

By Representative Wiles

1 A bill to be entitled
 2 An act relating to employee leasing; creating
 3 s. 627.192, F.S.; providing purposes; providing
 4 definitions; requiring lessees of an employee
 5 leasing company to secure workers; compensation
 6 benefits; providing requirements for obtaining
 7 workers' compensation insurance in the
 8 voluntary market or in the residual market;
 9 providing reporting requirements for employee
 10 leasing companies; providing for cancellation
 11 or nonrenewal of workers' compensation
 12 insurance policies under certain circumstances;
 13 providing requirements for experience
 14 modification factors for terminated lessees;
 15 providing for ineligibility of workers'
 16 compensation insurance coverage under certain
 17 circumstances; providing audit requirements;
 18 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) The purpose of this section is to ensure that an
 27 employer who leases some or all of the employer's employees
 28 properly obtains workers' compensation insurance coverage for
 29 such employees, including those leased from another entity,
 30 and that premium is paid commensurate with exposure and
 31 anticipated claim experience.

- 1 (2) For purposes of this section:
2 (a) "Employee leasing" shall have the same meaning as
3 provided in s. 468.520.
4 (b) "Leased employee" means a person performing
5 services for a lessee under an employee leasing arrangement.
6 (c) "Lessee" means an entity which obtains all or part
7 of its workforce from another entity through an employee
8 leasing arrangement or which employs the services of an entity
9 through an employee leasing arrangement.
10 (d) "Lessor" means an employee leasing company,
11 licensed pursuant to part XI of chapter 458, that grants a
12 written lease to a lessee through an employee leasing
13 arrangement.
14 (e) "Multiple coordinated policies basis" means a
15 methodology under which:
16 1. Each lessee has its own policy covering its leased
17 employees who are required to be covered pursuant to the laws
18 of this state.
19 2. Nonleased employees of a lessee, required to be
20 covered pursuant to the laws of this state, are provided
21 coverage pursuant to a separate policy issued by the same
22 insurer.
23 3. All policies for lessees of the same lessor are
24 written by the same insurer to the extent possible.
25 4. The insurer arranges to have the same renewal dates
26 for all such policies.
27 5. The insurer arranges to have all notices sent to
28 the lessor and have a single master invoice sent to the lessor
29 for all policies covering the lessees of that lessor.
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1 6. If a lessee leases employees from more than one
2 lessor, there is a separate policy for the leased employees of
3 each lessor.

4 7. Appropriate endorsements are used to restrict the
5 coverage to specific employees and to coordinate coverage
6 between lessees and the lessor.

7 (f) "Premium subject to dispute" means any disputed
8 portion of workers' compensation insurance premium with
9 respect to which an insured has provided a written notice of
10 dispute to the insurer or service carrier, has initiated any
11 applicable proceeding for resolving as prescribed by law or
12 rating organization rule, or has initiated litigation. The
13 insured must have provided a detailed explanation of the
14 specific areas of dispute and provided an estimate of the
15 premium the insured believes to be correct. The insured must
16 have paid any undisputed portion of the premium.

17 (3) A lessee shall secure workers' compensation
18 benefits under s. 440.38. If the lessee complies by purchasing
19 and maintaining a workers' compensation insurance policy, the
20 exposure and experience of the lessee shall be used in
21 determining the premium for policy.

22 (4) Notwithstanding subsection (3), a lessor who
23 obtains coverage in the voluntary workers' compensation market
24 may, with the voluntary market insurer's knowledge and
25 consent, elect to secure the coverage on leased employees
26 through a standard workers' compensation policy issued to the
27 lessor. The lessor's insurer may take all reasonable steps to
28 ascertain exposure under the policy and collect the
29 appropriate premium by:

30 (a) Requiring the lessor to provide a complete
31 description of lessor's operations.

1 (b) Requiring periodic reporting by the lessor of the
2 covered lessees' payroll, classifications, experience rating
3 modification factors, and jurisdictions with exposure. Such
4 reporting may be supplemented by a requirement for lessees to
5 submit to the carrier Internal Revenue Service Form 941 or its
6 equivalent on a quarterly basis.

7 (c) Auditing the lessor's operations.

8 (d) Undertaking any other reasonable measures to
9 determine the appropriate premium.

10 (5) A lessor who obtains coverage for leased employees
11 through the residual market, established pursuant to s.
12 627.311(4), shall secure coverage on a multiple coordinated
13 policies basis. To qualify for coverage on a multiple
14 coordinated policies basis, the lessor's officers or
15 directors, or any person with a 5 percent or greater interest
16 in the lessor, may not owe any premium to the lessor's current
17 insurer or any prior insurers of the lessor except premium
18 subject to dispute. All information required by this section
19 shall be provided and the lessor must be licensed with the
20 Department of Business and Professional Regulation. A lessor
21 who applies for coverage through the residual market shall
22 provide, with the application for coverage:

23 (a) A list by jurisdiction of each name the lessor has
24 operated under in the preceding 5 years, including any
25 alternative names and names of predecessor and successor
26 business entities, together with the policy number and carrier
27 for each workers' compensation insurance policy issued to the
28 lessor under each such name in the preceding 5 years and a
29 copy of the most recent Internal Revenue Service Form 941 or
30 its equivalent filed with the United States Internal Revenue
31 Service by the lessor.

1 (b) A list of each person or entity who owns a 5
2 percent or greater interest in the lessor at the time of
3 application and a list of each person or entity who formerly
4 owned a 5 percent or greater interest in the lessor or any
5 predecessor, successor, or other form or identity of the
6 lessor in the preceding 5 years.

7 (c) For each person or entity identified in the
8 paragraph (b), a list of all other lessors in which each such
9 person or entity owns or owned a 5 percent or greater interest
10 and a list of all other businesses in which each such person
11 or entity or combination of two or more such persons or
12 entities owns or owned a 50 percent or greater interest at the
13 time application is made and in the 12 months preceding the
14 application.

15 (d) A list by jurisdiction for each lessee, together
16 with any other names such lessee has operated under in the
17 preceding 5 years and the Internal Revenue Service Form 941 or
18 its equivalent most recently filed with the United States
19 Internal Revenue Service with respect to each lessee and a
20 copy of the most recent Internal Revenue Service Form 941 or
21 its equivalent filed with the United States Internal Revenue
22 Service by each lessee.

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

28 (f) For each lessee at the time of application or
29 renewal, a listing of all leased employees together with their
30 social security numbers, classification codes, and wages.

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

9 (6) A lessor who applies for coverage or is covered
10 through the voluntary market or the residual market shall also
11 maintain and provide to the insurer, or to the principal
12 rating organization through the residual market servicing
13 carrier, sufficient information to permit the calculation of
14 an experience modification factor for each lessee. Such
15 information shall include:

16 (a) The lessee's corporate name.

17 (b) The lessee's taxpayer or employer identification
18 number.

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

20 (d) A listing of all leased employees associated with
21 each lessee, the applicable classification code, and the
22 payroll.

23 (e) Claims information groups by lessee, and any other
24 information necessary to permit the calculation of an
25 experience modification factor for each lessee.

26 (7) In addition to any other provision of law, any
27 violation of this section is grounds for cancellation or
28 nonrenewal, provided the employee leasing company has been
29 provided a reasonable opportunity to cure the violation. If a
30 lessor has received notice that its workers' compensation
31 insurance policy will be canceled or nonrenewed, the lessor

1 shall notify, by certified mail within 15 days after receiving
2 the notice, all lessees for which there is an employee leasing
3 arrangement covered under such policy.

4 (8) If the employee leasing arrangement with a lessee
5 is terminated, the lessee shall be assigned an experience
6 modification factor which reflects its experience during the
7 experience period specified by the approved experience rating
8 plan, including, if applicable, experience incurred for leased
9 employees under any employee leasing arrangements. The lessor
10 shall notify the insurer or the service carrier 30 days prior
11 to the effective date of termination, or immediately upon
12 notification of cancellation by the lessee, of an employee
13 leasing arrangement with a lessee in order to allow sufficient
14 time to calculate an experience modification factor for the
15 lessee.

16 (9) This section shall not affect any requirement by
17 law of a lessee to secure workers' compensation coverage for
18 employees not provided, supplied, or maintained by a lessor
19 pursuant to an employee leasing arrangement.

20 (10) A lessee shall not be eligible for coverage
21 pursuant to a workers' compensation insurance policy issued to
22 a lessor in the voluntary market if the lessee owes its
23 current insurer or a prior insurer any premium for workers'
24 compensation insurance, except premium subject to dispute. A
25 lessee shall not be eligible for coverage pursuant to a
26 workers' compensation policy under a multiple coordinated
27 policy basis in the residual market if the lessee owes its
28 current insurer or a prior insurer any premium for workers'
29 compensation insurance, except premium subject to dispute.

30 (11) Each insurer shall audit any policy issued to a
31 lessor within 90 days after the effective date of the policy

1 and may conduct quarterly audits thereafter. The purpose of
2 the audits shall be to determine the appropriateness of all
3 classifications, experience modification factors, and
4 estimated payroll used with respect to the development of the
5 premium charged to the lessor. Audits shall include, at a
6 minimum, onsite audits conducted at the principle location of
7 each lessee.

8 Section 2. This act shall take effect October 1 of the
9 year in which enacted.

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HOUSE SUMMARY

Provides requirements to ensure that employers who lease employees properly obtains workers' compensation insurance coverage for such employees and that workers' compensation insurance premium is paid commensurate with exposure and anticipated claim experience. See bill for details.