

By Senator Williams

4-54A-98

1 A bill to be entitled
 2 An act relating to workers' compensation
 3 insurance; creating s. 627.192, F.S.; requiring
 4 an employer that leases its workers to obtain
 5 workers' compensation insurance coverage for
 6 all of its employees, including leased
 7 employees; requiring that premiums be paid
 8 commensurate with exposure and anticipated
 9 claim experience; providing definitions;
 10 providing for voluntary market coverage;
 11 providing for residual market coverage;
 12 prescribing reporting requirements for lessors;
 13 providing for cancellation or nonrenewal of
 14 policies; providing for the assignment of an
 15 experience modification factor; providing
 16 lessee's obligation to secure coverage;
 17 providing for policy audits providing
 18 eligibility; providing an effective date.

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

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 22 Section 1. Section 627.192, Florida Statutes, is
 23 created to read:

24 627.192 Workers compensation insurance; employee
 25 leasing arrangements.--

26 (1) PURPOSE.--The purpose of this section is to ensure
 27 that an employer who leases some or all of its workers
 28 properly obtains workers' compensation insurance coverage for
 29 all of its employees, including those leased from another
 30 entity, and that premium is paid commensurate with exposure
 31 and anticipated claim experience.

1 (2) DEFINITIONS.--As used in the Florida Insurance
2 Code, the term:

3 (a) "Employee leasing" has the same meaning ascribed
4 in s. 468.520(4).

5 (b) "Leased employee" means a person performing
6 services for a lessee under an employee leasing arrangement.

7 (c) "Lessee" means a person who obtains all or part of
8 the person's workforce from another person through an employee
9 leasing arrangement or who employs the services of a person
10 through an employee leasing arrangement.

11 (d) "Lessor" means an employee leasing company
12 licensed under part XI of chapter 458 which grants a written
13 lease to a lessee through an employee leasing arrangement. The
14 "lessor" may also be referred to as an employee leasing
15 company.

16 (e) "Multiple coordinated policies basis" means:

17 1. Each lessee must have its own policy covering its
18 leased employees required to be covered pursuant to the laws
19 of this state.

20 2. Nonleased employees of a lessee, required to be
21 covered pursuant to the laws of this state, must be provided
22 coverage pursuant to a separate policy issued by the same
23 insurer.

24 3. All policies for lessees of the same employee
25 leasing company must be written by the same insurer to the
26 extent possible.

27 4. The insurer shall arrange to have the same renewal
28 dates for all such policies.

29 5. The insurer shall arrange to have all notices sent
30 to the employee leasing company and have a single master
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1 invoice sent to the employee leasing company for all policies
2 covering the lessees of that company.

3 6. If a lessee leases employees from more than one
4 lessor, there must be a separate policy for the leased
5 employees of each lessor.

6 7. Appropriate endorsements must be used to restrict
7 the coverage to specific employees and to coordinate coverage
8 between lessees and lessor.

9 (f) "Premium subject to dispute" means that the
10 insured has provided a written notice of dispute to the
11 insurer or service carrier, has initiated any applicable
12 proceeding for resolving such disputes as prescribed by law or
13 rating organization rule, or has initiated litigation
14 regarding the premium dispute. The insured must have detailed
15 the specific areas of dispute and provided an estimate of the
16 premium the insured believes to be correct. The insured must
17 have paid any undisputed portion of the bill.

18 (3) STATUTORY RESPONSIBILITY.--A lessee shall fulfill
19 its statutory responsibility to secure benefits under the
20 Workers' Compensation Law as provided in s. 440.38. If the
21 lessee complies by purchasing and maintaining a workers'
22 compensation insurance policy, the exposure and experience of
23 the lessee must be used in determining the premium for policy.

24 (4) VOLUNTARY MARKET COVERAGE.--Notwithstanding
25 subsection (3), a lessor that obtains coverage in the
26 voluntary workers' compensation market may, with the voluntary
27 market insurer's knowledge and consent, elect to secure the
28 coverage on leased employees through a standard workers'
29 compensation policy issued to the lessor. The insurer of the
30 lessor may take all reasonable steps to ascertain exposure
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1 under the policy and collect the appropriate premium by
2 requiring:
3 (a) The lessor to provide a complete description of
4 lessor's operations;
5 (b) Periodic reporting by the lessor of covered
6 lessees' payroll, classification, experience rating
7 modification factors, and jurisdictions with exposure. This
8 reporting may be supplemented by a requirement for lessees' to
9 submit to the carrier internal Revenue Service Form 941 or its
10 equivalent on a quarterly basis;
11 (c) Audit of lessor's operations; and
12 (d) Any other reasonable measures to determine the
13 appropriate premium.
14 (5) RESIDUAL MARKET COVERAGE.--A lessor who obtains
15 coverage through the residual market, established pursuant to
16 s. 627.311(4), for leased employees, must secure coverage on a
17 multiple coordinated policies basis. To qualify for coverage
18 on a multiple coordinated policies basis, the lessor's
19 officers or directors, or any person with a 5 percent or
20 greater interest may not owe any premium to the current or
21 prior insurers, except premium subject to dispute; all
22 information required by this section must be provided; and the
23 employee leasing company must be licensed with the Department
24 of Business and Professional Regulation. A lessor who applies
25 for coverage through the residual market must furnish the
26 following information with the application for coverage:
27 (a) A list by jurisdiction of each name that the
28 employee leasing company has operated under in the preceding 5
29 years, including any alternative names and names of
30 predecessors and successor business entities along with the
31 policy number and carrier for each workers' compensation

1 insurance policy issued to the employee leasing company under
2 each and every such name in the preceding 5 years and a copy
3 of the most recent Form 941 or its equivalent filed with the
4 United States Internal Revenue Service by the employee leasing
5 company;

6 (b) A list of each person who owns a 5 percent or
7 greater interest in the employee leasing business at the time
8 of application and a list of each person who formerly owned a
9 5 percent or greater interest in the employee leasing company
10 or its predecessors, successors, or alter egos in the
11 preceding 5 years.

12 (c) For each person identified in paragraph (b), a
13 list of all other employee leasing companies in which each
14 such person owns or owned a 5 percent or greater interest and
15 a list of all other businesses in which each such person or
16 combination of two or more such persons owns or owned 50
17 percent or greater interest at the time application is made
18 and in the preceding 12 months;

19 (d) A list by jurisdiction for each lessee, along with
20 any other name such lessee has operated under in the preceding
21 5 years and the Internal Revenue Service Form 941 or its
22 equivalent most recently filed with the service with respect
23 to each lessee and a copy of the most recent form 941 or its
24 equivalent filed with the United States Internal Revenue
25 Service by each lessee;

26 (e) A sworn written statement signed by the owner,
27 partner, or officer authorized to bind the lessee legally,
28 that states the policy number and carrier for each workers'
29 compensation insurance policy issued to the lessee under each
30 name in the preceding 5 years.

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1 (f) For each lessee at the time of application or
2 renewal, a listing of all leased employees along with their
3 social security numbers, classification codes, and wages; and

4 (g) A sworn written statement signed by the owner,
5 partner, or officer authorized to bind the lessee legally
6 which states that all of the lessee's nonleased employees are
7 covered by a workers' compensation insurance policy. In
8 addition, the sworn written statement must provide the policy
9 number, carrier, a listing of the number of nonleased
10 employees, and the aggregate payroll applicable to each
11 classification code.

12 (6) REPORTING REQUIREMENTS FOR LESSORS.--A lessor that
13 applies for coverage or is covered through either the
14 voluntary market or the residual market mechanism shall also
15 maintain and furnish to the insurer or to the principal rating
16 organization through the residual market servicing carrier,
17 sufficient information to permit the calculation of an
18 experience modification factor for each lessee. Such
19 information must include:

20 (a) The lessee's corporate name;

21 (b) The lessee's taxpayer or employer identification
22 number.

23 (c) The lessee's risk identification number.

24 (d) A listing of all leased employees associated with
25 each lessee, the applicable classification code and payroll;
26 and

27 (e) Claims information grouped by lessee and any other
28 information necessary to permit the calculation of an
29 experience modification factor for each lessee.

30 (7) CANCELLATION OR NONRENEWAL OF POLICIES.--In
31 addition to any other statutory penalties, any violation of

1 the section is grounds for cancellation or nonrenewal provided
2 that the employee leasing company has been provided a
3 reasonable opportunity to cure the violation. If an employee
4 leasing company has received notice that its workers'
5 compensation insurance policy will be canceled or nonrenewed,
6 the leasing company shall notify by certified mail, within 15
7 days of the receipt of the notice, all of the lessees for
8 which there is an employee leasing arrangement covered under
9 the to-be-canceled policy.

10 (8) EXPERIENCE MODIFICATION FACTOR.--If the employee
11 leasing arrangement with a lessee is terminated, the lessee
12 must be assigned an experience modification factor that
13 reflects its experience during the experience period specified
14 by the approved experience rating plan, including, if
15 applicable, experience incurred for leased employees under the
16 employee leasing arrangements. The employee leasing company
17 shall notify the insurer or the service carrier 30 days prior
18 to the effective date of termination, or immediately upon
19 notification of cancellation by the lessee, of an employee
20 leasing arrangement with a lessee in order to allow sufficient
21 time to calculate an experience modification factor for the
22 lessee.

23 (9) LESSEE'S OBLIGATION.--This section does not have
24 any effect on the statutory obligation, if any, of a lessee to
25 secure workers' compensation coverage for employees not
26 provided, supplied, or maintained by a lessor under an
27 employee leasing arrangement.

28 (10) ELIGIBILITY.--A lessee is not eligible for
29 coverage under a workers' compensation insurance policy issued
30 to a lessor in the voluntary market if the lessee owes its
31 current or a prior insurer any premium for workers'

1 compensation insurance, except premium subject to dispute. A
2 lessee is not eligible for coverage pursuant to a workers'
3 compensation policy under a multiple coordinated policy basis
4 on the residual market if the lessee owes its current or a
5 prior insurer any premium for workers' compensation insurance,
6 except premium subject to dispute.

7 (11) POLICY AUDITS.--Insurers shall audit policies
8 issued to employee leasing companies within 90 days of the
9 policy effective date and may conduct quarterly audits
10 thereafter. The purpose of the audit is to determine whether
11 all classifications, experience modification factors, and
12 estimated payroll utilized with respect to the development of
13 the premium charged to the lessor are appropriate. Audits must
14 include, at a minimum, on-site audits conducted at the
15 principal location of each lessee.

16 Section 2. This act shall take effect October 1, 1998.

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19 SENATE SUMMARY

20 Requires an employer who leases its workers to obtain
21 workers' compensation insurance coverage for all of its
22 employees including leased employees. Requires that
23 premiums be paid commensurate with exposure and
24 anticipated claim experience. Provides definitions.
Provides for voluntary and residual market coverage.
Prescribes reporting requirements for lessors. Provides
for cancellation or nonrenewal of policies. (See bill for
details.)