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LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/08/2012 05:14 PM

Senator Smith moved the following:

1 **Senate Substitute for Amendment (917396) (with title**
2 **amendment)**

3
4 Delete lines 18 - 181
5 and insert:

6 Section 1. Effective July 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 ~~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 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 ~~prior to~~ the expiration date of
153 a ~~construction industry~~ certificate of exemption ~~issued after~~
154 ~~December 1, 1998~~, the department shall send notice of the
155 expiration date ~~and an application for renewal~~ to the
156 certificateholder at the address on the certificate or to the e-
157 mail address on file with the department.

158 Section 5. Subsection (15) is added to section 440.107,



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159 Florida Statutes, to read:

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

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

167 Section 6. Except as otherwise expressly provided in this
168 act, this act shall take effect July 1, 2012.

169

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

171 And the title is amended as follows:

172 Delete lines 2 - 13

173 and insert:

174 An act relating to commercial insurance; amending s.
175 440.02, F.S.; redefining the terms “corporate officer”
176 and “employee” for purposes of workers’ compensation;
177 amending s. 440.05, F.S.; revising requirements for
178 submitting a notice of election of exemption; revising
179 duties of the Department of Financial Services
180 relating to the expiration of certificates of
181 exemption; expanding applicability of requirements
182 relating to certificates of exemption; amending s.
183 440.107, F.S.; exempting certain limited liability
184 companies from penalties for failure to secure the
185 payment of workers’ compensation;