

By Senator Smith

29-00485A-12

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1 A bill to be entitled
2 An act relating to the workers' compensation
3 certificate-of-exemption process; amending s. 440.02,
4 F.S.; redefining the term "employee" for purposes of
5 workers' compensation; amending s. 440.05, F.S.;
6 revising requirements relating to election of
7 exemption from coverage to include applicability to
8 members of limited liability companies; revising
9 requirements for submitting a notice of election of
10 exemption; revising duties of the Department of
11 Financial Services relating to the expiration of
12 certificates of exemption; expanding applicability of
13 requirements relating to certificates of exemption;
14 providing effective dates.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraphs (b) and (c) of subsection (15) of
19 section 440.02, Florida Statutes, are 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

29-00485A-12

2012676__

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 ~~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
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

29-00485A-12

2012676__

59 shares of stock of the corporation which the officer owns.

60 (c) "Employee" includes:

61 1. A sole proprietor, a member of a limited liability
62 company, or a partner who is not engaged in the construction
63 industry, devotes full time to the proprietorship, limited
64 liability company, or partnership, and elects to be included in
65 the definition of employee by filing notice thereof as provided
66 in s. 440.05.

67 2. All persons who are being paid by a construction
68 contractor as a subcontractor, unless the subcontractor has
69 validly elected an exemption as permitted by this chapter, or
70 has otherwise secured the payment of compensation coverage as a
71 subcontractor, consistent with s. 440.10, for work performed by
72 or as a subcontractor.

73 3. An independent contractor working or performing services
74 in the construction industry.

75 4. A sole proprietor who engages in the construction
76 industry and a partner or partnership that is engaged in the
77 construction industry.

78 Section 2. Subsections (2), (3), and (6) of section 440.05,
79 Florida Statutes, are amended to read:

80 440.05 Election of exemption; revocation of election;
81 notice; certification.—

82 (2) Each sole proprietor, member of a limited liability
83 company, or partner who elects to be included in the definition
84 of "employee" or who, after such election, revokes that election
85 must mail to the department in Tallahassee notice to such
86 effect, in accordance with a form to be prescribed by the
87 department.

29-00485A-12

2012676__

(3) Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to the department on a form prescribed by the department. ~~The notice of election to be exempt from the provisions of this chapter must be notarized and under oath.~~ The notice of election to be exempt which is electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, date of birth, Florida driver's license number or Florida identification card number ~~social security number~~, all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, ~~a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership along with a copy of the stock certificate~~ evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the

29-00485A-12

2012676__

election does not exceed exemption limits for officers provided in s. 440.02, and must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both

29-00485A-12

2012676__

146 the effective date and the expiration date must be listed on the
147 face of the certificate by the department. The construction
148 industry certificate must expire at midnight, 2 years from its
149 issue date, as noted on the face of the exemption certificate. A
150 construction industry certificate of election to be exempt may
151 be revoked before its expiration by the officer for whom it was
152 issued or by the department for the reasons stated in this
153 section. At least 60 days before ~~prior to~~ the expiration date of
154 a construction industry certificate of exemption ~~issued after~~
155 ~~December 1, 1998~~, the department shall send notice of the
156 expiration date ~~and an application for renewal~~ to the
157 certificateholder at the address on the certificate or to the e-
158 mail address on file with the department.

159 Section 3. Effective January 1, 2013, subsection (6) of
160 section 440.05, Florida Statutes, as amended by this act, is
161 amended to read:

162 440.05 Election of exemption; revocation of election;
163 notice; certification.-

164 (6) A ~~construction industry~~ certificate of election to be
165 exempt which is issued on or after January 1, 2013, in
166 accordance with this section shall be valid for 2 years after
167 the effective date stated thereon. Both the effective date and
168 the expiration date must be listed on the face of the
169 certificate by the department. The ~~construction industry~~
170 certificate must expire at midnight, 2 years from its issue
171 date, as noted on the face of the exemption certificate. A
172 ~~construction industry~~ certificate of election to be exempt may
173 be revoked before its expiration by the officer for whom it was
174 issued or by the department for the reasons stated in this

29-00485A-12

2012676__

175 section. At least 60 days before the expiration date of a
176 ~~construction industry~~ certificate of exemption, the department
177 shall send notice of the expiration date to the
178 certificateholder at the address on the certificate or to the e-
179 mail address on file with the department.

180 Section 4. Except as otherwise expressly provided in this
181 act, this act shall take effect upon becoming a law.