

589-116X-32

Bill No. CS/HB 4267

Amendment No. \_\_\_\_ (for drafter's use only)

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Wiles offered the following:

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**Amendment (with title amendment)**

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On page 1, line 29,

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remove from the bill: everything after the enacting clause,

16

and insert in lieu thereof:

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Section 1. Section 627.192, Florida Statutes, is

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created to read:

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627.192 Workers' compensation insurance; employee

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leasing arrangements.--

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(1) The purpose of this section is to ensure that an

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employer who leases some or all of its workers properly

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obtains workers' compensation insurance coverage for all of

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its employees, including those leased from or coemployed with

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another entity, and that premium paid by an employee leasing

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company is commensurate with exposure and anticipated claim

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experience for all employees.

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(2) For purposes of the Florida Insurance Code:

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(a) "Employee leasing" shall have the same meaning as

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set forth in s. 468.520(4).

1           (b) "Experience rating modification" means a factor  
2 applied to a premium to reflect a risk's variation from the  
3 average risk. The experience modification is determined by  
4 comparing actual losses to expected losses, using the risk's  
5 own past experience.

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

8           (d) "Lessee" means an entity which obtains all or part  
9 of its workforce from another entity through an employee  
10 leasing arrangement or which employs the services of an entity  
11 through an employee leasing arrangement.

12           (e) "Lessor" means an employee leasing company, as set  
13 forth in part XI of chapter 468, engaged in the business of or  
14 holding itself out as being in the business of employee  
15 leasing. A lessor may also be referred to as an employee  
16 leasing company.

17           (f) "Premium subject to dispute" means that the  
18 insured has provided a written notice of dispute to the  
19 insurer or service carrier, has initiated any applicable  
20 proceeding for resolving such disputes as prescribed by law or  
21 rating organization procedures approved by the department, or  
22 has initiated litigation regarding the premium dispute. The  
23 insured must have detailed the specific areas of dispute and  
24 provided an estimate of the premium the insured believes to be  
25 correct. The insured must have paid any undisputed portion of  
26 the bill.

27           (3) A lessor that obtains coverage in the voluntary  
28 workers' compensation market may elect, with the voluntary  
29 market insurer's knowledge and consent, to secure the coverage  
30 on leased employees through a workers' compensation policy  
31 issued to the lessor. The insurer of the lessor may, in its

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1 discretion, take all reasonable steps to ascertain exposure  
2 under the policy and collect the appropriate premium by:  
3 (a) Requiring the lessor to provide a complete  
4 description of lessor's operations.  
5 (b) Requiring periodic reporting by the lessor of  
6 covered lessees' payroll, classifications, claims information,  
7 loss data, and jurisdictions with exposure. This reporting may  
8 be supplemented by a requirement for lessees to submit to the  
9 carrier Internal Revenue Service Form 941 or its equivalent on  
10 a quarterly basis.  
11 (c) Auditing the lessor's operations.  
12 (d) Using other reasonable measures to determine the  
13 appropriate premium.  
14 (4) A lessor that applies for coverage or is covered  
15 through the voluntary market shall also maintain and furnish  
16 to the insurer on an annual basis, and as the insurer may  
17 otherwise reasonably require, sufficient information to permit  
18 the calculation of an experience modification factor for each  
19 lessee upon termination of the employee leasing relationship.  
20 Information accruing during the term of the leasing  
21 arrangement which is used to calculate an experience  
22 modification factor for a lessee upon termination of the  
23 leasing relationship shall continue to be used in the future  
24 experience ratings of the lessor. Such information shall  
25 include:  
26 (a) The lessee's corporate name.  
27 (b) The lessee's taxpayer or employer identification  
28 number.  
29 (c) Payroll summaries and class codes applicable to  
30 each lessee, and, if requested by the insurer, a listing of  
31 all leased employees associated with a given lessee.

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1           (d) Claims information grouped by lessee, and any  
2 other information maintained by or readily available to the  
3 lessor that is necessary for the calculation of an experience  
4 modification factor for each lessee.

5           (5) In addition to any other provision of law, any  
6 material violation of this section by an employee leasing  
7 company is grounds for cancellation or nonrenewal of the  
8 lessor's insurance policy provided that the employee leasing  
9 company has been provided a reasonable opportunity to cure the  
10 violation. If an employee leasing company has received notice  
11 that its workers' compensation insurance policy will be  
12 canceled or nonrenewed, the leasing company shall notify by  
13 certified mail, within 15 days after receipt of the notice,  
14 all of the lessees for which there is an employee leasing  
15 arrangement covered under the policy to be canceled, except  
16 notice is not required if the employee leasing company has  
17 obtained another insurance policy with an effective date that  
18 is the same as the date of cancellation or nonrenewal.

19           (6) If the employee leasing arrangement with a lessee  
20 is terminated, the lessee shall be assigned an experience  
21 modification factor which reflects its experience during the  
22 experience period specified by the approved experience rating  
23 plan, including, if applicable, experience incurred for leased  
24 employees under the employee leasing arrangements. The  
25 employee leasing company shall notify the insurer of its  
26 intent to terminate any lessee relationship prior to  
27 termination when feasible. When prior notice is not feasible,  
28 the employee leasing company shall notify its insurer within 5  
29 working days following actual termination.

30           (7) This section shall not have any effect on the  
31 statutory obligation, if any, of a lessee to secure workers'

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1 compensation coverage for employees that the lessee does not  
2 coemploy or lease pursuant to an employee leasing arrangement.

3 (8) A lessee shall not enter into an employee leasing  
4 relationship or be eligible for workers' compensation coverage  
5 in the voluntary market if the lessee owes its current or a  
6 prior insurer any premium for workers' compensation insurance,  
7 or if the lessee owes its current or prior employee leasing  
8 company amounts due under the service agreement, except for  
9 premium or amounts due that are subject to dispute. For the  
10 purposes of this section and compliance with other laws and  
11 regulations, a lessor may rely on a sworn statement by the  
12 lessee that the lessee has met any and all prior premium or  
13 fee obligations, unless the lessor has actual knowledge to the  
14 contrary.

15 (9) Insurers shall conduct annual audits of payroll  
16 and classifications of employee leasing companies in order to  
17 ensure that the appropriate premium is charged for workers'  
18 compensation coverage. The audits shall be conducted to ensure  
19 that all sources of payment by lessors to employees,  
20 subcontractors, and independent contractors have been reviewed  
21 and the accuracy of classifications of employees have been  
22 verified. Insurers may provide for more frequent audits of  
23 lessors based on such factors as amount of premium, type of  
24 business, loss ratios, or other relevant factors. Payroll and  
25 classification verification audit rules of insurers must  
26 include, but need not be limited to, use by the insurer of  
27 state and federal reports of employee income, payroll and  
28 other accounting records, certificates of insurance maintained  
29 by subcontractors, and duties of employees.

30 (10) If a lessor or a lessee fails to provide  
31 reasonable access to payroll and classification records for a

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1 payroll and classification audit, the insured shall pay a  
 2 premium to the insurer not to exceed three times the most  
 3 recent estimated annual premium. However, the lessor is not  
 4 subject to such penalty if the failure to obtain the needed  
 5 records is the direct result of the acts or omissions of the  
 6 lessee.

7 Section 2. This act shall take effect July 1 of the  
 8 year in which enacted, and shall apply to any workers'  
 9 compensation insurance policy issued to or renewed with an  
 10 employee leasing company on or after October 1, 1998.

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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 1, lines 2-26,  
 16 remove from the title of the bill: all of said lines,  
 17  
 18 and insert in lieu thereof:

19 An act relating to employee leasing; creating  
 20 s. 627.192, F.S.; providing purposes; providing  
 21 definitions; authorizing certain lessors to  
 22 secure workers' compensation insurance coverage  
 23 on leased employees under certain  
 24 circumstances; providing procedures; requiring  
 25 such lessors to provide certain information to  
 26 insurers for certain purposes; providing for  
 27 cancellation or nonrenewal of such insurance  
 28 under certain circumstances; providing for  
 29 notice; providing an exception; providing for  
 30 assigning an experience modification factor to  
 31 lessees under a terminated employee leasing

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1 arrangement; requiring notice; providing  
2 application; prohibiting lessees from entering  
3 into employee leasing relationships or from  
4 being eligible for certain workers'  
5 compensation coverage under certain  
6 circumstances; requiring insurers to conduct  
7 audits of employee leasing companies for  
8 certain purposes; specifying procedures;  
9 requiring the insured to pay additional  
10 premiums if the lessor or lessee fails to  
11 provide certain audit access; providing an  
12 exception; providing application; providing an  
13 effective date.

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