

By Senator Simpson

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1 A bill to be entitled
2 An act relating to workers' compensation system
3 administration; amending s. 440.02, F.S.; revising
4 definitions; amending s. 440.021, F.S.; conforming a
5 cross-reference; amending s. 440.05, F.S.; requiring
6 members of limited liability companies to submit
7 specified notices; deleting a required item to be
8 listed on a notice of election to be exempt; revising
9 specified rules regarding the maintenance of business
10 records by an officer of a corporation; removing the
11 requirement that the Department of Financial Services
12 issue a specified stop-work order; amending s.
13 440.107, F.S.; requiring that the department allow an
14 employer who has not previously been issued an order
15 of penalty assessment to receive a specified credit to
16 be applied to the penalty; prohibiting the application
17 of a specified credit unless the employer provides
18 specified documentation and proof of payment to the
19 department within a specified period; requiring the
20 department to reduce the final assessed penalty by a
21 specified percentage for employers who have not been
22 previously issued a stop-work order or order of
23 penalty assessment; revising the penalty calculation
24 for the imputed weekly payroll for an employee;
25 amending s. 440.13, F.S.; eliminating the
26 certification requirements when an expert medical
27 advisor is selected by a judge of compensation claims;
28 amending s. 440.185, F.S.; deleting the requirement
29 that employers notify the department within 24 hours

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30 of any injury resulting in death; amending s. 440.42,
31 F.S.; conforming a cross-reference; amending s.
32 440.49, F.S.; revising definitions; revising the
33 requirements for filing a claim; deleting the
34 preferred worker program; deleting the notification
35 fees on certain filed claims which supplement the
36 Special Disability Trust Fund; conforming cross-
37 references; amending s. 440.50, F.S.; conforming
38 cross-references; amending s. 440.52, F.S.; deleting a
39 fee for certain registration of insurance carriers;
40 amending s. 624.4626, F.S.; conforming a cross-
41 reference; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Subsection (9) and paragraph (c) of subsection
46 (15) of section 440.02, Florida Statutes, are amended to read:
47 440.02 Definitions.—When used in this chapter, unless the
48 context clearly requires otherwise, the following terms shall
49 have the following meanings:

50 (9) "Corporate officer" or "officer of a corporation" means
51 any person who fills an office provided for in the corporate
52 charter or articles of incorporation filed with the Division of
53 Corporations of the Department of State or as authorized or
54 required under part I of chapter 607. For persons engaged in the
55 construction industry, the term "officer of a corporation"
56 includes a member owning at least 10 percent of a limited
57 liability company as defined in and organized pursuant to
58 chapter 605.

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59 (15)

60 (c) "Employee" includes:

61 1. A sole proprietor, a member of a limited liability
62 company, or a partner who is not engaged in the construction
63 industry, devotes full time to the proprietorship, limited
64 liability company, or partnership, and elects to be included in
65 the definition of employee by filing notice thereof as provided
66 in s. 440.05.

67 2. All persons who are being paid by a construction
68 contractor as a subcontractor, unless the subcontractor has
69 validly elected an exemption as permitted by this chapter, or
70 has otherwise secured the payment of compensation coverage as a
71 subcontractor, consistent with s. 440.10, for work performed by
72 or as a subcontractor.

73 3. An independent contractor working or performing services
74 in the construction industry.

75 4. A sole proprietor who engages in the construction
76 industry and a partner or partnership that is engaged in the
77 construction industry.

78 Section 2. Section 440.021, Florida Statutes, is amended to
79 read:

80 440.021 Exemption of workers' compensation from chapter
81 120.—Workers' compensation adjudications by judges of
82 compensation claims are exempt from chapter 120, and no judge of
83 compensation claims shall be considered an agency or a part
84 thereof. Communications of the result of investigations by the
85 department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt
86 from chapter 120. In all instances in which the department
87 institutes action to collect a penalty or interest which may be

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88 due pursuant to this chapter, the penalty or interest shall be
89 assessed without hearing, and the party against which such
90 penalty or interest is assessed shall be given written notice of
91 such assessment and shall have the right to protest within 20
92 days of such notice. Upon receipt of a timely notice of protest
93 and after such investigation as may be necessary, the department
94 shall, if it agrees with such protest, notify the protesting
95 party that the assessment has been revoked. If the department
96 does not agree with the protest, it shall refer the matter to
97 the judge of compensation claims for determination pursuant to
98 s. 440.25(2)-(5). Such action of the department is exempt from
99 the provisions of chapter 120.

100 Section 3. Subsections (1), (2), (3), (5), (10), and (11)
101 of section 440.05, Florida Statutes, are amended to read:

102 440.05 Election of exemption; revocation of election;
103 notice; certification.-

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

109 (2) Each sole proprietor, member of a limited liability
110 company, or partner who elects to be included in the definition
111 of "employee" or who, after such election, revokes that election
112 must submit mail to the department ~~in Tallahassee~~ notice to such
113 effect, in accordance with a form to be prescribed by the
114 department.

115 (3) ~~Each officer of a corporation who is engaged in the~~
116 ~~construction industry and who elects an exemption from this~~

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117 ~~chapter or who, after electing such exemption, revokes that~~
118 ~~exemption must submit a notice to such effect to the department~~
119 ~~on a form prescribed by the department.~~ The notice of election
120 to be exempt must be electronically submitted to the department
121 by the officer of a corporation who is allowed to claim an
122 exemption as provided by this chapter and must list the name,
123 ~~federal tax identification number,~~ date of birth, driver license
124 number or Florida identification card number, and all certified
125 or registered licenses issued pursuant to chapter 489 held by
126 the person seeking the exemption, the registration number of the
127 corporation filed with the Division of Corporations of the
128 Department of State, and the percentage of ownership evidencing
129 the required ownership under this chapter. The notice of
130 election to be exempt must identify each corporation that
131 employs the person electing the exemption and must list the
132 social security number or federal tax identification number of
133 each such employer and the additional documentation required by
134 this section. In addition, the notice of election to be exempt
135 must provide that the officer electing an exemption is not
136 entitled to benefits under this chapter, must provide that the
137 election does not exceed exemption limits for officers provided
138 in s. 440.02, and must certify that any employees of the
139 corporation whose officer elects an exemption are covered by
140 workers' compensation insurance. Upon receipt of the notice of
141 the election to be exempt, receipt of all application fees, and
142 a determination by the department that the notice meets the
143 requirements of this subsection, the department shall issue a
144 certification of the election to the officer, unless the
145 department determines that the information contained in the

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146 notice is invalid. The department shall revoke a certificate of
147 election to be exempt from coverage upon a determination by the
148 department that the person does not meet the requirements for
149 exemption or that the information contained in the notice of
150 election to be exempt is invalid. The certificate of election
151 must list the name of the corporation listed in the request for
152 exemption. A new certificate of election must be obtained each
153 time the person is employed by a new or different corporation
154 that is not listed on the certificate of election. A notice ~~copy~~
155 of the certificate of election must be sent to each workers'
156 compensation carrier identified in the request for exemption.
157 Upon filing a notice of revocation of election, an officer who
158 is a subcontractor or an officer of a corporate subcontractor
159 must notify her or his contractor. Upon revocation of a
160 certificate of election of exemption by the department, the
161 department shall notify the workers' compensation carriers
162 identified in the request for exemption.

163 (5) A notice given under subsection (1), subsection (2), or
164 subsection (3) shall become effective when issued by the
165 department or 30 days after it ~~an application for an exemption~~
166 is received by the department, whichever occurs first. However,
167 if an accident or occupational disease occurs less than 30 days
168 after the effective date of the insurance policy under which the
169 payment of compensation is secured or the date the employer
170 qualified as a self-insurer, such notice is effective as of
171 12:01 a.m. of the day following the date it is submitted ~~mailed~~
172 to the department ~~in Tallahassee~~.

173 (10) Each officer of a corporation who is actively engaged
174 in the construction industry and who elects an exemption from

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175 this chapter shall maintain business records as specified by the
176 department by rule, ~~which rules must include the provision that~~
177 ~~any corporation with exempt officers engaged in the construction~~
178 ~~industry must maintain written statements of those exempted~~
179 ~~persons affirmatively acknowledging each such individual's~~
180 ~~exempt status.~~

181 (11) Any corporate officer permitted by this chapter to
182 claim an exemption must be listed on the records of this state's
183 Secretary of State, Division of Corporations, as a corporate
184 officer. ~~The department shall issue a stop-work order under s.~~
185 ~~440.107(7) to any corporation who employs a person who claims to~~
186 ~~be exempt as a corporate officer but who fails or refuses to~~
187 ~~produce the documents required under this subsection to the~~
188 ~~department within 3 business days after the request is made.~~

189 Section 4. Paragraphs (d) and (e) of subsection (7) of
190 section 440.107, Florida Statutes, are amended to read:

191 440.107 Department powers to enforce employer compliance
192 with coverage requirements.-

193 (7)

194 (d)1. In addition to any penalty, stop-work order, or
195 injunction, the department shall assess against any employer who
196 has failed to secure the payment of compensation as required by
197 this chapter a penalty equal to 2 times the amount the employer
198 would have paid in premium when applying approved manual rates
199 to the employer's payroll during periods for which it failed to
200 secure the payment of workers' compensation required by this
201 chapter within the preceding 2-year period or \$1,000, whichever
202 is greater.

203 a. For employers who have not been previously issued a

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204 stop-work order or order of penalty assessment, the department
205 must allow the employer to receive a credit for the initial
206 payment of the estimated annual workers' compensation policy
207 premium, as determined by the carrier, to be applied to the
208 penalty. Before applying the credit to the penalty, the employer
209 must provide the department with documentation reflecting that
210 the employer has secured the payment of compensation pursuant to
211 s. 440.38 and proof of payment to the carrier. In order for the
212 department to apply a credit for an employer that has secured
213 workers' compensation for leased employees by entering into an
214 employee leasing contract with a licensed employee leasing
215 company, the employer must provide the department with a written
216 confirmation, by a representative from the employee leasing
217 company, of the dollar or percentage amount attributable to the
218 initial estimated workers' compensation expense for leased
219 employees, and proof of payment to the employee leasing company.
220 The credit may not be applied unless the employer provides the
221 documentation and proof of payment to the department within 28
222 days after service of the stop-work order or first order of
223 penalty assessment upon the employer.

224 b. For employers who have not been previously issued a
225 stop-work order or order of penalty assessment, the department
226 must reduce the final assessed penalty by 25 percent if the
227 employer has complied with administrative rules adopted pursuant
228 to subsection (5) and has provided such business records to the
229 department within 10 business days after the employer's receipt
230 of the written request to produce business records.

231 c. The \$1,000 penalty shall be assessed against the
232 employer even if the calculated penalty after the credit and 25

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233 percent reduction have ~~has~~ been applied is less than \$1,000.

234 2. Any subsequent violation within 5 years after the most
235 recent violation shall, in addition to the penalties set forth
236 in this subsection, be deemed a knowing act within the meaning
237 of s. 440.105.

238 (e) When an employer fails to provide business records
239 sufficient to enable the department to determine the employer's
240 payroll for the period requested for the calculation of the
241 penalty provided in paragraph (d), for penalty calculation
242 purposes, the imputed weekly payroll for each employee,
243 corporate officer, sole proprietor, or partner shall be the
244 statewide average weekly wage as defined in s. 440.12(2)
245 multiplied by 1.5 ~~2~~.

246 Section 5. Paragraph (a) of subsection (7) and paragraphs
247 (a) and (f) of subsection (9) of section 440.13, Florida
248 Statutes, are amended to read:

249 440.13 Medical services and supplies; penalty for
250 violations; limitations.—

251 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

252 (a) Any health care provider, ~~carrier, or employer~~ who
253 elects to contest the disallowance or adjustment of payment by a
254 carrier under subsection (6) must, within 45 days after receipt
255 of notice of disallowance or adjustment of payment, petition the
256 department to resolve the dispute. The petitioner must serve a
257 copy of the petition on the carrier and on all affected parties
258 by certified mail. The petition must be accompanied by all
259 documents and records that support the allegations contained in
260 the petition. Failure of a petitioner to submit such
261 documentation to the department results in dismissal of the

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262 petition.

263 (9) EXPERT MEDICAL ADVISORS.—

264 (a) The department shall certify expert medical advisors in
265 each specialty to assist the department ~~and the judges of~~
266 ~~compensation claims~~ within the advisor's area of expertise as
267 provided in this section. The department shall, in a manner
268 prescribed by rule, in certifying, recertifying, or decertifying
269 an expert medical advisor, consider the qualifications,
270 training, impartiality, and commitment of the health care
271 provider to the provision of quality medical care at a
272 reasonable cost. As a prerequisite for certification or
273 recertification, the department shall require, at a minimum,
274 that an expert medical advisor have specialized workers'
275 compensation training or experience under the workers'
276 compensation system of this state and board certification or
277 board eligibility.

278 (f) If the department or a judge of compensation claims
279 orders the services of an ~~a certified~~ expert medical advisor to
280 resolve a dispute under this section, the party requesting such
281 examination must compensate the advisor for his or her time in
282 accordance with a schedule adopted by the department. If the
283 employee prevails in a dispute as determined in an order by a
284 judge of compensation claims based upon the expert medical
285 advisor's findings, the employer or carrier shall pay for the
286 costs of such expert medical advisor. If a judge of compensation
287 claims, upon his or her motion, finds that an expert medical
288 advisor is needed to resolve the dispute, the carrier must
289 compensate the advisor for his or her time in accordance with a
290 schedule adopted by the department. The department may assess a

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291 penalty not to exceed \$500 against any carrier that fails to
292 timely compensate an advisor in accordance with this section.

293 Section 6. Subsection (3) of section 440.185, Florida
294 Statutes, is amended to read:

295 440.185 Notice of injury or death; reports; penalties for
296 violations.-

297 ~~(3) In addition to the requirements of subsection (2), the~~
298 ~~employer shall notify the department within 24 hours by~~
299 ~~telephone or telegraph of any injury resulting in death.~~
300 ~~However, this special notice shall not be required when death~~
301 ~~results subsequent to the submission to the department of a~~
302 ~~previous report of the injury pursuant to subsection (2).~~

303 Section 7. Subsection (3) of section 440.42, Florida
304 Statutes, is amended to read:

305 440.42 Insurance policies; liability.-

306 (3) No contract or policy of insurance issued by a carrier
307 under this chapter shall expire or be canceled until at least 30
308 days have elapsed after a notice of cancellation has been sent
309 to the department and to the employer in accordance with the
310 provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due
311 to nonpayment of premium, the insurer shall mail notification to
312 the employer at least 10 days prior to the effective date of the
313 cancellation. However, when duplicate or dual coverage exists by
314 reason of two different carriers having issued policies of
315 insurance to the same employer securing the same liability, it
316 shall be presumed that only that policy with the later effective
317 date shall be in force and that the earlier policy terminated
318 upon the effective date of the latter. In the event that both
319 policies carry the same effective date, one of the policies may

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320 be canceled instanter upon filing a notice of cancellation with
 321 the department and serving a copy thereof upon the employer in
 322 such manner as the department prescribes by rule. The department
 323 may by rule prescribe the content of the notice of retroactive
 324 cancellation and specify the time, place, and manner in which
 325 the notice of cancellation is to be served.

326 Section 8. Paragraph (b) of subsection (2), paragraph (c)
 327 of subsection (4), paragraph (c) of subsection (6), paragraphs
 328 (c) and (d) of subsection (7), subsection (8), and paragraph (d)
 329 of subsection (9) of section 440.49, Florida Statutes, are
 330 amended to read:

331 440.49 Limitation of liability for subsequent injury
 332 through Special Disability Trust Fund.—

333 (2) DEFINITIONS.—As used in this section, the term:

334 ~~(b) "Preferred worker" means a worker who, because of a~~
 335 ~~permanent impairment resulting from a compensable injury or~~
 336 ~~occupational disease, is unable to return to the worker's~~
 337 ~~regular employment.~~

338
 339 In addition to the definitions contained in this subsection, the
 340 department may by rule prescribe definitions that are necessary
 341 for the effective administration of this section.

342 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
 343 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
 344 OTHER PHYSICAL IMPAIRMENT.—

345 (c) *Temporary compensation and medical benefits;*
 346 *aggravation or acceleration of preexisting condition or*
 347 *circumstantial causation.*—If an employee who has a preexisting
 348 permanent physical impairment experiences an aggravation or

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349 acceleration of the preexisting permanent physical impairment as
350 a result of an injury or occupational disease arising out of and
351 in the course of her or his employment, or suffers an injury as
352 a result of a merger as defined in paragraph (2) (b) ~~(2) (e)~~, the
353 employer shall provide all benefits provided by this chapter,
354 but, subject to the limitations specified in subsection (7), the
355 employer shall be reimbursed by the Special Disability Trust
356 Fund created by subsection (9) for 50 percent of its payments
357 for temporary, medical, and attendant care benefits.

358 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

359 (c) An employer's or carrier's right to apportionment or
360 deduction pursuant to ss. 440.02(1), 440.15(5)(b), and
361 440.151(1)(c) does not preclude reimbursement from such fund,
362 except when the merger comes within the definition of paragraph
363 (2) (b) ~~(2) (e)~~ and such apportionment or deduction relieves the
364 employer or carrier from providing the materially and
365 substantially greater permanent disability benefits otherwise
366 contemplated in those paragraphs.

367 (7) REIMBURSEMENT OF EMPLOYER.—

368 (c) A proof of claim must be filed on each notice of claim
369 on file as of June 30, 1997, within 1 year after July 1, 1997,
370 or the right to reimbursement of the claim shall be barred. A
371 notice of claim on file on or before June 30, 1997, may be
372 withdrawn and refiled if, at the time refiled, the notice of
373 claim remains within the limitation period specified in
374 paragraph (a). Such refiled shall not toll, extend, or
375 otherwise alter in any way the limitation period applicable to
376 the withdrawn and subsequently refiled notice of claim. ~~Each~~
377 ~~proof of claim filed shall be accompanied by a proof of claim~~

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378 ~~fee as provided in paragraph (9) (d).~~ The Special Disability
379 Trust Fund shall, within 120 days after receipt of the proof of
380 claim, serve notice of the acceptance of the claim for
381 reimbursement. This paragraph shall apply to all claims
382 notwithstanding the provisions of subsection (12).

383 ~~(d) Each notice of claim filed or refiled on or after July~~
384 ~~1, 1997, must be accompanied by a notification fee as provided~~
385 ~~in paragraph (9) (d).~~ A proof of claim must be filed within 1
386 year after the date the notice of claim is filed or refiled,
387 ~~accompanied by a proof-of-claim fee as provided in paragraph~~
388 ~~(9) (d),~~ or the claim shall be barred. ~~The notification fee shall~~
389 ~~be waived if both the notice of claim and proof of claim are~~
390 ~~submitted together as a single filing.~~ The Special Disability
391 Trust Fund shall, within 180 days after receipt of the proof of
392 claim, serve notice of the acceptance of the claim for
393 reimbursement. This paragraph shall apply to all claims
394 notwithstanding the provisions of subsection (12).

395 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~
396 ~~or administrator shall issue identity cards to preferred workers~~
397 ~~upon request by qualified employees and the Department of~~
398 ~~Financial Services shall reimburse an employer, from the Special~~
399 ~~Disability Trust Fund, for the cost of workers' compensation~~
400 ~~premium related to the preferred workers payroll for up to 3~~
401 ~~years of continuous employment upon satisfactory evidence of~~
402 ~~placement and issuance of payroll and classification records and~~
403 ~~upon the employee's certification of employment. The Department~~
404 ~~of Financial Services and the Department of Education may by~~
405 ~~rule prescribe definitions, forms, and procedures for the~~
406 ~~administration of the preferred worker program. The Department~~

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407 ~~of Education may by rule prescribe the schedule for submission~~
 408 ~~of forms for participation in the program.~~

409 (8)~~(9)~~ SPECIAL DISABILITY TRUST FUND.—

410 ~~(d) The Special Disability Trust Fund shall be supplemented~~
 411 ~~by a \$250 notification fee on each notice of claim filed or~~
 412 ~~refiled after July 1, 1997, and a \$500 fee on each proof of~~
 413 ~~claim filed in accordance with subsection (7). Revenues from the~~
 414 ~~fee shall be deposited into the Special Disability Trust Fund~~
 415 ~~and are exempt from the deduction required by s. 215.20. The~~
 416 ~~fees provided in this paragraph shall not be imposed upon any~~
 417 ~~insurer which is in receivership with the department.~~

418 Section 9. Paragraph (b) of subsection (1) of section
 419 440.50, Florida Statutes, is amended to read:

420 440.50 Workers' Compensation Administration Trust Fund.—

421 (1)

422 (b) The department is authorized to transfer as a loan an
 423 amount not in excess of \$250,000 from such special fund to the
 424 Special Disability Trust Fund established by s. 440.49(8) ~~s.~~
 425 ~~440.49(9)~~, which amount shall be repaid to the ~~said~~ special fund
 426 in annual payments equal to not less than 10 percent of moneys
 427 received for the ~~such~~ Special Disability Trust Fund.

428 Section 10. Subsection (1) of section 440.52, Florida
 429 Statutes, is amended to read:

430 440.52 Registration of insurance carriers; notice of
 431 cancellation or expiration of policy; suspension or revocation
 432 of authority.—

433 (1) Each insurance carrier who desires to write workers'
 434 ~~such~~ compensation insurance in compliance with this chapter
 435 shall be required, before writing such insurance, to register

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436 with the department and ~~pay a registration fee of \$100. This~~
437 ~~shall be deposited by the department in the fund created by s.~~
438 ~~440.50.~~

439 Section 11. Subsection (2) of section 624.4626, Florida
440 Statutes, is amended to read:

441 624.4626 Electric cooperative self-insurance fund.—

442 (2) A self-insurance fund that meets the requirements of
443 this section is subject to the assessments set forth in ss.
444 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not
445 subject to any other provision of s. 624.4621 and is not
446 required to file any report with the department under s.
447 440.38(2)(b) which is uniquely required of group self-insurer
448 funds qualified under s. 624.4621.

449 Section 12. This act shall take effect October 1, 2016.