A bill to be entitled
An act relating to unemployment compensation; amending
s. 213.053, F.S.; increasing the number of employer
payroll service providers who qualify for access to
unemployment tax information by filing a memorandum of
understanding; amending s. 443.031, F.S.; revising
provisions relating to statutory construction;
amending s. 443.036, F.S.; revising the definitions
for “available for work,” “earned income,”
“misconduct,” and “unemployment”; adding a definition
for “initial skills review”; amending s. 443.091,
F.S.; revising requirements for making continued
claims for benefits; requiring that an individual
claiming benefits report certain information and
participate in an initial skills review; providing an
exception; specifying criteria for determining an
applicant’s availability for work; amending s.
443.101, F.S.; clarifying “good cause” for voluntarily
leaving employment; specifying acts that are “gross
misconduct” for purposes of discharging an employee
and disqualifying him or her for benefits; revising
the criteria for determining suitable work to reduce
the number of weeks a person may receive benefits
before having to accept a job that pays a certain
amount; disqualifying a person for benefits due to the
receipt of severance pay; revising provisions relating
to the effect of criminal acts on eligibility for
benefits; disqualifying an individual for benefits for
any week he or she is incarcerated; amending s.
443.111, F.S.; revising the manner in which benefits are payable; eliminating payment by mail; providing an exception; conforming provisions to changes made by the act; amending s. 443.1115, F.S.; conforming cross-references; reviving, readopting, and amending s. 443.1117, F.S., relating to temporary extended benefits; providing for retroactive application; providing for applicability relating to extended benefits for certain weeks and for periods of high unemployment; providing for applicability; amending s. 443.1216, F.S.; providing that employee leasing companies may make a one-time election to report leased employees under the respective unemployment account of each leasing company client; providing procedures and application for such election; conforming a cross-reference; amending s. 443.141, F.S.; providing an employer payment schedule for 2012, 2013, and 2014 contributions; requiring an employer to pay a fee for paying contributions on a quarterly schedule; providing penalties, interest, and fees on delinquent contributions; amending s. 443.151, F.S.; requiring claims to be submitted by electronic means; conforming cross-references; specifying the allowable forms of evidence in an appeal hearing; specifying the judicial venue for filing a notice of appeal; providing for repayment of benefits in cases of agency error; amending s. 443.171, F.S.; specifying that evidence of mailing an agency document creates a rebuttable presumption; providing that the act
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 213.053, Florida Statutes, as amended by chapter 2010-280, Laws of Florida, is amended to read:

213.053 Confidentiality and information sharing.—
(4) The department, while providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316, may release unemployment tax rate information to the agent of an employer which provides payroll services for more than 100 employers, pursuant to the terms of a memorandum of understanding. The memorandum of understanding must state that the agent affirms, subject to the criminal penalties contained in ss. 443.171 and 443.1715, that the agent will retain the confidentiality of the information, that the agent has in effect a power of attorney from the employer which permits the agent to obtain unemployment tax rate information, and that the agent shall provide the department with a copy of the employer’s power of attorney upon request.

Section 2. Section 443.031, Florida Statutes, is amended to read:

443.031 Rule of liberal construction.—This chapter shall be liberally construed to accomplish its purpose to promote employment security by increasing opportunities for reemployment and to provide, through the accumulation of reserves, for the
payment of compensation to individuals with respect to their
unemployment. The Legislature hereby declares its intention to
provide for carrying out the purposes of this chapter in
cooperation with the appropriate agencies of other states and of
the Federal Government as part of a nationwide employment
security program, and particularly to provide for meeting the
requirements of Title III, the requirements of the Federal
Unemployment Tax Act, and the Wagner-Peyser Act of June 6, 1933,
entitled “An Act to provide for the establishment of a national
employment system and for cooperation with the states in the
promotion of such system, and for other purposes,” each as
amended, in order to secure for this state and its citizens the
grants and privileges available under such acts. All doubts in
favor of a claimant of unemployment benefits who is unemployed
through no fault of his or her own. Any doubt as to the proper
construction of any provision of this chapter shall be resolved
in favor of conformity with such requirements federal law,
including, but not limited to, the Federal Unemployment Tax Act,
the Social Security Act, the Wagner-Peyser Act, and the
Workforce Investment Act.

Section 3. Effective July 1, 2011, present subsections (26)
through (45) of section 443.036, Florida Statutes, are
redesignated as subsection (27) through (46) respectively, new
subsection (26) is added to that section, and present
subsections (6), (9), (16), (29), and (43) of that section are
amended, to read:

443.036 Definitions.—As used in this chapter, the term:
(6) “Available for work” means actively seeking and being
ready and willing to accept suitable work employment.
(9) “Benefit year” means, for an individual, the 1-year period beginning with the first day of the first week for which the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week for which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Each claim for benefits made in accordance with s. 443.151(2) is a valid claim under this subsection if the individual was paid wages for insured work in accordance with s. 443.091(1)(g) and is unemployed as defined in subsection (43) at the time of filing the claim. However, the Agency for Workforce Innovation may adopt rules providing for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry if the agency determines, after notice to the industry and to the workers in the industry and an opportunity to be heard in the matter, that those groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(16) “Earned income” means gross remuneration derived from work, professional service, or self-employment. The term includes commissions, bonuses, back pay awards or back pay settlements, front pay or front wages, and the cash value of all remuneration paid in a medium other than cash. The term does not include income derived from invested capital or ownership of property.

(26) “Initial skills review” means an online education or training program, such as that established under s. 1004.99, which is approved by the Agency for Workforce Innovation and
designed to measure an individual’s mastery level of workplace skills.

(30)(29) “Misconduct” includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious willful or wanton disregard of an employer’s interests and found to be a deliberate violation or disregard of reasonable the standards of behavior which the employer has a right to expect of his or her employee, including standards lawfully set forth in the employer’s written rules of conduct; or

(b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or evil design or shows an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his or her employer.

(44)(43) “Unemployment” or “unemployed” means:

(a) An individual is “totally unemployed” in any week during which he or she does not perform any services and for which earned income is not payable to him or her. An individual is “partially unemployed” in any week of less than full-time work if the earned income payable to him or her for that week is less than his or her weekly benefit amount. The Agency for Workforce Innovation may adopt rules prescribing distinctions in the procedures for unemployed individuals based on total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.

(b) An individual’s week of unemployment commences only
Section 4. Effective July 1, 2011, paragraphs (b), (c),
(d), and (f) of subsection (1) of section 443.091, Florida
Statutes, are amended to read:
443.091 Benefit eligibility conditions.—
(1) An unemployed individual is eligible to receive
benefits for any week only if the Agency for Workforce
Innovation finds that:
(b) She or he has registered with the agency for work and
subsequently reports to the one-stop career center as directed
by the regional workforce board for reemployment services. This
requirement does not apply to persons who are:
1. Non-Florida residents;
2. On a temporary layoff, as defined in s. 443.036(42);
3. Union members who customarily obtain employment through
a union hiring hall; or
4. Claiming benefits under an approved short-time
compensation plan as provided in s. 443.1116.
(c) To make continued claims for benefits, she or he is
reporting to the Agency for Workforce Innovation in accordance
with this paragraph and agency its rules, and participating in
an initial skills review as directed by the agency. Agency These
rules may not conflict with s. 443.111(1)(b), which requires
including the requirement that each claimant continue to report
regardless of any pending appeal relating to her or his
eligibility or disqualification for benefits.
1. For each week of unemployment claimed, each report must,
at a minimum, include the name, address, and telephone number of
each prospective employer contacted, or the date the claimant
reported to a one-stop career center, pursuant to paragraph (d).

2. The administrator or operator of the initial skills
review shall notify the agency when the individual completes the
initial skills review and report the results of the review to
the regional workforce board or the one-stop career center as
directed by the workforce board. The workforce board shall use
the initial skills review to develop a plan for referring
individuals to training and employment opportunities. The
failure of the individual to comply with this requirement will
result in the individual being determined ineligible for
benefits for the week in which the noncompliance occurred and
for any subsequent week of unemployment until the requirement is
satisfied. However, this requirement does not apply if the
individual is able to affirmatively attest to being unable to
complete such review due to illiteracy or a language impediment.

(d) She or he is able to work and is available for work. In
order to assess eligibility for a claimed week of unemployment,
the agency shall develop criteria to determine a claimant’s
ability to work and availability for work. A claimant must be
actively seeking work in order to be considered available for
work. This means engaging in systematic and sustained efforts to
find work, including contacting at least five prospective
employers for each week of unemployment claimed. The agency may
require the claimant to provide proof of such efforts to the
one-stop career center as part of reemployment services. The
agency shall conduct random reviews of work search information
provided by claimants. As an alternative to contacting at least
five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the agency upon request by the agency. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the agency, or by reason of s. 443.101(3) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the agency in accordance with criteria prescribed by rule. A claimant’s eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to her or his enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term “suitable employment” means work of a substantially equal or higher skill level than the worker’s past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker’s average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an
otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

(f) She or he has been unemployed for a waiting period of 1 week. A week may not be counted as a week of unemployment under this subsection unless:

1. **Unless** It occurs within the benefit year that includes the week for which she or he claims payment of benefits.

2. **If** Benefits have been paid for that week.

3. **Unless** The individual was eligible for benefits for that week as provided in this section and s. 443.101, except for the requirements of this subsection and of s. 443.101(6) 443.101(5).

Section 5. Effective July 1, 2011, paragraph (a) of subsection (1) and present subsections (2), (3), (9), and (11) of section 443.101, Florida Statutes, are amended, present subsections (2) through (11) of that section are redesignated as subsections (3) through (13), respectively, and new subsections (2) and (12) are added to that section, to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or in which the individual has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Agency for Workforce Innovation. As used in this paragraph, the term “work” means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the
individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than in excess of 17 times his or her weekly benefit amount. As used in this subsection, the term “good cause” includes only that cause attributable to the employing unit which would compel a reasonable individual to cease working or attributable to which consists of the individual’s illness or disability requiring separation from his or her work. Any other disqualification may not be imposed. An individual is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months, or. An individual is not disqualified under this subsection for voluntarily leaving work to relocate as a result of his or her military-connected spouse’s permanent change of station orders, activation orders, or unit deployment orders.

2. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks that immediately following follow that week, as determined by the agency in each case according to the circumstances in each case or the seriousness of the misconduct, under the agency’s rules adopted for determining determinations of disqualification for benefits for misconduct.

3. If an individual has provided notification to the
employing unit of his or her intent to voluntarily leave work
and the employing unit discharges the individual for reasons
other than misconduct before the date the voluntary quit was to
take effect, the individual, if otherwise entitled, shall
receive benefits from the date of the employer’s discharge until
the effective date of his or her voluntary quit.

4. If an individual is notified by the employing unit of
the employer’s intent to discharge the individual for reasons
other than misconduct and the individual quits without good
cause, as defined in this section, before the date the discharge
was to take effect, the claimant is ineligible for benefits
pursuant to s. 443.091(1)(d) for failing to be available for
work for the week or weeks of unemployment occurring before the
effective date of the discharge.

(2) For the week the individual has been discharged by the
employing unit for gross misconduct, based on a finding by the
Agency for Workforce Innovation. Disqualification for being
discharged for gross misconduct continues for the full period of
unemployment next ensuing after having been discharged and until
the individual is reemployed and has earned income of at least
17 times his or her weekly benefit amount. As used in this
subsection, the term “gross misconduct” means any of the
following:

(a) Willful or reckless damage to an employer’s property
which results in damage of more than $50.

(b) Theft of the property of an employer, a customer, or an
invitee of the employer.

(c) Violation of an employer’s policy relating to the
consumption of alcohol or drugs on the employer property, being
under the influence of alcohol or drugs on employer property, or using alcohol or drugs while on the job or on duty. As used in this paragraph, the term “alcohol or drugs” has the same meaning as in s. 440.102(1)(c).

(d) Failure to comply with an employer’s drug and alcohol testing and use policies while on the job or on duty.

(e) Failure to comply with applicable state or federal drug and alcohol testing and use regulations, including, but not limited to, 49 C.F.R. part 40 and part 382 of the Federal Motor Carrier Safety Regulations, while on the job or on duty, and regulations applicable to employees performing transportation and other safety-sensitive job functions as defined by the Federal Government.

(f) Assault or battery of another employee or of a customer or invitee of the employer.

(g) Abuse of a patient, resident, disabled person, elderly person, or child in her or his professional care.

(h) Insubordination, which is defined as the willful failure to comply with a lawful, reasonable order of a supervisor which is directly related to the employee’s employment as described in an applicable written job description, the written rules of conduct, or other lawful directive of the employer. Except in cases of severe insubordination, the employee must have received at least one written warning from the employer before being discharged from employment.

(i) Willful neglect of duty directly related to the employee’s employment as described in an applicable written job description or written rules of conduct. Except in cases of
severe willful neglect, the employee must have received at least one written warning from the employer before being discharged from employment.

(j) Failure to maintain a license, registration, or certification required by law in order for the employee to perform her or his assigned job duties as described in an written job description.

(3) If the Agency for Workforce Innovation finds that the individual has failed without good cause to apply for available suitable work when directed by the agency or the one-stop career center, to accept suitable work when offered to him or her, or to return to the individual’s customary self-employment when directed by the agency, the disqualification continues for the full period of unemployment next ensuing after he or she failed without good cause to apply for available suitable work, to accept suitable work, or to return to his or her customary self-employment, under this subsection, and until the individual has earned income of at least 17 times his or her weekly benefit amount. The Agency for Workforce Innovation shall by rule adopt criteria for determining the “suitability of work,” as used in this section. The agency for Workforce Innovation in developing these rules, the agency shall consider the duration of a claimant’s unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 19 weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing. 

(a) In determining whether or not any work is suitable for
590-02282-11

an individual, the agency for Workforce Innovation shall
consider the degree of risk involved to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, and prior earnings; his or her length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

2. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. If As a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(c) If the agency for Workforce Innovation finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(4)(3) For any week with respect to which he or she is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice.

(b) Severance pay. The number of weeks that an individual's
severance pay disqualifies the individual is equal to the amount of the severance pay divided by the individual’s average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual separated from that employer.

(c)(b)1. Compensation for temporary total disability or permanent total disability under the workers’ compensation law of any state or under a similar law of the United States.

2. However, if the remuneration referred to in paragraphs (a), and (b), and (c) is less than the benefits that would otherwise be due under this chapter, an individual who is otherwise eligible is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration.

(10)(9) If the individual was terminated from his or her work for violation of any criminal law punishable by imprisonment, or for any dishonest act, in connection with his or her work, as follows:

(a) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from his or her work for violation of any criminal law, under any jurisdiction, which was punishable by imprisonment in connection with his or her work or affected his or her ability to perform work, and the individual was convicted, or entered a plea of guilty or nolo contendere found guilty of the offense, made an admission of guilt in a court of law, or entered a plea of no contest, the individual is not entitled to unemployment benefits for up to 52 weeks, pursuant
to under rules adopted by the agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. If, before an adjudication of guilt, an admission of guilt, or a plea of no contest, the employer proves by competent, substantial evidence to show the agency for Workforce Innovation that the arrest was due to a crime against the employer or the employer’s business, customers, or invitees and, after considering all the evidence, the Agency for Workforce Innovation finds misconduct in connection with the individual’s work, the individual is not entitled to unemployment benefits.

(b) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from work for any dishonest act in connection with his or her work, the individual is not entitled to unemployment benefits for up to 52 weeks, pursuant to under rules adopted by the agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. In addition, if the employer terminates an individual as a result of a dishonest act in connection with his or her work and the agency for Workforce Innovation finds misconduct in connection with his or her work, the individual is not entitled to unemployment benefits.

If with respect to an individual is disqualified for benefits, the account of the terminating employer, if the employer is in the base period, is noncharged at the time the disqualification is imposed.

(12) For any week in which the individual is unavailable
(13)(11) If an individual is discharged from employment for
drug use as evidenced by a positive, confirmed drug test as
provided in paragraph (1)(d), or is rejected for offered
employment because of a positive, confirmed drug test as
provided in paragraph (3)(c) (2)(c), test results and chain of
custody documentation provided to the employer by a licensed and
approved drug-testing laboratory is self-authenticating and
admissible in unemployment compensation hearings, and such
evidence creates a rebuttable presumption that the individual
used, or was using, controlled substances, subject to the
following conditions:

(a) To qualify for the presumption described in this
subsection, an employer must have implemented a drug-free
workplace program under ss. 440.101 and 440.102 and must submit
proof that the employer has qualified for the insurance
discounts provided under s. 627.0915, as certified by the
insurance carrier or self-insurance unit. In lieu of these
requirements, an employer who does not fit the definition of
“employer” in s. 440.102 may qualify for the presumption if the
employer is in compliance with equivalent or more stringent
drug-testing standards established by federal law or regulation.

(b) Only laboratories licensed and approved as provided in
s. 440.102(9), or as provided by equivalent or more stringent
licensing requirements established by federal law or regulation
may perform the drug tests.

(c) Disclosure of drug test results and other information
pertaining to drug testing of individuals who claim or receive
compensation under this chapter shall be governed by s.
Section 6. Effective July 1, 2011, subsection (1) of section 443.111, Florida Statutes, is amended to read:

443.111 Payment of benefits.—
(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Agency for Workforce Innovation, subject to the following requirements:

(a) Benefits are payable by mail or electronically, except that an individual being paid by paper warrant on July 1, 2011, may continue to be paid in that manner until the expiration of the claim. Notwithstanding s. 409.942(4), the agency may develop a system for the payment of benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency deems to be commercially viable or cost-effective. Commodities or services related to the development of such a system shall be procured by competitive solicitation, unless they are purchased from a state term contract pursuant to s. 287.056. The agency shall adopt rules necessary to administer this paragraph the system.

(b) As required under s. 443.091(1), each claimant must report in the manner prescribed by the agency for Workforce Innovation to certify for benefits that are paid and must continue to report at least biweekly to receive unemployment benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has contacted at least five prospective employers or reported in person to a one-stop career center for reemployment services for each week of unemployment claimed, and, if she or
he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

Section 7. Effective July 1, 2011, paragraph (c) of subsection (3) of section 443.1115, Florida Statutes, is amended to read:

443.1115 Extended benefits.—
(3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.—
(c)1. An individual is disqualified from receiving extended benefits if the Agency for Workforce Innovation finds that, during any week of unemployment in her or his eligibility period:

a. She or he failed to apply for suitable work or, if offered, failed to accept suitable work, unless the individual can furnish to the agency satisfactory evidence that her or his prospects for obtaining work in her or his customary occupation within a reasonably short period are good. If this evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable for the individual shall be made in accordance with the definition of suitable work in s. 443.101(2). This disqualification begins with the week the failure occurred and continues until she or he is employed for at least 4 weeks and receives earned income of at least 17 times her or his weekly benefit amount.

b. She or he failed to furnish tangible evidence that she or he actively engaged in a systematic and sustained effort to find work. This disqualification begins with the week the failure occurred and continues until she or he is employed for
at least 4 weeks and receives earned income of at least 4 times
her or his weekly benefit amount.

2. Except as otherwise provided in sub-subparagraph 1.a.,
as used in this paragraph, the term “suitable work” means any
work within the individual’s capabilities to perform, if:

a. The gross average weekly remuneration payable for the
work exceeds the sum of the individual’s weekly benefit amount
plus the amount, if any, of supplemental unemployment benefits,
as defined in s. 501(c)(17)(D) of the Internal Revenue Code of
1954, as amended, payable to the individual for that week;

b. The wages payable for the work equal the higher of the
minimum wages provided by s. 6(a)(1) of the Fair Labor Standards
Act of 1938, without regard to any exemption, or the state or
local minimum wage; and

c. The work otherwise meets the definition of suitable work
in s. 443.101(3) 443.101(2) to the extent that the criteria for
suitability are not inconsistent with this paragraph.

Section 8. Notwithstanding the expiration date contained in
section 1 of chapter 2010-90, Laws of Florida, operating
retroactive to December 17, 2010, and expiring January 4, 2012,
section 443.1117, Florida Statutes, is revived, readopted, and
amended to read:

443.1117 Temporary extended benefits.—

(1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if
the result is inconsistent with the other provisions of this
section, s. 443.1115(2), (3), (4), (6), and (7) apply to all
claims covered by this section.

(2) DEFINITIONS.—As used in For the purposes of this
section, the term:
(a) “Regular benefits” and “extended benefits” have the same meaning as in s. 443.1115.

(b) “Eligibility period” means the weeks in an individual’s benefit year or emergency benefit period which begin in an extended benefit period and, if the benefit year or emergency benefit period ends within that extended benefit period, any subsequent weeks beginning in that period.


(d) “Extended benefit period” means a period that:
   1. Begins with the third week after a week for which there is a state “on” indicator; and
   2. Ends with any of the following weeks, whichever occurs later:
      a. The third week after the first week for which there is a state “off” indicator;
      b. The 13th consecutive week of that period.

However, an extended benefit period may not begin by reason of a state “on” indicator before the 14th week after the end of a prior extended benefit period that was in effect for this state.

(e) “Emergency benefit period” means the period during which an individual receives emergency benefits as defined in paragraph (c).

(f) “Exhaustee” means an individual who, for any week of unemployment in her or his eligibility period:

CODING: Words struck are deletions; words underlined are additions.
1. Has received, before that week, all of the regular benefits and emergency benefits, if any, available under this chapter or any other law, including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemembers under 5 U.S.C. ss. 8501-8525, in the current benefit year or emergency benefit period that includes that week. For the purposes of this subparagraph, an individual has received all of the regular benefits and emergency benefits, if any, available even if although, as a result of a pending appeal for wages paid for insured work which were not considered in the original monetary determination in the benefit year, she or he may subsequently be determined to be entitled to added regular benefits;

2. Had a benefit year that which expired before that week, and was paid no, or insufficient, wages for insured work on the basis of which she or he could establish a new benefit year that includes that week; and

3.a. Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act or other federal laws as specified in regulations issued by the United States Secretary of Labor; and

b. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if an individual is seeking those benefits and the appropriate agency finally determines that she or he is not entitled to benefits under that law, she or he is considered an exhaustee.

(g) “State ‘on’ indicator” means, with respect to weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 10, 2011 or May 8, 2010, the occurrence of a

CODING: Words stricken are deletions; words underlined are additions.
week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all each of the preceding 3 2 calendar years; and

2. Equals or exceeds 6.5 percent.

(h) “High unemployment period” means, with respect to weeks of unemployment beginning on or after January 1, 2009, and ending on or before December 10, 2011 May 8, 2010, any week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all each of the preceding 3 2 calendar years; and

2. Equals or exceeds 8 percent.

(i) “State ‘off’ indicator” means the occurrence of a week in which there is no state “on” indicator or which does not constitute a high unemployment period.

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (4):

(a) For any week for which there is an “on” indicator pursuant to paragraph (2)(g), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable
under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other provision of this chapter, if the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits the individual is entitled to receive in that extended benefit period for weeks of unemployment beginning after the end of the benefit year, except as provided in this section, is reduced, but not to below zero, by the number of weeks for which the individual received, within that benefit year, trade readjustment allowances under the Trade Act of 1974, as amended.

Section 9. The provisions of s. 443.1117, Florida Statutes, as revived, readopted, and amended by this act, apply only to claims for weeks of unemployment in which an exhaustee establishes entitlement to extended benefits pursuant to that section which are established for the period between December 17, 2010, and January 4, 2012.

Section 10. Effective July 1, 2011, paragraph (a) of
subsection (1) and paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, are amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, if whenever a client, as defined in s. 443.036(18), which would otherwise be designated as an employing unit, has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company and must be reported under the leasing company’s tax identification number and contribution rate for work performed for the leasing company.

a. However, except for the internal employees of an employee leasing company, a leasing company may make a one-time election to report and pay contributions under the client method. Under the client method, a leasing company must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions. For all other purposes, the leased employees are considered employees of the employee leasing company. A leasing company that elects the client method shall pay contributions at the rates assigned to each client company.

(I) The election applies to all of the leasing company’s
current and future clients.

(II) The leasing company must notify the Agency for Workforce Innovation or the tax collection service provider of its election by August 1, and such election applies to reports and contributions for the first quarter of the following calendar year. The notification must include:

(A) A list of each client company and its unemployment account number;
(B) A list of each client company’s current and previous employees and their respective social security numbers for the prior 3 state fiscal years; and
(C) All wage data and benefit charges for the prior 3 state fiscal years.

(III) Subsequent to such election, the employee leasing company may not change its reporting method.

(IV) The employee leasing company must file a Florida Department of Revenue Employer’s Quarterly Report (UCT-6) for each client company and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates, the election is treated like a total or partial succession, depending on the percentage of employees leased. If the client company leases only a portion of its employees from the leasing company, the client company shall continue to report the nonleased employees under its tax rate based on the experience of the nonleased employees.

(VI) A leasing company that makes a one-time election under this sub-subparagraph is not required to submit quarterly Multiple Worksite Reports required by sub-subparagraphs c. and
784 d. (VII) This sub-subparagraph applies to all employee leasing companies, including each leasing company that is a group member or group leader of an employee leasing company group licensed pursuant to chapter 468. The election is binding on all employee leasing companies and their related enterprises, subsidiaries, or other entities that share common ownership, management, or control with the leasing company. The election is also binding on all clients of the leasing company for as long as a written agreement is in effect between the client and the leasing company pursuant to s. 468.525(3)(a). If the relationship between the leasing company and the client terminates, the client retains the wage and benefit history experienced under the leasing company.

b. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company’s tax identification number and contribution rate for work performed for the employee leasing company.

c. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Agency for Workforce Innovation which includes each client establishment and each establishment of the employee leasing company, or as otherwise directed by the agency. The report must include the following information for each establishment:

(I) The trade or establishment name;
(II) The former unemployment compensation account number, if available;
(III) The former federal employer’s identification number (FEIN), if available;
(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;
(V) A description of the client’s primary business activity in order to verify or assign an industry code;
(VI) The address of the physical location;
(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to unemployment compensation taxes for, the pay period including the 12th of the month for each month of the quarter;
(VIII) The total wages subject to unemployment compensation taxes paid during the calendar quarter;
 IX) An internal identification code to uniquely identify each establishment of each client;
(X) The month and year that the client entered into the contract for services; and
(XI) The month and year that the client terminated the contract for services.

The report shall be submitted electronically or in a manner otherwise prescribed by the Agency for Workforce Innovation in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the agency for Workforce Innovation, or as otherwise directed by the agency, and must be
filed by the last day of the month immediately following the end of the calendar quarter. The information required in sub-sub-
subparagraphs c.(X) and (XI) a.(X) and (XI) need be provided
only in the quarter in which the contract to which it relates
was entered into or terminated. The sum of the employment data
and the sum of the wage data in this report must match the
employment and wages reported in the unemployment compensation quarterly tax and wage report. A report is not required for any
calendar quarter preceding the third calendar quarter of 2010.

e. The Agency for Workforce Innovation shall adopt rules
as necessary to administer this subparagraph, and may
administer, collect, enforce, and waive the penalty imposed by
s. 443.141(1)(b) for the report required by this subparagraph.

f. For the purposes of this subparagraph, the term
“establishment” means any location where business is conducted
or where services or industrial operations are performed.

3. An individual other than an individual who is an
employee under subparagraph 1. or subparagraph 2., who performs
services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in
distributing meat products, vegetable products, fruit products,
bakery products, beverages other than milk, or laundry or
drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-
time basis in the solicitation on behalf of, and the
transmission to, his or her principal of orders from
wholesalers, retailers, contractors, or operators of hotels,
restaurants, or other similar establishments for merchandise for
resale or supplies for use in their business operations. This
sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson’s principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:
   a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;
   b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and
   c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

   (13) The following are exempt from coverage under this chapter:

   (f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) or (c), to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 11. Present paragraph (f) of subsection (1) of section 443.141, Florida Statutes, is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

443.141 Collection of contributions and reimbursements.—
(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(f) Payments for 2012, 2013, and 2014 Contributions.—For an annual administrative fee not to exceed $5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of 2012, 2013, and 2014 in equal installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph 1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

5. Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each
year if the employer pays the contribution in accordance with
subparagraphs 1.-4. Interest and fees continue to accrue on
prior delinquent contributions and commence accruing on all
contributions due for wages paid in the first three quarters of
each year which are not paid in accordance with subparagraphs
1.-3. Penalties may be assessed in accordance with this chapter.
The contributions due for wages paid in the fourth quarter of
2012, 2013, and 2014 are not affected by this paragraph and are
due and payable in accordance with this chapter.

Section 12. Effective July 1, 2011, paragraph (a) of
subsection (2), paragraphs (d) and (e) of subsection (3), and
paragraphs (b) and (e) of subsection (4) of section 443.151,
Florida Statutes, are amended, present paragraphs (c) through
(f) of subsection (6) of that section are redesignated as
paragraphs (d) through (g), respectively, and a new paragraph
(c) is added to that subsection, to read:

443.151 Procedure concerning claims.—
(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF
CLAIMANTS AND EMPLOYERS.—
(a) In general.—Initial and continued claims for benefits
must be made by approved electronic means and in accordance with
the rules adopted by the Agency for Workforce Innovation. The
agency must notify claimants and employers regarding monetary
and nonmonetary determinations of eligibility. Investigations of
issues raised in connection with a claimant which may affect a
claimant’s eligibility for benefits or charges to an employer’s
employment record shall be conducted by the agency through
written, telephonic, or electronic means as prescribed by rule.

(3) DETERMINATION OF ELIGIBILITY.—
590-02282-11

(d) Determinations in labor dispute cases.—If a claim involves a labor dispute described in s. 443.101(4), the Agency for Workforce Innovation shall promptly assign the claim to a special examiner who shall make a determination on the issues involving unemployment due to the labor dispute. The special examiner shall make the determination after an investigation, as necessary. The claimant or another party entitled to notice of the determination may appeal a determination under subsection (4).

(e) Redeterminations.—

1. The Agency for Workforce Innovation may reconsider a determination if it finds an error or if new evidence or information pertinent to the determination is discovered after a prior determination or redetermination. A redetermination may not be made more than 1 year after the last day of the benefit year unless the disqualification for making a false or fraudulent representation under s. 443.101(7) is applicable, in which case the redetermination may be made within 2 years after the false or fraudulent representation. The agency must promptly give notice of redetermination to the claimant and to any employers entitled to notice in the manner prescribed in this section for the notice of an initial determination.

2. If the amount of benefits is increased by the redetermination, an appeal of the redetermination based solely on the increase may be filed as provided in subsection (4). If the amount of benefits is decreased by the redetermination, the redetermination may be appealed by the claimant if a subsequent claim for benefits is affected in amount or duration by the redetermination. If the final decision on the determination or
redetermination to be reconsidered was made by an appeals
referee, the commission, or a court, the Agency for Workforce
Innovation may apply for a revised decision from the body or
court that made the final decision.

3. If an appeal of an original determination is pending
when a redetermination is issued, the appeal, unless withdrawn,
is treated as an appeal from the redetermination.

(4) APPEALS.—

(b) Filing and hearing.—
1. The claimant or any other party entitled to notice of a
determination may appeal an adverse determination to an appeals
referee within 20 days after the date of mailing of the notice
to her or his last known address or, if the notice is not
mailed, within 20 days after the date of delivering delivery of
the notice.

2. Unless the appeal is untimely or withdrawn, or review is
initiated by the commission, the appeals referee, after mailing
all parties and attorneys of record a notice of hearing at least
10 days before the date of hearing, notwithstanding the 14-day
notice requirement in s. 120.569(2)(b), may only affirm, modify,
or reverse the determination. An appeal may not be withdrawn
without the permission of the appeals referee.

3. However, if an appeal appears to have been filed
after the permissible time limit, the Office of Appeals may
issue an order to show cause to the appellant requiring the appellant to show why the appeal should not be
dismissed as untimely. If the appellant does not, within 15 days
after the mailing date of the order to show cause, the appellant
does not provide written evidence of timely filing or good cause
for failure to appeal timely, the appeal shall be dismissed.

4. If an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the pendency of the appeal to the employing unit and to the Agency for Workforce Innovation, both of which become parties to the proceeding.

5. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath.

a. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court.

b. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review it before the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

6. The parties must be notified promptly of the referee’s decision. The referee’s decision is final unless further review is initiated under paragraph (c) within 20 days after the date...
590-02282-11  2011728c2

of mailing notice of the decision to the party’s last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

(e) Judicial review.—Orders of the commission entered under paragraph (c) are subject to review only by notice of appeal in the district court of appeal in the appellate district in which the issues involved were decided by an appeals referee. If the notice of appeal is filed by the claimant, it must be filed in the appellate district in which the claimant resides. If the notice of appeal is filed by the employer, it must be filed in the appellate district in which the business is located. However, if the claimant does not reside in this state or the business is not located in this state, the notice of appeal must be filed in the appellate district in which the order was issued. Notwithstanding chapter 120, the commission is a party respondent to every such proceeding. The Agency for Workforce Innovation may initiate judicial review of orders in the same manner and to the same extent as any other party.

(6) RECOVERY AND RECOUPMENT.—

(c) Any person who, by reason other than fraud, receives benefits under this chapter for which she or he is not entitled due to the failure of the Agency for Workforce Innovation to make and provide notice of a nonmonetary determination under paragraph (3)(c) within 30 days after filing a new claim, is liable for repaying up to 5 weeks of benefits received to the agency on behalf of the trust fund or may have those benefits deducted from any future benefits payable to her or him under this chapter.

Section 13. Subsection (10) is added to section 443.171,
Florida Statutes, to read:

443.171 Agency for Workforce Innovation and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(10) EVIDENCE OF MAILING.—A mailing date on any notice, determination, decision, order, or other document mailed by the Agency for Workforce Innovation or its tax collection service provider pursuant to this chapter creates a rebuttable presumption that such notice, determination, order, or other document was mailed on the date indicated.

Section 14. The Legislature finds that this act fulfills an important state interest.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.