

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 440.02, F.S.; redefining the term "employer";
4 providing that certain businesses may form a
5 group for purposes of workers' compensation;
6 providing immunity; amending s. 725.06, F.S.;
7 including promises to insure or obtain
8 insurance for certain parties to construction
9 contracts for certain actions as void and
10 unenforceable; providing exceptions; providing
11 for limited liability protection for additional
12 insured coverage under certain agreements or
13 contracts; prohibiting a contractor or
14 subcontractor from withholding payment to
15 certain subcontractors, sub-subcontractors, or
16 materialmen under certain insurance policies
17 under certain circumstances; providing
18 conditions; revising application; providing an
19 effective date.

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

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23 Section 1. Section 725.06, Florida Statutes, is
24 amended to read:

25 725.06 Construction contracts; limitation on
26 indemnification; agreements to insure.--

27 (1) Except as otherwise provided in paragraphs (a),
28 (b), and (c), any portion of any agreement or contract for or
29 in connection with, or any guarantee of or in connection with,
30 any construction, alteration, repair, or demolition of a
31 building, structure, appurtenance, or appliance, including

1 moving and excavating associated therewith, between an ~~owner~~
2 ~~of real property and an~~ architect, engineer, general
3 contractor, subcontractor, sub-subcontractor, or materialman
4 or any combination thereof wherein any party referred to
5 herein promises to have someone named an additional insured
6 under his insurance policy, indemnify, defend or hold harmless
7 ~~the other party to the agreement, contract, another person or~~
8 ~~party~~ guarantee for liability or for damages to persons or
9 property caused in whole or in part by any act, omission, or
10 default of the person or party indemnitee arising from the
11 ~~contract or its performance, being indemnified~~ shall be void
12 and unenforceable as against public policy. However, this
13 provision shall not be construed to place limits on indemnity
14 agreements that are only between a general contractor and the
15 owner of real property as long as unless the contract contains
16 a monetary limitation on the extent of the indemnification
17 that bears a reasonable commercial relationship to the
18 contract and is part of the project specifications or bid
19 documents, if any. Notwithstanding the foregoing, the monetary
20 limitation on the extent of the indemnification provided to
21 the owner of real property by any party in privity of contract
22 with such owner shall not be less than \$1 million per
23 occurrence, unless otherwise agreed by the parties. However,
24 such indemnification shall not include claims of, or damages
25 resulting from, gross negligence, or willful, wanton or
26 intentional misconduct of the indemnitee or its officers,
27 directors, agents or employees, or for statutory violations or
28 punitive damages except and to the extent the statutory
29 violation or punitive damages are caused by or result from the
30 negligent acts, omissions, or default of the indemnitor or any
31 of the indemnitor's contractors, subcontractors,

1 sub-subcontractors, materialmen, or agents of any tier or
2 their respective employees.

3 (a) Indemnification provisions in any such agreements,
4 contracts, or guarantees may ~~not~~ require that the indemnitor
5 indemnify the indemnitee for damages to persons or property
6 ~~caused in whole or in part~~ by any act, omission, or default of
7 ~~a party other than:~~

8 1.(a) The indemnitor; or

9 2.(b) Any of the indemnitor's contractors,
10 subcontractors, sub-subcontractors, materialmen, or agents of
11 any tier or their respective employees. ~~or~~

12 ~~(c) The indemnitee or its officers, directors, agents,~~
13 ~~or employees. However, such indemnification shall not include~~
14 ~~claims of, or damages resulting from, gross negligence, or~~
15 ~~willful, wanton or intentional misconduct of the indemnitee or~~
16 ~~its officers, directors, agents or employees, or for statutory~~
17 ~~violation or punitive damages except and to the extent the~~
18 ~~statutory violation or punitive damages are caused by or~~
19 ~~result from the acts or omissions of the indemnitor or any of~~
20 ~~the indemnitor's contractors, subcontractors,~~
21 ~~sub-subcontractors, materialmen, or agents of any tier or~~
22 ~~their respective employees.~~

23 (b)(2) A construction contract for a public agency or
24 in connection with a public agency's project may require a
25 party to that contract to indemnify and hold harmless the
26 other party to the contract, their officers and employees,
27 from liabilities, damages, losses and costs, including, but
28 not limited to, reasonable attorney's fees, to the extent
29 caused by the negligence, recklessness, or intentional
30 wrongful misconduct of the indemnifying party and persons

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1 employed or utilized by the indemnifying party in the
2 performance of the construction contract.

3 (c) Any portion of any agreement or contract for or in
4 connection with, or any guarantee of or in connection with,
5 any construction, alteration, repair, or demolition of a
6 building, structure, appurtenance, or appliance, including
7 moving and excavating associated therewith, between an entity
8 regulated by the Florida Public Service Commission and an
9 architect, engineer, general contractor, subcontractor,
10 sub-subcontractor, or materialman or any combination thereof
11 wherein any party referred to herein promises to indemnify or
12 hold harmless the other party to the agreement, contract, or
13 guarantee for liability for damages to persons or property
14 caused in whole or in part by any negligent act, omission, or
15 default of the indemnitee arising from the contract or its
16 performance, shall be void and unenforceable unless the
17 contract contains a monetary limitation on the extent of the
18 indemnification that bears a reasonable commercial
19 relationship to the contract and is part of the project
20 specifications or bid documents, if any. Notwithstanding the
21 foregoing, the monetary limitation on the extent of the
22 indemnification provided to the owner of real property by any
23 party in privity of contract with such owner shall not be less
24 than \$1 million per occurrence, unless otherwise agreed by the
25 parties. Indemnification provisions in any such agreements,
26 contracts, or guarantees may not require that the indemnitor
27 indemnify the indemnitee for damages to persons or property
28 caused in whole or in part by any act, omission, or default of
29 a party other than:

30 1. The indemnitor;
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1 2. Any of the indemnitor's contractors,
2 subcontractors, sub-subcontractors, materialmen, or agents of
3 any tier or their respective employees; or

4 3. The indemnitee or its officers, directors, agents,
5 or employees. However, such indemnification shall not include
6 claims of, or damages resulting from, gross negligence, or
7 willful, wanton or intentional misconduct of the indemnitee or
8 its officers, directors, agents or employees, or for statutory
9 violation or punitive damages except and to the extent the
10 statutory violation or punitive damages are caused by or
11 result from the acts or omissions of the indemnitor or any of
12 the indemnitor's contractors, subcontractors,
13 sub-subcontractors, materialmen, or agents of any tier or
14 their respective employees.

15 (2) If, as part of any agreement or contract for or in
16 connection with, or any guarantee of or in connection with,
17 any construction, alteration, repair, or demolition of a
18 building, structure, appurtenance, or appliance, including
19 moving and excavating associated with such activities, between
20 or among an architect, engineer, general contractor,
21 subcontractor, sub-subcontractor, or materialman or any
22 combination of such persons, a policy of insurance extends
23 certain coverage rights to an additional insured for liability
24 arising out of the acts, errors, or omissions of the named
25 insured, such additional insured coverage shall only provide
26 liability protection to the additional insured for the imputed
27 or vicarious liability imposed on the additional insured as a
28 direct consequence of the negligent acts or omissions of the
29 named insured.

30 (3) If a written contract requires a subcontractor,
31 sub-subcontractor or materialman to provide a policy of

1 insurance or a certificate of insurance to a general
2 contractor or subcontractor, extending specific coverage
3 rights to an additional insured:

4 (a) The general contractor or subcontractor may at any
5 point prior to the date the subcontractor, sub-subcontractor
6 or materialman commences work or delivers material to the
7 project, accept or reject the policy as being nonconforming;

8 (b) If not rejected, the general contractor or
9 subcontractor shall be deemed to have accepted the policy and;

10 (c) The general contractor or subcontractor shall not
11 use the lack of conforming insurance as a reason to reject
12 work already completed by a subcontractor, sub-subcontractor,
13 or material already supplied by the materialman, or withhold
14 payment to the subcontractor, sub-subcontractor or materialman
15 for work already completed or material already supplied ~~Except~~
16 ~~as specifically provided in subsection (2), a construction~~
17 ~~contract for a public agency or in connection with a public~~
18 ~~agency's project may not require one party to indemnify,~~
19 ~~defend, or hold harmless the other party, its employees,~~
20 ~~officers, directors, or agents from any liability, damage,~~
21 ~~loss, claim, action, or proceeding, and any such contract~~
22 ~~provision is void as against public policy of this state.~~

23 (4) This section does not affect any contracts,
24 agreements, or guarantees entered into before the effective
25 date of this section ~~or any renewals thereof.~~

26 Section 2. Subsection (16) of section 440.02, Florida
27 Statutes, is amended to read:

28 440.02 Definitions.--When used in this chapter, unless
29 the context clearly requires otherwise, the following terms
30 shall have the following meanings:

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

12 (b) Businesses, partnerships, corporations, sole
13 proprietorships, or other business entities with four or more
14 paid employees, which are engaged in the same or similar types
15 of work activities, have employees with similar industry
16 classifications, and confine their work exclusively or
17 predominately to a horseracing track or facility servicing a
18 horseracing track in this state may form a group and aggregate
19 their employer obligations under this chapter so that the
20 aggregated business activities of 10 or more separate entities
21 may be considered as single employer for purposes of arranging
22 workers' compensation insurance or self-insurance
23 certification, and the immunity provisions of s. 440.11 shall
24 apply.

25 Section 3. This act shall take effect upon becoming a
26 law.

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