

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Representative(s) Ross and Paul offered the following:

Amendment to Amendment (024565) (with title amendment)

On page 1, between lines 18 and 19,

insert:

Section 1. Section 440.06, Florida Statutes, is amended to read:

440.06 Failure to secure compensation; effect.--Every employer who fails to secure the payment of compensation, as provided in s. 440.10, by failing to meet the requirements of ~~under this chapter as provided in s. 440.38~~ may not, in any suit brought against him or her by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his or her employment, or that the injury was due to the comparative negligence of the employee.

Section 2. Paragraph (a) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.--

1 (1)(a) Every employer coming within the provisions of
2 this chapter, including any brought within the chapter by
3 waiver of exclusion or of exemption, shall be liable for, and
4 shall secure, in accordance with s. 440.38, the payment to his
5 or her employees, or any physician, surgeon, or pharmacist
6 providing services under the provisions of s. 440.13, of the
7 compensation payable under ss. 440.13, 440.15, and 440.16. Any
8 contractor or subcontractor who engages in any public or
9 private construction in the state shall secure and maintain
10 compensation for his or her employees under this chapter as
11 provided in s. 440.38.

12 Section 3. Subsection (1) of section 440.11, Florida
13 Statutes, is amended to read:

14 440.11 Exclusiveness of liability.--

15 (1) Except if an employer acts with the intent to
16 cause injury or death, the liability of an employer prescribed
17 in s. 440.10 shall be exclusive and in place of all other
18 liability, including any vicarious liability, of such employer
19 to any third-party tortfeasor and to the employee, the legal
20 representative thereof, husband or wife, parents, dependents,
21 next of kin, and anyone otherwise entitled to recover damages
22 from such employer at law or in admiralty on account of such
23 injury or death, except that if an employer fails to secure
24 payment of compensation in accordance with s. 440.38 ~~as~~
25 ~~required by this chapter,~~ an injured employee, or the legal
26 representative thereof in case death results from the injury,
27 may elect to claim compensation under this chapter or to
28 maintain an action at law or in admiralty for damages on
29 account of such injury or death. In such action the defendant
30 may not plead as a defense that the injury was caused by
31 negligence of a fellow employee, that the employee assumed the

Amendment No. ____ (for drafter's use only)

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

Amendment No. ____ (for drafter's use only)

1 judgment or settlement under this subsection, the workers'
2 compensation carrier for the employer or the employer, if
3 self-insured, shall have an offset against any workers'
4 compensation benefits to which the employee would be entitled
5 under this chapter. Nothing in this subsection shall create
6 or result in vicarious liability on the part of the employer.

7 Section 4. Subsection (8) is added to section 440.39,
8 Florida Statutes, to read:

9 440.39 Compensation for injuries when third persons
10 are liable.--

11 (8) This section does not impose on the employer or
12 carrier, relative to potential claims against a third party,
13 to preserve evidence pertaining to the industrial accident or
14 to injuries arising therefrom.

15
16

17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 54, line 11, of the amendment

20

21 after the semicolon insert:

22 amending 440.06, F.S.; requiring employers to
23 secure compensation; amending s. 440.10, F.S.;
24 specifying liability for compensation; amending
25 s. 440.11, F.S.; providing for exclusiveness of
26 liability; amending s. 440.39, F.S.; specifying
27 duties of employers and carriers with respect
28 to certain evidence;

29

30

31