

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 the insured to pay additional
24 premiums if the lessor or lessee fails to
25 provide certain audit access; providing an
26 exception; providing application; providing an
27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 627.192, Florida Statutes, is
2 created to read:

3 627.192 Workers' compensation insurance; employee
4 leasing arrangements.--

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

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

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

15 (b) "Experience rating modification" means a factor
16 applied to a premium to reflect a risk's variation from the
17 average risk. The experience modification is determined by
18 comparing actual losses to expected losses, using the risk's
19 own past experience.

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

22 (d) "Lessee" means an entity which obtains all or part
23 of its workforce from another entity through an employee
24 leasing arrangement or which employs the services of an entity
25 through an employee leasing arrangement.

26 (e) "Lessor" means an employee leasing company, as set
27 forth in part XI of chapter 468, engaged in the business of or
28 holding itself out as being in the business of employee
29 leasing. A lessor may also be referred to as an employee
30 leasing company.

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1 (f) "Premium subject to dispute" means that the
2 insured has provided a written notice of dispute to the
3 insurer or service carrier, has initiated any applicable
4 proceeding for resolving such disputes as prescribed by law or
5 rating organization procedures approved by the department, or
6 has initiated litigation regarding the premium dispute. The
7 insured must have detailed the specific areas of dispute and
8 provided an estimate of the premium the insured believes to be
9 correct. The insured must have paid any undisputed portion of
10 the bill.

11 (3) A lessor that obtains coverage in the voluntary
12 workers' compensation market may elect, with the voluntary
13 market insurer's knowledge and consent, to secure the coverage
14 on leased employees through a workers' compensation policy
15 issued to the lessor. The insurer of the lessor may, in its
16 discretion, take all reasonable steps to ascertain exposure
17 under the policy and collect the appropriate premium by:

18 (a) Requiring the lessor to provide a complete
19 description of lessor's operations.

20 (b) Requiring periodic reporting by the lessor of
21 covered lessees' payroll, classifications, claims information,
22 loss data, and jurisdictions with exposure. This reporting may
23 be supplemented by a requirement for lessees to submit to the
24 carrier Internal Revenue Service Form 941 or its equivalent on
25 a quarterly basis.

26 (c) Auditing the lessor's operations.

27 (d) Using other reasonable measures to determine the
28 appropriate premium.

29 (4) A lessor that applies for coverage or is covered
30 through the voluntary market shall also maintain and furnish
31 to the insurer on an annual basis, and as the insurer may

1 otherwise reasonably require, sufficient information to permit
2 the calculation of an experience modification factor for each
3 lessee upon termination of the employee leasing relationship.

4 Information accruing during the term of the leasing
5 arrangement which is used to calculate an experience
6 modification factor for a lessee upon termination of the
7 leasing relationship shall continue to be used in the future
8 experience ratings of the lessor. Such information shall
9 include:

10 (a) The lessee's corporate name.

11 (b) The lessee's taxpayer or employer identification
12 number.

13 (c) Payroll summaries and class codes applicable to
14 each lessee, and, if requested by the insurer, a listing of
15 all leased employees associated with a given lessee.

16 (d) Claims information grouped by lessee, and any
17 other information maintained by or readily available to the
18 lessor that is necessary for the calculation of an experience
19 modification factor for each lessee.

20 (5) In addition to any other provision of law, any
21 material violation of this section by an employee leasing
22 company is grounds for cancellation or nonrenewal of the
23 lessor's insurance policy provided that the employee leasing
24 company has been provided a reasonable opportunity to cure the
25 violation. If an employee leasing company has received notice
26 that its workers' compensation insurance policy will be
27 canceled or nonrenewed, the leasing company shall notify by
28 certified mail, within 15 days after receipt of the notice,
29 all of the lessees for which there is an employee leasing
30 arrangement covered under the policy to be canceled, except
31 notice is not required if the employee leasing company has

1 obtained another insurance policy with an effective date that
2 is the same as the date of cancellation or nonrenewal.

3 (6) If the employee leasing arrangement with a lessee
4 is terminated, the lessee shall be assigned an experience
5 modification factor which reflects its experience during the
6 experience period specified by the approved experience rating
7 plan, including, if applicable, experience incurred for leased
8 employees under the employee leasing arrangements. The
9 employee leasing company shall notify the insurer of its
10 intent to terminate any lessee relationship prior to
11 termination when feasible. When prior notice is not feasible,
12 the employee leasing company shall notify its insurer within 5
13 working days following actual termination.

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

18 (8) A lessee shall not enter into an employee leasing
19 relationship or be eligible for workers' compensation coverage
20 in the voluntary market if the lessee owes its current or a
21 prior insurer any premium for workers' compensation insurance,
22 or if the lessee owes its current or prior employee leasing
23 company amounts due under the service agreement, except for
24 premium or amounts due that are subject to dispute. For the
25 purposes of this section and compliance with other laws and
26 regulations, a lessor may rely on a sworn statement by the
27 lessee that the lessee has met any and all prior premium or
28 fee obligations, unless the lessor has actual knowledge to the
29 contrary.

30 (9) Insurers shall conduct annual audits of payroll
31 and classifications of employee leasing companies in order to

1 ensure that the appropriate premium is charged for workers'
2 compensation coverage. The audits shall be conducted to ensure
3 that all sources of payment by lessors to employees,
4 subcontractors, and independent contractors have been reviewed
5 and the accuracy of classifications of employees have been
6 verified. Insurers may provide for more frequent audits of
7 lessors based on such factors as amount of premium, type of
8 business, loss ratios, or other relevant factors. Payroll and
9 classification verification audit rules of insurers must
10 include, but need not be limited to, use by the insurer of
11 state and federal reports of employee income, payroll and
12 other accounting records, certificates of insurance maintained
13 by subcontractors, and duties of employees.

14 (10) If a lessor or a lessee fails to provide
15 reasonable access to payroll and classification records for a
16 payroll and classification audit, the insured shall pay a
17 premium to the insurer not to exceed three times the most
18 recent estimated annual premium. However, the lessor is not
19 subject to such penalty if the failure to obtain the needed
20 records is the direct result of the acts or omissions of the
21 lessee.

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