

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 307 Workers' Compensation Certificate-of-exemption Process

**SPONSOR(S):** Bernard

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly	Cooper
2) Government Operations Appropriations Subcommittee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined to include members of limited liability companies (LLCs) in the construction industry who own at least 10% of the LLC.

The Division of Workers' Compensation processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) who are at least 10% owners of the corporation or LLC may elect to be exempt. There is no ownership requirement for non-construction industry exemptions. However, as non-construction LLC members are not defined as corporate officers, they are not eligible for an exemption.

Applicants for exemption are required to complete DWC-Form 250, "Notice of Election to be Exempt," which must be notarized. For construction industry exemptions, applicants must also pay a \$50 filing fee and submit documentation of their requisite ownership interest.

House Bill 307 excludes members of non-construction LLCs from the definition of employee, unless they elect to be included as employees. Thus, members that do not make such election are exempt from workers' compensation coverage requirements.

The bill allows for the electronic submission of exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants are date of birth, Florida driver's license number or Florida identification card number. Applicants for a construction industry exemption will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

House bill 307 also provides that all certificates of election to be exempt issued on or after January 1, 2013 are valid for 2 years from the effective date stated on the certificate.

DFS has indicated that an electronic submission process could result in a significant decrease in the percentage of staff who review and process exemptions.

Except as otherwise provided, the bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Workers' Compensation Exemptions<sup>1</sup>**

Section 440.05, F.S., "Election of exemption; revocation of election; notice, certification," permits corporate officers to elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined in s. 440.02(9), F.S., to include members of limited liability companies (LLCs) in the construction industry who own at least 10% of the LLC.<sup>2,3</sup>

##### **Construction Industry versus Non-Construction Exemptions**

The Division of Workers' Compensation (DWC) processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) with a minimum 10% ownership interest in the corporation or LLC, respectively, may elect to be exempt. There is no ownership requirement associated with non-construction industry exemptions. However, as non-construction LLC members are not considered corporate officers, they are not eligible for an exemption.

##### **Exemption Applications<sup>4</sup>**

Currently, applicants for exemption complete a "Notice of Election to be Exempt" form (DWC-250). The application must be notarized, and submitted to the Division of Workers' Compensation. Construction industry applications must also be accompanied by a \$50 application fee and proof of requisite ownership (a copy of the stock certificate or documentation of 10% ownership of the LLC). A construction industry exemption is valid for 2 years, while there is no time limit on non-construction exemptions.

##### **Effect of the Bill:**

##### **Non-Construction LLC Members**

The bill amends the definition of "employee" under the Workers' Compensation Law to include non-construction LLC members that devote full time to the LLC and elect to be included as employees. Notice of the election must be mailed to the Division of Workers' Compensation. Non-construction LLC members who do not make such an election are exempt from workers' compensation coverage requirements.

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<sup>1</sup>For an overview of the exemption process and eligibility requirements, see the Department of Financial Services website: <http://www.myfloridacfo.com/wc/employer/exemption.html> (last accessed November 9, 2011).

<sup>2</sup>The "Florida Limited Liability Companies Act" (LLC Act) is contained in ss. 608.401-608.705, F.S. An LLC is defined as an LLC organized and existing under the act. In general, an LLC has "the attributes of both a corporation and a partnership..." See 51 Am. Jur. 2d, Limited Liability Companies, s. 1.

<sup>3</sup> The LLC Act defines an LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."

<sup>4</sup> The application fee for a construction industry exemption is \$50. There is no application fee for a non-construction industry exemption application. Pursuant to s. 440.05(8)(b), F.S., monies collected by the Division of Workers' Compensation are used to fund the division's investigative efforts, most of which relate to the construction industry.

## **Paperless Exemption Application Process**

The bill allows for the electronic submission of exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants electronically are date of birth, Florida driver's license number or Florida identification card number. Construction industry applicants will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

The bill provides that all certificates of exemption issued by the Division of Workers' Compensation on or after January 1, 2013 are valid for 2 years.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 440.02, F.S., relating to the definition of employee.

**Section 2.** Amends s. 440.05, F.S., providing for the electronic submission of workers' compensation exemption applications.

**Section 3.** Amends s. 440.05(6), F.S., providing a 2-year expiration period for all certificates of election to be exempt issued on or after January 1, 2013.

**Section 4.** Provides for the act to take effect upon becoming law, except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

No impact.

#### **2. Expenditures:**

The Department of Financial Services informs that providing for an electronic application process would eliminate the need for eight (8) staff who review and process exemptions, which is a 23% reduction of exemption process staffing and a savings of \$327,835 in salaries and benefits over the FY 2011-2012 budget.

As applicants for workers' compensation exemptions can currently fill out their application online at the Division of Workers' Compensation's website, the Division believes that costs associated with modifying its exemption technology to provide for electronic submissions would be minimal.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The changes will streamline the exemption process and make it easier for applicants to complete and submit an exemption. The elimination of the requirement to notarize the exemption application will reduce a regulatory step for applicants and eliminate the cost associated with using a notary.

With an established expiration period for all exemptions, persons with non-construction industry exemptions will have to apply for an exemption every 2 years. Presently, non-construction industry exemptions do not have an expiration date. The bill, however, will not result in new fees, as there continues to be no application fee for non-construction industry exemptions.

**D. FISCAL COMMENTS:**

The electronic submission process is part of the Department of Financial Services' LBR and Schedule VIII-B submission for FY 2012-2013.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The Division of Workers' Compensation would have to amend Rule 69L-6.012 "Notice of Election to be Exempt" to reflect the new statutory requirements.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Division of Workers' Compensation presently provides walk-in assistance in all Compliance District Offices and will continue to provide assistance. Computers will be available in the District Offices for exemption applicants who may not have access to a computer.

Non-construction industry exemptions do not have an expiration date. The bill provides for a 2-year expiration date for all exemptions. While this will require non-construction industry exemptionholders to re-apply for exemption every 2 years, it will assist in ensuring that the information on which each exemption is based remains timely during the exemption period. For example, currently a corporate officer with a construction industry exemption who leaves the corporation remains in possession of a "certificate of election to be exempt" that does not have an expiration date.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**