

1 A bill to be entitled
2 An act relating to employee leasing companies; amending s.
3 468.525, F.S.; requiring that each employee leasing
4 company at all times maintain a workers' compensation
5 policy; requiring that each contractual arrangement
6 between an employee leasing company and a client company
7 where the client company is to furnish workers'
8 compensation provide to the employee leasing company
9 evidence of valid workers' compensation coverage;
10 requiring that certain specified conditions be included in
11 the contractual arrangement between an employee leasing
12 company and its client companies; amending s. 468.529,
13 F.S.; requiring an employee leasing company to notify its
14 employees if the employee leasing company terminates its
15 agreement with a client company; providing the dates the
16 cancellation of workers' compensation coverage is
17 effective; requiring an employee leasing company or its
18 client companies to secure workers' compensation coverage
19 from an insurance company authorized in this state;
20 providing that an employee leasing company and its client
21 companies are considered an "employer" for the purposes of
22 the workers' compensation law; reenacting s. 626.112(1),
23 F.S., relating to the licensing of insurance agents,
24 insurance adjusters, and customer representatives to
25 incorporate the amendment to s. 468.525, F.S., in a
26 reference thereto; amending s. 443.036, F.S.; revising the
27 definition of the term "employee leasing company" to
28 reflect new reporting requirements; amending s. 443.1216,

29 F.S.; requiring the provision of quarterly reports that
 30 include certain information regarding client and employee
 31 leasing company establishments; providing effective dates.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

35 Section 1. Paragraphs (h) and (i) are added to subsection
 36 (3) of section 468.525, Florida Statutes, paragraph (f) of
 37 subsection (4) of that section is amended, and paragraph (g) is
 38 added to subsection (4) of that section, to read:

39 468.525 License requirements.--

40 (3) Each employee leasing company licensed by the
 41 department shall have a registered agent for service of process
 42 in this state and at least one licensed controlling person. In
 43 addition, each licensed employee leasing company shall comply
 44 with the following requirements:

45 (h) Each employee leasing company shall, regardless of the
 46 number of leased employees, at all times maintain a workers'
 47 compensation policy acceptable under the laws of this state.

48 (i) An employee leasing company whose contract with a
 49 client company provides for the client company to furnish
 50 coverage under this part shall require the client company to
 51 provide evidence of valid workers' compensation coverage to the
 52 employee leasing company.

53 (4) The employee leasing company's contractual
 54 arrangements with its client companies shall satisfy the
 55 following conditions, whereby the leasing company:

56 (f) Gives ~~has given~~ written notice of the relationship
 57 between the employee leasing company and the client company to
 58 each leased employee it assigns to perform services at the
 59 client's worksite and gives written notice to all leased
 60 employees as to whether the employee leasing company or the
 61 client company is providing their workers' compensation
 62 coverage.

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

66 Section 2. Section 468.529, Florida Statutes, is amended
 67 to read:

68 468.529 Licensee's insurance; employment tax; benefit
 69 plans.--

70 (1) A licensed employee leasing company is the employer of
 71 the leased employees, except that this provision is not intended
 72 to affect the determination of any issue arising under Pub. L.
 73 No. 93-406, the Employee Retirement Income Security Act, as
 74 amended from time to time. An employee leasing company is ~~shall~~
 75 ~~be~~ responsible for timely payment of unemployment taxes pursuant
 76 to chapter 443, and is ~~shall be~~ responsible for providing
 77 workers' compensation coverage pursuant to this part and chapter
 78 440. However, no licensed employee leasing company shall sponsor
 79 a plan of self-insurance for health benefits, except as may be
 80 permitted by the provisions of the Florida Insurance Code or, if
 81 applicable, by Pub. L. No. 93-406, the Employee Retirement
 82 Income Security Act, as amended from time to time. For purposes
 83 of this section, a "plan of self-insurance" shall exclude any

84 arrangement where an admitted insurance carrier has issued a
 85 policy of insurance primarily responsible for the obligations of
 86 the health plan.

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

93 (a) The correct name and federal identification number of
 94 each client company.

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

97 (c) The total eligible wages by classification code and
 98 the premiums due to the carrier for the employees provided to
 99 each client company.

100 (3) A licensed employee leasing company shall, within 30
 101 days after initiation or termination of an employee leasing
 102 agreement, notify its workers' compensation insurance carrier,
 103 the Division of Workers' Compensation of the Department of
 104 Financial Services, and the state agency providing unemployment
 105 tax collection services under contract with the Agency for
 106 Workforce Innovation through an interagency agreement pursuant
 107 to s. 443.1316 of both the initiation or the termination of the
 108 company's relationship with any client company.

109 (4) (a) If an employee leasing company terminates its
 110 relationship with a client company, the employee leasing company
 111 must send notice of the termination by United States Postal

112 Service first class mail to the last known address of each
113 leased employee who had been assigned to the terminated client
114 company. The notification must state the date the employee
115 leasing company terminated its relationship with the client
116 company.

117 (b) A leased employee who continues in the employment of a
118 terminated client company is not covered by the workers'
119 compensation policy of the employee leasing company after the
120 employee leasing company terminates its relationship with the
121 client company. Termination of the employee's workers'
122 compensation coverage is effective at the earliest of:

123 1. Five days after the employee leasing company mails a
124 notice of termination by United States Postal Service first
125 class mail to the last known address of the leased employee;

126 2. Upon the leased employee receiving actual or
127 constructive notice that he or she is no longer an employee of
128 the employee leasing company; or

129 3. Receipt, with proof of delivery, by the leased
130 employee, or receipt, with proof of delivery, at the leased
131 employee's last known address, of notice that the individual is
132 no longer an employee of the employee leasing company.

133 (c) If an employee leasing company continues its
134 relationship with a client company but terminates the employment
135 of, places on a leave of absence, or lays off a leased employee
136 who is assigned to the client company, the leased employee is
137 not covered by the workers' compensation policy of the employee
138 leasing company at the earliest of:

139 1. Five days after the employee leasing company mails a

140 notice, by United States Postal Service first class mail to the
141 last known address of the leased employee, informing the leased
142 employee that he or she is no longer a leased employee of the
143 employee leasing company, is on a leave of absence from the
144 client company or employee leasing company, or has been laid off
145 from the client company or employee leasing company; or

146 2. Upon the leased employee receiving actual or
147 constructive notice that he or she is no longer an employee of
148 the client company or employee leasing company, is on a leave of
149 absence from the client company or employee leasing company, or
150 has been laid off from the client company or employee leasing
151 company.

152 (d) Notwithstanding any actual or constructive notice
153 received by the leased employee that he or she is no longer a
154 leased employee of the employee leasing company and is no longer
155 covered by the employee leasing company's workers' compensation
156 policy, the requirements for notice to a leased employee under
157 paragraph (a), paragraph (b), or paragraph (c) are deemed to be
158 satisfied if a leased employee:

159 1. Negotiates a paycheck marked "final paycheck" which
160 clearly states or contains written notice that the leased
161 employee is no longer an employee of the employee leasing
162 company and is not covered by its workers' compensation policy;

163 2. Receives payment in cash, by paycheck, or by direct
164 deposit which contains no reference indicating that the payment
165 is from the employee leasing company; or

166 3. Is provided written notice by the client company or the
167 employee leasing company stating that the leased employee is no

168 longer an employee of the employee leasing company and is not
169 covered by the employee leasing company's workers' compensation
170 policy.

171 (5) An employee leasing agreement shall state whether the
172 responsibility to obtain workers' compensation insurance
173 coverage for leased employees as required under chapter 440
174 shall be allocated to the employee leasing company, the client
175 company, or both. The responsibility to obtain workers'
176 compensation coverage for leased employees shall be by way of a
177 master policy issued in the name of the employee leasing
178 company, a multiple coordinated policy issued to the employee
179 leasing company, a policy issued to the client company, or any
180 other policy acceptable under the laws of this state.

181 (6) Within 15 days of the termination of an employee
182 leasing agreement, the employee leasing company shall provide
183 the client company an opportunity to receive records regarding
184 the loss experience of the workers' compensation insurance
185 during the course of the employee leasing agreement.

186 (7) The client company and the employee leasing company
187 shall be considered the employer of leased employees for
188 purposes of coverage under chapter 440 regardless of whether the
189 client or employee leasing company is supplying workers'
190 compensation coverage. Subject to any limitations set forth in
191 chapter 440 or s. 627.192(7), s. 440.11(2) shall apply to the
192 employee leasing company and the client company and to all other
193 persons set forth in s. 440.11(2) if workers' compensation
194 coverage is secured for leased employees by the client company
195 or the employee leasing company.

196 (8)~~(4)~~ An initial or renewal license may not be issued to
 197 any employee leasing company unless the employee leasing company
 198 first provides evidence to the board, as required by board rule,
 199 that the employee leasing company has paid all of the employee
 200 leasing company's obligations for payroll, payroll-related
 201 taxes, workers' compensation insurance, and employee benefits.
 202 All disputed amounts must be disclosed in the application.

203 (9)~~(5)~~ The provisions of this section are subject to
 204 verification by department or board audit.

205 Section 3. For the purpose of incorporating the amendment
 206 made by this act to section 468.525, Florida Statutes, in a
 207 reference thereto, subsection (1) of section 626.112, Florida
 208 Statutes, is reenacted to read:

209 626.112 License and appointment required; agents, customer
 210 representatives, adjusters, insurance agencies, service
 211 representatives, managing general agents.--

212 (1) (a) No person may be, act as, or advertise or hold
 213 himself or herself out to be an insurance agent, insurance
 214 adjuster, or customer representative unless he or she is
 215 currently licensed by the department and appointed by an
 216 appropriate appointing entity or person.

217 (b) Except as provided in subsection (6) or in applicable
 218 department rules, and in addition to other conduct described in
 219 this chapter with respect to particular types of agents, a
 220 license as an insurance agent, service representative, customer
 221 representative, or limited customer representative is required
 222 in order to engage in the solicitation of insurance. For
 223 purposes of this requirement, as applicable to any of the

224 license types described in this section, the solicitation of
 225 insurance is the attempt to persuade any person to purchase an
 226 insurance product by:

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

229 2. Distributing an invitation to contract to prospective
 230 purchasers;

231 3. Making general or specific recommendations as to
 232 insurance products;

233 4. Completing orders or applications for insurance
 234 products;

235 5. Comparing insurance products, advising as to insurance
 236 matters, or interpreting policies or coverages; or

237 6. Offering or attempting to negotiate on behalf of
 238 another person a viatical settlement contract as defined in s.
 239 626.9911.

240
 241 However, an employee leasing company licensed pursuant to
 242 chapter 468 which is seeking to enter into a contract with an
 243 employer that identifies products and services offered to
 244 employees may deliver proposals for the purchase of employee
 245 leasing services to prospective clients of the employee leasing
 246 company setting forth the terms and conditions of doing
 247 business; classify employees as permitted by s. 468.529; collect
 248 information from prospective clients and other sources as
 249 necessary to perform due diligence on the prospective client and
 250 to prepare a proposal for services; provide and receive
 251 enrollment forms, plans, and other documents; and discuss or

252 explain in general terms the conditions, limitations, options,
 253 or exclusions of insurance benefit plans available to the client
 254 or employees of the employee leasing company were the client to
 255 contract with the employee leasing company. Any advertising
 256 materials or other documents describing specific insurance
 257 coverages must identify and be from a licensed insurer or its
 258 licensed agent or a licensed and appointed agent employed by the
 259 employee leasing company. The employee leasing company may not
 260 advise or inform the prospective business client or individual
 261 employees of specific coverage provisions, exclusions, or
 262 limitations of particular plans. As to clients for which the
 263 employee leasing company is providing services pursuant to s.
 264 468.525(4), the employee leasing company may engage in
 265 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
 266 subject to the restrictions specified in those sections. If a
 267 prospective client requests more specific information concerning
 268 the insurance provided by the employee leasing company, the
 269 employee leasing company must refer the prospective business
 270 client to the insurer or its licensed agent or to a licensed and
 271 appointed agent employed by the employee leasing company.

272 Section 4. Effective October 1, 2008, subsection (18) of
 273 section 443.036, Florida Statutes, is amended to read:

274 443.036 Definitions.--As used in this chapter, the term:

275 (18) "Employee leasing company" means an employing unit
 276 that has a valid and active license under chapter 468 and that
 277 maintains the records required by s. 443.171(5) and, in
 278 addition, produces quarterly reports as specified in s. 443.1216
 279 on the clients of the employee leasing company ~~maintains a~~

280 ~~listing of the clients of the employee leasing company and of~~
 281 ~~the employees, including their social security numbers, who have~~
 282 ~~been assigned to work at each client company job site. Further,~~
 283 ~~each client company job site must be identified by industry,~~
 284 ~~products or services, and address. The client list must be~~
 285 ~~provided to the tax collection service provider by June 30 and~~
 286 ~~by December 31 of each year. As used in this subsection, the~~
 287 term "client" means a party who has contracted with an employee
 288 leasing company to provide a worker, or workers, to perform
 289 services for the client. ~~Leased employees include employees~~
 290 ~~subsequently placed on the payroll of the employee leasing~~
 291 ~~company on behalf of the client. An employee leasing company~~
 292 must notify the tax collection service provider within 30 days
 293 after the initiation or termination of the company's
 294 relationship with any client company under chapter 468.

295 Section 5. Effective October 1, 2008, paragraph (a) of
 296 subsection (1) of section 443.1216, Florida Statutes, is amended
 297 to read:

298 443.1216 Employment.--Employment, as defined in s.
 299 443.036, is subject to this chapter under the following
 300 conditions:

301 (1)(a) The employment subject to this chapter includes a
 302 service performed, including a service performed in interstate
 303 commerce, by:

- 304 1. An officer of a corporation.
- 305 2. An individual who, under the usual common-law rules
 306 applicable in determining the employer-employee relationship, is
 307 an employee. However, whenever a client, as defined in s.

308 443.036(18), which would otherwise be designated as an employing
 309 unit has contracted with an employee leasing company to supply
 310 it with workers, those workers are considered employees of the
 311 employee leasing company. An employee leasing company may lease
 312 corporate officers of the client to the client and other workers
 313 to the client, except as prohibited by regulations of the
 314 Internal Revenue Service. Employees of an employee leasing
 315 company must be reported under the employee leasing company's
 316 tax identification number and contribution rate for work
 317 performed for the employee leasing company.

318 a. In addition to any other report required to be filed by
 319 law, an employee leasing company shall submit a report to the
 320 Agency for Workforce Innovation, Labor Market Statistics Center,
 321 or as otherwise directed by the agency, which must include the
 322 following information for each client establishment and each
 323 establishment:

324 (I) The trade or establishment name.

325 (II) The former unemployment compensation account number,
 326 if available.

327 (III) The former Federal Employment Identification Number,
 328 if available.

329 (IV) The industry code recognized and published by the
 330 United States Office of Management and Budget, if available.

331 (V) A description of the client's primary business
 332 activity in order to verify or assign an industry code.

333 (VI) The physical location address.

334 (VII) The number of full-time and part-time employees who
 335 worked during or received pay that was subject to unemployment

336 compensation taxes for the pay period, including the 12th day of
337 the month for each month of the quarter.

338 (VIII) The total wages subject to unemployment
339 compensation taxes paid during the calendar quarter.

340 (IX) An internal identification code to uniquely identify
341 each establishment of each client.

342 (X) The month and year the client entered into contract.

343 (XI) The month and year the client terminated the contract
344 for services.

345 b. The report shall be submitted electronically or in a
346 manner otherwise prescribed by the Agency for Workforce
347 Innovation in the format specified by the United States
348 Department of Labor, Bureau of Labor Statistics, for its
349 Multiple Worksite Report for Professional Employer
350 Organizations. The report must be provided quarterly to the
351 Agency for Workforce Innovation, Labor Market Statistics Center,
352 or as otherwise directed by the agency, and must be filed by the
353 last day of the month immediately following the end of the
354 calendar quarter. The information required in sub-sub-
355 subparagraphs a.(X) and (XI) must be provided only in the
356 quarter in which the contract to which it relates was entered
357 into or terminated. The sum of the employment data and the sum
358 of the wage data on this report must match the employment and
359 wages reported on the unemployment compensation quarterly tax
360 and wage report.

361 c. The Agency for Workforce Innovation shall have
362 rulemaking authority as necessary to implement the provisions of
363 this subparagraph and shall have the authority to administer,

364 collect, enforce, and waive the penalty imposed by s.
 365 443.141(1)(b) for the report required by this subparagraph.

366 d. For the purposes of this subparagraph, the term
 367 "establishment" means any location at which business is
 368 conducted or at which services or industrial operations are
 369 performed.

370 3. An individual other than an individual who is an
 371 employee under subparagraph 1. or subparagraph 2., who performs
 372 services for remuneration for any person:

373 a. As an agent-driver or commission-driver engaged in
 374 distributing meat products, vegetable products, fruit products,
 375 bakery products, beverages other than milk, or laundry or
 376 drycleaning services for his or her principal.

377 b. As a traveling or city salesperson engaged on a full-
 378 time basis in the solicitation on behalf of, and the
 379 transmission to, his or her principal of orders from
 380 wholesalers, retailers, contractors, or operators of hotels,
 381 restaurants, or other similar establishments for merchandise for
 382 resale or supplies for use in their business operations. This
 383 sub-subparagraph does not apply to an agent-driver or a
 384 commission-driver and does not apply to sideline sales
 385 activities performed on behalf of a person other than the
 386 salesperson's principal.

387 4. The services described in subparagraph 3. are
 388 employment subject to this chapter only if:

389 a. The contract of service contemplates that substantially
 390 all of the services are to be performed personally by the
 391 individual;

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392 b. The individual does not have a substantial investment
393 in facilities used in connection with the services, other than
394 facilities used for transportation; and

395 c. The services are not in the nature of a single
396 transaction that is not part of a continuing relationship with
397 the person for whom the services are performed.

398 Section 6. Except as otherwise specifically provided in
399 this act, this act shall take effect July 1, 2008.