

CHAPTER 98-174

Committee Substitute for Committee Substitute for Senate Bill No. 1406

An act relating to workers' compensation; amending s. 440.02, F.S.; defining the terms "corporate officer," "partner," and "sole proprietor," as used in ch. 440, F.S.; amending s. 440.05, F.S.; authorizing the Division of Workers' Compensation of the Department of Labor and Employment Security to approve and revoke certificates of exemption; specifying requirements for notices of election to be exempt; providing for renewal of exemption certificates; requiring notice on election forms that providing false information is a felony; revising fees for exemptions and specifying use of fees by the division; amending s. 440.09, F.S.; conforming references to judges of compensation claims and administrative law judges; amending s. 440.10, F.S.; relating to liability for compensation; revising provisions relating to when a person is conclusively presumed to be an independent contractor; providing circumstances in which carriers may not consider a person to be an employee; amending s. 440.103, F.S.; revising the documentation that must be filed by an employer that obtains a building permit; specifying requirements for certificates of coverage; amending s. 440.104, F.S.; revising the cause of action and remedies available to losers of competitive bidding against persons who violate certain provisions; increasing recoverable damages; amending s. 440.105, F.S.; providing penalties; providing a time limitation for bringing an action under s. 440.105(4), F.S.; amending s. 440.107, F.S.; providing legislative findings related to noncompliance with workers' compensation coverage requirements; authorizing the division to enter and inspect places of business for investigating compliance; requiring employers to maintain records required by the division by rule; authorizing the division to require sworn reports from employers, to administer oaths, and to issue subpoenas to enforce compliance; providing penalties for refusal to obey a subpoena; amending s. 440.185, F.S.; requiring carriers to notify the division whether certain policies are minimum premium policies; amending s. 440.42, F.S.; authorizing workers' compensation policies to require employers to release certain employment and wage information; amending s. 440.45, F.S.; revising term of office, qualifications, and method of nomination for the Chief Judge of the Office of the Judges of Compensation Claims; providing for expiration of term of office for members of the statewide nominating commission for judges of compensation claims; providing for new appointments to the nominating commission and staggered terms; revising the procedures for nominating commission regarding performance of sitting judges and regarding nominations of applicants; providing for expiration of the term of office and reappointment of the Chief Judge of Compensation Claims; amending s. 626.989, F.S.; requiring the Division of Insurance Fraud of the Department of Insurance and the Division of Workers' Compensation of the Department of Labor and Employment Security to periodically submit a

joint performance report to the Legislature; amending s. 627.413, F.S.; specifying notice requirements for minimum premium policies; requiring the division to notify certain persons of certain requirements of this act; providing an appropriation; amending s. 775.15, F.S.; providing a statute of limitations for certain insurance fraud violations; providing an effective date.

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

Section 1. Section 440.02, Florida Statutes, 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:

(1) “Accident” means only an unexpected or unusual event or result that happens suddenly. A mental or nervous injury due to stress, fright, or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual’s race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment. If a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident is compensable, with respect to death or permanent impairment.

(2) “Adoption” or “adopted” means legal adoption prior to the time of the injury.

(3) “Carrier” means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462.

(4) “Casual” as used in this section shall be taken to refer only to employments when the work contemplated is to be completed in not exceeding 10 working days, without regard to the number of persons employed, and when the total labor cost of such work is less than \$100.

(5) “Child” includes a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee. “Grandchild” means a child as above defined of a child as above defined. “Brother” and “sister” include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers or married sisters unless wholly dependent on the employee. “Child,” “grandchild,” “brother,” and “sister” include only persons who at the time of the death of the deceased employees are under 18 years of age, or under 22 years of age if a full-time student in an accredited educational institution.

(6) "Compensation" means the money allowance payable to an employee or to his or her dependents as provided for in this chapter.

(7) "Construction industry" means for-profit activities involving the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction. However, "construction" shall not mean a landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold or resold.

(8) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as permitted or required by chapter 607.

(9)(8) "Date of maximum medical improvement" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.

(10)(9) "Death" as a basis for a right to compensation means only death resulting from an injury.

(11)(10) "Department" means the Department of Labor and Employment Security.

(12)(11) "Disability" means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury.

(13)(12) "Division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.

(14)(13)(a) "Employee" means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

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

1. Any officer of a corporation may elect to be exempt from this chapter by filing written notice of the election with the division as provided in s. 440.05.

2. As to officers of a corporation who are actively engaged in the construction industry, no more than three officers may elect to be exempt from this chapter by filing written notice of the election with the division as provided in s. 440.05.

3. An officer of a corporation who elects to be exempt from this chapter by filing a written notice of the election with the division as provided in s. 440.05 is not an employee.

Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as provided in this paragraph, elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05. Partners or sole proprietors actively engaged in the construction industry are considered employees unless they elect to be excluded from the definition of employee by filing written notice of the election with the division as provided in s. 440.05. However, no more than three partners in a partnership that is actively engaged in the construction industry may elect to be excluded. A sole proprietor or partner who is actively engaged in the construction industry and who elects to be exempt from this chapter by filing a written notice of the election with the division as provided in s. 440.05 is not an employee. For purposes of this chapter, an independent contractor is an employee unless he or she meets all of the conditions set forth in subparagraph (d)1.

(d) "Employee" does not include:

1. An independent contractor, if:

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

b. 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 requirements;

c. The independent contractor performs or agrees to perform specific services or work for specific amounts of money and controls the means of performing the services or work;

d. The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;

e. The independent contractor is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform and is or could be held liable for a failure to complete the work or services;

f. The independent contractor receives compensation for work or services performed for a commission or on a per-job or competitive-bid basis and not on any other basis;

g. The independent contractor may realize a profit or suffer a loss in connection with performing work or services;

h. The independent contractor has continuing or recurring business liabilities or obligations; and

i. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

However, the determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449, or a newspaper delivery person, is an independent contractor is governed not by the criteria in this paragraph but by common-law principles, giving due consideration to the business activity of the individual.

2. A real estate salesperson or agent, if that person agrees, in writing, to perform for remuneration solely by way of commission.

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

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for transportation service and is not paid by the hour or on some other time-measured basis.

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

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

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

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

7. Any officer of a corporation who elects to be exempt from this chapter.

8. A sole proprietor or officer of a corporation who actively engages in the construction industry, and a partner in a partnership that is actively engaged in the construction industry, who elects to be exempt from the provisions of this chapter. Such sole proprietor, officer, or partner is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

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

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

(15)(14) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105 and 440.106.

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

(b) "Employment" includes:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein, including officers elected at the polls.

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

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

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

1. Domestic servants in private homes.

2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, who employs 5 or fewer regular employees

and who employs fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term "agricultural labor" includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

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

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

~~(17)~~(16) "Misconduct" includes, but is not limited to, the following, which shall not be construed in pari materia with each other:

(a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of the employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer's interests or of the employee's duties and obligations to the employer.

~~(18)~~(17) "Injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eye-glasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.

~~(19)~~(18) "Parent" includes stepparents and parents by adoption, parents-in-law, and any persons who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him or her and were dependent on the injured employee.

(20) "Partner" means any person who is a member of a partnership that is formed by two or more persons to carry on as coowners of a business with the understanding that there will be a proportional sharing of the profits and losses between them. For the purposes of this chapter, a partner is a person who participates fully in the management of the partnership and who is personally liable for its debts.

~~(21)~~(19) "Permanent impairment" means any anatomic or functional abnormality or loss determined as a percentage of the body as a whole, existing after the date of maximum medical improvement, which results from the injury.

~~(22)~~(20) "Person" means individual, partnership, association, or corporation, including any public service corporation.

~~(23)~~(21) “Self-insurer” means:

(a) Any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) or (6) as an individual self-insurer;

(b) Any employer who has secured payment of compensation through a group self-insurance fund under s. 624.4621;

(c) Any group self-insurance fund established under s. 624.4621;

(d) A public utility as defined in s. 364.02 or s. 366.02 that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.571; or

(e) Any local government self-insurance fund established under s. 624.4622.

(24) “Sole proprietor” means a natural person who owns a form of business in which that person owns all the assets of the business and is solely liable for all the debts of the business.

~~(25)~~(22) “Spouse” includes only a spouse substantially dependent for financial support upon the decedent and living with the decedent at the time of the decedent’s injury and death, or substantially dependent upon the decedent for financial support and living apart at that time for justifiable cause.

~~(26)~~(23) “Time of injury” means the time of the occurrence of the accident resulting in the injury.

~~(27)~~(24) “Wages” means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury and includes only the wages earned and reported for federal income tax purposes on the job where the employee is injured and any other concurrent employment where he or she is also subject to workers’ compensation coverage and benefits, together with the reasonable value of housing furnished to the employee by the employer which is the permanent year-round residence of the employee, and gratuities to the extent reported to the employer in writing as taxable income received in the course of employment from others than the employer and employer contributions for health insurance for the employee or the employee’s dependents. However, housing furnished to migrant workers shall be included in wages unless provided after the time of injury. In employment in which an employee receives consideration for housing, the reasonable value of such housing compensation shall be the actual cost to the employer or based upon the Fair Market Rent Survey promulgated pursuant to s. 8 of the Housing and Urban Development Act of 1974, whichever is less. However, if employer contributions for housing or health insurance are continued after the time of the injury, the contributions are not “wages” for the purpose of calculating an employee’s average weekly wage.

~~(28)~~(25) “Weekly compensation rate” means and refers to the amount of compensation payable for a period of 7 consecutive days, including any

Saturdays, Sundays, holidays, and other nonworking days which fall within such period of 7 consecutive days. When Saturdays, Sundays, holidays, or other nonworking days immediately follow the first 7 days of disability or occur at the end of a period of disability as the last day or days of such period, such nonworking days constitute a part of the period of disability with respect to which compensation is payable.

~~(29)~~(26) “Construction design professional” means an architect, professional engineer, landscape architect, or surveyor and mapper, or any corporation, professional or general, that has a certificate to practice in the construction design field from the Department of Business and Professional Regulation.

~~(30)~~(27) “Individual self-insurer” means any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) as an individual self-insurer.

~~(31)~~(28) “Domestic individual self-insurer” means an individual self-insurer:

- (a) Which is a corporation formed under the laws of this state;
- (b) Who is an individual who is a resident of this state or whose primary place of business is located in this state; or
- (c) Which is a partnership whose principals are residents of this state or whose primary place of business is located in this state.

~~(32)~~(29) “Foreign individual self-insurer” means an individual self-insurer:

- (a) Which is a corporation formed under the laws of any state, district, territory, or commonwealth of the United States other than this state;
- (b) Who is an individual who is not a resident of this state and whose primary place of business is not located in this state; or
- (c) Which is a partnership whose principals are not residents of this state and whose primary place of business is not located in this state.

~~(33)~~(30) “Insolvent member” means an individual self-insurer which is a member of the Florida Self-Insurers Guaranty Association, Incorporated, or which was a member and has withdrawn pursuant to s. 440.385(1)(b), and which has been found insolvent, as defined in paragraph ~~(34)(a)~~ (31)(a), paragraph ~~(34)(b)~~ (31)(b), or paragraph ~~(34)(c)~~ (31)(c), by a court of competent jurisdiction in this or any other state, or meets the definition of paragraph ~~(34)(d)~~ (31)(d).

~~(34)~~(31) “Insolvency” or “insolvent” means:

- (a) With respect to an individual self-insurer:
 1. That all assets of the individual self-insurer, if made immediately available, would not be sufficient to meet all the individual self-insurer’s liabilities;

2. That the individual self-insurer is unable to pay its debts as they become due in the usual course of business;

3. That the individual self-insurer has substantially ceased or suspended the payment of compensation to its employees as required in this chapter; or

4. That the individual self-insurer has sought protection under the United States Bankruptcy Code or has been brought under the jurisdiction of a court of bankruptcy as a debtor pursuant to the United States Bankruptcy Code.

(b) With respect to an employee claiming insolvency pursuant to s. 440.25(5), a person is insolvent who:

1. Has ceased to pay his or her debts in the ordinary course of business and cannot pay his or her debts as they become due; or

2. Has been adjudicated insolvent pursuant to the federal bankruptcy law.

~~(35)~~(32) “Arising out of” pertains to occupational causation. An accidental injury or death arises out of employment if work performed in the course and scope of employment is the major contributing cause of the injury or death.

~~(36)~~(33) “Soft-tissue injury” means an injury that produces damage to the soft tissues, rather than to the skeletal tissues or soft organs.

~~(37)~~(34) “Catastrophic injury” means a permanent impairment constituted by:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

(b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

(c) Severe brain or closed-head injury as evidenced by:

1. Severe sensory or motor disturbances;

2. Severe communication disturbances;

3. Severe complex integrated disturbances of cerebral function;

4. Severe episodic neurological disorders; or

5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.;

(d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands;

(e) Total or industrial blindness; or

(f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

~~(38)~~⁽³⁵⁾ “Insurer” means a group self-insurers’ fund authorized by s. 624.4621, an individual self-insurer authorized by s. 440.38, a commercial self-insurance fund authorized by s. 624.462, an assessable mutual insurer authorized by s. 628.6011, and an insurer licensed to write workers’ compensation and employer’s liability insurance in this state. The term “carrier,” as used in this chapter, means an insurer as defined in this subsection.

~~(39)~~⁽³⁶⁾ “Statement,” for the purposes of ss. 440.105 and 440.106, includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor record, X ray, test result, or other evidence of loss, injury, or expense.

Section 2. Section 440.05, Florida Statutes, is amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

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

(2) Each sole proprietor or partner who elects to be included in the definition of “employee” or who, after such election, revokes that election must mail to the division in Tallahassee notice to such effect, in accordance with a form to be prescribed by the division.

(3) Each sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the division on a form prescribed by the division. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is submitted to the division by the sole proprietor, partner, or officer of a corporation must list the name, federal tax identification number, social security number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the IRS as specified by the division, a copy of the relevant occupational license in the primary jurisdiction of the business, and, for corporate officers and partners, the registration number of the corporation or partnership filed with the Division of Corporations of the Department of State. The notice of election to be exempt form must identify each sole proprietorship, partnership, or corporation that employs the person electing the exemption and

must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt form must provide that the sole proprietor, partner, or officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers and partnerships provided in s. 440.02, and must certify that any employees of the sole proprietor, partner, or officer electing an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the division that the notice meets the requirements of this subsection, the division shall issue a certification of the election to the sole proprietor, partner, or officer, unless the division determines that the information contained in the notice is invalid. The division shall revoke a certificate of election to be exempt from coverage upon a determination by the division that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the names of the sole proprietorship, partnership, or corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new sole proprietorship, partnership, or corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. The certification of the election is valid until the sole proprietor, partner, or officer revokes her or his election. Upon filing a notice of revocation of election, a sole proprietor, partner, or officer who is a subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the division, the division shall notify the workers' compensation carriers identified in the request for exemption.

(4) The notice of election to be exempt from the provisions of this chapter must contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the division or any employer or employee, insurance company, or purposes program, files a notice of election to be exempt containing any false or misleading information is guilty of a felony of the third degree." Each person filing a notice of election to be exempt shall personally sign the notice and attest that he or she has reviewed, understands, and acknowledges the foregoing notice.

(5)(4) A notice given under subsection (1), subsection (2), or subsection (3) shall become effective when issued by the division or 30 days after an application for an exemption is received by the division, whichever occurs first is not effective until 30 days after the date it is mailed to the division in Tallahassee. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is mailed to the division in Tallahassee.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the

effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the division. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. Any person who has received from the division a construction industry certificate of election to be exempt which is in effect on December 31, 1998, shall file a new notice of election to be exempt by the last day in his or her birth month following December 1, 1998. A construction industry certificate of election to be exempt may be revoked before its expiration by the sole proprietor, partner, or officer for whom it was issued or by the division for the reasons stated in this section. At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the division shall send notice of the expiration date and an application for renewal to the certificateholder at the address on the certificate.

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

(8)(a)(6) The division may assess a fee, not to exceed \$50, with each request for a nonconstruction election ~~or renewal of election~~ under this section.

(b) The division must assess a fee of \$50, with each request for a construction industry certificate of election to be exempt or renewal of election to be exempt under this section.

(c) The funds collected by the division shall be used to administer this section, and to audit the businesses that pay the fee for compliance with any requirements of this chapter, and to enforce compliance with the provisions of this chapter.

Section 3. Subsection (4) of section 440.09, Florida Statutes, is amended to read:

440.09 Coverage.—

(4) An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge hearing officer, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the acts described in s. 440.105 for the purpose of securing workers' compensation benefits.

Section 4. Paragraph (g) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(g) For purposes of this section, a person is conclusively presumed to be an independent contractor if:

1. The independent contractor provides the general contractor with an affidavit stating that he or she meets all the requirements of s. 440.02(14)(13)(d); and

2. The independent contractor provides the general contractor with a valid certificate of workers' compensation insurance or a valid certificate of exemption issued by the division.

A sole proprietor, ~~independent contractor~~, partner, or officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 may not recover benefits or compensation under this chapter. An independent contractor who provides the general contractor with both an affidavit stating that he or she meets the requirements of s. 440.02(14)(d) and a certificate of exemption is not an employee under s. 440.02(14)(c) and may not recover benefits under this chapter. For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any person who meets the requirements of this paragraph to be an employee.

Section 5. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.— Except as otherwise provided in this chapter, every employer shall, as a condition to receiving a building permit, show proof that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the division, or a copy of the employer's authority to self-insure and shall be presented each time the employer applies for a building permit. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed by the Department of Insurance ~~the National Council of Compensation Insurers rules.~~ The words "minimum premium policy" or equivalent similar language shall may be typed, printed, stamped, or legibly handwritten.

Section 6. Subsections (1), (2), and (3) of section 440.104, Florida Statutes, are amended to read:

440.104 Competitive bidder; civil actions.—

(1) Any person engaged in the construction industry, as provided in s. 440.02(7), who loses a competitive bid for a contract shall have a cause of ~~may bring an action for damages against the another person who is awarded~~ the contract for which the bid was made, if the person making the losing bid establishes that the winning bidder knew or should have known that he or she was in violation ~~knowingly violated the provisions of~~ s. 440.10, s. 440.105, or s. 440.38 while performing the work under the contract.

(2) To recover in an action brought under this section, a party must establish a violation of s. 440.10, s. 440.105, or s. 440.38 by a preponderance of the evidence.

(3) Upon establishing that the winning bidder knew or should have known of the violation occurred, the person shall recover as liquidated damages ~~30~~ 10 percent of the total amount bid on the contract by the person bringing the action, or \$15,000 ~~\$5,000~~, whichever is greater.

Section 7. Subsections (4), (5), (6), and (7) of section 440.105, Florida Statutes, are amended, and subsection (9) is added to said said, to read:

440.105 Prohibited activities; penalties; limitations.—

(4) Whoever violates any provision of this subsection commits insurance fraud a felony of the third degree, punishable as provided in paragraph (f) s. 775.082, s. 775.083, or s. 775.084.

(a) It shall be unlawful for any employer to knowingly:

1. Present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with s. 440.38.

2. Make a deduction from the pay of any employee entitled to the benefits of this chapter for the purpose of requiring the employee to pay any portion of premium paid by the employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter.

3. Fail to secure payment of compensation if required to do so by this chapter.

(b) It shall be unlawful for any person:

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

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

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

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

5. To knowingly make any false, fraudulent, or misleading oral or written statement, or to knowingly omit or conceal material information, required

by s. 440.185 or s. 440.381, for the purpose of obtaining workers' compensation coverage or for the purpose of avoiding, delaying, or diminishing the amount of payment of any workers' compensation premiums.

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

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

(c) It shall be unlawful for any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, optometric physician licensed under chapter 463, or any other practitioner licensed under the laws of this state to knowingly and willfully assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

(d) It shall be unlawful for any person or governmental entity licensed under chapter 395 to maintain or operate a hospital in such a manner so that such person or governmental entity knowingly and willfully allows the use of the facilities of such hospital by any person, in a scheme or conspiracy to fraudulently violate any of the provisions of this chapter.

(e) It shall be unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or any firm, corporation, partnership, or association, to knowingly assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

(f) If the amount of any claim or workers' compensation insurance premium involved in any violation of this subsection:

1. Is less than \$20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Is \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Is \$100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It shall be unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee or for any firm, corporation, partnership, or association, to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in

and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims. Whoever violates any provision of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.085.

~~(6)~~(5) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

~~(7)~~(6) For the purpose of the section, the term "statement" includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor records, X ray, test result, or other evidence of loss, injury, or expense.

~~(8)~~(7) All claim forms as provided for in this chapter shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits insurance fraud, punishable as provided in s. 817.234 is guilty of a felony of the third degree." Each claimant shall personally sign the claim form and attest that he or she has reviewed, understands, and acknowledges the foregoing notice.

Section 8. Present subsections (1) through (7) of section 440.107, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and new subsections (1), (2), (3), and (4) are added to that section to read:

440.107 Division powers to enforce employer compliance with coverage requirements.—

(1) The Legislature finds that the failure of an employer to comply with the workers' compensation coverage requirements under chapter 440 poses an immediate danger to public health, safety, and welfare. The Legislature authorizes the division to secure employer compliance with the workers' compensation coverage requirements and authorizes the division to conduct investigations for the purpose of ensuring employer compliance.

(2) The division and its authorized representatives may enter and inspect any place of business at any reasonable time for the limited purpose of investigating compliance with workers' compensation coverage requirements under this chapter. Each employer shall keep true and accurate business records that contain such information as the division prescribes by rule. The business records must contain information necessary for the division to determine compliance with workers' compensation coverage requirements and must be maintained within this state by the business, in such a manner as to be accessible within a reasonable time upon request by the division. The business records must be open to inspection and be available for copying by the division at any reasonable time and place and as often as necessary. The division may require from any employer any sworn or unsworn reports, pertaining to persons employed by that employer, deemed necessary for the effective administration of the workers' compensation coverage requirements.

(3) In discharging its duties, the division may administer oaths and affirmations, certify to official acts, issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary by the division as evidence in order to ensure proper compliance with the coverage provisions of this chapter.

(4) If a person has refused to obey a subpoena to appear before the division or its authorized representative and produce evidence requested by the division or to give testimony about the matter that is under investigation, a court has jurisdiction to issue an order requiring compliance with the subpoena if the court has jurisdiction in the geographical area where the inquiry is being carried on or in the area where the person who has refused the subpoena is found, resides, or transacts business. Failure to obey such a court order may be punished by the court as contempt.

Section 9. Subsection (7) of section 440.185, Florida Statutes, is amended to read:

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

(7) Every carrier shall file with the division within 21 days after the issuance of a policy or contract of insurance such policy information as the division may require, including notice of whether the policy is a minimum premium policy. Notice of cancellation or expiration of a policy as set out in s. 440.42(2) shall be mailed to the division in accordance with rules promulgated by the division under chapter 120.

Section 10. Subsections (2) and (3) of section 440.42, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and new subsection (2) is added to said section, to read:

440.42 Insurance policies; liability.—

(2) A workers' compensation insurance policy may require the employer to release certain employment and wage information maintained by the state pursuant to federal and state unemployment compensation laws except to the extent prohibited or limited under federal law. By entering into a workers' compensation insurance policy with such a provision, the employer consents to the release of the information. The insurance carrier requiring such consent shall safeguard the information and maintain its confidentiality. The carrier shall limit use of the information to verifying compliance with the terms of the workers' compensation insurance policy. The department may charge a fee to cover the cost of disclosing the information.

Section 11. Section 440.45, Florida Statutes, is amended to read:

440.45 Office of the Judges of Compensation Claims.—

(1) There is hereby created the Office of the Judges of Compensation Claims within the Department of Labor and Employment Security. The Office of the Judges of Compensation Claims shall be headed by a Chief Judge who shall serve at the pleasure of the Governor and Cabinet. The

Chief Judge shall be appointed by the Governor for a term of 4 years and confirmed by the Cabinet from a list of three ~~two~~ names submitted by the statewide nominating commission created under subsection (2) each of the District Court Judicial Nominating Commissions created by s. 2, Art. V of the State Constitution and s. 43.29. The Chief Judge must possess the same qualifications for appointment as a judge of compensation claims, and the procedure for reappointment of the Chief Judge will be the same as for reappointment of a judge of compensation claims. The office shall be a separate budget entity and the Chief Judge shall be its agency head for all purposes. The Department of Labor and Employment Security shall provide administrative support and service to the office to the extent requested by the Chief Judge but shall not direct, supervise, or control the Office of the Judges of Compensation Claims in any manner, including but not limited to personnel, purchasing, budgetary matters, or property transactions. The operating budget of the Office of the Judges of Compensation Claims shall be paid out of the Workers' Compensation Administration Trust Fund established in s. 440.50.

(2)(a) The Governor shall appoint full-time judges of compensation claims to conduct proceedings as required by this chapter or other law. No person may be nominated to serve appointed as a judge of compensation claims unless he or she has been a member of The Florida Bar in good standing ~~for the preceding 5 years~~ and is knowledgeable in the practice of law of workers' compensation. No judge of compensation claims shall engage in the private practice of law during a term of office.

(b) Except as provided in paragraph (c), the Governor shall ~~initially~~ appoint a judge of compensation claims from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of the following:

1. Five ~~5~~ members, at least one of whom must be a member of a minority group as defined in s. 288.703(3), one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are engaged in the practice of law. On July 1, 1999, the term of office of each person appointed by the Board of Governors of The Florida Bar to the commission expires. The Board of Governors shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 4-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term;

2. Five ~~5~~ electors, at least one of whom must be a member of a minority group as defined in s. 288.703(3), one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor. On July 1, 1999, the term of office of each person appointed by the Governor to the commission expires. The Governor shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each,

beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term; and

3. Five electors, at least one of whom must be a member of a minority group as defined in s. 288.703(3), one of each who resides in the territorial jurisdictions of the district courts of appeal, selected and appointed by a majority vote of the other 10 members of the commission. On October 1, 1999, the term of office of each person appointed to the commission by its other members expires. A majority of the other members of the commission shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning October 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each, beginning October 1, 1999. Thereafter, each member shall be appointed for a 4-year term.

A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term. No attorney who appears before any judge of compensation claims more than four times a year is eligible to serve on the statewide nominating commission. The meetings and determinations of the nominating commission as to the judges of compensation claims shall be open to the general public.

(c) Each judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office. The Governor shall review the commission's report and may reappoint the judge for an additional 4-year term. If the Governor does not reappoint the judge, the Governor shall inform the commission. The judge shall remain in office until the Governor has appointed a successor judge in accordance with paragraphs (a) and (b). The report of the commission shall include a list of three candidates for appointment. The candidates shall include the judge whose term is expiring, if that judge desires reappointment and the judge's performance is satisfactory upon review by the commission. If a vacancy occurs during a judge's unexpired term, the statewide nominating commission does not find the judge's performance is satisfactory, or the governor does not reappoint the judge, the commission shall issue a report to the Governor shall appoint a successor judge for a term of 4 years in accordance with paragraph (b) which includes a list of three candidates for appointment. The Governor shall review the commission's report, and may select one of the listed candidates. If no candidate is selected, the Governor shall so inform the commission, which shall within 2 months issue a report to the Governor which includes a list of three different candidates for appointment.

(3) The Chief Judge shall select from among the full time judges of the office two or more judges to rotate as docketing judges. Docketing judges shall review all claims for benefits for consistency with the requirements of this chapter and the rules of procedure, including but not limited to specificity requirements, and shall dismiss any claim that fails to comport with such

rules and requirements. The docketing judge shall not dismiss any claim with prejudice without offering the parties an opportunity to appear and present argument. The Chief Judge may as he or she deems appropriate expand the duties of the docketing judges to include resolution without hearing of other types of procedural and substantive matters, including resolution of fee disputes.

(4) The Chief Judge shall have the discretion to require mediation and to designate qualified persons to act as mediators in any dispute pending before the judges of compensation claims and the division. The Chief Judge shall coordinate with the Director of the Division of Workers' Compensation to establish a mandatory mediation program to facilitate early and efficient resolution of disputes arising under this chapter and to establish training and continuing education for new and sitting judges.

(5) The Office of the Judges of Compensation Claims shall promulgate rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including but not limited to the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards and other performance indicators. The workers' compensation rules of procedure approved by the Supreme Court shall apply until the rules promulgated by the Office of the Judges of Compensation Claims pursuant to this section become effective.

(6) Not later than December 1 of each year, the Office of the Judges of Compensation Claims and the Division of Workers' Compensation shall jointly issue a written report to the Governor, the House of Representatives, and the Senate summarizing the amount, cost, and outcome of all litigation resolved in the prior year, summarizing the disposition of applications and motions for mediation conferences and recommending changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations.

Section 12. On July 1, 1999, the term of office of the Chief Judge of Compensation Claims expires. The statewide nominating commission is directed to submit a list of three names to the Governor pursuant to section 440.45(1), Florida Statutes, by March 1, 1999.

Section 13. The revised process for nomination and appointment of judges of compensation claims, as provided in the amendments to section 440.45(2)(c), Florida Statutes, shall take effect on July 1, 1999.

Section 14. Any member of the statewide nominating commission whose term of office expires as a result of the amendment of section 440.45, Florida Statutes, by this act is eligible for reappointment.

Section 15. Subsection (9) is added to section 626.989, Florida Statutes, to read:

626.989 Division of Insurance Fraud; definition; investigative, subpoena powers; protection from civil liability; reports to division; division investigator's power to execute warrants and make arrests.—

(9) In recognition of the complementary roles of investigating instances of workers' compensation fraud and enforcing compliance with the workers' compensation coverage requirements under chapter 440, the Division of Insurance Fraud of the Department of Insurance and the Division of Workers' Compensation of the Department of Labor and Employment Security are directed to prepare and submit a joint performance report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year for each of the next 2 years, and then every 3 years thereafter, describing the results obtained in achieving compliance with the workers' compensation coverage requirements and reducing the incidence of workers' compensation fraud.

Section 16. Subsection (5) is added to section 627.413, Florida Statutes, to read:

627.413 Contents of policies, in general; identification.—

(5) Any policy that is a minimum premium policy issued by an insurer pursuant to the minimum premium provisions of rules adopted by rating organizations licensed by the Department of Insurance, shall have typed, printed, stamped, or legibly handwritten on the certificate the words "minimum premium policy" or equivalent language. The department may impose an administrative fine pursuant to s. 624.4211 if the department finds any violation of this subsection.

Section 17. Paragraph (h) is added to subsection (2) of section 775.15, Florida Statutes, to read:

775.15 Time limitations.—

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(h) A prosecution for a felony violation of s. 440.105 must be commenced within 5 years after the violation is committed.

Section 18. Effective July 1, 1998, the Division of Workers' Compensation shall notify all persons holding a construction industry certificate of election of exemption of the requirements of section 440.05, Florida Statutes, as amended by this act.

Section 19. There is hereby appropriated to the Department of Labor and Employment Security from the Workers' Compensation Administration Trust Fund for the fiscal year 1998-1999, 15 positions and \$1,100,000 to carry out the provisions of this act. This section shall take effect July 1, 1998.

Section 20. Except as otherwise provided in this act, this act shall take effect January 1, 1999.

Approved by the Governor May 22, 1998.

Filed in Office Secretary of State May 22, 1998.