

By the Committee on Banking and Insurance; and Senator Posey

311-2195-02

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; redefining the terms
4 "employee" and "independent contractor";
5 prohibiting exemptions from coverage for
6 commercial construction job sites; defining the
7 terms "commercial building" and "residential
8 building"; amending s. 440.05, F.S.; requiring
9 employers to maintain business records
10 specified by rules of the Division of Workers'
11 Compensation, relative to exemptions from
12 coverage; revising requirements for election of
13 exemptions for coverage; amending s. 440.10,
14 F.S.; providing penalties for employers who
15 fail to secure compensation; amending s.
16 440.103, F.S.; specifying requirements for
17 certificates of insurance that must be shown to
18 receive a building permit; amending s. 440.107,
19 F.S.; requiring and authorizing the division to
20 issue stop-work orders and to impose certain
21 penalties against employers who fail to secure
22 compensation; requiring the division to notify
23 the Department of Business and Professional
24 Regulation; amending s. 440.381, F.S.;
25 requiring that the application for workers'
26 compensation coverage contain a sworn statement
27 by the agent; providing a penalty for carriers
28 that fail to comply with audit requirements;
29 revising requirements for audits; amending s.
30 440.40, F.S.; requiring employers to post a
31 notice related to the anti-fraud reward

1 program; amending ss. 489.114 and 489.510,
2 F.S.; revising provisions governing the
3 verification by the division of coverage of
4 persons engaged in the business of contracting;
5 specifying an administrative fine for
6 contractors who are in noncompliance with
7 chapter 440, F.S., to be paid to the Department
8 of Business and Professional Regulation;
9 amending s. 626.9892, F.S.; revising the
10 criteria for the anti-fraud program; requiring
11 the Department of Insurance to conduct a study
12 related to workers' compensation for persons
13 engaged in the construction industry; providing
14 an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraphs (b), (c), and (d) of subsection
19 (14) of section 440.02, Florida Statutes, are amended, and
20 subsections (40) and (41) are added to that section, to read:

21 440.02 Definitions.--When used in this chapter, unless
22 the context clearly requires otherwise, the following terms
23 shall have the following meanings:

24 (14)

25 (b) "Employee" includes any person who is an officer
26 of a corporation and who performs services for remuneration
27 for such corporation within this state, whether or not such
28 services are continuous.

29 1. Any officer of a corporation may elect to be exempt
30 from this chapter by filing written notice of the election
31 with the division as provided in s. 440.05.

1 2. As to officers of a corporation who are actively
2 engaged in the construction industry, no more than three
3 officers may elect to be exempt from this chapter by filing
4 written notice of the election with the division as provided
5 in s. 440.05. However, a corporate officer of a corporation
6 actively engaged in the construction industry may not elect to
7 be exempt, and any exemption obtained by such an officer is
8 not applicable, with respect to any commercial construction
9 job site estimated to be valued at \$250,000 or greater.

10 3. An officer of a corporation who elects to be exempt
11 from this chapter by filing a written notice of the election
12 with the division as provided in s. 440.05 is not an employee.

13
14 Services are presumed to have been rendered to the corporation
15 if the officer is compensated by other than dividends upon
16 shares of stock of the corporation which the officer owns.

17 (c)1. "Employee" includes a sole proprietor or a
18 partner who devotes full time to the proprietorship or
19 partnership and, except as provided in this paragraph, elects
20 to be included in the definition of employee by filing notice
21 thereof as provided in s. 440.05. Partners or sole proprietors
22 actively engaged in the construction industry are considered
23 employees unless they elect to be excluded from the definition
24 of employee by filing written notice of the election with the
25 division as provided in s. 440.05. However, no more than three
26 partners in a partnership that is actively engaged in the
27 construction industry may elect to be excluded. A sole
28 proprietor or partner who is actively engaged in the
29 construction industry and who elects to be exempt from this
30 chapter by filing a written notice of the election with the
31 division as provided in s. 440.05 is not an employee. For

1 purposes of this chapter, an independent contractor is an
2 employee unless he or she meets all of the conditions set
3 forth in subparagraph (d)1.

4 2. Notwithstanding the provisions of subparagraph 1.,
5 the term "employee" includes a sole proprietor or partner
6 actively engaged in the construction industry with respect to
7 any commercial construction job site estimated to be valued at
8 \$250,000 or greater. Any such employee may not elect to be
9 exempt, and any exemption obtained is not applicable, with
10 respect to work performed at such a commercial job site.

11 (d) "Employee" does not include:

12 1. An independent contractor, if:

13 a. The independent contractor maintains a separate
14 business with his or her own work facility, truck, equipment,
15 materials, or similar accommodations;

16 b. The independent contractor holds or has applied for
17 a federal employer identification number, unless the
18 independent contractor is a sole proprietor who is not
19 required to obtain a federal employer identification number
20 under state or federal requirements;

21 c. The independent contractor performs or agrees to
22 perform specific services or work for specific amounts of
23 money and controls the means of performing the services or
24 work;

25 d. The independent contractor incurs the principal
26 expenses related to the service or work that he or she
27 performs or agrees to perform;

28 e. The independent contractor is responsible for the
29 satisfactory completion of work or services that he or she
30 performs or agrees to perform and is or could be held liable
31 for a failure to complete the work or services;

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

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

6 h. The independent contractor has continuing or
7 recurring business liabilities or obligations; and

8 i. The success or failure of the independent
9 contractor's business depends on the relationship of business
10 receipts to expenditures.

11
12 However, the determination as to whether an individual
13 included in the Standard Industrial Classification Manual of
14 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
15 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
16 2448, or 2449, or a newspaper delivery person, is an
17 independent contractor is governed not by the criteria in this
18 paragraph but by common-law principles, giving due
19 consideration to the business activity of the individual.
20 Notwithstanding the provisions of this paragraph or any other
21 provision of this chapter, with respect to any commercial
22 construction job site estimated to be valued at \$250,000 or
23 greater, a person who is actively engaged in the construction
24 industry is not an independent contractor and is either an
25 employer or an employee who may not be exempt from the
26 coverage requirements of this chapter.

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

30 3. Bands, orchestras, and musical and theatrical
31 performers, including disk jockeys, performing in licensed

1 premises as defined in chapter 562, if a written contract
2 evidencing an independent contractor relationship is entered
3 into before the commencement of such entertainment.

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

15 5. A person whose employment is both casual and not in
16 the course of the trade, business, profession, or occupation
17 of the employer.

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

25 a. Persons who serve in private nonprofit agencies and
26 who receive no compensation other than expenses in an amount
27 less than or equivalent to the standard mileage and per diem
28 expenses provided to salaried employees in the same agency or,
29 if such agency does not have salaried employees who receive
30 mileage and per diem, then such volunteers who receive no
31 compensation other than expenses in an amount less than or

1 equivalent to the customary mileage and per diem paid to
2 salaried workers in the community as determined by the
3 division; and

4 b. Volunteers participating in federal programs
5 established under Pub. L. No. 93-113.

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

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

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

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

29 11. A person who performs services as a sports
30 official for an entity sponsoring an interscholastic sports
31 event or for a public entity or private, nonprofit

1 organization that sponsors an amateur sports event. For
2 purposes of this subparagraph, such a person is an independent
3 contractor. For purposes of this subparagraph, the term
4 "sports official" means any person who is a neutral
5 participant in a sports event, including, but not limited to,
6 umpires, referees, judges, linespersons, scorekeepers, or
7 timekeepers. This subparagraph does not apply to any person
8 employed by a district school board who serves as a sports
9 official as required by the employing school board or who
10 serves as a sports official as part of his or her
11 responsibilities during normal school hours.

12 (40) "Commercial building" means any building or
13 structure intended for commercial or industrial use, or any
14 building or structure intended for multifamily use of more
15 than four dwelling units, as well as any accessory use
16 structures constructed in conjunction with the principle
17 structure. The term, "commercial building," does not include
18 the conversion of any existing residential building to a
19 commercial building.

20 (41) "Residential building" means any building or
21 structure intended for residential use containing four or
22 fewer dwelling units and any structures intended as an
23 accessory use to the residential structure.

24 Section 2. Subsections (10), (11), (12), and (13) are
25 added to section 440.05, Florida Statutes, to read:

26 440.05 Election of exemption; revocation of election;
27 notice; certification.--

28 (10) Each employer conducting business in this state
29 shall maintain business records as specified by the division
30 by rule, which rules must include the provision that any
31 corporation with exempt officers and any partnership with

1 exempt partners must maintain written statements of those
2 exempted persons affirmatively acknowledging each such
3 individual's exempt status.

4 (11) Any sole proprietor or partner claiming an
5 exemption under this section shall maintain a copy of his or
6 her federal income tax records for each of the immediately
7 previous 3 years in which he or she claims an exemption. Such
8 federal income tax records must include a complete copy of the
9 following for each year in which an exemption is claimed:

10 (a) For sole proprietors, a copy of Federal Income Tax
11 Form 1040 and its accompanying Schedule C;

12 (b) For partners, a copy of the partner's Federal
13 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
14 Form 1040 and its accompanying Schedule E.

15
16 A sole proprietor or partner shall produce, upon request by
17 the division, a copy of those documents together with a
18 statement by the sole proprietor or partner that the tax
19 records provided are true and accurate copies of what the sole
20 proprietor or partner has filed with the federal Internal
21 Revenue Service. The statement must be signed under oath by
22 the sole proprietor or partner and must be notarized. The
23 division shall issue a stop-work order under s. 440.107(5) to
24 any sole proprietor or partner who fails or refuses to produce
25 a copy of the tax records and affidavit required under this
26 paragraph to the division within 3 business days after the
27 request is made.

28 (12) For those sole proprietors or partners that have
29 not been in business long enough to provide the information
30 required of an established business, the division shall
31 require such sole proprietor or partner to provide copies of

1 the most recently filed Federal Income Tax Form 1040. The
2 division shall establish by rule such other criteria to show
3 that the sole proprietor or partner intends to engage in a
4 legitimate enterprise within the construction industry and is
5 not otherwise attempting to evade the requirements of this
6 section. The division shall establish by rule the form and
7 format of financial information required to be submitted by
8 such employers.

9 (13) Any corporate officer claiming an exemption under
10 this section must be listed on the records of this state's
11 Secretary of State, Division of Corporations, as a corporate
12 officer. If the person who claims an exemption as a corporate
13 officer is not so listed on the records of the Secretary of
14 State, the individual must provide to the division, upon
15 request by the division, a notarized affidavit stating that
16 the individual is a bona fide officer of the corporation and
17 stating the date his or her appointment or election as a
18 corporate officer became or will become effective. The
19 statement must be signed under oath by both the officer and
20 the president or chief operating officer of the corporation
21 and must be notarized. The division shall issue a stop-work
22 order under s. 440.107(1) to any corporation who employs a
23 person who claims to be exempt as a corporate officer but who
24 fails or refuses to produce the documents required under this
25 subsection to the division within 3 business days after the
26 request is made.

27 Section 3. Subsection (1) of section 440.10, Florida
28 Statutes, is amended to read:

29 440.10 Liability for compensation.--

30 (1)(a) Every employer coming within the provisions of
31 this chapter, including any brought within the chapter by

1 waiver of exclusion or of exemption, shall be liable for, and
2 shall secure, the payment to his or her employees, or any
3 physician, surgeon, or pharmacist providing services under the
4 provisions of s. 440.13, of the compensation payable under ss.
5 440.13, 440.15, and 440.16. Any contractor or subcontractor
6 who engages in any public or private construction in the state
7 shall secure and maintain compensation for his or her
8 employees under this chapter as provided in s. 440.38.

9 (b) In case a contractor sublets any part or parts of
10 his or her contract work to a subcontractor or subcontractors,
11 all of the employees of such contractor and subcontractor or
12 subcontractors engaged on such contract work shall be deemed
13 to be employed in one and the same business or establishment;
14 and the contractor shall be liable for, and shall secure, the
15 payment of compensation to all such employees, except to
16 employees of a subcontractor who has secured such payment.

17 (c) A contractor may require a subcontractor to
18 provide evidence of workers' compensation insurance or a copy
19 of his or her certificate of election. A subcontractor
20 electing to be exempt as a sole proprietor, partner, or
21 officer of a corporation shall provide a copy of his or her
22 certificate of election to the contractor.

23 (d)1. If a contractor becomes liable for the payment
24 of compensation to the employees of a subcontractor who has
25 failed to secure such payment in violation of s. 440.38, the
26 contractor or other third-party payor shall be entitled to
27 recover from the subcontractor all benefits paid or payable
28 plus interest unless the contractor and subcontractor have
29 agreed in writing that the contractor will provide coverage.

30 2. If a contractor or third-party payor becomes liable
31 for the payment of compensation to the employee of a

1 subcontractor who is actively engaged in the construction
2 industry and has elected to be exempt from the provisions of
3 this chapter, but whose election is invalid, the contractor or
4 third-party payor may recover from the claimant, partnership,
5 or corporation all benefits paid or payable plus interest,
6 unless the contractor and the subcontractor have agreed in
7 writing that the contractor will provide coverage.

8 (e) A subcontractor is not liable for the payment of
9 compensation to the employees of another subcontractor on such
10 contract work and is not protected by the
11 exclusiveness-of-liability provisions of s. 440.11 from action
12 at law or in admiralty on account of injury of such employee
13 of another subcontractor.

14 (f) If an employer ~~willfully~~ fails to secure
15 compensation as required by this chapter, the division may
16 assess against the employer a penalty not to exceed \$5,000 for
17 each employee of that employer who is classified by the
18 employer as an independent contractor but who is found by the
19 division to not meet the criteria for an independent
20 contractor that are set forth in s. 440.02. The division shall
21 adopt rules to administer the provisions of this paragraph.

22 (g) For purposes of this section, a person is
23 conclusively presumed to be an independent contractor if:

24 1. The independent contractor provides the general
25 contractor with an affidavit stating that he or she meets all
26 the requirements of s. 440.02(14)(d); and

27 2. The independent contractor provides the general
28 contractor with a valid certificate of workers' compensation
29 insurance or a valid certificate of exemption issued by the
30 division.

31

1 A sole proprietor, partner, or officer of a corporation who
2 elects exemption from this chapter by filing a certificate of
3 election under s. 440.05 may not recover benefits or
4 compensation under this chapter. An independent contractor who
5 provides the general contractor with both an affidavit stating
6 that he or she meets the requirements of s. 440.02(14)(d) and
7 a certificate of exemption is not an employee under s.
8 440.02(14)(c) and may not recover benefits under this chapter.
9 For purposes of determining the appropriate premium for
10 workers' compensation coverage, carriers may not consider any
11 person who meets the requirements of this paragraph to be an
12 employee.

13 Section 4. Section 440.13, Florida Statutes, is
14 amended to read:

15 440.103 Building permits; identification of minimum
16 premium policy.--Except as otherwise provided in this chapter,
17 every employer shall, as a condition to receiving a building
18 permit, show proof that it has secured compensation for its
19 employees under this chapter as provided in ss. 440.10 and
20 440.38. Such proof of compensation must be evidenced by a
21 certificate of insurance coverage issued by the carrier, a
22 valid exemption certificate approved by the division, or a
23 copy of the employer's authority to self-insure and shall be
24 presented each time the employer applies for a building
25 permit. Each certificate of insurance shall indicate the sites
26 for which coverage applies.As provided in s. 627.413(5), each
27 certificate of insurance coverage must show, on its face,
28 whether or not coverage is secured under the minimum premium
29 provisions of rules adopted by rating organizations licensed
30 by the Department of Insurance. The words "minimum premium
31

1 policy" or equivalent language shall be typed, printed,
2 stamped, or legibly handwritten.

3 Section 5. Subsections (5) and (7) of section 440.107,
4 Florida Statutes, are amended, and subsection (12) is added to
5 that section to read:

6 440.107 Division powers to enforce employer compliance
7 with coverage requirements.--

8 (5) Whenever the division determines that an employer
9 who is required to secure the payment to his or her employees
10 of the compensation provided for by this chapter has failed to
11 do so, such failure shall be deemed an immediate serious
12 danger to public health, safety, or welfare sufficient to
13 justify service by the division of a stop-work order on the
14 employer, requiring the cessation of all business operations
15 at the place of employment or job site. If the division makes
16 such a determination, the division shall issue a stop-work
17 order within 72 hours.The order shall take effect upon the
18 date of service upon the employer, unless the employer
19 provides evidence satisfactory to the division of having
20 secured any necessary insurance or self-insurance and pays a
21 civil penalty to the division, to be deposited by the division
22 into the Workers' Compensation Administration Trust Fund, in
23 the amount of \$100 per day for each day the employer was not
24 in compliance with this chapter.

25 (7) In addition to any penalty, stop-work order, or
26 injunction, the division shall ~~may~~ assess against any
27 employer, who has failed to secure the payment of compensation
28 as required by this chapter, a penalty in the following amount
29 of:

30 (a) An amount equal to at least the amount that the
31 employer would have paid or up to twice the amount the

1 employer would have paid during periods it illegally failed to
2 secure payment of compensation in the preceding 3-year period
3 based on the employer's payroll during the preceding 3-year
4 period; or

5 (b) One thousand dollars, whichever is greater.

6
7 Any penalty assessed under this subsection is due within 30
8 days after the date on which the employer is notified, except
9 that, if the division has posted a stop-work order or obtained
10 injunctive relief against the employer, payment is due, in
11 addition to those conditions set forth in this section, as a
12 condition to relief from a stop-work order or an injunction.
13 Interest shall accrue on amounts not paid when due at the rate
14 of 1 percent per month. The division shall adopt rules to
15 administer this section.

16 (12) If the division finds that an employer who is
17 certified or registered under part I or part II of chapter 489
18 and who is required to secure payment of the compensation
19 provided for by this chapter to his or her employees has
20 failed to do so, the division shall immediately notify the
21 Department of Business and Professional Regulation.

22 Section 6. Subsections (2), (3), and (6) of section
23 440.381, Florida Statutes, are amended to read:

24 440.381 Application for coverage; reporting payroll;
25 payroll audit procedures; penalties.--

26 (2) The application must contain a statement that the
27 filing of an application containing false, misleading, or
28 incomplete information with the purpose of avoiding or
29 reducing the amount of premiums for workers' compensation
30 coverage is a felony of the third degree, punishable as
31 provided in s. 775.082, s. 775.083, or s. 775.084. The

1 application must contain a sworn statement by the employer
2 attesting to the accuracy of the information submitted and
3 acknowledging the provisions of former s. 440.37(4). The
4 application must contain a sworn statement by the agent
5 attesting that the agent explained to the employer or officer
6 the classification codes that are used for premium
7 calculations.

8 (3) The Department of Insurance and the Department of
9 Labor and Employment Security shall establish by rule minimum
10 requirements for audits of payroll and classifications in
11 order to ensure that the appropriate premium is charged for
12 workers' compensation coverage. The rules shall ensure that
13 audits performed by both carriers and employers are adequate
14 to provide that all sources of payments to employees,
15 subcontractors, and independent contractors have been reviewed
16 and that the accuracy of classification of employees has been
17 verified. The rules shall provide that employers in all
18 classes other than the construction class be audited not less
19 frequently than biennially and may provide for more frequent
20 audits of employers in specified classifications based on
21 factors such as amount of premium, type of business, loss
22 ratios, or other relevant factors. In no event shall employers
23 in the construction class, generating more than the amount of
24 premium required to be experience rated, be audited less than
25 annually. The annual audits required for construction classes
26 shall consist of physical onsite audits. Failure by the
27 carrier to comply with these auditing requirements shall be a
28 violation of the Insurance Code, as provided in s. 624.4211,
29 and shall result in a fine of at least \$1,000 for each
30 instance of noncompliance. Payroll verification audit rules
31 must include, but need not be limited to, the use of state and

1 federal reports of employee income, payroll and other
2 accounting records, certificates of insurance maintained by
3 subcontractors, and duties of employees. At the completion of
4 an audit, the employer or officer of the corporation and the
5 auditor must print and sign their names on the audit document
6 and attach proof of identification to the audit document.

7 (6) If an employer ~~intentionally~~ understates or
8 conceals payroll, or misrepresents or conceals employee duties
9 so as to avoid proper classification for premium calculations,
10 or misrepresents or conceals information pertinent to the
11 computation and application of an experience rating
12 modification factor, the employer, or the employer's agent or
13 attorney, shall pay to the insurance carrier a penalty of 10
14 times the amount of the difference in premium paid and the
15 amount the employer should have paid and reasonable attorney's
16 fees. The penalty may be enforced in the circuit courts of
17 this state.

18 Section 7. Section 440.40, Florida Statutes, is
19 amended to read:

20 440.40 Compensation notice.--Every employer who has
21 secured compensation under the provisions of this chapter
22 shall keep posted in a conspicuous place or places in and
23 about her or his place or places of business typewritten or
24 printed notices, in accordance with a form prescribed by the
25 division, the following:

26 (1) A notice stating that such employer has secured
27 the payment of compensation in accordance with the provisions
28 of this chapter. Such notices shall contain the name and
29 address of the carrier, if any, with whom the employer has
30 secured payment of compensation and the date of the expiration
31 of the policy. The division may by rule prescribe the form of

1 the notices and require carriers to provide the notices to
2 policyholders.

3 (2) A notice stating: "Anti-Fraud Reward
4 Program.--Rewards of up to \$25,000 may be paid to persons
5 providing information to the Department of Insurance leading
6 to the arrest and conviction of persons committing insurance
7 fraud, including employers who illegally fail to obtain
8 workers' compensation coverage. Persons may report suspected
9 fraud to the department at...(Phone No.).... A person is not
10 subject to civil liability for furnishing such information, if
11 such person acts without malice, fraud, or bad faith."

12 Section 8. Section 489.114, Florida Statutes, is
13 amended to read:

14 489.114 Evidence of workers' compensation
15 coverage.--Except as provided in s. 489.115(5)(d), any person,
16 business organization, or qualifying agent engaged in the
17 business of contracting in this state and certified or
18 registered under this part shall, as a condition precedent to
19 the issuance or renewal of a certificate, registration, or
20 certificate of authority of the contractor, provide to the
21 Construction Industry Licensing Board, as provided by board
22 rule, evidence of workers' compensation coverage pursuant to
23 chapter 440. In the event that the Division of Workers'
24 Compensation of the Department of Labor and Employment
25 Security receives notice of the cancellation of a policy of
26 workers' compensation insurance insuring a person or entity
27 governed by this section, the Division of Workers'
28 Compensation shall certify and identify all persons or
29 entities by certification or registration license number to
30 the department after verification is made by the Division of
31 Workers' Compensation that ~~such cancellation has occurred or~~

1 ~~that~~ persons or entities governed by this section are no
2 longer covered by workers' compensation insurance. Such
3 certification and verification by the Division of Workers'
4 Compensation may ~~shall~~ result ~~solely~~ from records furnished to
5 the Division of Workers' Compensation by the persons or
6 entities governed by this section or an investigation
7 completed by the Division of Workers' Compensation. The
8 department shall notify the persons or entities governed by
9 this section who have been determined to be in noncompliance
10 with chapter 440, and the persons or entities notified shall
11 provide certification of compliance with chapter 440 to the
12 department and pay an administrative fine in the amount of
13 \$500 ~~as provided by rule.~~ The failure to maintain workers'
14 compensation coverage as required by law shall be grounds for
15 the board to revoke, suspend, or deny the issuance or renewal
16 of a certificate, registration, or certificate of authority of
17 the contractor under the provisions of s. 489.129.

18 Section 9. Section 489.510, Florida Statutes, is
19 amended to read:

20 489.510 Evidence of workers' compensation
21 coverage.--Except as provided in s. 489.515(3)(b), any person,
22 business organization, or qualifying agent engaged in the
23 business of contracting in this state and certified or
24 registered under this part shall, as a condition precedent to
25 the issuance or renewal of a certificate or registration of
26 the contractor, provide to the Electrical Contractors'
27 Licensing Board, as provided by board rule, evidence of
28 workers' compensation coverage pursuant to chapter 440. In
29 the event that the Division of Workers' Compensation of the
30 Department of Labor and Employment Security receives notice of
31 the cancellation of a policy of workers' compensation

1 insurance insuring a person or entity governed by this
2 section, the Division of Workers' Compensation shall certify
3 and identify all persons or entities by certification or
4 registration license number to the department after
5 verification is made by the Division of Workers' Compensation
6 that ~~such cancellation has occurred or that~~ persons or
7 entities governed by this section are no longer covered by
8 workers' compensation insurance. Such certification and
9 verification by the Division of Workers' Compensation may
10 shall result ~~solely~~ from records furnished to the Division of
11 Workers' Compensation by the persons or entities governed by
12 this section or an investigation completed by the Division of
13 Workers' Compensation. The department shall notify the persons
14 or entities governed by this section who have been determined
15 to be in noncompliance with chapter 440, and the persons or
16 entities notified shall provide certification of compliance
17 with chapter 440 to the department and pay an administrative
18 fine in the amount of \$500 ~~as provided by rule~~. The failure
19 to maintain workers' compensation coverage as required by law
20 shall be grounds for the board to revoke, suspend, or deny the
21 issuance or renewal of a certificate or registration of the
22 contractor under the provisions of s. 489.533.

23 Section 10. Subsection (2) of section 626.9892,
24 Florida Statutes, is amended to read:

25 626.9892 Anti-Fraud Reward Program; reporting of
26 insurance fraud.--

27 (2) The department may pay rewards of up to \$25,000 to
28 persons providing information leading to the arrest and
29 conviction of persons committing ~~complex or organized~~ crimes
30 investigated by the Division of Insurance Fraud arising from
31

1 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989,
2 or s. 817.234.

3 Section 11. The Department of Insurance, in
4 consultation with the board of governors of the joint
5 underwriting association authorized under s. 627.311, Florida
6 Statutes, shall conduct a study to evaluate the availability
7 and affordability of workers' compensation insurance coverage
8 for persons engaged primarily in the construction industry.
9 The scope of the study shall include a review of workers'
10 compensation insurance currently provided or required in other
11 states and possible alternative coverages. The department
12 shall submit a report with recommendations to the President of
13 the Senate and the Speaker of the House of Representatives on
14 or before February 1, 2003.

15 Section 12. This act shall take effect October 1,
16 2002.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1612

4 This committee substitute makes the following changes:

- 5 1. Eliminates all exemptions from coverage for commercial
6 construction job sites valued at \$250,000 or more,
7 rather than limiting exemptions at a residential or
8 commercial construction to three per trade per job site;
- 9 2. Eliminates the independent contractor classification for
10 a person engaged in the construction industry at certain
11 commercial job sites. A person would either be an
12 employer or an employee;
- 13 3. Requires a sole proprietor or partner that has not been
14 in business long enough to provide the tax information
15 required of an established business, to submit the
16 individual's most recently filed 1040 and other
17 information as the Division of Workers' Compensation may
18 require;
- 19 4. Requires the Division of Workers' Compensation to issue
20 a stop-work order within 72 hours and fine an employer
21 an amount equal to the amount the employer would have
22 paid if the division determines that an employer has
23 failed to obtain coverage;
- 24 5. Authorizes the Division of Workers' Compensation to
25 impose a \$5,000 penalty against an employer for each
26 employee who is classified as an independent contractor
27 but who is found to be an employee, regardless of
28 whether the employer willfully failed to secure
29 coverage;
- 30 6. Provides that if an insurance carrier fails to comply
31 with current auditing requirements, including mandatory
annual audits for construction employers above a certain
premium, such a violation would be considered a
violation of the Insurance Code and the carrier would be
subject to a mandatory fine of at least \$1,000 for each
instance of noncompliance;
7. Requires the employer or officer of the corporation and
the auditor to sign the audit documents;
8. Requires the Division of Workers' Compensation to notify
the Department of Business and Professional Regulation,
if it finds that a contractor has failed to obtain
coverage;
9. Requires applications for coverage to contain a sworn
statement from the agent attesting that the agent
explained to the employer or officer of the corporation
the classification codes that are used.
10. Requires employers to post a notice informing employees
of the Anti-Fraud Reward Program, for information
leading to the arrest and conviction of persons

- 1 committing insurance fraud, including employers who
2 illegally fail to obtain workers' compensation coverage;
- 3 11. Revises the eligibility requirements for the Anti-Fraud
4 Reward Program by providing that the program would no
5 longer be limited to "complex or organized crimes."
6
- 7 12. Requires that insurance certificates presented by
8 contractors applying for a building permit indicate the
9 states for which coverage applies;
- 10 13. Requires the Department of Business and Professional
11 Regulation to impose an administrative fine in the
12 amount of \$500 on a building contractor or a electrical
13 or alarm system contractor for failure to maintain
14 workers' compensation; and
- 15 14. Requires the Department of Insurance to conduct a study
16 to evaluate the availability and affordability of
17 workers' compensation insurance coverage for the
18 construction industry, including possible alternative
19 coverages.
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