

By Senator Atwater

25-1355-05

See HB 423

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A bill to be entitled  
An act relating to worker's compensation;  
amending s. 440.02, F.S.; redefining the term  
"employee" under the Workers' Compensation Law  
to revise an exemption relating to  
owner-operators of motor vehicles; providing an  
effective date.

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

Section 1. Paragraph (d) of subsection (15) of section  
440.02, Florida Statutes, is amended to read:

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

(15)

(d) "Employee" does not include:

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

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

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

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

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

4 (IV) The independent contractor holds one or more bank  
5 accounts in the name of the business entity for purposes of  
6 paying business expenses or other expenses related to services  
7 rendered or work performed for compensation;

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

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

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

22 (I) The independent contractor performs or agrees to  
23 perform specific services or work for a specific amount of  
24 money and controls the means of performing the services or  
25 work.

26 (II) The independent contractor incurs the principal  
27 expenses related to the service or work that he or she  
28 performs or agrees to perform.

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

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

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

6 (VI) The independent contractor has continuing or  
7 recurring business liabilities or obligations.

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

11 c. Notwithstanding anything to the contrary in this  
12 subparagraph, an individual claiming to be an independent  
13 contractor has the burden of proving that he or she is an  
14 independent contractor for purposes of this chapter.

15 2. A real estate licensee, if that person agrees, in  
16 writing, to perform for remuneration solely by way of  
17 commission.

18 3. Bands, orchestras, and musical and theatrical  
19 performers, including disk jockeys, performing in licensed  
20 premises as defined in chapter 562, if a written contract  
21 evidencing an independent contractor relationship is entered  
22 into before the commencement of such entertainment.

23 4. An owner-operator of a motor vehicle who transports  
24 property under a written contract with a motor carrier which  
25 evidences a relationship by which the owner-operator assumes  
26 the responsibility of an employer for the performance of the  
27 contract, if the owner-operator is required to furnish ~~the~~  
28 ~~necessary~~ motor vehicle equipment as identified in the written  
29 contract and the principal ~~all~~ costs incidental to the  
30 performance of the contract, including, but not limited to,  
31 fuel and, taxes, licenses, repairs, provided a motor carrier's

1 advance of costs to the owner-operator when a written contract  
2 evidences the owner-operator's obligation to reimburse such  
3 advance shall be treated as the owner-operator furnishing such  
4 cost and hired help; and the owner-operator ~~is paid a~~  
5 ~~commission for transportation service and~~ is not paid by the  
6 hour or on some other time-measured basis.

7           5. A person whose employment is both casual and not in  
8 the course of the trade, business, profession, or occupation  
9 of the employer.

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

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

27           b. Volunteers participating in federal programs  
28 established under Pub. L. No. 93-113.

29           7. Unless otherwise prohibited by this chapter, any  
30 officer of a corporation who elects to be exempt from this  
31 chapter. Such officer is not an employee for any reason under

1 | this chapter until the notice of revocation of election filed  
2 | pursuant to s. 440.05 is effective.

3 |         8. An officer of a corporation that is engaged in the  
4 | construction industry who elects to be exempt from the  
5 | provisions of this chapter, as otherwise permitted by this  
6 | chapter. Such officer is not an employee for any reason until  
7 | the notice of revocation of election filed pursuant to s.  
8 | 440.05 is effective.

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

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

23 |         11. A person who performs services as a sports  
24 | official for an entity sponsoring an interscholastic sports  
25 | event or for a public entity or private, nonprofit  
26 | organization that sponsors an amateur sports event. For  
27 | purposes of this subparagraph, such a person is an independent  
28 | contractor. For purposes of this subparagraph, the term  
29 | "sports official" means any person who is a neutral  
30 | participant in a sports event, including, but not limited to,  
31 | umpires, referees, judges, linespersons, scorekeepers, or

1 | timekeepers. This subparagraph does not apply to any person  
2 | employed by a district school board who serves as a sports  
3 | official as required by the employing school board or who  
4 | serves as a sports official as part of his or her  
5 | responsibilities during normal school hours.

6 |         12. Medicaid-enrolled clients under chapter 393 who  
7 | are excluded from the definition of employment under s.  
8 | 443.1216(4)(d) and served by Adult Day Training Services under  
9 | the Home and Community-Based Medicaid Waiver program in a  
10 | sheltered workshop setting licensed by the United States  
11 | Department of Labor for the purpose of training and earning  
12 | less than the federal hourly minimum wage.

13 |         Section 2. This act shall take effect July 1, 2005.