

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 specified provisions governing  
5           workers' compensation insurance; defining the terms  
6           "client company" and "employee leasing company";  
7           revising definitions; deleting the definitions of the  
8           terms "lessee" and "lessor"; authorizing the insurer  
9           of an employee leasing company to require that the  
10          employee leasing company and client company provide  
11          certain information and to audit the operations of the  
12          employee leasing company and client company; requiring  
13          the insurer of an employee leasing company to provide  
14          workers' compensation coverage to all employees of the  
15          client company under certain conditions; specifying  
16          when a person is an employee of an employee leasing  
17          company; providing that the failure by a client  
18          company to report a leased employee's hiring to an  
19          employee leasing company may not serve as a basis for  
20          the denial of workers' compensation benefits for an  
21          unreported client company employee; providing that  
22          such failure does not preclude the charging of  
23          additional premiums by an employee leasing company's  
24          insurer against a client company for workers'  
25          compensation coverage; requiring insurers to conduct  
26          annual audits of employee leasing companies and client  
27          companies for certain purposes; applying penalties for  
28          an employee leasing company's or client company's  
29          failure to provide reasonable access to certain

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30 records; conforming provisions to changes made by the  
31 act; making technical changes; providing an effective  
32 date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Section 627.192, Florida Statutes, is amended to  
37 read:

38 627.192 Workers' compensation insurance; employee leasing  
39 arrangements.—

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

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

49 (a) "Client company" has the same meaning as provided in s.  
50 468.520(6).

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

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

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

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59 past experience.

60 ~~(e)~~ (e) "Leased employee" means an employee as defined in s.  
61 440.02(18) ~~a person~~ performing services for a client company  
62 ~~lessee under an employee leasing arrangement.~~

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

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

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

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

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88 premium by:

89 (a) Requiring the employee leasing company and the client  
90 company ~~lessor~~ to provide a complete description of the employee  
91 leasing company's and the client company's respective ~~lessor's~~  
92 operations.

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

100 (c) Auditing the employee leasing company's or the client  
101 company's ~~lessor's~~ operations.

102 (d) Using other reasonable measures to determine the  
103 appropriate premium.

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

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

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117       (b) The failure by a client company to report a leased  
118 employee's hiring to an employee leasing company may not serve  
119 as a basis for the denial of workers' compensation benefits for  
120 such unreported employee of a client company and does not  
121 preclude the charging of additional premiums and penalties by an  
122 employee leasing company's insurer against a client company for  
123 workers' compensation coverage as provided by s. 440.381.

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

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

140           (b) The client company's lessee's taxpayer or employer  
141 identification number.

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

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146 (d) Claims information grouped by client company lessee,  
147 and any other information maintained by or readily available to  
148 the employee leasing company which ~~lessor that~~ is necessary for  
149 the calculation of an experience rating modification factor for  
150 each client company lessee.

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

166 ~~(7)(6)~~ If an employee leasing company terminates the  
167 employee leasing arrangement with a client company lessee ~~is~~  
168 ~~terminated~~, the client company must ~~lessee shall~~ be assigned an  
169 experience rating modification factor which reflects its  
170 experience during the experience period specified by the  
171 approved experience rating plan, including, if applicable,  
172 experience incurred for leased employees under the employee  
173 leasing arrangements. The employee leasing company shall notify  
174 the insurer of its intent to terminate any employee leasing

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175 arrangement lessee relationship prior to termination when  
176 feasible. When prior notice is not feasible, the employee  
177 leasing company shall notify its insurer within 5 working days  
178 following actual termination.

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

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

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

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

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

226 Section 2. This act shall take effect July 1, 2024.