

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 746

SPONSOR: Banking and Insurance Committee, Senator Clary and others

SUBJECT: Workers' Compensation

DATE: January 18, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute:

- \* Requires the Department of Business and Professional Regulation to issue initial licenses to individuals seeking to engage in the business of contracting in Florida if the applicant: 1) qualifies for an exemption from workers' compensation coverage under s. 440.05, F.S.; 2) submits an affidavit on a form provided by the applicable regulatory board attesting to the fact that the applicant will obtain such exemption within 10 days of initial licensure; and 3) meets all other requirements for licensure.
- \* Revises the workers' compensation security deposit requirements for individual self-insured employers by eliminating the use of certificates of deposit, U.S. Treasury Notes and Bonds, and securities issued by the State of Florida and backed by the full faith and credit of the state as types of qualifying security deposits.
- \* Requires individual self-insured employers to comply with the revised, workers' compensation security deposit requirements on or before December 31, 2000, or upon maturity of the security deposits, whichever occurs later.
- \* Amends s. 627.914, F.S., effective July 1, 2000, to delete the requirement that insurers report certain workers' compensation data to the Department of Insurance, which is duplicative of data that is submitted to the department by statistical agents for the insurers; and changes the date for a rating organization to submit an aggregate compilation of payrolls, premium, losses, and expense for all companies from April 1 to July 1 of each year, which will improve the quality and timeliness of the data.

This bill substantially amends the following sections of the Florida Statutes: 489.114, 489.115, 489.510, 489.515, 440.38, and 627.914.

## II. Present Situation:

Under the provisions of s. 440.38, F.S., employers are required to provide workers' compensation, unless they obtain an exemption from coverage. Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure.

### **Election of Exemption from Workers' Compensation Coverage**

Corporate officers, partners, and sole proprietors actively engaged in the construction industry may elect to be exempt from the workers' compensation system by filing a notice of election to be exempt and providing certain information to the Division of Workers' Compensation along with a \$50 filing fee. For each employer seeking an exemption, the division requires the following information to be submitted: (1) listing of the names of the individuals seeking an exemption, (2) federal identification number, (3) social security number, (4) all certified or registered licenses issued pursuant to ch. 489, F.S., held by the person(s) seeking the exemption, (5) a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the division, (6) a copy of the relevant occupational license in the primary jurisdiction of the business; and (7) for corporate officers and partners, the registration number of the corporation or partnership filed with the Division of Corporations of the Department of State.

Upon determining that the requirements for exemption are met, the Division of Workers' Compensation issues a certificate of election of exemption which is valid for a 2-year period. However, the Division of Workers' Compensation has the authority to revoke the exemption if the person does not meet the requirements for an exemption or if the information is invalid.

Under the provisions of s. 489.114, F.S., any person engaged in the business of construction contracting in Florida is required as a *precedent* to the issuance or renewal of a certification or registration to provide to the Construction Industry Licensing Board (of the Department of Business and Professional Regulation), evidence of workers' compensation coverage, pursuant to ch. 440, F.S. The failure to obtain and maintain workers' compensation coverage is grounds for the board to revoke, suspend, or deny the issuance or renewal of a certification or registration. Pursuant to s. 489.510, F.S., electrical contractors are required to provide evidence of workers' compensation coverage to the Electrical Contractors' Licensing Board. This creates a conflict, since the Division of Workers' Compensation requires a sole proprietor, partner, or officer in a corporation who is actively engaged in the construction business to submit a copy of the registration or certifications issued under ch. 489, F.S., as a *precedent* to issuing an exemption for workers' compensation coverage. This conflict prevents an individual from meeting the requirements of ch. 489 or 440, F.S.

In an attempt to address this issue, the Division of Workers' Compensation was issuing a 30-day, temporary election of exemption from workers' compensation coverage to individuals who had applied for, but not yet been issued, their contractor license from the Department of Business and Professional Regulation. However, the division recently ceased issuing temporary exemptions. According to the Department of Business and Professional Regulation, a contractor's certification generally is issued within 3 months from the date of application.

### **Financial Requirements for Self-Insured Employers**

The division may authorize an employer to self-insure, if the employer provides satisfactory proof of its ability to pay workers' compensation claims. As a condition to such authorization, the division may require an employer to deposit an indemnity bond or securities in an amount determined by the division. The types of qualifying security deposits, at the option of the employer, include: (1) surety bonds, (2) certificates of deposit, (3) irrevocable letters of credit, (4) U.S. Treasury bonds and notes, and (5) securities issued and backed by the full faith and credit of the State of Florida.

Under the provisions of Rule 38F-5.103, Florida Administrative Code, a minimum initial security deposit of \$100,000 is required. However, if the last 3 years' losses are not fully funded by insurance, reinsurance, or subject to reimbursement exceed \$100,000, a security deposit equal to those losses must be posted. In addition, a self-insured employer must maintain a net worth of at least \$1,000,000, pursuant to Rule 38F-5.106, Florida Administrative Code.

Under the provisions of s. 440.38, in the event a self-insured employer defaults, the division is authorized to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds to ensure prompt payment of compensation. If an individual self-insurer becomes insolvent, the bonds and securities are payable to the Florida Self-Insurers Guaranty Association. However, under federal bankruptcy law, monies held as security by the Division of Workers' Compensation in the form of certificates of deposit and securities backed by the federal government and the State of Florida are deemed to be part of the bankrupt estate. Quite often, the certificates of deposit and direct obligations of the federal and state governments are settled for much less than the face value of the instrument. This precludes the division from transferring 100 percent of the face value of those assets to the Florida Self-Insurance Guaranty Association to assist in the payment of workers' compensation claims when a self-insured employer declares bankruptcy. Irrevocable letters of credit and surety bonds are agreements between a third party and the division and therefore are not a part of the bankruptcy process.

### III. Effect of Proposed Changes:

**Section 1- 4.** Amends ss. 489.114, 489.115, 489.510, and 489.515, F.S., relating to workers' compensation coverage for contractors to require the Department of Business and Professional to issue initial licenses to individuals engaged in the business of contracting in Florida if the applicant: 1) qualifies for an exemption from workers' compensation coverage under s. 440.05, F.S.; 2) submits an affidavit on a form provided by the applicable regulatory board attesting to the fact that the applicant will obtain such exemption within 10 days of initial licensure; and 3) meets all other requirements for licensure. This provides an exception to the current law's requirement that proof of workers' compensation coverage or an exemption from coverage must be submitted prior to obtaining a contractor's license.

**Section 5.** Amends s. 440.38, relating to compensation coverage, to revise the types of qualifying security deposits the Division of Workers' Compensation would require for individuals seeking to self-insure. In the event an individual self-insured employer ceases or suspends payment of compensation to its employees, the division is authorized to call the qualifying security deposit to ensure payment of compensation.

Certificates of deposit, U.S. Treasury Notes and Bonds, and securities issued by the State of Florida and backed by the full faith and credit of the state are eliminated as types of qualifying security deposits due to the concern that these types of assets would be deemed general assets in the event of an employer's bankruptcy, which would prevent the division from having a priority claim to the assets and receiving less than face value from the proceeds of the bankruptcy. Other types of acceptable securities and bonds are delineated in the section.

Currently authorized self-insured employers must comply with the revised qualifying security deposit requirements on or before December 31, 2000, or upon maturity of existing security deposits, whichever occurs later.

The section corrects statutory cross references to reflect the transfer of the regulation of self-insurance funds from the Division of Workers' Compensation to the Department of Insurance in 1993.

**Section 6.** Amends s. 627.914, F.S., relating to reports of information by workers' compensation insurers required, to: 1) delete the requirement that insurers report certain workers' compensation data to the Department of Insurance, which is duplicative of data that is submitted to the department by statistical agents for the insurers; 2) change the date for a rating organization to submit an aggregate compilation of payrolls, premium, losses, and expense for all companies from April 1 to July 1 of each year, which will improve the quality and timeliness of data; and 3) conform existing statutes to reflect that the Department of Insurance now regulates self-insurance funds, while individual self-insured employers are still regulated by the Department of Labor and Employment Security.

**Section 7.** Provides that the act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill should have a positive, although indeterminate, impact on individuals seeking to engage in the contracting business in Florida by allowing an applicant to obtain an initial contractors license, if the individual attests that an exemption from workers' compensation coverage will be obtained and all other chapter 489, F.S., requirements are met by the applicant.

Insurers and individual self-insurance funds should experience some cost savings attributable to the elimination of certain workers' compensation reporting requirements.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.