

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 2046

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Employee Leasing Companies

DATE: March 25, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.			GA	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer (“client company”) under which all or most of its client workforce is employed by the leasing company and then leased to the client company. Generally, the client company terminates all or most of its employees. The terminated employees are then engaged by the leasing company and leased to the client company to perform the same work they performed as the client’s employees.

The bill provides the following changes related to the regulation of employee leasing companies (ELC) in Florida:

- Streamlines approval process for a change of ownership by providing that a purchase or acquisition of a licensed ELC, does not require prior board approval if the controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S. Currently, the Board of Employee Leasing Companies (board) within the Department of Business and Professional Regulation must give prior approval for all purchases and acquisitions.
- Revises disciplinary actions associated with delinquent licenses (licenses not timely renewed). It eliminates the requirement that delinquent licenses automatically become void

30 days after the renewal date when the renewal fees are not paid and provides that the delinquent license would be subject to disciplinary action by the board instead of becoming automatically void.

- Clarifies that the existence of an employee leasing arrangement would not affect the eligibility of an ELC, a client company, or a leased employee for local or state tax incentives or other economic benefits.

This bill substantially amends the following sections of the Florida Statutes: 468.5245, 468.528, and 468.534.

II. Present Situation:

In recent years, employers are increasingly using various employment agencies in order to reduce administrative costs and to become more competitive in the marketplace.¹ Essentially, the employment staffing industry in Florida has three basic segments:

- *Day labor and labor pools.* These entities, regulated under ch. 448, F.S., assign their employees on a day-to-day basis to client companies (employers).
- *Temporary help firms.* These firms, which are not regulated by the state, assign their employees on a weekly, monthly, seasonal, or other basis to client companies for a period of less than one year.
- *Employee leasing companies or professional employer organizations.*² These companies are regulated under Ch. 468, F.S. These companies assign and actively co-employ their employees with the client company.

Florida Regulation of Employee Leasing Companies

The Board of Employee Leasing Companies (“board”) within the Department of Business and Professional Regulation (“DBPR”) licenses and regulates employee leasing companies under part XI, ch. 468, F.S. The law defines the term, “employee leasing,” as “...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.”³ The law excludes temporary help arrangements from the employee leasing definition and these entities are not subject to state licensure requirements.⁴

An employee leasing company (ELC), ELC group,⁵ or controlling person⁶ must meet certain initial and ongoing registration requirements. These requirements include the submission of an initial application and fees, financial reports, payroll assessment fees, and renewal applications and fees.

¹ Ibid.

² For purposes of this report, the terms, employee leasing company and professional employer organization are used interchangeably.

³ Section 468.520(4), F.S.

⁴ Ibid.

⁵ Two or more, but not more than five, ELCs that are majority owned by the same ultimate parent, entity, or persons may be licensed as an ELC group, pursuant to s. 468.526(2), F.S.

⁶ A controlling person is any natural person who has the power to direct or cause the direction of the management or policies of any ELC, as delineated in s. 468.520(7), F.S.

Annual Assessment -- The DBPR assesses each ELC and ELC group an annual assessment fee. This fee is based upon the preceding calendar year's gross Florida payroll of the company or group. The assessment fee is due on April 1 of each year and becomes delinquent after April 30.⁷

Licensure and Renewal – Each license issued to an ELC, ELC group, or controlling person is required to be renewed biennially.⁸ Licenses for ELCs and controlling persons must be renewed prior to March 1st of even-numbered years. If a licensee fails to renew a license by April 30th of every even-numbered year, the license will automatically become delinquent. A license that is delinquent for 30 days or less may be returned to an active status by paying the renewal fee plus a \$300 delinquent fee.⁹ A license delinquent for more than 30 days will automatically become void.¹⁰

Section 455.271(1), F.S., provides that a licensee may practice a profession, only if the licensee has an active status license. An inactive license may revert to active status at any time, provided the licensee meets all of the requirements for active status: pays any additional licensee fees and any applicable reactivation fees, pursuant to subsection (4) of s. 455.271, F.S. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle, will render the license void, without any further action by the board or the DBPR.

Section 468.532, F.S., authorizes the board to take disciplinary actions against a licensee for certain activities or violations, including conducting business without a license. Rule 61G-7.001, F.A.C., provides a range of disciplinary guidelines for violations of Part XI, ch. 468, F.S. Under this rule, an employer practicing on a revoked license or a suspended license, or is unlicensed, is in violation of s. 468.532(1)(f), F.S. Disciplinary actions could result and range from the imposition of a minimum penalty such as a reprimand, probation, \$500 fine, and administrative/legal costs to the maximum penalty of license denial, license revocation, \$5,000 fine per day, and administrative/legal costs.

The law authorizes the DBPR to conduct investigations, audits, or reviews of companies to determine compliance with applicable laws and rules.¹¹ According to the DBPR, the Complaints/Investigations intake section reviews complaints. Based upon information and documentation provided, the DBPR makes a determination as to the legal sufficiency of the allegations. If the complaint is determined to be legally sufficient and is not classified as an unlicensed practice, a notice of noncompliance or citation is considered for these minor violations. For more serious matters, such as unlicensed practice, the file is forwarded for investigation. The DBPR may initiate mediation for legally sufficient complaints where mediation rules exist and the allegations pertain to economic harm or the licensee can remedy them. If deemed appropriate, all completed investigations are forwarded to the Office of the General Counsel for legal determination and legal action.

⁷ Section 468.526(3), F.S.

⁸ Section 468.527(2), F.S.

⁹ Rule 61G-5.006, F.A.C.

¹⁰ Section 468.528, F.S.

¹¹ Section 468.535, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 468.5245, F.S., relating to employee leasing company acquisitions or purchases. This change will streamline the change of ownership process by providing that a purchase of acquisition of a licensed ELC does not require prior board approval if a controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S. This change would also eliminate the board's authority to conduct an investigation of the applicant and the books and records of the entity prior to the issuance of a certificate of approval to a person or entity seeking to purchase an ELC or ELC group.

Currently, the prior approval by the Board of Employee Leasing Companies (board) within the Department of Business and Professional Regulation is required for all purchases and acquisitions. As part of the prior approval process, the board is authorized to investigate the applicant and examine the records of the entity.

Section 2 amends s. 468.528, F.S. relating to delinquent licenses. Disciplinary actions associated with delinquent licenses are revised by eliminating the requirement that a license becomes automatically void 30 days after a missed renewal date and provides that such a license would be subject to disciplinary action by the board. This change will allow an ELC to remain in delinquent or inactive status for up to 2 years under ch. 455.271, F.S. However, the ELC would be prohibited from conducting business during this delinquent status.

Currently, failure to pay the renewal fee and renew the license at the time of renewal results in the license becoming delinquent. At that time, a licensee has 30 days to pay a late fee, not to exceed \$300 or the license automatically becomes void without further action of the board. A delinquent license for 30 days or less may be returned to active status by payment of the renewal fee plus a delinquent fee of \$300. A delinquent license for more than 30 days will automatically become void.

Section 3 amends s. 468.534, F.S., to provide that part XI of ch. 468, F.S., relating to employee leasing companies, does not effect the eligibility of an employee leasing company, a client company, or a leased employee to participate in or benefit from any local or state tax credit or other economic incentive. For purposes of subsection (2), if the amount of the tax credit or economic incentive is based on the number of a client's employees, the leased employees are treated as if they were direct employees for purposes of the tax credit or other incentive.

Section 4 provides that this act will take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The process to change ownership will be streamlined by eliminating prior approval by the board for a purchase of acquisition of a licensed ELC if a controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S.

By removing the requirement that a license automatically becomes void 30 days after the missed renewal date when payment is not made, a number of employee leasing companies may avoid having their delinquent licenses become void. Instead, these licenses would remain in delinquent or inactive status for a period of up to 2 years. However, an ELC with a delinquent license would not be able to engage in the employee leasing business, until the licensee cured the delinquency. A delinquency status could jeopardize a client's ability to obtain leased employees through that particular ELC.

According to the DBPR, in 2008, 16 percent or 63 ELC licenses failed to be renewed on time and as a result, their licenses were voided. These delinquent licensees would now be subject to disciplinary action by the board and would not become void for up to 2 years.

C. Government Sector Impact:

According to the DBPR, change of ownership applications must be submitted within 30 days of the purchase date. The DBPR will need to develop a new business process to track the change in ownership date, and forward these applications to the board if anyone fails to meet the 30-day notification deadline.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 24, 2010:

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- Revises disciplinary actions associated with delinquent licenses (licenses not timely renewed). It eliminates the requirement that delinquent licenses automatically become void 30 days after the renewal date when the renewal fees are not paid and provides that the delinquent license would be subject to disciplinary action by the board instead of becoming automatically void.
- Clarifies that the existence of an employee leasing arrangement would not affect the eligibility of an ELC, a client company, or a leased employee for local or state tax incentives or other economic benefits.

B. Amendments:

None.