

By Senator Bennett

21-01030-11

20111286

1 A bill to be entitled
2 An act relating to state reciprocity in workers'
3 compensation claims; amending s. 440.09, F.S.;
4 providing extraterritorial coverage; exempting certain
5 employees working in this state and the employers of
6 such employees from the Workers' Compensation Law of
7 this state under certain conditions; providing
8 requirements for the establishment of prima facie
9 evidence that the employer carries certain workers'
10 compensation insurance; requiring courts to take
11 judicial notice of the construction of certain laws;
12 authorizing the Division of Workers' Compensation to
13 enter into agreements with the workers' compensation
14 agencies of other states for certain purposes;
15 providing requirements for claims made in other
16 states; providing criteria for employees to be
17 considered temporarily in a state; providing
18 application; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Paragraph (e) is added to subsection (1) of
23 section 440.09, Florida Statutes, to read:

24 440.09 Coverage.—

25 (1) The employer must pay compensation or furnish benefits
26 required by this chapter if the employee suffers an accidental
27 compensable injury or death arising out of work performed in the
28 course and the scope of employment. The injury, its occupational
29 cause, and any resulting manifestations or disability must be

21-01030-11

20111286

30 established to a reasonable degree of medical certainty, based
31 on objective relevant medical findings, and the accidental
32 compensable injury must be the major contributing cause of any
33 resulting injuries. For purposes of this section, "major
34 contributing cause" means the cause which is more than 50
35 percent responsible for the injury as compared to all other
36 causes combined for which treatment or benefits are sought. In
37 cases involving occupational disease or repetitive exposure,
38 both causation and sufficient exposure to support causation must
39 be proven by clear and convincing evidence. Pain or other
40 subjective complaints alone, in the absence of objective
41 relevant medical findings, are not compensable. For purposes of
42 this section, "objective relevant medical findings" are those
43 objective findings that correlate to the subjective complaints
44 of the injured employee and are confirmed by physical
45 examination findings or diagnostic testing. Establishment of the
46 causal relationship between a compensable accident and injuries
47 for conditions that are not readily observable must be by
48 medical evidence only, as demonstrated by physical examination
49 findings or diagnostic testing. Major contributing cause must be
50 demonstrated by medical evidence only.

51 (e)1. If an employee in this state subject to this chapter
52 temporarily leaves the state incidental to his or her employment
53 and receives an accidental injury arising out of and in the
54 course of employment, the employee, or beneficiaries of the
55 employee if the injury results in death, is entitled to the
56 benefits of this chapter as if the employee were injured within
57 this state.

58 2. An employee from another state and the employer of the

21-01030-11

20111286

59 employee in the other state are exempt from this chapter while
60 the employee is temporarily in this state doing work for the
61 employer if:

62 a. The employer has furnished workers' compensation
63 insurance coverage under the workers' compensation insurance or
64 similar laws of the other state to cover the employee's
65 employment while in this state;

66 b. The extraterritorial provisions of this chapter are
67 recognized in the other state; and

68 c. Employees and employers who are covered in this state
69 are likewise exempted from the application of the workers'
70 compensation insurance or similar laws of the other state.

71 3. The benefits under the workers' compensation insurance
72 or similar laws of the other state, or other remedies under
73 similar law, are the exclusive remedy against the employer for
74 any injury, whether resulting in death or not, received by the
75 employee while temporarily working for that employer in this
76 state.

77 4. A certificate from the duly authorized officer of the
78 department or similar department of another state certifying
79 that the employer of the other state is insured in that state
80 and has provided extraterritorial coverage insuring employees
81 while working in this state is prima facie evidence that the
82 employer carries that workers' compensation insurance.

83 5. Whenever in any appeal or other litigation the
84 construction of the laws of another jurisdiction is required,
85 the courts shall take judicial notice of such construction of
86 the laws of the other jurisdiction.

87 6. The division may enter into an agreement with the

21-01030-11

20111286

88 workers' compensation agency of any other state relating to
89 conflicts of jurisdiction where the contract of employment is in
90 one state and the injuries occur in the other state, or where
91 there is a dispute as to the boundaries or jurisdiction of the
92 states; and, when such an agreement has been executed and made
93 public by the respective state agencies, the rights of employees
94 hired in the other state and injured while temporarily in this
95 state, or hired in this state and injured while temporarily in
96 the other state, or where the jurisdiction is otherwise
97 uncertain, shall be determined pursuant to such agreement and
98 confined to the jurisdiction provided in the agreement.

99 7. When an employee has a claim under the workers'
100 compensation law of another state, territory, province, or
101 foreign nation for the same injury or occupational disease as
102 the claim filed in this state, the total amount of compensation
103 paid or awarded under such other workers' compensation law shall
104 be credited against the compensation due under the Florida
105 Workers' Compensation Law. The employee is entitled to the full
106 amount of compensation due under the Florida Workers'
107 Compensation Law. If compensation under the Florida Workers'
108 Compensation Law is more than the compensation under another
109 law, or compensation paid to the employee under another law is
110 recovered from the employee, the insurer shall pay any unpaid
111 compensation to the employee up to the amount required by the
112 claim under the Florida Workers' Compensation Law.

113 8. For purposes of this paragraph, an employee is
114 considered to be temporarily in a state doing work for an
115 employer if the employee is working for his employer in a state
116 other than the state where he or she is primarily employed, for

21-01030-11

20111286__

117 no more than 10 consecutive days, or no more than 25 total days,
118 during a calendar year.

119 9. This paragraph applies to any claim made on or after
120 July 1, 2011, regardless of the date of the accident.

121 Section 2. This act shall take effect July 1, 2011.