

1 A bill to be entitled
2 An act relating to workers' compensation coverage by
3 employee leasing companies; amending s. 440.10, F.S.;
4 providing an additional manner in which construction
5 contractors and subcontractors must secure and
6 maintain workers' compensation for employees under
7 certain circumstances; amending s. 468.525, F.S.;
8 providing that employees of construction contractors
9 and subcontractors are deemed employees of an employee
10 leasing company for purposes of workers' compensation
11 coverage under certain circumstances; requiring an
12 employee leasing company to provide notice of intent
13 to terminate a contractual arrangement to specified
14 client companies under certain circumstances;
15 requiring an employee leasing company to allow a
16 client company to cure contractual defaults or
17 deficiencies under certain circumstances; amending s.
18 468.529, F.S.; providing circumstances under which
19 certain employees are deemed employees of an employee
20 leasing company for workers' compensation coverage;
21 requiring that an employee leasing company provide
22 written notice of termination of a contractual
23 arrangement with a client company under certain
24 circumstances; providing requirements for the notice;
25 requiring the employee leasing company to continue

26 workers' compensation coverage for a specified period
 27 after termination of a contractual arrangement under
 28 certain circumstances; creating s. 468.5315, F.S.;
 29 providing requirements relating to specified reports
 30 and documents for certain client companies that are
 31 construction contractors or subcontractors; providing
 32 for attorney fees; providing penalties; reenacting s.
 33 468.532(1)(g), F.S., relating to discipline, to
 34 incorporate the amendments made by the act; providing
 35 applicability; providing an effective date.
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37 Be It Enacted by the Legislature of the State of Florida:
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39 Section 1. Paragraph (a) of subsection (1) of section
 40 440.10, Florida Statutes, is amended to read:

41 440.10 Liability for compensation.—

42 (1)(a) Every employer coming within the provisions of this
 43 chapter shall be liable for, and shall secure, the payment to
 44 his or her employees, or any physician, surgeon, or pharmacist
 45 providing services under the provisions of s. 440.13, of the
 46 compensation payable under ss. 440.13, 440.15, and 440.16. Any
 47 contractor or subcontractor who engages in any public or private
 48 construction in the state shall secure and maintain compensation
 49 for his or her employees under this chapter as provided in s.
 50 440.38 or under an employee leasing company's contractual

51 arrangement as provided in s. 468.525(4)(g).

52 Section 2. Paragraphs (g) and (h) are added to subsection
53 (4) of section 468.525, Florida Statutes, to read:

54 468.525 License requirements.—

55 (4) The employee leasing company's contractual
56 arrangements with its client companies shall satisfy the
57 following conditions, whereby the leasing company:

58 (g) Provides that during the term of the contractual
59 arrangement, if the client company is a contractor or
60 subcontractor engaged in the construction industry, all leased
61 and nonleased employees of the contractor or subcontractor,
62 including any employees who are hired by the contractor or
63 subcontractor, commence work for the contractor or
64 subcontractor, or are hired directly by the employee leasing
65 company during the term of the contractual arrangement, are
66 deemed employees of the employee leasing company for purposes of
67 workers' compensation coverage.

68 (h) Provides at least 10 days' notice to a client company
69 that is a contractor or subcontractor engaged in the
70 construction industry before terminating the contractual
71 arrangement. If the termination is for cause, the employee
72 leasing company must allow the client company to cure any
73 contractual defaults or deficiencies within that timeframe.

74 Section 3. Subsections (4) and (5) of section 468.529,
75 Florida Statutes, are renumbered as subsections (5) and (6),

76 respectively, subsection (1) is amended, and a new subsection
 77 (4) and subsections (7) and (8) are added to that section, to
 78 read:

79 468.529 Licensee's insurance; employment tax; benefit
 80 plans.-

81 (1) (a) A licensed employee leasing company is the employer
 82 of the leased employees, except that this provision is not
 83 intended to affect the determination of any issue arising under
 84 Pub. L. No. 93-406, the Employee Retirement Income Security Act,
 85 as amended from time to time. An employee leasing company shall
 86 be responsible for timely payment of reemployment assistance
 87 taxes pursuant to chapter 443, and shall be responsible for
 88 providing workers' compensation coverage pursuant to chapter
 89 440.

90 (b) However, a ~~ne~~ licensed employee leasing company may
 91 not shall sponsor a plan of self-insurance for health benefits,
 92 except as may be permitted by ~~the provisions of~~ the Florida
 93 Insurance Code or, if applicable, by Pub. L. No. 93-406, the
 94 Employee Retirement Income Security Act, as amended from time to
 95 time. For purposes of this section, the term a "plan of self-
 96 insurance" excludes shall exclude any arrangement where an
 97 admitted insurance carrier has issued a policy of insurance
 98 primarily responsible for the obligations of the health plan.

99 (4) During the term of a licensed employee leasing
 100 company's contractual arrangement with a client company that is

101 a contractor or subcontractor engaged in the construction
102 industry, all leased and nonleased employees of the contractor
103 or subcontractor, including any employees who are hired by the
104 contractor or subcontractor, commence work for the contractor or
105 subcontractor, or are hired directly by the licensed employee
106 leasing company during the term of the contractual arrangement,
107 are deemed employees of the licensed employee leasing company
108 for purposes of workers' compensation coverage.

109 (7) If a contractual arrangement between a licensed
110 employee leasing company and a client company that is a
111 contractor or subcontractor engaged in the construction industry
112 is terminated, the licensed employee leasing company must send
113 notice by first-class mail to the last known address of each
114 leased and nonleased employee who was assigned to the client
115 company. The notice must include the date the contractual
116 arrangement was terminated. The notice must also be sent by
117 first-class mail to each contractor or subcontractor with whom
118 the client company has contracted, if known.

119 (8) The licensed employee leasing company must continue to
120 provide workers' compensation coverage for 20 days for all
121 leased and nonleased employees assigned to a client company
122 after the licensed employee leasing company terminates the
123 contractual arrangement with a client company that is a
124 contractor or subcontractor engaged in the construction
125 industry.

126 Section 4. Section 468.5315, Florida Statutes, is created
127 to read:

128 468.5315 Contractor and subcontractor client companies in
129 construction industry; requirements; penalties.-

130 (1) Each client company that is a contractor or
131 subcontractor engaged in the construction industry shall submit
132 a copy of the quarterly earnings report to the licensed employee
133 leasing company and submit self-audits supported by the
134 quarterly earnings report. The report must include a sworn
135 statement by an officer or principal of the client company
136 attesting to the accuracy of the information contained in the
137 report.

138 (2) Each client company that is a contractor or
139 subcontractor engaged in the construction industry shall make
140 available all records necessary for a payroll verification audit
141 and authorize the licensed employee leasing company to make a
142 physical inspection of the client company's operation. If the
143 client company fails upon request of the licensed employee
144 leasing company to provide access to the documents specified in
145 this section and the licensed employee leasing company cannot
146 complete the audit as a result, the client company shall pay a
147 penalty not to exceed three times the most recent estimated
148 annual premium to the licensed employee leasing company.

149 (3) If a client company that is a contractor or
150 subcontractor engaged in the construction industry understates

151 or conceals payroll, or misrepresents or conceals employee
152 duties so as to avoid proper classification for premium
153 calculations, the client company shall pay to the licensed
154 employee leasing company reasonable attorney fees and a penalty
155 equal to three times the difference of the amount of the premium
156 paid and the amount of the premium that should have been paid.
157 The penalty may be enforced in the circuit court of this state
158 having jurisdiction where the client company or the licensed
159 employee leasing company is located or transacts business.

160 (4) If an employee of a client company that is a
161 contractor or subcontractor engaged in the construction industry
162 suffers a compensable injury and the employee was not reported
163 to the licensed employee leasing company pursuant to the
164 contractual arrangement as earning wages before the accident,
165 the client company shall indemnify the licensed employee leasing
166 company for all workers' compensation benefits paid to or on
167 behalf of the employee. Any action for indemnification brought
168 by the licensed employee leasing company is cognizable in the
169 circuit court having jurisdiction where the client company or
170 licensed employee leasing company is located or transacts
171 business. The licensed employee leasing company is entitled to a
172 reasonable attorney fee if it recovers any portion of the
173 benefits paid in the action.

174 Section 5. For the purpose of incorporating the amendment
175 made by this act to section 468.529, Florida Statutes, in a

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176 reference thereto, paragraph (g) of subsection (1) of section
177 468.532, Florida Statutes, is reenacted to read:

178 468.532 Discipline.—

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

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

184 Section 6. This act applies to contracts entered into or
185 renewed on or after July 1, 2022.

186 Section 7. This act shall take effect July 1, 2022.