

Bill No. CS for SB 1188

Amendment No.      Barcode 405062

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Holzendorf moved the following amendment:

**Senate Amendment (with title amendment)**

On page 17, lines 16-22, delete those lines

and insert:

Section 5. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.--

(1) Unless an employer acts with the intent to cause injury or death, the liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including any vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation in accordance with s. 440.38 ~~as required by this chapter~~, an injured employee, or the legal representative thereof in case death results from the injury,

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1 may elect to claim compensation under this chapter or to  
2 maintain an action at law or in admiralty for damages on  
3 account of such injury or death. In such action the defendant  
4 may not plead as a defense that the injury was caused by  
5 negligence of a fellow employee, that the employee assumed the  
6 risk of the employment, or that the injury was due to the  
7 comparative negligence of the employee. The same immunities  
8 from liability enjoyed by an employer shall extend as well to  
9 each employee of the employer when such employee is acting in  
10 furtherance of the employer's business and the injured  
11 employee is entitled to receive benefits under this chapter.  
12 Such fellow-employee immunities shall not be applicable to an  
13 employee who acts, with respect to a fellow employee, with  
14 willful and wanton disregard or unprovoked physical aggression  
15 or with gross negligence when such acts result in injury or  
16 death or such acts proximately cause such injury or death, nor  
17 shall such immunities be applicable to employees of the same  
18 employer when each is operating in the furtherance of the  
19 employer's business but they are assigned primarily to  
20 unrelated works within private or public employment. The same  
21 immunity provisions enjoyed by an employer shall also apply to  
22 any ~~sole proprietor~~, partner, corporate officer or director,  
23 supervisor, or other person who in the course and scope of his  
24 or her duties acts in a managerial or policymaking capacity  
25 and the conduct which caused the alleged injury arose within  
26 the course and scope of said managerial or policymaking duties  
27 and was not a violation of a law, whether or not a violation  
28 was charged, for which the maximum penalty which may be  
29 imposed does not exceed 60 days' imprisonment as set forth in  
30 s. 775.082. The immunity from liability provided in this  
31 subsection extends to county governments with respect to

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1 employees of county constitutional officers whose offices are  
 2 funded by the board of county commissioners. Intent, as used  
 3 in this subsection, does not include actions of an employer  
 4 that are substantially certain to result in injury or death.  
 5 If an employee recovers damages from an employer either by  
 6 judgment or settlement under this subsection, the workers'  
 7 compensation carrier for the employer, or the employer if  
 8 self-insured, shall have an offset against any workers'  
 9 compensation benefits to which the employee would be entitled  
 10 under this chapter. This subsection does not create, nor shall  
 11 it result in, vicarious liability on the part of the employer.

12 Section 6. Section 440.10, Florida Statutes, is  
 13 amended to read:

14 440.10 Liability for compensation.--

15 (1)(a) Every employer coming within the provisions of  
 16 this chapter, including any brought within the chapter by  
 17 ~~waiver of exclusion or of exemption~~, shall be liable for, and  
 18 shall secure, in accordance with s. 440.38, the payment to his  
 19 or her employees, or any

20  
 21 (Redesignate subsequent sections.)

22  
 23  
 24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 1, line 15, delete that line

27  
 28 and insert:

29 compensable injuries; amending s. 440.11, F.S.;

30 amending provisions relating to exclusiveness

31 of liability; providing exceptions; amending

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1 cross-references; revising the applicability of  
2 immunity provisions; excluding certain employer  
3 actions from the term "intent"; providing to  
4 the carrier an offset against benefits in  
5 specified circumstances; providing that certain  
6 provisions do not impose vicarious liability on  
7 an employer; amending s. 440.10, F.S.; amending  
8 cross-references;  
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