

By the Committee on Banking and Insurance; and Senators Clary, Lee, McKay, Brown-Waite and Casas

311-843-00

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 489.114, F.S.; revising workers'
4 compensation coverage requirements; amending s.
5 489.115, F.S.; revising certification and
6 registration requirements for initial
7 licensure; amending s. 489.510, F.S.; revising
8 workers' compensation coverage requirements;
9 amending s. 489.515, F.S.; revising
10 certification and registration requirements;
11 amending s. 440.38, F.S.; providing for the
12 type of qualifying security deposit necessary
13 to become a self-insured employer; amending s.
14 627.914, F.S.; revising the requirements of
15 reports of information by workers' compensation
16 insurers; conforming statutory
17 cross-references; providing an effective date.

18

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

20

21 Section 1. Section 489.114, Florida Statutes, is
22 amended to read:

23 489.114 Evidence of workers' compensation
24 coverage.--Except as provided in s. 489.115(5)(d),any person,
25 business organization, or qualifying agent engaged in the
26 business of contracting in this state and certified or
27 registered under this part shall, as a condition precedent to
28 the issuance or renewal of a certificate, registration, or
29 certificate of authority of the contractor, provide to the
30 Construction Industry Licensing Board, as provided by board
31 rule, evidence of workers' compensation coverage pursuant to

1 chapter 440. In the event that the Division of Workers'
2 Compensation of the Department of Labor and Employment
3 Security receives notice of the cancellation of a policy of
4 workers' compensation insurance insuring a person or entity
5 governed by this section, the Division of Workers'
6 Compensation shall certify and identify all persons or
7 entities by certification or registration license number to
8 the department after verification is made by the Division of
9 Workers' Compensation that such cancellation has occurred or
10 that persons or entities governed by this section are no
11 longer covered by workers' compensation insurance. Such
12 certification and verification by the Division of Workers'
13 Compensation shall result solely from records furnished to the
14 Division of Workers' Compensation by the persons or entities
15 governed by this section. The department shall notify the
16 persons or entities governed by this section who have been
17 determined to be in noncompliance with chapter 440, and the
18 persons or entities notified shall provide certification of
19 compliance with chapter 440 to the department and pay an
20 administrative fine as provided by rule. The failure to
21 maintain workers' compensation coverage as required by law
22 shall be grounds for the board to revoke, suspend, or deny the
23 issuance or renewal of a certificate, registration, or
24 certificate of authority of the contractor under the
25 provisions of s. 489.129.

26 Section 2. Paragraph (d) is added to subsection (5) of
27 section 489.115, Florida Statutes, to read:

28 489.115 Certification and registration; endorsement;
29 reciprocity; renewals; continuing education.--

30 (5)

31

1 (d) If an applicant for initial licensure qualifies
2 for an exemption from workers' compensation under s. 440.05,
3 the department shall grant a license to the applicant who
4 submits an affidavit on a form provided by the board attesting
5 to the fact that the applicant will obtain such exemption
6 within 10 days after initial licensure, if all other
7 requirements for licensure are met.

8 Section 3. Section 489.510, Florida Statutes, is
9 amended to read:

10 489.510 Evidence of workers' compensation
11 coverage.--Except as provided in s. 489.515(3)(b),any person,
12 business organization, or qualifying agent engaged in the
13 business of contracting in this state and certified or
14 registered under this part shall, as a condition precedent to
15 the issuance or renewal of a certificate or registration of
16 the contractor, provide to the Electrical Contractors'
17 Licensing Board, as provided by board rule, evidence of
18 workers' compensation coverage pursuant to chapter 440. In
19 the event that the Division of Workers' Compensation of the
20 Department of Labor and Employment Security receives notice of
21 the cancellation of a policy of workers' compensation
22 insurance insuring a person or entity governed by this
23 section, the Division of Workers' Compensation shall certify
24 and identify all persons or entities by certification or
25 registration license number to the department after
26 verification is made by the Division of Workers' Compensation
27 that such cancellation has occurred or that persons or
28 entities governed by this section are no longer covered by
29 workers' compensation insurance. Such certification and
30 verification by the Division of Workers' Compensation shall
31 result solely from records furnished to the Division of

1 Workers' Compensation by the persons or entities governed by
2 this section. The department shall notify the persons or
3 entities governed by this section who have been determined to
4 be in noncompliance with chapter 440, and the persons or
5 entities notified shall provide certification of compliance
6 with chapter 440 to the department and pay an administrative
7 fine as provided by rule. The failure to maintain workers'
8 compensation coverage as required by law shall be grounds for
9 the board to revoke, suspend, or deny the issuance or renewal
10 of a certificate or registration of the contractor under the
11 provisions of s. 489.533.

12 Section 4. Subsection (3) of section 489.515, Florida
13 Statutes, is amended to read:

14 489.515 Issuance of certificates; registrations.--

15 (3)(a) As a prerequisite to the initial issuance or
16 the renewal of a certificate or registration, the applicant
17 shall submit an affidavit on a form provided by the board
18 attesting to the fact that the applicant has obtained both
19 workers' compensation insurance or an acceptable exemption
20 certificate issued by the department and public liability and
21 property damage insurance for the health, safety, and welfare
22 of the public in amounts determined by rule of the board. The
23 board shall by rule establish a procedure to verify the
24 accuracy of such affidavits based upon a random audit method.

25 (b) If an applicant for initial licensure qualifies
26 for an exemption from workers' compensation under s. 440.05,
27 the department shall grant a license to the applicant who
28 submits an affidavit on a form provided by the board attesting
29 to the fact that the applicant will obtain such exemption
30 within 10 days after initial licensure, if all other
31 requirements for licensure are met.

1 Section 5. Subsection (1) of section 440.38, Florida
2 Statutes, is amended to read:

3 440.38 Security for compensation; insurance carriers
4 and self-insurers.--

5 (1) Every employer shall secure the payment of
6 compensation under this chapter:

7 (a) By insuring and keeping insured the payment of
8 such compensation with any stock company or mutual company or
9 association or exchange, authorized to do business in the
10 state;

11 (b) By furnishing satisfactory proof to the division
12 of her or his financial ability to pay such compensation and
13 receiving an authorization from the division to pay such
14 compensation directly in accordance with the following
15 provisions:

16 1. The division may, as a condition to such
17 authorization, require such employer to deposit with in a
18 depository designated by the division a qualifying security
19 deposit ~~either an indemnity bond or securities, at the option~~
20 ~~of the employer,~~ of a kind and in an amount determined by the
21 division and subject to such conditions as the division
22 prescribes ~~may prescribe~~, which must ~~shall~~ include
23 authorization to the division in the case of default or in the
24 case of the individual self-insured employer ceasing or
25 suspending the payment of compensation to its employees as
26 required in this chapter to call the qualifying security
27 deposit ~~sell any such securities sufficient to pay~~
28 ~~compensation awards or to bring suit upon such bonds,~~ to
29 ensure ~~procure~~ prompt payment of compensation under this
30 chapter. In addition, the division shall require, as a
31 condition to authorization to self-insure, proof that the

1 employer has provided for competent personnel with whom to
2 deliver benefits and to provide a safe working environment.
3 Further, the division shall require such employer to carry
4 reinsurance at levels that will ensure the actuarial soundness
5 of such employer in accordance with rules promulgated by the
6 division. The division may by rule require that, in the event
7 of an individual self-insurer's insolvency, such qualifying
8 security deposit ~~indemnity bonds, securities,~~ and reinsurance
9 policies ~~are shall be~~ payable to the Florida Self-Insurers
10 Guaranty Association, Incorporated, created pursuant to s.
11 440.385. Any employer securing compensation in accordance
12 with the provisions of this paragraph shall be known as a
13 self-insurer and shall be classed as a carrier of her or his
14 own insurance.

15 2. If the employer fails to maintain the foregoing
16 requirements, the division shall revoke the employer's
17 authority to self-insure, unless the employer provides to the
18 division the certified opinion of an independent actuary who
19 is a member of the American Society of Actuaries as to the
20 actuarial present value of the employer's determined and
21 estimated future compensation payments based on cash reserves,
22 using a 4-percent discount rate, and a qualifying security
23 deposit equal to 1.5 times the value so certified. The
24 employer shall thereafter annually provide such a certified
25 opinion until such time as the employer meets the requirements
26 of subparagraph 1. The qualifying security deposit shall be
27 adjusted at the time of each such annual report. Upon the
28 failure of the employer to timely provide such opinion or to
29 timely provide a security deposit in an amount equal to 1.5
30 times the value certified in the latest opinion, the division
31 shall then revoke such employer's authorization to

1 self-insure, and such failure shall be deemed to constitute an
2 immediate serious danger to the public health, safety, or
3 welfare sufficient to justify the summary suspension of the
4 employer's authorization to self-insure pursuant to s. 120.68.

5 3. Upon the suspension or revocation of the employer's
6 authorization to self-insure, the employer shall provide to
7 the division and to the Florida Self-Insurers Guaranty
8 Association, Incorporated, created pursuant to s. 440.385 the
9 certified opinion of an independent actuary who is a member of
10 the American Society of Actuaries of the actuarial present
11 value of the determined and estimated future compensation
12 payments of the employer for claims incurred while the member
13 exercised the privilege of self-insurance, using a discount
14 rate of 4 percent. The employer shall provide such an opinion
15 at 6-month intervals thereafter until such time as the latest
16 opinion shows no remaining value of claims. With each such
17 opinion, the employer shall deposit with the division a
18 qualifying security deposit in an amount equal to the value
19 certified by the actuary. The association has a cause of
20 action against an employer, and against any successor of the
21 employer, who fails to timely provide such opinion or who
22 fails to timely maintain the required security deposit with
23 the division. The association shall recover a judgment in the
24 amount of the actuarial present value of the determined and
25 estimated future compensation payments of the employer for
26 claims incurred while the employer exercised the privilege of
27 self-insurance, together with attorney's fees. For purposes
28 of this section, the successor of an employer means any
29 person, business entity, or group of persons or business
30 entities, which holds or acquires legal or beneficial title to

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1 the majority of the assets or the majority of the shares of
2 the employer.

3 4. A qualifying security deposit shall consist, at the
4 option of the employer, of:

5 a. Surety bonds, in a form and containing such terms
6 as prescribed by the division, issued by a corporation surety
7 authorized to transact surety business by the Department of
8 Insurance, and whose policyholders' and financial ratings, as
9 reported in A.M. Best's Insurance Reports, Property-Liability,
10 are not less than "A" and "V", respectively.

11 ~~b. Certificates of deposit with financial~~
12 ~~institutions, the deposits of which are insured through the~~
13 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
14 ~~and Loan Insurance Corporation.~~

15 ~~b.c.~~ Irrevocable letters of credit in favor of the
16 division issued by financial institutions located within this
17 state, the deposits of which are insured through the Federal
18 Deposit Insurance Corporation described in sub-subparagraph b.

19 ~~d. Direct obligations of the United States Treasury~~
20 ~~backed by the full faith and credit of the United States.~~

21 ~~e. Securities issued by this state and backed by the~~
22 ~~full faith and credit of this state.~~

23 5. The qualifying security deposit shall be held by
24 the division, ~~or by a depository authorized by the division,~~
25 exclusively for the benefit of workers' compensation
26 claimants. The security shall not be subject to assignment,
27 execution, attachment, or any legal process whatsoever, except
28 as necessary to guarantee the payment of compensation under
29 this chapter. No surety bond may be terminated, and no letter
30 of credit ~~other qualifying security~~ may be allowed to expire
31 ~~lapse~~, without 90 days' prior notice to the division and

1 deposit by the self-insuring employer of some other qualifying
2 security deposit of equal value within 10 business days after
3 such notice. Failure to provide such notice or failure to
4 timely provide qualifying replacement security after such
5 notice shall constitute grounds for the division to call or
6 sue upon the surety bond, or to ~~act with respect to other~~
7 ~~pledged security in any manner necessary to preserve its value~~
8 ~~for the purposes intended by this section, including the~~
9 ~~exercise its of rights under a letter of credit. Current~~
10 ~~self-insured employers must comply with this section on or~~
11 ~~before December 31, 2000, or upon maturity of existing~~
12 ~~security deposits, whichever occurs later; the sale of any~~
13 ~~security at then prevailing market rates, or the withdrawal of~~
14 ~~any funds represented by any certificate of deposit forming~~
15 ~~part of the qualifying security deposit;~~

16 (c) By entering into a contract with a public utility
17 under an approved utility-provided self-insurance program as
18 set forth in s. 624.46225 ~~s. 440.571~~ in effect as of July 1,
19 1983. The division shall adopt rules to implement this
20 paragraph;

21 (d) By entering into an interlocal agreement with
22 other local governmental entities to create a local government
23 pool pursuant to s. 624.4622 ~~s. 440.575~~;

24 (e) In accordance with s. 440.135, an employer, other
25 than a local government unit, may elect coverage under the
26 Workers' Compensation Law and retain the benefit of the
27 exclusiveness of liability provided in s. 440.11 by obtaining
28 a 24-hour health insurance policy from an authorized property
29 and casualty insurance carrier or an authorized life and
30 health insurance carrier, or by participating in a fully or
31 partially self-insured 24-hour health plan that is established

1 or maintained by or for two or more employers, so long as the
2 law of this state is not preempted by the Employee Retirement
3 Income Security Act of 1974, Pub. L. No. 93-406, or any
4 amendment to that law, which policy or plan must provide, for
5 at least occupational injuries and illnesses, medical benefits
6 that are comparable to those required by this chapter. A local
7 government unit, as a single employer, in accordance with s.
8 440.135, may participate in the 24-hour health insurance
9 coverage plan referenced in this paragraph. Disputes and
10 remedies arising under policies issued under this section are
11 governed by the terms and conditions of the policies and under
12 the applicable provisions of the Florida Insurance Code and
13 rules adopted under the insurance code and other applicable
14 laws of this state. The 24-hour health insurance policy may
15 provide for health care by a health maintenance organization
16 or a preferred provider organization. The premium for such
17 24-hour health insurance policy shall be paid entirely by the
18 employer. The 24-hour health insurance policy may use
19 deductibles and coinsurance provisions that require the
20 employee to pay a portion of the actual medical care received
21 by the employee. If an employer obtains a 24-hour health
22 insurance policy or self-insured plan to secure payment of
23 compensation as to medical benefits, the employer must also
24 obtain an insurance policy or policies that provide indemnity
25 benefits as follows:

- 26 1. If indemnity benefits are provided only for
27 occupational-related disability, such benefits must be
28 comparable to those required by this chapter.
- 29 2. If indemnity benefits are provided for both
30 occupational-related and nonoccupational-related disability,
31 such benefits must be comparable to those required by this

1 chapter, except that they must be based on 60 percent of the
2 average weekly wages.

3 3. The employer shall provide for each of its
4 employees life insurance with a death benefit of \$100,000.

5 4. Policies providing coverage under this subsection
6 must use prescribed and acceptable underwriting standards,
7 forms, and policies approved by the Department of Insurance.
8 If any insurance policy that provides coverage under this
9 section is canceled, terminated, or nonrenewed for any reason,
10 the cancellation, termination, or nonrenewal is ineffective
11 until the self-insured employer or insurance carrier or
12 carriers notify the division and the Department of Insurance
13 of the cancellation, termination, or nonrenewal, and until the
14 division has actually received the notification. The division
15 must be notified of replacement coverage under a workers'
16 compensation and employer's liability insurance policy or plan
17 by the employer prior to the effective date of the
18 cancellation, termination, or nonrenewal; or

19 (f) By entering into a contract with an individual
20 self-insurer under an approved individual
21 self-insurer-provided self-insurance program as set forth in
22 s. 624.46225 ~~s. 440.571~~. The division may adopt rules to
23 implement this subsection.

24 Section 6. Effective July 1, 2000, section 627.914,
25 Florida Statutes, is amended to read:

26 627.914 Reports of information by workers'
27 compensation insurers required.--

28 (1) The department shall promulgate rules and
29 statistical plans which shall thereafter be used by each
30 insurer and self-insurance fund as defined in s. 624.461 in
31 the recording and reporting of loss, expense, and claims

1 experience, in order that the experience of all insurers and
2 self-insurance funds ~~self-insurers~~ may be made available at
3 least annually in such form and detail as may be necessary to
4 aid the department in determining whether Florida experience
5 for workers' compensation insurance is sufficient for
6 establishing rates.

7 ~~(2) Any insurer authorized to write a policy of~~
8 ~~workers' compensation insurance shall transmit the following~~
9 ~~information to the department each year with its annual~~
10 ~~report, and such information shall be reported on a net basis~~
11 ~~with respect to reinsurance for nationwide experience and on a~~
12 ~~direct basis for Florida experience:~~

13 ~~(a) Premiums written;~~

14 ~~(b) Premiums earned;~~

15 ~~(c) Dividends aid or credited to policyholders;~~

16 ~~(d) Losses paid;~~

17 ~~(e) Allocated loss adjustment expenses;~~

18 ~~(f) The ratio of allocated loss adjustment expenses to~~
19 ~~losses paid;~~

20 ~~(g) Unallocated loss adjustment expenses;~~

21 ~~(h) The ratio of unallocated loss adjustment expenses~~
22 ~~to losses paid;~~

23 ~~(i) The total of losses paid and unallocated and~~
24 ~~allocated loss adjustment expenses;~~

25 ~~(j) The ratio of losses paid and unallocated and~~
26 ~~allocated loss adjustment expenses to premiums earned;~~

27 ~~(k) The number of claims outstanding as of December 31~~
28 ~~of each year;~~

29 ~~(l) The total amount of losses unpaid as of December~~
30 ~~31 of each year;~~

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1 ~~(m) The total amount of allocated and unallocated loss~~
2 ~~adjustment expenses unpaid as of December 31 of each year; and~~

3 ~~(n) The total of losses paid and allocated loss~~
4 ~~adjustment expenses and unallocated loss adjustment expenses,~~
5 ~~plus the total of losses unpaid as of December 31 of each year~~
6 ~~and loss adjustment expenses unpaid as of December 31 of each~~
7 ~~year.~~

8 ~~(3) A report of the information required in subsection~~
9 ~~(2) shall be filed no later than April 1 of each year and~~
10 ~~shall include the information for the preceding year ending~~
11 ~~December 31. All reports shall be on a calendar-accident year~~
12 ~~basis, and each calendar-accident year shall be reported at~~
13 ~~eight stages of development.~~

14 ~~(2)(4)~~ Each insurer and self-insurance fund authorized
15 to write a policy of workers' compensation insurance shall
16 transmit the information for paragraphs (a) through (e)~~(a),~~
17 ~~(b), (d), and (e)~~ annually on both Florida experience and
18 nationwide experience separately:

- 19 (a) Payrolls by classification.
20 (b) Manual premiums by classification.
21 (c) Standard premiums by classification.
22 (d) Losses by classification and injury type.
23 (e) Expenses.

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25 A report of this information shall be filed no later than July
26 1 April~~1~~ of each year. All reports shall be filed in
27 accordance with standard reporting procedures for insurers,
28 which procedures have received approval by the department, and
29 shall contain data for the most recent policy period
30 available. A statistical or rating organization may be used
31 by insurers and self-insurance funds to report the data

1 required by this section. The statistical or rating
2 organization shall report each data element in the aggregate
3 only for insurers and self-insurance funds required to report
4 under this section who elect to have the ~~rating~~ organization
5 report on their behalf. Such insurers and self-insurance funds
6 shall be named in the report.

7 ~~(3)(5)~~ Individual self-insurers ~~Self-insurers~~
8 authorized to ~~transact workers' compensation insurance~~ as
9 provided in s. 440.02(21)(a) ~~s. 440.02~~ shall report only
10 Florida data as prescribed in paragraphs (a) through (e) of
11 subsection ~~(2)(4)~~ to the Division of Workers' Compensation of
12 the Department of Labor and Employment Security.

13 (a) The Division of Workers' Compensation shall
14 publish the dates and forms necessary to enable individual
15 self-insurers to comply with this section.

16 ~~(b) The Division of Workers' Compensation shall report~~
17 ~~the information collected under this section to the Department~~
18 ~~of Insurance in a manner prescribed by the department.~~

19 ~~(b)(c)~~ A statistical or rating organization may be
20 used by individual self-insurers for the purposes of reporting
21 the data required by this section and calculating experience
22 ratings.

23 ~~(4)(6)~~ The department shall provide a summary of
24 information provided pursuant to subsection ~~subsections~~ (2)
25 ~~and (4)~~ in its annual report.

26 Section 7. This act shall take effect upon becoming a
27 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 746

4 The committee substitute makes the following changes:

5 Requires the Department of Business and Professional
6 Regulation to issue initial licenses to individuals seeking to
7 engage in the business of contracting in Florida if the
8 applicant:

- 9 1) qualifies for an exemption from workers' compensation
10 coverage under s. 440.05, F.S.;
- 11 2) submits an affidavit on a form provided by the
12 applicable regulatory board attesting to the fact that
13 the applicant will obtain such exemption within 10 days
14 of initial licensure; and
- 15 3) meets all other requirements for licensure. An
16 individual seeking an exemption from workers'
17 compensation coverage would still be required to provide
18 proof of licensure under ch. 489, F.S., to the Division
19 of Workers' Compensation prior to obtaining an exemption
20 from coverage.

21 Revises the deadline for individual self-insured employers to
22 comply with the revised workers' compensation security deposit
23 requirements from on or before December 21, 2000, to December
24 31, 2000, or upon maturity of the security deposits, whichever
25 occurs later.

26 Amends s. 627.914, F.S., effective July 1, 2000, to delete the
27 requirement that insurers report certain workers' compensation
28 data to the Department of Insurance, which is duplicative of
29 data that is submitted to the department by statistical agents
30 for the insurers; and changes the date for a rating
31 organization to submit an aggregate compilation of payrolls,
premium, losses, and expense for all companies from April 1,
to July 1 of each year, which will improve the quality and
timeliness of the data.

Eliminates the Division of Workers' Compensation rulemaking
authority, as authorized by the bill, for establishing net
worth and security deposit requirements.