

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 9, 1998 Revised: 4/20/98 _____

Subject: Workers' Compensation/Leased Workers

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Employee leasing companies have attracted attention in recent years because of their rapid growth, and the insolvency of at least two self-insurance funds with significant number of employee leasing company members. Employers securing workers' compensation coverage through employee leasing companies, by the use of leased employees, may impact the experience modification factor used in determining workers' compensation premiums. For example, employers with a high frequency of compensable workplace accidents may use an employee leasing company to obtain coverage and take advantage of the lower experience modification factors enjoyed by the employee leasing company. If this occurs, the employer could be paying lower workers' compensation premiums than justified by their claims' experience.

This bill requires employers and employee leasing companies to obtain workers' compensation coverage for leased employees and pay premiums commensurate with the exposure and claims experience of the employer. The bill also requires employee leasing companies to provide certain information to the insurer or the residual market when obtaining workers' compensation coverage.

Insurers are required to audit policies issued to employee leasing companies within 90 days of the policy effective date and may conduct quarterly audits subsequently.

This bill substantially creates section 627.192, Florida Statutes.

II. Present Situation:

Employee Leasing Companies

Section 468.520, F.S., defines employee leasing to mean an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client. The employee leasing company assumes responsibility and liability as the employer for the leased employees (which are often the client's former employees). Under this arrangement, the employee leasing company is deemed to be the employer of the leased employees and, therefore, assumes regulatory responsibilities such as payroll administration and procuring workers' compensation coverage and health insurance coverage for the leased employees. However, the client exercises everyday control over the leased employees. In exchange for the employee leasing company providing personnel and administrative services, the client companies pay a fee to the employee leasing company.

This type of arrangement is financially feasible to small and mid-size businesses because the employee leasing company is in a position, due to volume discounts from insurers, to provide workers' compensation, health care benefits, retirement benefits, and other employee benefits at less cost than the business could provide. It is important to note that a client who is leasing employees remains the employer of any non-leased employees and is responsible for providing workers' compensation coverage for them.

Employee leasing companies are licensed and regulated by the Board of Employee Leasing Companies under the Department of Business and Professional Regulation (DBPR) pursuant to ss. 468.520 - 468.535, F.S. Section 468.525, F.S., mandates that an employee leasing company and at least one controlling person of the employee leasing company obtain a license from DBPR. As of January 1998, there were approximately 240 licensed employee leasing companies in Florida.

Under the provisions of s. 468.529, F.S., an employee leasing company is required to provide workers' compensation coverage pursuant to chapter 440, F.S. In addition, an employee leasing company is required to maintain and make available to the workers' compensation carrier certain information, including a list of all covered employees provided to each client company, by classification code, and the total eligible wages by classification code and the premiums due to the carrier for the employees provided to each client company. Section 468.529, F.S., also provides that the provisions of this section are subject to verification by DBPR or board audit.

Workers' Compensation Premium Rates

Pursuant to s. 627.062, F.S., the standard governing the regulation of insurance rates, including workers' compensation, requires that rates shall not be excessive, inadequate, or unfairly discriminatory. Workers' compensation insurance premiums are subject to prior approval of rates in Florida under the provisions of s. 627.101, F.S.

Section 627.072, F.S., authorizes the Department of Insurance to use certain factors in the determination and fixing of workers' compensation insurance rates. These factors include: (1) the past loss experience and prospective loss experience within and outside of Florida; (2) the conflagration and catastrophe hazard; (3) a reasonable profit margin; (4) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, (5) investment income on unearned premium reserves and loss reserves; (6) past expenses and prospective expenses, both those countrywide and those specifically applicable to Florida; and (7) all other relevant factors, including judgment factors, within and outside this state.

The rates paid by an employer for workers' compensation are determined by three primary factors: (1) the size of the payroll, (2) job classifications, and (3) the claim experience of the employer (experience modification factor).

The experience rating modification is a factor applied to premium to reflect a risk's variation from the average risk. Using the risk's own past experience, the experience modification is determined by comparing actual losses to expected losses. This comparison will result in a premium reduction, a premium increase, or no change.

An employer's experience modification factor will vary depending on the claims experience of the employer. The experience period is generally 3 completed years of experience ending 1 year prior to the effective date of the modification. For new businesses with no claims experience, the experience modification factor is 1.0. This means that workers' compensation premium would be multiplied by 1.0. In subsequent years, if an employer has fewer accidents and losses than the average for the particular industry in a given state, the experience modification factor will be lower than 1.0. However, for businesses that have multiple claims, the experience modification factor would be anticipated to be greater than 1.0 and, as a result, premiums would increase.

The Experience Rating Plan Manual of the National Council on Compensation Insurance, Inc., provides procedures for calculating the experience modification for an employee leasing company, as follows:

- 1) If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the experience of the client is commingled with that of other clients on the labor contractor's policy, the following procedure applies:

The experience of the client will be developed and reported to the rating organization by the insurance carrier, to the extent possible, for use in the development of an experience modification for the client. If suitable payroll and loss experience is not reported to the rating organization, the labor contractor's experience modification will apply to the client for up to 3 years or until such time as the client otherwise qualifies for development of its own experience modification.

2) If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the client was covered under the multiple, coordinated policies basis, the following procedure applies:

The client will be assigned an experience modification factor which reflects its experience during the experience period, including experience incurred for leased employees under the employee leasing agreement.

Use of Employee Leasing Companies and the Effect on the Experience Modification Rating System

If an employer transfers its employees to an employee leasing company, the employer becomes the client and its experience modification factor is not transferred to the employee leasing company. Therefore, the employee leasing company may obtain workers' compensation coverage for the leased employees without having to use the client's actual experience modification factor. Instead, the employee leasing company's workers' compensation premiums will be based on the employee leasing company's experience modification factor.

With the industry's growth, employee leasing companies are often newly formed and have not developed an experience modification factor and would be assigned a 1.0. In addition, an employee leasing company can, in effect, blend its experience modification factor in subsequent years because it pools together many different types of employees who are classified differently and who have different claims experience. As a practical matter, the employees remain at the same location, working under the same conditions as prior to the leasing arrangement. However, the client pays a fee for the leased employees (including workers' compensation insurance coverage), which may not take into consideration the actual risks of the worksite. The intent of the experience modification factor system can be circumvented by this type of leaseback arrangement.

III. Effect of Proposed Changes:

The bill creates s. 627.192, F.S., relating to workers' compensation insurance and employee leasing arrangements. It is the intent of this section to ensure that an employer who leases some or all of its workers properly obtains workers' compensation coverage for all of its employees, including those leased from another entity and pay a premium that commensurate with the exposure and the anticipated claims experience of the employer.

The terms, "employee leasing," "leased employee," "lessee," "lessor," "multiple coordinated policies basis," and "premium subject to dispute," are defined. Employee leasing has the same meaning as provided in s. 468.520, F.S. Lessee is defined to mean a person who obtains all or part of the person's workforce through an employee leasing company. A lessor means an employee leasing company.

A multiple coordinated policies basis means each lessee must have its own policy covering its leased employees required to be covered pursuant to the laws of Florida. Nonleased employees of

a lessee, required to be covered pursuant to the laws of Florida, must be provided coverage pursuant to a separate policy issued by the same insurer. All policies for lessees of the same employee leasing company must be written by the same insurer to the extent possible. The insurer is required to arrange to have all notices sent to the employee leasing company and have a single master invoice sent to the employee leasing company for all policies covering the lessees of that company. If a lessee leases employees from more than one leasing company, there must be a separate policy for the leased employees of each lessor. Appropriate endorsements must be used to restrict coverage to specific employees and to coordinate coverage between lessees and lessor.

A lessee is required to fulfill its statutory responsibility to secure workers' compensation benefits, as provided in s. 440.38, F.S. If the lessee complies by purchasing and maintaining such coverage, the exposure and experience of the lessee must be used to determine the premium for the policy. A lessor that obtains workers' compensation coverage in the voluntary market may, with the voluntary market insurer's consent, elect to secure the coverage on leased employees through a standard policy issued to the lessor.

An employee leasing company's is authorized to elect to secure coverage on leased employees from either the voluntary or residual market. Employee leasing companies would also be required to provide certain information to the insurer or the residual market when procuring workers' compensation coverage. The insurer may require: 1) the lessor to provide a complete description of the lessor's operations, 2) the lessor to periodically report the covered lessee's payroll, classification, experience rating modification factors, and jurisdictions with exposure; 3) an audit of lessor's operations; and 4) any other reasonable measures to determine the appropriate premium.

The bill establishes requirements for an employee leasing company to procure coverage from the residual market, including providing: 1) information of alternate names that the employee leasing company has operated under; 2) names of persons who have ownership in the employee leasing company; 3) the policy number and carrier for each workers' compensation policy; 4) a list of all leased employees together with their social security numbers, classifications, and wages; and 5) a sworn written statement that all of the lessee's non-leased employees are covered by workers' compensation.

An employee leasing company covered in the voluntary or residual market is required to provide information to the insurer or residual market that would permit the calculation of an experience modification factor for each lessee, including the lessee's corporate name, lessee's risk identification number, and claims information grouped by lessee.

Any violation of this section is grounds for the cancellation or nonrenewal of coverage, if there is an uncured violation of this section.

The section also requires that the insurer or residual market servicing carrier to assign an experience modification factor to a lessee after a leasing arrangement is terminated, which includes the experience incurred for any leased employees during the leasing arrangement.

This section does not affect the requirement that a lessee provide workers' compensation coverage for non-leased employees.

The section provides that a lessee is not eligible for coverage under an employee leasing company workers' compensation insurance policy if the lessee owes premium to the voluntary or residual market and also requires an insurer to audit any policy issued to an employee leasing company within 90 days after the effective date.

Section 2. The act takes effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires employers of leased employees to obtain workers' compensation coverage and pay premiums commensurate with the employers' exposure and claims experience. If an employee leasing company was presently paying reduced premiums as a result of an artificially low experience modification factor, it would pay more in premiums to provide coverage to leased employees.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Banking and Insurance:

The amendment provides a mechanism to create a financing corporation for the purpose of transferring and privatizing the liabilities of the Special Disability Trust Fund (SDTF) to a third party administrator, if the SDTF Privatization Commission determines that the state could realize substantial savings by privatizing the responsibilities and liabilities of the Fund.

The amendment creates a Special Disability Trust Fund Privatization Commission, comprised of the Governor, Treasurer, and the Executive Director of the State Board of Administration (or their designees) that would be charged with the responsibility of evaluating the feasibility of privatizing the Fund, as well as selecting and contracting with an administrator, if it is determined to be more cost efficient than the current administration of the Fund. The commission is authorized to contract with consultants deemed necessary to make such a determination and is appropriated \$200,000 from the Workers' Compensation Administrative Trust Fund to implement these provisions.

If the Fund is privatized, a financing corporation would be created to issue the debt in order to use the proceeds to privatize the Fund. The corporation, under the control of a three-member board comprised of the Governor, Treasurer, and Executive Director of the State Board of Administration (or their designees), is authorized to issue notes, bonds, and other forms of indebtedness and has all of the powers of a corporation authorized by law. The proceeds of any debt may be used to pay obligations of the Fund. The corporation is exempt from taxation by the state.

The amendment also authorizes the Commission, in consultation with the Division of Workers' Compensation, to develop and issue a request for proposal (RFP) to transfer the liabilities to an administrator. The commission, in consultation with the division, will evaluate the responses to the RFP to determine whether the functions of the Fund could be assumed and administered by a third party in a more cost efficient manner than presently provided by the division.

If the commission determines that the privatization would be a more cost-efficient method to administer the Fund, this amendment provides conforming language to chapter 440, F.S., to authorize an administrator to assume the responsibilities and liabilities of the Fund.

The amendment provides financial accountability to the state by requiring that 1) if the liabilities or claims of the Fund are assumed and transferred to the administrator, the administrator is required to provide the state with financial assurances as to the satisfaction of any such liabilities or claims; 2) any debt issued by the corporation is not a debt or liability of the state or any political subdivision, and the credit, revenues, or taxing power of the state or any political subdivision shall not be deemed to be pledged for the payment of any bonds of the corporation; 3) the Auditor General is authorized to audit the records of the corporation; and 4) the administrator would be prohibited from settling any claims of its affiliates or subsidiaries. (WITH TITLE AMENDMENT)

#2 by Banking and Insurance:

The amendment replaces the employee leasing provisions of the bill to provide as follows:

1) defines the terms, employee leasing, experience rating modification, leased employee, lessee, lessor, and premium subject to dispute; 2) authorizes an employee leasing company/lessor to obtain coverage in the voluntary market on leased employees through a workers' compensation policy issued to the lessor; 3) authorizes the insurer of the lessor to request specific information from the lessor to ascertain the exposure under the policy and to collect the appropriate premium; 4) requires the lessor that applies for coverage or is covered through the voluntary market to furnish certain information to the insurer, on an annual basis, to permit the calculation of an experience modification for each lessee upon termination of the leasing arrangement; 5) requires the information accrued during the term of a leasing arrangement which is used to calculate the experience modification rating for a lessee upon the termination of the arrangement to be used in the future experience ratings of the employee leasing company; 6) provides for the cancellation or nonrenewal of an employee leasing company's policy if there is an uncured violation of this section; 7) requires the insurer to assign an experience modification factor to a lessee/employer after a leasing arrangement is terminated, including the experience incurred for any leased employees during the leasing arrangement; 8) requires the employee leasing company to notify its insurer within 5 working days following actual termination of the leasing arrangement; 9) provides that this section does not affect the requirement that a lessee provide workers' compensation coverage for a non-leased employee; 10) provides that an employer shall not enter into an employee leasing relationship or be eligible for workers' compensation coverage in the voluntary market, if the employer owes its current or previous insurer any premium or if the lessee owes any amounts under a current or previous employee leasing arrangement; 11) requires an insurer to conduct annual audits of payroll and classifications of employee leasing companies to ensure that the appropriate premium is charged for workers' compensation coverage; and 12) requires an insured (employer or employee leasing company) to pay a premium to an insurer, not to exceed three times the most recent estimated annual premium, if an insured (employer or employee leasing company) fails to provide access to records pertaining to a payroll and classification audit. (WITH TITLE AMENDMENT)