

By Senator Atwater

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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

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30 468.525, Florida Statutes, is amended, and paragraph (g) is added  
31 to that subsection, to read:

32 468.525 License requirements.--

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

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

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

47 468.529 Licensee's insurance; employment tax; benefit  
48 plans.--

49 (1) A licensed employee leasing company is the employer of  
50 the leased employees, except that this provision is not intended  
51 to affect the determination of any issue arising under Pub. L.  
52 No. 93-406, the Employee Retirement Income Security Act, as  
53 amended from time to time. An employee leasing company is ~~shall~~  
54 ~~be~~ responsible for timely payment of unemployment taxes pursuant  
55 to chapter 443, and is ~~shall be~~ responsible for providing  
56 workers' compensation coverage under ~~pursuant to~~ chapter 440.  
57 However, a ~~no~~ licensed employee leasing company may not ~~shall~~  
58 sponsor a plan of self-insurance for health benefits, except as

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59 | ~~may be~~ permitted by the ~~provisions of the~~ Florida Insurance Code  
60 | or, if applicable, by Pub. L. No. 93-406, the Employee Retirement  
61 | Income Security Act, as amended from time to time. For purposes  
62 | of this section, a "plan of self-insurance" excludes ~~shall~~  
63 | ~~exclude~~ any arrangement where an admitted insurance carrier has  
64 | issued a policy of insurance primarily responsible for the  
65 | obligations of the health plan.

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

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

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

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

79 |       (3) A licensed employee leasing company shall within 30  
80 | days after initiation or termination notify its workers'  
81 | compensation insurance carrier, the Division of Workers'  
82 | Compensation of the Department of Financial Services, and the  
83 | state agency providing unemployment tax collection services under  
84 | contract with the Agency for Workforce Innovation through an  
85 | interagency agreement pursuant to s. 443.1316 of both the  
86 | initiation or the termination of the company's relationship with  
87 | any client company.

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

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

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

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

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

113       1. Three days after the employee leasing company mails a  
114 notice to the last known address of the leased employee informing  
115 the leased employee that he or she is no longer a leased employee  
116 of the employee leasing company, is on a leave of absence from

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117 the client company or employee leasing company, or is on layoff  
118 status from the client company or employee leasing company; or

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

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

138 (5) The responsibility to obtain workers' compensation  
139 coverage for leased employees from an insurance carrier  
140 authorized to do business in this state by way of a master policy  
141 issued in the name of the employee leasing company, a multiple  
142 coordinated policy issued to the employee leasing company, a  
143 policy issued to the client company, or any other policy  
144 acceptable under the laws of this state must be specifically  
145 allocated in the employee leasing agreement to the client company

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146 or the employee leasing company.

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

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

159 (8)~~(4)~~ An initial or renewal license may not be issued to  
160 any employee leasing company unless the employee leasing company  
161 first provides evidence to the board, as required by board rule,  
162 that the employee leasing company has paid all of the employee  
163 leasing company's obligations for payroll, payroll-related taxes,  
164 workers' compensation insurance, and employee benefits. All  
165 disputed amounts must be disclosed in the application.

166 (9)~~(5)~~ The provisions of this section are subject to  
167 verification by department or board audit.

168 Section 3. Paragraph (b) of subsection (17) of section  
169 440.02, Florida Statutes, is amended to read:

170 440.02 Definitions.--When used in this chapter, unless the  
171 context clearly requires otherwise, the following terms shall  
172 have the following meanings:

173 (17)

174 (b) "Employment" includes:

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

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

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

185 4. Employment performed by a leased employee under chapter  
186 468.

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

189 440.11 Exclusiveness of liability.--

190 (2) The immunity from liability described in subsection (1)  
191 extends shall extend to an employee leasing company, North  
192 American Industry Classification System Code 561330, licensed  
193 under chapter 468; a temporary help services company, North  
194 American Industry Classification System Code 561320; to each  
195 employer to whom the employee leasing company or temporary help  
196 services company assigns their employees; and to each of their  
197 respective employees, whether the workers' compensation coverage  
198 is provided to the leased employees or temporary help services  
199 employees by the licensed employee leasing company, the temporary  
200 help services company, or the employer. employer and to each  
201 employee of the employer which utilizes the services of the  
202 employees of a help supply services company, as set forth in  
203 Standard Industry Code Industry Number 7363, when such employees,

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204 ~~whether management or staff, are acting in furtherance of the~~  
205 ~~employer's business. An employee so engaged by the employer shall~~  
206 ~~be considered a borrowed employee of the employer, and, for the~~  
207 ~~purposes of this section, shall be treated as any other employee~~  
208 ~~of the employer. The employer is shall be~~ liable for and shall  
209 secure the payment of compensation to all such borrowed employees  
210 as required in s. 440.10, except when the ~~such~~ payment has been  
211 secured by the help supply services company.

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

216 626.112 License and appointment required; agents, customer  
217 representatives, adjusters, insurance agencies, service  
218 representatives, managing general agents.--

219 (1) (a) No person may be, act as, or advertise or hold  
220 himself or herself out to be an insurance agent, insurance  
221 adjuster, or customer representative unless he or she is  
222 currently licensed by the department and appointed by an  
223 appropriate appointing entity or person.

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



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233 | by:

234 |       1. Describing the benefits or terms of insurance coverage,  
235 | including premiums or rates of return;236 |       2. Distributing an invitation to contract to prospective  
237 | purchasers;238 |       3. Making general or specific recommendations as to  
239 | insurance products;240 |       4. Completing orders or applications for insurance  
241 | products;242 |       5. Comparing insurance products, advising as to insurance  
243 | matters, or interpreting policies or coverages; or244 |       6. Offering or attempting to negotiate on behalf of another  
245 | person a viatical settlement contract as defined in s. 626.9911.  
246 |

247 | However, an employee leasing company licensed pursuant to chapter  
248 | 468 which is seeking to enter into a contract with an employer  
249 | that identifies products and services offered to employees may  
250 | deliver proposals for the purchase of employee leasing services  
251 | to prospective clients of the employee leasing company setting  
252 | forth the terms and conditions of doing business; classify  
253 | employees as permitted by s. 468.529; collect information from  
254 | prospective clients and other sources as necessary to perform due  
255 | diligence on the prospective client and to prepare a proposal for  
256 | services; provide and receive enrollment forms, plans, and other  
257 | documents; and discuss or explain in general terms the  
258 | conditions, limitations, options, or exclusions of insurance  
259 | benefit plans available to the client or employees of the  
260 | employee leasing company were the client to contract with the  
261 | employee leasing company. Any advertising materials or other

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262 documents describing specific insurance coverages must identify  
263 and be from a licensed insurer or its licensed agent or a  
264 licensed and appointed agent employed by the employee leasing  
265 company. The employee leasing company may not advise or inform  
266 the prospective business client or individual employees of  
267 specific coverage provisions, exclusions, or limitations of  
268 particular plans. As to clients for which the employee leasing  
269 company is providing services pursuant to s. 468.525(4), the  
270 employee leasing company may engage in activities permitted by  
271 ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions  
272 specified in those sections. If a prospective client requests  
273 more specific information concerning the insurance provided by  
274 the employee leasing company, the employee leasing company must  
275 refer the prospective business client to the insurer or its  
276 licensed agent or to a licensed and appointed agent employed by  
277 the employee leasing company.

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