

By Senator Bennett

21-418-06

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 having 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 for up to 365
5 days.
6 (c) Hospital intensive care ... \$400 per day for up to
7 15 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</u>	
8	<u>processes</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 for 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 that have been determined to meet such</u>	

1 requirements and the applications for such policies must
2 include the following statement: "This policy is an
3 accident-only policy approved by the Florida Office of
4 Insurance Regulation as alternative coverage to workers'
5 compensation coverage, but only for persons legally allowed to
6 elect alternative coverage. Persons allowed to elect
7 alternative coverage are: employers having three or fewer
8 employees; sole proprietors not engaged in the construction
9 industry; and officers and directors of corporations, limited
10 to three officers and directors of a corporation, engaged in
11 the construction 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 motor
6 vehicle equipment as identified in the written contract and
7 the principal costs incidental to the performance of the
8 contract, including, but not limited to, fuel and repairs,
9 provided a motor carrier's advance of costs to the
10 owner-operator when a written contract evidences the
11 owner-operator's obligation to reimburse such advance shall be
12 treated as the owner-operator furnishing such cost and the
13 owner-operator is not paid by the hour or on some other
14 time-measured basis.

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

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

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

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

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

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

12 8. An officer of a corporation that is engaged in the
13 construction industry who elects alternative coverage ~~to be~~
14 ~~exempt from the provisions of this chapter~~, as otherwise
15 permitted by this chapter. Such an officer is not an employee
16 for any reason until the notice of revocation of alternative
17 coverage election filed pursuant to s. 440.05 is effective.

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

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

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

15 12. Medicaid-enrolled clients under chapter 393 who
16 are excluded from the definition of employment under s.
17 443.1216(4)(d) and served by Adult Day Training Services under
18 the Home and Community-Based or the Family and Supported
19 Living Medicaid Waiver program in a sheltered workshop setting
20 licensed by the United States Department of Labor for the
21 purpose of training and earning less than the federal hourly
22 minimum wage.

23 13. Medicaid-enrolled clients under chapter 393 who
24 are excluded from the definition of employment under s.
25 443.1216(4)(d) and served by Adult Day Training Services under
26 the Family and Supported Living Medicaid Waiver program in a
27 sheltered workshop setting licensed by the United States
28 Department of Labor for the purpose of training and earning
29 less than the federal hourly minimum wage. This subparagraph
30 expires July 1, 2006.
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1 (16)(a) "Employer" means the state and all political
2 subdivisions thereof, all public and quasi-public corporations
3 therein, every person carrying on any employment, and the
4 legal representative of a deceased person or the receiver or
5 trustees of any person. The term includes an employment
6 agency, an employee leasing company, or a similar agent that
7 provides employees to other persons. The term does not include
8 a registry licensed under s. 400.506. ~~"Employer" also includes~~
9 ~~employment agencies, employee leasing companies, and similar~~
10 ~~agents who provide employees to other persons.~~ If the employer
11 is a corporation, parties in actual control of the
12 corporation, including, but not limited to, the president,
13 officers who exercise broad corporate powers, directors, and
14 all shareholders who directly or indirectly own a controlling
15 interest in the corporation, are considered the employer for
16 the purposes of ss. 440.105, 440.106, and 440.107.

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

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

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

30 (b) "Employment" includes:
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1 1. Employment by the state and all political
2 subdivisions thereof and all public and quasi-public
3 corporations therein, including officers elected at the polls.

4 2. All private employments in which four or more
5 employees are employed by the same employer or, with respect
6 to the construction industry, all private employment in which
7 one or more employees are employed by the same employer.

8 3. Volunteer firefighters responding to or assisting
9 with fire or medical emergencies whether or not the
10 firefighters are on duty.

11 (c) "Employment" does not include service performed by
12 or as:

13 1. Domestic servants in private homes.

14 2. Agricultural labor performed on a farm in the
15 employ of a bona fide farmer, or association of farmers, that
16 employs 5 or fewer regular employees and that employs fewer
17 than 12 other employees at one time for seasonal agricultural
18 labor that is completed in less than 30 days, provided such
19 seasonal employment does not exceed 45 days in the same
20 calendar year. The term "farm" includes stock, dairy, poultry,
21 fruit, fur-bearing animals, fish, and truck farms, ranches,
22 nurseries, and orchards. The term "agricultural labor"
23 includes field foremen, timekeepers, checkers, and other farm
24 labor supervisory personnel.

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

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

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1 5. State prisoners or county inmates, except those
2 performing services for private employers or those enumerated
3 in s. 948.036(1).

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

6 440.04 Waiver of exemption.--

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

12 Section 7. Section 440.05, Florida Statutes, is
13 amended to read:

14 440.05 Election of alternative coverage exemption;
15 revocation of election; notice; certification.--

16 (1) Each corporate officer who elects alternative
17 coverage under ~~not to accept the provisions of~~ this chapter or
18 who, after making ~~electing~~ such an election exemption, revokes
19 that election must exemption shall mail to the department in
20 Tallahassee notice to that such effect in accordance with a
21 form to be prescribed by the department.

22 (2) Each sole proprietor or partner who elects
23 alternative coverage under this chapter ~~to be included in the~~
24 ~~definition of "employee"~~ or who, after such an election,
25 revokes that election must mail to the department in
26 Tallahassee notice to that such effect, in accordance with a
27 form to be prescribed by the department.

28 (3) Each officer of a corporation who is engaged in
29 the construction industry and who elects alternative coverage
30 under ~~an exemption from~~ this chapter or who, after electing
31 such coverage exemption, revokes that election exemption, must

1 mail a written notice to that ~~such~~ effect to the department on
2 a form prescribed by the department. The notice of election of of
3 alternative coverage ~~to be exempt from the provisions of this~~
4 ~~chapter~~ must be notarized and under oath. The notice of
5 election that ~~to be exempt which~~ is submitted to the
6 department by the officer of a corporation who is allowed to
7 ~~do so claim an exemption as provided by this chapter~~ must list
8 the name, federal tax identification number, social security
9 number, all certified or registered licenses issued pursuant
10 to chapter 489 held by the person seeking the alternative
11 coverage exemption, a copy of relevant documentation as to
12 employment status filed with the Internal Revenue Service as
13 specified by the department, a copy of the relevant
14 occupational license in the primary jurisdiction of the
15 business, and the registration number of the corporation filed
16 with the Division of Corporations of the Department of State
17 along with a copy of the stock certificate evidencing the
18 required ownership under this chapter. The notice of election
19 ~~to be exempt~~ must identify each corporation that employs the
20 person making the election ~~electing the exemption~~ and must
21 list the social security number or federal tax identification
22 number of each such employer and the additional documentation
23 required by this section. In addition, the notice of election
24 ~~to be exempt must provide that the officer electing an~~
25 ~~exemption is not entitled to benefits under this chapter, must~~
26 ~~provide that the election does not exceed exemption limits for~~
27 ~~officers provided in s. 440.02, and~~ must certify that any
28 employees of the corporation whose officer elects alternative
29 coverage an exemption are covered by workers' compensation
30 insurance or, if applicable, alternative coverage. Upon
31 receipt of the notice of the election ~~to be exempt~~, receipt of

1 all application fees, and a determination by the department
2 that the notice meets the requirements of this subsection, the
3 department shall issue a certification of the election to the
4 officer, unless the department determines that the information
5 contained in the notice is invalid. The department shall
6 revoke a certificate of election ~~to be exempt from coverage~~
7 upon a determination by the department that the person does
8 not meet the requirements for alternative coverage exemption
9 or that the information contained in the notice of election ~~to~~
10 ~~be exempt~~ is invalid. The certificate of election must list
11 the name of the corporation listed in the notice of election
12 ~~request for exemption~~. A new certificate of election must be
13 obtained each time the person is employed by a new or
14 different corporation that is not listed on the certificate of
15 election. A copy of the certificate of election must be sent
16 to each workers' compensation carrier identified in the
17 request for exemption. Upon filing a notice of revocation of
18 election, an officer who is a subcontractor or an officer of a
19 corporate subcontractor must notify her or his contractor.
20 Upon revocation of a certificate of election ~~of exemption~~ by
21 the department, the department shall notify the workers'
22 compensation carriers identified in the notice of election
23 ~~request for exemption~~.

24 (4) The notice of election of alternative coverage ~~to~~
25 ~~be exempt from the provisions of this chapter~~ must contain a
26 notice that clearly states in substance the following: "Any
27 person who, knowingly and with intent to injure, defraud, or
28 deceive the department or any employer or employee, insurance
29 company, or ~~any~~ other person, files a notice of election of
30 alternative coverage ~~to be exempt~~ containing any false or
31 misleading information is guilty of a felony of the third

1 degree." Each person filing a notice of election ~~to be exempt~~
2 shall personally sign the notice and attest that he or she has
3 reviewed, understands, and acknowledges the foregoing notice.

4 (5) A notice given under subsection (1), subsection
5 (2), or subsection (3) becomes ~~shall become~~ effective when
6 issued by the department or 30 days after an application for
7 alternative coverage ~~an exemption~~ is received by the
8 department, whichever occurs first. However, if an accident or
9 occupational disease occurs less than 30 days after the
10 effective date of the insurance policy under which the payment
11 of compensation is secured or the date the employer qualified
12 as a self-insurer, such notice is effective as of 12:01 a.m.
13 of the day following the date it is mailed to the department
14 in Tallahassee.

15 (6) A construction industry certificate of election of
16 alternative coverage ~~to be exempt~~ which is issued in
17 accordance with this section is ~~shall be~~ valid for 2 years
18 after the effective date stated thereon. Both the effective
19 date and the expiration date must be listed on the face of the
20 certificate by the department. The construction industry
21 certificate must expire at midnight, 2 years after ~~from~~ its
22 issue date, as noted on the face of the exemption certificate.
23 A construction industry certificate of election ~~to be exempt~~
24 may be revoked before its expiration by the officer for whom
25 it was issued or by the department for the reasons stated in
26 this section. At least 60 days before ~~prior to~~ the expiration
27 date of a construction industry certificate of election
28 ~~exemption issued after December 1, 1998~~, the department shall
29 send notice of the expiration date and an application for
30 renewal to the certificateholder at the address on the
31 certificate.

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

6 (8)(a) The department must assess a fee of \$50 with
7 each request for a construction industry certificate of
8 election of alternative coverage ~~to be exempt~~ or renewal of
9 election of alternative coverage ~~to be exempt~~ under this
10 section.

11 (b) The funds collected by the department shall be
12 used to administer this section, to audit the businesses that
13 pay the fee for compliance with any requirements of this
14 chapter, and to enforce compliance with the provisions of this
15 chapter.

16 (9) The department may by rule prescribe forms and
17 procedures for filing an election of alternative coverage
18 ~~exemption~~, revocation of election ~~to be exempt~~, and notice of
19 election of coverage for all employers and require specified
20 forms to be submitted by all employers in filing for the
21 election of alternative coverage ~~exemption~~. The department may
22 by rule prescribe forms and procedures for issuing a
23 certificate of the election of alternative coverage ~~exemption~~.

24 (10) Each officer of a corporation who is actively
25 engaged in the construction industry and who elects
26 alternative coverage ~~an exemption from this chapter~~ shall
27 maintain business records as specified by the department by
28 rule, which rules must include the provision that any
29 corporation with ~~exempt~~ officers having alternative coverage
30 engaged in the construction industry must maintain written
31

1 statements of those exempted persons affirmatively
2 acknowledging each such individual's ~~exempt~~ status.

3 (11) Any corporate officer permitted by this chapter
4 to elect alternative coverage ~~claim an exemption~~ must be
5 listed on the records of this state's Secretary of State,
6 Division of Corporations, as a corporate officer. The
7 department shall issue a stop-work order under s. 440.107(1)
8 to any corporation who employs a person who claims to be
9 eligible for alternative coverage under this chapter ~~exempt~~ as
10 a corporate officer but who fails or refuses to produce the
11 documents required under this subsection to the department
12 within 3 business days after the request is made.

13 (12) Certificates of election of alternative coverage
14 ~~to be exempt~~ issued under subsection (3) ~~shall~~ apply only to
15 the corporate officer named on the notice of election ~~to be~~
16 ~~exempt~~ and apply only within the scope of the business or
17 trade listed on the notice of election ~~to be exempt~~.

18 (13) Notices of election of alternative coverage ~~to be~~
19 ~~exempt~~ and certificates of election of alternative coverage
20 are to be exempt ~~shall be~~ subject to revocation if, at any
21 time after the filing of the notice or the issuance of the
22 certificate, the person named on the notice or certificate no
23 longer meets the requirements of this section for issuance of
24 a certificate. The department shall revoke a certificate at
25 any time for failure of the person named on the certificate to
26 meet the requirements of this section.

27 (14) An officer of a corporation who elects
28 alternative coverage ~~exemption from this chapter~~ by filing a
29 certificate of election under this section may not recover
30 benefits or compensation under this chapter other than the
31 benefits provided by the alternative coverage. For purposes of

1 determining the appropriate premium for workers' compensation
2 coverage, carriers may not consider any officer of a
3 corporation who validly meets the requirements of this section
4 to be an employee.

5 (15) Any corporate officer who is an affiliated person
6 of a person who is delinquent in paying a stop-work order and
7 penalty assessment order issued pursuant to s. 440.107, or
8 owed pursuant to a court order, is ineligible for an election
9 of alternative coverage ~~exemption~~. The stop-work order and
10 penalty assessment shall be in effect against any such
11 affiliated person. As used in this subsection, the term
12 "affiliated person" means:

13 (a) The spouse of such other person;

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

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

21 (d) Any person or group of persons who directly or
22 indirectly control, are controlled by, or are under common
23 control with such other person;

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

26 (f) Any officer, director, trustee, partner, owner,
27 manager, joint venturer, or employee of such other person or a
28 person performing duties similar to persons in such positions;
29 or

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

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

3 440.10 Liability for compensation.--

4 (1)

5 (c) A contractor shall require a subcontractor to
6 provide evidence of workers' compensation insurance. A
7 subcontractor who is a corporation and has an officer who
8 elects alternative coverage ~~to be exempt as permitted~~ under
9 this chapter shall provide a copy of his or her certificate of
10 alternative coverage exemption to the contractor.

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

18 2. If a contractor or third-party payor becomes liable
19 for the payment of compensation to the corporate officer of a
20 subcontractor who is engaged in the construction industry and
21 has elected alternative coverage under ~~to be exempt from the~~
22 ~~provisions of~~ this chapter, but whose election is invalid, the
23 contractor or third-party payor may recover from the claimant
24 or corporation all benefits paid or payable plus interest,
25 unless the contractor and the subcontractor have agreed in
26 writing that the contractor will provide coverage.

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

30 440.105 Prohibited activities; reports; penalties;
31 limitations.--

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

4 (a) It ~~is shall be~~ unlawful for any employer to
5 knowingly:

6 1. Coerce or attempt to coerce, as a precondition to
7 employment or otherwise, an employee to obtain a certificate
8 of election of alternative coverage ~~exemption~~ pursuant to s.
9 440.05.

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

13 3. Discharge, discipline, or take any other adverse
14 personnel action against any employee for disclosing
15 information to the department or any law enforcement agency
16 relating to any violation or suspected violation of any of the
17 provisions of this chapter or rules promulgated hereunder.

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

20 (4) Whoever violates any provision of this subsection
21 commits insurance fraud, punishable as provided in paragraph
22 (f).

23 (b) It ~~is shall be~~ unlawful for any person:

24 1. To knowingly make, or cause to be made, any false,
25 fraudulent, or misleading oral or written statement for the
26 purpose of obtaining or denying any benefit or payment under
27 this chapter.

28 2. To present or cause to be presented any written or
29 oral statement as part of, or in support of, a claim for
30 payment or other benefit pursuant to any provision of this
31 chapter, knowing that such statement contains any false,

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

3 3. To prepare or cause to be prepared any written or
4 oral statement that is intended to be presented to any
5 employer, insurance company, or self-insured program in
6 connection with, or in support of, any claim for payment or
7 other benefit pursuant to any provision of this chapter,
8 knowing that such statement contains any false, incomplete, or
9 misleading information concerning any fact or thing material
10 to such claim.

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

13 5. To knowingly make any false, fraudulent, or
14 misleading oral or written statement, or to knowingly omit or
15 conceal material information, required by s. 440.185 or s.
16 440.381, for the purpose of obtaining workers' compensation
17 coverage or for the purpose of avoiding, delaying, or
18 diminishing the amount of payment of any workers' compensation
19 premiums.

20 6. To knowingly misrepresent or conceal payroll,
21 classification of workers, or information regarding an
22 employer's loss history which would be material to the
23 computation and application of an experience rating
24 modification factor for the purpose of avoiding or diminishing
25 the amount of payment of any workers' compensation premiums.

26 7. 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 compliance with s. 440.38, as
29 evidence of eligibility for a certificate of alternative
30 coverage exemption under s. 440.05.

31

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

3 9. To knowingly present or cause to be presented any
4 false, fraudulent, or misleading oral or written statement to
5 any person as evidence of identity for the purpose of
6 obtaining employment or filing or supporting a claim for
7 workers' compensation benefits.

8 Section 10. Paragraph (d) of subsection (5) of section
9 489.115, Florida Statutes, is amended to read:

10 489.115 Certification and registration; endorsement;
11 reciprocity; renewals; continuing education.--

12 (5)

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

20 Section 11. Paragraph (b) of subsection (3) of section
21 489.515, Florida Statutes, is amended to read:

22 489.515 Issuance of certificates; registrations.--

23 (3)

24 (b) An applicant for initial issuance of a certificate
25 or registration shall submit as a prerequisite to qualifying
26 for alternative ~~an exemption from workers' compensation~~
27 coverage ~~requirements~~ under s. 440.05 an affidavit attesting
28 to the fact that the applicant will obtain such alternative
29 coverage ~~an exemption~~ within 30 days after the date the
30 initial certificate or registration is issued by the board.

31

