



247306

LEGISLATIVE ACTION

Senate

House

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03/08/2012 07:17 PM

Senator Smith moved the following:

1 **Senate Substitute for Amendment (335992) (with title**
2 **amendment)**

3
4 Delete lines 18 - 181

5 and insert:

6 Section 1. Effective January 1, 2013, subsection (9) of
7 section 440.02, Florida Statutes, is amended to read:

8 440.02 Definitions.—When used in this chapter, unless the
9 context clearly requires otherwise, the following terms shall
10 have the following meanings:

11 (9) "Corporate officer" or "officer of a corporation" means
12 any person who fills an office provided for in the corporate
13 charter or articles of incorporation filed with the Division of



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14 Corporations of the Department of State or as permitted or
15 required by chapter 607. ~~As to persons engaged in the~~
16 ~~construction industry,~~ The term "officer of a corporation"
17 includes a member owning at least 10 percent of a limited
18 liability company created and approved under chapter 608.

19 Section 2. Paragraph (b) of subsection (15) of section
20 440.02, Florida Statutes, is amended to read:

21 440.02 Definitions.—When used in this chapter, unless the
22 context clearly requires otherwise, the following terms shall
23 have the following meanings:

24 (15)

25 (b) "Employee" includes any person who is an officer of a
26 corporation and who performs services for remuneration for such
27 corporation within this state, whether or not such services are
28 continuous.

29 1. Any officer of a corporation may elect to be exempt from
30 this chapter by filing ~~written~~ notice of the election with the
31 department as provided in s. 440.05.

32 2. As to officers of a corporation who are engaged in the
33 construction industry, no more than three officers of a
34 corporation or of any group of affiliated corporations may elect
35 to be exempt from this chapter by filing a ~~written~~ notice of the
36 election with the department as provided in s. 440.05. Officers
37 must be shareholders, each owning at least 10 percent of the
38 stock of such corporation and listed as an officer of such
39 corporation with the Division of Corporations of the Department
40 of State, in order to elect exemptions under this chapter. For
41 purposes of this subparagraph, the term "affiliated" means and
42 includes one or more corporations or entities, any one of which



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43 is a corporation engaged in the construction industry, under the
44 same or substantially the same control of a group of business
45 entities which are connected or associated so that one entity
46 controls or has the power to control each of the other business
47 entities. The term "affiliated" includes, but is not limited to,
48 the officers, directors, executives, shareholders active in
49 management, employees, and agents of the affiliated corporation.
50 The ownership by one business entity of a controlling interest
51 in another business entity or a pooling of equipment or income
52 among business entities shall be prima facie evidence that one
53 business is affiliated with the other.

54 3. An officer of a corporation who elects to be exempt from
55 this chapter by filing a ~~written~~ notice of the election with the
56 department as provided in s. 440.05 is not an employee.

57
58 Services are presumed to have been rendered to the corporation
59 if the officer is compensated by other than dividends upon
60 shares of stock of the corporation which the officer owns.

61 Section 3. Subsections (3) and (6) of section 440.05,
62 Florida Statutes, are amended to read:

63 440.05 Election of exemption; revocation of election;
64 notice; certification.-

65 (3) Each officer of a corporation who is engaged in the
66 construction industry and who elects an exemption from this
67 chapter or who, after electing such exemption, revokes that
68 exemption, must submit mail a ~~written~~ notice to such effect to
69 the department on a form prescribed by the department. ~~The~~
70 ~~notice of election to be exempt from the provisions of this~~
71 ~~chapter must be notarized and under oath.~~ The notice of election



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72 to be exempt which is electronically submitted to the department
73 by the officer of a corporation who is allowed to claim an
74 exemption as provided by this chapter must list the name,
75 federal tax identification number, date of birth, Florida driver
76 license number or Florida identification card number ~~social~~
77 ~~security number~~, all certified or registered licenses issued
78 pursuant to chapter 489 held by the person seeking the
79 exemption, ~~a copy of relevant documentation as to employment~~
80 ~~status filed with the Internal Revenue Service as specified by~~
81 ~~the department, a copy of the relevant occupational license in~~
82 ~~the primary jurisdiction of the business, and the registration~~
83 number of the corporation filed with the Division of
84 Corporations of the Department of State, and the percentage of
85 ownership ~~along with a copy of the stock certificate~~ evidencing
86 the required ownership under this chapter. The notice of
87 election to be exempt must identify each corporation that
88 employs the person electing the exemption and must list the
89 social security number or federal tax identification number of
90 each such employer and the additional documentation required by
91 this section. In addition, the notice of election to be exempt
92 must provide that the officer electing an exemption is not
93 entitled to benefits under this chapter, must provide that the
94 election does not exceed exemption limits for officers provided
95 in s. 440.02, and must certify that any employees of the
96 corporation whose officer elects an exemption are covered by
97 workers' compensation insurance. Upon receipt of the notice of
98 the election to be exempt, receipt of all application fees, and
99 a determination by the department that the notice meets the
100 requirements of this subsection, the department shall issue a



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101 certification of the election to the officer, unless the
102 department determines that the information contained in the
103 notice is invalid. The department shall revoke a certificate of
104 election to be exempt from coverage upon a determination by the
105 department that the person does not meet the requirements for
106 exemption or that the information contained in the notice of
107 election to be exempt is invalid. The certificate of election
108 must list the name of the corporation listed in the request for
109 exemption. A new certificate of election must be obtained each
110 time the person is employed by a new or different corporation
111 that is not listed on the certificate of election. A copy of the
112 certificate of election must be sent to each workers'
113 compensation carrier identified in the request for exemption.
114 Upon filing a notice of revocation of election, an officer who
115 is a subcontractor or an officer of a corporate subcontractor
116 must notify her or his contractor. Upon revocation of a
117 certificate of election of exemption by the department, the
118 department shall notify the workers' compensation carriers
119 identified in the request for exemption.

120 (6) A construction industry certificate of election to be
121 exempt which is issued in accordance with this section shall be
122 valid for 2 years after the effective date stated thereon. Both
123 the effective date and the expiration date must be listed on the
124 face of the certificate by the department. The construction
125 industry certificate must expire at midnight, 2 years from its
126 issue date, as noted on the face of the exemption certificate. A
127 construction industry certificate of election to be exempt may
128 be revoked before its expiration by the officer for whom it was
129 issued or by the department for the reasons stated in this



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130 section. At least 60 days before ~~prior to~~ the expiration date of
131 a construction industry certificate of exemption ~~issued after~~
132 ~~December 1, 1998~~, the department shall send notice of the
133 expiration date ~~and an application for renewal~~ to the
134 certificateholder at the address on the certificate or to the e-
135 mail address on file with the department.

136 Section 4. Effective January 1, 2013, subsection (6) of
137 section 440.05, Florida Statutes, as amended by this act, is
138 amended to read:

139 440.05 Election of exemption; revocation of election;
140 notice; certification.-

141 (6) A ~~construction industry~~ certificate of election to be
142 exempt which is issued on or after January 1, 2013, in
143 accordance with this section is ~~shall be~~ valid for 2 years after
144 the effective date stated thereon. Both the effective date and
145 the expiration date must be listed on the face of the
146 certificate by the department. The ~~construction industry~~
147 certificate must expire at midnight, 2 years from its issue
148 date, as noted on the face of the exemption certificate. A
149 ~~construction industry~~ certificate of election to be exempt may
150 be revoked before its expiration by the officer for whom it was
151 issued or by the department for the reasons stated in this
152 section. At least 60 days before the expiration date of a
153 ~~construction industry~~ certificate of exemption, the department
154 shall send notice of the expiration date to the
155 certificateholder at the address on the certificate or to the e-
156 mail address on file with the department.

157 Section 5. Subsection (15) is added to section 440.107,
158 Florida Statutes, to read:



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159 440.107 Department powers to enforce employer compliance
160 with coverage requirements.—

161 (15) A limited liability company that is not engaged in the
162 construction industry and that meets the definition of
163 “employment” at any time between January 1, 2013, and December
164 31, 2013, may not be issued a penalty pursuant to this section
165 for failing to secure the payment of workers’ compensation.

166 Section 6. Section 627.215, Florida Statutes, is amended to
167 read:

168 627.215 Excessive profits for ~~workers’ compensation,~~
169 ~~employer’s liability,~~ commercial property, and commercial
170 casualty insurance prohibited.—

171 (1) (a) Each insurer group writing ~~workers’ compensation and~~
172 ~~employer’s liability insurance as defined in s. 624.605(1)(c),~~
173 commercial property insurance as defined in s. 627.0625,
174 commercial umbrella liability insurance as defined in s.
175 627.0625, or commercial casualty insurance as defined in s.
176 627.0625 shall file with the office before ~~prior to~~ July 1 of
177 each year, on a form prescribed by the commission, the following
178 data for the component types of such insurance as provided in
179 the form:

- 180 1. Calendar-year earned premium.
- 181 2. Accident-year incurred losses and loss adjustment
182 expenses.
- 183 3. The administrative and selling expenses incurred in this
184 state or allocated to this state for the calendar year.
- 185 4. Policyholder dividends applicable to the calendar year.

186
187 This does not ~~Nothing herein is intended to prohibit an insurer~~



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188 from filing on a calendar-year basis.

189 (b) The data filed for the group shall be a consolidation
190 of the data of the individual insurers of the group. However, an
191 insurer may elect to ~~either~~ consolidate commercial umbrella
192 liability insurance data with commercial casualty insurance data
193 or to separately file data for commercial umbrella liability
194 insurance. Each insurer shall elect its method of filing
195 commercial umbrella liability insurance at the time of filing
196 data for accident year 1987 and shall thereafter continue filing
197 under the same method. In the case of commercial umbrella
198 liability insurance data reported separately, a separate
199 excessive profits test shall be applied and the test period
200 shall be 10 years. ~~In the case of workers' compensation and
201 employer's liability insurance, the final report for the test
202 period including accident years 1984, 1985, and 1986 must be
203 filed prior to July 1, 1988. In the case of commercial property
204 and commercial casualty insurance, the final report for the test
205 period including accident years 1987, 1988, and 1989 must be
206 filed prior to July 1, 1991.~~

207 ~~(2) Each insurer group writing workers' compensation and
208 employer's liability insurance shall also file a schedule of
209 Florida loss and loss adjustment experience for each of the 3
210 years previous to the most recent accident year. The incurred
211 losses and loss adjustment expenses shall be valued as of
212 December 31 of the first year following the latest accident year
213 to be reported, developed to an ultimate basis, and at two 12-
214 month intervals thereafter, each developed to an ultimate basis,
215 so that a total of three evaluations will be provided for each
216 accident year. The first year to be so reported shall be~~



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217 ~~accident year 1984, so that the reporting of 3 accident years~~
218 ~~under this revised evaluation will not take place until accident~~
219 ~~years 1985 and 1986 have become available. For reporting~~
220 ~~purposes unrelated to determining excessive profits, the loss~~
221 ~~and loss adjustment experience of each accident year shall~~
222 ~~continue to be reported until each accident year has been~~
223 ~~reported at eight stages of development.~~

224 ~~(2)(3)(a) Each insurer group writing commercial property~~
225 ~~insurance or commercial casualty insurance shall also file a~~
226 ~~schedule of Florida loss and loss adjustment experience for each~~
227 ~~of the 3 years previous to the most recent accident year. The~~
228 ~~incurred losses and loss adjustment expenses shall be valued as~~
229 ~~of December 31 of the first year following the latest accident~~
230 ~~year, developed to an ultimate basis, and at two 12-month~~
231 ~~intervals thereafter, each developed to an ultimate basis, so~~
232 ~~that a total of 3 evaluations will be provided for each accident~~
233 ~~year. The first year to be so reported shall be accident year~~
234 ~~1987, which shall first be reported on or before July 1, 1989,~~
235 ~~and the reporting of 3 accident years will not take place until~~
236 ~~accident years 1988 and 1989 have become available. For medical~~
237 ~~malpractice insurance, the first year to be so reported shall be~~
238 ~~accident year 1990, which shall first be reported on or before~~
239 ~~July 1, 1992, and the reporting of 3 accident years for full~~
240 ~~inclusion of medical malpractice experience in commercial~~
241 ~~casualty insurance will not take place until accident years 1991~~
242 ~~and 1992 become available. Accordingly, no medical malpractice~~
243 ~~insured shall be eligible for refunds or credits until the~~
244 ~~reporting period ending with calendar accident year 1992. For~~
245 ~~reporting purposes unrelated to determining excess profits, the~~



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246 loss and loss adjustment experience of each accident year shall
247 continue to be reported until each accident year has been
248 reported at eight stages of development.

249 (b) Each insurer group writing commercial umbrella
250 liability insurance which elects to file separate data for such
251 insurance shall also file a schedule of Florida loss and loss
252 adjustment experience for each of the 10 years previous to the
253 most recent accident year. The incurred losses and loss
254 adjustment expenses shall be valued as of December 31 of the
255 first year following the latest accident year, developed to an
256 ultimate basis, and at nine 12-month intervals thereafter, each
257 developed to an ultimate basis, so that a total of 10
258 evaluations will be provided for each accident year. ~~The first~~
259 ~~year to be so reported shall be accident year 1987, which shall~~
260 ~~first be reported on or before October 1, 1989, and the~~
261 ~~reporting of 10 accident years will not take place until~~
262 ~~accident year 1996 data is reported.~~

263 (3)~~(4)~~ Each insurer group's underwriting gain or loss for
264 each calendar-accident year shall be computed as follows: The
265 sum of the accident-year incurred losses and loss adjustment
266 expenses as of December 31 of the year, developed to an ultimate
267 basis, plus the administrative and selling expenses incurred in
268 the calendar year, plus policyholder dividends applicable to the
269 calendar year, shall be subtracted from the calendar-year earned
270 premium to determine the underwriting gain or loss.

271 (4)~~(5)~~ For the 3 most recent calendar-accident years for
272 which data is to be filed under this section, the underwriting
273 gain or loss shall be compared to the anticipated underwriting
274 profit, except in the case of separately reported commercial



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275 umbrella liability insurance for which such comparison shall be
276 made for the 10 most recent calendar-accident years.

277 ~~(6) For those insurer groups writing workers' compensation~~
278 ~~and employer's liability insurance during the years 1984, 1985,~~
279 ~~1986, 1987, and 1988, an excessive profit has been realized if~~
280 ~~underwriting gain is greater than the anticipated underwriting~~
281 ~~profit plus 5 percent of earned premiums for the 3 most recent~~
282 ~~calendar years for which data is to be filed under this section.~~
283 ~~Any excess profit of an insurance company offering workers'~~
284 ~~compensation or employer's liability insurance during this~~
285 ~~period of time, shall be returned to policyholders in the form~~
286 ~~of a cash refund or a credit toward future purchase of~~
287 ~~insurance. The excessive amount shall be refunded on a pro rata~~
288 ~~basis in relation to the final compilation year earned premiums~~
289 ~~to the workers' compensation policyholders of record of the~~
290 ~~insurer group on December 31 of the final compilation year.~~

291 (5) ~~(7)~~ (a) Beginning with the July 1, 1991, report for
292 ~~workers' compensation insurance, employer's liability insurance,~~
293 ~~commercial property insurance, and commercial casualty~~
294 ~~insurance, an excessive profit has been realized if the net~~
295 ~~aggregate underwriting gain for all these lines combined is~~
296 ~~greater than the net aggregate anticipated underwriting profit~~
297 ~~for these lines plus 5 percent of earned premiums for the 3 most~~
298 ~~recent calendar years for which data is to be filed under this~~
299 ~~section. For calculation purposes commercial property insurance~~
300 ~~and commercial casualty insurance shall be broken down into~~
301 ~~sublines in order to ascertain the anticipated underwriting~~
302 ~~profit factor versus the actual underwriting gain for the given~~
303 ~~subline.~~



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304 (b) Beginning with the July 1, 1998, report for commercial
305 umbrella liability insurance, if an insurer has elected to file
306 data separately for such insurance, an excessive profit has been
307 realized if the underwriting gain for such insurance is greater
308 than the anticipated underwriting profit for such insurance plus
309 5 percent of earned premiums for the 10 most recent calendar
310 years for which data is to be filed under this section.

311 ~~(6)~~ As used in this section with respect to any 3-year
312 period, or with respect to any 10-year period in the case of
313 commercial umbrella liability insurance, "anticipated
314 underwriting profit" means the sum of the dollar amounts
315 obtained by multiplying, for each rate filing of the insurer
316 group in effect during such period, the earned premiums
317 applicable to such rate filing during such period by the
318 percentage factor included in such rate filing for profit and
319 contingencies, such percentage factor having been determined
320 with due recognition to investment income from funds generated
321 by Florida business, except that the anticipated underwriting
322 profit for the purposes of this section shall be calculated
323 using a profit and contingencies factor that is not less than
324 zero. Separate calculations need not be made for consecutive
325 rate filings containing the same percentage factor for profits
326 and contingencies.

327 ~~(7)~~ If the insurer group has realized an excessive
328 profit, the office shall order a return of the excessive amounts
329 after affording the insurer group an opportunity for hearing and
330 otherwise complying with the requirements of chapter 120. Such
331 excessive amounts shall be refunded in all instances unless the
332 insurer group affirmatively demonstrates to the office that the



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333 refund of the excessive amounts will render a member of the
334 insurer group financially impaired or will render it insolvent
335 under the provisions of the Florida Insurance Code.

336 (8)~~(10)~~ Any excess profit of an insurance company ~~as~~
337 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
338 policyholders in the form of a cash refund or a credit toward
339 the future purchase of insurance. The excessive amount shall be
340 refunded on a pro rata basis in relation to the final
341 compilation year earned premiums to the policyholders of record
342 of the insurer group on December 31 of the final compilation
343 year.

344 (9)~~(11)~~ (a) Cash refunds to policyholders may be rounded to
345 the nearest dollar.

346 (b) Data in required reports to the office may be rounded
347 to the nearest dollar.

348 (c) Rounding, if elected by the insurer, shall be applied
349 consistently.

350 (10)~~(12)~~ (a) Refunds shall be completed in one of the
351 following ways:

352 1. If the insurer group elects to make a cash refund, the
353 refund shall be completed within 60 days after ~~of~~ entry of a
354 final order indicating that excessive profits have been
355 realized.

356 2. If the insurer group elects to make refunds in the form
357 of a credit to renewal policies, such credits shall be applied
358 to policy renewal premium notices which are forwarded to
359 insureds more than 60 calendar days after entry of a final order
360 indicating that excessive profits have been realized. If an
361 insurer group has made this election but an insured thereafter



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362 cancels her or his policy or otherwise allows the policy to
363 terminate, the insurer group shall make a cash refund within ~~not~~
364 ~~later than~~ 60 days after termination of such coverage.

365 (b) Upon completion of the renewal credits or refund
366 payments, the insurer group shall immediately certify to the
367 office that the refunds have been made.

368 (11) ~~(13)~~ Any refund or renewal credit made pursuant to this
369 section shall be treated as a policyholder dividend applicable
370 to the year immediately succeeding the compilation period giving
371 rise to the refund or credit, for purposes of reporting under
372 this section for subsequent years.

373 (12) ~~(14)~~ The application of this law to commercial property
374 and commercial casualty insurance, which includes commercial
375 umbrella liability insurance, ceases on January 1, 1997.

376 Section 7. Subsection (4) of section 628.6017, Florida
377 Statutes, is amended to read:

378 628.6017 Converting assessable mutual insurer.—

379 (4) An assessable mutual insurer becoming a stock insurer
380 or a nonassessable mutual insurer is ~~shall~~ not be subject to s.
381 627.215 or s. 627.351(5) for 5 years following authorization of
382 the conversion by the office. However, the converted stock
383 insurer or nonassessable mutual insurer must ~~shall~~ file all
384 necessary data required by s. 627.215. Such amounts otherwise
385 subject to s. 627.215(8) must ~~627.215(10) shall~~ be maintained as
386 surplus as to policyholders and are not be available for
387 dividends for a ~~period of~~ 5 years.

388 Section 8. The recurring sum of \$193,850 is appropriated
389 from the Workers' Compensation Administrative Trust Fund to the
390 Department of Financial Services and four additional full-time



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391 equivalent positions are authorized for the purpose of
392 implementing the provisions of this act.

393 Section 9. Except as otherwise expressly provided in this
394 act, this act shall take effect July 1, 2012.

395

396 ===== T I T L E A M E N D M E N T =====

397 And the title is amended as follows:

398 Delete lines 2 - 13

399 and insert:

400 An act relating to commercial insurance; amending s.
401 44.02, F.S.; redefining the terms "corporate officer"
402 and "employee" for purposes of workers' compensation;
403 amending s. 440.05, F.S.; revising requirements for
404 submitting a notice of election of exemption; revising
405 duties of the Department of Financial Services
406 relating to the expiration of certificates of
407 exemption; expanding applicability of requirements
408 relating to certificates of exemption; amending s.
409 440.107, F.S.; exempting certain limited liability
410 companies from penalties for failure to secure the
411 payment of workers' compensation; amending s. 627.215,
412 F.S.; removing workers' compensation and employer's
413 liability insurance from those types of insurance that
414 must report and refund excess profits; deleting
415 obsolete provisions; amending s. 628.6017, F.S.;
416 conforming a cross-reference; providing an
417 appropriation to and authorizing additional positions
418 within the Department of Financial Services;