

By Senator Atwater

25-1314-06

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 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 that authorize alternative methods
10 of determining net worth; requiring maintenance
11 of net worth; deleting provisions authorizing
12 certain companies to submit financial
13 statements that are reviewed rather than
14 audited by a certified public accountant;
15 requiring that an employee leasing company
16 provide written notice to leased employees
17 under certain circumstances; amending s.
18 468.529, F.S.; requiring that an employee
19 leasing company make certain information
20 available to the Department of Financial
21 Services; prescribing times for notices of
22 termination; prescribing circumstances under
23 which a person becomes a leased employee;
24 amending s. 627.192, F.S.; requiring workers'
25 compensation insurers providing coverage for
26 employee leasing companies to provide certain
27 information to the rating organization;
28 requiring a report by the rating organization
29 to the lessee; requiring workers' compensation
30 coverage for leased employees; providing an
31 effective date.

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

2

3 Section 1. Subsection (2) of section 468.521, Florida
4 Statutes, is amended to read:

5 468.521 Board of Employee Leasing Companies;
6 membership; appointments; terms.--

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

20 Section 2. Subsection (3) and paragraph (f) of
21 subsection (4) of section 468.525, Florida Statutes, are
22 amended to read:

23 468.525 License requirements.--

24 (3) Each employee leasing company licensed by the
25 department shall have a registered agent for service of
26 process in this state and at least one licensed controlling
27 person. In addition, each licensed employee leasing company
28 shall comply with the following requirements:

29 (a) The employment relationship with workers provided
30 by the employee leasing company to a client company shall be
31 established by written agreement between the leasing company

1 and the client, and written notice of that relationship shall
2 be given by the employee leasing company to each worker who is
3 assigned to perform services at the client company's worksite.

4 (b) An applicant for an initial employee leasing
5 company license or group shall have a tangible accounting net
6 worth of not less than \$100,000 in accordance with generally
7 accepted accounting principles ~~\$50,000~~.

8 ~~(c) An applicant for initial or renewal license of an~~
9 ~~employee leasing company license or employee leasing company~~
10 ~~group shall have an accounting net worth or shall have~~
11 ~~guaranties, letters of credit, or other security acceptable to~~
12 ~~the board in sufficient amounts to offset any deficiency. A~~
13 ~~guaranty will not be acceptable to satisfy this requirement~~
14 ~~unless the applicant submits sufficient evidence to satisfy~~
15 ~~the board that the guarantor has adequate resources to satisfy~~
16 ~~the obligation of the guaranty.~~

17 (c)(d) Each employee leasing company and employee
18 leasing company group shall maintain at all times after
19 licensure a tangible an accounting net worth of at least
20 \$100,000 and positive working capital, as determined in
21 accordance with generally accepted accounting principles, or
22 shall have guaranties, letters of credit, or other security
23 acceptable to the board in sufficient amounts to offset any
24 deficiency in net worth or working capital. A guaranty will
25 not be acceptable to satisfy this requirement unless the
26 licensee submits sufficient evidence, as defined by rule, that
27 the guarantor has adequate resources to satisfy the obligation
28 of the guaranty. In determining the amount of working capital,
29 a licensee shall include adequate reserves for all taxes and
30 insurance, including plans of self-insurance or partial
31 self-insurance for claims incurred but not paid and for claims

1 incurred but not reported. Compliance with the requirements of
2 this paragraph is subject to verification by department or
3 board audit.

4 ~~(d)(e)~~ Each employee leasing company or employee
5 leasing company group shall submit annual financial statements
6 audited by an independent certified public accountant, with
7 the application and within 120 days after the end of each
8 fiscal year, in a manner and time prescribed by the board. The
9 financial statements may be prepared on a consolidated or
10 combined basis., ~~provided however, that any employee leasing~~
11 ~~company or employee leasing company group with gross Florida~~
12 ~~payroll of less than \$2.5 million during any fiscal year may~~
13 ~~submit financial statements reviewed by an independent~~
14 ~~certified public accountant for that year.~~

15 ~~(e)(f)~~ The licensee shall notify the department or
16 board in writing within 30 days after any change in the
17 application or status of the license.

18 ~~(f)(g)~~ Each employee leasing company or employee
19 leasing company group shall maintain accounting and employment
20 records relating to all employee leasing activities for a
21 minimum of 3 calendar years.

22 (4) The employee leasing company's contractual
23 arrangements with its client companies shall satisfy the
24 following conditions, whereby the leasing company:

25 (f) Is obligated to give ~~Has given~~ written notice of
26 the relationship between the employee leasing company and the
27 client company to all each leased employees as to whether the
28 employee leasing company is providing workers' compensation
29 coverage ~~employee it assigns to perform services at the~~
30 ~~client's worksite.~~

1 Section 3. Section 468.529, Florida Statutes, is
2 amended to read:

3 468.529 Licensee's insurance; employment tax; benefit
4 plans.--

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

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

29 (a) The correct name and federal identification number
30 of each client company.
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1 (b) A listing of all covered employees provided to
2 each client company, by classification code.

3 (c) The total eligible wages by classification code
4 and the premiums due to the carrier for the employees provided
5 to each client company.

6 (3) A licensed employee leasing company shall within 7
7 ~~30~~ days after initiation of an employee leasing company
8 contract with a client company ~~or termination~~ notify, in a
9 format acceptable to the Department of Financial Services, its
10 workers' compensation insurance carrier, the Division of
11 Workers' Compensation of the Department of Financial Services,
12 and the state agency providing unemployment tax collection
13 services under contract with the Agency for Workforce
14 Innovation through an interagency agreement pursuant to s.
15 443.1316 of ~~both~~ the initiation ~~or the termination~~ of the
16 employee leasing company's relationship with any client
17 company. The notice of termination of an employee leasing
18 company's contract with a client company shall be provided as
19 set forth in this subsection to those agencies and entities
20 within 7 days after the employee leasing company's receipt of
21 written notification from the client company that it is
22 terminating the contractual relationship with the employee
23 leasing company or within 7 days after receipt by the client
24 company of the employee leasing company's written notification
25 that it is terminating the contractual relationship with the
26 client company. Such notification must set forth the date of
27 termination of the employee leasing relationship.

28 (4) An initial or renewal license may not be issued to
29 any employee leasing company unless the employee leasing
30 company first provides evidence to the board, as required by
31 board rule, that the employee leasing company has paid all of

1 | the employee leasing company's obligations for payroll,
2 | payroll-related taxes, workers' compensation insurance, and
3 | employee benefits. All disputed amounts must be disclosed in
4 | the application.

5 | (5) A person shall become a leased employee upon the
6 | return of the written notice provided by the employee leasing
7 | company under s. 468.525(4)(f) which is signed by the
8 | applicant acknowledging that the applicant has been informed
9 | of the relationship between the employee leasing company and
10 | the client company, the receipt by the employee leasing
11 | company of a completed application for employment and any
12 | additional forms required by the employee leasing company, or
13 | the receipt by the applicant of the applicant's first paycheck
14 | from the employee leasing company, whichever occurs earlier.

15 | ~~(6)(5)~~ The provisions of this section are subject to
16 | verification by department or board audit.

17 | Section 4. Subsection (4) of section 627.192, Florida
18 | Statutes, is amended, and subsection (11) is added to that
19 | section, to read:

20 | 627.192 Workers' compensation insurance; employee
21 | leasing arrangements.--

22 | (4) A lessor that applies for coverage or is covered
23 | through the voluntary market shall also maintain and furnish
24 | to the insurer on an annual basis, and as the insurer may
25 | otherwise reasonably require, sufficient information to permit
26 | the calculation of an experience modification factor for each
27 | lessee upon termination of the employee leasing relationship.
28 | The insurer shall report periodically to its rating
29 | organization such information submitted by each lessor.
30 | Information accruing during the term of the leasing
31 | arrangement which is used to calculate an experience

1 modification factor for a lessee upon termination of the
2 leasing relationship shall continue to be used in the future
3 experience ratings of the lessor. If available, the rating
4 organization shall report the experience modification factor
5 for a lessee within 30 days after such a request is made by a
6 lessee. Such information shall include:

7 (a) The lessee's corporate name.

8 (b) The lessee's taxpayer or employer identification
9 number.

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

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

17 (11) Except as otherwise authorized, a lessor shall
18 provide workers' compensation insurance coverage to all leased
19 employees of a lessee.

20 Section 5. This act shall take effect January 1, 2007.

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23 SENATE SUMMARY

24 Revises various provisions relating to employee leasing
25 companies. Revises membership criteria for certain
26 members of the Board of Employee Leasing Companies.
27 Revises net-worth requirements for such companies.
28 Deletes authorization to review rather than audit some
29 financial statements. Requires a company to make certain
30 information available to the Department of Financial
31 Services. Prescribes circumstances under which a person
is considered a leased employee. Requires maintenance of
workers' compensation coverage for leased employees. (See
bill for details.)