

By Senator Sebesta

20-1642A-00

See HB

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A bill to be entitled

An act relating to workers' compensation;
amending s. 440.02, F.S.; excluding certain
sports officials from the definition of
"employee"; providing an effective date.

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

Section 1. Paragraph (d) of subsection (14) of 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:

(14)

(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;

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

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

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

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

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

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16 However, the determination as to whether an individual
17 included in the Standard Industrial Classification Manual of
18 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
19 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
20 2448, or 2449, or a newspaper delivery person, is an
21 independent contractor is governed not by the criteria in this
22 paragraph but by common-law principles, giving due
23 consideration to the business activity of the individual.

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

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

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

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

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

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

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

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

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

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

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

26 11. A person who performs services as a sports
27 official for an entity sponsoring an interscholastic or
28 intercollegiate sports event or for a public entity or
29 private, nonprofit organization that sponsors an amateur
30 sports event. For purposes of this subparagraph, such a
31 person is an independent contractor. For purposes of this

1 subparagraph, the term "sports official" means any person who
2 is a neutral participant in a sports event, including, but not
3 limited to, umpires, referees, judges, linespersons,
4 scorekeepers, or timekeepers. This subparagraph does not apply
5 to any person employed by a district school board who serves
6 as a sports official as required by the employing school board
7 or who serves as a sports official as part of his or her
8 responsibilities during normal school hours.

9 Section 2. This act shall take effect upon becoming a
10 law.

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13 LEGISLATIVE SUMMARY

14 Excludes from the definition of the term "employee," for
15 purposes of workers' compensation, independent
16 contractors who are sports officials for an entity
17 sponsoring an interscholastic or intercollegiate sports
18 event or for a public entity or private, nonprofit
19 organization that sponsors an amateur sports event. (See
20 bill for details.)
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