

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~~7~~ who is permitted by law to elect
18 alternative coverage ~~not to secure payment of compensation~~
19 under this chapter~~7~~ 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).

31 |

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

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

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

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

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

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

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

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

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 an officer is not an employee
6 for any reason under this chapter until the notice of
7 revocation of alternative coverage ~~election~~ filed pursuant to
8 s. 440.05 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 an officer is not an employee
13 for 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.
14 443.1216(4)(d) and served by Adult Day Training Services under
15 the Home and Community-Based Medicaid Waiver program in a
16 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)12. shall be considered agents of the Agency for Health
10 Care Administration as it relates to providing Adult Day
11 Training Services under the Home and Community-Based Medicaid
12 Waiver program and not employers or third parties for the
13 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 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. 948.036(1).

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 an election ~~exemption~~, revokes
6 that election must ~~exemption shall~~ mail to the department in
7 Tallahassee notice to that ~~such~~ effect in accordance with a
8 form to be 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 an election,
12 revokes that election must mail to the department in
13 Tallahassee notice to that ~~such~~ effect, in accordance with a
14 form to be 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 that ~~such~~ effect to the department on
20 a 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 ~~to be exempt~~ which is submitted to the department by
24 the officer of a corporation who is allowed to do so ~~claim an~~
25 ~~exemption as provided by this chapter~~ must list the name,
26 federal tax identification number, social security number, all
27 certified or registered licenses issued pursuant to chapter
28 489 held by the person seeking the alternative coverage
29 ~~exemption~~, a copy of relevant documentation as to employment
30 status filed with the Internal Revenue Service as specified by
31 the department, a copy of the relevant occupational license in

1 | the primary jurisdiction of the business, and the registration
2 | number of the corporation filed with the Division of
3 | Corporations of the Department of State along with a copy of
4 | the stock certificate evidencing the required ownership under
5 | this chapter. The notice of election ~~to be exempt~~ must
6 | identify each corporation that employs the person making the
7 | election ~~electing the exemption~~ and must list the social
8 | security number or federal tax identification number of each
9 | such employer and the additional documentation required by
10 | this section. In addition, the notice of election ~~to be exempt~~
11 | ~~must provide that the officer electing an exemption is not~~
12 | ~~entitled to benefits under this chapter, must provide that the~~
13 | ~~election does not exceed exemption limits for officers~~
14 | ~~provided in s. 440.02, and~~ must certify that any employees of
15 | the corporation whose officer elects alternative coverage an
16 | ~~exemption~~ are covered by workers' compensation insurance or,
17 | if applicable, alternative coverage. Upon receipt of the
18 | notice of the election ~~to be exempt~~, receipt of all
19 | application fees, and a determination by the department that
20 | 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) becomes ~~shall become~~ effective when
24 issued by the department or 30 days after an application for
25 alternative coverage ~~an exemption~~ is received by the
26 department, whichever occurs first. However, if an accident or
27 occupational disease occurs less than 30 days after the
28 effective date of the insurance policy under which the payment
29 of compensation is secured or the date the employer qualified
30 as a self-insurer, such notice is effective as of 12:01 a.m.

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1 of the day following the date it is mailed to the department
2 in Tallahassee.

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

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

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

1 | election of alternative coverage ~~to be exempt~~ under this
2 | section.

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

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

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

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

1 a corporate officer but who fails or refuses to produce the
2 documents required under this subsection to the department
3 within 3 business days after the request is made.

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

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

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

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

1 penalty assessment shall be in effect against any such
2 affiliated person. As used in this subsection, the term
3 "affiliated person" means:

4 (a) The spouse of such other person;

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

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

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

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

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

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

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

25 440.10 Liability for compensation.--

26 (1)

27 (c) A contractor shall require a subcontractor to
28 provide evidence of workers' compensation insurance. A
29 subcontractor who is a corporation and has an officer who
30 elects alternative coverage ~~to be exempt as permitted~~ under
31

1 this chapter shall provide a copy of his or her certificate of
2 alternative coverage ~~exemption~~ to the contractor.

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

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

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

22 440.105 Prohibited activities; reports; penalties;
23 limitations.--

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

27 (a) It ~~is shall be~~ unlawful for any employer to
28 knowingly:

29 1. Coerce or attempt to coerce, as a precondition to
30 employment or otherwise, an employee to obtain a certificate
31

1 of election of alternative coverage ~~exemption~~ pursuant to s.
2 440.05.

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

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

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

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

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

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

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

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

1 knowing that such statement contains any false, incomplete, or
2 misleading information concerning any fact or thing material
3 to such claim.

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

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

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

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

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

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

31

1 Section 10. Paragraph (d) of subsection (5) of section
2 489.115, Florida Statutes, is amended to read:

3 489.115 Certification and registration; endorsement;
4 reciprocity; renewals; continuing education.--

5 (5)

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

13 Section 11. Paragraph (b) of subsection (3) of section
14 489.515, Florida Statutes, is amended to read:

15 489.515 Issuance of certificates; registrations.--

16 (3)

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

24 Section 12. Except for this section and section
25 440.095(9), Florida Statutes, as created by section 4 of this
26 act, which shall take effect upon becoming a law, this act
27 shall take effect January 1, 2006.

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SENATE SUMMARY

Deletes the 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.)