premiums, contributions, and assessments received  
28 by a group self-insurer's fund are subject to sections  
29 624.509(1) and (2) and 624.5092, Florida Statutes, except that  
30 the tax rate is 1.6 percent of the gross amount of such  
31 premiums, contributions, and assessments.

1           (8) This section does not apply to any program,  
2 intergovernmental agreement, cooperative effort, consortium,  
3 or agency through which two or more governmental entities,  
4 without pooling their liabilities, administer the payment of  
5 workers' compensation to their respective employees.

6           Section 34. Self-insured public utilities.--A  
7 self-insured public utility, as authorized by paragraph (1)(b)  
8 of section 29, may assume by contract the liabilities under  
9 this act of contractors and subcontractors, or each of them,  
10 employed by or on behalf of the public utility when performing  
11 work on or adjacent to property owned or used by the public  
12 utility.

13           Section 35. Local government pools.--

14           (1) Any two or more local governmental entities may  
15 enter into interlocal agreements for the purpose of securing  
16 the payment of benefits under this act, and the local  
17 government pool that is thereby created must:

18           (a) Maintain a continuing program of excess insurance  
19 coverage and reserve evaluation to protect the financial  
20 stability of the fund in an amount and manner determined by a  
21 qualified and independent actuary.

22           (b) Submit to the Department of Labor and Employment  
23 Security, within 6 months after the end of the fiscal year, an  
24 audited fiscal year-end financial statement by an independent  
25 certified public accountant.

26           (c) Have a governing body that is composed entirely of  
27 local elected officials.

28           (2) A local government pool that meets the  
29 requirements of this section is not subject to section 34 and  
30 is not required to file any report with the department under  
31 paragraph (2)(b) of section 29, which is uniquely required of

1 group self-insurer funds qualified under section 30. If any  
2 of the requirements of this section are not met, the local  
3 government pool is subject to section 34.

4 Section 36. Administrative procedure; rulemaking  
5 authority.--The Department of Labor and Employment Security  
6 shall adopt rules to govern the performance of any programs,  
7 duties, or responsibilities with which it is charged under  
8 this act.

9 Section 37. This act shall take effect January 1,  
10 2001.

11 \*\*\*\*\*

12 SENATE SUMMARY

13 Provides an alternative system of workers' compensation  
14 to that provided under ch. 440, F.S. Authorizes  
15 employers to elect to participate in such an alternative  
16 system in lieu of one that conforms to ch. 440, F.S.  
17 (See bill for details.)

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