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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/8/2008	.	
	.	
	.	

1 The Committee on Regulated Industries (Fasano) recommended the
 2 following **amendment**:

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. This act may be cited as the "Accurate
8 Employment Statistics Enhancement Act."

9 Section 2. Subsection (18) of section 443.036, Florida
10 Statutes, is amended to read:

11 443.036 Definitions.--As used in this chapter, the term:

12 (18) "Employee leasing company" means an employing unit
 13 that has a valid and active license under chapter 468 and that
 14 maintains the records required by s. 443.171(5) and, in addition,
 15 produces quarterly reports as specified in s. 443.1216 concerning
 16 the clients of the employee leasing company and the internal
 17 staff of the employee leasing company ~~maintains a listing of the~~

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18 ~~clients of the employee leasing company and of the employees,~~
19 ~~including their social security numbers, who have been assigned~~
20 ~~to work at each client company job site. Further, each client~~
21 ~~company job site must be identified by industry, products or~~
22 ~~services, and address. The client list must be provided to the~~
23 ~~tax collection service provider by June 30 and by December 31 of~~
24 ~~each year.~~ As used in this subsection, the term "client" means a
25 party who has contracted with an employee leasing company to
26 provide a worker, or workers, to perform services for the client.
27 ~~Leased employees include employees subsequently placed on the~~
28 ~~payroll of the employee leasing company on behalf of the client.~~
29 An employee leasing company must notify the tax collection
30 service provider within 30 days after the initiation or
31 termination of the company's relationship with any client company
32 under chapter 468.

33 Section 3. Paragraph (a) of subsection (1) of section
34 443.1216, Florida Statutes, is amended to read:

35 443.1216 Employment.--Employment, as defined in s. 443.036,
36 is subject to this chapter under the following conditions:

37 (1)(a) The employment subject to this chapter includes a
38 service performed, including a service performed in interstate
39 commerce, by:

- 40 1. An officer of a corporation.
- 41 2. An individual who, under the usual common-law rules
42 applicable in determining the employer-employee relationship, is
43 an employee. However, whenever a client, as defined in s.
44 443.036(18), which would otherwise be designated as an employing
45 unit has contracted with an employee leasing company to supply it
46 with workers, those workers are considered employees of the
47 employee leasing company. An employee leasing company may lease



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48 corporate officers of the client to the client and other workers
49 to the client, except as prohibited by regulations of the
50 Internal Revenue Service. Employees of an employee leasing
51 company must be reported under the employee leasing company's tax
52 identification number and contribution rate for work performed
53 for the employee leasing company.

54 a. In addition to any other report required to be filed by
55 law, an employee leasing company shall submit a report that must
56 include every client establishment and each establishment of the
57 employee leasing company to the Labor Market Statistics Center of
58 the Agency for Workforce Innovation, or as otherwise directed by
59 the agency, which must include the following information for each
60 establishment:

61 (I) The trade or establishment name;

62 (II) The former unemployment compensation account number,
63 if available;

64 (III) The former federal employer identification number
65 (FEIN), if available;

66 (IV) The industry code recognized and published by the
67 United States Office of Management and Budget, if available;

68 (V) A description of the client's primary business activity
69 in order to verify or assign an industry code;

70 (VI) The physical location address;

71 (VII) The number of full-time and part-time employees who
72 worked during or received pay that was subject to unemployment
73 compensation taxes for the pay period, including the 12th of the
74 month for each month of the quarter;

75 (VIII) The total wages subject to unemployment compensation
76 taxes paid during the calendar quarter;



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77 (IX) An internal identification code to uniquely identify
78 each establishment of each client;

79 (X) The month and year the client entered into contract;
80 and

81 (XI) The month and year the client terminated the contract
82 for services.

83 b. The report shall be submitted electronically or in a
84 manner otherwise prescribed by the agency in the format specified
85 by the United States Bureau of Labor Statistics for its Multiple
86 Worksite Report for Professional Employer Organizations. The
87 report must be provided quarterly to the Labor Market Statistics
88 Center of the Agency for Workforce Innovation, or as otherwise
89 directed by the agency, and must be filed by the last day of the
90 month immediately following the end of the calendar quarter. The
91 information required in sub-sub-subparagraph a.(X) and (XI) need
92 be provided only in the quarter in which the contract to which it
93 relates was entered into or terminated. The sum of the employment
94 data and the sum of the wage data on this report must match the
95 employment and wages reported on the unemployment compensation
96 quarterly tax and wage report.

97 c. The Agency for Workforce Innovation may adopt rules to
98 administer this subparagraph and shall administer, collect,
99 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
100 the report required by this subparagraph.

101 d. For the purposes of this subparagraph, the term
102 "establishment" or "worksite" means any location where business
103 is conducted or where services or industrial operations are
104 performed.



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105 3. An individual other than an individual who is an
106 employee under subparagraph 1. or subparagraph 2., who performs
107 services for remuneration for any person:

108 a. As an agent-driver or commission-driver engaged in
109 distributing meat products, vegetable products, fruit products,
110 bakery products, beverages other than milk, or laundry or
111 drycleaning services for his or her principal.

112 b. As a traveling or city salesperson engaged on a full-
113 time basis in the solicitation on behalf of, and the transmission
114 to, his or her principal of orders from wholesalers, retailers,
115 contractors, or operators of hotels, restaurants, or other
116 similar establishments for merchandise for resale or supplies for
117 use in their business operations. This sub-subparagraph does not
118 apply to an agent-driver or a commission-driver and does not
119 apply to sideline sales activities performed on behalf of a
120 person other than the salesperson's principal.

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

123 a. The contract of service contemplates that substantially
124 all of the services are to be performed personally by the
125 individual;

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

129 c. The services are not in the nature of a single
130 transaction that is not part of a continuing relationship with
131 the person for whom the services are performed.

132 Section 4. Paragraphs (h) and (i) are added to subsection
133 (3) of section 468.525, Florida Statutes, paragraph (f) of



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134 subsection (4) of that section is amended, and paragraph (g) is
135 added to subsection (4) of that section, to read:

136 468.525 License requirements.--

137 (3) Each employee leasing company licensed by the
138 department shall have a registered agent for service of process
139 in this state and at least one licensed controlling person. In
140 addition, each licensed employee leasing company shall comply
141 with the following requirements:

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

145 (i) An employee leasing company whose contact with a client
146 company provides for the client company to furnish coverage under
147 this part shall require the client company to provide evidence of
148 valid workers' compensation coverage to the employee leasing
149 company.

150 (4) The employee leasing company's contractual arrangements
151 with its client companies shall satisfy the following conditions,
152 whereby the leasing company:

153 (f) Gives ~~Has given~~ written notice of the relationship
154 between the employee leasing company and the client company to
155 each leased employee it assigns to perform services at the
156 client's worksite and gives written notice to all leased
157 employees as to whether the employee leasing company or the
158 client company is providing their workers' compensation coverage.

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

162 Section 5. Section 468.529, Florida Statutes, is amended to
163 read:



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164 468.529 Licensee's insurance; employment tax; benefit
165 plans.--

166 (1) A licensed employee leasing company is the employer of
167 the leased employees, except that this provision is not intended
168 to affect the determination of any issue arising under Pub. L.
169 No. 93-406, the Employee Retirement Income Security Act, as
170 amended from time to time. An employee leasing company is ~~shall~~
171 ~~be~~ responsible for timely payment of unemployment taxes pursuant
172 to chapter 443, and is ~~shall be~~ responsible for providing
173 workers' compensation coverage pursuant to this part and chapter
174 440. However, no licensed employee leasing company shall sponsor
175 a plan of self-insurance for health benefits, except as may be
176 permitted by the provisions of the Florida Insurance Code or, if
177 applicable, by Pub. L. No. 93-406, the Employee Retirement Income
178 Security Act, as amended from time to time. For purposes of this
179 section, a "plan of self-insurance" shall exclude any arrangement
180 where an admitted insurance carrier has issued a policy of
181 insurance primarily responsible for the obligations of the health
182 plan.

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

189 (a) The correct name and federal identification number of
190 each client company.

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



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193 (c) The total eligible wages by classification code and the
194 premiums due to the carrier for the employees provided to each
195 client company.

196 (3) A licensed employee leasing company shall within 30
197 days after initiation or termination of an employee leasing
198 agreement notify its workers' compensation insurance carrier, the
199 Division of Workers' Compensation of the Department of Financial
200 Services, and the state agency providing unemployment tax
201 collection services under contract with the Agency for Workforce
202 Innovation through an interagency agreement pursuant to s.
203 443.1316 of both the initiation or the termination of the
204 company's relationship with any client company.

205 (4) (a) If an employee leasing company terminates its
206 relationship with a client company, the employee leasing company
207 shall send notice of the termination by United States Postal
208 Service first-class mail to the last known address of each leased
209 employee who had been assigned to the terminated client company.
210 The notification must state the date that the employee leasing
211 company terminated its relationship with the client company.

212 (b) A leased employee who continues in the employment of a
213 terminated client company is not covered by the workers'
214 compensation policy of the employee leasing company after the
215 employee leasing company terminates its relationship with the
216 client company. Termination of the employee's workers'
217 compensation coverage is effective at the earliest of:

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



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221 2. Upon the leased employee receiving actual or
222 constructive notice that he or she is no longer an employee of
223 the employee leasing company; or

224 3. Receipt, with proof of delivery, by the leased employee,
225 or receipt, with proof of delivery, at the leased employee's last
226 known address, of notice that the individual is no longer an
227 employee of the employee leasing company.

228 (c) If an employee leasing company continues its
229 relationship with a client company but terminates the employment
230 of, places on a leave of absence, or lays off a leased employee
231 who is assigned to the client company, the leased employee is not
232 covered by the workers' compensation policy of the employee
233 leasing company at the earliest of:

234 1. Five days after the employee leasing company mails a
235 notice, by United States Postal first-class mail to the last
236 known address of the leased employee, informing the leased
237 employee that he or she is no longer a leased employee of the
238 employee leasing company, is on leave of absence from the client
239 company or employee leasing company, or has been laid off from
240 the client company or employee leasing company; or

241 2. Upon the leased employee receiving actual or
242 constructive notice that he or she is no longer an employee of
243 the client company or employee leasing company, is on a leave of
244 absence from the client company or employee leasing company, or
245 has been laid off from the client company or employee leasing
246 company.

247 (d) Notwithstanding any actual or constructive notice
248 received by the leased employee that he or she is no longer a
249 leased employee of the leasing company and is no longer covered
250 by the employee leasing company's workers' compensation policy,



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251 the requirements for notice to a leased employee under paragraph
252 (b) or paragraph (c) are deemed to be satisfied if a leased
253 employee:

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

258 2. Receives payment in cash or by paycheck which contains
259 no reference indicating that the payment is from the employee
260 leasing company; or

261 3. Is provided written notice by the client company or the
262 employee leasing company stating that the leased employee is no
263 longer an employee of the employee leasing company and is not
264 covered by the employee leasing company's workers' compensation
265 policy.

266 (5) An employee leasing agreement must state whether the
267 responsibility to obtain workers' compensation insurance coverage
268 for leased employees as required under chapter 440 is allocated
269 to the employee leasing company, the client company, or both. The
270 responsibility to obtain workers' compensation coverage for
271 leased employees shall be by way of a master policy issued in the
272 name of the employee leasing company, a multiple coordinated
273 policy issued to the employee leasing company, a policy issued to
274 the client company, or any other policy acceptable under the laws
275 of this state.

276 (6) Within 15 days after termination of an employee leasing
277 agreement, the employee leasing company shall provide the client
278 company an opportunity to receive records regarding the loss
279 experience of the workers' compensation insurance during the
280 course of the employee leasing agreement.



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281 (7) The client company and the employee leasing company
282 shall be considered the employer of leased employees for purposes
283 of coverage under chapter 440 regardless of whether the client or
284 employee leasing company is supplying workers' compensation
285 coverage. Subject to any limitation set forth in chapter 440 or
286 s. 627.192(7), s. 440.11(2) applies to the employee leasing
287 company, the client company, and all other persons set forth in
288 s. 440.11(2) if workers' compensation coverage is secured for
289 leased employees by the client company or the employee leasing
290 company.

291 ~~(8)(4)~~ An initial or renewal license may not be issued to
292 any employee leasing company unless the employee leasing company
293 first provides evidence to the board, as required by board rule,
294 that the employee leasing company has paid all of the employee
295 leasing company's obligations for payroll, payroll-related taxes,
296 workers' compensation insurance, and employee benefits. All
297 disputed amounts must be disclosed in the application.

298 ~~(9)(5)~~ The provisions of this section are subject to
299 verification by department or board audit.

300 Section 6. For the purpose of incorporating the amendment
301 made by this act to section 468.525, Florida Statutes, in a
302 reference thereto, subsection (1) of section 626.112, Florida
303 Statutes, is reenacted to read:

304 626.112 License and appointment required; agents, customer
305 representatives, adjusters, insurance agencies, service
306 representatives, managing general agents.--

307 (1) (a) No person may be, act as, or advertise or hold
308 himself or herself out to be an insurance agent, insurance
309 adjuster, or customer representative unless he or she is



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310 currently licensed by the department and appointed by an
311 appropriate appointing entity or person.

312 (b) Except as provided in subsection (6) or in applicable
313 department rules, and in addition to other conduct described in
314 this chapter with respect to particular types of agents, a
315 license as an insurance agent, service representative, customer
316 representative, or limited customer representative is required in
317 order to engage in the solicitation of insurance. For purposes of
318 this requirement, as applicable to any of the license types
319 described in this section, the solicitation of insurance is the
320 attempt to persuade any person to purchase an insurance product
321 by:

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

324 2. Distributing an invitation to contract to prospective
325 purchasers;

326 3. Making general or specific recommendations as to
327 insurance products;

328 4. Completing orders or applications for insurance
329 products;

330 5. Comparing insurance products, advising as to insurance
331 matters, or interpreting policies or coverages; or

332 6. Offering or attempting to negotiate on behalf of another
333 person a viatical settlement contract as defined in s. 626.9911.
334

335 However, an employee leasing company licensed pursuant to chapter
336 468 which is seeking to enter into a contract with an employer
337 that identifies products and services offered to employees may
338 deliver proposals for the purchase of employee leasing services
339 to prospective clients of the employee leasing company setting



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340 | forth the terms and conditions of doing business; classify
 341 | employees as permitted by s. 468.529; collect information from
 342 | prospective clients and other sources as necessary to perform due
 343 | diligence on the prospective client and to prepare a proposal for
 344 | services; provide and receive enrollment forms, plans, and other
 345 | documents; and discuss or explain in general terms the
 346 | conditions, limitations, options, or exclusions of insurance
 347 | benefit plans available to the client or employees of the
 348 | employee leasing company were the client to contract with the
 349 | employee leasing company. Any advertising materials or other
 350 | documents describing specific insurance coverages must identify
 351 | and be from a licensed insurer or its licensed agent or a
 352 | licensed and appointed agent employed by the employee leasing
 353 | company. The employee leasing company may not advise or inform
 354 | the prospective business client or individual employees of
 355 | specific coverage provisions, exclusions, or limitations of
 356 | particular plans. As to clients for which the employee leasing
 357 | company is providing services pursuant to s. 468.525(4), the
 358 | employee leasing company may engage in activities permitted by
 359 | ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions
 360 | specified in those sections. If a prospective client requests
 361 | more specific information concerning the insurance provided by
 362 | the employee leasing company, the employee leasing company must
 363 | refer the prospective business client to the insurer or its
 364 | licensed agent or to a licensed and appointed agent employed by
 365 | the employee leasing company.

366 | Section 7. This act shall take effect October 1, 2008.

367 |
 368 | ===== T I T L E A M E N D M E N T =====

369 | And the title is amended as follows:

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370 Delete everything before the enacting clause

371 and insert:

372 A bill to be entitled

373 An act relating to employee leasing companies; providing a
374 short title; amending s. 443.036, F.S.; redefining the
375 term "employee leasing company" for purposes of the
376 Unemployment Compensation Law; amending s. 443.1216, F.S.;
377 requiring an employee leasing company to submit a report
378 regarding client establishment and each establishment of
379 the employee leasing company to the Labor Market
380 Statistics Center of the Agency for Workforce Innovation;
381 providing requirements for the reports; providing
382 rulemaking authority for the agency; providing
383 definitions; amending s. 468.525, F.S.; requiring that
384 each employee leasing company at all times maintain a
385 workers' compensation policy; requiring that each
386 contractual arrangement between an employee leasing
387 company and a client company where the client company is
388 to furnish workers' compensation provide to the employee
389 leasing company evidence of valid workers' compensation
390 coverage; requiring that certain specified conditions be
391 included in the contractual arrangement between an
392 employee leasing company and its client companies;
393 amending s. 468.529, F.S.; requiring an employee leasing
394 company to notify its employees if the employee leasing
395 company terminates its agreement with a client company;
396 providing effective dates for the cancellation of workers'
397 compensation coverage; requiring an employee leasing
398 company or its client companies to secure workers'
399 compensation coverage from an insurance company authorized



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400 | in this state; requiring the employee leasing company to
401 | offer to the client company an opportunity to receive
402 | certain records related to the loss experience of the
403 | workers' compensation insurance within a specified time
404 | after termination of an employee leasing agreement;
405 | providing that an employee leasing company and its client
406 | companies are considered an employer for the purposes of
407 | the workers' compensation law; reenacting s. 626.112(1),
408 | F.S., relating to the licensing of insurance agents,
409 | insurance adjusters, and customer representatives, to
410 | incorporate the amendment to s. 468.525, F.S., in a
411 | reference thereto; providing an effective date.