

By Senator DiCeglie

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1 A bill to be entitled
2 An act relating to occupational injury benefit plans;
3 amending s. 440.02, F.S.; revising the definition of
4 the term "employee"; defining the term "qualified
5 compensation alternative employer"; amending s.
6 440.03, F.S.; providing an exception to the
7 application of certain provisions of ch. 440, F.S.;
8 amending s. 440.06, F.S.; specifying how an employer
9 may elect to secure the payment of compensation;
10 authorizing an employee of a qualified compensation
11 alternative employer to bring a certain cause of
12 action; specifying that the employee must prove
13 negligence in such action; authorizing the qualified
14 compensation alternative employer to use certain
15 defenses in such action; prohibiting certain
16 employers, in specified suits, from defending the suit
17 on certain grounds; providing that a qualified
18 compensation alternative employer is entitled to an
19 offset to occupational injury benefits paid to and on
20 behalf of employees under certain circumstances;
21 providing construction; creating s. 440.065, F.S.;
22 requiring qualified compensation arrangement employers
23 to adopt a written occupational injury benefit plan;
24 specifying the requirements of such plan; requiring a
25 qualified compensation arrangement employer to grant
26 eligibility for benefits under certain circumstances;
27 prohibiting a qualified compensation arrangement
28 employer from charging a fee, premium, or other
29 similar cost to the covered employee for the

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30 occupational injury benefit plan; authorizing the
31 qualified compensation arrangement employer to select
32 or authorize medical providers who provide treatment
33 to covered employees under such plan; providing that
34 the qualified compensation arrangement employer is not
35 required to cover, and is not liable in a negligence
36 lawsuit for, certain injuries, diseases, or
37 conditions; creating s. 440.066, F.S.; requiring a
38 qualified compensation arrangement employer to
39 demonstrate financial responsibility; authorizing the
40 qualified compensation arrangement employer to self-
41 fund or insure the benefits and liabilities under its
42 occupational injury benefit plan; specifying the
43 insurance requirements and coverage limits required
44 for such insurance; specifying requirements related to
45 the security held; creating s. 440.067, F.S.;

46 providing that all benefit payments by a qualified
47 compensation arrangement employer are made pursuant to
48 workers' compensation law; providing that such law is
49 incorporated in the act by reference; creating s.
50 440.068, F.S.; requiring a qualified compensation
51 arrangement employer to obtain approval from the
52 insurance carrier for administration of claims;
53 authorizing a qualified compensation arrangement
54 employer to self-administer or use a third party to
55 administer claims, provided that certain requirements
56 are met; amending ss. 440.14 and 440.385, F.S.;

57 conforming cross-references; providing an effective
58 date.

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

Section 1. Present subsections (33) through (41) of section 440.02, Florida Statutes, are redesignated as subsections (34) through (42), respectively, a new subsection (33) is added to that section, and paragraph (d) of subsection (18) of that section is amended, to read:

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

(18)

(d) "Employee" does not include:

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

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

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

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

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

(IV) The independent contractor holds one or more bank

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88 accounts in the name of the business entity for purposes of
89 paying business expenses or other expenses related to services
90 rendered or work performed for compensation;

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

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

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

105 (I) The independent contractor performs or agrees to
106 perform specific services or work for a specific amount of money
107 and controls the means of performing the services or work.

108 (II) The independent contractor incurs the principal
109 expenses related to the service or work that he or she performs
110 or agrees to perform.

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

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

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

119 (VI) The independent contractor has continuing or recurring
120 business liabilities or obligations.

121 (VII) The success or failure of the independent
122 contractor's business depends on the relationship of business
123 receipts to expenditures.

124 c. Notwithstanding anything to the contrary in this
125 subparagraph, an individual claiming to be an independent
126 contractor has the burden of proving that he or she is an
127 independent contractor for purposes of this chapter.

128 2. A real estate licensee, if that person agrees, in
129 writing, to perform for remuneration solely by way of
130 commission.

131 3. Bands, orchestras, and musical and theatrical
132 performers, including disk jockeys, performing in licensed
133 premises as defined in chapter 562, if a written contract
134 evidencing an independent contractor relationship is entered
135 into before the commencement of such entertainment.

136 4. An owner-operator of a motor vehicle who transports
137 property under a written contract with a motor carrier which
138 evidences a relationship by which the owner-operator assumes the
139 responsibility of an employer for the performance of the
140 contract, if the owner-operator is required to furnish motor
141 vehicle equipment as identified in the written contract and the
142 principal costs incidental to the performance of the contract,
143 including, but not limited to, fuel and repairs, provided a
144 motor carrier's advance of costs to the owner-operator when a
145 written contract evidences the owner-operator's obligation to

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146 reimburse such advance shall be treated as the owner-operator
147 furnishing such cost and the owner-operator is not paid by the
148 hour or on some other time-measured basis.

149 5. A person whose employment is both casual and not in the
150 course of the trade, business, profession, or occupation of the
151 employer.

152 6. A volunteer, except a volunteer worker for the state or
153 a county, municipality, or other governmental entity. A person
154 who does not receive monetary remuneration for services is
155 presumed to be a volunteer unless there is substantial evidence
156 that a valuable consideration was intended by both employer and
157 employee. For purposes of this chapter, the term "volunteer"
158 includes, but is not limited to:

159 a. Persons who serve in private nonprofit agencies and who
160 receive no compensation other than expenses in an amount less
161 than or equivalent to the standard mileage and per diem expenses
162 provided to salaried employees in the same agency or, if such
163 agency does not have salaried employees who receive mileage and
164 per diem, then such volunteers who receive no compensation other
165 than expenses in an amount less than or equivalent to the
166 customary mileage and per diem paid to salaried workers in the
167 community as determined by the department; and

168 b. Volunteers participating in federal programs established
169 under Pub. L. No. 93-113.

170 7. Unless otherwise prohibited by this chapter, any officer
171 of a corporation who elects to be exempt from this chapter. Such
172 officer is not an employee for any reason under this chapter
173 until the notice of revocation of election filed pursuant to s.
174 440.05 is effective.

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175 8. An officer of a corporation that is engaged in the
176 construction industry who elects to be exempt from ~~the~~
177 ~~provisions of~~ this chapter, as otherwise permitted by this
178 chapter. Such officer is not an employee for any reason until
179 the notice of revocation of election filed pursuant to s. 440.05
180 is effective.

181 9. An exercise rider who does not work for a single horse
182 farm or breeder, and who is compensated for riding on a case-by-
183 case basis, provided a written contract is entered into before
184 ~~prior to~~ the commencement of such activity which evidences that
185 an employee/employer relationship does not exist.

186 10. A taxicab, limousine, or other passenger vehicle-for-
187 hire driver who operates such ~~said~~ vehicles pursuant to a
188 written agreement with a company which provides any dispatch,
189 marketing, insurance, communications, or other services under
190 which the driver and any fees or charges paid by the driver to
191 the company for such services are not conditioned upon, or
192 expressed as a proportion of, fare revenues.

193 11. A person who performs services as a sports official for
194 an entity sponsoring an interscholastic sports event or for a
195 public entity or private, nonprofit organization that sponsors
196 an amateur sports event. For purposes of this subparagraph, such
197 a person is an independent contractor. For purposes of this
198 subparagraph, the term "sports official" means any person who is
199 a neutral participant in a sports event, including, but not
200 limited to, umpires, referees, judges, linespersons,
201 scorekeepers, or timekeepers. This subparagraph does not apply
202 to any person employed by a district school board who serves as
203 a sports official as required by the employing school board or

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204 who serves as a sports official as part of his or her
205 responsibilities during normal school hours.

206 12. Medicaid-enrolled clients under chapter 393 who are
207 excluded from the definition of employment under s.
208 443.1216(4) (d) and served by Adult Day Training Services under
209 the Home and Community-Based or the Family and Supported Living
210 Medicaid Waiver program in a sheltered workshop setting licensed
211 by the United States Department of Labor for the purpose of
212 training and earning less than the federal hourly minimum wage.

213 13. Medicaid-enrolled clients under chapter 393 who are
214 excluded from the definition of employment under s.
215 443.1216(4) (d) and served by Adult Day Training Services under
216 the Family and Supported Living Medicaid Waiver program in a
217 sheltered workshop setting licensed by the United States
218 Department of Labor for the purpose of training and earning less
219 than the federal hourly minimum wage.

220 14. A person employed by a qualified compensation
221 alternative employer.

222 (33) "Qualified compensation alternative employer" or
223 "QCARE employer" means any employer who elects coverage for its
224 employees under s. 440.06.

225 Section 2. Section 440.03, Florida Statutes, is amended to
226 read:

227 440.03 Application.—Every employer and employee as defined
228 in s. 440.02 ~~is shall be bound by the provisions of this~~
229 chapter, except for a qualified compensation alternative
230 employer. A QCARE employer is bound by only those provisions of
231 this chapter specifically referenced.

232 Section 3. Section 440.06, Florida Statutes, is amended to

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233 read:

234 440.06 Election Failure to secure compensation; effect.—

235 (1) An employer may elect to secure the payment of
236 compensation, as provided in s. 440.10, or elect to be a
237 qualified compensation alternative employer by complying with s.
238 440.065.

239 (2) An employee of a QCARE employer may bring a cause of
240 action against the QCARE employer for negligence in causing an
241 injury; however, there may be no QCARE employer negligence for
242 an ordinary disease of life to which the general public is
243 exposed. In the cause of action, the employee must prove the
244 QCARE employer negligent. The QCARE employer may use any defense
245 available to an alleged tortfeasor under general law.

246 (3) An ~~Every~~ employer who fails to secure the payment of
247 compensation, as provided in s. 440.10, by failing to meet the
248 requirements of s. 440.38 ~~or who fails to secure the payment of~~
249 compensation by failing to comply with s. 440.065 may not, in
250 any suit brought against him or her by an employee subject to
251 this chapter to recover damages for injury ~~or death~~, defend such
252 a suit on the grounds that the injury was caused by the
253 negligence of a fellow employee ~~servant~~, that the employee
254 assumed the risk of his or her employment, or that the injury
255 was due to the comparative negligence of the employee.

256 (4) A QCARE employer is entitled to an offset for the
257 benefits paid to or on behalf of an employee, under an
258 occupational injury benefit plan that meets the requirements of
259 s. 440.065, against any alleged negligence liability of the
260 QCARE employer, its officers, directors, or agents with respect
261 to an injury involving such employee. Benefit payments made

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262 under such occupational injury benefit plan shall be considered
263 made by the QCARE employer and may not be considered payment
264 from a collateral source, as the term "collateral source" may be
265 defined under any applicable rule, statute, judicial decision,
266 or directive.

267 Section 4. Section 440.065, Florida Statutes, is created to
268 read:

269 440.065 Requirements of a qualified compensation
270 alternative employer.-

271 (1) A QCARE employer shall adopt a written occupational
272 injury benefit plan that provides defined occupational injury
273 benefits for covered employees on a no-fault basis. Such plan
274 may exclude willful or intentional acts to injure oneself or
275 another. Except for the definitions of the terms provided in
276 subsection (2), the plan must include all the definitions of the
277 terms provided in s. 440.02, but only to the extent that such
278 terms are relevant to the benefits required in this section.

279 (2) The occupational injury benefit plan must define all of
280 the following terms as indicated:

281 (a) "Accident" means an unexpected or unusual event or
282 result that happens suddenly. If a preexisting condition is
283 accelerated or aggravated by an accident arising out of and in
284 the course of employment, only acceleration or aggravation of
285 the preexisting condition reasonably attributable to the
286 accident is compensable.

287 (b) "Arising out of" means occupational causation. An
288 accidental injury or death arises out of employment if work
289 performed in the course and scope of employment is the major
290 contributing cause of the injury or death.

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291 (c) "Occupational disease" means a disease that is due to
292 causes and conditions that are characteristic of and peculiar to
293 a particular trade, occupation, process, or employment. The term
294 does not include ordinary diseases of life to which the general
295 public is exposed.

296 (d) "Wages" means the money rate at which the service
297 rendered is recompensed under the contract of hiring in force at
298 the time of the injury and includes only the wages earned and
299 reported for federal income tax purposes on the job where the
300 employee is injured and any other concurrent employment where he
301 or she is also subject to occupational injury coverage and
302 benefits, together with the reasonable value of housing
303 furnished to the employee by the QCARE employer which is the
304 permanent year-round residence of the employee, and gratuities
305 to the extent reported to the QCARE employer in writing as
306 taxable income received in the course of employment from others
307 than the QCARE employer and QCARE employer contributions for
308 health insurance for the employee or the employee's dependents.
309 However, housing furnished to migrant workers shall be included
310 in wages unless provided after the time of injury. In employment
311 in which an employee receives consideration for housing, the
312 reasonable value of such housing compensation shall be the
313 actual cost to the employer or based upon the Fair Market Rent
314 Survey promulgated pursuant to s. 8 of the Housing and Urban
315 Development Act of 1974, whichever is less. However, if the
316 QCARE employer contributions for housing or health insurance are
317 continued after the time of the injury, the contributions are
318 not "wages" for the purpose of calculating an employee's average
319 weekly wages.

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320 (3) The occupational injury benefit plan must provide
321 medical expense coverage for at least 156 weeks per covered
322 employee, up to at least \$300,000 per covered employee.

323 (4) The occupational injury benefit plan must provide lost
324 wage compensation, beginning no later than the 4th full day of
325 disability, of at least 75 percent of the average weekly wages
326 of the employee, for at least 156 weeks from the date of
327 disability.

328 (5) The occupational injury benefit plan must provide death
329 benefits for a covered employee's death arising out of
330 employment in an amount not less than \$150,000, payable in no
331 more than 60 equal monthly installments. The plan must also pay
332 funeral expenses up to at least \$10,000.

333 (6) A QCARE employer must provide benefits to an employee
334 otherwise eligible for occupational injury benefits if the
335 employee reports an accident or a known exposure to an
336 occupational disease within 3 days after such accident,
337 exposure, or diagnosis.

338 (7) A QCARE employer may not charge a fee, premium, or
339 other similar expense to the covered employee for his or her
340 coverage under the occupational injury benefit plan.

341 (8) The QCARE employer may select or authorize the medical
342 providers who provide any treatment to a covered employee under
343 the occupational injury benefit plan.

344 (9) The QCARE employer is not required to cover under the
345 occupational injury benefit plan, nor is the QCARE employer
346 liable in a negligence lawsuit for, any injuries, diseases, or
347 conditions arising from any of the following:

348 (a) A subsequent injury the employee suffers as a result of

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349 an original injury arising out of employment unless the original
350 injury is the major contributing cause of the subsequent injury.
351 The employee must demonstrate the major contributing cause by
352 medical evidence.

353 (b) Bodily injury to any person subject to any federal
354 workers' compensation law or other federal occupational disease
355 law, including, but not limited to, the Federal Employers'
356 Liability Act, the Longshore and Harbor Workers' Compensation
357 Act, the Defense Base Act, the Jones Act, or the Migrant and
358 Seasonal Agricultural Worker Protection Act.

359 (c) Any obligation imposed by workers' compensation,
360 occupational disease, unemployment compensation, or disability
361 benefits law, or any similar law, except as specifically
362 referenced in this chapter.

363 Section 5. Section 440.066, Florida Statutes, is created to
364 read:

365 440.066 Financial responsibility of a qualified
366 compensation alternative employer.—

367 (1) A QCARE employer shall demonstrate financial ability to
368 pay benefit and negligence liability claims by complying with
369 this section.

370 (2) A QCARE employer shall insure the benefits and
371 liabilities under its occupational injury benefit plan with any
372 insurance carrier authorized to do business in this state. The
373 insurance must be for a minimum limit of \$1 million per
374 occurrence. The insurance must include benefit coverage and
375 negligence liability coverage. Insurance coverage obtained by a
376 QCARE employer must be from an admitted or an approved insurer
377 that is rated "A-" or higher by A.M. Best Company.

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378 (3) Any security held for purposes of compliance with this
379 section serves to guarantee the payment of claims under this
380 chapter.

381 (4) (a) A QCARE employer with a net worth of less than \$10
382 million which insures or obtains coverage to be reimbursed for
383 payments under the QCARE employer's occupational injury benefit
384 plan or any negligence settlements or awards through an
385 insurance policy that has a self-insured retention of the
386 greater of \$50,000 or 1.5 percent of net worth per occurrence is
387 deemed to have fully insured the QCARE employer's compensation
388 obligation.

389 (b) A QCARE employer with a net worth of \$10 million or
390 more which insures or obtains coverage to be reimbursed for
391 payments under the QCARE employer's occupational injury benefit
392 plan or any negligence settlements or awards through an
393 insurance policy that has a self-insured retention of the
394 greater of \$500,000 or 1.5 percent of net worth per occurrence
395 is deemed to have fully insured the QCARE employer's
396 compensation obligation.

397 (c) A QCARE employer identified in paragraph (a) or
398 paragraph (b) is not required to post any security deposit with
399 or provide any financial data to the Office of Insurance
400 Regulation.

401 Section 6. Section 440.067, Florida Statutes, is created to
402 read:

403 440.067 Taxation of benefits of a qualified compensation
404 alternative employer.—For purposes of state and federal
405 taxation, all benefit payments made by a QCARE employer are
406 deemed amounts received under a workers' compensation law as

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407 compensation for personal injury or sickness.

408 Section 7. Section 440.068, Florida Statutes, is created to
409 read:

410 440.068 Benefit plan disputes.—A QCARE employer shall
411 obtain approval from the insurance carrier selected in
412 accordance with s. 440.066 for claims administration. Subject to
413 insurance carrier approval, the QCARE employer may self-
414 administer or use a third-party claims administrator to
415 administer claims, provided that all claims and appeals for
416 benefits must be adjudicated by the claims administrator in
417 accordance with the applicable fiduciary, enforcement, reporting
418 and disclosure, and claims administration laws and regulations
419 of the Employee Retirement Income Security Act of 1974, as
420 amended.

421 Section 8. Subsection (4) of section 440.14, Florida
422 Statutes, is amended to read:

423 440.14 Determination of pay.—

424 (4) Upon termination of the employee or upon termination of
425 the payment of fringe benefits of any employee who is collecting
426 indemnity benefits pursuant to s. 440.15(2) or (3), the employer
427 shall within 7 days after ~~of~~ such termination file a corrected
428 13-week wage statement reflecting the wages paid, as provided in
429 s. 440.02(41), and the fringe benefits that had been paid to the
430 injured employee, ~~as provided in s. 440.02(40)~~.

431 Section 9. Paragraph (a) of subsection (1) of section
432 440.385, Florida Statutes, is amended to read:

433 440.385 Florida Self-Insurers Guaranty Association,
434 Incorporated.—

435 (1) CREATION OF ASSOCIATION.—

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436 (a) There is created a nonprofit corporation to be known as
437 the "Florida Self-Insurers Guaranty Association, Incorporated,"
438 hereinafter referred to as "the association." Upon incorporation
439 of the association, all individual self-insurers as defined in
440 ss. 440.02(34)(a) and 440.38(1)(b) ~~ss. 440.02(33)(a) and~~
441 ~~440.38(1)(b)~~, other than individual self-insurers which are
442 public utilities or governmental entities, shall be members of
443 the association as a condition of their authority to
444 individually self-insure in this state. The association shall
445 perform its functions under a plan of operation as established
446 and approved under subsection (5) and shall exercise its powers
447 and duties through a board of directors as established under
448 subsection (2). The association shall have those powers granted
449 or permitted corporations not for profit, as provided in chapter
450 617. The activities of the association shall be subject to
451 review by the department. The department shall have oversight
452 responsibility as set forth in this section. The association is
453 specifically authorized to enter into agreements with this state
454 to perform specified services.

455 Section 10. This act shall take effect September 1, 2026.