Session Law 88-284

Florida Senate & House of Representatives

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Florida Legislative History Documentation
relating to
Laws of Florida, 1988, Chapter 88-284
“An act relating to workers’ compensation”


02 Senate. Committee on Commerce “Exclusiveness of Liability”, January, 1988

03 Joint Legislative Management Committee Division of Legislative Information. Final Legislative Bill Information, 1988 Regular Session. SB 603 (p. 118), SB 872 (p. 151), and HB 1288 (p. 400)


05 Committee Substitute (CS) for HB 1288, as reported by the House Committee on Commerce, May 12, 1988.


08. Senate Bill (SB) 872 (1988) as filed April 6, 1988


10 CS/SB 872 as reported by the Commerce Committee on April 27, 1988.

11. Senate. Committee on Commerce Staff Analysis of CS/SB 872, April 27, 1988

12 Journal of the Senate, May 12, 1988, p. 289, re: amendments to CS/SB 872.

January 30, 2001

B. V. Dannheisser
Paderewski, Dannheisser, & Sweeting PA
1834 Main Street
Sarasota, FL 34236


Dear Mr. Dannheisser,

Pursuant to your request for audio tapes relating to the amendments to CS/HB 1288, Please find the following tapes enclosed.

(1) House Committee on Commerce, Sub-Committee on Labor and Employment Security, Meeting of April 28, 1988 (Tape 1 of 1). (in the Florida State Archives, Series 414, Box 715)

(2) ___________, Full Committee, Meeting of April 27, 1988 (Tape 1 of 2). (Ibid.)

(3) ___________, Full Committee, Meeting of May 4, 1988 (Tape 1 of 1). (Ibid.)


Again I will put this project on hold briefly to give you a chance to review these tapes. Please give me a call if you have any questions, or if we can be of further service.

Sincerely,

Edward J. Tribble

Enclosures: 4 tapes
such premises, or such minor's purchase or rental of a videotape, for a monetary consideration.

(e) It is unlawful for any person to knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to his agent, or to any person mentioned in paragraph (b), that he is the parent of any minor or that any minor is 17 years of age or older, with intent to procure such minor's admission to such premises or to aid such minor in procuring admission thereto, or to aid or enable such minor's purchase or rental of a videotape, for a monetary consideration.

(f) A violation of any provision of this subsection constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. (1) As used in this section, the term:

(a) "Official rating" means an official rating of the Motion Picture Association of America, and the Film Advisory Board, Inc., or any other official rating organization.

(b) "Person" means an individual, corporation, partnership, or any other legal or commercial entity.

(c) "Video movie" means a videotape or video disc copy of a motion picture film.

(2) It is unlawful for a person to sell at retail, rent to another, attempt to sell at retail, or attempt to rent to another, a video movie in this state unless the official rating of the motion picture from which it is copied is clearly displayed on the outside of its cassette, case, jacket, or other covering. If the motion picture from which the video movie is copied has no official rating or if the video movie has been altered so that its content materially differs from the motion picture, such video movie shall be clearly and prominently marked as "N.R." or "Not Rated." Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. This act shall take effect October 1, 1988.

Approved by the Governor July 5, 1988.

Filed in Office Secretary of State July 5, 1988.

Committee Substitute for House Bill No. 1288

An act relating to workers' compensation; amending s. 440.11, P.S., extending employer's immunity from liability for injury or death to apply to certain persons under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.--

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor or other person who in the course and scope of his duties acts in a managerial or policy-making capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policy-making duties and the conduct was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed exceeds 60 days imprisonment as set forth in s. 775.082, F.S.

Section 2. This act shall take effect October 1, 1988.

Approved by the Governor July 5, 1988.

Filed in Office Secretary of State July 5, 1988.

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Committee Substitute for House Bill No. 1420

An act relating to radiation; amending s. 404.056, F.S.; revising provisions relating to land radiation emission standards to provide for environmental radiation standards and programs; providing for coordination of activities related to detection, control, and abatement of radon conducted by state universities by the Board of Regents; requiring the Board of Regents to develop and
EXCLUSIVENESS OF LIABILITY

By the Staff of

The Florida Senate Committee on Commerce

January 1988
**Exclusiveness of Liability**

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EXCLUSIVENESS OF LIABILITY

I. INTRODUCTION

"Workers' Compensation" is a comprehensive term used to refer to those statutes which provide for fixed awards to employees or their dependents in cases of employment related accidents and diseases. These awards are granted without the proof of negligence which is required in traditional tort actions. Workers' compensation laws are intended to benefit both the employer and the employee. This goal is accomplished by providing employers with a liability which is both limited and determinate, and by providing employees with a remedy without the need for proof of fault. Florida's Workers' Compensation Law is embodied in Chapter 440, Florida Statutes.

Workers' compensation is a branch of law, unknown at common law, and entirely statutory in origin. The onset of industrialization and the inability of traditional common law liability rules to efficiently resolve legal disputes arising out of work-related injuries served as the catalyst for the proliferation of workers' compensation statutes. These statutes initially created a no-fault system based upon a trade-off between the employer and the employee whereby the employee relinquishes the right to sue for common law damages in return for the employer assuming
absolute liability for work-related accidents. The employer purchases workers' compensation insurance to cover its potential liability and passes the cost of the insurance to the consumer in the price of its product. The amount of the recovery is statutorily determined as is the employee's exclusive remedy against the employer. Unfortunately, the workers' compensation recoveries have failed to keep pace with increasingly large common law recoveries, thereby providing injured parties with an incentive to attempt to avoid the exclusivity provisions. The primary methods used to avoid the exclusivity of the statutory remedy are co-employee suits and suits against the workers' compensation insurance carrier. Co-employee law suits within the state of Florida are the subject of this report.
II. EXECUTIVE SUMMARY

Prior to 1978, a Florida employee was not barred by a workers' compensation recovery from bringing suit against a co-employee for tortious negligence.3

On July 1, 1978, s. 440.11, F.S., was amended to extend employer immunity under workers' compensation to employees when such employees are "acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter."4 (See Appendix A) This immunity is limited by the statute to employees who are not acting "with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death." The change to s. 440.11, F.S., had the effect of limiting co-employee liability to instances where gross negligence arises from intentional tortious conduct.5 Employers have continued to enjoy immunity even in the event of such gross negligence.6

Prior to 1987, a "co-employee" was not defined either statutorily or by case law. The Florida Supreme Court decision of Streeter v. Sullivan and Stanlick v. Kaplin, 509 So.2d 268 (Fla. 1987), was the case of first impression to hold that a co-employee could be a fellow employee,
supervisor, or officer of the corporation in which the employee was employed. (See Appendix B)

In a typical Workers' Compensation and Employer's Liability Insurance Policy, there are two parts to the policy. The first part, which is often called part A, contains the workers' compensation insurance coverage, general provisions and exclusions. The second part, which is usually labeled part B, contains the employer's liability insurance coverage, general provisions and exclusions. This case may have expanded the possible exposure that arises under part B of a Workers' Compensation and Employer's Liability insurance policy. (See Appendix C) It also may have significantly expanded the exposure of a business' General Liability Insurance Policy. However, the real problem the insurance industry and employers face, may be the duty to defend Streeter-type cases.
III. THE SIGNIFICANCE OF THE STREETER DECISION

When the Supreme Court of Florida recently addressed the issue of co-employee liability in Streeter, the Court considered whether co-employees who injured co-workers through their grossly negligent behavior may be held personally liable regardless of a workers' compensation award. The Court found that Florida's Workers' Compensation Law "unambiguously imposes liability on all employees for their gross negligence which results in death or injury to their fellow employees. This imposition of liability is blind to corporate status. Nowhere does s. 440.11(1), F.S., impose upon an injured employee a requirement to show that the fellow employee has committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe place to work."8

The significance of Streeter arises out of the statutory definition of "employee" under s. 440.02(11), F.S. Employees are statutorily defined, inter alia, as "any person who is an officer of a corporation." (See Appendix D) Therefore, the Florida Supreme Court, after considering the statutory definition of "employee" and the statutory liability of co-employees for grossly negligent behavior, held that corporate officers may be held liable as fellow
employees for acts of gross negligence or willful and wanton disregard for plaintiffs' safety. Gross negligence is constituted by the failure of the corporate officer to provide a reasonably safe place to work.\textsuperscript{9}

The \textit{Streeter} decision was followed by a case from the Third District Court of Appeal, \textit{Laderman v. Mester}.\textsuperscript{10} The District Court held that whether co-employees and supervisors are grossly negligent and do not enjoy workers' compensation immunity from liability is a question of fact precluding summary judgment.\textsuperscript{11} It was alleged in the \textit{Laderman} case, that the employee had been ordered by his co-employees and supervisors, to perform his work in the presence of an unreasonably dangerous and hazardous condition. The District Court remanded the case to the trial court to decide whether a foreign material left on the warehouse floor constituted willful and wanton disregard for the employee's safety. If the trial court decides that the co-employees and supervisors committed a willful and wanton act, then the workers' compensation immunity from liability will no longer preclude a tort claim against the co-employees and supervisors.

The Second District Court of Appeal in the recent decision of \textit{Raulerson v. Roehr}, addressed the supervisor/officer liability scenario.\textsuperscript{12} The Second District held that the employee was not entitled to maintain a separate negligence action because there was not
sufficient evidence that the supervisors/officers were
guilty of affirmative acts of negligence that went beyond
the failure to perform the employer's nondelegable duty to
provide the employee with a safe place to work.¹³
Interestingly, the Court found that the "something extra"
needed to illustrate that the supervisors/officers had
committed gross negligence was missing in the case.¹⁴

In summary, the Streeter decision imposes liability
upon officers of a corporation who do not ensure that
employees have a reasonably safe place to work. An employee
in such a situation is not bound by the exclusivity of the
workers' compensation remedy and may bring suit against a
corporate officer or supervisor alleging gross negligence on
the part of a co-employee.
IV. PRECEDENTS FOR THE STREETER DECISION

The Streeter decision is not totally without precedent. In 1976, the Second District Court of Appeal held in *West v. Jessop*, that an injured employee could sue a corporate officer who negligently injured her through an affirmative act. In addition, several other jurisdictions, including Alabama, Maryland, Wisconsin, and Wyoming have case law dealing with the issue of permitting suits by employees against corporate officers.

Courts of other jurisdictions have used varying approaches to resolve the issue of corporate officer amenability to suit. One approach used in co-employee negligence actions is derived from the common law concept of vice-principals. Any employee responsible for discharging one or more of the common law duties of his employer is classified as a "vice-principal" and, as such, owes a personal duty of care to his co-employee. The negligent failure of supervising personnel to provide a safe place to work resulted in supervisor liability under this vice-principal approach.

The Supreme Court of Wisconsin adopted a more widely utilized approach which allowed injured employees to sue supervising personnel under the third-party provision of the Wisconsin Workmen's Compensation Act. For recovery to occur
under the Wisconsin approach, the corporate officer or supervising employee, must have breached a duty of care that he personally owed to the injured employee. In addition, the injury must have resulted from an affirmative act of negligence and an act for which the corporate employer bears no responsibility. Because common law nondelegable duties (such as providing a safe workplace and safe equipment) are the exclusive province of the employer, a supervisor is not subject to liability for breaching a nondelegable duty owed by the corporate employer to the injured employee.

The Wisconsin approach is based upon the premise that the liability of a corporate officer must ensue from acts performed as a co-employee, rather than from acts performed by an individual in his corporate capacity. Therefore, the Wisconsin approach distinguishes between nondelegable duties, which are owed by the employer, and personal duties owed by the individual supervisors or corporate officers. An employee who is injured by the breach of a nondelegable duty takes his remedy solely from the compensation mandated by the act. In comparison, an employee injured by the breach of a personal duty may receive compensation under the act while also electing to proceed against the supervisory co-employee for damages.\(^{18}\)

In 1984, the Maryland Supreme Court was presented with a situation similar to that of the Florida Supreme Court in Streeter. The Maryland Supreme Court in Athas v.
Hill, decided whether to allow a plaintiff to bring suit against supervising co-employees for negligently failing to provide a safe place to work.\textsuperscript{19} Despite the court's conclusions that the term "co-employees" includes supervisors and that provisions of the act permit co-employee actions, the claim in \textit{Athas} was disallowed. The court held that under the common law of Maryland, employers cannot delegate to their supervisory personnel the duties to provide a safe workplace. Therefore, the court applied the Wisconsin approach and determined that the supervisors in \textit{Athas} did not breach a personal duty of care owed to the plaintiff.

The \textit{Athas} decision left Maryland aligned with the minority of jurisdictions which allow co-employee actions, however, the holding limits the class of potential co-employee defendants by excluding supervisors and corporate officers who discharge their employees' nondelegable duties from the reach of co-employee suits. As a result of \textit{Athas}, corporate officers and supervisors in Maryland are accessible to co-employee suits only for the violation of a personal duty of care which is owed to another employee.

The Maryland Supreme Court in \textit{Athas} recognized that permitting corporate officers and supervisors to be held liable for failure to maintain a safe workplace would hinder efficient business management. A holding, which rendered supervisors and corporate officers liable for breach of
their employers common law duties, would likely force employers to provide liability insurance to such employees in order to maintain an efficient level of operation and assure them that they would not risk unlimited liability merely by performing certain types of supervisory chores. Such a provision of indemnification would impose substantial additional costs upon employers, would tend to discourage large business and industrial concerns from expanding or relocating in the state, and would emasculate the employer immunity provisions of the act.
In allowing corporate officers to be held liable for failure to maintain a safe workplace, the Florida Supreme Court in Streeter has created a situation which the Maryland Supreme Court sought to avoid in Athas. The potential for corporate officer liability will serve to increase employer costs as well as possibly making Florida a less attractive location for business ventures to incorporate or relocate. The Streeter decision also conflicts with one objective of workers' compensation statutes; that objective being that an employer's liability be both limited and determinate. Corporate officers, acting on behalf of an employee, are not subject to liability for violating their employer's duty to maintain a safe workplace. The purpose of workers' compensation statutes has been to hold employers, not corporate officers, liable for breach of this duty.

Given the Florida Supreme Court's decision in Streeter, legislative action would be required to provide corporate officers or supervisors with some type of immunity from similar suits in the future. Early indicators show, through cases filed and claims made against insurers, that if no legislative change is adopted, businesses will be forced to defend more lawsuits by employees alleging gross negligence of their supervisors or officers of the business.
Defending lawsuits like Streeter will cause further increased costs within the workers' compensation system.

In conclusion, if the Streeter decision is allowed to endure, there will exist a certain unfairness among different types of employers (corporations, partnerships and sole proprietors). Under the workers' compensation system, all employers are excluded from liability if they commit any type of negligence. Thus, in a sole proprietorship (an employer-officer-owner-sole proprietor), the employer is excluded from tort liability. However, in a corporation-type setting (employer-corporation, officer-employee), the employer is excluded from tort liability but due to the Streeter decision the officer-employee is amenable to tort liability. This unbalanced dichotomy may necessitate legislative action.
VI. **ENDNOTES**

1. Florida's was initially adopted in 1935.

2. "Exclusivity" of the remedy refers to the characteristic of workers' compensation statutes which limits an employee's recovery from an employer to the amount specified by the workers' compensation statute.


5. See *Chorak v. Naughton*, 409 So.2d 35 (Fla. 2d DCA 1982).


8. **Id.** at 270.

9. The facts and history of *Streeter* are as follows:

Suzanne Sullivan was employed as a branch manager of the Davie branch of Atlantic Federal Savings and Loan (Atlantic). In 1981, Atlantic, through its officers, Streeter and Melcher, made the economic decision to remove the armed guard from the Davie branch, despite persistent requests from the employees of that branch to maintain a guard. The Davie branch was robbed once in the fall of 1981 and again in June of 1982. Throughout this period the Davie branch employees stepped up their requests to Streeter and Melcher to reassign the armed guard to the branch.

During the June 1982 robbery, the perpetrator threatened Suzanne Sullivan's life. In July of 1982 the same man returned to the Davie branch and killed Suzanne Sullivan.

Mark Sullivan, Suzanne's husband, brought suit against Atlantic, as well as Streeter and Melcher, alleging that the defendants had acted with gross negligence in failing to provide adequate security.
and that this failure proximately caused Suzanne's death. The trial court granted all defendant's motions for summary judgment and Sullivan appealed. The Fourth District affirmed the summary judgment as to Atlantic, but reversed as to Streeter and Melcher, holding that s. 440.11(1), F.S., expressly imposes liability upon grossly negligent employees. The court stated that corporate officers are "employees" under the statute and certified the question to the Supreme Court.

The facts and history of Stanlick are as follows:

Stanlick, a truck driver for Kaplan Industries, was injured when he fell asleep while driving Kaplan's truck. Stanlick brought an action against Kaplan Industries and Donald and John Kaplan, officers of the corporation, individually. Stanlick alleged that the Kaplans required him to work excessively long hours in violation of federal law and that the Kaplans required Stanlick to falsify his driving records in order to evade detection by federal authorities. He thus alleged that the Kaplans were guilty of willful and wanton misconduct resulting in foreseeable injury to Stanlick.

The trial court granted Kaplan Industries' motion to dismiss, but denied the Kaplan brothers' similar motion. The Kaplans' petitioned the Second District for a writ of prohibition of the ground that the trial court lacked jurisdiction to hear Stanlick's complaint. The court granted the writ, holding that corporate officers are not employees; rather they are employers entitled to the immunity under s. 440.11(1), F.S. The court certified that its decision was in express conflict with Streeter.

10. 510 So.2d 630, (Fla. 3d DCA 1987).

11. Corporate officers and supervisors, as well as other co-employees, enjoy immunity from suit under s. 440.11, F.S., when they injure a fellow employee while acting in furtherance of the employer's business. This immunity is limited to acts which do not constitute gross negligence as intentional tortious conduct.

12. 511 So.2d 1027 (Fla. 2d DCA 1987).

13. Id. at 1030.

14. Id.
15. 339 So.2d 1136 (Fla. 2d DCA 1976).

16. Discussions of these states' experiences with co-employee lawsuits against corporate officers may be found in the following Law Review Articles:


18. An example of this concept may be helpful: The provision of a safe workplace is a nondelegable duty owed by the employer to the employee. If this duty is breached (workplace is not safe for any reason), then the employee may only recover workers' compensation benefits from the employer. If a corporate officer co-employee affirmatively harms the injured worker, then the worker may recover from the corporate officer as well.

VII. APPENDICES

A. Section 440.11, Florida Statutes
B. The Streeter v. Sullivan Decision
C. Basic Workers' Compensation and Employer's Liability Insurance Policy
D. Section 440.02(11), Florida Statutes
Appendix A

Section 440.11, Florida Statutes
440.11 Exclusiveness of liability.--

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment.

(2) An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract. The exclusion from liability under this subsection shall not apply in any case in which injury or death is proximately caused by the willful and unprovoked physical aggression, or by the negligent operation of a motor vehicle, by employees, officers, or directors of the employer's workers' compensation carrier, service agent, or safety consultant.

(3) Notwithstanding the provisions of s. 624.155, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in
this chapter, which shall be exclusive and in place of all other liability.

History.—S. 11, ch. 17481, 1935; CGL 1936 Supp. 5966(11); s. 1, ch. 70-25; s. 1, ch. 71-190; s. 4, ch. 75-209; ss. 2, 23, ch. 78-300; ss. 6, 124, ch. 79-40; s. 21, ch. 79-312; s. 3, ch. 83-305.
Appendix B

The *Streeter v. Sullivan* Decision
Husband of branch manager of savings and loan killed during armed robbery brought action against president and chairman of board and senior vice-president of deceased wife's employer. The Circuit Court, Broward County, Bobby W. Gunther, J., granted summary judgment for defendants, and husband appealed. The District Court of Appeal, 485 So.2d 893, Richard Yale Feder, Associate Judge, held that suit against executives of employer corporation for gross negligence was not barred by statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death.

An injured truck driver brought action against directors and officers of corporation to recover for injuries sustained in his job, and officers and directors sought writ of prohibition, after trial court denied motion to dismiss. The District Court of Appeal, 485 So.2d 231, held that the employee immunity statute did not remove immunity of corporate officers, who were not employees, but rather, were employers. On certified question and certification of express conflict between decisions by District Courts of Appeal, the Supreme Court, Kogan, J., held that: (1) employee immunity statute included corporate officers within scope of term "employee," even though corporate officers were performing employer's nondelegable duty to maintain safe work place, and (2) employee immunity statute exception from immunity did not apply only to nonsupervisory employees with whom injured person worked on every day basis, but rather, authorized actions against all employees for acts of gross negligence resulting in injury to coemployees.

Decision in first case approved; decision in second case quashed, and case remanded to district court.

Overton, J., filed dissenting opinion with which McDonald, C.J., concurred.

1. Workers' Compensation 2168

Statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death included corporate officers within term "employee," so as to make corporate officials liable in the excepted situations, even when corporate officers were performing employer's nondelegable duty to maintain safe work place. West's F.S.A. §§ 440.02, 440.11(1).

See publication Words and Phrases for other judicial constructions and definitions.

2. Statutes 190

Inquiry into legislative intent for purposes of interpreting statute may begin only where statute is ambiguous on its face.

3. Workers' Compensation 2168

Statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death did not except from immunity only nonsupervisory employees with whom injured person
worked on every day basis, but rather, authorized actions against all employees for acts of gross negligence resulting in injury to coemployees. West’s F.S.A. § 440.11(1).

The Fourth District Court of Appeal has certified the following question as being one of great public importance:

DOES SECTION 440.11(1), FLORIDA STATUTES (1983) PERMIT SUITS AGAINST CORPORATE EMPLOYER OFFICERS, EXECUTIVES, AND SUPERVISORS AS “EMPLOYEES” FOR ACTS OF GROSS NEGLIGENCE IN FAILING TO PROVIDE A REASONABLY SAFE PLACE IN WHICH OTHER EMPLOYEES MAY WORK?

Sullivan v. Streeter, 485 So.2d 893, 896 (Fla. 4th DCA 1986). The Second District Court of Appeal, in Kaplan v. Circuit Court of the Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986), certified express conflict between that court’s decision and the Fourth District’s decision in Sullivan. This Court has jurisdiction pursuant to article V, sections 3(b)(3), (4) of the Florida Constitution. We answer the certified question in the affirmative, and accordingly approve the decision of the Fourth District and quash the decision of the Second District and remand that case for further proceedings consistent with this opinion.

Sullivan
Suzanne Sullivan was employed as a branch manager of the Davie branch of Atlantic Federal Savings and Loan (Atlantic). In 1981 Atlantic, through Streeter and Melcher, made the economic decision to remove the armed guard from the Davie branch, despite persistent requests from the employees of that branch to maintain the guard. The Davie branch was robbed once in the fall of 1981 and again in June of 1982. Throughout this period the Davie branch employees stepped up their requests to Streeter and Melcher to reassign the armed guard to the branch.

During the June, 1982 robbery, the perpetrator threatened Suzanne Sullivan’s life. In July of 1982 the same man returned to the Davie branch and killed Suzanne Sullivan.

Mark Sullivan, Suzanne’s husband, brought suit against Atlantic, as well as Streeter and Melcher, alleging that the defendants acted with gross negligence in failing to provide adequate security, and that this failure proximately caused Suzanne’s death. The trial court granted all defendant’s motions for summary judgment and Sullivan appealed. The Fourth District affirmed the summary judgment as to Atlantic, but reversed as to Streeter and Melcher, holding that section 440.11(1) expressly imposes liability upon grossly negligent employees. The court stated that corporate officers are “employees” under the statute, and certified the above-styled question to this Court.

Stanlick
Stanlick, a truck driver for Kaplan Industries, was injured when he fell asleep while
driving Kaplan's truck. Stanlick brought an action against Kaplan Industries, and Donald and John Kaplan, individually. Stanlick alleged that the Kaplans required him to work excessively long hours in violation of federal law and that the Kaplans required Stanlick to falsify his driving records in order to evade detection by federal authorities. He thus alleged that the Kaplans were guilty of....

The trial court granted Kaplan Industries' motion to dismiss, but denied the Kaplan brothers' similar motion. The Kaplans petitioned the Second District for a writ of prohibition on the ground that the trial court lacked jurisdiction to hear Stanlick's complaint. The court granted the writ, holding that corporate officers are not employees; rather they are employers entitled to the immunity under section 440.11(1). The court certified that its decision was in express conflict with Sullivan.1

We believe the emphasized portion of the statute to be an unambiguous statement of the legislature's desire to impose liability on all employees who act with gross negligence with respect to their fellow employees, regardless of the grossly negligent employee's corporate status.

1. Streeter, Melcher (petitioners herein), and the Kaplans (respondents herein) will be referred to in this opinion as the defendants. Sullivan (respondent herein) and Stanlick (petitioner herein) will be referred to as the plaintiffs.
The first argument espoused by the defendants is that in order to be liable to a fellow employee, a corporate officer must have committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe workplace. Kaplan v. Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986), West v. Jessop, 339 So.2d 1136 (Fla. 2d DCA 1976). Defendants argue that if any affirmative acts were committed in either of these cases they did not go beyond the employer's nondelegable duty to provide a safe place to work. On this basis, the defendants contend that for purposes of providing a safe workplace, the corporate officer is not an employee, but rather an "alter-ego" of the employer, deserving the benefits of the employer's immunity. See Zurich Insurance Co. v. Scofi, 366 So.2d 1193 (Fla. 2d DCA), cert. denied, 378 So.2d 348 (Fla. 1979). To support these contentions, defendants rely on what they perceive is the legislative intent behind the statute.

[2] Inquiry into legislative intent may begin only where the statute is ambiguous on its face. See State v. Egan, 287 So.2d 1, 4 (Fla.1973). Were these provisions even slightly ambiguous, an examination of legislative history and statutory construction principles would be necessary. We believe, however, that the plain language of sections 440.01 and 440.11(1) precludes any further explanation of legislative intent. These statutes unambiguously impose liability on all employees for their gross negligence resulting in death or injury to their fellow employees. This imposition of liability is blind to corporate status. Nowhere does section 440.11(1) impose upon injured employees a requirement to show that the fellow employee has committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe place to work. We are not inclined to read such a requirement into the statute when it is plainly not there.

The affirmative act doctrine has its roots in cases interpreting section 440.11(1) before it was amended in 1978. Those cases did not have the benefit of the legislature's statement expressly imposing liability on grossly negligent employees who injure other employees. The basis of those opinions was legislatively abrogated by section 440.11(1). Thus, to the extent that those cases conflict with this opinion (as well as section 440.11(1), as amended), we disapprove of them.

[3] Because of the unambiguous language used in the statute we will not here attempt to define any further legislative intent. The first rule of statutory interpretation is that "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 114-4, 137 So. 157, 159 (Fla.1931). Accord, State v. Egan, 287 So.2d 1 (Fla.1973). To attempt to discern the legislative intent when the language is so plain would be both unnecessary and futile. The statute herein serves as ample evidence of what the legislature intended.

3. See note 4, infra.
4. It has no roots in the common law, where a corporate officer was without doubt liable for gross negligence, and perhaps even simple negligence. See Frantz v. McBee Co., 77 So.2d 796 (Fla.1955).
5. See, e.g., Dessert v. Electric Mutual Liability Ins. Co., 392 So.2d 340 (Fla. 5th DCA), rev. denied, 399 So.2d 1141 (Fla.1981); Zurich Ins. Co. v. Scofi, 366 So.2d 1193 (Fla. 2d DCA), cert. denied, 378 So.2d 348 (Fla.1979); West v. Jessop, 339 So.2d 1136 (Fla. 2d DCA 1976). While some of the cases were decided after the 1978 amendment to section 440.11(1), their decisions are based on the affirmative act doctrine which was conceived prior to that amendment.
6. Even were this Court to indulge itself with an examination of the legislative history of section 440.11(1) we would have considerable difficulty. As the defendants admit, there are no extrinsic statements of legislative intent with regard to the imposition of liability on employees who, through their gross negligence, injure another employee. Streeter's Brief on the Merits at 20.
The 1978 amendment to section 440.11(1) authorizes actions against all fellow employees for acts of gross negligence resulting in injury to other employees. To separate corporate officers from this rule requires a highly convoluted andlogistically suspect construction of the statute. The defendants, at oral argument, contended that the term “fellow employee” is a term of art, applying solely to employees with whom the injured person work on an everyday basis. Therefore, the defendants contend, the term “fellow employees” could only refer to nonsupervisory employees. We are equally disinclined to follow this line of reasoning. Again, we must stress that the plain language of section 440.11(1) fully precludes any such interpretation. By “fellow employees,” the statute clearly is intended to include all employees, not just nonsupervisory employees.

The legislature has expressed the policy of this state to impose liability upon those employees who injure a co-employee by their grossly negligent behavior. This policy was plainly and unambiguously stated in section 440.11(1), and we are bound by it. We are further bound by the statutory definition of the term “employee,” which includes with equal clarity corporate officers and supervisors. The context of section 440.11(1) does not clearly require any other definition of employee. As such, the statutory definition is controlling. It would be inappropriate for this Court to read any more into section 440.11(1) than what is plainly there.

Accordingly, we answer the certified question in the affirmative and approve the decision of the Fourth District Court of Appeal. Furthermore, we quash the decision of the Second District Court of Appeal, and remand that case back to the district court for proceedings consistent with this opinion.

It is so ordered.
Appendix C

Basic Workers' Compensation and Employer's Liability Insurance Policy
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows.

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in items 1 or 4 of the Information Page; and it covers all other workplaces in item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right to investigate and settle these claims. We have the right to defend any claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.
E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law:

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee’s employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in item 3.A. of the Information Page.

3. Bodily injury by accident must occur during the policy period
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee’s last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.
B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;
   provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of the discharge of, coercion of, or discrimination against any employee in violation of law.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident-each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.
A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

1. Bodily Injury by Disease. The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

2. Bodily injury by disease does not include disease that results directly from bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

PART THREE - OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in item 3.C. of the Information Page.

2. If you begin work in any one of those states and are not insured or are not self-insured for such work, the policy will apply as though that state were listed in item 3.A of the Information Page.

B. Notice

Tell us at once if you begin work in any state listed in item 3.C. of the Information Page.

PART FOUR - YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.

2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.

3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.

5. Do nothing after an injury occurs that would interfere with our right to recover from others.

6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work
C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise.

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX – CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.
C Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in item 1 of the Information Page will be sufficient to prove notice.

3. The policy period will end on the day and hour stated in the cancelation notice.

4. Any of these provisions that conflicts with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with that law.

E. Sole Representative

The insured first named in item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.
Appendix D

Section 440.02(11), Florida Statutes
440.02 Definitions.--When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(11)(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed.

(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. However, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of the election with the division as provided in s. 440.05. Services shall be presumed to have been rendered the corporation in cases when such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

(d) "Employee" does not include:

1. An independent contractor, including:
   a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission; and
   b. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, provided a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment.

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

3. A volunteer, except a volunteer worker for the state or a county, city, or other governmental entity. Notwithstanding the provisions of s. 440.26, 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, in the event that 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.
   b. Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter.
FLORIDA LEGISLATURE

FINAL
LEGISLATIVE BILL
INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
S 599 (CONTINUED)  
Amends Florida Statutes, 2007, to:  
(1) Extend the deadline for the submission of noncommissioned officers' training and education records for 2010, from March 31, 2010, to June 30, 2010;  
(2) Repeal the requirement for the submission of noncommissioned officers' training and education records for 2011; and  
(3) Make conforming changes. 

S 100 GENERAL BILL/CS by Economic, Community and Consumer Affairs (S.J. 73)  
On Committee agenda—Economic, Community and Consumer Affairs, 04/20/88, 2:00 pm, Room-H  
Comm. Report: Favorable by Economic Community and Consumer Affairs, placed on Calendar—SJ 193  
04/25/88 SENATE Placed on Special Order Calendar—SJ 211, Passed, YEAS 34 NAYS 0—SJ 223  
06/07/88 HOUSE Died in Committee on Regulatory Reform, Idem./Sim. Compare bill passed, refer to SB 1031 (Ch 88-206)  

S 600 GENERAL BILL/CS by Kirkpatrick (Similar CS/ENG/H 1288, ENG/H 872)  
Workers' Comp Liability Immunity: extends immunity from liability provided to employer under W.C. law to each corporate officer of employer when acting in supervisory capacity. Provides for disclosure, advertisement, and performance standards for such insurance; provides for review and repeal, and provides applicability.  

S 601 GENERAL BILL by Kirkpatrick (Compare CS/H 1647, ENG/S 1031)  
Meaning Aid Specialist/License: provides refund of fee applicant has paid to take hearing and examination when, prior to date of examination, such applicant is found to be ineligible to take such examination. Amend 464 0447 Effective Date: Upon becoming law  
03/30/88 SENATE Prefiled  
04/12/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs—SJ 73  
04/15/88 SENATE Extension of time granted Community Economic, Community and Consumer Affairs
S 870 GENERAL BILL/ENG by W.D. Childers (Similar CS/H 206)
Child Custody/Interference: provides that person who knowingly or recklessly interferes with custody of child or incompetent person is guilty of felony of third degree, provides that certain persons who have custody of child or incompetent person & who maliciously take said persons with intent to deprive right of custody of another who has right to custody thereof are guilty of felony of third degree. Amendments 787,03 Effective Date 10/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Judiciary-Criminal — SJ 110
04/29/88 SENATE Extension of time granted Committee-Judiciary-Criminal 05/03/88 SENATE On Committee agenda—Judiciary-Criminal, 06/05/88, 1:00 pm, Room—C
05/06/88 SENATE Comm Report, Favorable with 1 amendment(s) by Judiciary-Criminal, placed on Calendar — SJ 246
05/19/88 SENATE Placed on Consent Calendar—SJ 310; Passed as amended; YEAS 35 NAYS 0 — SJ 541
06/19/88 HOUSE In Messages
05/23/88 HOUSE Received, placed on Calendar — HJ 626
05/24/88 HOUSE Placed on Special Order Calendar
05/30/88 HOUSE Substituted for CS/HB 206 — HJ 839, Read second time; Amendments adopted; Read third time, Passed as amended; YEAS 112 NAYS 0 — HJ 939; Reconsidered — HJ 940; Amendment reconsidered, withdrawn, Passed as amended; YEAS 112 NAYS 0 — HJ 940
05/30/88 SENATE In Messages
05/31/88 SENATE Concurred; Passed as amended; YEAS 37 NAYS 0 — SJ 553
05/31/88 HOUSE Or Committee agenda—Agriculture, 06/21/88, 9:00 am, Room—C
06/21/88 HOUSE Signed by Officers and presented to Governor
07/05/88 Approved by Governor

S 871 GENERAL BILL by W.D. Childers (Identical H 331)
Nonprofit Cooperative Associations: provides clarifying language re definition of agricultural products & nonprofit cooperative associations Amendments 619,01,07,08 Effective Date. 07/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Agriculture— SJ 110
04/19/88 SENATE On Committee agenda—Agriculture, 04/21/88, 9:00 am, Room—B
04/21/88 SENATE Comm Report, Favorable by Agriculture, placed on Calendar—SJ 166
04/25/88 SENATE Placed on Special Order Calendar—SJ 193, Iden./Sim., House Bill substituted, Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to HB 331 (Ch. 86-54)

S 872 GENERAL BILL/CS/ENG by Commerce, Commerce (Similar CS/ENG/H 1288, S 603)
Workers' Comp/Liability Immunity: extends employers immunity from liability for injury or death to apply to certain persons. Amendments 460, 11 Effective Date. 07/01/88 or upon becoming law, whichever occurs later
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Commerce— SJ 110
04/25/88 SENATE On Committee agenda—Commerce, 04/27/88, 9:00 am, Room—A
04/27/88 SENATE Comm, Report—CS by Commerce, placed on Calendar— SJ 212
05/03/88 SENATE CS read first time— SJ 218
05/11/88 SENATE Placed on Special Order Calendar— SJ 267
05/12/88 SENATE Placed on Special Order Calendar— SJ 267; CS passed as amended; YEAS 34 NAYS 0 — SJ 289
05/17/88 HOUSE In Messages
05/18/88 HOUSE Received, placed on Calendar — HJ 545
05/19/88 HOUSE Placed on Special Order Calendar
05/24/88 HOUSE Retained on Regular Calendar
06/28/88 HOUSE Read second time, Amendments adopted; Read third time, CS passed as amended; YEAS 105 NAYS 1 — HJ 742
06/29/88 SENATE In Messages
07/05/88 SENATE Died in Messages, Iden./Sim./Compare Bill passed, refer to CS/HB 1288 (Ch. 86-254)

S 873 JOINT RESOLUTION by Kiser (Identical H 1069, Compare CS/H 673, CS/CS/ENG/S 391)
State Bonds/Transportation Projects: constitutional amendment to authorize State Legislature to provide for issuance by state, without vote of electors, of bonds pledging full faith & credit of state, proceeds of which are to be used for finance of transportation projects, state correctional facilities, & public education fixed capital outlay projects Creates s. 17, Art. VII, s. 20, Art. XII.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Rules and Calendar—SJ 111
04/28/88 SENATE Considered by Rules and Calendar, placed on Local Calendar—SJ 110
04/29/88 SENATE On Committee agenda—Governmental Operations, Finance, Taxation & Claims, Appropriations, Rules, and Calendar— SJ 110
06/02/88 SENATE Extension of time granted Committee Governmental Operations
06/13/88 SENATE Extension of time granted Committee Governmental Operations

PAGE NUMBERS REFLECT DAILY SENATE AND HOUSE JOURNALS
AND NOT FINAL BOUND JOURNALS

S 873 (CONTINUED)
06/27/88 SENATE Extension of time granted Committee Governmental Operations
06/07/88 SENATE Died in Committee on Governmental Operations, Iden./Sim./Compare bill passed, refer to CS/CS/SJR 391 (Filed with Secretary of State)

S 874 GENERAL BILL/CS/ENG by Judiciary-Civil; Kiser (Compare H 1019)
Judicial Review/Legal Separation: deletes provision that court must grant as matter of right, stay of enforcement of state agency decision to revoke or suspend license pending judicial review. Amendments 120, 68 Effective Date Upon becoming law.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Judiciary-Civil— SJ 110
04/28/88 SENATE On Committee agenda—Judiciary-Civil, 04/28/88, 2:00 pm, Room—B
04/28/88 SENATE Comm. Report—CS by Judiciary-Civil, placed on Calendar— SJ 212
05/03/88 SENATE CS read first time— SJ 218
05/11/88 SENATE Placed on Special Order Calendar— SJ 267
05/12/88 SENATE Placed on Special Order Calendar— SJ 267
05/17/88 SENATE Placed on Special Order Calendar—SJ 290 &— SJ 291; CS passed as amended, YEAS 35 NAYS 0 — SJ 301
05/18/88 HOUSE In Messages
05/23/88 HOUSE Received, placed on Calendar—HJ 626
06/01/88 SENATE Placed on Consent Calendar; Read second time; Read third time, CS passed, YEAS 112 NAYS 0 — HJ 1147
06/01/88 HOUSE Ordered enrolled—SJ 630
06/16/88 Signed by Officers and presented to Governor
07/01/88 Vetoed by Governor

S 875 GENERAL BILL/CS by Commerce; Grant (Similar H 1071)
Motor Vehicle Ins/Death Benefits: provides for death benefits as part of required personal injury protection benefits. Amendments 627, 736 Effective Date Upon becoming law.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Commerce— SJ 110
04/25/88 SENATE On Committee agenda—Commerce, 04/27/88, 9:00 am, Room—B
05/03/88 SENATE CS read first time— SJ 218
06/03/88 SENATE Died in Calendar

S 876 GENERAL BILL/CS by Commerce; Grant (Similar CS/ENG/S 11, Compare H 1351)
Florida Cemetery Act: provides for contract cancellation & refunds, revises requirements re receipt from sale of personal property or services & deposits into merchandise trust fund, revises method of computing cost of certain property or services, provides for surety bonds & letters of credit as alternatives to trust fund deposits, provides for proof of compliance for existing merchandise trust funds, etc Creates 497, 026,.0484, 049, amendments 497, 048 Effective Date Upon becoming law.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Commerce, Appropriations— SJ 111
04/29/88 SENATE Extension of time granted Committee Commerce
05/13/88 SENATE Extension of time granted Committee Commerce
05/13/88 SENATE On Committee agenda—Commerce, 05/23/88, 10:00 am, Room—A
05/23/88 SENATE Comm. Report—CS by Commerce, placed on Calendar— SJ 212
05/24/88 SENATE CS read first time— SJ 375; Now in Appropriations— SJ 375
06/07/88 SENATE Dead in Committee on Appropriations, Iden./Sim./Compare bill passed, refer to CS/SB 11 (Ch. 85-227)

S 877 LOCAL BILL by Dudley (Similar H 606)
Captive Lion Prevention District (Lee Co.) provides for payment of special assessments in installments; provides for interest rates on such assessments. Effective Date 06/02/86.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Rules and Calendar— SJ 111
04/28/88 SENATE Considered by Rules and Calendar, placed on Local Calendar— SJ 165, Passed, YEAS 37 NAYS 0— SJ 189
04/29/88 HOUSE In Messages
06/03/88 HOUSE Received, referred to Community Affairs, Finance & Taxation—HJ 305, On Committee agenda—Community Affairs, 05/04/88, 8:00 am, 212-HOB
05/04/88 HOUSE Preliminary Committee Action by Community Affairs— File
06/19/88 HOUSE Comm Report— Favorable by Community Affairs—HJ 365, Now in Finance & Taxation—HJ 365
05/09/88 HOUSE On Committee agenda—Finance & Taxation, 05/11/88, 1:30 pm, 21-HOB—For subreferral only
05/11/88 HOUSE Withdrawn from Finance & Taxation—HJ 413, Placed on Calendar

(CONTINUING ON NEXT PAGE)
H 1286 (CONTINUED)
05/23/88 HOUSE Subreferred to Subcommittee on Government, On Committee agenda—Appropriations, 05/24/88, 8:00 am, Morris Hall—For ratification of subreferral
06/07/88 HOUSE Died in Committee on Appropriations

H 1287 GENERAL BILL by Friedman (Identical S 449)
Taxation; Sanitary Sewer Service, allows municipality to levy tax upon sanitary sewer service, provides restrictions Amends 106.231 Effective Date: 10/01/88
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Community Affairs; Finance & Taxation; Appropriations—HJ 129
04/25/88 HOUSE On Committee agenda—Community Affairs, 04/27/88, 8:00 am, 212-HOB—For ratification of subreferral
05/09/88 HOUSE On subcommittee agenda—Community Affairs, 05/11/88, upon adjournment of full committee, 217-HOB
05/11/88 HOUSE Subcommittees Recommendation pending ratification by full Committee: Favorable
05/17/88 HOUSE On Committee agenda—Community Affairs, 05/19/88, 4:00 pm, 212-HOB
05/19/88 HOUSE Preliminary Committee Action by Community Affairs: Favorable
05/24/88 HOUSE Comm. Report. Favorable by Community Affairs—HJ 675, Now in Finance & Taxation—HJ 675
06/02/88 HOUSE Died in Committee on Finance & Taxation

H 1288 GENERAL BILL/CS/ENG by Commerce; Silver (Similar S 401)
Workers’ Comp/Liability Immunity: extends employer’s immunity from liability for injury or death to apply to certain persons under certain circumstances Amends 440 1. Effective Date: 10/01/88
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Commerce, Appropriations—HJ 129
04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 1:15 pm, 317C—For ratification of subreferral
04/21/88 HOUSE On subcommittee agenda—Commerce, 04/25/88, 3:30 pm, 317C
04/25/88 HOUSE On Committee agenda, pending subcommittee action—Commerce, 04/27/88, 9:00 am, 317C
05/02/88 HOUSE On Committee agenda—Commerce, 05/04/88, 9:00 am, 317C
05/04/88 HOUSE Preliminary Committee Action by Commerce: Favorable as a Committee Substitute
05/12/88 HOUSE Comm. Report. CS by Commerce —HJ 472; CS read first time—HJ 472, Now in Appropriations—HJ 472
05/16/88 HOUSE Withdrawn from Appropriations—HJ 478; Placed on Calendar
05/17/88 HOUSE Placed on Special Order Calendar
05/24/88 HOUSE Read second time, Amendment adopted—HJ 664
05/25/88 HOUSE Read third time, CS passed as amended, YEAS 112 NAYS 3—HJ 681
05/25/88 SENATE In Messages
05/30/88 SENATE Received, referred to Commerce—SJ 471; Withdrawn from Commerce; CS passed; YEAS 39 NAYS 0—SJ 501
06/20/88 Ordered enrolled
06/21/88 Signed by Officers and presented to Governor
07/06/88 HOUSE Died in Committee—Chapter No. 88-254

H 1289 GENERAL BILL/CS/ENG by Transportation; Silver (Compare CS/CS/ENG/S 295)
Metropolitan Planning Org. (Members); revises requirements for membership of metropolitan planning organizations. Amends 339.175. Effective Date: 10/01/88.
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Transportation—HJ 129
04/14/88 HOUSE Subreferred to Subcommittees on Transportation Facilities and Services
04/15/88 HOUSE On Committee agenda—Transportation, 04/19/88, 1:15 pm, 214C—For ratification of subreferral
06/08/88 HOUSE On Committee agenda—Transportation, 05/10/88, 3:30 pm, 214C
06/10/88 HOUSE Preliminary Committee Action by Transportation: Favorable as a Committee Substitute
06/13/88 HOUSE Comm. Report: CS by Transportation, placed on Calendar—HJ 498; CS read first time—HJ 497
06/26/88 HOUSE Placed on Special Order Calendar
06/29/88 HOUSE Read second time, Amendments adopted, Read third time; CS passed as amended; YEAS 111 NAYS 1—HJ 574
06/30/88 SENATE In Messages
06/01/88 SENATE Received, referred to Transportation; Economic, Community and Consumer Affairs; Finance; Taxation and Claims; Appropriations—SJ 620
06/07/88 SENATE Died in Committee on Transportation, Ideas./Sim./Compare bill passed, refer to CS/CS/SB 296 (Ch. 88-163)

H 1290
04/07/88 HOUSE Withdrawn—HJ 129

H 1291 GENERAL BILL by Brown (Identical S 1122)
Residential Schools/Dropouts, provides for establishment of residential schools by district school systems: provides for criteria guidelines & administration. Effective Date: 10/01/88.
04/06/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Education, K – 12, Appropriations—HJ 129
04/22/88 HOUSE Subreferred to Subcommittee on Programs, On Committee agenda—Education, K – 12, 04/26/88, 1:45 pm, 214C—For ratification of subreferral
06/07/88 HOUSE Died in Committee on Education, K – 12

H 1292 LOCAL BILL/ENG by Mitchell
Washington Co. Jail Board, provides for membership, appointment, terms, removal, compensation, & powers of members of Washington County Jail Board of Trustees, etc. Effective Date: 06/18/88
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Community Affairs; Health Care—HJ 129
05/02/88 HOUSE On Committee agenda—Community Affairs, 05/04/88, 8:00 am, 212-HOB
05/04/88 HOUSE Preliminary Committee Action by Community Affairs: Favorable with 1 amendment
05/06/88 HOUSE Comm. Report Favorable with 1 amendment(s) by Community Affairs—HJ 365, Now in Health Care—HJ 365
05/11/88 HOUSE Withdrawn from Health Care—HJ 413; Placed on Calendar
05/17/88 HOUSE Placed on Local Calendar; Read second time; Amendment adopted, Read third time; Passed as amended; YEAS 117 NAYS 0—HJ 526, Immediately certified—HJ 526
05/17/88 SENATE In Messages
05/24/88 SENATE Received, referred to Rules and Calendar—SJ 373
05/25/88 SENATE Considered by Rules and Calendar; Placed on Local Calendar—SJ 375, Passed; YEAS 39 NAYS 0—SJ 399
05/26/88 Ordered enrolled
06/02/88 Signed by Officers and presented to Governor—HJ 1281
06/18/88 Became Law without Governor’s Signature, Chapter No. 88-352

H 1293 GENERAL BILL/CS by Regulated Industries & Licensing; Smith (Compare S 365)
Water & Sewer Services, authorizes Public Service Commission to require that certain rate increases be held in trust account subject to final order by commission; requires commission to determine reasonsableness of rate case expenses. Amends 367 081., 082. Effective Date: Upon becoming law.
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Regulated Industries & Licensing—HJ 129
04/14/88 HOUSE Subreferred to Subcommittee on Public Utilities; On Committee agenda—Regulated Industries & Licensing, 04/18/88, 1:15 pm, 413C—For ratification of subreferral
04/21/88 HOUSE On subcommittee agenda—Regulated Industries & Licensing, 04/25/88, 3:30 pm, 412-HOB
04/25/88 HOUSE Subcommittees Recommendation pending ratification by full Committee Favorable with 2 amendments, On Committee agenda, pending subcommittee action—Regulated Industries & Licensing, 04/27/88, 8:00 am, 413C
04/27/88 HOUSE Preliminary Committee Action by Regulated Industries & Licensing: Favorable as a Committee Substitute
05/09/88 HOUSE Comm. Report: CS by Regulated Industries & Licensing, placed on Calendar—HJ 383, CS read first time—HJ 381
06/07/88 HOUSE Died on Calendar

H 1294 GENERAL BILL by Woodruff
Capital Collateral Representation, provides that capital collateral representatives are authorized to appear only in state courts; provides duties in cases of conflict of interest, provides qualifications for assistant capital collateral representatives & support personnel who provide legal representation; preserves pending litigation from applicability Amends 27.702—704. Effective Date: Upon becoming law.
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Criminal Justice; Appropriations—HJ 130
04/15/88 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions
04/18/88 HOUSE On Committee agenda—Criminal Justice, 04/20/88, 3:30 pm, Morra Hall—For ratification of subreferral
06/07/88 HOUSE Died in Committee on Criminal Justice

H 1295 GENERAL BILL/CS by Criminal Justice; Dunbar (Compare H 1699, S 862, ENG/S 927)
Credit Card Fraud, defines term “acquirer” for purposes of provisions re credit card crimes, prohibits person who is paid by credit card for furnishing money, goods, or services or anything else of value to defraud acquirer through counterfeit or false credit card transactions; provides that it is unlawful for certain persons to make credit card account lists or portions thereof available to third parties, provides penalty, etc. Amends 817 56.2., 646. Effective Date: 10/01/88
04/06/88 HOUSE Filed
04/12/88 HOUSE Introduced, referred to Criminal Justice—HJ 130

(CONTINUED ON NEXT PAGE)
A bill to be entitled
An act relating to worker's compensation;
amending s. 440.11, F.S., extending employer's
immunity from liability for injury or death to
apply to certain persons; providing an
exception; providing an effective date.

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

Section 1. Subsection (1) of section 440.11, Florida
Statutes, is amended to read:

440.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s.
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words stricken are deletions; words underlined are additions
A bill to be entitled
An act relating to workers' compensation;
amending s. 440.11, F.S., extending employer's
immunity from liability for injury or death to
apply to certain persons under certain
circumstances; providing an effective date.

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admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

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furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The immunity provisions of this subsection apply to any sole proprietor, partner, corporate officer, director, supervisor, or other person who in the course and scope of his duties acts in a managerial capacity and the conduct which caused the alleged harm arose in the course and scope of the lawful performance of said managerial duties.

Section 2. This act shall take effect October 1, 1988.

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HOUSE SUMMARY

Extends employers' immunity from liability for injury or death under workers' compensation law to apply to sole proprietors, partners, corporate officers, directors, supervisors, or other persons who act in a managerial capacity and the conduct which caused the alleged harm arose in the course and scope of the lawful performance of said managerial duties.

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municipality may appropriate certain proceeds of contraband forfeiture proceedings to public or private agencies for school resource officer, crime prevention, drug abuse education, or drug abuse treatment or rehabilitation purposes, providing an effective date 

—was taken up, having been read the second time earlier today, now pending on motion by Rep Locke to adopt the following amendment:

Amendment 2—On page 2, line 5, through page 3, line 23, strike all of said lines and insert: incurred in the forfeiture proceeding. The remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality, and such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, or drug education programs, drug treatment programs within county or municipal detention facilities or for other law enforcement purposes. These funds may be expended only upon request, by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. Such funds may be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, which may include automated fingerprint identification equipment and an automated uniform offense report and arrest report system; to provide matching funds to obtain federal grants; or for school resource officer, crime prevention, or drug abuse education programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate and shall not be a source of revenue to meet normal operating needs of the law enforcement agency. In the event that the seizing law enforcement agency does not have the funds necessary to conduct the investigation or to continue the enforcement action, the remaining proceeds shall be deposited in a special law enforcement fund. The fund shall be used to obtain federal grants; to provide matching funds; to defray the costs of protracted or complex investigations; to provide additional technical equipment or expertise; which may include automated fingerprint identification equipment and an automated uniform offense report and arrest report system; to provide matching funds to obtain federal grants; or for school resource officer, crime prevention, or drug abuse education programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate and shall not be a source of revenue to meet normal operating needs of the law enforcement agency. In the event of a violation of this section, and only upon appropriation by the sheriff, the fund may be used for drug treatment programs within detention facilities, providing an effective date.

The question recurred on the adoption of the amendment. On motion by Rep McEwan, the rules were waived and debate was limited to five minutes per side.

The question again recurred on the adoption of the amendment which was adopted. The vote was

Yea—Carpenter
Nay—Bloom

Representatives Locke and Clements offered the following title amendment

Amendment 3—On page 1, lines 3-10, strike all of said lines and insert: amending s. 932.704, F.S.; providing that proceeds in special law enforcement trust fund may be used for drug treatment programs within detention facilities, providing an effective date.

Rep Locke moved the adoption of the amendment, which was adopted without objection.

The Committee on Criminal Justice offered the following amendment:

Amendment 4—On page 2, line 30, strike “75” and insert 85

On motion by Rep Canady, without objection, the amendment was withdrawn.

REPRESENTATIVE GORDON IN THE CHAIR

Representatives Gutman, Souto, Clements and Garcia offered the following amendment:

Amendment 5—On page 1, line 13, insert Section 1. Section 932.7045, Florida Statutes, is created to read 932.7045 Zero tolerance with respect to certain controlled substances found in a motor vehicle—it is the intent of the Legislature that it shall be considered a violation of state law for any person to have or possess any controlled substance in violation of any state statute regulating controlled substances without regard to the amount of the substance within any motor vehicle. In the event that a violation of the provisions of this section is discovered by any law enforcement officer the motor vehicle shall be immediately seized and disposed of pursuant to the Uniform Contraband Forfeiture Act (renumber subsequent sections).

Rep Gutman moved the adoption of the amendment.

During consideration thereof, Rep Friedman stated if the amendment were adopted, he would raise a point of order under Rule 8 8 to have the bill recommitted to the Committee on Appropriations due to its fiscal impact.

The question recurred on the adoption of the amendment, which failed adoption Under Rule 8 19, the bill was referred to the Engrossing Clerk.
Rep. Silver moved the adoption of the amendment, which was adopted without objection.

Under Rule 8 19, the bill was referred to the Engrossing Clerk.

HB 1485—A bill to be entitled An act relating to landlord and tenant, amending § 84 183, F.S., revising language with respect to service of process in actions for possession of residential premises; amending § 83 20, F.S., clarifying language regarding service of the 3-day notice that rent is delinquent; amending § 83 49, F.S., revising language with respect to notice by a tenant to a landlord of intent to vacate or abandon leased premises, eliminating reference to certified mail, providing that failure to provide notice shall not waive any right of the tenant to his security deposit, amending § 83 595, F.S., clarifying when the landlord may choose his remedies after the tenant breaches the lease, amending § 83 62, F.S., providing that the landlord or his agent is responsible for removing personal property left at the premises to which a landlord has regained possession and providing that once removed, neither the landlord nor sheriff is liable for loss, destruction, or damage to the property, amending § 83.625, F.S., clarifying when the landlord may choose his remedies after the tenant removes, neither the landlord nor sheriff is liable for loss, destruction, or damage to the property, amending § 83 19, F.S., revising language with respect to service of the process, amending § 713 691, F.S., clarifying that the landlord's right to possession of the premises is not dependent upon whether the tenant's property has been removed by the sheriff, providing an effective date—was taken up, having been read the second time and amended on May 19, now pending on motion by Rep. Lawson to adopt Amendment 3. Pending consideration thereof, without objection, the amendment was withdrawn. Under Rule 8 19, the bill was referred to the Engrossing Clerk.

HJR 1336—A joint resolution proposing an amendment to Section 8 of Article I of the State Constitution relating to the right to bear arms was taken up, having been read the second time on May 19, now pending on motions by Rep. R. C. Johnson to adopt Amendment 1, Amendment 1 to Amendment 1, Substitute Amendment 1, and Amendment 1 to Substitute Amendment 1. During consideration thereof, without objection, the amendments were withdrawn. Representatives R. C. Johnson, Clements, Renke and Tobasson offered the following amendment:

Amendment 2—On page 1, line 8, strike everything after the period and insert: That Section 8 of Article I of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1988:

SECTION 8 Right to bear arms—
(a) The right of people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) Counties shall have the sole authority to adopt waiting period ordinances relating to the purchase of handguns, by majority vote of the county commissioners, of up to not to exceed 3 working days between the purchase and delivery of a handgun under the restrictions and exemptions relating to waiting periods or cooling-off periods set forth in § 790 332(b), (c), and (d), Florida Statutes, as that section existed on October 1, 1987. For purposes of this section, "purchase" means payment of deposit, payment in full, or written notification of intent to purchase.

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101 161, Florida Statutes, the substance of the amendment proposed herein shall appear on the ballot as follows:

WAITING PERIOD FOR PURCHASE OF HANDGUNS

Authorizes a waiting period of up to 3 working days between the purchase and delivery of a handgun on a local county option.

Rep. R. C. Johnson moved the adoption of the amendment, which was adopted. The vote was:

Yeas—61

Arnold Gonzalez- Lewis Rush
Bainter Quevedo Locke Sample
Bangham Grindle Lombard Sanderson
Bankhead Gutman Mackey Sansom
Bass Harden Martinez Simone
Brinson Harris McEwan Souto
Burnsed Hawkins Meffert Starks
Carpenter Hill Messersmith Stone
Casas Hodges Mitchell Thomas
Clements Holland Morse Tobasson
Crady Ireland Mortham Troxler
Crotty Irvine Nergard Upchurch
Drage Johnson, B. L. Patchett Webster
Fruha Johnson, R. C. Peoples Wise
Garcia Kelly Renke
Gardner Langton Rudd

Nays—54

The Chair Figg Lawson Saunders
Abrams Frankel Liberti Shelley
Ascheri Friedman Loppman Silver
Bell Gluckman Logan Simon
Bloom Gordon Long Smith
Brown Guber Mackenzie Titone
Carlton Gustafson Martin Tobin
Clark Hanson Metcalf Trammell
Cogrove Hargrett Ostrau Wallace
Dantzler Healey Press Wetherell
Davis Holzendorf Reaves Woodruff
Deutsch Jamerson Redick Young
Diaz-Balart Jennings Rehm
Dunbar Jones, D. L. Rochlin

Votes after roll call:

Nays—Mills, C. F. Jones

Representative Friedman offered the following amendment:

Amendment 3—On page 1, line 21, after the period insert: The state weapon of the State of Florida is hereby declared to be the Uzi.

Rep. Friedman moved the adoption of the amendment. During consideration thereof, without objection, the amendment was withdrawn. Under Rule 8 19, the bill was referred to the Engrossing Clerk.

HB 1606—A bill to be entitled An act relating to insurance, amending § 624 315, F.S., providing for additional material in a required annual report, amending § 627 025 and § 627 215, F.S., providing for commercial property risk management plans, revising the definition of "commercial property insurance", deleting the supplemental findings for risk management plans through excess profits; prohibiting excess profits for commercial property and commercial casualty insurance in the same manner as is currently the case for workers' compensation and employer's liability insurance; providing legislative intent with respect to retroactive applicability; amending § 627 351, F.S., revising language with respect to property and casualty insurance risk apportionment, revising elements of the plan, revising rate requirements, amending § 627 3515, F.S., providing for a governing board for the market assistance plan; authorizing the board to appoint an executive committee; providing an effective date—was taken up, having been read the second time on May 19, now pending on motion by Rep. Simon to adopt the following amendment:

Amendment 1—On page 20, line 13, strike "without" and insert after
prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes;

Rep. Simon moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Young, the rules were waived by two-thirds vote and CS/SSB 54, as amended, was read a third time by title. On passage, the vote was

Yea—114
Nay—1

Irving

So the bill passed, as amended, and was immediately certified to the Senate after engrossment.

CS for SB 872—A bill to be entitled An act relating to workers' compensation; amending s. 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons; providing an effective date

—was taken up out of regular order and read the second time by title.

Representative Silver offered the following amendment

Amendment 1—On page 1, line 10, strike everything after the enacting clause and insert: A bill to be entitled An act relating to workers' compensation; amending s. 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons; providing an effective date.

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parent, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such follow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when such employer is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor or other person who in the course and scope of his duties acts in a managerial or policy-making capacity and the conduct which caused the alleged injury arose within the course and scope of such managerial or policy-making duties and the conduct was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed exceeds 60 days imprisonment as set forth in s. 775.082, F.S.

Section 2 This act shall take effect October 1, 1988

Rep Silver moved the adoption of the amendment, which was adopted without objection.

Representative Silver offered the following title amendment:

Amendment 2—On page 1, lines 1-6, strike everything before the enacting clause and insert: A bill to be entitled An act relating to workers' compensation; amending s. 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons under certain circumstances, providing an effective date.

Rep Silver moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Silver, the rules were waived by two-thirds vote and CS/SSB 872, as amended, was read a third time by title. On passage the vote was

Yea—105
Nay—1

Irvine

The Chair Gardner, Kelly, Renke, Garcia, Morales, Reddick, Rimes
Arnold Glickman, King, Rudd, Roach, Longman, Sanderson
Ascheri Langton, Lawson, Russ, Roche, Lappman, Sanders
Banter Gardner, Liberty, Sampson, French, Lock, Sanders
Bannan Glickman, Lappman, Alley, Roach, Leppman, Sanborn
Bankhead Gonzales, Locke, Sanders, French, Licker, Sanders
Bass Quevedo, Logan, Saunders, Roach, Lander, Sanderson
Bell Goode, Lombard, Shelley, Silver, Logan, Sanders
Bloom Grindle, Mackenzie, Simon, Silver, Lander, Sanders
Brown Guber, Mackey, Simone, Silver, Lander, Sanders
Burke Gustafson, Martin, Smith, Silver, Lander, Sanders
Burnseed Gutman, Martinez, Soto, Silver, Lander, Sanders
Canada Hanson, Mcllwain, Starks, Silver, Lander, Sanders
Carlton Harden, Meffert, Stone, Silver, Lander, Sanders
Carpenter Harris, Messer, Thomas, Silver, Lander, Sanders
Casas Hawkins, Metcalf, Thomas, Thomas, Silver, Lander, Sanders
Clark Healey, Mitchell, Tobassan, Thomas, Silver, Lander, Sanders
Clements Hill, Morse, Tolin, Thomas, Silver, Lander, Sanders
Congrove Holland, Mortham, Trammell, Thomas, Silver, Lander, Sanders
Cready Holzendorf, Nergard, Troxler, Thomas, Silver, Lander, Sanders
Cussey Ireland, Ostrau, Upchurch, Thomas, Silver, Lander, Sanders
Dantzi1er Jennings, Patchett, Wallance, Thomas, Silver, Lander, Sanders
Davis Johnso1, B. L, Peeples, Webster, Thomas, Silver, Lander, Sanders
Deutsch Johnson, R. C, Press, Wetherell, Thomas, Silver, Lander, Sanders
Dez-Balart Jones, C. F, Reaves, Wise, Thomas, Silver, Lander, Sanders
Dra
g Jones, D. L, Reddick, Young, Thomas, Silver, Lander, Sanders
Dunbar Kelly, Rehm, Thomas, Silver, Lander, Sanders

Nays—1

Frankel
I. SUMMARY:

Committee Substitute (CS) for House Bill 1288 amends the exclusivity doctrine in the workers' compensation law by extending immunity from tort suits to persons who while acting lawfully in their managerial capacity injure another person.

A. PRESENT SITUATION:

Workers' compensation is a statutory system designed to expeditiously afford benefits to persons who have been injured on the job. Chapter 440, Florida Statutes, governs the procedures of the workers' compensation system. The theory behind the system is that work-related injuries will be compensated without need for proof of fault as long as that system operates exclusively, i.e., as long as workers' compensation is the exclusive remedy for a work-related injury (commonly known as the exclusivity doctrine). Therefore, in exchange for the right to sue in tort, a worker who is injured on the job, can receive whichever workers' compensation benefits are appropriate (including medical, disability, wage-loss, rehabilitation and death benefits) without having to prove that the employer was at fault.

The only exception to the exclusivity doctrine was enacted in 1978. Section 440.11(1), F.S., permits tort suits against fellow-employees who act with willful and wanton disregard, unprovoked physical aggression or gross negligence with respect to another employee. For almost 10 years, the term fellow-employee was not judicially interpreted. In May, 1987, the Florida Supreme Court in the case of Streeter v. Sullivan (509 So.2d 268) ruled that fellow-employee includes corporate officers because the definitional section
of the statute includes corporate officers in the term "employee" (s. 440.02(2)(b), F.S.). Therefore, the managerial personnel in the Streeter case were held liable in tort for the commission of a grossly negligent act that resulted in the death of an employee. As a result of this decision, several cases are pending in circuit courts throughout the state in which the Streeter decision is cited as precedent.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1288 extends the immunity provisions in s. 440.11(1), F.S., to sole proprietors, partners, supervisors, corporate officers or directors, and any other person who acts in a managerial capacity as long as the conduct which caused the harm is no worse than conduct which could be punished by a 60 day jail sentence, regardless of whether or not criminal charges are brought. Effectively, then, managerial personnel will no longer be able to be sued in tort for managerial actions which cause on-the-job injuries if such actions are not worse than second degree misdemeanors under Florida law. For example, a corporate officer acting in his managerial capacity who assaults an employee of the company or exposes an employee to a dangerous situation could not be civilly sued by the employee because the officer's conduct would only be a second degree misdemeanor. The employee, however, would be entitled to workers' compensation benefits and could press criminal charges against the offending individual. Also, intentional harmful conduct, such as battery, or negligent infliction of injury (culpable negligence), will be actionable in tort as those actions are first degree misdemeanors.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:
Bill #: h1288s-f.co
Date: May 31, 1988

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Management personnel will no longer incur costs associated with tort suits for certain acts which they commit in their managerial capacity. This should serve to reduce their liability insurance expenses.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

STATEMENT OF SUBSTANTIAL CHANGE IN THE COMMITTEE SUBSTITUTE

The original bill extended the exclusivity doctrine of the workers' compensation law to the same individuals but worded it slightly differently. The CS makes it clear that it is the unlawful conduct of the individual that triggers the exception to the exclusivity doctrine and that the immunity is the same as that which is enjoyed by employers.

OTHER

In 1981, the Florida Supreme Court upheld the constitutionality of s. 440.11(1), F.S. In the case of Iglesia v. Floran (394 So.2d 994), the high court ruled that the provision did not bar access to the courts and was therefore constitutional.

LEGISLATIVE HISTORY

Enacted Bill:

House Bill 1288 was filed on April 6, 1988, by Representative Silver and referred to the Committees on Commerce and Appropriations. The bill was subreferred to the Subcommittee on Labor and Employment Security, but not heard there. It was reported as a Committee Substitute by the Full
Commerce Committee on May 4, 1988. After being withdrawn from Appropriations, it was placed on the Special Order Calendar. A clarifying amendment was adopted regarding the type of immunity provisions in question and the bill was passed by a vote of 112 to 3 on May 25, 1988 (HJ 00681). The Senate referred the bill to its Commerce Committee, withdrew it therefrom and passed it unanimously on May 30, 1988 (SJ00501).

Disposition of Companion:

Senate Bill 872 was filed by the Commerce Committee on April 6, 1988, and referred to same. On April 27, 1988, the Senate bill was reported favorably as a Committee Substitute. The Senate put a technical amendment on the bill on the floor and passed it unanimously on May 12, 1988 (SJ00289). The House placed the Senate bill on the Calendar intending to retain it there and send its own bill back. The Senate refused to take up the House bill while the Senate bill was in possession of the House so the House amended the Senate bill to make it identical to the House bill, passed it by a vote of 105 to 1 (HJ00742) and sent it to the Senate.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Ivy Crแam Harris

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:

Staff Director: H. Fred Varn

Staff Director:

Staff Director:
A bill to be entitled
An act relating to workers' compensation;
amending s. 440.11, F.S.; redefining
circumstances in which fellow-employee
immunities do not apply with respect to grossly
negligent acts; providing an effective date.

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

Section 1. Subsection (1) of section 440.11, Florida
Statutes, is amended to read:

440.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s.
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words stricken are deletions; words underlined are additions.
furtherance of the employer's business and the injured
employee is entitled to receive benefits under this chapter.
Such fellow-employee immunities shall not be applicable to an
employee who acts, with respect to a fellow employee, with
willful and wanton disregard or unprovoked physical aggression
or with gross negligence when such acts result in injury or
death or such acts proximately cause such injury or death, nor
shall such immunities be applicable to employees of the same
employer when each is operating in the furtherance of the
employer's business but they are assigned primarily to
unrelated works within private or public employment.

Section 2. This act shall take effect July 1, 1988, or
upon becoming a law, whichever occurs later.

SENATE SUMMARY

Redefines the circumstances in which fellow-employee
immunities will not apply, with respect to liability for
workers' compensation, to remove the provision that such
immunities will not be applicable to an employee who acts
with gross negligence.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Section 440.11, F.S., which is entitled, exclusiveness of liability, was amended in 1978 to allow an employee who injured a co-employee while acting in furtherance of the employer's business to enjoy the workers' compensation immunity from suit if simple negligence occurred. However, no immunity exists if the fellow employee acted "with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death." The term "co-employee" was not defined either statutorily or by case law until May 1987 when the Florida Supreme Court held in Streeter v. Sullivan, 509 So.2d 268 (Fla. 1987), that a co-employee could be an officer or supervisor of a business. Due to the Streeter decision, co-employees may now bring a tort action against an officer or supervisor who has committed gross negligence. Additionally, s. 440.11, F.S., allows a co-employee to bring a tort action if a co-employee has committed an act which injures a fellow employee either with willful and wanton disregard or where the co-employee acted with unprovoked physical aggression.

Because the Supreme Court in Streeter held that corporate officers were within the scope of the term "employee," the exposure of an employer's liability insurance under a workers' compensation and employer's liability policy may have been significantly increased.

B. Effect of Proposed Changes:

This bill removes "gross negligence" as an element of establishing a cause of action against a co-employee under s. 440.11, F.S. Thus, a co-employee could not bring an action against a co-employee (including an officer or supervisor) who has injured an employee by a grossly negligent act. However, a co-employee could still maintain an action against an officer or supervisor for willful or wanton disregard for the co-employee or where the officer or supervisor acted with unprovoked physical aggression.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.
III. COMMENTS:

There may be a constitutional challenge to eliminating gross negligence from s. 440.11, F.S. It is possible that eliminating gross negligence would be taking away a right without substituting a remedy or barring access to the courts contrary to Art. 1, s. 21 of the Florida Constitution. If gross negligence is eliminated, the best argument to find such action constitutional is the "quid pro quo" of the workers' compensation system. See Iglesia v. Floran, 394 So.2d 994 (Fla. 1981).

Finally, research indicates that the standard of care for "gross negligence" and "willful and wanton disregard" are often blurred. Therefore, if "gross negligence" is stricken from s. 440.11, F.S., but "willful and wanton disregard" is allowed to remain, there may be, in fact, no benefit from a legislative change in s. 440.11, F.S.

IV. AMENDMENTS:

None.
BILL VOTE SHEET

(VS-88: File with Secretary of Senate) BILL NO. SB 872

COMMITTEE ON: Commerce

DATE: APRIL 27, 1987 ACTION:
TIME: 9:00 A.M. - 12 NOON Favorably with ___ amendments
PLACE: ROOM "A" Favorably with Committee Substitute

OTHER COMMITTEE REFERENCES:
(in order shown)

THE VOTE WAS:

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TOTAL: 9 O

Please Complete: The Key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( X )
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Senate Amendment

On page 2, line 6, strike or with gross negligence

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

or with gross negligence

CODING: Words stricken are deletions; words underlined are additions.

Amendment No. ___, taken up by committee: Adopted ___

Offered by ___, failed ___

(Amendment No. ___, Adopted ___, Failed ___, Date __/__/___)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Senate Amendment

On page 2, line 11

after the period

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

No

The immunity provisions of this subsection apply to any sole proprietor, partner, supervisor, corporate officer or director, or other person who in the course and scope of his duties acts in a managerial capacity with respect to the work out of which the injury arises.
SENATE COMMITTEE AMENDMENT

The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Senate Amendment

In title, on page 1, lines 3-6, strike all of said lines

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

and insert:

amending s. 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons; providing an effective date.

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. ___, taken up by committee: Adopted ___ *
* Offered by _______Failed ___ *

(Amendment No. ___, Adopted ___, Failed ___, Date ___/___/___)
Senator: PALM. F. HINGLEY

moved the following amendment

which was adopted: which failed:

Amendment to 2nd Amendment

On page, line strike

1. all

Insert:

The immunity provisions as
This subsection (b) apply to any
sold, purchased, owned, or

officer, on duty.
By the Committee on Commerce

A bill to be entitled
An act relating to workers' compensation;
amending s. 440.11, F.S.; extending employer's
immunity from liability for injury or death to
apply to certain persons; providing an
effective date.

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

Section 1. Subsection (1) of section 440.11, Florida
Statutes, is amended to read:

440.11 Exclusiveness of liability.—
(1) The liability of an employer prescribed in s.
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words struck out are deletions; words underlined are additions.
310-1935-88  CS for SB 872

furtherance of the employer's business and the injured
employee is entitled to receive benefits under this chapter.

Such fellow-employee immunities shall not be applicable to an
employee who acts, with respect to a fellow employee, with
willful and wanton disregard or unprovoked physical aggression
or with gross negligence when such acts result in injury or
death or such acts proximately cause such injury or death, nor
shall such immunities be applicable to employees of the same
employer when each is operating in the furtherance of the
employer's business but they are assigned primarily to
unrelated works within private or public employment. The
immunity provisions of this subsection shall apply to any sole
proprietor, partner, corporate officer, or director.

Section 2. This act shall take effect July 1, 1988, or
upon becoming a law, whichever occurs later.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 872

This committee substitute for SB 872 extends immunity in
which employers enjoy under the workers' compensation system
to any sole proprietor, partner, corporate officer or
director.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Section 440.11, F.S., which is entitled, exclusiveness of liability, was amended in 1978 to allow an employee who injured a co-employee while acting in furtherance of the employer's business to enjoy the workers' compensation immunity from suit if simple negligence occurred. However, no immunity exists if the fellow employee acted "with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death." The term "co-employee" was not defined either statutorily or by case law until May 1987 when the Florida Supreme Court held in Streeter v. Sullivan, 509 So.2d 268 (Fla. 1987), that a co-employee could be an officer or supervisor of a business. Due to the Streeter decision, co-employees may now bring a tort action against an officer or supervisor who has committed gross negligence. Additionally, s. 440.11, F.S., allows a co-employee to bring a tort action if a co-employee has committed an act which injures a fellow employee either with willful and wanton disregard or where the co-employee acted with unprovoked physical aggression.

Because the Supreme Court in Streeter held that corporate officers were within the scope of the term "employee," the exposure of an employer's liability insurance under a workers' compensation and employer's liability policy may have been significantly increased.

B. Effect of Proposed Changes:

Section 440.11, F.S., as amended, extends the immunity from liability which employers currently enjoy, to any sole proprietor, partner, corporate officer or director.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.
III. COMMENTS:

None.

IV. AMENDMENTS:

None.
Amendment 1—On page 2, strike all of lines 11-13 and insert: unrelat ed works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer, or director.

On motion by Senator Jennings, by two-thirds vote CS for SB 872 was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yea—Crawford, Stuart

CS for SB 872—A bill to be entitled An act relating to workers’ compensation, amending § 440.11, F.S., extending employer’s immunity from liability for injury or death to apply to certain persons, providing an effective date:

—was read the second time by title.

On motion by Senator Jennings, by two-thirds vote CS for SB 924 was read the third time by title, passed and certified to the House. The vote on passage was:

Yea—36

Barron Gordon Langley Ros-Lehtinen
Beard Grant Lehtinen Scott
Brown Grizzle Malmion Thomas
Children, D. Hill Margolis Thurman
Children, W. D. Hollingsworth McPherson Weinstein
Crenshaw Jenne Meek Woodson
Deratany Jennings Myers Wemstock
Dudley Johnson Peterson Ros-Lehtinen
Girardeau Kirkpatrick Plummer

Nays—None

Vote after roll call

Yea—Crawford, Stuart

Consideration of SB 1026 was deferred.

CS for SB 1119—A bill to be entitled An act relating to public lodging establishments, amending § 509.215, F.S., prescribing fire safety standards for such establishments, requiring such establishments to change from battery-operated to electrically operated smoke detectors by a date certain, providing an effective date:

—was read the second time by title.

On motion by Senator Thurman, by two-thirds vote CS for SB 1119 was read the third time by title, passed and certified to the House. The vote on passage was:

Yea—32

Barron Girardeau Johnson Peterson
Beard Gordon Kirkpatrick Plummer
Brown Grant Langley Scott
Children, D. Grizzle Malmion Thurman
Children, W. D. Hill Margolis Thomas
Crenshaw Hollingsworth McPherson Weinstein
Deratany Jenne Meek Wemstock
Dudley Jennings Myers Woodson

Nays—2

Lehtinen Ros-Lehtinen

Vote after roll call

Yea—Crawford, Stuart

SB 1077—A bill to be entitled An act relating to bank loans, amending § 658.50, F.S.; clarifying the maximum interest rate that may be charged on a credit card or overdraft financing arrangement, defining the term “interest” and the term “billing cycle” for such purpose, providing an effective date:

—was read the second time by title.

The Committee on Commerce recommended the following amendment which was moved by Senator Jennings and adopted:

Amendment 1—On page 1, line 18, after “exceeding” insert, the equivalent of:

On motion by Senator Jennings, by two-thirds vote SB 1077 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:
Journal
of the
Florida
House of Representatives

Ninetieth
Regular Session
since Statehood in 1845

April 5 through June 7, 1988

[Including a record of transmittal of Acts subsequent to sine die adjournment]
prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes,

Rep Simon moved the adoption of the amendment, which was adopted without objection

On motion by Rep Young, the rules were waived by two-thirds vote and CS/SB 54, as amended, was read a third time by title. On passage, the vote was

Yeas—114

The Chair Pigg
Abrams Frankel
Arnold Friedman
Ascherl Garcia
Bainter Gardner
Banann Glickman
Bankhead Gonzalez
Bass Quevedo
Bell Goode
Bloom Gordon
Bronson Grindle
Brown Guber
Burke Gustafson
Burnsed Gutman
Canady Hanson
Carlton Harden
Carpenter Harris
Cassas Hawkins
Clark Healey
Clements Hill
Cosgrove Holland
Cready Holzendorf
Crofton Ireland
Dantzler Jennings
Davis Johnson
Deutsch Johnson
Diaz-Balart Jones
Drage Jones
Dunbar Kelly

Irvine

So the bill passed, as amended, and was immediately certified to the Senate after engrossment

'CS for SB 872—A bill to be entitled An act relating to workers' compensation; amending ss 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons; providing an effective date

—was taken up out of regular order and read the second time by title

Representative Silver offered the following amendment

Amendment 1—On page 1, line 10, strike everything after the enacting clause and insert Section 1. Subsection (1) of section 440.11, Florida Statutes, is amended to read.

440.11 Exclusiveness of liability

(1) The liability of an employer prescribed in s 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was due to the comparative negligence of a fellow servant that, the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor or other person who in the course and scope of his duties acts in a managerial or policy-making capacity and the conduct which caused the alleged injury arose within the course and scope of such managerial or policy-making duties and the conduct was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed exceeds 60 days imprisonment as set forth in s 775.082, F.S.

Section 2 This act shall take effect October 1, 1988

Rep Silver moved the adoption of the amendment, which was adopted without objection

Representative Silver offered the following title amendment

Amendment 2—On page 1, lines 1-6, strike everything before the enacting clause and insert A bill to be entitled An act relating to workers' compensation; amending ss 440.11, F.S., extending employer's immunity from liability for injury or death to apply to certain persons under certain circumstances, providing an effective date

Rep Silver moved the adoption of the amendment, which was adopted without objection.

On motion by Rep Silver, the rules were waived by two-thirds vote and CS/SB 872, as amended, was read a third time by title. On passage the vote was

Yeas—105

The Chair Gardner
Arnold Glickman
Ascherl Gonzalez
Bainter Quevedo
Banann Goode
Bankhead Gordon
Bass Grindle
Brown Guber
Burnsed Gutman
Canady Hanson
Carlton Harden
Carpenter Harris
Cassas Hawkins
Clark Healey
Clements Hill
Cosgrove Holland
Cready Holzendorf
Crofton Ireland
Dantzler Jennings
Davis Johnson
Deutsch Johnson
Diaz-Balart Jones
Drage Jones
Dunbar Kelly

Irvine

So the bill passed, as amended, and was immediately certified to the Senate after engrossment
HB 1632—A bill to be entitled An act relating to mechanics' lien, amending s 95 L 1, F S., providing for the statute of limitations on recovery of real property with respect to certain actions to enforce a claim against certain payment bonds, amending s 255.05, F S.; providing additional requirements with respect to the payment and performance bond of a contractor constructing public buildings, amending s 713.02, F S., revising language with respect to payment bonds under the mechanics' lien law; amending s 713.13, F S.; requiring a true copy of the bond to be attached to the notice of commencement, amending s 713.14, F S., specifying application of payment to certain contract obligations, amending s 713.20, F S., prohibiting the waiver of lien rights in advance, providing a form for partial release of a lien, amending s 713.23, F S., revising language with respect to payment bonds, requiring written notice of nonpayment to surety for certain persons to recover on payment bonds, amending s 713.345, F S., revising language with respect to penalties concerning violations for moneys received for real property improvements; creating s. 489.128, F S., providing for the issuance of more motor vehicles under certain circumstances, disallowing the purchase of a person to properly apply payments received for improvements to real property, prohibiting replacement dealers for a certain time period, amending s 320.02, F S., revising language with respect to franchise agreements and obligations of the manufacturer and its agent; amending s 320.64, F S., providing criteria for determination of whether or not a discontinuation, cancellation or nonrenewal of a franchise agreement is unfair, providing criteria with respect to abandoned franchise agreements, prohibiting replacement dealers for a certain time period, amending s 320.642, F S., providing procedure with respect to dealer licenses in areas previously served, amending s 320.643, F S., expanding provisions with respect to procedure for transfer of a franchise agreement, amending s 320.644, F S., providing clarifying language with respect to a change in executive management or a transfer of the franchise, amending s 320.645, F S., deleting language making it unnecessary for a proposed motor vehicle dealer to provide exclusive facilities and personnel under certain circumstances, amending s 320.696, F S., providing clarifying language with respect to reasonable compensation for work by a motor vehicle dealer for warranty repairs or service on behalf of a licensee, creating s 320.699, F S., providing a procedure for administrative hearings and adjudications; creating s 320.6991, F S., providing for the dismissal of certain procedures, providing an appropriate, providing for application of the act, saving ss 320.27-320.31, F S., and ss 320.60-320.71, F S., from Sunset repeal, providing for future review and repeal, providing an effective date
Documentation List

Laws of Florida, 1988
Chapter 88-284


03. Joint Legislative Management Committee. Division of Legislative Information. Final Legislative Bill Information, 1988 Regular Session. CS/HB 1288, SB 603, and CS/SB 872.


05. Committee Substitute for House Bill (CS/HB) 1288, as reported by the House Committee on Commerce, 5/12/88.


07. House. Committee on Commerce. Staff Analysis of CS/HB 1288, 5/31/88 (as passed by the Legislature).


09. Senate. Committee on Commerce. Staff Analysis of SB 872, April 27, 1988 (with vote sheet and amendments attached).

10. Committee Substitute for Senate Bill (CS/SB) 872, as reported by the Senate Committee on Commerce, 4/27/88.


A bill to be entitled
An act relating to workers' compensation;
amending s. 440.11, F.S.; extending employer's
immunity from liability for injury or death to
apply to certain persons; providing an
effective date.

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

Section 1. Subsection (1) of section 440.11, Florida
Statutes, is amended to read:

440.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s.
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words stricken are deletions; words underlined are additions.
furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The immunity provisions of this subsection shall apply to any sole proprietor, partner, corporate officer, or director.

Section 2. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 872

This committee substitute for SB 872 extends immunity in which employers enjoy under the workers' compensation system to any sole proprietor, partner, corporate officer or director.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to workers' compensation;
amending s. 440.11, F.S.; redefining
circumstances in which fellow-employee
immunities do not apply with respect to grossly
negligent acts; providing an effective date.

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

Section 1. Subsection (1) of section 440.11, Florida
Statutes, is amended to read:

440.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s.
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
pARENTS, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words stricken are deletions; words underlined are additions.
furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment.

Section 2. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

****************************************

SENATE SUMMARY

Redefines the circumstances in which fellow-employee immunities will not apply, with respect to liability for workers' compensation, to remove the provision that such immunities will not be applicable to an employee who acts with gross negligence.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to workers' compensation;
amending s. 40.11, F.S., extending employer's
immunity from liability for injury or death to
apply to certain persons under certain
circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 400.11, Florida
Statutes, is amended to read:

400.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s.
400.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words stricken are deletions; words underlined are additions.
furtherance of the employer's business and the injured
employee is entitled to receive benefits under this chapter.

Such fellow-employee immunities shall not be applicable to an
employee who acts, with respect to a fellow employee, with
willful and wanton disregard or unprovoked physical aggression
or with gross negligence when such acts result in injury or
death or such acts proximately cause such injury or death, nor
shall such immunities be applicable to employees of the same
employer when each is operating in the furtherance of the
employer's business but they are assigned primarily to
unrelated works within private or public employment. The
immunity provisions of this subsection apply to any sole
proprietor, partner, corporate officer, director, supervisor,
or other person who in the course and scope of his duties acts
in a managerial capacity and the conduct which caused the
alleged harm arose in the course and scope of the lawful
performance of said managerial duties.

Section 2. This act shall take effect October 1, 1988.

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HOUSE SUMMARY

Extends employers' immunity from liability for injury or
death under workers' compensation law to apply to sole
proprietors, partners, corporate officers, directors,
supervisors, or other persons who act in a managerial
capacity and the conduct which caused the alleged harm
arose in the course and scope of the lawful performance
of said managerial duties.

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to worker's compensation;
amending s. 440.11, F.S., extending employer's
immunity from liability for injury or death to
apply to certain persons; providing an
exception; providing an effective date

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

Section 1. Subsection (1) of section 440.11, Florida Statutes, is amended to read:
440.11 Exclusiveness of liability.--
(1) The liability of an employer prescribed in s
440.10 shall be exclusive and in place of all other liability
of such employer to any third-party tortfeasor and to the
employee, the legal representative thereof, husband or wife,
parents, dependents, next of kin, and anyone otherwise
entitled to recover damages from such employer at law or in
admiralty on account of such injury or death, except that if
an employer fails to secure payment of compensation as
required by this chapter, an injured employee, or the legal
representative thereof in case death results from the injury,
may elect to claim compensation under this chapter or to
maintain an action at law or in admiralty for damages on
account of such injury or death. In such action the defendant
may not plead as a defense that the injury was caused by
negligence of a fellow servant, that the employee assumed the
risk of the employment, or that the injury was due to the
comparative negligence of the employee. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in

CODING: Words struck are deletions; words underlined are additions
BILL #: HB 1288

RELATING TO: Workers' Comp./Liability Immunity

SPONSOR(S): Representative Silver

EFFECTIVE DATE: October 1, 1988

COMPANION BILL(S): Similar S603

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

***************************************************************************

I. SUMMARY:

House Bill 1288 amends the exclusivity doctrine in the workers' compensation law by extending immunity from gross negligence suits to persons who act in a managerial capacity.

A. PRESENT SITUATION:

Workers' compensation is a statutory system designed to expeditiously afford benefits to persons who have been injured on the job. Chapter 440, Florida Statutes, governs the procedures of the workers' compensation system. The theory behind the system is that work-related injuries will be compensated without need for proof of fault as long as that system operates exclusively, i.e., as long as workers' compensation is the exclusive remedy for a work-related injury (commonly known as the exclusivity doctrine). Therefore, in exchange for the right to sue in tort, a worker who is injured on the job, can receive whichever workers' compensation benefits are appropriate (including medical, disability, wage-loss, rehabilitation and death benefits) without having to prove that the employer was at fault.

The only exception to the exclusivity doctrine was enacted in 1978. Section 440.11(1), F.S., permits tort suits against fellow-employees who act with willful and wanton disregard, unprovoked physical aggression or gross negligence with respect to another employee. For almost 10 years, the term fellow-employee was not judicially interpreted. In May, 1987, the Florida Supreme Court in the case of Streeter v. Sullivan (509 So.2d 268) ruled that fellow-employee includes corporate officers because the definitional section of the statute includes corporate officers in the term "employee" (s. 440.02(2)(b), F.S.). As a result of this decision, several cases are pending in circuit courts throughout the state in which the Streeter decision is cited as precedent.
B. EFFECT OF PROPOSED CHANGES:

House Bill 1288 extends the immunity provisions contained in s. 440.11(1), F.S., to sole proprietors, partners, supervisors, corporate officers or directors, and any other person who acts in a managerial capacity with respect to the work out of which the injury arises. Effectively, then, if the bill is enacted, corporate officers or supervisors would no longer be able to be sued in tort for grossly negligent managerial acts. They would, however, still be liable for any job-related willful and wanton acts or unprovoked physical aggression acts. Also, they could be sued for grossly negligent acts that were unrelated to their managerial capacity.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None.
2. **Direct Private Sector Benefits:**

Corporate officers and supervisors would no longer incur costs associated with tort suits for grossly negligent acts which they committed in their managerial capacity. This should serve to reduce their liability insurance expenses.

3. **Effects on Competition, Private Enterprise, and Employment Markets:**

None.

D. **FISCAL COMMENTS:**

None.

III. **LONG RANGE CONSEQUENCES:**

None.

IV. **COMMENTS:**

In 1981, the Florida Supreme Court upheld the constitutionality of s. 440.11(1), F.S. In the case of Iglesia v. Floran (394 So.2d 994), the high court ruled that the provision did not bar access to the courts and was therefore constitutional.

V. **AMENDMENTS:**

None.

VI. **SIGNATURES:**

**SUBSTANTIVE COMMITTEE:**
Prepared by: Ivy Cream Harris

*Signature*

Staff Director: H. Fred Varn

**FINANCE & TAXATION:**
Prepared by:

*Signature*

Staff Director:

**APPROPRIATIONS:**
Prepared by:

*Signature*

Staff Director:
Bill #: CS/HB 1288

Relating To: Workers' Comp/Liability Immunity

Sponsor(s): Commerce & Representative Silver

Effective Date: October 1, 1988

Companion Bill(s): Similar S603 and S872

Other Committees of Reference: (1) Appropriations
(2) ______________________________

********************************************************************************

I. SUMMARY:

Committee Substitute (CS) for House Bill 1288 amends the exclusivity doctrine in the workers' compensation law by extending immunity from tort suits to persons who act lawfully in their managerial capacity.

A. PRESENT SITUATION:

Workers' compensation is a statutory system designed to expeditiously afford benefits to persons who have been injured on the job. Chapter 440, Florida Statutes, governs the procedures of the workers' compensation system. The theory behind the system is that work-related injuries will be compensated without need for proof of fault as long as that system operates exclusively, i.e., as long as workers' compensation is the exclusive remedy for a work-related injury (commonly known as the exclusivity doctrine). Therefore, in exchange for the right to sue in tort, a worker who is injured on the job, can receive whichever workers' compensation benefits are appropriate (including medical, disability, wage-loss, rehabilitation and death benefits) without having to prove that the employer was at fault.

The only exception to the exclusivity doctrine was enacted in 1978. Section 440.11(1), F.S., permits tort suits against fellow-employees who act with willful and wanton disregard, unprovoked physical aggression or gross negligence with respect to another employee. For almost 10 years, the term fellow-employee was not judicially interpreted. In May, 1987, the Florida Supreme Court in the case of Streeter v. Sullivan (509 So.2d 268) ruled that fellow-employee includes corporate officers because the definitional section of the statute includes corporate officers in the term "employee" (s. 440.02(2)(b), F.S.). Therefore, the managerial personnel in the Streeter case were held liable in tort for the commission of a grossly negligent act that resulted in the death of an employee. As a result of this decision, several cases are pending in circuit courts throughout the state in which the Streeter decision is cited as precedent.
B. EFFECT OF PROPOSED CHANGES:

CS/HB 1288 extends the immunity provisions in s. 440.11(1), F.S., to sole proprietors, partners, supervisors, corporate officers or directors, and any other person who acts in a managerial capacity as long as the conduct which caused the harm arises out of the lawful performance of the managerial duties. Effectively, then, if the bill is enacted, managerial personnel including corporate officers and directors would no longer be able to be sued in tort for managerial actions which cause on-the-job injuries if such actions are not against the law. Since most grossly negligent acts are within the law, they would not be grounds for work-related liable suits. However, intentional harmful conduct would likely be actionable as it is generally considered to be a violation of the law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None.
2. **Direct Private Sector Benefits:**

Management personnel would no longer incur costs associated with tort suits for grossly negligent acts which they committed in their managerial capacity. This should serve to reduce their liability insurance expenses.

3. **Effects on Competition, Private Enterprise, and Employment Markets:**

None.

D. **FISCAL COMMENTS:**

None.

III. **LONG RANGE CONSEQUENCES:**

None.

IV. **COMMENTS:**

**STATEMENT OF SUBSTANTIAL CHANGE IN THE COMMITTEE SUBSTITUTE**

The original bill extended the exclusivity doctrine of the workers' compensation law to the same individuals but worded it slightly differently. The CS makes it clear that it is the unlawful conduct of the individual that triggers the exception to the exclusivity doctrine.

**OTHER**

In 1981, the Florida Supreme Court upheld the constitutionality of s. 440.11(1), F.S. In the case of *Iglesia v. Floran* (394 So.2d 994), the high court ruled that the provision did not bar access to the courts and was therefore constitutional.

V. **AMENDMENTS:**

None.

VI. **SIGNATURES:**

**SUBSTANTIVE COMMITTEE:**
Prepared by: Ivy Cream Harris

**FINANCE & TAXATION:**
Prepared by:

**APPROPRIATIONS:**
Prepared by:

Staff Director: H. Fred Varn

968
This committee substitute for SB 872 extends immunity in which employers enjoy under the workers' compensation system to any sole proprietor, partner, corporate officer or director.
By Senator Kirkpatrick

A bill to be entitled

An act relating to workers' compensation;

amending s. 440.11, F.S.; extending the

immunity from liability provided to an employer

under the Workers' Compensation Law to each

corporate officer of the employer when acting

in a supervisory capacity; providing an

effective date.

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

Section 1. Subsection (1) of section 440.11, Florida

Statutes, is amended to read:

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s.

440.10 shall be exclusive and in place of all other liability

of such employer to any third-party tortfeasor and to the

employee, the legal representative thereof, husband or wife,

parents, dependents, next of kin, and anyone otherwise

entitled to recover damages from such employer at law or in

admiralty on account of such injury or death, except that if

an employer fails to secure payment of compensation as

required by this chapter, an injured employee, or the legal

representative thereof in case death results from the injury,

may elect to claim compensation under this chapter or to

maintain an action at law or in admiralty for damages on

account of such injury or death. In such action the defendant

may not plead as a defense that the injury was caused by

negligence of a fellow servant, that the employee assumed the

risk of the employment, or that the injury was due to the

comparative negligence of the employee. The same immunities

CODING: Words stricken are deletions; words underlined are additions.
from liability enjoyed by an employer extend to each corporate
officer of the employer when such officer is acting in a
supervisory capacity to employees of the employer in
furtherance of the employer's business. The same immunities
from liability enjoyed by an employer shall extend as well to
each employee of the employer when such employee is acting in
furtherance of the employer's business and the injured
employee is entitled to receive benefits under this chapter.
Such fellow-employee immunities shall not be applicable to an
employee who acts, with respect to a fellow employee, with
willful and wanton disregard or unprovoked physical aggression
or with gross negligence when such acts result in injury or
death or such acts proximately cause such injury or death, nor
shall such immunities be applicable to employees of the same
employer when each is operating in the furtherance of the
employer's business but they are assigned primarily to
unrelated works within private or public employment.

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

**********************************************
SENATE SUMMARY
Extends the immunity from liability provided to employers
under the Workers' Compensation Law to each officer
acting in a supervisory capacity for a corporate
employer.

CODING: Words struck are deletions; words underlined are additions.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

SUBJECT: BILL NO. AND SPONSOR:
Workers' Compensation
Exclusiveness of Liability
SB 603 by Senator Kirkpatrick

I. SUMMARY:

A. Present Situation:

Section 440.11, F.S., which is entitled exclusiveness of liability, was amended in 1978 to allow an employee who injured a co-employee while acting in furtherance of the employer's business to enjoy the workers' compensation immunity from suit if simple negligence occurred. However, no immunity exists if the fellow employee acted "with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death." The term "co-employee" was not defined either statutorily or by case law until May 1987 when the Florida Supreme Court held in Streeter v. Sullivan, 509 So.2d 268 (Fla. 1987), that a co-employee could be an officer or supervisor of a business. Due to the Streeter decision, co-employees may now bring a tort action against an officer or supervisor who has committed gross negligence. Additionally, s. 440.11, F.S., allows a co-employee to bring a tort action if a co-employee has committed an act which injures a fellow employee either with willful and wanton disregard or where the co-employee acted with unprovoked physical aggression.

Because the Supreme Court in Streeter held that corporate officers were within the scope of the term "employee," the exposure of an employer's liability insurance under a workers' compensation and employer's liability policy may have been significantly increased.

B. Effect of Proposed Changes:

Section 440.11, F.S., as amended, provides the same immunities from liability enjoyed by an employee extend to each corporate officer of the employer when the officer is acting in a supervisory capacity to employees of the employer in furtherance of the employer's business. Thus, a co-employee could still maintain an action against a co-employee other than an officer, if the co-employee's act constituted gross negligence, willful or wanton disregard for the co-employee or where the co-employee acted with unprovoked physical aggression.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.
III. COMMENTS:
None.

IV. AMENDMENTS:
None.
EXCLUSIVENESS OF LIABILITY

By the Staff of
The Florida Senate Committee on Commerce
January 1988
# Exclusiveness of Liability

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<td>D. Section 440.02(11), Florida Statutes</td>
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EXCLUSIVENESS OF LIABILITY

I. INTRODUCTION

"Workers' Compensation" is a comprehensive term used to refer to those statutes which provide for fixed awards to employees or their dependents in cases of employment related accidents and diseases. These awards are granted without the proof of negligence which is required in traditional tort actions. Workers' compensation laws are intended to benefit both the employer and the employee. This goal is accomplished by providing employers with a liability which is both limited and determinate, and by providing employees with a remedy without the need for proof of fault.

Florida's Workers' Compensation Law is embodied in Chapter 440, Florida Statutes.

Workers' compensation is a branch of law, unknown at common law, and entirely statutory in origin. The onset of industrialization and the inability of traditional common law liability rules to efficiently resolve legal disputes arising out of work-related injuries served as the catalyst for the proliferation of workers' compensation statutes. These statutes initially created a no-fault system based upon a trade-off between the employer and the employee whereby the employee relinquishes the right to sue for common law damages in return for the employer assuming
absolute liability for work-related accidents.¹ The employer purchases workers' compensation insurance to cover its potential liability and passes the cost of the insurance to the consumer in the price of its product. The amount of the recovery is statutorily determined as is the employee's exclusive remedy against the employer. Unfortunately, the workers' compensation recoveries have failed to keep pace with increasingly large common law recoveries, thereby providing injured parties with an incentive to attempt to avoid the exclusivity provisions.² The primary methods used to avoid the exclusivity of the statutory remedy are co-employee suits and suits against the workers' compensation insurance carrier. Co-employee law suits within the state of Florida are the subject of this report.
II. EXECUTIVE SUMMARY

Prior to 1978, a Florida employee was not barred by a workers' compensation recovery from bringing suit against a co-employee for tortious negligence.3

On July 1, 1978, s. 440.11, F.S., was amended to extend employer immunity under workers' compensation to employees when such employees are "acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter."4 (See Appendix A) This immunity is limited by the statute to employees who are not acting "with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death." The change to s. 440.11, F.S., had the effect of limiting co-employee liability to instances where gross negligence arises from intentional tortious conduct.5 Employers have continued to enjoy immunity even in the event of such gross negligence.6

Prior to 1987, a "co-employee" was not defined either statutorily or by case law. The Florida Supreme Court decision of Streeter v. Sullivan and Stanlick v. Kaplin, 509 So.2d 268 (Fla. 1987), was the case of first impression to hold that a co-employee could be a fellow employee,
supervisor, or officer of the corporation in which the employee was employed. (See Appendix B)

In a typical Workers' Compensation and Employer's Liability Insurance Policy, there are two parts to the policy. The first part, which is often called part A, contains the workers' compensation insurance coverage, general provisions and exclusions. The second part, which is usually labeled part B, contains the employer's liability insurance coverage, general provisions and exclusions. This case may have expanded the possible exposure that arises under part B of a Workers' Compensation and Employer's Liability insurance policy. (See Appendix C) It also may have significantly expanded the exposure of a business' General Liability Insurance Policy. However, the real problem the insurance industry and employers face, may be the duty to defend Streeter-type cases.
III. **THE SIGNIFICANCE OF THE STREETER DECISION**

When the Supreme Court of Florida recently addressed the issue of co-employee liability in Streeter, the Court considered whether co-employees who injured co-workers through their grossly negligent behavior may be held personally liable regardless of a workers' compensation award. The Court found that Florida's Workers' Compensation Law "unambiguously imposes liability on all employees for their gross negligence which results in death or injury to their fellow employees. This imposition of liability is blind to corporate status. Nowhere does s. 440.11(1), F.S., impose upon an injured employee a requirement to show that the fellow employee has committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe place to work."8

The significance of Streeter arises out of the statutory definition of "employee" under s. 440.02(11), F.S. Employees are statutorily defined, inter alia, as "any person who is an officer of a corporation." (See Appendix D) Therefore, the Florida Supreme Court, after considering the statutory definition of "employee" and the statutory liability of co-employees for grossly negligent behavior, held that corporate officers may be held liable as fellow
employees for acts of gross negligence or willful and wanton disregard for plaintiffs' safety. Gross negligence is constituted by the failure of the corporate officer to provide a reasonably safe place to work.\(^9\)

The *Streeter* decision was followed by a case from the Third District Court of Appeal, *Laderman v. Mester*.\(^{10}\) The District Court held that whether co-employees and supervisors are grossly negligent and do not enjoy workers' compensation immunity from liability is a question of fact precluding summary judgment.\(^{11}\) It was alleged in the *Laderman* case, that the employee had been ordered by his co-employees and supervisors, to perform his work in the presence of an unreasonably dangerous and hazardous condition. The District Court remanded the case to the trial court to decide whether a foreign material left on the warehouse floor constituted willful and wanton disregard for the employee's safety. If the trial court decides that the co-employees and supervisors committed a willful and wanton act, then the workers' compensation immunity from liability will no longer preclude a tort claim against the co-employees and supervisors.

The Second District Court of Appeal in the recent decision of *Raulerson v. Roehr*, addressed the supervisor/officer liability scenario.\(^{12}\) The Second District held that the employee was not entitled to maintain a separate negligence action because there was not
sufficient evidence that the supervisors/officers were guilty of affirmative acts of negligence that went beyond the failure to perform the employer's nondelegable duty to provide the employee with a safe place to work.\textsuperscript{13}

Interestingly, the Court found that the "something extra" needed to illustrate that the supervisors/officers had committed gross negligence was missing in the case.\textsuperscript{14}

In summary, the Streeter decision imposes liability upon officers of a corporation who do not ensure that employees have a reasonably safe place to work. An employee in such a situation is not bound by the exclusivity of the workers' compensation remedy and may bring suit against a corporate officer or supervisor alleging gross negligence on the part of a co-employee.
IV. PRECEDENTS FOR THE STREETER DECISION

The Streeter decision is not totally without precedent. In 1976, the Second District Court of Appeal held in West v. Jessop, that an injured employee could sue a corporate officer who negligently injured her through an affirmative act.\(^{15}\) In addition, several other jurisdictions, including Alabama, Maryland, Wisconsin, and Wyoming have case law dealing with the issue of permitting suits by employees against corporate officers.\(^{16}\)

Courts of other jurisdictions have used varying approaches to resolve the issue of corporate officer amenability to suit. One approach used in co-employee negligence actions is derived from the common law concept of vice-principals. Any employee responsible for discharging one or more of the common law duties of his employer is classified as a "vice-principal" and, as such, owes a personal duty of care to his co-employee. The negligent failure of supervising personnel to provide a safe place to work resulted in supervisor liability under this vice-principal approach.\(^{17}\)

The Supreme Court of Wisconsin adopted a more widely utilized approach which allowed injured employees to sue supervising personnel under the third-party provision of the Wisconsin Workmen's Compensation Act. For recovery to occur...
under the Wisconsin approach, the corporate officer or supervising employee, must have breached a duty of care that he personally owed to the injured employee. In addition, the injury must have resulted from an affirmative act of negligence and an act for which the corporate employer bears no responsibility. Because common law nondelegable duties (such as providing a safe workplace and safe equipment) are the exclusive province of the employer, a supervisor is not subject to liability for breaching a nondelegable duty owed by the corporate employer to the injured employee.

The Wisconsin approach is based upon the premise that the liability of a corporate officer must ensue from acts performed as a co-employee, rather than from acts performed by an individual in his corporate capacity. Therefore, the Wisconsin approach distinguishes between nondelegable duties, which are owed by the employer, and personal duties owed by the individual supervisors or corporate officers. An employee who is injured by the breach of a nondelegable duty takes his remedy solely from the compensation mandated by the act. In comparison, an employee injured by the breach of a personal duty may receive compensation under the act while also electing to proceed against the supervisory co-employee for damages.18

In 1984, the Maryland Supreme Court was presented with a situation similar to that of the Florida Supreme Court in Streeter. The Maryland Supreme Court in Athas v.
Hill, decided whether to allow a plaintiff to bring suit against supervising co-employees for negligently failing to provide a safe place to work.¹⁹ Despite the court's conclusions that the term "co-employees" includes supervisors and that provisions of the act permit co-employee actions, the claim in Athas was disallowed. The court held that under the common law of Maryland, employers cannot delegate to their supervisory personnel the duties to provide a safe workplace. Therefore, the court applied the Wisconsin approach and determined that the supervisors in Athas did not breach a personal duty of care owed to the plaintiff.

The Athas decision left Maryland aligned with the minority of jurisdictions which allow co-employee actions, however, the holding limits the class of potential co-employee defendants by excluding supervisors and corporate officers who discharge their employees' nondelegable duties from the reach of co-employee suits. As a result of Athas, corporate officers and supervisors in Maryland are accessible to co-employee suits only for the violation of a personal duty of care which is owed to another employee.

The Maryland Supreme Court in Athas recognized that permitting corporate officers and supervisors to be held liable for failure to maintain a safe workplace would hinder efficient business management. A holding, which rendered supervisors and corporate officers liable for breach of
their employers common law duties, would likely force employers to provide liability insurance to such employees in order to maintain an efficient level of operation and assure them that they would not risk unlimited liability merely by performing certain types of supervisory chores. Such a provision of indemnification would impose substantial additional costs upon employers, would tend to discourage large business and industrial concerns from expanding or relocating in the state, and would emasculate the employer immunity provisions of the act.
V. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

In allowing corporate officers to be held liable for failure to maintain a safe workplace, the Florida Supreme Court in Streeter has created a situation which the Maryland Supreme Court sought to avoid in Athas. The potential for corporate officer liability will serve to increase employer costs as well as possibly making Florida a less attractive location for business ventures to incorporate or relocate. The Streeter decision also conflicts with one objective of workers' compensation statutes; that objective being that an employer's liability be both limited and determinate.

Corporate officers, acting on behalf of an employee, are not subject to liability for violating their employer's duty to maintain a safe workplace. The purpose of workers' compensation statutes has been to hold employers, not corporate officers, liable for breach of this duty.

Given the Florida Supreme Court's decision in Streeter, legislative action would be required to provide corporate officers or supervisors with some type of immunity from similar suits in the future. Early indicators show, through cases filed and claims made against insurers, that if no legislative change is adopted, businesses will be forced to defend more lawsuits by employees alleging gross negligence of their supervisors or officers of the business.
Defending lawsuits like *Streeter* will cause further increased costs within the workers' compensation system.

In conclusion, if the *Streeter* decision is allowed to endure, there will exist a certain unfairness among different types of employers (corporations, partnerships and sole proprietors). Under the workers' compensation system, all employers are excluded from liability if they commit any type of negligence. Thus, in a sole proprietorship (an employer-officer-owner-sole proprietor), the employer is excluded from tort liability. However, in a corporation-type setting (employer-corporation, officer-employee), the employer is excluded from tort liability but due to the *Streeter* decision the officer-employee is amenable to tort liability. This unbalanced dichotomy may necessitate legislative action.
VI. ENDNOTES

1. Florida's was initially adopted in 1935.

2. "Exclusivity" of the remedy refers to the characteristic of workers' compensation statutes which limits an employee's recovery from an employer to the amount specified by the workers' compensation statute.


5. See Chorak v. Naughton, 409 So.2d 35 (Fla. 2d DCA 1982).


8. Id. at 270.

9. The facts and history of Streeter are as follows:

Suzanne Sullivan was employed as a branch manager of the Davie branch of Atlantic Federal Savings and Loan (Atlantic). In 1981, Atlantic, through its officers, Streeter and Melcher, made the economic decision to remove the armed guard from the Davie branch, despite persistent requests from the employees of that branch to maintain a guard. The Davie branch was robbed once in the fall of 1981 and again in June of 1982. Throughout this period the Davie branch employees stepped up their requests to Streeter and Melcher to reassign the armed guard to the branch.

During the June 1982 robbery, the perpetrator threatened Suzanne Sullivan's life. In July of 1982 the same man returned to the Davie branch and killed Suzanne Sullivan.

Mark Sullivan, Suzanne's husband, brought suit against Atlantic, as well as Streeter and Melcher, alleging that the defendants had acted with gross negligence in failing to provide adequate security
and that this failure proximately caused Suzanne's death. The trial court granted all defendant's motions for summary judgment and Sullivan appealed. The Fourth District affirmed the summary judgment as to Atlantic, but reversed as to Streeter and Melcher, holding that s. 440.11(1), F.S., expressly imposes liability upon grossly negligent employees. The court stated that corporate officers are "employees" under the statute and certified the question to the Supreme Court.

The facts and history of Stanlick are as follows:

Stanlick, a truck driver for Kaplan Industries, was injured when he fell asleep while driving Kaplan's truck. Stanlick brought an action against Kaplan Industries and Donald and John Kaplan, officers of the corporation, individually. Stanlick alleged that the Kaplans required him to work excessively long hours in violation of federal law and that the Kaplans required Stanlick to falsify his driving records in order to evade detection by federal authorities. He thus alleged that the Kaplans were guilty of willful and wanton misconduct resulting in foreseeable injury to Stanlick.

The trial court granted Kaplan Industries' motion to dismiss, but denied the Kaplan brothers' similar motion. The Kaplans' petitioned the Second District for a writ of prohibition of the ground that the trial court lacked jurisdiction to hear Stanlick's complaint. The court granted the writ, holding that corporate officers are not employees; rather they are employers entitled to the immunity under s. 440.11(1), F.S. The court certified that its decision was in express conflict with Streeter.

10. 510 So.2d 630, (Fla. 3d DCA 1987).

11. Corporate officers and supervisors, as well as other co-employees, enjoy immunity from suit under s. 440.11, F.S., when they injure a fellow employee while acting in furtherance of the employer's business. This immunity is limited to acts which do not constitute gross negligence as intentional tortious conduct.

12. 511 So.2d 1027 (Fla. 2d DCA 1987).

13. Id. at 1030.

14. Id.
15. 339 So.2d 1136 (Fla. 2d DCA 1976).

16. Discussions of these states' experiences with co-employee lawsuits against corporate officers may be found in the following Law Review Articles:


18. An example of this concept may be helpful: The provision of a safe workplace is a nondelegable duty owed by the employer to the employee. If this duty is breached (workplace is not safe for any reason), then the employee may only recover workers' compensation benefits from the employer. If a corporate officer co-employee affirmatively harms the injured worker, then the worker may recover from the corporate officer as well.

VII. APPENDICES

A. Section 440.11, Florida Statutes
B. The Streeter v. Sullivan Decision
C. Basic Workers' Compensation and Employer's Liability Insurance Policy
D. Section 440.02(11), Florida Statutes
Appendix A

Section 440.11, Florida Statutes
440.11 Exclusiveness of liability.--

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment.

(2) An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract. The exclusion from liability under this subsection shall not apply in any case in which injury or death is proximately caused by the willful and unprovoked physical aggression, or by the negligent operation of a motor vehicle, by employees, officers, or directors of the employer's workers' compensation carrier, service agent, or safety consultant.

(3) Notwithstanding the provisions of s. 624.155, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in

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APPENDIX A
this chapter, which shall be exclusive and in place of all other liability.

History.--s. 11, ch. 17481, 1935; CGL 1936 Supp. 5966(11); s. 1, ch. 70-25; s. 1, ch. 71-190; s. 4, ch. 75-209; ss. 2, 23, ch. 78-300; ss. 6, 124, ch. 79-40; s. 21, ch. 79-312; s. 3, ch. 83-305.
Appendix B

The Streeter v. Sullivan Decision
Donald STREETER and Edward E. Melcher, Petitioners.

v.

Michael SULLIVAN, individually and as personal representative of the Estate of Suzanne Sullivan, his deceased wife, Respondent.


v.

Donald KAPLAN and John Kaplan, Respondents.

Nos. 68697, 69559.

Supreme Court of Florida.


Rehearing Denied July 30, 1987

Husband of branch manager of savings and loan killed during armed robbery brought action against president and chairman of board and senior vice-president of deceased wife's employer. The Circuit Court, Broward County, Bobby W. Gunther, J., granted summary judgment for defendants, and husband appealed. The District Court of Appeal, 485 So.2d 893, Richard Yale Feder, Associate Judge, held that suit against executives of employer corporation for gross negligence was not barred by statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death. An injured truck driver brought action against directors and officers of corporation to recover for injuries sustained in his job, and officers and directors sought writ of prohibition, after trial court denied motion to dismiss. The District Court of Appeal, 495 So 2d 231, held that the employee immunity statute did not remove immunity of corporate officers, who were not employees, but rather, were employers. On certified question and certification of express conflict between decisions by District Courts of Appeal, the Supreme Court, Kogan, J., held that: (1) employee immunity statute included corporate officers within scope of term "employee," even though corporate officers were performing employer's nondelegable duty to maintain safe work place, and (2) employee immunity statute exception from immunity did not apply only to nonsupervisory employees with whom injured person worked on every day basis, but rather, authorized actions against all employees for acts of gross negligence resulting in injury to coemployees.

Decision in first case approved, decision in second case quashed, and case remanded to district court.

Overton, J., filed dissenting opinion with which McDonald, C.J., concurred.

1. Workers' Compensation

Statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death included corporate officers within term "employee," so as to make corporate officials liable in the excepted situations, even when corporate officers were performing employer's nondelegable duty to maintain safe work place. West's F.S.A. §§ 440.02, 440.11(1).

See publication Words and Phrases for other judicial constructions and definitions.

2. Statutes

Inquiry into legislative intent for purposes of interpreting statute may begin only where statute is ambiguous on its face.

3. Workers' Compensation

Statute giving employees immunity in workers' compensation situations unless employee acted with respect to coemployee with willful and wanton disregard, unprovoked physical aggression, or gross negligence that resulted in injury or death did not except from immunity only nonsupervisory employees with whom injured person...
worked on every day basis, but rather, authorized actions against all employees for acts of gross negligence resulting in injury to coemployees. West's F.S.A. § 440.11(1).

Rex Conrad and Valerie Shea of Conrad, Scherer & James, Fort Lauderdale, for Donald Streeter and Edward E. Melcher.

Joel S. Perwin of Podhurst, Orseck, Parks, Jowefsb erg, Eaton, Meadow & Olin, P.A., Miami and the Law Offices of Wagner, Cunningham, Vaughan & Mclaughlin, Tampa, for Scott Randall Stanlick et al


Steven D. Merryday, Michael A. Fogarty and Joseph H. Varner, III of Glenn, Rasmussen, Fogarty, Merryday & Russo, Tampa, for Donald Kaplan and John Kaplan.

Leslie King O'Neal and Larry P. Studer of Markel, McDonough & O'Neal, Orlando, for Florida Defense Lawyers Ass'n, amicus curiae.

Alan E. McMichael of Stripling & Den son, Gainesville and C. Rufus Pennington, III of Margol, Freyfield & Pennington, Jacksonville, for The Academy of Florida Trial Lawyers, amicus curiae.

KOGAN, Justice.

The Fourth District Court of Appeal has certified the following question as being one of great public importance:

DOES SECTION 440.11(1), FLORIDA STATUTES (1983) PERMIT SUITS AGAINST CORPORATE EMPLOYER OFFICERS, EXECUTIVES, AND SUPERVISORS AS "EMPLOYEES" FOR ACTS OF GROSS NEGLIGENCE IN FAILING TO PROVIDE A REASONABLY SAFE PLACE IN WHICH OTHER EMPLOYEES MAY WORK?

Sullivan v. Streeter, 485 So.2d 893, 896 (Fla. 4th DCA 1986). The Second District Court of Appeal, in Kaplan v. Circuit Court of the Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986), certified express conflict between that court's decision and the Fourth District's decision in Sullivan. This Court has jurisdiction pursuant to article V, sections 3(b)(3), (4) of the Florida Constitution. We answer the certified question in the affirmative, and accordingly approve the decision of the Fourth District and quash the decision of the Second District and remand that case for further proceedings consistent with this opinion.

Streeter

Suzanne Sullivan was employed as a branch manager of the Davie branch of Atlantic Federal Savings and Loan (Atlantic). In 1981 Atlantic, through Streeter and Melcher, made the economic decision to remove the armed guard from the Davie branch, despite persistent requests from the employees of that branch to maintain the guard. The Davie branch was robbed once in the fall of 1981 and again in June of 1982. Throughout this period the Davie branch employees stepped up their requests to Streeter and Melcher to reassign the armed guard to the branch.

During the June, 1982 robbery, the perpetrator threatened Suzanne Sullivan's life. In July of 1982 the same man returned to the Davie branch and killed Suzanne Sullivan.

Mark Sullivan, Suzanne's husband, brought suit against Atlantic, as well as Streeter and Melcher, alleging that the defendants had acted with gross negligence in failing to provide adequate security, and that this failure proximately caused Suzanne's death. The trial court granted all defendant's motions for summary judgment and Sullivan appealed. The Fourth District affirmed the summary judgment as to Atlantic, but reversed as to Streeter and Melcher, holding that section 440.11(1) expressly imposes liability upon grossly negligent employees. The court stated that corporate officers are "employees" under the statute, and certified the above-styled question to this Court.

Stanlick

Stanlick, a truck driver for Kaplan Industries, was injured when he fell asleep while...
driving Kaplan's truck. Stanlick brought an action against Kaplan Industries, and Donald and John Kaplan, individually. Stanlick alleged that the Kaplans required him to work excessively long hours in violation of federal law and that the Kaplans required Stanlick to falsify his driving records in order to evade detection by federal authorities. He thus alleged that the Kaplans were guilty of willful and wanton misconduct resulting in foreseeable injury to Stanlick.

The trial court granted Kaplan Industries' motion to dismiss, but denied the Kaplan brothers' similar motion. The Kaplans petitioned the Second District for a writ of prohibition on the ground that the trial court lacked jurisdiction to hear Stanlick's complaint. The court granted the writ, holding that corporate officers are not employees; rather they are employers entitled to the immunity under section 440.11(1). The court certified that its decision was in express conflict with Sullivan.1

The liability or immunity of all defendants rests upon our interpretation of section 440.11(1), Florida Statutes (1981).2 That statute grants immunity to employers and employees for simple negligence but imposes liability on employees who act with gross negligence with respect to their fellow employees. The statute reads:

Such fellow employee immunities shall not be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment (emphasis added).

We believe the emphasized portion of the statute to be an unambiguous statement of the legislature's desire to impose liability on all employees who act with gross negligence with respect to their fellow employees, regardless of the grossly negligent employee's corporate status.

[1] The defendants request this Court to define the term "employee," for the purposes of this statute, to exclude corporate officers who are performing the employer's nondelegable duty to maintain a safe workplace. In defining the term "employee," as used in section 440.11(1), we turn to the definitional section of the Worker's Compensation Act, section 440.02. That statute reads, in pertinent part:

When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

The defendants argue that a distinction be drawn between classes of employees. In support of their arguments, defendants rely primarily on their interpretation of the legislative intent behind the statute, as well as case law having roots that extend to a

1. Streeter, Melcher (petitioners herein), and the Kaplans (respondents herein) will be referred to in this opinion as the defendants. Sullivan (respondent herein) and Stanlick (petitioner herein) will be referred to as the plaintiffs.

2. While the Fourth District referred to the 1983 version of Florida Statutes in its certified question, we will be referring to Florida Statutes, 1981, because at the time the action arose, the 1983 version was not yet in effect. The two versions are identical.
The first argument espoused by the defendants is that in order to be liable to a fellow employee, a corporate officer must have committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe workplace. Kaplan v. Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986), West v. Jessop, 339 So.2d 1136 (Fla. 2d DCA 1976). Defendants argue that if any affirmative acts were committed in either of these cases they did not go beyond the employer's nondelegable duty to provide a safe place to work. On this basis, the defendants contend that for purposes of providing a safe workplace, the corporate officer is not an employee, but rather an "alter-ego" of the employer, deserving the benefits of the employer's immunity. See Zurich Insurance Co. v. Scofi, 366 So.2d 1193 (Fla. 2d DCA), cert. denied, 378 So.2d 348 (Fla. 1979). To support these contentions, defendants rely on what they perceive is the legislative intent behind the statute.

[2] Inquiry into legislative intent may begin only where the statute is ambiguous on its face. See State v. Egan, 287 So.2d 1, 4 (Fla.1973). Were these provisions even slightly ambiguous, an examination of legislative history and statutory construction principles would be necessary. We believe, however, that the plain language of sections 440.01 and 440.11(1) precludes any further explanation of legislative intent. These statutes unambiguously impose liability on all employees for their gross negligence resulting in death or injury to their fellow employees. This imposition of liability is blind to corporate status. Nowhere does section 440.11(1) impose upon injured employees a requirement to show that the fellow employee has committed some affirmative act going beyond the scope of the employer's nondelegable duty to provide a safe place to work. We are not inclined to read such a requirement into the statute when it is plainly not there.

The affirmative act doctrine has its roots in cases interpreting section 440.11(1) before it was amended in 1978. Those cases did not have the benefit of the legislature's statement expressly imposing liability on grossly negligent employees who injure other employees. The basis of those opinions was legislatively abrogated by section 440.11(1). Thus, to the extent that those cases conflict with this opinion (as well as section 440.11(1), as amended), we disapprove of them.

[3] Because of the unambiguous language used in the statute we will not here attempt to define any further legislative intent. The first rule of statutory interpretation is that "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157, 159 (Fla.1931). Accord, State v. Egan, 287 So.2d 1 (Fla.1973). To attempt to discern the legislative intent when the language is so plain would be both unnecessary and futile. The statute herein serves as ample evidence of what the legislature intended.

3. See note 4, infra.

4. It has no roots in the common law, where a corporate officer was without doubt liable for gross negligence, and perhaps even simple negligence. See Frantz v. McBee Co., 77 So.2d 796 (Fla.1955).

5. See, e.g., Desert v Electric Mutual Liability Ins. Co., 392 So.2d 340 (Fla. 5th DCA), rev. denied, 399 So.2d 1141 (Fla.1981); Zurich Ins Co. v Scofi, 366 So.2d 1193 (Fla. 2d DCA), cert. denied, 378 So.2d 348 (Fla.1979), West v. Jessop, 339 So.2d 1136 (Fla. 2d DCA 1976). While some of the cases were decided after the 1978 amendment to sect. 440.11(1), their decisions are based on the affirmative act doctrine which was conceived prior to that amendment.

6. Even were this Court to indulge itself with an examination of the legislative history of section 440.11(1) we would have considerable difficulty. As the defendants admit, there are no extrinsic statements of legislative intent with regard to the imposition of liability on employees who, through their gross negligence, injure another employee. Streeter's Brief on the Merits at 20.
The 1978 amendment to section 440.11(1) authorizes actions against all fellow employees for acts of gross negligence resulting in injury to other employees. To separate corporate officers from this rule requires a highly convoluted and logistically suspect construction of the statute. The defendants, at oral argument, contended that the term "fellow employee" is a term of art, applying solely to employees with whom the injured person work on an every day basis. Therefore, the defendants contend, the term "fellow employee" could only refer to nonsupervisory employees. We are equally disinclined to follow this line of reasoning. Again, we must stress that the plain language of section 440.11(1) fully precludes any such interpretation. By "fellow employees," the statute clearly is intended to include all employees, not just nonsupervisory employees.

The legislature has expressed the policy of this state to impose liability upon those employees who injure a co-employee by their grossly negligent behavior. This policy was plainly and unambiguously stated in section 440.11(1), and we are bound by it. We are further bound by the statutory definition of the term "employee," which includes with equal clarity corporate officers and supervisors. The context of section 440.11(1) does not clearly require any other definition of employee. As such, the statutory definition is controlling. It would be inappropriate for this Court to read any more into section 440.11(1) than what is plainly there.

Accordingly, we answer the certified question in the affirmative and approve the decision of the Fourth District Court of Appeal. Furthermore, we quash the decision of the Second District Court of Appeal, and remand that case back to the district court for proceedings consistent with this opinion.

It is so ordered.
Appendix C

Basic Workers' Compensation and Employer's Liability Insurance Policy
WORLDS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership’s employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen’s compensation law and occupational disease law of each state or territory named in item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in items 1 or 4 of the Information Page; and it covers all other workplaces in item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE – WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.

2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee’s last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;

3. litigation costs taxed against you;

4. interest on a judgment as required by law until we offer the amount due under this insurance; and

5. expenses we incur.
E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct.
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation, or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law:

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law. Subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in item 3 A of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.
B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This Insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of the discharge of, coercion of, or discrimination against any employee in violation of law.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in item 3.B of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.
A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

PART THREE – OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.

2. If you begin work in any one of those states and are not insured or are not self-insured for such work, the policy will apply as though that state were listed in Item 3.A. of the Information Page.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR – YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.

2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.

3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.

5. Do nothing after an injury occurs that would interfere with our right to recover from others.

6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE – PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work
classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise.

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX – CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.
C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in item 1 of the Information Page will be sufficient to prove notice.

3. The policy period will end on the day and hour stated in the cancelation notice.

4. Any of these provisions that conflicts with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with that law.

E. Sole Representative

The insured first named in item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.
Appendix D

Section 440.02(11), Florida Statutes
440.02 Definitions.--When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(11)(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed.

(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. However, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of the election with the division as provided in s. 440.05. Services shall be presumed to have been rendered the corporation in cases when such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

(d) "Employee" does not include:

1. An independent contractor, including:
   a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission; and
   b. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, provided a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment.

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

3. A volunteer, except a volunteer worker for the state or a county, city, or other governmental entity. Notwithstanding the provisions of s. 440.26, 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, in the event that 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.
   b. Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter.