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1 A bill to be entitled
2 An act relating to employee leasing companies; amending s.
3 468.525, F.S.; requiring that certain specified conditions
4 be included in the contractual arrangement between an
5 employee leasing company and its client companies;
6 amending s. 468.529, F.S.; requiring an employee leasing
7 company to notify its employees if the employee leasing
8 company terminates its agreement with a client company;
9 providing the dates the cancellation of workers'
10 compensation coverage is effective; requiring an employee
11 leasing company to secure workers' compensation coverage
12 from an insurance company authorized in this state;
13 providing that an employee leasing company and its client
14 companies are considered an "employer" for the purposes of
15 the workers' compensation law; amending s. 440.02, F.S.;
16 providing that the term "employment" for purposes of
17 workers' compensation coverage includes employment
18 performed by a leased employee; amending s. 440.11, F.S.;
19 providing that immunity from liability for certain acts
20 extends to an employee leasing company and certain other
21 specified entities; reenacting s. 626.112(1), F.S.,
22 relating to the licensing of insurance agents, insurance
23 adjusters, and customer representatives to incorporate the
24 amendment to s. 468.525, F.S., in a reference thereto;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (f) of subsection (4) of section
 30 468.525, Florida Statutes, is amended, and paragraph (g) is
 31 added to that subsection, to read:

32 468.525 License requirements.--

33 (4) The employee leasing company's contractual
 34 arrangements with its client companies shall satisfy the
 35 following conditions, whereby the leasing company:

36 (f) Gives ~~has given~~ written notice of the relationship
 37 between the employee leasing company and the client company to
 38 each leased employee it assigns to perform services at the
 39 client's worksite and gives written notice to all leased
 40 employees as to whether the employee leasing company or the
 41 client company is providing their workers' compensation
 42 coverage.

43 (g) Sets forth whether each leased employee will be
 44 covered by a workers' compensation policy issued to the employee
 45 leasing company or to the client company.

46 Section 2. Section 468.529, Florida Statutes, is amended
 47 to read:

48 468.529 Licensee's insurance; employment tax; benefit
 49 plans.--

50 (1) A licensed employee leasing company is the employer of
 51 the leased employees, except that this provision is not intended
 52 to affect the determination of any issue arising under Pub. L.
 53 No. 93-406, the Employee Retirement Income Security Act, as
 54 amended from time to time. An employee leasing company is ~~shall~~
 55 ~~be~~ responsible for timely payment of unemployment taxes pursuant
 56 to chapter 443, and is ~~shall be~~ responsible for providing

57 workers' compensation coverage under ~~pursuant to~~ chapter 440.
 58 However, a ~~ne~~ licensed employee leasing company may not ~~shall~~
 59 sponsor a plan of self-insurance for health benefits, except as
 60 ~~may be~~ permitted by the ~~provisions of the~~ Florida Insurance Code
 61 or, if applicable, by Pub. L. No. 93-406, the Employee
 62 Retirement Income Security Act, as amended from time to time.
 63 For purposes of this section, a "plan of self-insurance"
 64 excludes ~~shall exclude~~ any arrangement where an admitted
 65 insurance carrier has issued a policy of insurance primarily
 66 responsible for the obligations of the health plan.

67 (2) An initial or renewal license may not be issued to any
 68 employee leasing company unless the employee leasing company
 69 first files with the board evidence of workers' compensation
 70 coverage for all leased employees in this state. Each employee
 71 leasing company shall maintain and make available to its
 72 workers' compensation carrier the following information:

73 (a) The correct name and federal identification number of
 74 each client company.

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

77 (c) The total eligible wages by classification code and
 78 the premiums due to the carrier for the employees provided to
 79 each client company.

80 (3) A licensed employee leasing company shall within 30
 81 days after initiation or termination notify its workers'
 82 compensation insurance carrier, the Division of Workers'
 83 Compensation of the Department of Financial Services, and the
 84 state agency providing unemployment tax collection services

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85 under contract with the Agency for Workforce Innovation through
86 an interagency agreement pursuant to s. 443.1316 of both the
87 initiation or the termination of the company's relationship with
88 any client company.

89 (4) (a) If an employee leasing company terminates its
90 relationship with any client company, the employee leasing
91 company must send notice of the termination to the last known
92 address of each leased employee who had been coemployed with the
93 terminated client company. The notification must include the
94 date the employee leasing company terminated its relationship
95 with the client company.

96 (b) A leased employee coemployed by the terminated client
97 company is not covered by the workers' compensation policy of
98 the employee leasing company after the employee leasing company
99 terminates its relationship with the client company. Termination
100 of the employee's workers' compensation coverage is effective at
101 the earliest of:

102 1. Three days after the employee leasing company mails a
103 notice of termination to the last known address of the
104 terminated leased employee; or

105 2. Upon the terminated leased employee learning that he or
106 she is no longer an employee of the client company or employee
107 leasing company.

108 (c) If an employee leasing company continues its
109 relationship with a client company but terminates the employment
110 of, lays off, or places on a leave of absence a leased employee
111 who is coemployed with the client company, the leased employee
112 is not covered by the workers' compensation policy of the

113 employee leasing company at the earliest of:

114 1. Three days after the employee leasing company mails a
115 notice to the last known address of the leased employee
116 informing the leased employee that he or she is no longer a
117 leased employee of the employee leasing company, is on a leave
118 of absence from the client company or employee leasing company,
119 or is on layoff status from the client company or employee
120 leasing company; or

121 2. Upon the leased employee learning that he or she is no
122 longer an employee of the client company or employee leasing
123 company, is on a leave of absence from the client company or
124 employee leasing company, or is on laid-off status from the
125 client company or employee leasing company.

126 (d) If a leased employee receives and accepts a direct
127 deposit of a paycheck from a client company formerly under
128 contract with an employee leasing company or receives or accepts
129 payment in cash or by paycheck which contains no reference
130 indicating that the payment is from the employee leasing company
131 for employment services rendered for a client company, the
132 receipt or acceptance is conclusive proof that the employee has
133 received notice that he or she is no longer a leased employee of
134 the employee leasing company and is no longer covered by the
135 employee leasing company's workers' compensation policy. Except
136 as otherwise required by law, any other benefit provided by an
137 employee leasing company to its leased employees ceases upon the
138 termination of the leased employee's employment with the
139 employee leasing company.

140 (5) The responsibility to obtain workers' compensation

141 coverage for leased employees from an insurance carrier
142 authorized to do business in this state by way of a master
143 policy issued in the name of the employee leasing company, a
144 multiple coordinated policy issued to the employee leasing
145 company, a policy issued to the client company, or any other
146 policy acceptable under the laws of this state must be
147 specifically allocated in the employee leasing agreement to the
148 client company or the employee leasing company.

149 (6) At the termination of the agreement, the employee
150 leasing company must offer to the client company an opportunity,
151 at a reasonable time and location, to receive records regarding
152 the loss experience of the workers' compensation insurance
153 during the course of the agreement.

154 (7) The client company and the employee leasing company
155 shall be considered the employer for purposes of coverage under
156 chapter 440. Section 440.11 applies to the employee leasing
157 company and the client company and to all other persons set
158 forth in s. 440.11(2) irrespective of whether workers'
159 compensation coverage is provided to the leased employee by the
160 client company or the employee leasing company.

161 (8)~~(4)~~ An initial or renewal license may not be issued to
162 any employee leasing company unless the employee leasing company
163 first provides evidence to the board, as required by board rule,
164 that the employee leasing company has paid all of the employee
165 leasing company's obligations for payroll, payroll-related
166 taxes, workers' compensation insurance, and employee benefits.
167 All disputed amounts must be disclosed in the application.

168 ~~(9)-(5)~~ The provisions of this section are subject to
 169 verification by department or board audit.

170 Section 3. Paragraph (b) of subsection (17) of section
 171 440.02, Florida Statutes, is amended to read:

172 440.02 Definitions.--When used in this chapter, unless the
 173 context clearly requires otherwise, the following terms shall
 174 have the following meanings:

175 (17)

176 (b) "Employment" includes:

177 1. Employment by the state and all political subdivisions
 178 thereof and all public and quasi-public corporations therein,
 179 including officers elected at the polls.

180 2. All private employments in which four or more employees
 181 are employed by the same employer or, with respect to the
 182 construction industry, all private employment in which one or
 183 more employees are employed by the same employer.

184 3. Volunteer firefighters responding to or assisting with
 185 fire or medical emergencies whether or not the firefighters are
 186 on duty.

187 4. Employment performed by a leased employee under chapter
 188 468.

189 Section 4. Subsection (2) of section 440.11, Florida
 190 Statutes, is amended to read:

191 440.11 Exclusiveness of liability.--

192 (2) The immunity from liability described in subsection
 193 (1) extends shall extend to an employee leasing company, North
 194 American Industry Classification System Code 561330, licensed
 195 under chapter 468; to a temporary help services company, North

196 American Industry Classification System Code 561320; to each
 197 employer to whom the employee leasing company or temporary help
 198 services company assigns their employees; and to each of their
 199 respective employees, whether the workers' compensation coverage
 200 is provided to the leased employees or temporary help services
 201 employees by the licensed employee leasing company, the
 202 temporary help services company, or the employer. ~~employer and~~
 203 ~~to each employee of the employer which utilizes the services of~~
 204 ~~the employees of a help supply services company, as set forth in~~
 205 ~~Standard Industry Code Industry Number 7363, when such~~
 206 ~~employees, whether management or staff, are acting in~~
 207 ~~furtherance of the employer's business. An employee so engaged~~
 208 ~~by the employer shall be considered a borrowed employee of the~~
 209 ~~employer, and, for the purposes of this section, shall be~~
 210 ~~treated as any other employee of the employer.~~ The employer is
 211 shall be liable for and shall secure the payment of compensation
 212 to all such borrowed employees as required in s. 440.10, except
 213 when the ~~such~~ payment has been secured by the help supply
 214 services company.

215 Section 5. For the purpose of incorporating the amendment
 216 made by this act to section 468.525, Florida Statutes, in a
 217 reference thereto, subsection (1) of section 626.112, Florida
 218 Statutes, is reenacted to read:

219 626.112 License and appointment required; agents, customer
 220 representatives, adjusters, insurance agencies, service
 221 representatives, managing general agents.--

222 (1) (a) No person may be, act as, or advertise or hold
 223 himself or herself out to be an insurance agent, insurance

224 adjuster, or customer representative unless he or she is
 225 currently licensed by the department and appointed by an
 226 appropriate appointing entity or person.

227 (b) Except as provided in subsection (6) or in applicable
 228 department rules, and in addition to other conduct described in
 229 this chapter with respect to particular types of agents, a
 230 license as an insurance agent, service representative, customer
 231 representative, or limited customer representative is required
 232 in order to engage in the solicitation of insurance. For
 233 purposes of this requirement, as applicable to any of the
 234 license types described in this section, the solicitation of
 235 insurance is the attempt to persuade any person to purchase an
 236 insurance product by:

237 1. Describing the benefits or terms of insurance coverage,
 238 including premiums or rates of return;

239 2. Distributing an invitation to contract to prospective
 240 purchasers;

241 3. Making general or specific recommendations as to
 242 insurance products;

243 4. Completing orders or applications for insurance
 244 products;

245 5. Comparing insurance products, advising as to insurance
 246 matters, or interpreting policies or coverages; or

247 6. Offering or attempting to negotiate on behalf of
 248 another person a viatical settlement contract as defined in s.
 249 626.9911.

250

251 However, an employee leasing company licensed pursuant to
252 chapter 468 which is seeking to enter into a contract with an
253 employer that identifies products and services offered to
254 employees may deliver proposals for the purchase of employee
255 leasing services to prospective clients of the employee leasing
256 company setting forth the terms and conditions of doing
257 business; classify employees as permitted by s. 468.529; collect
258 information from prospective clients and other sources as
259 necessary to perform due diligence on the prospective client and
260 to prepare a proposal for services; provide and receive
261 enrollment forms, plans, and other documents; and discuss or
262 explain in general terms the conditions, limitations, options,
263 or exclusions of insurance benefit plans available to the client
264 or employees of the employee leasing company were the client to
265 contract with the employee leasing company. Any advertising
266 materials or other documents describing specific insurance
267 coverages must identify and be from a licensed insurer or its
268 licensed agent or a licensed and appointed agent employed by the
269 employee leasing company. The employee leasing company may not
270 advise or inform the prospective business client or individual
271 employees of specific coverage provisions, exclusions, or
272 limitations of particular plans. As to clients for which the
273 employee leasing company is providing services pursuant to s.
274 468.525(4), the employee leasing company may engage in
275 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
276 subject to the restrictions specified in those sections. If a
277 prospective client requests more specific information concerning
278 the insurance provided by the employee leasing company, the

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279 | employee leasing company must refer the prospective business
280 | client to the insurer or its licensed agent or to a licensed and
281 | appointed agent employed by the employee leasing company.

282 | Section 6. This act shall take effect July 1, 2008.