

597-1365A-05

1 A bill to be entitled
2 An act relating to employee leasing companies;
3 amending s. 468.521, F.S.; revising the
4 criteria for the appointment of members of the
5 Board of Employee Leasing Companies; amending
6 s. 468.525, F.S.; requiring that an applicant
7 for a renewal license as an employee leasing
8 company have a specified net worth; deleting
9 provisions authorizing certain companies to
10 submit financial statements that are reviewed
11 rather than audited by a certified public
12 accountant; amending s. 468.529, F.S.;
13 requiring that an employee leasing company make
14 certain information available to the Division
15 of Workers' Compensation of the Department of
16 Financial Services; providing an administrative
17 fine for failure or refusal to submit the
18 required reports, forms, or notices; amending
19 s. 627.192, F.S.; requiring workers'
20 compensation insurers providing coverage for
21 employee leasing companies to provide certain
22 information to the rating organization;
23 requiring a report by the rating organization
24 to the lessee; providing an effective date.

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

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28 Section 1. Subsection (2) of section 468.521, Florida
29 Statutes, is amended to read:
30 468.521 Board of Employee Leasing Companies;
31 membership; appointments; terms.--

1 (2) Five members of the board shall be chosen from
2 individuals already engaged in the employee leasing industry
3 and must be licensed pursuant to this part. One of the
4 licensed members must be in an employee leasing company that
5 has an annual gross Florida payroll for its leased employees
6 which is among the smallest 20 percent of licensed employee
7 leasing companies in the state at the time of the member's
8 appointment and each reappointment. The remaining two board
9 members must ~~shall~~ be residents of this state and must not be,
10 or ever have been, connected with the business of employee
11 leasing, one of the remaining two board members must represent
12 small employers, and the other remaining board member must
13 have experience in the field of insurance regulation.

14 Section 2. Paragraphs (b) and (e) of subsection (3) of
15 section 468.525, Florida Statutes, are amended to read:

16 468.525 License requirements.--

17 (3) Each employee leasing company licensed by the
18 department shall have a registered agent for service of
19 process in this state and at least one licensed controlling
20 person. In addition, each licensed employee leasing company
21 shall comply with the following requirements:

22 (b) An applicant for an initial or renewal employee
23 leasing company license shall have a tangible accounting net
24 worth of not less than \$50,000.

25 (e) Each employee leasing company or employee leasing
26 company group shall submit annual financial statements audited
27 by an independent certified public accountant, with the
28 application and within 120 days after the end of each fiscal
29 year, in a manner and time prescribed by the board, ~~provided~~
30 ~~however, that any employee leasing company or employee leasing~~
31 ~~company group with gross Florida payroll of less than \$2.5~~

1 ~~million during any fiscal year may submit financial statements~~
2 ~~reviewed by an independent certified public accountant for~~
3 ~~that year.~~

4 Section 3. Section 468.529, Florida Statutes, is
5 amended to read:

6 468.529 Licensee's insurance; employment tax; benefit
7 plans.--

8 (1) A licensed employee leasing company is the
9 employer of the leased employees, except that this provision
10 is not intended to affect the determination of any issue
11 arising under Pub. L. No. 93-406, the Employee Retirement
12 Income Security Act, as amended from time to time. An employee
13 leasing company shall be responsible for timely payment of
14 unemployment taxes pursuant to chapter 443, and shall be
15 responsible for providing workers' compensation coverage
16 pursuant to chapter 440. However, no licensed employee leasing
17 company shall sponsor a plan of self-insurance for health
18 benefits, except as may be permitted by the provisions of the
19 Florida Insurance Code or, if applicable, by Pub. L. No.
20 93-406, the Employee Retirement Income Security Act, as
21 amended from time to time. For purposes of this section, a
22 "plan of self-insurance" shall exclude any arrangement where
23 an admitted insurance carrier has issued a policy of insurance
24 primarily responsible for the obligations of the health plan.

25 (2) An initial or renewal license may not be issued to
26 any employee leasing company unless the employee leasing
27 company first files with the board evidence of workers'
28 compensation coverage for all leased employees in this state.
29 Each employee leasing company shall maintain and make
30 available to its workers' compensation carrier and the
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1 Division of Workers' Compensation of the Department of
2 Financial Services the following information:

3 (a) The correct name and federal identification number
4 of each client company.

5 (b) A listing of all covered employees provided to
6 each client company, by classification code.

7 (c) The total eligible wages by classification code
8 and the premiums due to the carrier for the employees provided
9 to each client company.

10 (3) A licensed employee leasing company shall within 5
11 ~~30~~ days after initiation or termination notify its workers'
12 compensation insurance carrier, the Division of Workers'
13 Compensation of the Department of Financial Services, and the
14 state agency providing unemployment tax collection services
15 under contract with the Agency for Workforce Innovation
16 through an interagency agreement pursuant to s. 443.1316 of
17 both the initiation or the termination of the company's
18 relationship with any client company.

19 (4) Reports, forms, or notices required under
20 subsections (2) and (3) shall be filed with the Division of
21 Workers' Compensation of the Department of Financial Services
22 by employee leasing companies at such times and in such form
23 and format as the Department of Financial Services prescribes
24 by rule. Any employee leasing company that fails or refuses to
25 timely send such reports, forms, or notices required under
26 subsections (2) and (3) shall be subject to an administrative
27 fine by the division not to exceed \$1,000 for each failure or
28 refusal.

29 ~~(5)(4)~~ An initial or renewal license may not be issued
30 to any employee leasing company unless the employee leasing
31 company first provides evidence to the board, as required by

1 board rule, that the employee leasing company has paid all of
2 the employee leasing company's obligations for payroll,
3 payroll-related taxes, workers' compensation insurance, and
4 employee benefits. All disputed amounts must be disclosed in
5 the application.

6 ~~(6)~~⁽⁵⁾ The provisions of this section are subject to
7 verification by department or board audit.

8 Section 4. Section 627.192, Florida Statutes, is
9 amended to read:

10 627.192 Workers' compensation insurance; employee
11 leasing arrangements.--

12 (1) The purpose of this section is to ensure that an
13 employer who leases some or all of its workers properly
14 obtains workers' compensation insurance coverage for all of
15 its employees, including those leased from or coemployed with
16 another entity, and that premium paid by an employee leasing
17 company is commensurate with exposure and anticipated claim
18 experience for all employees.

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

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

22 (b) "Experience rating modification" means a factor
23 applied to a premium to reflect a risk's variation from the
24 average risk. The experience modification is determined by
25 comparing actual losses to expected losses, using the risk's
26 own past experience.

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

29 (d) "Lessee" means an entity which obtains all or part
30 of its workforce from another entity through an employee
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1 leasing arrangement or which employs the services of an entity
2 through an employee leasing arrangement.

3 (e) "Lessor" means an employee leasing company, as set
4 forth in part XI of chapter 468, engaged in the business of or
5 holding itself out as being in the business of employee
6 leasing. A lessor may also be referred to as an employee
7 leasing company.

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

18 (3) A lessor that obtains coverage in the voluntary
19 workers' compensation market may elect, with the voluntary
20 market insurer's knowledge and consent, to secure the coverage
21 on leased employees through a workers' compensation policy
22 issued to the lessor. The insurer of the lessor may, in its
23 discretion, take all reasonable steps to ascertain exposure
24 under the policy and collect the appropriate premium by:

25 (a) Requiring the lessor to provide a complete
26 description of lessor's operations.

27 (b) Requiring periodic reporting by the lessor of
28 covered lessees' payroll, classifications, claims information,
29 loss data, and jurisdictions with exposure. This reporting may
30 be supplemented by a requirement for lessees to submit to the
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1 carrier Internal Revenue Service Form 941 or its equivalent on
2 a quarterly basis.

3 (c) Auditing the lessor's operations.

4 (d) Using other reasonable measures to determine the
5 appropriate premium.

6 (4) A lessor that applies for coverage or is covered
7 through the voluntary market shall also maintain and furnish
8 to the insurer on an annual basis, and as the insurer may
9 otherwise reasonably require, sufficient information to permit
10 the calculation of an experience modification factor for each
11 lessee upon termination of the employee leasing relationship.

12 The insurer shall periodically report to its rating
13 organization such information submitted by each lessor, as
14 required by the rating organization. Information accruing
15 during the term of the leasing arrangement which is used to
16 calculate an experience modification factor for a lessee upon
17 termination of the leasing relationship shall continue to be
18 used in the future experience ratings of the lessor. If
19 available, the rating organization shall report the experience
20 modification factor for a lessee within 30 days after such a
21 request by the lessee. Such information shall include:

22 (a) The lessee's corporate name.

23 (b) The lessee's taxpayer or employer identification
24 number.

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

28 (d) Claims information grouped by lessee, and any
29 other information maintained by or readily available to the
30 lessor that is necessary for the calculation of an experience
31 modification factor for each lessee.

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

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

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

30 (8) A lessee shall not enter into an employee leasing
31 relationship or be eligible for workers' compensation coverage

1 | in the voluntary market if the lessee owes its current or a
2 | prior insurer any premium for workers' compensation insurance,
3 | or if the lessee owes its current or prior employee leasing
4 | company amounts due under the service agreement, except for
5 | premium or amounts due that are subject to dispute. For the
6 | purposes of this section and compliance with other laws and
7 | regulations, a lessor may rely on a sworn statement by the
8 | lessee that the lessee has met any and all prior premium or
9 | fee obligations, unless the lessor has actual knowledge to the
10 | contrary.

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

26 | (10) If a lessor or a lessee fails to provide
27 | reasonable access to payroll and classification records for a
28 | payroll and classification audit, the insured shall pay a
29 | premium to the insurer not to exceed three times the most
30 | recent estimated annual premium. However, the lessor is not
31 | subject to such penalty if the failure to obtain the needed

1 records is the direct result of the acts or omissions of the
2 lessee.

3 Section 5. This act shall take effect January 1, 2006.
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6 SENATE SUMMARY

7 Revises various provisions governing employee leasing
8 companies. Revises the membership of the Board of
9 Employee Leasing Companies. Requires that an employee
10 leasing company make certain information available to the
11 Division of Workers' Compensation of the Department of
12 Financial Services. Provides an administrative fine for
13 failure or refusal to submit the required reports, forms,
14 or notices. (See bill for details.)
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