



920488

LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/2R	.	Floor: SEN1/C
03/09/2012 11:41 AM	.	03/09/2012 04:08 PM
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Senator Smith moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(9) "Corporate officer" or "officer of a corporation" means  
any person who fills an office provided for in the corporate  
charter or articles of incorporation filed with the Division of  
Corporations of the Department of State or as permitted or



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

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

20 440.02 Definitions.—When used in this chapter, unless the  
21 context clearly requires otherwise, the following terms shall  
22 have the following meanings:

23 (15)

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

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

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



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

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

56  
57 Services are presumed to have been rendered to the corporation  
58 if the officer is compensated by other than dividends upon  
59 shares of stock of the corporation which the officer owns.

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

62 440.05 Election of exemption; revocation of election;  
63 notice; certification.-

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



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



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

119 (6) A construction industry certificate of election to be  
120 exempt which is issued in accordance with this section shall be  
121 valid for 2 years after the effective date stated thereon. Both  
122 the effective date and the expiration date must be listed on the  
123 face of the certificate by the department. The construction  
124 industry certificate must expire at midnight, 2 years from its  
125 issue date, as noted on the face of the exemption certificate. A  
126 construction industry certificate of election to be exempt may  
127 be revoked before its expiration by the officer for whom it was  
128 issued or by the department for the reasons stated in this  
129 section. At least 60 days before ~~prior to~~ the expiration date of



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

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

138 440.05 Election of exemption; revocation of election;  
139 notice; certification.-

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

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

158 440.107 Department powers to enforce employer compliance



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159 with coverage requirements.-

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

165 Section 6. Subsections (7) and (8) of section 624.307,  
166 Florida Statutes, are renumbered as subsections (8) and (9),  
167 respectively, and a new subsection (7) is added to that section,  
168 to read:

169 624.307 General powers; duties.-

170 (7) The office, within existing resources, may expend funds  
171 for the professional development of its employees, including,  
172 but not limited to, professional dues for employees who are  
173 required to be members of professional organizations;  
174 examinations leading to professional designations required for  
175 employment with the office; training courses and examinations  
176 provided through, and to ensure compliance with, the National  
177 Association of Insurance Commissioners; or other training  
178 courses related to the regulation of insurance.

179 Section 7. Section 627.215, Florida Statutes, is amended to  
180 read:

181 627.215 Excessive profits for ~~workers' compensation,~~  
182 ~~employer's liability,~~ commercial property, and commercial  
183 casualty insurance prohibited.-

184 (1) (a) Each insurer group writing ~~workers' compensation and~~  
185 ~~employer's liability insurance as defined in s. 624.605(1)(c),~~  
186 commercial property insurance as defined in s. 627.0625,  
187 commercial umbrella liability insurance as defined in s.



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188 627.0625, or commercial casualty insurance as defined in s.  
189 627.0625 shall file with the office before ~~prior to~~ July 1 of  
190 each year, on a form prescribed by the commission, the following  
191 data for the component types of such insurance as provided in  
192 the form:

- 193 1. Calendar-year earned premium.
- 194 2. Accident-year incurred losses and loss adjustment  
195 expenses.
- 196 3. The administrative and selling expenses incurred in this  
197 state or allocated to this state for the calendar year.
- 198 4. Policyholder dividends applicable to the calendar year.

199  
200 This paragraph does not ~~Nothing herein is intended to~~ prohibit  
201 an insurer from filing on a calendar-year basis.

202 (b) The data filed for the group shall be a consolidation  
203 of the data of the individual insurers of the group. However, an  
204 insurer may elect to ~~either~~ consolidate commercial umbrella  
205 liability insurance data with commercial casualty insurance data  
206 or to separately file data for commercial umbrella liability  
207 insurance. Each insurer shall elect its method of filing  
208 commercial umbrella liability insurance at the time of filing  
209 data for accident year 1987 and shall thereafter continue filing  
210 under the same method. In the case of commercial umbrella  
211 liability insurance data reported separately, a separate  
212 excessive profits test shall be applied and the test period  
213 shall be 10 years. ~~In the case of workers' compensation and  
214 employer's liability insurance, the final report for the test  
215 period including accident years 1984, 1985, and 1986 must be  
216 filed prior to July 1, 1988. In the case of commercial property~~





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217 ~~and commercial casualty insurance, the final report for the test~~  
218 ~~period including accident years 1987, 1988, and 1989 must be~~  
219 ~~filed prior to July 1, 1991.~~

220 ~~(2) Each insurer group writing workers' compensation and~~  
221 ~~employer's liability insurance shall also file a schedule of~~  
222 ~~Florida loss and loss adjustment experience for each of the 3~~  
223 ~~years previous to the most recent accident year. The incurred~~  
224 ~~losses and loss adjustment expenses shall be valued as of~~  
225 ~~December 31 of the first year following the latest accident year~~  
226 ~~to be reported, developed to an ultimate basis, and at two 12-~~  
227 ~~month intervals thereafter, each developed to an ultimate basis,~~  
228 ~~so that a total of three evaluations will be provided for each~~  
229 ~~accident year. The first year to be so reported shall be~~  
230 ~~accident year 1984, so that the reporting of 3 accident years~~  
231 ~~under this revised evaluation will not take place until accident~~  
232 ~~years 1985 and 1986 have become available. For reporting~~  
233 ~~purposes unrelated to determining excessive profits, the loss~~  
234 ~~and loss adjustment experience of each accident year shall~~  
235 ~~continue to be reported until each accident year has been~~  
236 ~~reported at eight stages of development.~~

237 (2)~~(3)~~(a) Each insurer group writing commercial property  
238 insurance or commercial casualty insurance shall also file a  
239 schedule of Florida loss and loss adjustment experience for each  
240 of the 3 years previous to the most recent accident year. The  
241 incurred losses and loss adjustment expenses shall be valued as  
242 of December 31 of the first year following the latest accident  
243 year, developed to an ultimate basis, and at two 12-month  
244 intervals thereafter, each developed to an ultimate basis, so  
245 that a total of 3 evaluations will be provided for each accident



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246 ~~year. The first year to be so reported shall be accident year~~  
247 ~~1987, which shall first be reported on or before July 1, 1989,~~  
248 ~~and the reporting of 3 accident years will not take place until~~  
249 ~~accident years 1988 and 1989 have become available. For medical~~  
250 ~~malpractice insurance, the first year to be so reported shall be~~  
251 ~~accident year 1990, which shall first be reported on or before~~  
252 ~~July 1, 1992, and the reporting of 3 accident years for full~~  
253 ~~inclusion of medical malpractice experience in commercial~~  
254 ~~casualty insurance will not take place until accident years 1991~~  
255 ~~and 1992 become available. Accordingly, no medical malpractice~~  
256 ~~insured shall be eligible for refunds or credits until the~~  
257 ~~reporting period ending with calendar accident year 1992. For~~  
258 reporting purposes unrelated to determining excess profits, the  
259 loss and loss adjustment experience of each accident year shall  
260 continue to be reported until each accident year has been  
261 reported at eight stages of development.

262 (b) Each insurer group writing commercial umbrella  
263 liability insurance which elects to file separate data for such  
264 insurance shall also file a schedule of Florida loss and loss  
265 adjustment experience for each of the 10 years previous to the  
266 most recent accident year. The incurred losses and loss  
267 adjustment expenses shall be valued as of December 31 of the  
268 first year following the latest accident year, developed to an  
269 ultimate basis, and at nine 12-month intervals thereafter, each  
270 developed to an ultimate basis, so that a total of 10  
271 evaluations will be provided for each accident year. ~~The first~~  
272 ~~year to be so reported shall be accident year 1987, which shall~~  
273 ~~first be reported on or before October 1, 1989, and the~~  
274 ~~reporting of 10 accident years will not take place until~~



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275 ~~accident year 1996 data is reported.~~

276       (3)~~(4)~~ Each insurer group's underwriting gain or loss for  
277 each calendar-accident year shall be computed as follows: The  
278 sum of the accident-year incurred losses and loss adjustment  
279 expenses as of December 31 of the year, developed to an ultimate  
280 basis, plus the administrative and selling expenses incurred in  
281 the calendar year, plus policyholder dividends applicable to the  
282 calendar year, shall be subtracted from the calendar-year earned  
283 premium to determine the underwriting gain or loss.

284       (4)~~(5)~~ For the 3 most recent calendar-accident years for  
285 which data is to be filed under this section, the underwriting  
286 gain or loss shall be compared to the anticipated underwriting  
287 profit, except in the case of separately reported commercial  
288 umbrella liability insurance for which such comparison shall be  
289 made for the 10 most recent calendar-accident years.

290       ~~(6) For those insurer groups writing workers' compensation~~  
291 ~~and employer's liability insurance during the years 1984, 1985,~~  
292 ~~1986, 1987, and 1988, an excessive profit has been realized if~~  
293 ~~underwriting gain is greater than the anticipated underwriting~~  
294 ~~profit plus 5 percent of earned premiums for the 3 most recent~~  
295 ~~calendar years for which data is to be filed under this section.~~  
296 ~~Any excess profit of an insurance company offering workers'~~  
297 ~~compensation or employer's liability insurance during this~~  
298 ~~period of time, shall be returned to policyholders in the form~~  
299 ~~of a cash refund or a credit toward future purchase of~~  
300 ~~insurance. The excessive amount shall be refunded on a pro rata~~  
301 ~~basis in relation to the final compilation year earned premiums~~  
302 ~~to the workers' compensation policyholders of record of the~~  
303 ~~insurer group on December 31 of the final compilation year.~~



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304           (5)~~(7)~~ (a) Beginning with the July 1, 1991, report for  
305 ~~workers' compensation insurance, employer's liability insurance,~~  
306 commercial property insurance, and commercial casualty  
307 insurance, an excessive profit has been realized if the net  
308 aggregate underwriting gain for ~~all~~ these lines combined is  
309 greater than the net aggregate anticipated underwriting profit  
310 for these lines plus 5 percent of earned premiums for the 3 most  
311 recent calendar years for which data is to be filed under this  
312 section. For calculation purposes commercial property insurance  
313 and commercial casualty insurance shall be broken down into  
314 sublines in order to ascertain the anticipated underwriting  
315 profit factor versus the actual underwriting gain for the given  
316 subline.

317           (b) Beginning with the July 1, 1998, report for commercial  
318 umbrella liability insurance, if an insurer has elected to file  
319 data separately for such insurance, an excessive profit has been  
320 realized if the underwriting gain for such insurance is greater  
321 than the anticipated underwriting profit for such insurance plus  
322 5 percent of earned premiums for the 10 most recent calendar  
323 years for which data is to be filed under this section.

324           (6)~~(8)~~ As used in this section with respect to any 3-year  
325 period, or with respect to any 10-year period in the case of  
326 commercial umbrella liability insurance, "anticipated  
327 underwriting profit" means the sum of the dollar amounts  
328 obtained by multiplying, for each rate filing of the insurer  
329 group in effect during such period, the earned premiums  
330 applicable to such rate filing during such period by the  
331 percentage factor included in such rate filing for profit and  
332 contingencies, such percentage factor having been determined



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333 with due recognition to investment income from funds generated  
334 by Florida business, except that the anticipated underwriting  
335 profit for the purposes of this section shall be calculated  
336 using a profit and contingencies factor that is not less than  
337 zero. Separate calculations need not be made for consecutive  
338 rate filings containing the same percentage factor for profits  
339 and contingencies.

340 (7)~~(9)~~ If the insurer group has realized an excessive  
341 profit, the office shall order a return of the excessive amounts  
342 after affording the insurer group an opportunity for hearing and  
343 otherwise complying with the requirements of chapter 120. Such  
344 excessive amounts shall be refunded in all instances unless the  
345 insurer group affirmatively demonstrates to the office that the  
346 refund of the excessive amounts will render a member of the  
347 insurer group financially impaired or will render it insolvent  
348 under the provisions of the Florida Insurance Code.

349 (8)~~(10)~~ Any excess profit of an insurance company ~~as~~  
350 ~~determined on July 1, 1991, and thereafter~~ shall be returned to  
351 policyholders in the form of a cash refund or a credit toward  
352 the future purchase of insurance. The excessive amount shall be  
353 refunded on a pro rata basis in relation to the final  
354 compilation year earned premiums to the policyholders of record  
355 of the insurer group on December 31 of the final compilation  
356 year.

357 (9)~~(11)~~(a) Cash refunds to policyholders may be rounded to  
358 the nearest dollar.

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

361 (c) Rounding, if elected by the insurer, shall be applied



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362 consistently.

363 ~~(10)-(12)~~ (a) Refunds shall be completed in one of the  
364 following ways:

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

369 2. If the insurer group elects to make refunds in the form  
370 of a credit to renewal policies, such credits shall be applied  
371 to policy renewal premium notices which are forwarded to  
372 insureds more than 60 calendar days after entry of a final order  
373 indicating that excessive profits have been realized. If an  
374 insurer group has made this election but an insured thereafter  
375 cancels her or his policy or otherwise allows the policy to  
376 terminate, the insurer group shall make a cash refund within ~~not~~  
377 ~~later than~~ 60 days after termination of such coverage.

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

381 ~~(11)-(13)~~ Any refund or renewal credit made pursuant to this  
382 section shall be treated as a policyholder dividend applicable  
383 to the year immediately succeeding the compilation period giving  
384 rise to the refund or credit, for purposes of reporting under  
385 this section for subsequent years.

386 ~~(12)-(14)~~ The application of this law to commercial property  
387 and commercial casualty insurance, which includes commercial  
388 umbrella liability insurance, ceases on January 1, 1997.

389 Section 8. Subsection (8) is added to section 627.4133,  
390 Florida Statutes, to read:



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391           627.4133 Notice of cancellation, nonrenewal, or renewal  
392 premium.—

393           (8) Upon expiration of the policy term, an insurer may  
394 transfer a commercial lines policy to another authorized insurer  
395 that is a member of the same group or owned by the same holding  
396 company as the transferring insurer. The transfer constitutes a  
397 renewal of the policy and may not be treated as a cancellation  
398 or a nonrenewal of the policy. The insurer must provide notice  
399 of its intent to transfer the policy at least 45 days before the  
400 effective date of the transfer along with the financial rating  
401 of the authorized insurer to which the policy is being  
402 transferred. Such notice may be provided in the notice of  
403 renewal premium. This subsection does not apply to a policy  
404 providing residential property insurance coverage, except for  
405 farmowners insurance and commercial general liability policies  
406 providing farm coverage or commercial property policies  
407 providing farm coverage.

408           Section 9. Subsection (2) of section 627.442, Florida  
409 Statutes, is amended to read:

410           627.442 Insurance contracts.—

411           (2) Notwithstanding s. 440.381(3), an insurer having at  
412 least \$200 million in surplus, or an insurer within an insurer  
413 group that has at least \$400 million in surplus, as reflected in  
414 the combined annual statement filed by the insurer group with  
415 the office, is not required to perform physical onsite premium  
416 audits ~~are not required~~ for workers' compensation coverage,  
417 other than an audit required by ~~the insurance policy~~ or an order  
418 of the office, or ~~at least once each policy period,~~ if requested  
419 by the insured.



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420 Section 10. Subsection (4) of section 628.6017, Florida  
421 Statutes, is amended to read:

422 628.6017 Converting assessable mutual insurer.—

423 (4) An assessable mutual insurer becoming a stock insurer  
424 or a nonassessable mutual insurer is ~~shall~~ not ~~be~~ subject to s.  
425 627.215 or s. 627.351(5) for 5 years following authorization of  
426 the conversion by the office. However, the converted stock  
427 insurer or nonassessable mutual insurer must ~~shall~~ file all  
428 necessary data required by s. 627.215. Such amounts otherwise  
429 subject to s. 627.215(8) must ~~627.215(10) shall~~ be maintained as  
430 surplus as to policyholders and are not ~~be~~ available for  
431 dividends for ~~a period of~~ 5 years.

432 Section 11. Except as otherwise expressly provided in this  
433 act, this act shall take effect July 1, 2012.

434

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

436 And the title is amended as follows:

437 Delete everything before the enacting clause  
438 and insert:

439 A bill to be entitled  
440 An act relating to insurance; amending s. 440.02,  
441 F.S.; redefining the terms "corporate officer" and  
442 "employee" for purposes of workers' compensation;  
443 amending s. 440.05, F.S.; revising requirements for  
444 submitting a notice of election of exemption; revising  
445 duties of the Department of Financial Services  
446 relating to the expiration of certificates of  
447 exemption; expanding applicability of requirements  
448 relating to certificates of exemption; amending s.





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449 440.107, F.S.; exempting certain limited liability  
450 companies from penalties for failure to secure the  
451 payment of workers' compensation; amending s. 624.307,  
452 F.S.; authorizing the Office of Insurance Regulation  
453 to expend funds for the professional development of  
454 its employees; amending s. 627.215, F.S.; removing  
455 workers' compensation and employer's liability  
456 insurance from those types of insurance that must  
457 report and refund excess profits; deleting obsolete  
458 provisions; amending s. 627.4133, F.S.; providing that  
459 the transfer of a policy to certain other insurers is  
460 considered a renewal of the policy rather than a  
461 cancellation or nonrenewal; requiring notice of such  
462 transfer; specifying which types of policies such  
463 transfer provisions apply to; amending s. 627.442,  
464 F.S.; exempting certain insurers from performing  
465 onsite premium audits for workers' compensation  
466 insurance; amending s. 628.6017, F.S.; conforming a  
467 cross-reference; providing effective dates.