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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/01/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment to Amendment (800706) (with title amendment)**

Between lines 721 and 722  
insert:

Section 12. Paragraph (d) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(d)1. If a contractor becomes liable for the payment of



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11 compensation to the employees of a subcontractor who has failed  
12 to secure such payment in violation of s. 440.38, the contractor  
13 or other third-party payor shall be entitled to recover from the  
14 subcontractor all benefits paid or payable plus interest unless  
15 the contractor and subcontractor have agreed in writing that the  
16 contractor will provide coverage.

17 2. If a contractor or third-party payor becomes liable for  
18 the payment of compensation to the corporate officer of a  
19 subcontractor who is engaged in the construction industry and  
20 has elected to be exempt from ~~the provisions of~~ this chapter,  
21 but whose election is invalid, the contractor or third-party  
22 payor may recover from the claimant or corporation all benefits  
23 paid or payable plus interest, unless the contractor and the  
24 subcontractor have agreed in writing that the contractor will  
25 provide coverage.

26 3. If a contractor and an employee leasing company are  
27 operating pursuant to an arrangement for employee leasing as  
28 defined in s. 468.520(4) and workers' compensation insurance is  
29 provided by the employee leasing company to the leased  
30 employees, a person is deemed an employee of the employee  
31 leasing company for purposes of workers' compensation insurance,  
32 unless the contractor has secured additional workers'  
33 compensation coverage applicable to the employee, upon the  
34 earliest of the following:

35 a. The hiring of the person by the contractor.

36 b. The commencement of work by the person for the  
37 contractor.

38 c. The hiring of the person directly by the employee  
39 leasing company.



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40 Section 13. Subsection (5) is added to section 468.525,  
41 Florida Statutes, to read:

42 468.525 License requirements.—

43 (5) If the client company is a contractor, the requirements  
44 of s. 440.10(1)(a) are not satisfied by the employee leasing  
45 arrangement unless the contractor has secured additional  
46 workers' compensation insurance for nonleased employees or  
47 unless the contractual arrangement provides that a person is  
48 deemed an employee of the employee leasing company for purposes  
49 of workers' compensation coverage, upon the earliest of the  
50 following:

51 (a) The hiring of the person by the client company.

52 (b) The commencement of work by the person for the client  
53 company.

54 (c) The hiring of the person directly by the employee  
55 leasing company.

56 Section 14. Present subsections (4) and (5) of section  
57 468.529, Florida Statutes, are redesignated as subsections (5)  
58 and (6), respectively, a new subsection (4) is added to that  
59 section, and subsection (1) of that section is amended, to read:

60 468.529 Licensee's insurance; employment tax; benefit  
61 plans.—

62 (1) A licensed employee leasing company is the employer of  
63 the leased employees, except that this provision is not intended  
64 to affect the determination of any issue arising under Pub. L.  
65 No. 93-406, the Employee Retirement Income Security Act, as  
66 amended from time to time. An employee leasing company shall be  
67 responsible for timely payment of reemployment assistance taxes  
68 pursuant to chapter 443, and shall be responsible for providing



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69 workers' compensation coverage pursuant to chapter 440.

70 (a) However, a ~~ne~~ licensed employee leasing company may not  
71 shall sponsor a plan of self-insurance for health benefits,  
72 except as may be permitted by the provisions of the Florida  
73 Insurance Code or, if applicable, by Pub. L. No. 93-406, the  
74 Employee Retirement Income Security Act, as amended from time to  
75 time. For purposes of this section, the term a "plan of self-  
76 insurance" excludes shall exclude any arrangement where an  
77 admitted insurance carrier has issued a policy of insurance  
78 primarily responsible for the obligations of the health plan.

79 (b) This section does not modify the statutory obligation  
80 of a client company to secure workers' compensation coverage as  
81 required under s. 440.10 for employees whom the client company  
82 does not lease pursuant to an employee leasing arrangement. A  
83 client company that is engaged in the construction industry and  
84 that is in an employee leasing arrangement shall secure and  
85 maintain separate workers' compensation insurance coverage as  
86 required under this section and s. 440.10 unless the employee  
87 leasing company and its carrier agree to provide such coverage  
88 directly to the client company, covering all persons performing  
89 work for the client company at all times, in full compliance  
90 with s. 440.10.

91 (4) During the term of an employee leasing arrangement with  
92 a contractor, if a contractor does not secure workers'  
93 compensation insurance for nonleased employees, a person is  
94 deemed an employee of the employee leasing company for purposes  
95 of workers' compensation insurance upon the earliest of the  
96 following:

97 (a) The hiring of such person by the client company.



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98           (b) The commencement of work by such person for the client  
99 company.

100           (c) The hiring of the person directly by the employee  
101 leasing company.

102           Section 15. For the purpose of incorporating the amendment  
103 made by this act to section 468.529, Florida Statutes, in a  
104 reference thereto, paragraph (g) of subsection (1) of section  
105 468.532, Florida Statutes, is reenacted to read:

106           468.532 Discipline.—

107           (1) The following constitute grounds for which disciplinary  
108 action against a licensee may be taken by the board:

109           (g) Failing to maintain workers' compensation insurance as  
110 required in s. 468.529.

111  
112 ===== T I T L E   A M E N D M E N T =====

113 And the title is amended as follows:

114           Delete line 824

115 and insert:

116           the act; amending s. 440.10, F.S.; specifying when a  
117 person is deemed an employee of an employee leasing  
118 company for workers' compensation insurance purposes  
119 under circumstances relating to the company's employee  
120 leasing arrangement with a contractor; amending s.  
121 468.525, F.S.; providing that if an employee leasing  
122 company's client company is a contractor, workers'  
123 compensation insurance requirements are not satisfied  
124 by the employee leasing arrangement unless certain  
125 conditions are met; amending s. 468.529, F.S.;

126           requiring certain client companies to maintain



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127 separate workers' compensation insurance coverage  
128 unless certain conditions are met; specifying when a  
129 person is deemed an employee of an employee leasing  
130 company for workers' compensation insurance proposes  
131 under certain circumstances; providing construction;  
132 reenacting s. 468.532(1)(g), F.S., relating to  
133 discipline, to incorporate the amendment made to s.  
134 468.529, F.S., in a reference thereto; providing an  
135 effective date.