

By Senator King

8-1356-00

1 A bill to be entitled
2 An act relating to rulemaking authority of the
3 Division of Workers' Compensation of the
4 Department of Labor and Employment Security
5 (RAB); amending s. 440.13, F.S.; authorizing
6 the division to assess by rule penalties
7 against employers or carriers that fail to
8 timely file wage statements or other required
9 forms or reports; amending s. 440.38, F.S.;
10 authorizing the division to specify by rule the
11 amount of the security deposit and net worth
12 required for an employer to obtain
13 authorization to self-insure; requiring that
14 the division provide by rule for suspending or
15 revoking an employer's authorization to
16 self-insure; providing an effective date.

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

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20 Section 1. Paragraph (b) of subsection (11) of section
21 440.13, Florida Statutes, is amended to read:22 440.13 Medical services and supplies; penalty for
23 violations; limitations.--

24 (11) AUDITS BY DIVISION; JURISDICTION.--

25 (b) The division shall monitor and audit carriers to
26 determine if medical bills are paid in accordance with this
27 section and division rules. Any employer, if self-insured, or
28 carrier found by the division not to be within 90 percent
29 compliance as to the payment of medical bills after July 1,
30 1994, must be assessed a fine not to exceed 1 percent of the
31 prior year's assessment levied against such entity under s.

1 440.51 for every quarter in which the entity fails to attain
2 90-percent compliance. The division shall fine an employer or
3 carrier, pursuant to rules adopted by the division, for each
4 late payment of compensation that is below the minimum
5 90-percent performance standard. Any carrier that is found to
6 be not in compliance in subsequent consecutive quarters must
7 implement a medical-bill review program approved by the
8 division, and the carrier is subject to disciplinary action by
9 the Department of Insurance. The division may by rule provide
10 for penalties to be assessed against any employer or carrier
11 that fails to timely file wage statements or other forms or
12 reports that are required to be filed with the division
13 pursuant to rule.

14 Section 2. Subsection (1) and paragraph (b) of
15 subsection (3) of section 440.38, Florida Statutes, are
16 amended to read:

17 440.38 Security for compensation; insurance carriers
18 and self-insurers.--

19 (1) Every employer shall secure the payment of
20 compensation under this chapter:

21 (a) By insuring and keeping insured the payment of
22 such compensation with any stock company or mutual company or
23 association or exchange, authorized to do business in the
24 state;

25 (b) By furnishing satisfactory proof to the division
26 of her or his financial ability to pay such compensation and
27 receiving an authorization from the division to pay such
28 compensation directly in accordance with the following
29 provisions:

30 1. The division may, as a condition to such
31 authorization, require such employer to deposit in a

1 depository designated by the division either an indemnity bond
2 or securities, at the option of the employer, of a kind and in
3 an amount determined by the division and subject to such
4 conditions as the division may prescribe, which shall include
5 authorization to the division in the case of default to sell
6 any such securities sufficient to pay compensation awards or
7 to bring suit upon such bonds, to procure prompt payment of
8 compensation under this chapter. In addition, the division
9 shall require, as a condition to authorization to self-insure,
10 proof that the employer has provided for competent personnel
11 with whom to deliver benefits and to provide a safe working
12 environment. Further, the division shall require such
13 employer to carry reinsurance at levels that will ensure the
14 actuarial soundness of such employer in accordance with rules
15 promulgated by the division. The division may by rule require
16 that, in the event of an individual self-insurer's insolvency,
17 such indemnity bonds, securities, and reinsurance policies
18 shall be payable to the Florida Self-Insurers Guaranty
19 Association, Incorporated, created pursuant to s. 440.385.
20 Any employer securing compensation in accordance with the
21 provisions of this paragraph shall be known as a self-insurer
22 and shall be classed as a carrier of her or his own insurance.

23 2. If the employer fails to maintain the foregoing
24 requirements, the division shall revoke the employer's
25 authority to self-insure, unless the employer provides to the
26 division the certified opinion of an independent actuary who
27 is a member of the American Society of Actuaries as to the
28 actuarial present value of the employer's determined and
29 estimated future compensation payments based on cash reserves,
30 using a 4-percent discount rate, and a qualifying security
31 deposit equal to 1.5 times the value so certified. The

1 employer shall thereafter annually provide such a certified
2 opinion until such time as the employer meets the requirements
3 of subparagraph 1. The qualifying security deposit shall be
4 adjusted at the time of each such annual report. Upon the
5 failure of the employer to timely provide such opinion or to
6 timely provide a security deposit in an amount equal to 1.5
7 times the value certified in the latest opinion, the division
8 shall then revoke such employer's authorization to
9 self-insure, and such failure shall be deemed to constitute an
10 immediate serious danger to the public health, safety, or
11 welfare sufficient to justify the summary suspension of the
12 employer's authorization to self-insure pursuant to s. 120.68.

13 3. Upon the suspension or revocation of the employer's
14 authorization to self-insure, the employer shall provide to
15 the division and to the Florida Self-Insurers Guaranty
16 Association, Incorporated, created pursuant to s. 440.385 the
17 certified opinion of an independent actuary who is a member of
18 the American Society of Actuaries of the actuarial present
19 value of the determined and estimated future compensation
20 payments of the employer for claims incurred while the member
21 exercised the privilege of self-insurance, using a discount
22 rate of 4 percent. The employer shall provide such an opinion
23 at 6-month intervals thereafter until such time as the latest
24 opinion shows no remaining value of claims. With each such
25 opinion, the employer shall deposit with the division a
26 qualifying security deposit in an amount equal to the value
27 certified by the actuary. The association has a cause of
28 action against an employer, and against any successor of the
29 employer, who fails to timely provide such opinion or who
30 fails to timely maintain the required security deposit with
31 the division. The association shall recover a judgment in the

1 amount of the actuarial present value of the determined and
2 estimated future compensation payments of the employer for
3 claims incurred while the employer exercised the privilege of
4 self-insurance, together with attorney's fees. For purposes
5 of this section, the successor of an employer means any
6 person, business entity, or group of persons or business
7 entities, which holds or acquires legal or beneficial title to
8 the majority of the assets or the majority of the shares of
9 the employer.

10 4. A qualifying security deposit shall consist, at the
11 option of the employer, of:

12 a. Surety bonds, in a form and containing such terms
13 as prescribed by the division, issued by a corporation surety
14 authorized to transact surety business by the Department of
15 Insurance, and whose policyholders' and financial ratings, as
16 reported in A.M. Best's Insurance Reports, Property-Liability,
17 are not less than "A" and "V", respectively.

18 b. Certificates of deposit with financial
19 institutions, the deposits of which are insured through the
20 Federal Deposit Insurance Corporation or the Federal Savings
21 and Loan Insurance Corporation.

22 c. Irrevocable letters of credit in favor of the
23 division issued by financial institutions described in
24 sub-subparagraph b.

25 d. Direct obligations of the United States Treasury
26 backed by the full faith and credit of the United States.

27 e. Securities issued by this state and backed by the
28 full faith and credit of this state.

29 5. The qualifying security deposit shall be held by
30 the division, or by a depository authorized by the division,
31 exclusively for the benefit of workers' compensation

1 claimants. The security shall not be subject to assignment,
2 execution, attachment, or any legal process whatsoever, except
3 as necessary to guarantee the payment of compensation under
4 this chapter. No surety bond may be terminated, and no other
5 qualifying security may be allowed to lapse, without 90 days'
6 prior notice to the division and deposit by the self-insuring
7 employer of other qualifying security of equal value within 10
8 business days after such notice. Failure to provide such
9 notice or failure to timely provide qualifying replacement
10 security after such notice shall constitute grounds for the
11 division to call or sue upon the surety bond, or to act with
12 respect to other pledged security in any manner necessary to
13 preserve its value for the purposes intended by this section,
14 including the exercise of rights under a letter of credit, the
15 sale of any security at then prevailing market rates, or the
16 withdrawal of any funds represented by any certificate of
17 deposit forming part of the qualifying security deposit. The
18 division may specify by rule the amount of the qualifying
19 security deposit required prior to authorizing an employer to
20 self-insure and the amount of net worth required for an
21 employer to qualify for authorization to self-insure;

22 (c) By entering into a contract with a public utility
23 under an approved utility-provided self-insurance program as
24 set forth in s. 440.571 in effect as of July 1, 1983. The
25 division shall adopt rules to implement this paragraph;

26 (d) By entering into an interlocal agreement with
27 other local governmental entities to create a local government
28 pool pursuant to s. 440.575;

29 (e) In accordance with s. 440.135, an employer, other
30 than a local government unit, may elect coverage under the
31 Workers' Compensation Law and retain the benefit of the

1 exclusiveness of liability provided in s. 440.11 by obtaining
2 a 24-hour health insurance policy from an authorized property
3 and casualty insurance carrier or an authorized life and
4 health insurance carrier, or by participating in a fully or
5 partially self-insured 24-hour health plan that is established
6 or maintained by or for two or more employers, so long as the
7 law of this state is not preempted by the Employee Retirement
8 Income Security Act of 1974, Pub. L. No. 93-406, or any
9 amendment to that law, which policy or plan must provide, for
10 at least occupational injuries and illnesses, medical benefits
11 that are comparable to those required by this chapter. A local
12 government unit, as a single employer, in accordance with s.
13 440.135, may participate in the 24-hour health insurance
14 coverage plan referenced in this paragraph. Disputes and
15 remedies arising under policies issued under this section are
16 governed by the terms and conditions of the policies and under
17 the applicable provisions of the Florida Insurance Code and
18 rules adopted under the insurance code and other applicable
19 laws of this state. The 24-hour health insurance policy may
20 provide for health care by a health maintenance organization
21 or a preferred provider organization. The premium for such
22 24-hour health insurance policy shall be paid entirely by the
23 employer. The 24-hour health insurance policy may use
24 deductibles and coinsurance provisions that require the
25 employee to pay a portion of the actual medical care received
26 by the employee. If an employer obtains a 24-hour health
27 insurance policy or self-insured plan to secure payment of
28 compensation as to medical benefits, the employer must also
29 obtain an insurance policy or policies that provide indemnity
30 benefits as follows:

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1 1. If indemnity benefits are provided only for
2 occupational-related disability, such benefits must be
3 comparable to those required by this chapter.

4 2. If indemnity benefits are provided for both
5 occupational-related and nonoccupational-related disability,
6 such benefits must be comparable to those required by this
7 chapter, except that they must be based on 60 percent of the
8 average weekly wages.

9 3. The employer shall provide for each of its
10 employees life insurance with a death benefit of \$100,000.

11 4. Policies providing coverage under this subsection
12 must use prescribed and acceptable underwriting standards,
13 forms, and policies approved by the Department of Insurance.
14 If any insurance policy that provides coverage under this
15 section is canceled, terminated, or nonrenewed for any reason,
16 the cancellation, termination, or nonrenewal is ineffective
17 until the self-insured employer or insurance carrier or
18 carriers notify the division and the Department of Insurance
19 of the cancellation, termination, or nonrenewal, and until the
20 division has actually received the notification. The division
21 must be notified of replacement coverage under a workers'
22 compensation and employer's liability insurance policy or plan
23 by the employer prior to the effective date of the
24 cancellation, termination, or nonrenewal; or

25 (f) By entering into a contract with an individual
26 self-insurer under an approved individual
27 self-insurer-provided self-insurance program as set forth in
28 s. 440.571. The division may adopt rules to implement this
29 subsection.

30 (3)

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1 (b) The division shall suspend or revoke any
2 authorization to a self-insurer for good cause, as defined by
3 rule of the division. No suspension or revocation shall
4 affect the liability of any self-insurer already incurred.

5 Section 3. This act shall take effect upon becoming a
6 law.

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9 SENATE SUMMARY

10 Authorizes the Division of Workers' Compensation of the
11 Department of Labor and Employment Security to adopt
12 rules for assessing penalties against employers or
13 carriers that fail to file wage statements or other
14 required reports. Provides for the division to specify by
15 rule the amount of the security deposit and net worth
16 necessary for an employer to self-insure. Provides for
17 the division to adopt rules for suspending or revoking an
18 employer's authorization to self-insure.
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