

SB

336

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 2, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/5/98

The FINANCE Committee considered:

CSSB 336(L&C)

CS FOR SENATE BILL NO. 336(L&C)

WORKERS' COMP: EXEMPT HOCKEY PLAYERS

"An Act relating to excluding professional hockey team members from workers' compensation coverage."

recommends it be replaced
with the following committee substitute _____

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) label 3/23/98

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault			<input checked="" type="checkbox"/>	
<i>Glenn Pude</i>	Mulder	<input checked="" type="checkbox"/>			
<i>Terry Martin</i>	Martin			<input checked="" type="checkbox"/>	<i>may 19</i>
<i>Vic Kohring</i>	Kohring	<input checked="" type="checkbox"/>			
<i>John J. Davies</i>	J. Davies	<input checked="" type="checkbox"/>			
<i>Ben J. Grusendorf</i>	Grusendorf			<input checked="" type="checkbox"/>	
<i>John G. Davis</i>	G. Davis			<input checked="" type="checkbox"/>	
<i>John Kelly</i>	Kelly			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE

Gene Theriault
Theriault

FISCAL NOTE

No. 1
 Bill Version: CSSB 336(LC)
 (S) Publish Date: 3-23-98

**STATE OF ALASKA
 1998 LEGISLATIVE SESSION**

Revision Date (Note if correction)		Dept. Affected	Labor
Title	<u>Workers' Comp: Exempt Hockey Players</u>	BRU	<u>Workers' Compensation</u>
Sponsor	<u>Senate L&C</u>	Component	<u>Workers' Compensation</u>
Requester	<u>Senate L&C</u>	Component Serial No.	<u>344</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This proposed bill amends AS 23.30.230(a) to include persons employed as a player or coach of a professional hockey team as persons not covered by workers' compensation. The passage of this bill is not anticipated to result in any noticable activity.

Prepared by	Paul Grossi, Director <i>(Signature)</i>	Phone	465-2790
Division	Workers' Compensation <i>(Signature)</i>	Date	3/13/98
Approved by Commissioner:	Tom Cashen	Date	3/13/98
Agency	Labor		

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*workers comp
file*

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July 19, 1996

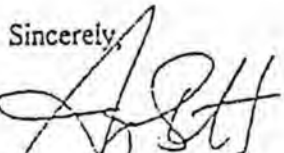
Walt Edwards
Vice President/Business Operations
1659 Folkstone Road
Tallahassee, FL 32312

Re: Eastern Indoor Soccer League

Dear Walt:

I have enclosed a copy of § 440.09(8) and 440.02(15)(c)(3), Florida Statutes, which discusses exemption of professional athletes from Florida's Workers Compensation requirements in certain situations as you requested. As you will notice, professional soccer players are not specifically mentioned, although a plain reading of the language of the statute seems to include them. I took a quick look at the case law and found no cases specifically including or excluding professional soccer.

As always, please call with any questions.

Sincerely,

Tammy deSoto Cicchetti

TdC/nw



MAY 5 1998

Office of Senator Loren Leman
State Capitol, Room 115
Juneau, AK 99801

May 5, 1998

Re: SB 336

Dear Mr. Leman:

On behalf of the Anchorage Aces Professional Hockey Team and the Players, we would like to thank you for introducing SB 336. We understand that this will require your effort as well as your that of your staff and are in full support of this bill.

This bill is very crucial to keeping the Aces in Alaska. The Aces have provided professional hockey to the State of Alaska for the past three years and are very close with the community of Anchorage. The players love Anchorage and want to continue to be a part of this community. The players and management are willing to be available for any testimony or support of this bill. Please let me know if we can be of assistance.

Sincerely,

Derek Donald, General Manager/Player

Alaska State Legislature

Senate



Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Sponsor Statement

SB 336: "An Act relating to excluding professional hockey team members from worker's compensation coverage

This bill amends Worker's Compensation provisions by adding professional hockey teams to the list of persons not covered under AS 23.30.230. In exchange for this exemption, a team owner would have to provide a medical and disability program to cover the players (and anyone else associated with the team who is in the same Worker's Comp risk category, e.g., coaches, assistant coaches, but not office personnel) 100% of the time - whether on duty, travel or their own time. The owner is responsible for the cost of the premiums on this coverage. The idea is taken from Florida's approach to this problem.

The committee was asked to introduce this legislation by the sole professional hockey team in the state, the Anchorage Aces.

The Department of Labor, Division of Worker's Compensation has reviewed the legislation and is neutral on the bill.

- 440.525 Examination of carriers.
 440.53 Effect of unconstitutionality.
 440.54 Violation of child labor law.
 440.55 Proceedings against state.
 440.572 Authorization for individual self-insurer to provide coverage.
 440.585 Workers' compensation group self-insurance fund application disclosure.
 440.59 Reporting requirements.
 440.591 Administrative procedure; rulemaking authority.
 440.593 Electronic reporting.
 440.60 Application of laws.

440.01 Short title.—This chapter may be cited as the "Workers' Compensation Law."

History.—s. 1 on 17481, 1935; s. 1536 Supp. 1956; s. 23, ch. 74-300; s. 1, 124, ch. 79-40; s. 27, ch. 79-312; s. 43, ch. 89-209; s. 59, ch. 90-257; s. 52, ch. 91-1.

440.015 Legislative intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The Division of Workers' Compensation shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

History.—s. 8, ch. 90-201; s. 6, ch. 91-1; s. 1, ch. 93-415.

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 individu-

al'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 condition 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 men 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 dependant upon the deceased, but does not include married children unless wholly dependent on him. "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 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) "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.

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

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

(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.

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

- 440.525 Examination of carriers.
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440.01 Short title.—This chapter may be cited as the "Workers' Compensation Law."

History.—s. 1, ch. 17481, 1935; s. 1, ch. 1573, Supp. 1939; s. 23, ch. 78-300, L.S. 1, 12a, ch. 79-49, s. 21, ch. 78-312, s. 43, ch. 88-289, s. 58, ch. 90-221, s. 22, ch. 91-1.

440.015 Legislative Intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The Division of Workers' Compensation shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

History.—s. 8, ch. 90-221; s. 8, ch. 91-1; s. 1, ch. 93-413.

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. An injury 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 men 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 him. "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 employee are under 16 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 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) "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.

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

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

(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.

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

(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 he 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 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 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 performs or agrees to perform.

e. The independent contractor is responsible for the satisfactory completion of work or services that he 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 his 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 his 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.

(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 trustee 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.

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

(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 foreman, 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 motorboat 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. 318.193.

(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 his 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 his employer.

(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, eyeglasses, 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.

(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; and were dependent on the injured employee.

(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.

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

(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. 440.57; or

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

(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.

(23) "Time of injury" means the time of the occurrence of the accident resulting in the injury.

(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 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.

(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.

(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.

(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.

(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.

(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.

(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 (31)(a), paragraph (31)(b), or paragraph (31)(c), by a court of competent jurisdiction in this or any other state, or meets the definition of paragraph (31)(d).

(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 debts in the ordinary course of business and cannot pay his debts as they become due; or

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

(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.

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

(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:

Severe sensory or motor disturbances.

- 2 Severe communicative 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.:

(a) 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;

(a) Total or industrial blindness; or

(1) 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, 1952, without regard to any time limitations provided under that act.

(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.

(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.

History.—s. 2, ch. 17481, 1936; s. 1, ch. 17482, 1936; s. 1, ch. 17483, 1936; CGL 1936 Supp. 586677; s. 1, ch. 78412, 1937; s. 1, ch. 20817, 1941; s. 1, ch. 26228, 1953; s. 1, ch. 20778, 1955; s. 1, ch. 67-184, s. 1, ch. 37-226, s. 1, ch. 52-100, s. 1, ch. 66-104, s. 1, ch. 67-354, s. 17, 38, ch. 68-102, s. 1, ch. 71-60, s. 162, ch. 71-377; s. 1, ch. 72-243, s. 1, ch. 73-127, s. 1, ch. 73-233, s. 118, ch. 73-333, s. 1, ch. 74-441; s. 1, ch. 74-121, s. 1, ch. 74-197, s. 1, ch. 75-209, s. 1, ch. 77-174, s. 1, ch. 77-299; s. 1, ch. 79-300, s. 15, ch. 79-7, s. 2, 124, ch. 79-40, s. 21, ch. 79-312, s. 1, ch. 80-738, s. 3, ch. 81-119, s. 1, ch. 83-305, s. 1, ch. 84-267, s. 9, ch. 86-171; s. 1, ch. 87-300, s. 1, ch. 88-202, s. 2, ch. 92-811, s. 3, 43, ch. 85-289, s. 9, 56, ch. 90-201, s. 4, 7, 52, ch. 81-1, s. 1, ch. 81-2, s. 2, ch. 83-415, s. 117, ch. 94-119; s. 59, ch. 94-218.

*Note.—Transferred to s. 624.4622 by s. 81, ch. 93-415.
 *Note.—Redesignated as subparagraph (31)(a)1, by s. 2, ch. 93-415.
 *Note.—Redesignated as subparagraph (31)(a)2, by s. 2, ch. 93-415.
 *Note.—Redesignated as subparagraph (31)(a)3, by s. 2, ch. 93-415.
 *Note.—Redesignated as subparagraph (31)(a)4, by s. 2, ch. 93-415.

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the division pursuant to s. 440.185(4) are exempt from chapter 120. In all instances in which the division institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the division shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the division does not agree with the protest, it shall refer the matter to the judge of compensation claims for

determination pursuant to s. 440.25(3) and (4). Such action of the division is exempt from the provisions of chapter 120.

History.—s. 2, ch. 17481, 1936; CGL 1936 Supp. 586677; s. 1, ch. 17482, 1936; s. 1, ch. 17483, 1936; CGL 1936 Supp. 586677; s. 1, ch. 78412, 1937; s. 1, ch. 20817, 1941; s. 1, ch. 26228, 1953; s. 1, ch. 20778, 1955; s. 1, ch. 67-184, s. 1, ch. 37-226, s. 1, ch. 52-100, s. 1, ch. 66-104, s. 1, ch. 67-354, s. 17, 38, ch. 68-102, s. 1, ch. 71-60, s. 162, ch. 71-377; s. 1, ch. 72-243, s. 1, ch. 73-127, s. 1, ch. 73-233, s. 118, ch. 73-333, s. 1, ch. 74-441; s. 1, ch. 74-121, s. 1, ch. 74-197, s. 1, ch. 75-209, s. 1, ch. 77-174, s. 1, ch. 77-299; s. 1, ch. 79-300, s. 15, ch. 79-7, s. 2, 124, ch. 79-40, s. 21, ch. 79-312, s. 1, ch. 80-738, s. 3, ch. 81-119, s. 1, ch. 83-305, s. 1, ch. 84-267, s. 9, ch. 86-171; s. 1, ch. 87-300, s. 1, ch. 88-202, s. 2, ch. 92-811, s. 3, 43, ch. 85-289, s. 9, 56, ch. 90-201, s. 4, 7, 52, ch. 81-1, s. 1, ch. 81-2, s. 2, ch. 83-415, s. 117, ch. 94-119; s. 59, ch. 94-218.

440.03 Application.—Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.

History.—s. 1, ch. 17481, 1936; CGL 1936 Supp. 586677; s. 1, ch. 17482, 1936; s. 1, ch. 17483, 1936; CGL 1936 Supp. 586677; s. 1, ch. 78412, 1937; s. 1, ch. 20817, 1941; s. 1, ch. 26228, 1953; s. 1, ch. 20778, 1955; s. 1, ch. 67-184, s. 1, ch. 37-226, s. 1, ch. 52-100, s. 1, ch. 66-104, s. 1, ch. 67-354, s. 17, 38, ch. 68-102, s. 1, ch. 71-60, s. 162, ch. 71-377; s. 1, ch. 72-243, s. 1, ch. 73-127, s. 1, ch. 73-233, s. 118, ch. 73-333, s. 1, ch. 74-441; s. 1, ch. 74-121, s. 1, ch. 74-197, s. 1, ch. 75-209, s. 1, ch. 77-174, s. 1, ch. 77-299; s. 1, ch. 79-300, s. 15, ch. 79-7, s. 2, 124, ch. 79-40, s. 21, ch. 79-312, s. 1, ch. 80-738, s. 3, ch. 81-119, s. 1, ch. 83-305, s. 1, ch. 84-267, s. 9, ch. 86-171; s. 1, ch. 87-300, s. 1, ch. 88-202, s. 2, ch. 92-811, s. 3, 43, ch. 85-289, s. 9, 56, ch. 90-201, s. 4, 7, 52, ch. 81-1, s. 1, ch. 81-2, s. 2, ch. 83-415, s. 117, ch. 94-119; s. 59, ch. 94-218.

440.04 Waiver of exemption.—

(1) Every employer having in his employment any employee not included in the definition "employee," or excluded or exempted from the operation of this chapter may at any time waive such exclusion or exemption and accept the provisions of this chapter by giving notice thereof as provided in s. 440.05, and by so doing be as fully protected and covered by the provisions of this chapter as if such exclusion or exemption had not been contained herein.

(2) When any policy or contract of insurance specifically secures the benefits of this chapter to any person not included in the definition of "employee" or whose services are not included in the definition of "employment" or who is otherwise excluded or exempted from the operation of this chapter, the acceptance of such policy or contract of insurance by the insured and the writing of same by the carrier shall constitute a waiver of such exclusion or exemption and an acceptance of the provisions of this chapter with respect to such person, notwithstanding the provision of s. 440.05 with respect to notice.

(3) A corporate officer who has exempted himself by proper notice from the operation of this chapter may at any time revoke such exemption and thereby accept the provisions of this chapter by giving notice as provided in s. 440.05.

History.—s. 4, ch. 17481, 1936; CGL 1936 Supp. 586677; s. 2, ch. 18413, 1937; s. 2, ch. 27773, 1955; s. 4, ch. 70-142, s. 2, ch. 74-187, s. 25, ch. 78-300, s. 124, ch. 79-40, s. 31, ch. 79-312, s. 43, ch. 86-288, s. 58, ch. 80-201, s. 52, ch. 91-1.

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 election 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. The 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. In addition, the election 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 and a determination 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. 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 his election. Upon filing a notice of revocation of election, a sole proprietor, partner, or officer who is a subcontractor must notify his contractor.

(4) A notice given under subsection (1), subsection (2), or subsection (3) 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.

(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.

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

History.—s. 1, ch. 17481, 1973; C.S.L. 1934, 5000, 5950/51, 15, 17, 32, ch. 64-105, s. 2, ch. 70-148, s. 1, ch. 70-409, s. 3, ch. 74-197, s. 2, ch. 73-209, s. 22, ch. 78-300, s. 124, ch. 79-40, s. 21, ch. 79-312, s. 42, ch. 89-289, s. 56, ch. 90-201, s. 32, ch. 91-1, s. 2, ch. 91-2, s. 3, ch. 93-415.

440.055 Notice requirements.—An employer who employs fewer than four employees, who is permitted by law to elect not to secure payment of compensation under this chapter, and who elects not to do so shall post clear written notice in a conspicuous location at

each worksite directed to all employees and other persons performing services at the worksite of their lack of entitlement to benefits under this chapter.

History.—s. 10, ch. 90-201, s. 4, ch. 91-1, s. 4, ch. 93-415.

440.06 Failure to secure compensation; effect.—Every employer who fails to secure the payment of compensation under this chapter as provided in s. 440.38 may not, in any suit brought against him by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his employment, or that the injury was due to the comparative negligence of the employee.

History.—s. 4, ch. 17481, 1973; C.S.L. 1836, 5000, 5950/51, s. 5, ch. 70-148, s. 23, ch. 78-300, ss. 4, 124, ch. 79-40, s. 21, ch. 79-312, s. 43, ch. 89-289, s. 56, ch. 90-201, s. 62, ch. 91-1.

440.075 When corporate officer rejects chapter; effect.—Every corporate officer who elects to reject this chapter shall, in any action to recover damages for injury or death brought against the corporate employer, proceed as at common law, and the employer in such suit may avail itself of all defenses that exist at common law.

History.—s. 4, ch. 74-197, s. 23, ch. 78-300, s. 124, ch. 79-40, s. 21, ch. 79-312, s. 43, ch. 89-289, s. 56, ch. 90-201, s. 62, ch. 91-1.

440.077 When a sole proprietor, partner, or officer rejects chapter; effect.—A sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects to be exempt from the provisions of this chapter may not recover benefits under this chapter.

History.—s. 2, ch. 91-2.

440.09 Coverage.—

(1) The employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an accidental injury or death arising out of work performed in the course and the scope of employment. The injury, its occupational cause, and any resulting manifestations or disability shall be established to a reasonable degree of medical certainty and by objective medical findings. Mental or nervous injuries occurring as a manifestation of an injury compensable under this section shall be demonstrated by clear and convincing evidence.

(a) This chapter does not require any compensation or benefits for any subsequent injury the employee suffers as a result of an original injury arising out of and in the course of employment unless the original injury is the major contributing cause of the subsequent injury.

(b) If an injury arising out of and in the course of employment combines with a preexisting disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this chapter only to the extent that the injury arising out of and in the course of employment is and remains the major contributing cause of the disability or need for treatment.

(c) Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in s. 440.15(6) shall for the purpose of this chapter be considered to be a death resulting from the accident causing the hernia.

(1) If an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents are entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in this chapter.

(2) Benefits are not payable in respect of the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or the Jones Act.

(3) Compensation is not payable if the injury was occasioned primarily by the intoxication of the employee; by the influence of any drugs, barbiturates, or other stimulants not prescribed by a physician; or by the willful intention of the employee to injure or kill himself, herself, or another.

(4) An employee shall not be entitled to compensation or benefits under this chapter if any administrative 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.

(5) If injury is caused by the knowing refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully adopted by the division, and brought prior to the accident to the employee's knowledge, or if injury is caused by the knowing refusal of the employee to use a safety appliance provided by the employer, the compensation as provided in this chapter shall be reduced 25 percent.

(6) Except as provided in this chapter, a construction design professional who is retained to perform professional services on a construction project, or an employee of a construction design professional in the performance of professional services on the site of the construction project, is not liable for any injuries resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter, unless responsibility for safety practices is specifically assumed by contracts. The immunity provided by this subsection to a construction design professional does not apply to the negligent preparation of design plans or specifications.

(7)(a) To ensure that the workplace is a drug-free environment and to deter the use of drugs and alcohol at the workplace, if the employer has reason to suspect that the injury was occasioned primarily by the intoxication of the employee or by the use of any drug, as defined in this chapter, which affected the employee to the extent that the employee's normal faculties were impaired, and the employer has not implemented a drug-free workplace pursuant to ss. 440.101 and 440.102, the employer may require the employee to submit to a test for the presence of any or all drugs or alcohol in his system.

(b) If the employee has, at the time of the injury, a blood alcohol level equal to or greater than the level

specified in § 316.193, or if the employee has a positive confirmation of a drug as defined in this act, it is presumed that the injury was occasioned primarily by the intoxication of, or by the influence of the drug upon, the employee. In the absence of a drug-free workplace program, this presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per 100 milliliters of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of 90 days. Blood serum may be used for testing purposes under this chapter; however, if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and expressly acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the presumptions specified in this subsection do not apply.

(c) If the injured worker refuses to submit to a drug test, it shall be presumed in the absence of clear and convincing evidence to the contrary that the injury was occasioned primarily by the influence of drugs.

(d) The division shall provide by rule for the authorization and regulation of drug-testing policies, procedures, and methods. Testing of injured employees shall not commence until such rules are adopted.

(8) If, by operation of s. 440.04, benefits become payable to a professional athlete under this chapter, such benefits shall be reduced or setoff in the total amount of injury benefits or wages payable during the period of disability by the employer under a collective bargaining agreement or contract for hire.

History.—s. 9, ch. 17461, 1955; CCL 1934 Supp. 500000; s. 3, ch. 18413, 1937; s. 1, ch. 28226, 1953; s. 1, ch. 57-253; s. 2, ch. 73-127; s. 3, ch. 74-187; s. 3, ch. 75-209; s. 2, ch. 77-290; s. 23, ch. 78-300; s. 124, ch. 78-40; s. 21, ch. 79-312; s. 7, ch. 86-171; ss. 4, 5, 6, 42, ch. 88-209; ss. 11, 64, ch. 90-201; ss. 9, 32, ch. 91-1; ss. 5, 63, ch. 93-415.

Repealed by s. 3, ch. 82-277.

440.091 Law enforcement officer; when acting within the course of employment.—If an employee:

(1) Is elected, appointed, or employed full time by a municipality, the state, or any political subdivision and is vested with authority to bear arms and make arrests and his primary responsibility is the prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state;

(2) Was discharging that primary responsibility within the state in a place and under circumstances reasonably consistent with that primary responsibility; and

(3) Was not engaged in services for which he was paid by a private employer, and he and his public employer had no agreement providing for workers' compensation coverage for that private employment;

the employee shall be deemed to have been acting within the course of employment. The term "employee" as used in this section includes all certified supervisory and command personnel whose duties include, in whole