

**STORAGE NAME:** h4267s1.fs

**DATE:** April 9, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 4267

**RELATING TO:** Employee Leasing Companies

**SPONSOR(S):** Committee on Financial Services and Representative Wiles

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) FINANCIAL SERVICES YEAS 10 NAYS 0

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I. SUMMARY:

Employee leasing companies (ELC) have attracted attention recently because of their rapid growth, and the insolvency of at least two self-insurance funds with significant number of ELC members. Employers securing workers' compensation coverage through ELCs by the use of leased employees may impact the experience modification factor used in determining workers' compensation premiums. For example, employers with a high frequency of compensable workplace accidents could use an ELC to obtain coverage and take advantage of the lower experience modification factors enjoyed by the ELCs. If this were to occur, the employer could be paying lower workers' compensation premiums than justified by their experience.

The committee substitute requires employers and ELCs to obtain workers' compensation coverage for leased employees and pay premiums that are commensurate with the exposure and claims experience of the employer. The committee substitute also requires ELCs to provide certain information to the insurer when procuring workers' compensation coverage.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Employee leasing companies (ELC) have attracted attention recently because of their rapid growth, and the insolvency of at least two self-insurance funds with significant number of ELC members. Employers securing workers' compensation coverage through ELCs by the use of leased employees may impact the experience modification factor used in determining workers' compensation premiums. For example, employers with a high frequency of compensable workplace accidents could use an ELC to obtain coverage and take advantage of the lower experience modification factors enjoyed by the ELCs. If this were to occur, the employer could be paying lower workers' compensation premiums than justified by their experience.

**What is an ELC?**

An ELC, or as it is sometimes called, a professional employer organization, is a firm that enters into arrangements with businesses (the client) where it leases employees to a client and allocates the direction of and control over the leased employees. The ELC assumes responsibility and liability as the employer for the leased employees (which are often times the client's former employees). Under this arrangement, the ELC is deemed to be the employer of the leased employees and, therefore, assumes regulatory responsibilities such as payroll administration and procuring workers' compensation for the leased employees. However, the client exercises everyday control over the leased employees. In exchange for the ELC's providing personnel administration services, the client companies pay a fee to the ELC. It is important to note that a client who is leasing employees from an ELC remains the employer of any non-leased employees and is responsible for providing workers' compensation coverage for them.

This type of arrangement is very attractive to small and mid-size businesses because the ELC is in a position, due to volume discounts from insurers, to provide workers' compensation, health care benefits, retirement benefits, and other employee benefits at less cost than the business could provide.

ELCs are regulated by the Department of Business and Professional Regulation (DBPR) pursuant to ss. 468.520 - 468.535, F.S. Section 468.525, F.S., mandates that an ELC and at least one controlling person of the ELC obtain a license from DBPR.

ELCs are not required to have an insurance license and, therefore, are not regulated by the Department of Insurance. However, one of the primary reasons that employers use ELCs is to reduce the cost of providing workers' compensation insurance coverage.

**Workers' Compensation Premium Rates**

The rates paid by an employer for workers' compensation are determined by three primary factors: (1) the size of the payroll, (2) job classifications, and (3) the claim experience of the employer (experience modification factor).

In Florida, there are over 600 different job classifications and the rates for these classifications range from very low (secretaries) to very high (steel workers).

An employer's experience modification factor will vary depending on the claims experience of the employer. For new businesses with no claims experience, the experience modification factor would be 1. This means that workers' compensation premium would be multiplied by 1. However, for businesses that have multiple claims, the experience modification factor would be greater than 1 and, as a result, premiums would increase. Employers may reduce the experience modification factor by improving safety and reducing the number of claims.

### **Effect on the Experience Modification Rating System**

If an employer transfers its employees to an ELC, the employer becomes the client and its experience modification factor is not transferred to the ELC. Therefore, the ELC may procure workers' compensation coverage for the leased employees without having to use the client's experience modification factor. Instead, the ELC's workers' compensation premiums will be based on the ELC's experience modification factor. With the industry's growth, ELCs are often newly formed and have new experience modification factors or none at all. In addition, ELCs can, in effect, socialize its experience modification factor because it pools together many different types of employees who are classified differently and who have different claims experience. As a result, the lease transaction essentially washes clean the client's experience modification for its employees.

As a practical matter, the employees remain at the same location, working under the same conditions as before. But the client pays for coverage based on the ELC's policy, which does not take into consideration the actual the risk of the worksite. The intent of the experience modification factor system can be circumvented by this leaseback arrangement.

The NCCI has proposed a special set of rules around the country to address concerns over the impact ELCs can have on the experience modification factor system, and ultimately the ratemaking process. The rules essentially impose additional disclosure requirements on ELCs.

#### **B. EFFECT OF PROPOSED CHANGES:**

Florida law would ensure that employers be required to obtain workers' compensation coverage for leased employees and that premium be paid that is commensurate with the exposure and claims experience for all employees. ELCs would also be required to provide certain information to the insurer when procuring workers' compensation coverage.

The committee substitute creates s. 627.192, F.S., which:

- for purposes of the section, defines the terms, "employee leasing," "leased employee," "lessee," "lessor," and "premium subject to dispute;"

- states that the purpose of the section is to ensure that an employers who lease employees properly obtain workers' compensation coverage for all employees, including leased employees, and that premiums are paid based on the exposure and experience for all employees;
- permits ELC's to secure coverage on leased employees from the voluntary market;
- specifies information that an insurer may require from an ELC when providing workers' compensation coverage, including: payroll reports, classifications, experience modification factors, and lists of jurisdictions with exposure;
- requires ELCs covered in the voluntary market to provide information on an annual basis to the insurer that would permit the calculation of an experience modification factor for each lessee;
- provides for the cancellation or nonrenewal of coverage if there is an uncured violation of this section;
- requires that the insurer assign an experience modification factor to a lessee after a leasing arrangement is terminated, which includes the experience incurred for any leased employees during the leasing arrangement;
- requires ELCs to notify the insurer when an employee leasing arrangement is terminated;
- provides that this section does not affect the requirement that a lessee provide workers' compensation coverage for non-leased employees;
- provides that a lessee shall not enter into an employee leasing arrangement or be eligible for workers' compensation coverage in the voluntary market if the lessee owes its current or previous insurer any premium or if the lessee owes any amounts under a current or previous employee leasing arrangement;
- requires that insurers conduct annual audits of payroll and classification of ELCs and specifies audit requirements; and
- requires employers to pay a premium, not to exceed three times the amount of the most recent annual premium, if a lessor or lessee fails to provide access to payroll and classification records for an audit.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 627.192, F.S.

E. SECTION-BY-SECTION RESEARCH:

N/A

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The bill requires employers of leased employees to obtain workers' compensation coverage and pay premium which is commensurate with employers' exposure and claims experience. Therefore, employee leasing companies that were paying reduced premiums as a result of an artificially low experience modification factor will pay more in premiums to cover leased employees.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the bill, as filed, in that:

- the bill, as filed, contained a provision which stated that lessees shall secure workers' compensation benefits under s. 440.38, whereas the committee substitute does not;
- the bill, as filed, contained provisions relating to ELCs obtaining workers' compensation coverage in both the voluntary and residual market for leased employees, whereas the committee substitute only contains a provision for obtaining workers' compensation coverage in the voluntary market for leased employees;
- the committee substitute requires the ELC to provide more information to insurers than the bill, as filed, for the purpose of calculating an experience modification factor;
- the bill, as filed, required ELCs to notify insurers of the termination of an employee leasing arrangement 30 days prior to the effective date of termination or immediately upon notification of termination by the lessee, whereas the committee substitute requires the ELC to notify the insurer of the termination of an employee leasing arrangement prior to the termination, where feasible, or within 5 days after the termination;
- the bill as filed, provides that a lessee is not eligible for workers' compensation coverage in the voluntary market if it owes premium to its insurer or a prior insurer, whereas the committee substitute provides that a lessee can neither enter into an employee leasing arrangement nor be eligible for workers' compensation coverage in the voluntary market if the lessee owes its current or previous insurer any

**STORAGE NAME:** h4267s1.fs

**DATE:** April 9, 1998

**PAGE 10**

- premium or if the lessee owes any amounts under a current or previous employee leasing arrangement;
- the bill, as filed, required that insurers audit policies within 90 days of the effective date of each policy and permitted insurers to conduct quarterly audits thereafter, whereas the committee substitute requires that insurers conduct annual audits of ELCs; and
  - the committee substitute requires employers to pay a penalty, not to exceed three times the amount of the most recent annual premium, if a lessor or lessee fails to provide access to payroll and classification records for an audit, whereas the bill, as filed, did not contain a penalty provision.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

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