

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Bernard offered the following:

2
3 **Amendment to Amendment (247306) (with title amendment)**

4 Remove lines 6-392 of the amendment and insert:

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

7 440.02 Definitions.—When used in this chapter, unless the
8 context clearly requires otherwise, the following terms shall
9 have the following meanings:

10 (9) "Corporate officer" or "officer of a corporation"
11 means any person who fills an office provided for in the
12 corporate charter or articles of incorporation filed with the
13 Division of Corporations of the Department of State or as
14 permitted or required by chapter 607. ~~As to persons engaged in~~
15 ~~the construction industry,~~ The term "officer of a corporation"

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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
29 from this chapter by filing ~~written~~ notice of the election with
30 the 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
43 same or substantially the same control of a group of business

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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
54 from this chapter by filing a ~~written~~ notice of the election
55 with the 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
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100 certification of the election to the officer, unless the
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

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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
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.

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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
159 with coverage requirements.—

160 (15) A limited liability company that is not engaged in
161 the construction industry and that meets the definition of
162 "employment" at any time between July 1, 2013, and July 1, 2014,
163 may not be issued a penalty pursuant to this section for failing
164 to secure the payment of workers' compensation.

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

167 627.215 Excessive profits for ~~workers' compensation,~~
168 ~~employer's liability,~~ commercial property, and commercial
169 casualty insurance prohibited.—

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

179 1. Calendar-year earned premium.

180 2. Accident-year incurred losses and loss adjustment
181 expenses.

182 3. The administrative and selling expenses incurred in
183 this state or allocated to this state for the calendar year.

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184 4. Policyholder dividends applicable to the calendar year.

185
186 This does not ~~Nothing herein is intended to~~ prohibit an insurer
187 from filing on a calendar-year basis.

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

206 ~~(2) Each insurer group writing workers' compensation and~~
207 ~~employer's liability insurance shall also file a schedule of~~
208 ~~Florida loss and loss adjustment experience for each of the 3~~
209 ~~years previous to the most recent accident year. The incurred~~
210 ~~losses and loss adjustment expenses shall be valued as of~~
211 ~~December 31 of the first year following the latest accident year~~

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212 ~~to be reported, developed to an ultimate basis, and at two 12-~~
213 ~~month intervals thereafter, each developed to an ultimate basis,~~
214 ~~so that a total of three evaluations will be provided for each~~
215 ~~accident year. The first year to be so reported shall be~~
216 ~~accident year 1984, so that the reporting of 3 accident years~~
217 ~~under this revised evaluation will not take place until accident~~
218 ~~years 1985 and 1986 have become available. For reporting~~
219 ~~purposes unrelated to determining excessive profits, the loss~~
220 ~~and loss adjustment experience of each accident year shall~~
221 ~~continue to be reported until each accident year has been~~
222 ~~reported at eight stages of development.~~

223 (2)~~(3)~~(a) Each insurer group writing commercial property
224 insurance or commercial casualty insurance shall also file a
225 schedule of Florida loss and loss adjustment experience for each
226 of the 3 years previous to the most recent accident year. The
227 incurred losses and loss adjustment expenses shall be valued as
228 of December 31 of the first year following the latest accident
229 year, developed to an ultimate basis, and at two 12-month
230 intervals thereafter, each developed to an ultimate basis, so
231 that a total of 3 evaluations will be provided for each accident
232 year. ~~The first year to be so reported shall be accident year~~
233 ~~1987, which shall first be reported on or before July 1, 1989,~~
234 ~~and the reporting of 3 accident years will not take place until~~
235 ~~accident years 1988 and 1989 have become available. For medical~~
236 ~~malpractice insurance, the first year to be so reported shall be~~
237 ~~accident year 1990, which shall first be reported on or before~~
238 ~~July 1, 1992, and the reporting of 3 accident years for full~~
239 ~~inclusion of medical malpractice experience in commercial~~

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240 ~~casualty insurance will not take place until accident years 1991~~
241 ~~and 1992 become available. Accordingly, no medical malpractice~~
242 ~~insured shall be eligible for refunds or credits until the~~
243 ~~reporting period ending with calendar accident year 1992. For~~
244 reporting purposes unrelated to determining excess profits, the
245 loss and loss adjustment experience of each accident year shall
246 continue to be reported until each accident year has been
247 reported at eight stages of development.

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

262 ~~(3)-(4)~~ Each insurer group's underwriting gain or loss for
263 each calendar-accident year shall be computed as follows: The
264 sum of the accident-year incurred losses and loss adjustment
265 expenses as of December 31 of the year, developed to an ultimate
266 basis, plus the administrative and selling expenses incurred in
267 the calendar year, plus policyholder dividends applicable to the
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268 calendar year, shall be subtracted from the calendar-year earned
269 premium to determine the underwriting gain or loss.

270 ~~(4)-(5)~~ For the 3 most recent calendar-accident years for
271 which data is to be filed under this section, the underwriting
272 gain or loss shall be compared to the anticipated underwriting
273 profit, except in the case of separately reported commercial
274 umbrella liability insurance for which such comparison shall be
275 made for the 10 most recent calendar-accident years.

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

290 ~~(5)-(7)~~(a) Beginning with the July 1, 1991, report for
291 ~~workers' compensation insurance, employer's liability insurance,~~
292 commercial property insurance, and commercial casualty
293 insurance, an excessive profit has been realized if the net
294 aggregate underwriting gain for all these lines combined is
295 greater than the net aggregate anticipated underwriting profit
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296 for these lines plus 5 percent of earned premiums for the 3 most
297 recent calendar years for which data is to be filed under this
298 section. For calculation purposes commercial property insurance
299 and commercial casualty insurance shall be broken down into
300 sublines in order to ascertain the anticipated underwriting
301 profit factor versus the actual underwriting gain for the given
302 subline.

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

310 ~~(6)-(8)~~ As used in this section with respect to any 3-year
311 period, or with respect to any 10-year period in the case of
312 commercial umbrella liability insurance, "anticipated
313 underwriting profit" means the sum of the dollar amounts
314 obtained by multiplying, for each rate filing of the insurer
315 group in effect during such period, the earned premiums
316 applicable to such rate filing during such period by the
317 percentage factor included in such rate filing for profit and
318 contingencies, such percentage factor having been determined
319 with due recognition to investment income from funds generated
320 by Florida business, except that the anticipated underwriting
321 profit for the purposes of this section shall be calculated
322 using a profit and contingencies factor that is not less than
323 zero. Separate calculations need not be made for consecutive

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324 rate filings containing the same percentage factor for profits
325 and contingencies.

326 ~~(7)-(9)~~ If the insurer group has realized an excessive
327 profit, the office shall order a return of the excessive amounts
328 after affording the insurer group an opportunity for hearing and
329 otherwise complying with the requirements of chapter 120. Such
330 excessive amounts shall be refunded in all instances unless the
331 insurer group affirmatively demonstrates to the office that the
332 refund of the excessive amounts will render a member of the
333 insurer group financially impaired or will render it insolvent
334 under the provisions of the Florida Insurance Code.

335 ~~(8)-(10)~~ Any excess profit of an insurance company ~~as~~
336 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
337 policyholders in the form of a cash refund or a credit toward
338 the future purchase of insurance. The excessive amount shall be
339 refunded on a pro rata basis in relation to the final
340 compilation year earned premiums to the policyholders of record
341 of the insurer group on December 31 of the final compilation
342 year.

343 ~~(9)-(11)~~(a) Cash refunds to policyholders may be rounded to
344 the nearest dollar.

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

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

349 ~~(10)-(12)~~(a) Refunds shall be completed in one of the
350 following ways:

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

355 2. If the insurer group elects to make refunds in the form
356 of a credit to renewal policies, such credits shall be applied
357 to policy renewal premium notices which are forwarded to
358 insureds more than 60 calendar days after entry of a final order
359 indicating that excessive profits have been realized. If an
360 insurer group has made this election but an insured thereafter
361 cancels her or his policy or otherwise allows the policy to
362 terminate, the insurer group shall make a cash refund within ~~not~~
363 ~~later than~~ 60 days after termination of such coverage.

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

367 (11) ~~(13)~~ Any refund or renewal credit made pursuant to
368 this section shall be treated as a policyholder dividend
369 applicable to the year immediately succeeding the compilation
370 period giving rise to the refund or credit, for purposes of
371 reporting under this section for subsequent years.

372 (12) ~~(14)~~ The application of this law to commercial
373 property and commercial casualty insurance, which includes
374 commercial umbrella liability insurance, ceases on January 1,
375 1997.

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

378 628.6017 Converting assessable mutual insurer.-

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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.
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389
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391 -----

392 **T I T L E A M E N D M E N T**

393 Remove lines 416-418 of the amendment and insert:
394 conforming a cross-reference;
395