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CS/HB 613

2016 Legislature

1
2 An act relating to workers' compensation system
3 administration; amending s. 440.021, F.S.; conforming
4 a cross-reference; amending s. 440.05, F.S.; deleting
5 a required item to be listed on a notice of election
6 to be exempt; revising specified rules regarding the
7 maintenance of business records by an officer of a
8 corporation; removing the requirement that the
9 Department of Financial Services issue a specified
10 stop-work order; amending s. 440.107, F.S.; requiring
11 that the department allow an employer who has not
12 previously been issued an order of penalty assessment
13 to receive a specified credit to be applied to the
14 penalty; prohibiting the application of a specified
15 credit unless the employer provides specified
16 documentation and proof of payment to the department
17 within a specified period; requiring the department to
18 reduce the final assessed penalty by a specified
19 percentage for employers who have not been previously
20 issued a stop-work order or order of penalty
21 assessment; revising the penalty calculation for the
22 imputed weekly payroll for an employee; amending s.
23 440.13, F.S.; eliminating the certification
24 requirements when an expert medical advisor is
25 selected by a judge of compensation claims; providing
26 requirements for the selection of an expert medical

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 | advisor; amending s. 440.185, F.S.; deleting the
 28 | requirement that employers notify the department
 29 | within 24 hours of any injury resulting in death;
 30 | amending s. 440.42, F.S.; conforming a cross-
 31 | reference; amending s. 440.49, F.S.; revising
 32 | definitions; revising the requirements for filing a
 33 | claim; deleting the preferred worker program; deleting
 34 | the notification fees on certain filed claims which
 35 | supplement the Special Disability Trust Fund;
 36 | conforming cross-references; amending s. 440.50, F.S.;
 37 | conforming cross-references; amending s. 440.52, F.S.;
 38 | deleting a fee for certain registration of insurance
 39 | carriers; amending s. 624.4626, F.S.; conforming a
 40 | cross-reference; providing an effective date.

41

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

43

44 | Section 1. Section 440.021, Florida Statutes, is amended
 45 | to read:

46 | 440.021 Exemption of workers' compensation from chapter
 47 | 120.—Workers' compensation adjudications by judges of
 48 | compensation claims are exempt from chapter 120, and no judge of
 49 | compensation claims shall be considered an agency or a part
 50 | thereof. Communications of the result of investigations by the
 51 | department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt
 52 | from chapter 120. In all instances in which the department

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53 institutes action to collect a penalty or interest which may be
54 due pursuant to this chapter, the penalty or interest shall be
55 assessed without hearing, and the party against which such
56 penalty or interest is assessed shall be given written notice of
57 such assessment and shall have the right to protest within 20
58 days of such notice. Upon receipt of a timely notice of protest
59 and after such investigation as may be necessary, the department
60 shall, if it agrees with such protest, notify the protesting
61 party that the assessment has been revoked. If the department
62 does not agree with the protest, it shall refer the matter to
63 the judge of compensation claims for determination pursuant to
64 s. 440.25(2)-(5). Such action of the department is exempt from
65 the provisions of chapter 120.

66 Section 2. Subsections (1), (2), (3), (5), (10), and (11)
67 of section 440.05, Florida Statutes, are amended to read:

68 440.05 Election of exemption; revocation of election;
69 notice; certification.-

70 (1) Each corporate officer who elects not to accept the
71 provisions of this chapter or who, after electing such
72 exemption, revokes that exemption shall submit mail to the
73 department ~~in Tallahassee~~ notice to such effect in accordance
74 with a form to be prescribed by the department.

75 (2) Each sole proprietor or partner who elects to be
76 included in the definition of "employee" or who, after such
77 election, revokes that election must submit mail to the
78 department ~~in Tallahassee~~ notice to such effect, in accordance

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79 | with a form to be prescribed by the department.

80 | (3) ~~Each officer of a corporation who is engaged in the~~
81 | ~~construction industry and who elects an exemption from this~~
82 | ~~chapter or who, after electing such exemption, revokes that~~
83 | ~~exemption must submit a notice to such effect to the department~~
84 | ~~on a form prescribed by the department.~~ The notice of election
85 | to be exempt must be electronically submitted to the department
86 | by the officer of a corporation who is allowed to claim an
87 | exemption as provided by this chapter and must list the name,
88 | ~~federal tax identification number,~~ date of birth, driver license
89 | number or Florida identification card number, and all certified
90 | or registered licenses issued pursuant to chapter 489 held by
91 | the person seeking the exemption, the registration number of the
92 | corporation filed with the Division of Corporations of the
93 | Department of State, and the percentage of ownership evidencing
94 | the required ownership under this chapter. The notice of
95 | election to be exempt must identify each corporation that
96 | employs the person electing the exemption and must list the
97 | social security number or federal tax identification number of
98 | each such employer and the additional documentation required by
99 | this section. In addition, the notice of election to be exempt
100 | must provide that the officer electing an exemption is not
101 | entitled to benefits under this chapter, must provide that the
102 | election does not exceed exemption limits for officers provided
103 | in s. 440.02, and must certify that any employees of the
104 | corporation whose officer elects an exemption are covered by

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105 workers' compensation insurance. Upon receipt of the notice of
106 the election to be exempt, receipt of all application fees, and
107 a determination by the department that the notice meets the
108 requirements of this subsection, the department shall issue a
109 certification of the election to the officer, unless the
110 department determines that the information contained in the
111 notice is invalid. The department shall revoke a certificate of
112 election to be exempt from coverage upon a determination by the
113 department that the person does not meet the requirements for
114 exemption or that the information contained in the notice of
115 election to be exempt is invalid. The certificate of election
116 must list the name of the corporation listed in the request for
117 exemption. A new certificate of election must be obtained each
118 time the person is employed by a new or different corporation
119 that is not listed on the certificate of election. A notice ~~copy~~
120 of the certificate of election must be sent to each workers'
121 compensation carrier identified in the request for exemption.
122 Upon filing a notice of revocation of election, an officer who
123 is a subcontractor or an officer of a corporate subcontractor
124 must notify her or his contractor. Upon revocation of a
125 certificate of election of exemption by the department, the
126 department shall notify the workers' compensation carriers
127 identified in the request for exemption.

128 (5) A notice given under subsection (1), subsection (2),
129 or subsection (3) shall become effective when issued by the
130 department or 30 days after it ~~an application for an exemption~~

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131 is received by the department, whichever occurs first. However,
 132 if an accident or occupational disease occurs less than 30 days
 133 after the effective date of the insurance policy under which the
 134 payment of compensation is secured or the date the employer
 135 qualified as a self-insurer, such notice is effective as of
 136 12:01 a.m. of the day following the date it is submitted mailed
 137 to the department ~~in Tallahassee~~.

138 (10) Each officer of a corporation who is actively engaged
 139 in the construction industry and who elects an exemption from
 140 this chapter shall maintain business records as specified by the
 141 department by rule, ~~which rules must include the provision that~~
 142 ~~any corporation with exempt officers engaged in the construction~~
 143 ~~industry must maintain written statements of those exempted~~
 144 ~~persons affirmatively acknowledging each such individual's~~
 145 ~~exempt status.~~

146 (11) Any corporate officer permitted by this chapter to
 147 claim an exemption must be listed on the records of this state's
 148 Secretary of State, Division of Corporations, as a corporate
 149 officer. ~~The department shall issue a stop-work order under s.~~
 150 ~~440.107(7) to any corporation who employs a person who claims to~~
 151 ~~be exempt as a corporate officer but who fails or refuses to~~
 152 ~~produce the documents required under this subsection to the~~
 153 ~~department within 3 business days after the request is made.~~

154 Section 3. Paragraphs (d) and (e) of subsection (7) of
 155 section 440.107, Florida Statutes, are amended to read:

156 440.107 Department powers to enforce employer compliance

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157 with coverage requirements.—

158 (7)

159 (d)1. In addition to any penalty, stop-work order, or
160 injunction, the department shall assess against any employer who
161 has failed to secure the payment of compensation as required by
162 this chapter a penalty equal to 2 times the amount the employer
163 would have paid in premium when applying approved manual rates
164 to the employer's payroll during periods for which it failed to
165 secure the payment of workers' compensation required by this
166 chapter within the preceding 2-year period or \$1,000, whichever
167 is greater.

168 a. For employers who have not been previously issued a
169 stop-work order or order of penalty assessment, the department
170 must allow the employer to receive a credit for the initial
171 payment of the estimated annual workers' compensation policy
172 premium, as determined by the carrier, to be applied to the
173 penalty. Before applying the credit to the penalty, the employer
174 must provide the department with documentation reflecting that
175 the employer has secured the payment of compensation pursuant to
176 s. 440.38 and proof of payment to the carrier. In order for the
177 department to apply a credit for an employer that has secured
178 workers' compensation for leased employees by entering into an
179 employee leasing contract with a licensed employee leasing
180 company, the employer must provide the department with a written
181 confirmation, by a representative from the employee leasing
182 company, of the dollar or percentage amount attributable to the

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183 initial estimated workers' compensation expense for leased
 184 employees, and proof of payment to the employee leasing company.
 185 The credit may not be applied unless the employer provides the
 186 documentation and proof of payment to the department within 28
 187 days after service of the stop-work order or first order of
 188 penalty assessment upon the employer.

189 b. For employers who have not been previously issued a
 190 stop-work order or order of penalty assessment, the department
 191 must reduce the final assessed penalty by 25 percent if the
 192 employer has complied with administrative rules adopted pursuant
 193 to subsection (5) and has provided such business records to the
 194 department within 10 business days after the employer's receipt
 195 of the written request to produce business records.

196 c. The \$1,000 penalty shall be assessed against the
 197 employer even if the calculated penalty after the credit and 25
 198 percent reduction have ~~has~~ been applied is less than \$1,000.

199 2. Any subsequent violation within 5 years after the most
 200 recent violation shall, in addition to the penalties set forth
 201 in this subsection, be deemed a knowing act within the meaning
 202 of s. 440.105.

203 (e) When an employer fails to provide business records
 204 sufficient to enable the department to determine the employer's
 205 payroll for the period requested for the calculation of the
 206 penalty provided in paragraph (d), for penalty calculation
 207 purposes, the imputed weekly payroll for each employee,
 208 corporate officer, sole proprietor, or partner shall be the

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209 statewide average weekly wage as defined in s. 440.12(2)
 210 multiplied by 1.5 ~~2~~.

211 Section 4. Paragraph (a) of subsection (7) and paragraphs
 212 (a), (c), and (f) of subsection (9) of section 440.13, Florida
 213 Statutes, are amended to read:

214 440.13 Medical services and supplies; penalty for
 215 violations; limitations.—

216 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

217 (a) Any health care provider, ~~carrier, or employer~~ who
 218 elects to contest the disallowance or adjustment of payment by a
 219 carrier under subsection (6) must, within 45 days after receipt
 220 of notice of disallowance or adjustment of payment, petition the
 221 department to resolve the dispute. The petitioner must serve a
 222 copy of the petition on the carrier and on all affected parties
 223 by certified mail. The petition must be accompanied by all
 224 documents and records that support the allegations contained in
 225 the petition. Failure of a petitioner to submit such
 226 documentation to the department results in dismissal of the
 227 petition.

228 (9) EXPERT MEDICAL ADVISORS.—

229 (a) The department shall certify expert medical advisors
 230 in each specialty to assist the department ~~and the judges of~~
 231 ~~compensation claims~~ within the advisor's area of expertise as
 232 provided in this section. The department shall, in a manner
 233 prescribed by rule, in certifying, recertifying, or decertifying
 234 an expert medical advisor, consider the qualifications,

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235 training, impartiality, and commitment of the health care
236 provider to the provision of quality medical care at a
237 reasonable cost. As a prerequisite for certification or
238 recertification, the department shall require, at a minimum,
239 that an expert medical advisor have specialized workers'
240 compensation training or experience under the workers'
241 compensation system of this state and board certification or
242 board eligibility.

243 (c) If there is disagreement in the opinions of the health
244 care providers, if two health care providers disagree on medical
245 evidence supporting the employee's complaints or the need for
246 additional medical treatment, or if two health care providers
247 disagree that the employee is able to return to work, the
248 department may, and the judge of compensation claims shall, upon
249 his or her own motion or within 15 days after receipt of a
250 written request by either the injured employee, the employer, or
251 the carrier, order the injured employee to be evaluated by an
252 expert medical advisor. The injured employee and the employer or
253 carrier may agree on the health care provider to serve as an
254 expert medical advisor. If the parties do not agree, the judge
255 of compensation claims shall select an expert medical advisor
256 from the department's list of certified expert medical advisors.
257 If a certified medical advisor within the relevant medical
258 specialty is unavailable, the judge of compensation claims shall
259 appoint any otherwise qualified health care provider to serve as
260 an expert medical advisor without obtaining the department's

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261 certification. The opinion of the expert medical advisor is
262 presumed to be correct unless there is clear and convincing
263 evidence to the contrary as determined by the judge of
264 compensation claims. The expert medical advisor appointed to
265 conduct the evaluation shall have free and complete access to
266 the medical records of the employee. An employee who fails to
267 report to and cooperate with such evaluation forfeits
268 entitlement to compensation during the period of failure to
269 report or cooperate.

270 (f) If the department or a judge of compensation claims
271 orders the services of an ~~a certified~~ expert medical advisor to
272 resolve a dispute under this section, the party requesting such
273 examination must compensate the advisor for his or her time in
274 accordance with a schedule adopted by the department. If the
275 employee prevails in a dispute as determined in an order by a
276 judge of compensation claims based upon the expert medical
277 advisor's findings, the employer or carrier shall pay for the
278 costs of such expert medical advisor. If a judge of compensation
279 claims, upon his or her motion, finds that an expert medical
280 advisor is needed to resolve the dispute, the carrier must
281 compensate the advisor for his or her time in accordance with a
282 schedule adopted by the department. The department may assess a
283 penalty not to exceed \$500 against any carrier that fails to
284 timely compensate an advisor in accordance with this section.

285 Section 5. Subsection (3) of section 440.185, Florida
286 Statutes, is amended to read:

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287 440.185 Notice of injury or death; reports; penalties for
 288 violations.—

289 ~~(3) In addition to the requirements of subsection (2), the~~
 290 ~~employer shall notify the department within 24 hours by~~
 291 ~~telephone or telegraph of any injury resulting in death.~~
 292 ~~However, this special notice shall not be required when death~~
 293 ~~results subsequent to the submission to the department of a~~
 294 ~~previous report of the injury pursuant to subsection (2).~~

295 Section 6. Subsection (3) of section 440.42, Florida
 296 Statutes, is amended to read:

297 440.42 Insurance policies; liability.—

298 (3) No contract or policy of insurance issued by a carrier
 299 under this chapter shall expire or be canceled until at least 30
 300 days have elapsed after a notice of cancellation has been sent
 301 to the department and to the employer in accordance with the
 302 provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due
 303 to nonpayment of premium, the insurer shall mail notification to
 304 the employer at least 10 days prior to the effective date of the
 305 cancellation. However, when duplicate or dual coverage exists by
 306 reason of two different carriers having issued policies of
 307 insurance to the same employer securing the same liability, it
 308 shall be presumed that only that policy with the later effective
 309 date shall be in force and that the earlier policy terminated
 310 upon the effective date of the latter. In the event that both
 311 policies carry the same effective date, one of the policies may
 312 be canceled instanter upon filing a notice of cancellation with

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313 the department and serving a copy thereof upon the employer in
 314 such manner as the department prescribes by rule. The department
 315 may by rule prescribe the content of the notice of retroactive
 316 cancellation and specify the time, place, and manner in which
 317 the notice of cancellation is to be served.

318 Section 7. Paragraph (b) of subsection (2), paragraph (c)
 319 of subsection (4), paragraph (c) of subsection (6), paragraphs
 320 (c) and (d) of subsection (7), subsection (8), and paragraph (d)
 321 of subsection (9) of section 440.49, Florida Statutes, are
 322 amended to read:

323 440.49 Limitation of liability for subsequent injury
 324 through Special Disability Trust Fund.—

325 (2) DEFINITIONS.—As used in this section, the term:

326 ~~(b) "Preferred worker" means a worker who, because of a~~
 327 ~~permanent impairment resulting from a compensable injury or~~
 328 ~~occupational disease, is unable to return to the worker's~~
 329 ~~regular employment.~~

330
 331 In addition to the definitions contained in this subsection, the
 332 department may by rule prescribe definitions that are necessary
 333 for the effective administration of this section.

334 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
 335 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
 336 OTHER PHYSICAL IMPAIRMENT.—

337 (c) Temporary compensation and medical benefits;
 338 aggravation or acceleration of preexisting condition or

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339 | circumstantial causation.—If an employee who has a preexisting
 340 | permanent physical impairment experiences an aggravation or
 341 | acceleration of the preexisting permanent physical impairment as
 342 | a result of an injury or occupational disease arising out of and
 343 | in the course of her or his employment, or suffers an injury as
 344 | a result of a merger as defined in paragraph (2) (b) ~~(2) (e)~~, the
 345 | employer shall provide all benefits provided by this chapter,
 346 | but, subject to the limitations specified in subsection (7), the
 347 | employer shall be reimbursed by the Special Disability Trust
 348 | Fund created by subsection (9) for 50 percent of its payments
 349 | for temporary, medical, and attendant care benefits.

350 | (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

351 | (c) An employer's or carrier's right to apportionment or
 352 | deduction pursuant to ss. 440.02(1), 440.15(5)(b), and
 353 | 440.151(1)(c) does not preclude reimbursement from such fund,
 354 | except when the merger comes within the definition of paragraph
 355 | (2) (b) ~~(2) (e)~~ and such apportionment or deduction relieves the
 356 | employer or carrier from providing the materially and
 357 | substantially greater permanent disability benefits otherwise
 358 | contemplated in those paragraphs.

359 | (7) REIMBURSEMENT OF EMPLOYER.—

360 | (c) A proof of claim must be filed on each notice of claim
 361 | on file as of June 30, 1997, within 1 year after July 1, 1997,
 362 | or the right to reimbursement of the claim shall be barred. A
 363 | notice of claim on file on or before June 30, 1997, may be
 364 | withdrawn and refiled if, at the time refiled, the notice of

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365 claim remains within the limitation period specified in
 366 paragraph (a). Such refiling shall not toll, extend, or
 367 otherwise alter in any way the limitation period applicable to
 368 the withdrawn and subsequently refiled notice of claim. ~~Each~~
 369 ~~proof of claim filed shall be accompanied by a proof of claim~~
 370 ~~fee as provided in paragraph (9)(d).~~ The Special Disability
 371 Trust Fund shall, within 120 days after receipt of the proof of
 372 claim, serve notice of the acceptance of the claim for
 373 reimbursement. This paragraph shall apply to all claims
 374 notwithstanding the provisions of subsection (12).

375 ~~(d) Each notice of claim filed or refiled on or after July~~
 376 ~~1, 1997, must be accompanied by a notification fee as provided~~
 377 ~~in paragraph (9)(d).~~ A proof of claim must be filed within 1
 378 year after the date the notice of claim is filed or refiled,
 379 ~~accompanied by a proof of claim fee as provided in paragraph~~
 380 ~~(9)(d), or the claim shall be barred. The notification fee shall~~
 381 ~~be waived if both the notice of claim and proof of claim are~~
 382 ~~submitted together as a single filing.~~ The Special Disability
 383 Trust Fund shall, within 180 days after receipt of the proof of
 384 claim, serve notice of the acceptance of the claim for
 385 reimbursement. This paragraph shall apply to all claims
 386 notwithstanding the provisions of subsection (12).

387 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~
 388 ~~or administrator shall issue identity cards to preferred workers~~
 389 ~~upon request by qualified employees and the Department of~~
 390 ~~Financial Services shall reimburse an employer, from the Special~~

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391 ~~Disability Trust Fund, for the cost of workers' compensation~~
 392 ~~premium related to the preferred workers payroll for up to 3~~
 393 ~~years of continuous employment upon satisfactory evidence of~~
 394 ~~placement and issuance of payroll and classification records and~~
 395 ~~upon the employee's certification of employment. The Department~~
 396 ~~of Financial Services and the Department of Education may by~~
 397 ~~rule prescribe definitions, forms, and procedures for the~~
 398 ~~administration of the preferred worker program. The Department~~
 399 ~~of Education may by rule prescribe the schedule for submission~~
 400 ~~of forms for participation in the program.~~

401 (8) ~~(9)~~ SPECIAL DISABILITY TRUST FUND.—

402 ~~(d) The Special Disability Trust Fund shall be~~
 403 ~~supplemented by a \$250 notification fee on each notice of claim~~
 404 ~~filed or refiled after July 1, 1997, and a \$500 fee on each~~
 405 ~~proof of claim filed in accordance with subsection (7). Revenues~~
 406 ~~from the fee shall be deposited into the Special Disability~~
 407 ~~Trust Fund and are exempt from the deduction required by s.~~
 408 ~~215.20. The fees provided in this paragraph shall not be imposed~~
 409 ~~upon any insurer which is in receivership with the department.~~

410 Section 8. Paragraph (b) of subsection (1) of section
 411 440.50, Florida Statutes, is amended to read:

412 440.50 Workers' Compensation Administration Trust Fund.—

413 (1)

414 (b) The department is authorized to transfer as a loan an
 415 amount not in excess of \$250,000 from such special fund to the
 416 Special Disability Trust Fund established by s. 440.49(8) ~~s.~~

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417 ~~440.49(9)~~, which amount shall be repaid to the ~~said~~ special fund
 418 in annual payments equal to not less than 10 percent of moneys
 419 received for the ~~such~~ Special Disability Trust Fund.

420 Section 9. Subsection (1) of section 440.52, Florida
 421 Statutes, is amended to read:

422 440.52 Registration of insurance carriers; notice of
 423 cancellation or expiration of policy; suspension or revocation
 424 of authority.—

425 (1) Each insurance carrier who desires to write workers'
 426 ~~such~~ compensation insurance in compliance with this chapter
 427 shall be required, before writing such insurance, to register
 428 with the department and ~~pay a registration fee of \$100. This~~
 429 ~~shall be deposited by the department in the fund created by s.~~
 430 ~~440.50.~~

431 Section 10. Subsection (2) of section 624.4626, Florida
 432 Statutes, is amended to read:

433 624.4626 Electric cooperative self-insurance fund.—

434 (2) A self-insurance fund that meets the requirements of
 435 this section is subject to the assessments set forth in ss.
 436 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not
 437 subject to any other provision of s. 624.4621 and is not
 438 required to file any report with the department under s.
 439 440.38(2)(b) which is uniquely required of group self-insurer
 440 funds qualified under s. 624.4621.

441 Section 11. This act shall take effect October 1, 2016.