

By the Committee on Financial Services and 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; authorizing certain lessors to
5 secure workers' compensation insurance coverage
6 on leased employees under certain
7 circumstances; providing procedures; requiring
8 such lessors to provide certain information to
9 insurers for certain purposes; providing for
10 cancellation or nonrenewal of such insurance
11 under certain circumstances; providing for
12 notice; providing an exception; providing for
13 assigning an experience modification factor to
14 lessees under a terminated employee leasing
15 arrangement; requiring notice; providing
16 application; prohibiting lessees from entering
17 into employee leasing relationships or from
18 being eligible for certain workers'
19 compensation coverage under certain
20 circumstances; requiring insurers to conduct
21 audits of employee leasing companies for
22 certain purposes; specifying procedures;
23 requiring employers which fail to provide
24 certain audit access to pay additional
25 premiums; providing an exception; providing
26 application; providing an effective date.

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

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30 Section 1. Section 627.192, Florida Statutes, is
31 created to read:

1 627.192 Workers' compensation insurance; employee
2 leasing arrangements.--

3 (1) The purpose of this section is to ensure that an
4 employer who leases some or all of its workers properly
5 obtains workers' compensation insurance coverage for all of
6 its employees, including those leased from or coemployed with
7 another entity, and that premium paid by an employee leasing
8 company is commensurate with exposure and anticipated claim
9 experience for all employees.

10 (2) For purposes of the Florida Insurance Code:

11 (a) "Employee leasing" shall have the same meaning as
12 set forth in s. 468.520(4).

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

15 (c) "Lessee" means an entity which obtains all or part
16 of its workforce from another entity through an employee
17 leasing arrangement or which employs the services of an entity
18 through an employee leasing arrangement.

19 (d) "Lessor" means an employee leasing company, as set
20 forth in part XI of chapter 468, engaged in the business of or
21 holding itself out as being in the business of employee
22 leasing. A lessor may also be referred to as an employee
23 leasing company.

24 (e) "Premium subject to dispute" means that the
25 insured has provided a written notice of dispute to the
26 insurer or service carrier, has initiated any applicable
27 proceeding for resolving such disputes as prescribed by law or
28 rating organization rule, or has initiated litigation
29 regarding the premium dispute. The insured must have detailed
30 the specific areas of dispute and provided an estimate of the
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1 premium the insured believes to be correct. The insured must
2 have paid any undisputed portion of the bill.
3 (3) A lessor that obtains coverage in the voluntary
4 workers' compensation market may elect, with the voluntary
5 market insurer's knowledge and consent, to secure the coverage
6 on leased employees through a workers' compensation policy
7 issued to the lessor. The insurer of the lessor may, in its
8 discretion, take all reasonable steps to ascertain exposure
9 under the policy and collect the appropriate premium by:
10 (a) Requiring the lessor to provide a complete
11 description of lessor's operations.
12 (b) Requiring periodic reporting by the lessor of
13 covered lessees' payroll, classifications, claims information,
14 loss data, and jurisdictions with exposure. This reporting may
15 be supplemented by a requirement for lessees to submit to the
16 carrier Internal Revenue Service Form 941 or its equivalent on
17 a quarterly basis.
18 (c) Auditing the lessor's operations.
19 (d) Using other reasonable measures to determine the
20 appropriate premium.
21 (4) A lessor that applies for coverage or is covered
22 through the voluntary market shall also maintain and furnish
23 to the insurer on an annual basis and, as the insurer may
24 otherwise reasonably require, sufficient information to permit
25 the calculation of an experience modification factor for each
26 lessee upon termination of the employee leasing relationship.
27 Such information shall include:
28 (a) The lessee's corporate name.
29 (b) The lessee's taxpayer or employer identification
30 number.
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1 (c) Payroll summaries and class codes applicable to
2 each lessee, and, if requested by the insurer, a listing of
3 all leased employees associated with a given lessee.

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

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

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

3 (7) This section shall not have any effect on the
4 statutory obligation, if any, of a lessee to secure workers'
5 compensation coverage for employees that the lessee does not
6 coemploy or lease pursuant to an employee leasing arrangement.

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

19 (9) Insurers shall conduct annual audits of payroll
20 and classifications of employee leasing companies in order to
21 ensure that the appropriate premium is charged for workers'
22 compensation coverage. The audits shall be conducted to ensure
23 that all sources of payment by lessors to employees,
24 subcontractors, and independent contractors have been reviewed
25 and the accuracy of classifications of employees have been
26 verified. Lessors shall be audited by insurers not less
27 frequently than annually. Insurers may provide for more
28 frequent audits of lessors based on such factors as amount of
29 premium, type of business, loss ratios, or other relevant
30 factors. Payroll and classification verification audit rules
31 of insurers must include, but need not be limited to, use by

1 the insurer of state and federal reports of employee income,
2 payroll and other accounting records, certificates of
3 insurance maintained by subcontractors, and duties of
4 employees.

5 (10) If a lessor or a lessee fails to provide
6 responsible access to payroll and classification records for a
7 payroll and classification audit, the employer shall pay a
8 premium to the insurer not to exceed three times the most
9 recent estimated annual premium. However, the lessor is not
10 subject to such penalty if the failure to obtain the needed
11 records is the direct result of the acts or omissions of the
12 lessee.

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

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