A bill to be entitled
An act relating to the Department of Financial Services; amending s. 440.02, F.S.; redefining the term "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; repealing s. 440.59, F.S., relating to the duty of the Department of Financial Services to make an annual report on the administration of ch. 440, F.S., the Workers' Compensation Law, to specified officials; providing effective dates.

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

Section 1. 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 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 2. 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 electronically submit 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 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 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 3. 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 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 4. Section 440.59, Florida Statutes, is repealed.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.