

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
30 date.

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

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34 Section 1. Section 627.192, Florida Statutes, is amended
35 to 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
48 s. 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
59 s. 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
70 has provided a written notice of dispute to the insurer ~~or~~
71 ~~service carrier~~, has initiated any applicable proceeding for
72 resolving such disputes as prescribed by law or rating
73 organization procedures approved by the office, or has initiated
74 litigation regarding the premium dispute. The insured must have
75 detailed the specific areas of dispute and provided an estimate

76 of the premium the insured believes to be correct. The insured
77 must have paid any undisputed portion of the bill.

78 (3) An employee leasing company ~~A lesser~~ 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 ~~lesser~~. The insurer of the employee leasing company
84 ~~lesser~~ 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
88 company ~~lesser~~ to provide a complete description of the employee
89 leasing company's and the client company's respective ~~lesser's~~
90 operations.

91 (b) Requiring periodic reporting by the employee leasing
92 company ~~lesser~~ 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 ~~lesser'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
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 lessor~~. 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
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
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
197 and 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
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 lesser~~ 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 ~~lessee~~ 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.