

HB 933

2011

1                   A bill to be entitled  
2           An act relating to employee leasing companies; amending s.  
3           468.525, F.S.; requiring an employee licensing company to  
4           carry workers' compensation insurance coverage and provide  
5           notice to a client company within a specified period after  
6           an employee leasing arrangement is terminated; requiring a  
7           client company to provide an employee leasing company with  
8           certain written information regarding certain contractual  
9           relationships; requiring a client company to notify an  
10          employee leasing company of certain agreements within a  
11          specified period; requiring a client company to provide  
12          certain information about certain employees; amending s.  
13          468.529, F.S.; requiring an employee leasing company to  
14          secure workers' compensation coverage before obtaining or  
15          renewing a license; providing circumstances requiring a  
16          person to become an employee of a leasing company;  
17          requiring a client company to report within a specified  
18          period the hiring of specified employees and carry  
19          workers' compensation insurance for such employees;  
20          providing that a client company is liable for payment of  
21          certain expenses incurred by an employee leasing company  
22          for failure to report certain information within a  
23          specified period of time; requiring the employee leasing  
24          company to notify each leased employee or specified client  
25          company by mail of the termination of an employee leasing  
26          agreement; requiring certain information be included in  
27          the notice; specifying a period after which a specified  
28          leased employee is no longer covered by workers'

HB 933

2011

29 compensation insurance; requiring issuance of a multiple  
30 coordinated policy to an employee leasing company when  
31 obtaining workers' compensation coverage; requiring a  
32 client company to apply its experience rating modification  
33 factor to workers' compensation charges made by the  
34 employee leasing company under a specified condition;  
35 requiring a client company that meets a specified  
36 condition to have its own experience rating modification  
37 factor used by a workers' compensation insurance carrier;  
38 requiring an employee leasing company meeting a specified  
39 condition to provide the client company with certain  
40 records regarding workers' compensation insurance within a  
41 specified period; specifying that certain immunity  
42 provisions apply only under a specified condition;  
43 amending s. 627.192, F.S.; deleting provisions allowing a  
44 lessor to make certain decisions regarding workers'  
45 compensation coverage; requiring a lessor applying for or  
46 covered by a workers' compensation insurance policy to  
47 provide certain information to the insurer; revising the  
48 time period to notify certain individuals covered under a  
49 workers' compensation policy of the cancellation of such  
50 policy; providing an effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Paragraph (f) of subsection (4) of section  
55 468.525, Florida Statutes, is amended, paragraph (h) is added to

HB 933

2011

56 subsection (3), and paragraphs (g) through (j) are added to  
57 subsection (4) of that section, to read:

58 468.525 License requirements.—

59 (3) Each employee leasing company licensed by the  
60 department shall have a registered agent for service of process  
61 in this state and at least one licensed controlling person. In  
62 addition, each licensed employee leasing company shall comply  
63 with the following requirements:

64 (h) Each employee leasing company must, regardless of the  
65 number of leased employees, maintain at all times a workers'  
66 compensation policy acceptable under the laws of this state  
67 providing coverage for such employees.

68 (4) The employee leasing company's contractual  
69 arrangements with its client companies shall satisfy the  
70 following conditions, whereby the leasing company:

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

75 (g) Provides 30 days' notice to the client company before  
76 termination of an employee leasing agreement.

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

HB 933

2011

84 earlier.

85 (i) Secures the workers' compensation coverage for the  
 86 leased employees.

87 (j) Requires the client company to provide to the employee  
 88 leasing company in writing the names of any direct, nonleased  
 89 employees employed by the client company at the time of entering  
 90 into the employee leasing arrangement.

91 Section 2. Section 468.529, Florida Statutes, is amended  
 92 to read:

93 468.529 Licensee's insurance; employment tax; benefit  
 94 plans.—

95 (1) A licensed employee leasing company is the employer of  
 96 the leased employees, except that this provision is not intended  
 97 to affect the determination of any issue arising under Pub. L.  
 98 No. 93-406, the Employee Retirement Income Security Act, as  
 99 amended from time to time. An employee leasing company is solely  
 100 ~~shall be~~ responsible for timely payment of unemployment taxes  
 101 pursuant to chapter 443, and is ~~shall be~~ responsible for  
 102 obtaining ~~providing~~ workers' compensation coverage pursuant to  
 103 this part and chapter 440. However, no licensed employee leasing  
 104 company shall sponsor a plan of self-insurance for health  
 105 benefits, except as may be permitted by the provisions of the  
 106 Florida Insurance Code or, if applicable, by Pub. L. No. 93-406,  
 107 the Employee Retirement Income Security Act, as amended from  
 108 time to time. For purposes of this section, a "plan of self-  
 109 insurance" shall exclude any arrangement where an admitted  
 110 insurance carrier has issued a policy of insurance primarily  
 111 responsible for the obligations of the health plan.

HB 933

2011

112 (2) An initial or renewal license may not be issued to any  
113 employee leasing company unless the employee leasing company  
114 first files with the board evidence that it has secured ~~of~~  
115 workers' compensation coverage for all leased employees in this  
116 state before such license may be issued. Each employee leasing  
117 company shall maintain and make available to its workers'  
118 compensation carrier the following information:

119 (a) The correct name and federal identification number of  
120 each client company.

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

123 (c) The total eligible wages by classification code and  
124 the premiums due to the carrier for the employees provided to  
125 each client company.

126 (3) A licensed employee leasing company shall within 30  
127 days after initiation or termination of an employee leasing  
128 arrangement notify its workers' compensation insurance carrier,  
129 the Division of Workers' Compensation of the Department of  
130 Financial Services, and the state agency providing unemployment  
131 tax collection services under contract with the Agency for  
132 Workforce Innovation through an interagency agreement pursuant  
133 to s. 443.1316 of both the initiation or the termination of the  
134 company's relationship with any client company.

135 (4) During the term of an employee leasing arrangement  
136 with a client company, a person must become an employee of the  
137 leasing company upon the earlier of the following:

138 (a) The hiring of such person by the client company;

139 (b) The commencement of work for the client company by

HB 933

2011

140 such person; or

141 (c) The hiring of the person directly by the employee  
142 leasing company.

143 (5) A client company that hires direct, nonleased  
144 employees must report such employees to the employee leasing  
145 company within 48 hours after hiring. The client company must  
146 have an active workers' compensation policy covering such  
147 direct, nonleased employees. If an employee leasing company  
148 becomes liable for the payment of workers' compensation benefits  
149 to one of its employees hired by the client company, and the  
150 client company has failed to report such hiring within 48 hours  
151 after hiring, the employee leasing company's insurer, or the  
152 employee leasing company if self-insured, is entitled to recover  
153 from the client company three times the amount of premium and  
154 administrative costs that would have been owed by the client  
155 company if the employee had been reported.

156 (6) (a) When an employee leasing arrangement is terminated,  
157 the employee leasing company must send notice of the termination  
158 by first-class United States mail to the last known address of  
159 each leased employee who had been assigned to the terminated  
160 client company. The notification must state the date that the  
161 employee leasing arrangement was terminated. If the client  
162 company is a contractor or involved in the construction  
163 industry, the employee leasing company must send the notice to  
164 all contractors with whom the client company has contracted.

165 (b) A leased employee who remains employed by a terminated  
166 client company is not covered by the workers' compensation  
167 policy of the employee leasing company upon the 31st day after

HB 933

2011

168 the employee leasing company terminates its relationship with  
169 the client company.

170 (7) The responsibility to obtain workers' compensation  
171 coverage for leased employees must be by way of a multiple  
172 coordinated policy issued to the employee leasing company.

173 (8) Any client company covered by an insurer, other than  
174 an insurer for an employee leasing company, which enters into an  
175 employee leasing arrangement must have the experience rating  
176 modification factor it has developed applied to charges made by  
177 the employee leasing company for workers' compensation coverage  
178 and premium.

179 (9) Any client company who terminates a leasing  
180 arrangement or has such leasing arrangement terminated by the  
181 employee leasing company must have its own experience rating  
182 modification factor used by any carrier who provides coverage  
183 for such client company.

184 (10) Within 15 days after termination of an employee  
185 leasing agreement, the employee leasing company must provide the  
186 client company an opportunity to receive records regarding the  
187 loss experience of the workers' compensation insurance during  
188 the course of the employee leasing agreement.

189 (11) Except as otherwise provided in s. 627.192(7) or  
190 chapter 440, s. 440.11(2) applies to the employee leasing  
191 company, the client company, and all other persons set forth in  
192 s. 440.11(2) only if workers' compensation coverage is secured  
193 for leased employees by the employee leasing company.

194 (12)~~(4)~~ An initial or renewal license may not be issued to  
195 any employee leasing company unless the employee leasing company

HB 933

2011

196 first provides evidence to the board, as required by board rule,  
 197 that the employee leasing company has paid all of the employee  
 198 leasing company's obligations for payroll, payroll-related  
 199 taxes, workers' compensation insurance, and employee benefits.  
 200 All disputed amounts must be disclosed in the application.

201 (13)~~(5)~~ The provisions of this section are subject to  
 202 verification by department or board audit.

203 Section 3. Section 627.192, Florida Statutes, is amended  
 204 to read:

205 627.192 Workers' compensation insurance; employee leasing  
 206 arrangements.—

207 (1) The purpose of this section is to ensure that an  
 208 employer who leases some or all of its workers properly obtains  
 209 workers' compensation insurance coverage for all of its  
 210 employees, including those leased from or coemployed with  
 211 another entity, and that premium paid by an employee leasing  
 212 company is commensurate with exposure and anticipated claim  
 213 experience for all employees.

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

215 (a) "Employee leasing" shall have the same meaning as set  
 216 forth in s. 468.520(4).

217 (b) "Experience rating modification" means a factor  
 218 applied to a premium to reflect a risk's variation from the  
 219 average risk. The experience modification is determined by  
 220 comparing actual losses to expected losses, using the risk's own  
 221 past experience.

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



224 (d) "Lessee" means an entity which obtains all or part of  
 225 its workforce from another entity through an employee leasing  
 226 arrangement or which employs the services of an entity through  
 227 an employee leasing arrangement.

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

232 (f) "Premium subject to dispute" means that the insured  
 233 has provided a written notice of dispute to the insurer or  
 234 service carrier, has initiated any applicable proceeding for  
 235 resolving such disputes as prescribed by law or rating  
 236 organization procedures approved by the office, or has initiated  
 237 litigation regarding the premium dispute. The insured must have  
 238 detailed the specific areas of dispute and provided an estimate  
 239 of the premium the insured believes to be correct. The insured  
 240 must have paid any undisputed portion of the bill.

241 ~~(3) A lessor that obtains coverage in the voluntary~~  
 242 ~~workers' compensation market may elect, with the voluntary~~  
 243 ~~market insurer's knowledge and consent, to secure the coverage~~  
 244 ~~on leased employees through a workers' compensation policy~~  
 245 ~~issued to the lessor. The insurer of the lessor may, in its~~  
 246 ~~discretion, take all reasonable steps to ascertain exposure~~  
 247 ~~under the policy and collect the appropriate premium by:~~

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

250 ~~(b) Requiring periodic reporting by the lessor of covered~~  
 251 ~~lessees' payroll, classifications, claims information, loss~~

HB 933

2011

252 ~~data, and jurisdictions with exposure. This reporting may be~~  
253 ~~supplemented by a requirement for lessees to submit to the~~  
254 ~~carrier Internal Revenue Service Form 941 or its equivalent on a~~  
255 ~~quarterly basis.~~

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

257 ~~(d) Using other reasonable measures to determine the~~  
258 ~~appropriate premium.~~

259 (3)~~(4)~~ A lessor that applies for coverage or is covered by  
260 a workers' compensation insurance policy ~~through the voluntary~~  
261 ~~market~~ shall also maintain and furnish to the insurer on an  
262 annual basis, and as the insurer may otherwise reasonably  
263 require, sufficient information to permit the calculation of an  
264 experience rating modification factor for each lessee upon  
265 termination of the employee leasing relationship. Information  
266 accruing during the term of the leasing arrangement which is  
267 used to calculate an experience rating modification factor for a  
268 lessee upon termination of the leasing relationship shall  
269 continue to be used in the future experience ratings of the  
270 lessor. Such information shall include:

271 (a) The lessee's corporate name.

272 (b) The lessee's taxpayer or employer identification  
273 number.

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

277 (d) Claims information grouped by lessee, and any other  
278 information maintained by or readily available to the lessor  
279 that is necessary for the calculation of an experience rating

HB 933

2011

280 modification factor for each lessee.

281 (4)~~(5)~~ In addition to any other provision of law, any  
282 material violation of this section by an employee leasing  
283 company is grounds for cancellation or nonrenewal of the  
284 lessor's insurance policy provided that the employee leasing  
285 company has been provided a reasonable opportunity to cure the  
286 violation. If an employee leasing company has received notice  
287 that its workers' compensation insurance policy will be canceled  
288 or nonrenewed, the leasing company shall notify by certified  
289 mail, within 5 ~~15~~ days after receipt of the notice, all of the  
290 lessees for which there is an employee leasing arrangement  
291 covered under the policy to be canceled, except notice is not  
292 required if the employee leasing company has obtained another  
293 insurance policy with an effective date that is the same as the  
294 date of cancellation or nonrenewal.

295 (5)~~(6)~~ If the employee leasing arrangement with a lessee  
296 is terminated, the lessee shall be assigned an experience rating  
297 modification factor which reflects its experience during the  
298 experience period specified by the approved experience rating  
299 plan, including, if applicable, experience incurred for leased  
300 employees under the employee leasing arrangements. The employee  
301 leasing company shall notify the insurer of its intent to  
302 terminate any lessee relationship prior to termination ~~when~~  
303 ~~feasible. When prior notice is not feasible, the employee~~  
304 ~~leasing company shall notify its insurer within 5 working days~~  
305 ~~following actual termination.~~

306 (6)~~(7)~~ This section shall not have any effect on the  
307 statutory obligation, if any, of a lessee to secure workers'

HB 933

2011

308 compensation coverage for employees that the lessee does not  
309 ~~employ or~~ lease pursuant to an employee leasing arrangement.

310 (7)~~(8)~~ A lessee shall not enter into an employee leasing  
311 relationship or be eligible for workers' compensation coverage  
312 ~~in the voluntary market~~ if the lessee owes its current or a  
313 prior insurer any premium for workers' compensation insurance,  
314 or if the lessee owes its current or prior employee leasing  
315 company amounts due under the service agreement, except for  
316 premium or amounts due that are subject to dispute. For the  
317 purposes of this section and compliance with other laws and  
318 regulations, a lessor may rely on a sworn statement by the  
319 lessee that the lessee has met any and all prior premium or fee  
320 obligations, unless the lessor has actual knowledge to the  
321 contrary.

322 (8)~~(9)~~ Insurers shall conduct annual audits of payroll and  
323 classifications of employee leasing companies in order to ensure  
324 that the appropriate premium is charged for workers'  
325 compensation coverage. The audits shall be conducted to ensure  
326 that all sources of payment by lessors to employees,  
327 subcontractors, and independent contractors have been reviewed  
328 and the accuracy of classifications of employees has been  
329 verified. Insurers may provide for more frequent audits of  
330 lessors based on such factors as amount of premium, type of  
331 business, loss ratios, or other relevant factors. Payroll and  
332 classification verification audit rules of insurers must  
333 include, but need not be limited to, use by the insurer of state  
334 and federal reports of employee income, payroll and other  
335 accounting records, certificates of insurance maintained by

HB 933

2011

336 subcontractors, and duties of employees.

337 (9)~~(10)~~ If a lessor or a lessee fails to provide  
338 reasonable access to payroll and classification records for a  
339 payroll and classification audit, the insured shall pay a  
340 premium to the insurer not to exceed three times the most recent  
341 estimated annual premium. However, the lessor is not subject to  
342 such penalty if the failure to obtain the needed records is the  
343 direct result of the acts or omissions of the lessee.

344 Section 4. This act shall take effect July 1, 2011.