

By Senator Bogdanoff

25-00679A-11

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1                                   A bill to be entitled  
2           An act relating to employee leasing companies;  
3           amending s. 468.525, F.S.; revising the provisions  
4           that must be addressed in a contractual arrangement  
5           between an employee leasing company and a client  
6           company; providing that the leasing company is  
7           responsible for securing workers' compensation  
8           coverage; requiring the client company to identify its  
9           contractors and nonleased employees to the leasing  
10          company within specified times; requiring the leasing  
11          company to give 10 days' notice before terminating an  
12          agreement; amending s. 468.529, F.S.; providing that  
13          during the term of a leasing agreement, employees who  
14          are directly hired by a client company or who commence  
15          work for the client company become employees of the  
16          leasing company; requiring a client company that  
17          directly hires nonleased employees to have an in-force  
18          workers' compensation policy covering these employees;  
19          providing that a leasing company's insurer may recover  
20          from a client company a certain amount of premium and  
21          administrative costs in specified circumstances;  
22          providing that responsibility for workers'  
23          compensation for leased employees is by way of a  
24          multiple coordinated policy issued to the leasing  
25          company; providing for calculating the client  
26          company's workers' compensation premium while under  
27          contract with a leasing company; requiring a leasing  
28          company to notify employees if the leasing agreement  
29          is terminated; specifying when coverage ends after the

25-00679A-11

20111360\_\_

30 agreement is terminated; requiring a leasing company  
31 to provide the client company with records relating to  
32 its loss experience during the term of the agreement;  
33 amending s. 627.192, F.S.; deleting provisions  
34 relating to an employee leasing company and its  
35 workers' compensation insurer, to conform; providing  
36 an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Subsection (4) of section 468.525, Florida  
41 Statutes, is amended to read:

42 468.525 License requirements.—

43 (4) The employee leasing company's contractual arrangements  
44 with its client companies must ~~shall~~ satisfy the following  
45 conditions, whereby the leasing company:

46 (a) Reserves a right of direction and control over leased  
47 employees assigned to the client's location. However, a client  
48 may retain such sufficient direction and control over the leased  
49 employees as is necessary to conduct the client's business and  
50 without which the client would be unable to conduct its  
51 business, discharge any fiduciary responsibility that it may  
52 have, or comply with any applicable licensure, regulatory, or  
53 statutory requirement ~~of the client~~.

54 (b) Assumes responsibility for the payment of wages to the  
55 leased employees without regard to payments by the client to the  
56 leasing company.

57 (c) Assumes full responsibility for the payment of payroll  
58 taxes and collection of taxes from payroll on leased employees.

25-00679A-11

20111360

59 (d) Is the entity that secures the workers' compensation  
60 coverage for the leased employees.

61 (e)~~(d)~~ Retains authority to hire, terminate, discipline,  
62 and reassign the leased employees. However, the client company  
63 may have the right to accept or cancel the assignment of any  
64 leased employee.

65 (f)~~(e)~~ Retains a right of direction and control over  
66 management of safety, risk, and hazard control at the worksite  
67 or sites affecting its leased employees, including:

68 1. Responsibility for performing safety inspections of  
69 client equipment and premises.

70 2. Responsibility for the promulgation and administration  
71 of employment and safety policies.

72 3. Responsibility for the management of workers'  
73 compensation claims, claims filings, and related procedures.

74 (g)~~(f)~~ Gives ~~Has given~~ written notice of the relationship  
75 between the employee leasing company and the client company to  
76 each leased employee it assigns to perform services at the  
77 client's worksite.

78 (h) Requires the client company to provide to the leasing  
79 company, in writing, the names and addresses of all parties with  
80 whom it has a contractor relationship at the time of entering  
81 into the employee leasing arrangement. The client company must  
82 notify the leasing company within 48 hours after entering into a  
83 subcontractor relationship with a third party or immediately  
84 upon commencement of such contract work, whichever occurs first.

85 (i) Requires the client company to provide to the leasing  
86 company, in writing, the names of any direct, nonleased  
87 employees employed by the client company at the time of entering

25-00679A-11

20111360\_\_

88 into the employee leasing arrangement.

89 (j) Provides 10 days' notice to the client company before  
90 terminating the employee leasing agreement, during which time  
91 the client company may cure any contract defaults or  
92 deficiencies. If the deficiency is not cured within 10 days, the  
93 contract is terminated.

94 Section 2. Section 468.529, Florida Statutes, is reordered  
95 and amended to read:

96 468.529 Licensee's insurance; employment tax; benefit  
97 plans.-

98 (1) A licensed employee leasing company is the employer of  
99 the leased employees, except that this provision does is not  
100 ~~intended to~~ affect the determination of any issue arising under  
101 ~~Pub. L. No. 93-406~~, the Employee Retirement Income Security Act,  
102 Pub. L. No. 93-406, as amended ~~from time to time~~.

103 (a) An employee leasing company is solely shall be  
104 responsible for the timely payment of unemployment taxes  
105 pursuant to chapter 443, and ~~shall be responsible for~~ obtaining  
106 ~~providing~~ workers' compensation coverage pursuant to this part  
107 and chapter 440. However, no

108 (b) A licensed employee leasing company may not shall  
109 sponsor a plan of self-insurance for health benefits, except as  
110 ~~may be permitted by the provisions of the~~ Florida Insurance Code  
111 or, if applicable, by ~~Pub. L. No. 93-406~~, the Employee  
112 Retirement Income Security Act, Pub. L. No. 93-406, as amended  
113 ~~from time to time~~. For purposes of this section, a "plan of  
114 self-insurance" excludes shall exclude any arrangement where an  
115 admitted insurance carrier has issued a policy of insurance  
116 which is primarily responsible for the obligations of the health

25-00679A-11

20111360\_\_

117 plan.

118 (2) An initial or renewal license may not be issued to an  
119 ~~any~~ employee leasing company unless the ~~employee~~ leasing company  
120 first files with the board evidence that the leasing company has  
121 secured ~~of~~ workers' compensation coverage for all leased  
122 employees in this state. Each employee leasing company shall  
123 maintain and make available to its workers' compensation carrier  
124 the following information:

125 (a) The correct name and federal identification number of  
126 each client company.

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

129 (c) The total eligible wages by classification code and the  
130 premiums due to the carrier for the employees provided to each  
131 client company.

132 (4) ~~(3)~~ A licensed employee leasing company shall, within 30  
133 days after initiation or termination of an employee leasing  
134 agreement, notify its workers' compensation insurance carrier,  
135 the Division of Workers' Compensation of the Department of  
136 Financial Services, and the state agency providing unemployment  
137 tax collection services under contract with the Agency for  
138 Workforce Innovation through an interagency agreement pursuant  
139 to s. 443.1316 of ~~both~~ the initiation or the termination of the  
140 company's relationship with a ~~any~~ client company.

141 (5) During the term of an employee leasing agreement with a  
142 client company, a person becomes an employee of the leasing  
143 company upon the direct hiring of such person by the client  
144 company, the commencement of work for the client company by such  
145 person, or the direct hiring of the person by the leasing

25-00679A-11

20111360

146 company, whichever occurs first. A client company that directly  
147 hires nonleased employees must report those employees to the  
148 employee leasing company within 48 hours after hiring, and the  
149 client company must have an in-force workers' compensation  
150 policy covering such directly hired, nonleased employees. If an  
151 employee leasing company becomes liable for the payment of  
152 workers' compensation benefits to an employee of the leasing  
153 company who was directly hired by the client company and the  
154 client company has failed to report such hiring within 48 hours  
155 after hiring, the employee leasing company's insurer, or the  
156 leasing company if self-insured, may recover from the client  
157 company the amount of premium and administrative costs that  
158 would have been owed by the client company if the employee had  
159 been reported.

160 (6) Responsibility for obtaining workers' compensation  
161 coverage for leased employees shall be by way of a multiple  
162 coordinated policy issued to the employee leasing company.

163 (a) During the first year that a client company enters into  
164 an employee leasing agreement with an employee leasing company,  
165 the client company's experience modification factor shall be  
166 applied to the premium paid by the leasing company and charged  
167 to the client company for workers' compensation coverage.

168 (b) During the second year that a client company enters  
169 into an employee leasing agreement with an employee leasing  
170 company, the premium paid by the leasing company and charged to  
171 the client company shall be based on the average of the leasing  
172 company's and client company's experience modification factors.

173 (c) During the third year that a client company enters into  
174 an employee leasing agreement with an employee leasing company,

25-00679A-11

20111360

175 and thereafter, the leasing company's experience modification  
176 factor shall be applied to the premium paid by the leasing  
177 company and charged to the client company for workers'  
178 compensation coverage.

179 (7) If an employee leasing arrangement is terminated, the  
180 leasing company must send notice of such termination by first-  
181 class mail to the last known address of each leased employee who  
182 was assigned to the terminated client company. The notification  
183 must state the date the employee leasing arrangement was  
184 terminated. If the client company is a contractor or involved in  
185 the construction industry, the employee leasing company must  
186 send notice of the termination to all contractors with whom the  
187 client company contracted.

188 (a) A leased employee who continues to be employed by a  
189 terminated client company is not covered by the workers'  
190 compensation policy of the employee leasing company as of the  
191 11th day after the leasing company terminated its relationship  
192 with the client company.

193 (b) Upon termination of the employee leasing agreement, the  
194 employee leasing company shall provide to the client company the  
195 records regarding the loss experience of the workers'  
196 compensation insurance for the company during the term of the  
197 employee leasing agreement.

198 (8) Subject to any limitation set forth in chapter 440 or  
199 s. 627.192(7), s. 440.11(2) applies to the employee leasing  
200 company, the client company, and all other persons set forth s.  
201 440.11(2) only if workers' compensation coverage is secured for  
202 leased employees by the leasing company.

203 (3)~~(4)~~ An initial or renewal license may not be issued to

25-00679A-11

20111360\_\_

204 any employee leasing company unless the ~~employee~~ leasing company  
205 first provides evidence to the board, as required by board rule,  
206 that the ~~employee~~ leasing company has paid all of the employee  
207 leasing company's obligations for payroll, payroll-related  
208 taxes, workers' compensation insurance, and employee benefits.  
209 All disputed amounts must be disclosed in the application.

210 (9)~~(5)~~ The provisions of this section are subject to  
211 verification by department or board audit.

212 Section 3. Section 627.192, Florida Statutes, is amended to  
213 read:

214 627.192 Workers' compensation insurance; employee leasing  
215 arrangements.—

216 (1) The purpose of this section is to ensure that an  
217 employer who leases some or all of its workers properly obtains  
218 workers' compensation insurance coverage for all of its  
219 employees, including those leased from or coemployed with  
220 another entity, and that the premium paid by an employee leasing  
221 company is commensurate with exposure and anticipated claim  
222 experience for all employees.

223 (2) For purposes of the Florida Insurance Code:

224 (a) "Employee leasing" has ~~shall have~~ the same meaning as  
225 set forth in s. 468.520~~(4)~~.

226 (b) "Experience rating modification" means a factor applied  
227 to a premium to reflect a risk's variation from the average  
228 risk. The experience modification is determined by comparing  
229 actual losses to expected losses, using the risk's own past  
230 experience.

231 (c) "Leased employee" means a person performing services  
232 for a lessee under an employee leasing arrangement.



25-00679A-11

20111360\_\_

233 (d) "Lessee" means an entity that ~~which~~ obtains all or part  
234 of its workforce from another entity through an employee leasing  
235 arrangement or ~~which~~ employs the services of an entity through  
236 an employee leasing arrangement.

237 (e) "Lessor" means an employee leasing company, as set  
238 forth in part XI of chapter 468, engaged in the business of or  
239 holding itself out as being in the business of employee leasing.  
240 A lessor may also be referred to as an employee leasing company.

241 (f) "Premium subject to dispute" means that the insured has  
242 provided a written notice of dispute to the insurer or service  
243 carrier, has initiated a ~~any applicable~~ proceeding for resolving  
244 such disputes as prescribed by law or rating organization  
245 procedures approved by the office, or has initiated litigation  
246 regarding the premium dispute. The insured must have detailed  
247 the specific areas of dispute and provided an estimate of the  
248 premium the insured believes to be correct. The insured must  
249 have paid any undisputed portion of the bill.

250 ~~(3) A lessor that obtains coverage in the voluntary~~  
251 ~~workers' compensation market may elect, with the voluntary~~  
252 ~~market insurer's knowledge and consent, to secure the coverage~~  
253 ~~on leased employees through a workers' compensation policy~~  
254 ~~issued to the lessor. The insurer of the lessor may, in its~~  
255 ~~discretion, take all reasonable steps to ascertain exposure~~  
256 ~~under the policy and collect the appropriate premium by:~~

257 ~~(a) Requiring the lessor to provide a complete description~~  
258 ~~of lessor's operations.~~

259 ~~(b) Requiring periodic reporting by the lessor of covered~~  
260 ~~lessees' payroll, classifications, claims information, loss~~  
261 ~~data, and jurisdictions with exposure. This reporting may be~~

25-00679A-11

20111360\_\_

262 ~~supplemented by a requirement for lessees to submit to the~~  
263 ~~carrier Internal Revenue Service Form 941 or its equivalent on a~~  
264 ~~quarterly basis.~~

265 ~~(c) Auditing the lessor's operations.~~

266 ~~(d) Using other reasonable measures to determine the~~  
267 ~~appropriate premium.~~

268 (3)~~(4)~~ A lessor that applies for coverage or is covered by  
269 a workers' compensation insurance policy must through the  
270 ~~voluntary market shall~~ also maintain and furnish to the insurer  
271 on an annual basis, and as the insurer may otherwise reasonably  
272 require, sufficient information to permit the calculation of an  
273 experience modification factor for each lessee upon termination  
274 of the employee leasing relationship. Information accruing  
275 during the term of the leasing arrangement which is used to  
276 calculate an experience modification factor for a lessee upon  
277 termination of the leasing relationship shall continue to be  
278 used in the future experience ratings of the lessor. Such  
279 information includes ~~shall include~~:

280 (a) The lessee's corporate name.

281 (b) The lessee's taxpayer or employer identification  
282 number.

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

286 (d) Claims information grouped by lessee, and any other  
287 information maintained by or readily available to the lessor  
288 which ~~that~~ is necessary for the calculation of an experience  
289 modification factor for each lessee.

290 (4)~~(5)~~ In addition to any other provision of law, any

25-00679A-11

20111360\_\_

291 material violation of this section by a lessor ~~an employee~~  
292 ~~leasing company~~ is grounds for cancellation or nonrenewal of the  
293 lessor's insurance policy provided that the lessor ~~employee~~  
294 ~~leasing company~~ has been provided a reasonable opportunity to  
295 cure the violation. If a lessor ~~an employee leasing company~~ has  
296 received notice that its workers' compensation insurance policy  
297 will be canceled or nonrenewed, the lessor must ~~leasing company~~  
298 ~~shall notify by certified mail~~, within 5 ~~15~~ days after receipt  
299 of the notice, notify by certified mail all of the lessees for  
300 which there is an employee leasing arrangement covered under the  
301 policy to be canceled. ~~except~~ Notice is not required if the  
302 lessor ~~employee leasing company~~ has obtained another insurance  
303 policy with an effective date that is the same as the date of  
304 cancellation or nonrenewal.

305 (5) ~~(6)~~ If the employee leasing arrangement with a lessee is  
306 terminated, the lessee shall be assigned an experience  
307 modification factor that ~~which~~ reflects its experience during  
308 the experience period specified by the approved experience  
309 rating plan, including, if applicable, experience incurred for  
310 leased employees under the employee leasing arrangements. The  
311 lessor ~~employee leasing company~~ shall notify the insurer of its  
312 intent to terminate any lessee relationship before ~~prior to~~  
313 termination ~~when feasible~~. ~~When prior notice is not feasible,~~  
314 ~~the employee leasing company shall notify its insurer within 5~~  
315 ~~working days following actual termination.~~

316 (6) ~~(7)~~ This section does ~~shall~~ not affect ~~have any effect~~  
317 ~~on~~ the statutory obligation, if any, of a lessee to secure  
318 workers' compensation coverage for employees that the lessee  
319 does not ~~employ or~~ lease pursuant to an employee leasing

25-00679A-11

20111360\_\_

320 arrangement.

321 (7)~~(8)~~ A lessee may ~~shall~~ not enter into an employee  
322 leasing relationship or be eligible for workers' compensation  
323 coverage ~~in the voluntary market~~ if the lessee owes its current  
324 or a prior insurer any premium for workers' compensation  
325 insurance, or if the lessee owes its current or prior lessor  
326 ~~employee leasing company~~ amounts due under the service  
327 agreement, except for premium or amounts due that are subject to  
328 dispute. For the purposes of this section and compliance with  
329 other laws and regulations, a lessor may rely on a sworn  
330 statement by the lessee that the lessee has met any and all  
331 prior premium or fee obligations, unless the lessor has actual  
332 knowledge to the contrary.

333 (8)~~(9)~~ Insurers shall conduct annual audits of payroll and  
334 classifications of lessors ~~employee leasing companies~~ in order  
335 to ensure that the appropriate premium is charged for workers'  
336 compensation coverage. The audits shall be conducted to ensure  
337 that all sources of payment by lessors to employees,  
338 subcontractors, and independent contractors have been reviewed  
339 and the accuracy of classifications of employees has been  
340 verified. Insurers may provide for more frequent audits of  
341 lessors based on such factors as amount of premium, type of  
342 business, loss ratios, or other relevant factors. Payroll and  
343 classification verification audit rules of insurers must  
344 include, but need not be limited to, use by the insurer of state  
345 and federal reports of employee income, payroll and other  
346 accounting records, certificates of insurance maintained by  
347 subcontractors, and duties of employees.

348 (9)~~(10)~~ If a lessor or a lessee fails to provide reasonable

25-00679A-11

20111360\_\_

349 access to payroll and classification records for a payroll and  
350 classification audit, the insured shall pay ~~a premium to~~ the  
351 insurer a premium not to exceed three times the most recent  
352 estimated annual premium. However, the lessor is not subject to  
353 such penalty if the failure to obtain the needed records is the  
354 direct result of the acts or omissions of the lessee.

355 Section 4. This act shall take effect upon becoming a law.