

By Senator Bennett

21-606B-04

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.055, F.S.; requiring an
4 employer with fewer than four employees who has
5 elected alternative coverage to workers'
6 compensation to post notice at each worksite to
7 this effect; amending s. 440.075, F.S.;
8 providing that every corporate officer who
9 elects alternative coverage must proceed at
10 common law in any action to recover damages for
11 injury or death brought against the employer;
12 amending s. 440.077, F.S.; providing that an
13 officer of a corporation who elects alternative
14 coverage may not recover workers' compensation
15 benefits; creating s. 440.095, F.S.; providing
16 for alternative coverage to regular workers'
17 compensation; prescribing benefits included in
18 alternative coverage; prescribing a schedule of
19 benefits for specified injuries; authorizing
20 the Financial Services Commission to adopt
21 rules specifying policies providing alternative
22 coverages; amending s. 440.02, F.S.; redefining
23 the terms "employee," "employer," and
24 "employment" for purposes of unemployment
25 compensation coverage; deleting the power of
26 corporate officers and certain others to elect
27 exemption from workers' compensation coverage;
28 amending s. 440.04, F.S.; providing that a
29 corporate officer who has elected alternative
30 coverage may revoke that election; amending s.
31 440.05, F.S.; prescribing procedures for giving

1 notice of election of alternative coverage and
2 of revocation of that election; amending s.
3 440.10, F.S.; providing for subcontractors to
4 give evidence of alternative coverage to
5 contractors, when applicable; amending s.
6 440.105, F.S.; providing penalties for an
7 employer that coerces an employee into electing
8 alternative coverage; amending ss. 489.115,
9 489.515, F.S., to conform; providing an
10 effective date.

11

12 Be It Enacted by the Legislature of the State of Florida:

13

14 Section 1. Section 440.055, Florida Statutes, is
15 amended to read:

16 440.055 Notice requirements.--An employer who employs
17 fewer than four employees, who is permitted by law to elect
18 alternative coverage ~~not to secure payment of compensation~~
19 under this chapter, and who elects ~~not~~ to do so shall post
20 clear written notice in a conspicuous location at each
21 worksite directed to all employees and other persons
22 performing services at the worksite of their lack of
23 entitlement to full workers' compensation benefits under this
24 chapter and their entitlement to reduced, alternative coverage
25 benefits.

26 Section 2. Section 440.075, Florida Statutes, is
27 amended to read:

28 440.075 When corporate officer rejects chapter;
29 effect.--Every corporate officer who elects alternative
30 coverage as permitted by ~~to reject~~ this chapter shall, in any
31 action to recover damages for injury or death brought against

1 the corporate employer, proceed as at common law, and the
2 employer in such suit may avail itself of all defenses that
3 exist at common law.

4 Section 3. Section 440.077, Florida Statutes, is
5 amended to read:

6 440.077 When a corporate officer rejects chapter,
7 effect.--An officer of a corporation who is permitted to elect
8 alternative coverage ~~an exemption~~ under this chapter ~~and who~~
9 ~~elects to be exempt from the provisions of this chapter~~ may
10 not recover benefits under this chapter other than the
11 benefits provided by the alternative coverage.

12 Section 4. Section 440.095, Florida Statutes, is
13 created to read:

14 440.095 Alternative coverage.--

15 (1) In lieu of workers' compensation coverage as
16 provided in ss. 440.09-440.093 and the benefits for such
17 coverage specified in this chapter, eligible persons may elect
18 alternative coverage under this section. Such alternative
19 coverage must provide coverage for accidents, both
20 work-related and not work-related, but not coverage for
21 illnesses and other health problems that do not result from an
22 accident. Alternative coverage must provide, at a minimum, the
23 benefits specified in this section.

24 (2) Persons who are eligible to elect alternative
25 coverage are:

26 (a) An employer with fewer than four employees.

27 (b) A sole proprietor or a partner who is not engaged
28 in the construction industry.

29 (c) An officer of a corporation, as provided in s.
30 440.02(15)(b).

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1 (3) Disability benefits are 60 percent of preaccident
2 wages for up to 12 months, not to exceed \$1,500 per month,
3 payable during the continuance of the disability, beginning
4 after a 7-day elimination period after the date of the covered
5 accident.

6 (4) Accidental death and dismemberment benefits are a
7 death benefit of \$100,000 and dismemberment benefits subject
8 to the following schedule:

- 9 (a) For loss of an arm \$20,000.
- 10 (b) For loss of a hand \$10,000.
- 11 (c) For loss of a leg \$20,000.
- 12 (d) For loss of a foot \$10,000.
- 13 (e) For loss of one eye \$15,000.
- 14 (f) For loss of a thumb \$5,000.
- 15 (g) For loss of a second finger \$2,500.
- 16 (h) For loss of a third finger \$2,000.
- 17 (i) For loss of a fourth finger \$1,000.
- 18 (j) For loss of a fifth finger \$750.
- 19 (k) For loss of a great toe \$2,000.
- 20 (l) For loss of a toe other than great toe \$750.

21 (5) In addition to the benefits under subsection (3),
22 a catastrophic loss benefit of \$100,000 shall be payable after
23 a 365-day elimination period after the date of the covered
24 accident, for an injury that results in total and permanent:

- 25 (a) Loss of both hands or both feet;
- 26 (b) Loss or loss of use of both arms or both legs;
- 27 (c) Loss or loss of use of one arm and one leg;
- 28 (d) Loss of one hand and one foot;
- 29 (e) Loss of sight in both eyes;
- 30 (f) Loss of hearing in both ears; or
- 31 (g) Loss of the ability to speak.

- 1 (6) Hospital care benefits are as follows:
2 (a) Hospital admission \$750 per admission per
3 accident.
4 (b) Hospital confinement \$200 per day up to 365
5 days.
6 (c) Hospital intensive care \$400 per day up to 15
7 days.
8 (7) Medical indemnity benefits are as follows:
9 (a) Ambulance \$100 per trip.
10 (b) Air ambulance \$500 per trip.
11 (c) Emergency room treatment \$150 per accident.
12 (d) Initial doctor's office visit .. \$50 per accident.
13 (e) Open abdominal or thoracic surgery \$1,000.
14 (f) Blood/plasma/platelets \$300.
15 (g) Dislocation (separated joint). For an open
16 (surgical) reduction of a dislocation of the following bones,
17 which amounts are reduced by 50 percent for closed
18 (nonsurgical) reduction:
19 1. Hip \$4,000.
20 2. Knee \$2,000.
21 3. Ankle bone or bones of the foot \$1,600.
22 4. Collarbone (sternoclavicular) \$1,000.
23 5. Lower jaw, shoulder, elbow, wrist \$600.
24 6. Bone or bones of the hand \$600.
25 7. Collarbone (acromioclavicular and separation), one
26 toe or finger \$200.
27 (h) Fracture (broken bone). For an open (surgical)
28 reduction of a fracture of the following bones, which amounts
29 are reduced by 50 percent for closed (nonsurgical) reduction:
30 1. Skull/depressed \$5,000.
31 2. Skull/simple nondepressed \$2,000.

1	<u>3. Hip, thigh</u>	<u>\$3,000.</u>
2	<u>4. Body of vertebrae, pelvis, leg</u>	<u>\$1,600.</u>
3	<u>5. Bones of face or nose</u>	<u>\$700.</u>
4	<u>6. Upper jaw, maxilla</u>	<u>\$700.</u>
5	<u>7. Upper area between elbow and shoulder</u>	<u>\$700.</u>
6	<u>8. Lower jaw, mandible, kneecap, ankle, foot . . .</u>	<u>\$600.</u>
7	<u>9. Shoulder blade, collarbone, vertebral processes</u>	
8	<u>.</u>	<u>\$600.</u>
9	<u>10. Forearm, wrist, hand</u>	<u>\$600.</u>
10	<u>11. Rib</u>	<u>\$500.</u>
11	<u>12. Coccyx</u>	<u>\$400.</u>
12	<u>13. Finger, toe</u>	<u>\$100.</u>
13	<u>(i) Burn (based on size and degree) .</u>	<u>\$750 to \$10,000.</u>
14	<u>(j) Concussion</u>	<u>\$100.</u>
15	<u>(k) Emergency dental work</u>	<u>\$50 to \$150.</u>
16	<u>(l) Eye injury</u>	<u>\$200.</u>
17	<u>(m) Torn knee cartilage</u>	<u>\$500.</u>
18	<u>(n) Lacerations (based on size)</u>	<u>\$25 to \$400.</u>
19	<u>(o) Ruptured disc</u>	<u>\$400.</u>
20	<u>(p) Tendon/ligament/rotator cuff</u>	<u>\$600.</u>
21	<u>(q) Followup care:</u>	
22	<u>1. Accident followup treatment</u>	<u>\$50 (limit of one</u>
23	<u>visit, payable after emergency treatment, hospital discharge,</u>	
24	<u>or initial doctor's office visit).</u>	
25	<u>2. Appliances (wheelchair, crutches)</u>	<u>\$100.</u>
26	<u>3. Physical therapy</u>	<u>\$25 per treatment up to six</u>
27	<u>treatments.</u>	
28	<u>4. Prosthetic devices</u>	<u>\$1,000.</u>
29	<u>(8) The Office of Insurance Regulation shall determine</u>	
30	<u>whether a policy meets the minimum requirements specified in</u>	
31	<u>this section. Policies determined to meet such requirements</u>	

1 and the applications for such policies shall include the
2 following statement: "This policy is an accident-only policy
3 approved by the Florida Office of Insurance Regulation as
4 alternative coverage to workers' compensation coverage, but
5 only for persons legally allowed to elect alternative
6 coverage. Persons allowed to elect alternative coverage are:
7 employers with three or fewer employees; sole proprietors not
8 engaged in the construction industry; and officers and
9 directors of corporations, limited to three officers and
10 directors of a corporation, engaged in the construction
11 industry."

12 (9) The Financial Services Commission may, by rule,
13 specify additional requirements for alternative benefit
14 policies consistent with this section.

15 Section 5. Subsections (15), (16), and (17) of section
16 440.02, Florida Statutes, are amended to read:

17 440.02 Definitions.--When used in this chapter, unless
18 the context clearly requires otherwise, the following terms
19 shall have the following meanings:

20 (15)(a) "Employee" means any person who receives
21 remuneration from an employer for the performance of any work
22 or service while engaged in any employment under any
23 appointment or contract for hire or apprenticeship, express or
24 implied, oral or written, whether lawfully or unlawfully
25 employed, and includes, but is not limited to, aliens and
26 minors.

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

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1 1. Any officer of a corporation may elect alternative
2 coverage under ~~to be exempt from~~ this chapter by filing
3 written notice of the election with the department as provided
4 in s. 440.05.

5 2. As to officers of a corporation who are engaged in
6 the construction industry, no more than three officers of a
7 corporation or of any group of affiliated corporations may
8 elect alternative coverage under ~~to be exempt from~~ this
9 chapter by filing written notice of the election with the
10 department as provided in s. 440.05. Officers must be
11 shareholders, each owning at least 10 percent of the stock of
12 such corporation and listed as an officer of such corporation
13 with the Division of Corporations of the Department of State,
14 in order to elect alternative coverage ~~exemptions~~ under this
15 chapter. For purposes of this subparagraph, the term
16 "affiliated" means and includes one or more corporations or
17 entities, any one of which is a corporation engaged in the
18 construction industry, under the same or substantially the
19 same control of a group of business entities which are
20 connected or associated so that one entity controls or has the
21 power to control each of the other business entities. The term
22 "affiliated" includes, but is not limited to, the officers,
23 directors, executives, shareholders active in management,
24 employees, and agents of the affiliated corporation. The
25 ownership by one business entity of a controlling interest in
26 another business entity or a pooling of equipment or income
27 among business entities shall be prima facie evidence that one
28 business is affiliated with the other.

29 3. An officer of a corporation who elects alternative
30 coverage under ~~to be exempt from~~ this chapter by filing a
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1 written notice of the election with the department as provided
2 in s. 440.05 is not an employee.

3
4 Services are presumed to have been rendered to the corporation
5 if the officer is compensated by other than dividends upon
6 shares of stock of the corporation which the officer owns.

7 (c) "Employee" includes:

8 1. A sole proprietor or a partner who is not engaged
9 in the construction industry, devotes full time to the
10 proprietorship or partnership, and has not elected alternative
11 coverage under this chapter ~~elects to be included in the~~
12 ~~definition of employee~~ by filing notice thereof as provided in
13 s. 440.05.

14 2. All persons who are being paid by a construction
15 contractor as a subcontractor, unless the subcontractor has
16 validly elected alternative coverage ~~an exemption~~ as permitted
17 by this chapter, or has otherwise secured the payment of
18 compensation coverage as a subcontractor, consistent with s.
19 440.10, for work performed by or as a subcontractor.

20 3. An independent contractor working or performing
21 services in the construction industry.

22 4. A sole proprietor who engages in the construction
23 industry and a partner or partnership that is engaged in the
24 construction industry.

25 (d) "Employee" does not include:

26 1. An independent contractor who is not engaged in the
27 construction industry.

28 a. In order to meet the definition of independent
29 contractor, at least four of the following criteria must be
30 met:

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1 (I) The independent contractor maintains a separate
2 business with his or her own work facility, truck, equipment,
3 materials, or similar accommodations;

4 (II) The independent contractor holds or has applied
5 for a federal employer identification number, unless the
6 independent contractor is a sole proprietor who is not
7 required to obtain a federal employer identification number
8 under state or federal regulations;

9 (III) The independent contractor receives compensation
10 for services rendered or work performed and such compensation
11 is paid to a business rather than to an individual;

12 (IV) The independent contractor holds one or more bank
13 accounts in the name of the business entity for purposes of
14 paying business expenses or other expenses related to services
15 rendered or work performed for compensation;

16 (V) The independent contractor performs work or is
17 able to perform work for any entity in addition to or besides
18 the employer at his or her own election without the necessity
19 of completing an employment application or process; or

20 (VI) The independent contractor receives compensation
21 for work or services rendered on a competitive-bid basis or
22 completion of a task or a set of tasks as defined by a
23 contractual agreement, unless such contractual agreement
24 expressly states that an employment relationship exists.

25 b. If four of the criteria listed in sub-subparagraph
26 a. do not exist, an individual may still be presumed to be an
27 independent contractor and not an employee based on full
28 consideration of the nature of the individual situation with
29 regard to satisfying any of the following conditions:

30 (I) The independent contractor performs or agrees to
31 perform specific services or work for a specific amount of

1 money and controls the means of performing the services or
2 work.

3 (II) The independent contractor incurs the principal
4 expenses related to the service or work that he or she
5 performs or agrees to perform.

6 (III) The independent contractor is responsible for
7 the satisfactory completion of the work or services that he or
8 she performs or agrees to perform.

9 (IV) The independent contractor receives compensation
10 for work or services performed for a commission or on a
11 per-job basis and not on any other basis.

12 (V) The independent contractor may realize a profit or
13 suffer a loss in connection with performing work or services.

14 (VI) The independent contractor has continuing or
15 recurring business liabilities or obligations.

16 (VII) The success or failure of the independent
17 contractor's business depends on the relationship of business
18 receipts to expenditures.

19 c. Notwithstanding anything to the contrary in this
20 subparagraph, an individual claiming to be an independent
21 contractor has the burden of proving that he or she is an
22 independent contractor for purposes of this chapter.

23 2. A real estate licensee, if that person agrees, in
24 writing, to perform for remuneration solely by way of
25 commission.

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

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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 department; and

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

3 7. Unless otherwise prohibited by this chapter, any
4 officer of a corporation who elects alternative coverage ~~to be~~
5 ~~exempt from this chapter~~. Such officer is not an employee for
6 any reason under this chapter until the notice of revocation
7 of alternative coverage ~~election~~ filed pursuant to s. 440.05
8 is effective.

9 8. An officer of a corporation that is engaged in the
10 construction industry who elects alternative coverage ~~to be~~
11 ~~exempt from the provisions of this chapter~~, as otherwise
12 permitted by this chapter. Such officer is not an employee for
13 any reason until the notice of revocation of alternative
14 coverage ~~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 12. Medicaid-enrolled clients under chapter 393 who
13 are excluded from the definition of employment under s.
14 443.036(21)(d)5. and served by Adult Day Training Services
15 under the Home and Community-Based Medicaid Waiver program in
16 a sheltered workshop setting licensed by the United States
17 Department of Labor for the purpose of training and earning
18 less than the federal hourly minimum wage.

19 (16)(a) "Employer" means the state and all political
20 subdivisions thereof, all public and quasi-public corporations
21 therein, every person carrying on any employment, and the
22 legal representative of a deceased person or the receiver or
23 trustees of any person. The term includes an employment
24 agency, an employee leasing company, or a similar agent that
25 provides employees to other persons. The term does not include
26 a registry licensed under s. 400.506. ~~"Employer" also includes~~
27 ~~employment agencies, employee leasing companies, and similar~~
28 ~~agents who provide employees to other persons.~~ If the employer
29 is a corporation, parties in actual control of the
30 corporation, including, but not limited to, the president,
31 officers who exercise broad corporate powers, directors, and

1 all shareholders who directly or indirectly own a controlling
2 interest in the corporation, are considered the employer for
3 the purposes of ss. 440.105, 440.106, and 440.107.

4 (b) A homeowner shall not be considered the employer
5 of persons hired by the homeowner to carry out construction on
6 the homeowner's own premises if those premises are not
7 intended for immediate lease, sale, or resale.

8 (c) Facilities serving individuals under subparagraph
9 ~~(15)(d)9.~~~~(15)(d)12.~~ shall be considered agents of the Agency
10 for Health Care Administration as it relates to providing
11 Adult Day Training Services under the Home and Community-Based
12 Medicaid Waiver program and not employers or third parties for
13 the purpose of limiting or denying Medicaid benefits.

14 (17)(a) "Employment," subject to the other provisions
15 of this chapter, means any service performed by an employee
16 for the person employing him or her.

17 (b) "Employment" includes:

18 1. Employment by the state and all political
19 subdivisions thereof and all public and quasi-public
20 corporations therein, including officers elected at the polls.

21 2. All private employments in which one ~~four~~ or more
22 employees are employed by the same employer or, with respect
23 to the construction industry, all private employment in which
24 one or more employees are employed by the same employer.

25 3. Volunteer firefighters responding to or assisting
26 with fire or medical emergencies whether or not the
27 firefighters are on duty.

28 (c) "Employment" does not include service performed by
29 or as:

30 1. Domestic servants in private homes.

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1 2. Agricultural labor performed on a farm in the
2 employ of a bona fide farmer, or association of farmers, that
3 employs 5 or fewer regular employees and that employs fewer
4 than 12 other employees at one time for seasonal agricultural
5 labor that is completed in less than 30 days, provided such
6 seasonal employment does not exceed 45 days in the same
7 calendar year. The term "farm" includes stock, dairy, poultry,
8 fruit, fur-bearing animals, fish, and truck farms, ranches,
9 nurseries, and orchards. The term "agricultural labor"
10 includes field foremen, timekeepers, checkers, and other farm
11 labor supervisory personnel.

12 3. Professional athletes, such as professional boxers,
13 wrestlers, baseball, football, basketball, hockey, polo,
14 tennis, jai alai, and similar players, and motorsports teams
15 competing in a motor racing event as defined in s. 549.08.

16 4. Labor under a sentence of a court to perform
17 community services as provided in s. 316.193.

18 5. State prisoners or county inmates, except those
19 performing services for private employers or those enumerated
20 in s. 948.03(8)(a).

21 Section 6. Subsection (3) of section 440.04, Florida
22 Statutes, is amended to read:

23 440.04 Waiver of exemption.--

24 (3) A corporate officer who has elected alternative
25 coverage under ~~exempted herself or himself by proper notice~~
26 ~~from the operation of~~ this chapter may at any time revoke such
27 election exemption and thereby accept the provisions of this
28 chapter by giving notice as provided in s. 440.05.

29 Section 7. Section 440.05, Florida Statutes, is
30 amended to read:

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1 440.05 Election of alternative coverage ~~exemption~~;
2 revocation of election; notice; certification.--

3 (1) Each corporate officer who elects alternative
4 coverage under ~~not to accept the provisions of~~ this chapter or
5 who, after making ~~electing~~ such election ~~exemption~~, revokes it
6 ~~that exemption~~ shall mail to the department in Tallahassee
7 notice to such effect in accordance with a form to be
8 prescribed by the department.

9 (2) Each sole proprietor or partner who elects
10 alternative coverage under this chapter ~~to be included in the~~
11 ~~definition of "employee"~~ or who, after such election, revokes
12 that election must mail to the department in Tallahassee
13 notice to such effect, in accordance with a form to be
14 prescribed by the department.

15 (3) Each officer of a corporation who is engaged in
16 the construction industry and who elects alternative coverage
17 under ~~an exemption from~~ this chapter or who, after electing
18 such coverage ~~exemption~~, revokes that election ~~exemption~~, must
19 mail a written notice to such effect to the department on a
20 form prescribed by the department. The notice of election of
21 alternative coverage ~~to be exempt from the provisions of this~~
22 ~~chapter~~ must be notarized and under oath. The notice of
23 election that ~~to be exempt which~~ is submitted to the
24 department by the officer of a corporation who is allowed to
25 do so ~~claim an exemption as provided by this chapter~~ must list
26 the name, federal tax identification number, social security
27 number, all certified or registered licenses issued pursuant
28 to chapter 489 held by the person seeking the alternative
29 coverage ~~exemption~~, a copy of relevant documentation as to
30 employment status filed with the Internal Revenue Service as
31 specified by the department, a copy of the relevant

1 occupational license in the primary jurisdiction of the
2 business, and the registration number of the corporation filed
3 with the Division of Corporations of the Department of State
4 along with a copy of the stock certificate evidencing the
5 required ownership under this chapter. The notice of election
6 ~~to be exempt~~ must identify each corporation that employs the
7 person making the election ~~electing the exemption~~ and must
8 list the social security number or federal tax identification
9 number of each such employer and the additional documentation
10 required by this section. In addition, the notice of election
11 ~~to be exempt~~ must provide that the officer ~~electing an~~
12 ~~exemption~~ is not entitled to benefits under this chapter, must
13 ~~provide that the election does not exceed exemption limits for~~
14 ~~officers provided in s. 440.02,~~ and must certify that any
15 employees of the corporation whose officer elects alternative
16 coverage ~~an exemption~~ are covered by workers' compensation
17 insurance or, if applicable, alternative coverage. Upon
18 receipt of the notice of the election ~~to be exempt~~, receipt of
19 all application fees, and a determination by the department
20 that the notice meets the requirements of this subsection, the
21 department shall issue a certification of the election to the
22 officer, unless the department determines that the information
23 contained in the notice is invalid. The department shall
24 revoke a certificate of election ~~to be exempt from coverage~~
25 upon a determination by the department that the person does
26 not meet the requirements for alternative coverage ~~exemption~~
27 or that the information contained in the notice of election ~~to~~
28 ~~be exempt~~ is invalid. The certificate of election must list
29 the name of the corporation listed in the notice of election
30 ~~request for exemption~~. A new certificate of election must be
31 obtained each time the person is employed by a new or

1 different corporation that is not listed on the certificate of
2 election. A copy of the certificate of election must be sent
3 to each workers' compensation carrier identified in the
4 request for exemption. Upon filing a notice of revocation of
5 election, an officer who is a subcontractor or an officer of a
6 corporate subcontractor must notify her or his contractor.
7 Upon revocation of a certificate of election ~~of exemption~~ by
8 the department, the department shall notify the workers'
9 compensation carriers identified in the notice of election
10 ~~request for exemption~~.

11 (4) The notice of election of alternative coverage ~~to~~
12 ~~be exempt from the provisions of this chapter~~ must contain a
13 notice that clearly states in substance the following: "Any
14 person who, knowingly and with intent to injure, defraud, or
15 deceive the department or any employer or employee, insurance
16 company, or ~~any~~ other person, files a notice of election of
17 alternative coverage ~~to be exempt~~ containing any false or
18 misleading information is guilty of a felony of the third
19 degree." Each person filing a notice of election ~~to be exempt~~
20 shall personally sign the notice and attest that he or she has
21 reviewed, understands, and acknowledges the foregoing notice.

22 (5) A notice given under subsection (1), subsection
23 (2), or subsection (3) shall become effective when issued by
24 the department or 30 days after an application for alternative
25 coverage ~~an exemption~~ is received by the department, whichever
26 occurs first. However, if an accident or occupational disease
27 occurs less than 30 days after the effective date of the
28 insurance policy under which the payment of compensation is
29 secured or the date the employer qualified as a self-insurer,
30 such notice is effective as of 12:01 a.m. of the day following
31 the date it is mailed to the department in Tallahassee.

1 (6) A construction industry certificate of election of
2 alternative coverage ~~to be exempt~~ which is issued in
3 accordance with this section shall be valid for 2 years after
4 the effective date stated thereon. Both the effective date and
5 the expiration date must be listed on the face of the
6 certificate by the department. The construction industry
7 certificate must expire at midnight, 2 years from its issue
8 date, as noted on the face of the exemption certificate. ~~Any~~
9 ~~person who has received from the department a construction~~
10 ~~industry certificate of election to be exempt which is in~~
11 ~~effect on December 31, 1998, shall file a new notice of~~
12 ~~election to be exempt by the last day in his or her birth~~
13 ~~month following December 1, 1998.~~ A construction industry
14 certificate of election ~~to be exempt~~ may be revoked before its
15 expiration by the officer for whom it was issued or by the
16 department for the reasons stated in this section. At least
17 60 days prior to the expiration date of a construction
18 industry certificate of election exemption ~~issued after~~
19 ~~December 1, 1998~~, the department shall send notice of the
20 expiration date and an application for renewal to the
21 certificateholder at the address on the certificate.

22 (7) Any contractor responsible for compensation under
23 s. 440.10 may register in writing with the workers'
24 compensation carrier for any subcontractor and shall
25 thereafter be entitled to receive written notice from the
26 carrier of any cancellation or nonrenewal of the policy.

27 (8)(a) The department must assess a fee of \$50 with
28 each request for a construction industry certificate of
29 election of alternative coverage ~~to be exempt~~ or renewal of
30 election of alternative coverage ~~to be exempt~~ under this
31 section.

1 (b) The funds collected by the department shall be
2 used to administer this section, to audit the businesses that
3 pay the fee for compliance with any requirements of this
4 chapter, and to enforce compliance with the provisions of this
5 chapter.

6 (9) The department may by rule prescribe forms and
7 procedures for filing an election of alternative coverage
8 ~~exemption~~, revocation of election ~~to be exempt~~, and notice of
9 election of coverage for all employers and require specified
10 forms to be submitted by all employers in filing for the
11 election of alternative coverage ~~exemption~~. The department may
12 by rule prescribe forms and procedures for issuing a
13 certificate of the election of alternative coverage ~~exemption~~.

14 (10) Each officer of a corporation who is actively
15 engaged in the construction industry and who elects
16 alternative coverage ~~an exemption from this chapter~~ shall
17 maintain business records as specified by the department by
18 rule, which rules must include the provision that any
19 corporation with ~~exempt~~ officers having alternative coverage
20 engaged in the construction industry must maintain written
21 statements of those exempted persons affirmatively
22 acknowledging each such individual's ~~exempt~~ status.

23 (11) Any corporate officer permitted by this chapter
24 to elect alternative coverage ~~claim an exemption~~ must be
25 listed on the records of this state's Secretary of State,
26 Division of Corporations, as a corporate officer. The
27 department shall issue a stop-work order under s. 440.107(1)
28 to any corporation who employs a person who claims to be
29 eligible for alternative coverage under this chapter ~~exempt~~ as
30 a corporate officer but who fails or refuses to produce the
31

1 documents required under this subsection to the department
2 within 3 business days after the request is made.

3 (12) Certificates of election of alternative coverage
4 ~~to be exempt~~ issued under subsection (3) shall apply only to
5 the corporate officer named on the notice of election ~~to be~~
6 ~~exempt~~ and apply only within the scope of the business or
7 trade listed on the notice of election ~~to be exempt~~.

8 (13) Notices of election of alternative coverage ~~to be~~
9 ~~exempt~~ and certificates of election of alternative coverage ~~to~~
10 ~~be exempt~~ shall be subject to revocation if, at any time after
11 the filing of the notice or the issuance of the certificate,
12 the person named on the notice or certificate no longer meets
13 the requirements of this section for issuance of a
14 certificate. The department shall revoke a certificate at any
15 time for failure of the person named on the certificate to
16 meet the requirements of this section.

17 (14) An officer of a corporation who elects
18 alternative coverage ~~exemption from this chapter~~ by filing a
19 certificate of election under this section may not recover
20 benefits or compensation under this chapter other than the
21 benefits provided by the alternative coverage. For purposes of
22 determining the appropriate premium for workers' compensation
23 coverage, carriers may not consider any officer of a
24 corporation who validly meets the requirements of this section
25 to be an employee.

26 (15) Any corporate officer who is an affiliated person
27 of a person who is delinquent in paying a stop-work order and
28 penalty assessment order issued pursuant to s. 440.107, or
29 owed pursuant to a court order, is ineligible for an election
30 of alternative coverage ~~exemption~~. The stop-work order and
31 penalty assessment shall be in effect against any such

1 affiliated person. As used in this subsection, the term
2 "affiliated person" means:

3 (a) The spouse of such other person;

4 (b) Any person who directly or indirectly owns or
5 controls, or holds with the power to vote, 10 percent or more
6 of the outstanding voting securities of such other person;

7 (c) Any person who directly or indirectly owns 10
8 percent or more of the outstanding voting securities that are
9 directly or indirectly owned, controlled, or held with the
10 power to vote by such other person;

11 (d) Any person or group of persons who directly or
12 indirectly control, are controlled by, or are under common
13 control with such other person;

14 (e) Any person who directly or indirectly acquires all
15 or substantially all of the other assets of such other person;

16 (f) Any officer, director, trustee, partner, owner,
17 manager, joint venturer, or employee of such other person or a
18 person performing duties similar to persons in such positions;
19 or

20 (g) Any person who has an officer, director, trustee,
21 partner, or joint venturer in common with such person.

22 Section 8. Paragraphs (c) and (d) of subsection (1) of
23 section 440.10, Florida Statutes, are amended to read:

24 440.10 Liability for compensation.--

25 (1)

26 (c) A contractor shall require a subcontractor to
27 provide evidence of workers' compensation insurance. A
28 subcontractor who is a corporation and has an officer who
29 elects alternative coverage ~~to be exempt as permitted~~ under
30 this chapter shall provide a copy of his or her certificate of
31 alternative coverage ~~exemption~~ to the contractor.

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

8 2. If a contractor or third-party payor becomes liable
9 for the payment of compensation to the corporate officer of a
10 subcontractor who is engaged in the construction industry and
11 has elected alternative coverage under ~~to be exempt from the~~
12 ~~provisions of this chapter~~, but whose election is invalid, the
13 contractor or third-party payor may recover from the claimant
14 or corporation all benefits paid or payable plus interest,
15 unless the contractor and the subcontractor have agreed in
16 writing that the contractor will provide coverage.

17 Section 9. Paragraph (a) of subsection (2) and
18 paragraph (b) of subsection (4) of section 440.105, Florida
19 Statutes, are amended to read:

20 440.105 Prohibited activities; reports; penalties;
21 limitations.--

22 (2) Whoever violates any provision of this subsection
23 commits a misdemeanor of the first degree, punishable as
24 provided in s. 775.082 or s. 775.083.

25 (a) It shall be unlawful for any employer to
26 knowingly:

27 1. Coerce or attempt to coerce, as a precondition to
28 employment or otherwise, an employee to obtain a certificate
29 of election of alternative coverage ~~exemption~~ pursuant to s.
30 440.05.

31

1 2. Discharge or refuse to hire an employee or job
2 applicant because the employee or applicant has filed a claim
3 for benefits under this chapter.

4 3. Discharge, discipline, or take any other adverse
5 personnel action against any employee for disclosing
6 information to the department or any law enforcement agency
7 relating to any violation or suspected violation of any of the
8 provisions of this chapter or rules promulgated hereunder.

9 4. Violate a stop-work order issued by the department
10 pursuant to s. 440.107.

11 (4) Whoever violates any provision of this subsection
12 commits insurance fraud, punishable as provided in paragraph
13 (f).

14 (b) It shall be unlawful for any person:

15 1. To knowingly make, or cause to be made, any false,
16 fraudulent, or misleading oral or written statement for the
17 purpose of obtaining or denying any benefit or payment under
18 this chapter.

19 2. To present or cause to be presented any written or
20 oral statement as part of, or in support of, a claim for
21 payment or other benefit pursuant to any provision of this
22 chapter, knowing that such statement contains any false,
23 incomplete, or misleading information concerning any fact or
24 thing material to such claim.

25 3. To prepare or cause to be prepared any written or
26 oral statement that is intended to be presented to any
27 employer, insurance company, or self-insured program in
28 connection with, or in support of, any claim for payment or
29 other benefit pursuant to any provision of this chapter,
30 knowing that such statement contains any false, incomplete, or
31

1 misleading information concerning any fact or thing material
2 to such claim.

3 4. To knowingly assist, conspire with, or urge any
4 person to engage in activity prohibited by this section.

5 5. To knowingly make any false, fraudulent, or
6 misleading oral or written statement, or to knowingly omit or
7 conceal material information, required by s. 440.185 or s.
8 440.381, for the purpose of obtaining workers' compensation
9 coverage or for the purpose of avoiding, delaying, or
10 diminishing the amount of payment of any workers' compensation
11 premiums.

12 6. To knowingly misrepresent or conceal payroll,
13 classification of workers, or information regarding an
14 employer's loss history which would be material to the
15 computation and application of an experience rating
16 modification factor for the purpose of avoiding or diminishing
17 the amount of payment of any workers' compensation premiums.

18 7. To knowingly present or cause to be presented any
19 false, fraudulent, or misleading oral or written statement to
20 any person as evidence of compliance with s. 440.38, as
21 evidence of eligibility for a certificate of alternative
22 coverage exemption under s. 440.05.

23 8. To knowingly violate a stop-work order issued by
24 the department pursuant to s. 440.107.

25 9. To knowingly present or cause to be presented any
26 false, fraudulent, or misleading oral or written statement to
27 any person as evidence of identity for the purpose of
28 obtaining employment or filing or supporting a claim for
29 workers' compensation benefits.

30 Section 10. Paragraph (d) of subsection (5) of section
31 489.115, Florida Statutes, is amended to read:

1 489.115 Certification and registration; endorsement;
2 reciprocity; renewals; continuing education.--

3 (5)

4 (d) An applicant for initial issuance of a certificate
5 or registration shall submit as a prerequisite to qualifying
6 for alternative ~~an exemption from workers' compensation~~
7 coverage ~~requirements~~ under s. 440.05 an affidavit attesting
8 to the fact that the applicant will obtain such alternative
9 coverage ~~an exemption~~ within 30 days after the date the
10 initial certificate or registration is issued by the board.

11 Section 11. Paragraph (b) of subsection (3) of section
12 489.515, Florida Statutes, is amended to read:

13 489.515 Issuance of certificates; registrations.--

14 (3)

15 (b) An applicant for initial issuance of a certificate
16 or registration shall submit as a prerequisite to qualifying
17 for alternative ~~an exemption from workers' compensation~~
18 coverage ~~requirements~~ under s. 440.05 an affidavit attesting
19 to the fact that the applicant will obtain such alternative
20 coverage ~~an exemption~~ within 30 days after the date the
21 initial certificate or registration is issued by the board.

22 Section 12. Except for this section and section
23 440.095(9), Florida Statutes, as created by section 4 of this
24 act, which shall take effect upon becoming a law, this act
25 shall take effect January 1, 2005.

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SENATE SUMMARY

Deletes authority of certain persons to elect to be exempt from workers' compensation coverage. The new alternative will be regular workers' compensation coverage or an alternative coverage for accidents only, whether work-related or not work-related. Provides standards for alternative coverage and a schedule of benefits payable for catastrophic injuries. (See bill for details.)