

By Representative Waters

1 A bill to be entitled
 2 An act relating to firefighter occupational
 3 health and safety; designating ss.
 4 633.01-633.72, F.S., as pt. I of ch. 633, F.S.;
 5 amending and renumbering ss. 442.001, 442.002,
 6 442.003, 442.004, 442.005, 442.006, 442.007,
 7 442.008, 442.009, 442.0105, 442.011, 442.012,
 8 442.013, 442.014, 442.015, 442.016, 442.017,
 9 442.018, 442.019, 442.020, 442.021, 442.023,
 10 442.118, 442.20, and 442.21, F.S., and
 11 transferring said sections to pt. II of ch.
 12 633, F.S.; transferring from the Division of
 13 Safety of the Department of Labor and
 14 Employment Security to the Division of State
 15 Fire Marshal of the Department of Insurance
 16 powers, duties, and responsibilities under
 17 provisions relating to workplace occupational
 18 safety and health; specifying application to
 19 firefighters and employers of firefighters;
 20 amending s. 14 of ch. 99-240, Laws of Florida;
 21 saving certain sections of ch. 442, F.S., from
 22 repeal; providing effective dates.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Sections 633.01-633.72, Florida Statutes,
 27 are designated as part I of chapter 633, Florida Statutes,
 28 entitled "Fire Prevention and Control."

29 Section 2. Sections 442.001, 442.002, 442.003,
 30 442.004, 442.005, 442.006, 442.007, 442.008, 442.009,
 31 442.0105, 442.011, 442.012, 442.013, 442.014, 442.015,

1 442.016, 442.017, 442.018, 442.019, 442.020, 442.021, 442.023,
2 442.20, 442.21, and 442.118, Florida Statutes, are renumbered
3 as sections 633.801, 633.802, 633.803, 633.804, 633.805,
4 633.806, 633.807, 633.808, 633.809, 633.810, 633.811, 633.812,
5 633.813, 633.814, 633.815, 633.816, 633.817, 633.818, 633.819,
6 633.820, 633.821, 633.822, 633.823, 633.824, and 633.825,
7 Florida Statutes, respectively, designated as part II of
8 chapter 633, Florida Statutes, entitled "Firefighters
9 Occupational Safety and Health," and amended to read:
10 633.801 ~~442.001~~ Short title.--This part ~~chapter~~ may be
11 cited as the "Florida Firefighters Occupational Safety and
12 Health Act."
13 633.802 ~~442.002~~ Definitions.--Unless the context
14 clearly requires otherwise, the following definitions ~~set~~
15 ~~forth in s. 440.02~~ apply to this part ~~chapter~~.
16 (1) "Department" means the Department of Insurance.
17 (2) "Division" means the Division of State Fire
18 Marshal of the department.
19 (3) "Employee" means any person engaged in any public
20 or private employment as a firefighter under any appointment
21 or contract of hire or apprenticeship, express or implied,
22 oral or written, whether lawfully or unlawfully employed, and
23 includes all volunteer firefighters responding to or assisting
24 with fire or medical emergencies whether or not the
25 firefighter is on duty.
26 (4) "Employer" means the state and all political
27 subdivisions of the state, all public and quasi-public
28 corporations in this state, and every person carrying on any
29 employment of the state, such political subdivisions, and such
30 corporations, which employ firefighters or which use volunteer
31 firefighters.

1 (5) "Employment" means any service performed by a
2 firefighter employee for the firefighter employer, and
3 includes the use of all volunteer firefighters.

4 (6) "Place of employment" means the physical location
5 at which a firefighter is employed.

6 633.803 ~~442.003~~ Legislative intent.--It is the intent
7 of the Legislature to enhance occupational safety and health
8 in this state through the implementation and maintenance of
9 policies, procedures, practices, rules, and standards that
10 reduce the incidence of employee accidents, occupational
11 diseases, and fatalities compensable under chapter 440. The
12 Legislature further intends that the division of ~~Safety of the~~
13 ~~Department of Labor and Employment Security~~ develop a means by
14 which it can identify individual employers with a high
15 frequency or severity of work-related injuries; conduct safety
16 inspections of those employers; and assist those employers in
17 the development and implementation of employee safety and
18 health programs. In addition, it is the intent of the
19 Legislature that the division of ~~Safety of the Department of~~
20 ~~Labor and Employment Security~~ administer the provisions of
21 this part ~~chapter~~; provide assistance to employers, employees,
22 and insurers ~~insurance carriers~~; and enforce the policies,
23 rules, and standards set forth in this part ~~chapter~~.

24 633.804 ~~442.004~~ Safety inspections, consultations;
25 rules.--The division shall adopt rules governing the manner,
26 means, and frequency of safety inspections and consultations
27 by all insurers ~~carriers~~ and self-insurers.

28 633.805 ~~442.005~~ Division to make study of firefighter
29 occupational diseases, etc.--The division shall make a
30 continuous study of firefighter occupational diseases and the
31 ways and means for their control and prevention and shall make

1 and enforce necessary regulations for such control. For this
2 purpose, the division is authorized to cooperate with
3 employers, employees, and insurers ~~carriers~~ and with the
4 Department of Health.

5 633.806 ~~442.006~~ Investigations by the division;
6 refusal to admit; penalty.--

7 (1) The division shall make studies and investigations
8 with respect to safety provisions and the causes of
9 firefighter injuries in ~~public sector~~ places of employment,
10 and shall make to the Legislature and ~~public sector~~ employers
11 and insurers ~~carriers~~ such recommendations as it considers
12 proper as to the best means of preventing firefighter
13 injuries. In making such studies and investigations, the
14 division may:

15 (a) Cooperate with any agency of the United States
16 charged with the duty of enforcing any law securing safety
17 against injury in any ~~public sector~~ place of employment
18 covered by this part ~~chapter~~, or any agency or department of
19 the state engaged in enforcing any laws to assure safety for
20 employees.

21 (b) Allow any such agency or department to have access
22 to the records of the division.

23 (2) The division and its authorized representatives
24 may enter and inspect any ~~public sector~~ place of employment at
25 any reasonable time for the purpose of investigating
26 compliance with this part ~~chapter~~ and making inspections for
27 the proper enforcement of this part ~~chapter~~. Any ~~public sector~~
28 employer who refuses to admit any member of the division or
29 its authorized representative to any ~~public sector~~ place of
30 employment or to allow investigation and inspection pursuant
31 to this paragraph commits ~~is guilty of~~ a misdemeanor of the

1 second degree, punishable as provided in s. 775.082 or s.
2 775.083.

3 (3) The division by rule may adopt procedures for
4 conducting investigations of ~~public sector~~ employers under
5 this part ~~chapter~~.

6 633.807 ~~442.007~~ Safety; employer
7 responsibilities.--Every employer ~~as defined in s. 440.02~~
8 shall furnish to firefighters employment that is safe for the
9 employees therein, furnish and use safety devices and
10 safeguards, adopt and use methods and processes reasonably
11 adequate to render such an employment and place of employment
12 safe, and do every other thing reasonably necessary to protect
13 the lives, health, and safety of such employees. As used in
14 this section, the terms "safe" and "safety" as applied to any
15 employment or place of employment mean such freedom from
16 danger as is reasonably necessary for the protection of the
17 lives, health, and safety of employees, including conditions
18 and methods of sanitation and hygiene. Safety devices and
19 safeguards required to be furnished by the employer by this
20 section or by the division under authority of this section
21 shall not include personal apparel and protective devices that
22 replace personal apparel normally worn by employees during
23 regular working hours.

24 633.808 ~~442.008~~ Division authority.--The division
25 shall:

26 (1) Investigate and prescribe what safety devices,
27 safeguards, or other means of protection must be adopted for
28 the prevention of accidents in every ~~public sector~~ place of
29 employment or at any fire scene; determine what suitable
30 devices, safeguards, or other means of protection for the
31 prevention of firefighter occupational diseases must be

1 adopted or followed in any or all such ~~public sector~~ places of
2 employment or at any fire scene; and adopt reasonable rules
3 for the prevention of accidents, the safety, protection, and
4 security of employees engaged in firefighting inside and
5 outside of structures, and the prevention of firefighter
6 occupational diseases.

7 (2) Ascertain, fix, and order such reasonable
8 standards and rules for the construction, repair, and
9 maintenance of ~~public sector~~ places of employment as shall
10 render them safe. Such rules and standards must be adopted in
11 accordance with chapter 120.

12 (3) Assist employers in the development and
13 implementation of employee safety training programs by
14 contracting with professional safety organizations.

15 (4) Adopt rules prescribing recordkeeping
16 responsibilities for ~~public sector~~ employers, which may
17 include rules for maintaining a log and summary of
18 occupational injuries, diseases, and illnesses and for
19 producing on request a notice of injury and employee accident
20 investigation records, and rules prescribing a retention
21 schedule for such records.

22 633.809 ~~442.009~~ Right of entry.--The division and its
23 authorized representatives may enter at any reasonable time
24 any place of employment for the purpose of examining any tool,
25 appliance, or machinery used in such employment and may make
26 inspections for the proper enforcement of this part ~~chapter~~.
27 An employer or owner may not refuse to admit any member of the
28 division or its authorized representatives to any place of
29 employment.

30 633.810 ~~442.0105~~ Employers whose employees have a high
31 frequency of work-related injuries.--The division shall

1 develop a means by which it can identify individual employers
2 whose employees have a high frequency or severity of
3 work-related injuries. The division shall carry out safety
4 inspections of the facilities and operations of these
5 employers in order to assist them in reducing the frequency
6 and severity of work-related injuries. The division shall
7 develop safety and health programs for those employers.
8 Insurers ~~Carriers~~ shall distribute these safety and health
9 programs to the employers so identified by the division. Those
10 employers identified by the division as having a high
11 frequency or severity of work-related injuries shall implement
12 a division-developed safety and health program. The division
13 shall carry out safety inspections of those employers so
14 identified to ensure compliance with the safety and health
15 program and to assist such employers in reducing the number of
16 work-related injuries. The division may not assess penalties
17 as the result of such inspections, except as provided by s.
18 633.813 ~~442.013~~. Copies of any report made as the result of
19 such an inspection must be provided to the employer and its
20 insurer ~~carrier~~. Employers may submit their own safety and
21 health programs to the division for approval in lieu of using
22 the division-developed safety and health program. The division
23 must promptly review the program submitted and approve or
24 disapprove it. Upon approval by the division, the program must
25 be implemented by the employer. If the program is not approved
26 or if a program is not submitted, the employer must implement
27 the division-developed program. The division shall adopt rules
28 setting forth the criteria for safety and health programs.
29 633.811 ~~442.011~~ Insurer ~~Carrier~~ consultations.--Each
30 insurer ~~insurance carrier~~ writing workers' compensation
31 insurance in this state, each employer qualifying as an

1 individual self-insurer under s. 440.38, each self-insurance
2 fund under s. 624.461, and each assessable mutual insurer
3 under s. 628.6011 must provide safety consultations to each of
4 its policyholders who requests such consultations. Each such
5 insurer ~~carrier~~ or self-insurer must inform its policyholders
6 of the availability of such consultations. The division is
7 responsible for approving all safety and health programs. The
8 division shall aid all insurers ~~insurance carriers~~ and
9 self-insurers in establishing their safety and health programs
10 by setting out criteria in an appropriate format.

11 633.812 ~~442.012~~ Workplace safety committees and safety
12 coordinators.--

13 (1) In order to promote health and safety in places of
14 employment in this state:

15 (a) Each ~~public or private~~ employer of 20 or more
16 employees shall establish and administer a workplace safety
17 committee in accordance with rules adopted under this section.

18 (b) Each ~~public or private~~ employer of fewer than 20
19 employees which is identified by the division as having high
20 frequency or severity of work-related injuries shall establish
21 and administer a workplace safety committee or designate a
22 workplace safety coordinator who shall establish and
23 administer workplace safety activities in accordance with
24 rules adopted under this section.

25 (2) The division shall adopt rules:

26 (a) Prescribing the membership of the workplace safety
27 committees so as to ensure an equal number of employee
28 representatives, who are volunteers or are elected by their
29 peers, and of employer representatives, and specifying the
30 frequency of meetings.

31

1 (b) Requiring employers to make adequate records of
2 each meeting and to file and to maintain the records subject
3 to inspection by the division.

4 (c) Prescribing the duties and functions of the
5 workplace safety committee and workplace safety coordinator,
6 which include, but are not limited to:

7 1. Establishing procedures for workplace safety
8 inspections by the committee.

9 2. Establishing procedures investigating all workplace
10 accidents, safety-related incidents, illnesses, and deaths.

11 3. Evaluating accident-prevention and
12 illness-prevention programs.

13 4. Prescribing guidelines for the training of safety
14 committee members.

15 (3) The composition, selection, and function of safety
16 committees shall be a mandatory topic of negotiations with any
17 certified collective bargaining agent for ~~nonfederal public~~
18 ~~sector~~ employers that operate under a collective bargaining
19 agreement. Employers that operate under a collective
20 bargaining agreement that contains provisions regulating the
21 formation and operation of workplace safety committees that
22 meet or exceed the minimum requirements contained in this
23 section, or employers who otherwise have existing workplace
24 safety committees that meet or exceed the minimum requirements
25 established by this section are in compliance with this
26 section.

27 (4) Employees must be compensated their regular hourly
28 wage while engaged in workplace safety committee or workplace
29 safety coordinator training, meetings, or other duties
30 prescribed under this section.

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1 633.813 ~~442.013~~ ~~Public sector~~ Employer penalties.--If
2 any ~~public sector~~ employer violates or fails or refuses to
3 comply with this part ~~chapter~~ or with any rule adopted by the
4 division, in accordance with chapter 120, for the prevention
5 of injuries, accidents, or occupational diseases or with any
6 lawful order of the division in connection with this part
7 ~~chapter~~, or fails or refuses to furnish or adopt any safety
8 device, safeguard, or other means of protection prescribed by
9 the division under this part ~~chapter~~ for the prevention of
10 accidents or occupational diseases, the division may assess
11 against the ~~public sector~~ employer a civil penalty of not less
12 than \$100 nor more than \$5,000 for each day the violation,
13 omission, failure, or refusal continues after the ~~public~~
14 ~~sector~~ employer has been given notice thereof in writing. The
15 total penalty for each violation may not exceed \$50,000. The
16 division shall adopt rules requiring penalties commensurate
17 with the frequency or severity, or both, of safety violations.
18 A hearing must be held in the county where the violation,
19 omission, failure, or refusal is alleged to have occurred,
20 unless otherwise agreed to by the ~~public sector~~ employer and
21 authorized by the division. All penalties assessed and
22 collected under this section shall be deposited into the
23 Insurance Commissioner's Regulatory Trust Fund.

24 633.814 ~~442.014~~ Division cooperation with Federal
25 Government; exemption from division ~~of Safety~~ requirements.--
26 (1) The division shall cooperate with the Federal
27 Government so that duplicate inspections will be avoided yet
28 assure safe places of employment for the firefighters ~~citizens~~
29 of this state.

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31

1 (2) Except as provided in this section, a private
2 ~~sector~~ employer is not subject to the requirements of the
3 division ~~of Safety~~ if:
4 (a) The employer is subject to the federal regulations
5 in 29 C.F.R. ss. 1910 and 1926, ~~and~~
6 (b) The employer has adopted and implemented a written
7 safety program that conforms to the requirements of 29 C.F.R.
8 ss. 1910 and 1926, ~~and~~
9 (c) The ~~An~~ employer employs ~~with~~ 20 or more full-time
10 employees and includes ~~shall include~~ provisions for a safety
11 committee in the safety program. The safety committee must
12 include employee representation and must meet at least once
13 each calendar quarter. The employer must make adequate records
14 of each meeting and maintain the records subject to
15 inspections under subsection (3). The safety committee shall,
16 if appropriate, make recommendations regarding improvements to
17 the safety program and corrections of hazards affecting
18 workplace safety, ~~and~~
19 (d) The employer provides the division ~~of Safety~~ with
20 a written statement that certifies compliance with this
21 subsection.
22 (3) The division ~~of Safety~~ may enter at any reasonable
23 time any place of employment for the purposes of verifying the
24 accuracy of the written certification. If the division ~~of~~
25 ~~Safety~~ determines that the employer has not complied with the
26 requirements of subsection (2), the employer shall be subject
27 to the rules of the division ~~of Safety~~ until the employer
28 complies with subsection (2) and recertifies that fact to the
29 division ~~of Safety~~.
30 (4) This section shall not restrict the division ~~of~~
31 ~~Safety~~ from performing any duties pursuant to a written

1 contract between the division of ~~Safety~~ and the Federal
2 Occupational Safety and Health Administration (OSHA).
3 633.815 ~~442.015~~ Failure to implement a safety and
4 health program; cancellations.--If an employer that is found
5 by the division to have a high frequency or severity of
6 work-related injuries fails to implement a safety and health
7 program, the insurer ~~carrier~~ or self-insurer's fund that is
8 providing coverage for the employer may cancel the contract
9 for insurance with the employer. In the alternative, the
10 insurer ~~carrier~~ or fund may terminate any discount or
11 deviation granted to the employer for the remainder of the
12 term of the policy. If the contract is canceled or the
13 discount or deviation is terminated, the insurer ~~carrier~~ must
14 make such reports as are required by law.
15 633.816 ~~442.016~~ Expenses of administration.--~~The total~~
16 ~~expenses of administering this chapter must be estimated~~
17 ~~annually and provided to the Division of Workers' Compensation~~
18 ~~of the Department of Labor and Employment Security for~~
19 ~~inclusion under s. 440.51.~~The amounts that are needed to
20 administer this part ~~chapter~~ shall be disbursed from the
21 Insurance Commissioner's Regulatory ~~Workers' Compensation~~
22 ~~Administration Trust Fund, established under s. 440.50, in the~~
23 ~~manner provided in that section.~~
24 633.817 ~~442.017~~ Refusal to admit; penalty.--The
25 division and its authorized representatives may enter and
26 inspect any place of employment at any reasonable time for the
27 purpose of investigating compliance with this part ~~chapter~~ and
28 conducting inspections for the proper enforcement of this part
29 ~~chapter~~. An employer or owner who refuses to admit any member
30 of the division or its authorized representative to any place
31 of employment or to allow investigation and inspection

1 pursuant to this paragraph, commits a misdemeanor of the
2 second degree, punishable as provided in s. 775.082 or s.
3 775.083, and may be assessed an administrative penalty by the
4 division in an amount not to exceed \$1,000 for each day the
5 refusal continues, not to exceed the total sum of \$50,000.
6 Any penalties assessed and collected under this section shall
7 be deposited into the Insurance Commissioner's Regulatory
8 Trust Fund.

9 633.818 ~~442.018~~ Employee rights and
10 responsibilities.--

11 (1) Each employee of an employer covered under this
12 part ~~chapter~~ shall comply with rules adopted by the division
13 and with reasonable workplace safety and health standards,
14 rules, policies, procedures, and work practices established by
15 the employer and the workplace safety committee. An employee
16 who knowingly fails to comply with this subsection may be
17 disciplined or discharged by the employer.

18 (2) An employer may not discharge, threaten to
19 discharge, cause to be discharged, intimidate, coerce,
20 otherwise discipline, or in any manner discriminate against an
21 employee for any of the following reasons:

22 (a) The employee has requested information regarding
23 safety and health, filed a complaint or suit, or instituted or
24 caused to be instituted a proceeding under this part ~~chapter~~;

25 (b) The employee has testified or is about to testify,
26 on her or his own behalf, or on behalf of others, in any
27 proceeding instituted under this part ~~chapter~~;

28 (c) The employee has exercised any other right
29 afforded under this part ~~chapter~~; or

30 (d) The employee is engaged in activities relating to
31 the workplace safety committee.

1 (3) Neither pay, position, seniority, nor other
2 benefit may be lost for exercising any right under, or for
3 seeking compliance with, any requirement of this part ~~chapter~~.

4 633.819 ~~442.019~~ Compliance.--Failure of an ~~a public~~
5 ~~sector~~ employer or an insurer ~~a carrier~~ to comply with this
6 part ~~chapter~~ or with any rules adopted under this part ~~chapter~~
7 constitutes grounds for the division to seek remedies,
8 including injunctive relief, for compliance by making
9 appropriate filings with the Circuit Court of Leon County.

10 633.820 ~~442.020~~ False statements to insurers
11 ~~carriers~~.--An employer who knowingly and willfully falsifies
12 or conceals a material fact, makes a false, fictitious, or
13 fraudulent statement or representation; or makes or uses any
14 false document knowing the document to contain any false,
15 fictitious, or fraudulent entry or statement to an insurer ~~a~~
16 ~~carrier~~ of workers' compensation insurance under this part
17 commits ~~chapter is guilty of~~ a misdemeanor of the second
18 degree, punishable as provided in s. 775.082 or s. 775.083,
19 and may be assessed an administrative penalty by the division
20 in an amount not to exceed \$10,000. Any penalties assessed
21 and collected under this section shall be deposited into the
22 Insurance Commissioner's Regulatory Trust Fund.

23 633.821 ~~442.021~~ Insurer ~~Carrier~~ penalties.--If any
24 insurer ~~carrier~~ violates, or fails or refuses to comply with,
25 this part ~~chapter~~ or with any rule adopted or order issued
26 under this part ~~chapter~~, the division, after notice and
27 hearing in accordance with chapter 120, shall assess against
28 the insurer ~~carrier~~ a civil penalty of not less than \$100 nor
29 more than \$5,000 each day the violation, failure, or refusal
30 continues after the insurer ~~carrier~~ has been given written
31 notice thereof. The total penalty for each violation, failure,

1 or refusal may not exceed \$50,000. The division shall adopt
2 rules providing for penalties for noncompliance with this part
3 ~~chapter~~ by insurers ~~carriers~~. All penalties assessed and
4 collected under this section shall be deposited into the
5 Insurance Commissioner's Regulatory Trust Fund.

6 633.822 ~~442.023~~ Matters within jurisdiction of the
7 division ~~of Safety~~; false, fictitious, or fraudulent acts,
8 statements, and representations prohibited; penalty; statute
9 of limitations.--A person may not, in any matter within the
10 jurisdiction of the division ~~of Safety of the Department of~~
11 ~~Labor and Employment Security~~, knowingly and willfully falsify
12 or conceal a material fact; make any false, fictitious, or
13 fraudulent statement or representation; or make or use any
14 false document, knowing the same to contain any false,
15 fictitious, or fraudulent statement or entry. A person who
16 violates this section commits a misdemeanor of the second
17 degree, punishable as provided in s. 775.082 or s. 775.083.
18 The statute of limitations for prosecution of an act committed
19 in violation of this section is 5 years after the date the act
20 was committed or, if not discovered within 30 days after the
21 act was committed, 5 years after the date the act was
22 discovered.

23 633.823 ~~442.20~~ Workplace safety.--

24 (1) The division ~~of Safety within the Department of~~
25 ~~Labor and Employment Security~~ shall assist in making the
26 workplace a safer place to work and decreasing the frequency
27 and severity of on-the-job injuries.

28 (2) The division ~~of Safety~~ shall have the authority to
29 adopt rules for the purpose of assuring safe working
30 conditions for all employees ~~workers~~ by authorizing the
31 enforcement of effective standards, assisting and encouraging

1 employers to maintain safe working conditions, and by
2 providing for education and training in the field of safety.
3 For ~~public sector~~ employers, the division may by rule adopt
4 subparts C through T and subpart Z of 29 C.F.R. part 1910;
5 subparts C through Z of 29 C.F.R. part 1926; subparts A
6 through D, subpart I, and subpart M of 29 C.F.R. part 1928;
7 subparts A through G of 29 C.F.R. part 1917; subparts A
8 through L and subpart Z of 29 C.F.R. part 1915; subparts A
9 through J of 29 C.F.R. part 1918, as revised July 1, 1993,
10 provided that 29 C.F.R. s. 1910.156 applies to volunteer
11 firefighters and fire departments operated by the state or
12 political subdivisions; the National Fire Protection
13 Association, Inc., Standard 1500, paragraph 5-7 (Personal
14 Alert Safety System) (1992 edition); and ANSI A 10.4-1990.
15 (3) The provisions of chapter 440 which pertain to
16 workplace safety shall be applicable to the division of
17 Safety.

18 (4) The administrative rules of the Department of
19 Labor and Employment Security pertaining to the function of
20 the Bureau of Industrial Safety and Health which are in effect
21 immediately before July 1, 2000 ~~1990~~, continue in effect as
22 rules of the division of ~~Safety~~ until specifically amended by
23 the division ~~Department of Labor and Employment Security~~.

24 ~~(5) All references to the Assistant Secretary of the~~
25 ~~Occupational Safety and Health Administration and to the~~
26 ~~Director of the National Institute for Occupational Safety and~~
27 ~~Health and their authorized representatives in the adopted~~
28 ~~federal Occupational Safety and Health Administration~~
29 ~~standards shall, for purposes of this section, mean the~~
30 ~~Director of the Division of Safety of the Department of Labor~~
31

1 ~~and Employment Security or his or her authorized~~
2 ~~representatives.~~

3 633.824 ~~442.21~~ Information identifying employees
4 exercising rights; confidentiality.--

5 (1) Information held by the division ~~Department of~~
6 ~~Labor and Employment Security~~ identifying an employee who has
7 exercised any right granted under this part ~~chapter~~ is
8 confidential and exempt from the provisions of s. 119.07(1)
9 and s. 24(a), Art. I of the State Constitution until the
10 identity of the employee is otherwise permissibly made public
11 under the laws of this state or pursuant to proceedings under
12 the laws of this state.

13 (2) The Legislature finds that it is a public
14 necessity that information held by the division ~~Department of~~
15 ~~Labor and Employment Security~~ identifying any employee who has
16 exercised his or her rights granted under this part ~~chapter~~,
17 such as reporting work-related health and safety hazards and
18 violations, be held confidential and exempt from the public
19 records law. This exemption is necessary because release of
20 such information to the public could lead to discrimination
21 against and harassment of the reporting employee by coworkers
22 and others, and thus potentially jeopardize any ensuing
23 investigation. Accordingly, disclosure could chill an
24 employee's willingness to report potential health and safety
25 violations.

26 633.825 ~~442.118~~ Presence of toxic substances; notice
27 to fire departments, emergency medical service providers, law
28 enforcement agencies, and local emergency management agencies;
29 penalty.--

30 (1) Each ~~An~~ employer as defined in this section,
31 unless specifically exempted pursuant to subsection (3) ~~(4)~~,

1 shall provide within 60 days after commencing business or, if
2 engaged in business on the effective date of this act, within
3 60 days ~~9 months~~ after the effective date of this act, to the
4 person responsible for the administration and direction of a
5 fire department in a county, municipality, or political
6 subdivision, including a fire chief or fire administrator or
7 that person's designee:

8 (a) A list of work areas, sufficiently identified by
9 name and location, where toxic substances are present, which
10 list contains the chemical and common name of each substance
11 regularly present unless such information is protected
12 pursuant to the trade secret provisions of this act; and

13 (b) Upon request, any material safety data sheet for
14 each toxic substance regularly present.

15
16 Except as otherwise provided in this section, information
17 maintained by the employer pursuant to this subsection is
18 confidential and exempt from the provisions of s. 119.07(1).

19 (2) Whenever circumstances regarding the name and
20 location of the substance change sufficiently to warrant an
21 updated report, the employer shall update the information
22 provided pursuant to subsection (1).

23 ~~(3) Employers who become covered under this act after~~
24 ~~October 1, 1985, shall provide the information required by~~
25 ~~subsection (1) within 60 days after becoming covered.~~

26 (3)~~(4)~~ An employer operating a plant or facility which
27 continues in operation, including maintenance periods, 24
28 hours a day, 7 days a week, 365 days a year, shall not be
29 required to provide the information specified in subsection
30 (1) with respect to any such plant or facility, provided such

31

1 plant or facility is manned at all times by personnel
2 qualified to provide such information.

3 ~~(4)(5)~~ The person responsible for the administration
4 and direction of a fire department in a county, municipality,
5 or political subdivision, including a fire chief or fire
6 administrator or that person's designee, shall maintain the
7 information provided by the employer as required in subsection
8 (1) for at least 4 years and shall provide copies of such
9 information only to the following agencies located within the
10 geographic jurisdiction of such fire department:

11 (a) Fire suppression and fire inspection divisions;

12 (b) Emergency medical service providers licensed under
13 chapter 401; and

14 (c) Upon request, law enforcement agencies and local
15 emergency management agencies.

16
17 Information obtained pursuant to this subsection is
18 confidential and exempt from the provisions of s. 119.07(1).

19 ~~(5)(6)~~ This section and any rules ~~regulations~~ adopted
20 by the division ~~department~~ for enforcement of this section
21 shall have the same force and effect in each county and
22 municipality as the ordinances of such county or municipality
23 and are enforceable in the appropriate court having
24 jurisdiction ~~county courts~~ in the same manner as such
25 ordinances. ~~The provisions of s. 442.123(1) apply to~~
26 ~~violations of this section and are enforceable in county~~
27 ~~court.~~

28 ~~(6)(7)~~ The chief of a county, municipal, or special
29 district fire department, other fire department personnel
30 designated by such chief, and personnel designated by a local
31 government having no organized fire department are authorized

1 to enforce this section and any rule ~~regulation~~ adopted by the
2 division ~~department~~ for enforcement of this section. Such
3 personnel acting under the authority of this section shall be
4 considered agents of their respective jurisdictions and not
5 agents of the division ~~department~~. Any penalties collected by
6 such local personnel for violation of this section pursuant to
7 subsection (7) ~~s. 442.123~~ shall be retained by the respective
8 fire department or local government.

9 ~~(7)(8) Notwithstanding the provisions of s.~~
10 ~~442.123(1)~~, If an employer fails to provide the information
11 required by this section, the division ~~department~~ shall assess
12 a civil penalty in an amount not to exceed \$100 for each
13 violation in accordance with the provisions of chapter 120, to
14 be deposited into the Insurance Commissioner's Regulatory
15 Trust Fund.

16 (8) As used in this section, "employer" means any
17 person, firm, corporation, partnership, association, or other
18 entity engaged in a business or in providing services,
19 including the state and any political subdivision of the
20 state, that manufactures, produces, uses, applies, or stores
21 toxic substances. An independent contractor or subcontractor
22 shall be deemed the sole employer of her or his employees,
23 even when her or his employees are performing work at the
24 workplace of another employer. The term "employer" does not
25 include:

- 26 (a) Employers employing two or fewer employees.
27 (b) Employers of domestic workers in private homes.
28 (c) Bona fide farmers or an association of farmers
29 employing employees in agricultural labor performed on a farm,
30 or in the onsite packing facilities for agricultural products
31 from such farms, who employ 12 or fewer regular employees and

1 who employ 24 or fewer other employees at one time for
2 seasonal or occasional agricultural labor that is completed in
3 less than 30 continuous days, provided such seasonal or
4 occasional employment does not exceed 60 days in the same
5 calendar year. The term "farm" includes stock, dairy,
6 poultry, fruit, fur-bearing animal, fish, and truck farms,
7 ranches, nurseries, and orchards. The term "agricultural
8 labor" includes field foremen, timekeepers, checkers, and
9 other farm labor supervisory personnel.

10 (d) Employers of professional athletes, such as
11 professional boxers and wrestlers and professional baseball,
12 football, basketball, hockey, polo, tennis, jai alai, and
13 similar players.

14 (e) Employers employing labor under court sentences
15 requiring the performance of community service as provided in
16 s. 316.193.

17 (9) The division may adopt any rule necessary to
18 implement, interpret, and make specific the provisions of this
19 section, and shall adopt by rule a standard form for employers
20 to use in complying with the requirements of this section.

21 Section 3. Effective June 30, 2000, section 14 of
22 chapter 99-240, Laws of Florida, is amended to read:

23 Section 14. Sections Chapter 442, Florida Statutes,
24 consisting of ss. 442.001, 442.002, 442.003, 442.004, 442.005,
25 442.006, 442.007, 442.008, 442.009, 442.1015, 442.011,
26 442.012, 442.013, 442.014, 442.015, 442.016, 442.017, 442.018,
27 442.019, 442.020, 442.021, 442.022, 442.023, 442.101, 442.102,
28 442.103, 442.104, 442.105, 442.106, 442.107, 442.108, 442.109,
29 442.111, 442.112, 442.113, 442.115, 442.116, ~~442.118,~~
30 442.1185, 442.119, 442.121, 442.123, 442.125, 442.126, and
31 442.127, Florida Statutes, are ~~442.20,~~ and ~~442.21~~ is repealed

1 July 1, 2000. The Department of Labor and Employment Security
2 shall submit to the Governor and the Legislature by January 1,
3 2000, a report on a proposed reauthorization of the Division
4 of Safety and the provisions of chapter 442, Florida Statutes,
5 based upon the following criteria:

6 (1) External requirements mandating that the State of
7 Florida provide a state agency for employment safety issues.†

8 (2) Internal organizational requirements that
9 necessitate a state agency for safety issues and a review of
10 state agency practices for the provision of existing
11 safety-related activities.

12 (3) A compilation of best practices among public and
13 private employers which achieve safety results without the
14 creation of a governmental regulatory apparatus.

15 (4) The appropriateness of a management-by-exception
16 system in which the division functions as a contract
17 performance auditor for the development of internal risk and
18 safety management issues among employers.

19 Section 4. Except as otherwise provided herein, this
20 act shall take effect October 1, 2000.

21 *****
22 *****

23 HOUSE SUMMARY

24 Transfers from the Division of Safety of the Department
25 of Labor and Employment Security to the Division of State
26 Fire Marshal of the Department of Insurance powers,
27 duties, and responsibilities under provisions of ch. 442,
28 F.S., relating to workplace occupational safety and
29 health and specifies application to firefighters and
30 employers of firefighters. Saves such provisions from
31 repeal on July 1, 2000.