

CHAPTER 2012-213

Committee Substitute for House Bill No. 941

An act relating to insurance; amending s. 440.02, F.S.; redefining the terms “corporate officer” and “employee” for purposes of workers’ compensation; amending s. 440.05, F.S.; revising requirements for submitting a notice of election of exemption; revising duties of the Department of Financial Services relating to the expiration of certificates of exemption; expanding applicability of requirements relating to certificates of exemption; amending s. 440.107, F.S.; exempting certain limited liability companies from penalties for failure to secure the payment of workers’ compensation; amending s. 624.307, F.S.; authorizing the Office of Insurance Regulation to expend funds for the professional development of its employees; amending s. 627.215, F.S.; removing workers’ compensation and employer’s liability insurance from those types of insurance that must report and refund excess profits; deleting obsolete provisions; amending s. 627.4133, F.S.; providing that the transfer of a policy to certain other insurers is considered a renewal of the policy rather than a cancellation or nonrenewal; requiring notice of such transfer; specifying which types of policies such transfer provisions apply to; amending s. 627.442, F.S.; exempting certain insurers from performing onsite premium audits for workers’ compensation insurance; amending s. 628.6017, F.S.; conforming a cross-reference; providing effective dates.

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

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

Section 2. Paragraph (b) of subsection (15) 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:

(15)

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

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

2. As to officers of a corporation who are engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing a ~~written~~ notice of the election with the department as provided in s. 440.05. Officers must be shareholders, each owning at least 10 percent of the stock of such corporation and listed as an officer of such corporation with the Division of Corporations of the Department of State, in order to elect exemptions under this chapter. For purposes of this subparagraph, the term “affiliated” means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term “affiliated” includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

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

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

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

440.05 Election of exemption; revocation of election; notice; certification.

(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 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 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 the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. A construction industry certificate of election to be exempt may be revoked before its expiration by the officer for whom it was issued or by the department for the reasons stated in this section. At least 60 days ~~before~~ prior to the expiration date of a construction industry certificate of exemption issued ~~after December 1, 1998~~, the department shall send notice of the expiration date

~~and an application for renewal to the certificateholder at the address on the certificate or to the e-mail address on file with the department.~~

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

440.05 Election of exemption; revocation of election; notice; certification.

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

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

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

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

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

624.307 General powers; duties.—

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

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

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

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

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

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

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

~~(2) Each insurer group writing workers' compensation and employer's liability insurance shall also file a schedule of Florida loss and loss adjustment experience for each of the 3 years previous to the most recent accident year. The incurred losses and loss adjustment expenses shall be valued as of December 31 of the first year following the latest accident year to be reported, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year. The first year to be so reported shall be accident year 1984, so that the reporting of 3 accident years under this revised evaluation will not take place until accident years 1985 and 1986 have become available. For reporting purposes unrelated to determining excessive profits, the loss and loss adjustment experience of~~

each accident year shall continue to be reported until each accident year has been reported at eight stages of development.

~~(2)(3)~~(a) Each insurer group writing commercial property insurance or commercial casualty insurance shall also file a schedule of Florida loss and loss adjustment experience for each of the 3 years previous to the most recent accident year. The incurred losses and loss adjustment expenses shall be valued as of December 31 of the first year following the latest accident year, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of 3 evaluations will be provided for each accident year. ~~The first year to be so reported shall be accident year 1987, which shall first be reported on or before July 1, 1989, and the reporting of 3 accident years will not take place until accident years 1988 and 1989 have become available. For medical malpractice insurance, the first year to be so reported shall be accident year 1990, which shall first be reported on or before July 1, 1992, and the reporting of 3 accident years for full inclusion of medical malpractice experience in commercial casualty insurance will not take place until accident years 1991 and 1992 become available. Accordingly, no medical malpractice insured shall be eligible for refunds or credits until the reporting period ending with calendar accident year 1992.~~ For reporting purposes unrelated to determining excess profits, the loss and loss adjustment experience of each accident year shall continue to be reported until each accident year has been reported at eight stages of development.

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

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

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

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

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

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

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

~~(7)~~~~(9)~~ If the insurer group has realized an excessive profit, the office shall order a return of the excessive amounts after affording the insurer group an opportunity for hearing and otherwise complying with the requirements of chapter 120. Such excessive amounts shall be refunded in all instances unless the insurer group affirmatively demonstrates to the office that the

refund of the excessive amounts will render a member of the insurer group financially impaired or will render it insolvent under the provisions of the Florida Insurance Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627.442 Insurance contracts.—

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

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

628.6017 Converting assessable mutual insurer.—

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

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

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.