

By Senator Perry

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1                                   A bill to be entitled  
2           An act relating to workers' compensation insurance for  
3           employee leasing companies; amending s. 627.192, F.S.;  
4           revising the purpose of the section; adding, deleting,  
5           and revising definitions for purposes of the Florida  
6           Insurance Code; authorizing the insurer of an employee  
7           leasing company to require that the employee leasing  
8           company and client company provide certain information  
9           and to audit the operations of the employee leasing  
10          company and client company; requiring that the insurer  
11          of an employee leasing company provide workers'  
12          compensation coverage to all employees of the client  
13          company under certain conditions; specifying when a  
14          person is an employee of an employee leasing company;  
15          providing that the failure by a client company to  
16          report a leased employee's hiring to an employee  
17          leasing company may not serve as a basis for the  
18          denial of workers' compensation benefits for an  
19          unreported client company employee; providing that  
20          such failure does not preclude the charging of  
21          additional premiums by an employee leasing company's  
22          insurer against a client company for workers'  
23          compensation coverage; requiring insurers to conduct  
24          annual audits of employee leasing companies and client  
25          companies for certain purposes; applying penalties for  
26          an employee leasing company's or client company's  
27          failure to provide reasonable access to certain  
28          records; conforming provisions to changes made to the  
29          act; making technical changes; providing an effective

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30 date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Section 627.192, Florida Statutes, is amended to  
35 read:

36 627.192 Workers' compensation insurance; employee leasing  
37 arrangements.—

38 (1) The purpose of this section is to ensure that an  
39 employer who leases some or all of its workers properly obtains  
40 workers' compensation insurance coverage in compliance with  
41 chapter 440 for all of its employees, including those leased  
42 from an employee leasing company ~~or coemployed with another~~  
43 ~~entity~~, and that premium paid by an employee leasing company is  
44 commensurate with exposure and anticipated claim experience for  
45 all employees.

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

47 (a) "Client company" has the same meaning as provided in s.  
48 468.520(6).

49 (b) "Employee leasing" has ~~shall have~~ the same meaning as  
50 provided ~~set forth~~ in s. 468.520(4).

51 (c) "Employee leasing company" has the same meaning as  
52 provided in s. 468.520(5).

53 (d) ~~(b)~~ "Experience rating modification factor" means a  
54 factor applied to a premium to reflect a risk's variation from  
55 the average risk. The experience modification is determined by  
56 comparing actual losses to expected losses, using the risk's own  
57 past experience.

58 (e) ~~(e)~~ "Leased employee" means an employee as defined in s.

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59 440.02(15) ~~a person~~ performing services for a client company  
60 ~~lessee under an employee leasing arrangement.~~

61 ~~(d) "Lessee" means an entity which obtains all or part of~~  
62 ~~its workforce from another entity through an employee leasing~~  
63 ~~arrangement or which employs the services of an entity through~~  
64 ~~an employee leasing arrangement.~~

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

69 (f) "Premium subject to dispute" means that the insured has  
70 provided a written notice of dispute to the insurer ~~or service~~  
71 ~~carrier~~, has initiated any applicable proceeding for resolving  
72 such disputes as prescribed by law or rating organization  
73 procedures approved by the office, or has initiated litigation  
74 regarding the premium dispute. The insured must have detailed  
75 the specific areas of dispute and provided an estimate of the  
76 premium the insured believes to be correct. The insured must  
77 have paid any undisputed portion of the bill.

78 (3) An employee leasing company ~~A lessor~~ that obtains  
79 coverage in the voluntary workers' compensation market may  
80 elect, with the voluntary market insurer's knowledge and  
81 consent, to secure the coverage on leased employees through a  
82 workers' compensation policy issued to the employee leasing  
83 company lessor. The insurer of the employee leasing company  
84 ~~lessor~~ may, in its discretion, take all reasonable steps to  
85 ascertain exposure under the policy and collect the appropriate  
86 premium by:

87 (a) Requiring the employee leasing company and the client

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88 company lessor to provide a complete description of the employee  
89 leasing company's and the client company's respective lessor's  
90 operations.

91 (b) Requiring periodic reporting by the employee leasing  
92 company lessor of covered client companies' lessees' payroll,  
93 classifications, claims information, loss data, and  
94 jurisdictions with exposure. This reporting may be supplemented  
95 by a requirement for client companies lessees to submit to the  
96 insurer carrier Internal Revenue Service Form 941 or its  
97 equivalent on a quarterly basis.

98 (c) Auditing the employee leasing company's or the client  
99 company's lessor's operations.

100 (d) Using other reasonable measures to determine the  
101 appropriate premium.

102 (4) (a) During the contract period of an employee leasing  
103 arrangement with a client company, the insurer of an employee  
104 leasing company must provide workers' compensation coverage for  
105 all leased and nonleased employees of the client company if the  
106 client company fails to secure and maintain separate workers'  
107 compensation coverage as required by this section and ss. 440.10  
108 and 440.38. A person is such an employee of the employee leasing  
109 company upon the earliest of the following:

- 110 1. The hiring of such person by the client company;
- 111 2. The commencement of work for the client company by such  
112 person; or
- 113 3. The hiring of the person directly by the employee  
114 leasing company.

115 (b) The failure by a client company to report a leased  
116 employee's hiring to an employee leasing company may not serve

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117 as a basis for the denial of workers' compensation benefits for  
118 such unreported employee of a client company and does not  
119 preclude the charging of additional premiums and penalties by an  
120 employee leasing company's insurer against a client company for  
121 workers' compensation coverage as provided by s. 440.381.

122 (5) An employee leasing company ~~A lesser~~ that applies for  
123 coverage or is covered through the voluntary market shall also  
124 maintain and furnish to the insurer on an annual basis, and as  
125 the insurer may otherwise reasonably require, sufficient  
126 information to permit the calculation of an experience rating  
127 modification factor for each client company lessee upon  
128 termination of the employee leasing arrangement relationship.  
129 For calculating future experience ratings of an employee leasing  
130 company upon termination of a leasing arrangement, an insurer  
131 shall continue using information that accrued ~~accruing~~ during  
132 the term of the leasing arrangement which was ~~is~~ used to  
133 calculate an experience rating modification factor for a client  
134 company lessee upon termination of the leasing relationship  
135 ~~shall continue to be used in the future experience ratings of~~  
136 ~~the lesser~~. Such information must ~~shall~~ include:

137 (a) The client company's lessee's corporate name.

138 (b) The client company's lessee's taxpayer or employer  
139 identification number.

140 (c) Payroll summaries and class codes applicable to each  
141 client company lessee, and, if requested by the insurer, a  
142 listing of all leased employees associated with a given client  
143 company lessee.

144 (d) Claims information grouped by client company lessee,  
145 and any other information maintained by or readily available to

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146 the employee leasing company which ~~lessor that~~ is necessary for  
147 the calculation of an experience rating modification factor for  
148 each client company lessee.

149 ~~(6)(5)~~ In addition to any other provision of law, any  
150 material violation of this section by an employee leasing  
151 company is grounds for cancellation or nonrenewal of the  
152 employee leasing company's ~~lessor's~~ insurance policy, provided  
153 that the insurer provides the employee leasing company ~~has been~~  
154 ~~provided~~ a reasonable opportunity to cure the violation. If an  
155 employee leasing company receives ~~has received~~ notice that its  
156 workers' compensation insurance policy will be canceled or  
157 nonrenewed, the leasing company shall notify by certified mail,  
158 within 15 days after receipt of the notice, all of the client  
159 companies ~~lessees~~ for which there is an employee leasing  
160 arrangement covered under the policy to be canceled, except  
161 notice is not required if the employee leasing company has  
162 obtained another insurance policy with an effective date that is  
163 the same as the date of cancellation or nonrenewal.

164 ~~(7)(6)~~ If an employee leasing company terminates the  
165 employee leasing arrangement with a client company ~~lessee is~~  
166 ~~terminated~~, the client company ~~lessee~~ shall be assigned an  
167 experience rating modification factor which reflects its  
168 experience during the experience period specified by the  
169 approved experience rating plan, including, if applicable,  
170 experience incurred for leased employees under the employee  
171 leasing arrangements. The employee leasing company shall notify  
172 the insurer of its intent to terminate any employee leasing  
173 arrangement ~~lessee relationship~~ prior to termination when  
174 feasible. When prior notice is not feasible, the employee

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175 leasing company shall notify its insurer within 5 working days  
176 following actual termination.

177 ~~(8)(7)~~ This section does not affect ~~shall not have any~~  
178 ~~effect on~~ the statutory obligation, if any, of a client company  
179 ~~lessee~~ to secure workers' compensation coverage for employees  
180 that the client company lessee does not ~~employ or~~ lease  
181 pursuant to an employee leasing arrangement.

182 ~~(9)(8)~~ A client company may lessee shall not enter into an  
183 employee leasing relationship or be eligible for workers'  
184 compensation coverage in the voluntary market if the client  
185 company lessee owes its current or a prior insurer any premium  
186 for workers' compensation insurance, or if the client company  
187 ~~lessee~~ owes its current or prior employee leasing company  
188 amounts due under the service agreement, except for premium or  
189 amounts due that are subject to dispute. For the purposes of  
190 this section and compliance with other laws and regulations, an  
191 employee leasing company a lessor may rely on a sworn statement  
192 by the client company lessee that the client company lessee has  
193 met any and all prior premium or fee obligations, unless the  
194 employee leasing company lessor has actual knowledge to the  
195 contrary.

196 ~~(10)(9)~~ Insurers shall conduct annual audits of payroll and  
197 classifications of employee leasing companies and client  
198 companies in compliance with s. 440.381 in order to ensure that  
199 the appropriate premium is charged for workers' compensation  
200 coverage. Insurers shall conduct audits ~~The audits shall be~~  
201 ~~conducted~~ to ensure that all sources of payment by employee  
202 leasing companies and client companies lessors to employees,  
203 subcontractors, and independent contractors have been reviewed

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204 and the accuracy of classifications of employees has been  
205 verified. Insurers may provide for more frequent audits of  
206 employee leasing companies and client companies ~~lessors~~ based on  
207 such factors as amount of premium, type of business, loss  
208 ratios, or other relevant factors. Payroll and classification  
209 verification audit rules of insurers must include, but need not  
210 be limited to, use by the insurer of state and federal reports  
211 of employee income, payroll and other accounting records,  
212 certificates of insurance maintained by subcontractors, and  
213 duties of employees.

214 ~~(11)(10)~~ If an employee leasing company ~~a lessor~~ or a  
215 client company ~~lessee~~ fails to provide reasonable access to  
216 payroll and classification records for a payroll and  
217 classification audit, the employee leasing company or the client  
218 company ~~insured~~ shall pay a premium to the insurer not to exceed  
219 three times the most recent estimated annual premium. However,  
220 the employee leasing company ~~lessor~~ is not subject to such  
221 penalty if the failure to obtain the needed records is the  
222 direct result of the acts or omissions of the client company  
223 ~~lessee~~.

224 Section 2. This act shall take effect July 1, 2021.