

By Senator Rossin

35-1306-01

See HB 227

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.02, F.S.; excluding certain  
4           sports officials from the definition of  
5           "employee"; providing an effective date.  
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7 Be It Enacted by the Legislature of the State of Florida:  
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9           Section 1. Paragraph (d) of subsection (14) of section  
10 440.02, Florida Statutes, is amended to read:

11           440.02 Definitions.--When used in this chapter, unless  
12 the context clearly requires otherwise, the following terms  
13 shall have the following meanings:

14           (14)

15           (d) "Employee" does not include:

16           1. An independent contractor, if:

17           a. The independent contractor maintains a separate  
18 business with his or her own work facility, truck, equipment,  
19 materials, or similar accommodations;

20           b. The independent contractor holds or has applied for  
21 a federal employer identification number, unless the  
22 independent contractor is a sole proprietor who is not  
23 required to obtain a federal employer identification number  
24 under state or federal requirements;

25           c. The independent contractor performs or agrees to  
26 perform specific services or work for specific amounts of  
27 money and controls the means of performing the services or  
28 work;

29           d. The independent contractor incurs the principal  
30 expenses related to the service or work that he or she  
31 performs or agrees to perform;

1 e. The independent contractor is responsible for the  
2 satisfactory completion of work or services that he or she  
3 performs or agrees to perform and is or could be held liable  
4 for a failure to complete the work or services;

5 f. The independent contractor receives compensation  
6 for work or services performed for a commission or on a  
7 per-job or competitive-bid basis and not on any other basis;

8 g. The independent contractor may realize a profit or  
9 suffer a loss in connection with performing work or services;

10 h. The independent contractor has continuing or  
11 recurring business liabilities or obligations; and

12 i. The success or failure of the independent  
13 contractor's business depends on the relationship of business  
14 receipts to expenditures.

15  
16 However, the determination as to whether an individual  
17 included in the Standard Industrial Classification Manual of  
18 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
19 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
20 2448, or 2449, or a newspaper delivery person, is an  
21 independent contractor is governed not by the criteria in this  
22 paragraph but by common-law principles, giving due  
23 consideration to the business activity of the individual.

24 2. A real estate salesperson or agent, if that person  
25 agrees, in writing, to perform for remuneration solely by way  
26 of commission.

27 3. Bands, orchestras, and musical and theatrical  
28 performers, including disk jockeys, performing in licensed  
29 premises as defined in chapter 562, if a written contract  
30 evidencing an independent contractor relationship is entered  
31 into before the commencement of such entertainment.

1           4. An owner-operator of a motor vehicle who transports  
2 property under a written contract with a motor carrier which  
3 evidences a relationship by which the owner-operator assumes  
4 the responsibility of an employer for the performance of the  
5 contract, if the owner-operator is required to furnish the  
6 necessary motor vehicle equipment and all costs incidental to  
7 the performance of the contract, including, but not limited  
8 to, fuel, taxes, licenses, repairs, and hired help; and the  
9 owner-operator is paid a commission for transportation service  
10 and is not paid by the hour or on some other time-measured  
11 basis.

12           5. A person whose employment is both casual and not in  
13 the course of the trade, business, profession, or occupation  
14 of the employer.

15           6. A volunteer, except a volunteer worker for the  
16 state or a county, municipality, or other governmental entity.  
17 A person who does not receive monetary remuneration for  
18 services is presumed to be a volunteer unless there is  
19 substantial evidence that a valuable consideration was  
20 intended by both employer and employee. For purposes of this  
21 chapter, the term "volunteer" includes, but is not limited to:

22           a. Persons who serve in private nonprofit agencies and  
23 who receive no compensation other than expenses in an amount  
24 less than or equivalent to the standard mileage and per diem  
25 expenses provided to salaried employees in the same agency or,  
26 if such agency does not have salaried employees who receive  
27 mileage and per diem, then such volunteers who receive no  
28 compensation other than expenses in an amount less than or  
29 equivalent to the customary mileage and per diem paid to  
30 salaried workers in the community as determined by the  
31 division; and

1           b. Volunteers participating in federal programs  
2 established under Pub. L. No. 93-113.

3           7. Any officer of a corporation who elects to be  
4 exempt from this chapter.

5           8. A sole proprietor or officer of a corporation who  
6 actively engages in the construction industry, and a partner  
7 in a partnership that is actively engaged in the construction  
8 industry, who elects to be exempt from the provisions of this  
9 chapter. Such sole proprietor, officer, or partner is not an  
10 employee for any reason until the notice of revocation of  
11 election filed pursuant to s. 440.05 is effective.

12           9. An exercise rider who does not work for a single  
13 horse farm or breeder, and who is compensated for riding on a  
14 case-by-case basis, provided a written contract is entered  
15 into prior to the commencement of such activity which  
16 evidences that an employee/employer relationship does not  
17 exist.

18           10. A taxicab, limousine, or other passenger  
19 vehicle-for-hire driver who operates said vehicles pursuant to  
20 a written agreement with a company which provides any  
21 dispatch, marketing, insurance, communications, or other  
22 services under which the driver and any fees or charges paid  
23 by the driver to the company for such services are not  
24 conditioned upon, or expressed as a proportion of, fare  
25 revenues.

26           11. A person who performs services as a sports  
27 official for an entity sponsoring an interscholastic sports  
28 event or for a public entity or private, nonprofit  
29 organization that sponsors an amateur sports event. For  
30 purposes of this subparagraph, such a person is an independent  
31 contractor. For purposes of this subparagraph, the term

1 "sports official" means any person who is a neutral  
2 participant in a sports event, including, but not limited to,  
3 umpires, referees, judges, linespersons, scorekeepers, or  
4 timekeepers. This subparagraph does not apply to any person  
5 employed by a district school board who serves as a sports  
6 official as required by the employing school board or who  
7 serves as a sports official as part of his or her  
8 responsibilities during normal school hours.

9           Section 2. This act shall take effect upon becoming a  
10 law.

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13                           HOUSE SUMMARY

14           Excludes from the definition of the term "employee," for  
15 purposes of workers' compensation, independent  
16 contractors who are sports officials for an entity  
17 sponsoring an interscholastic sports event or for a  
18 public entity or private, nonprofit organization that  
19 sponsors an amateur sports event. See bill for details.  
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