



279984

LEGISLATIVE ACTION

Senate

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House

Senator Farmer moved the following:

1 **Senate Amendment to Amendment (913612) (with title**
2 **amendment)**

3
4 Delete lines 1298 - 1487

5 and insert:

6 Section 14. Present subsections (3) through (46) of section
7 443.036, Florida Statutes, are redesignated as subsections (4)
8 through (47), respectively, a new subsection (3) is added to
9 that section, and present subsection (24) of that section is
10 amended, to read:

11 443.036 Definitions.—As used in this chapter, the term:



279984

12 (3) "Alternative base period" means the four most recently
13 completed calendar quarters before an individual's benefit year,
14 if such quarters qualify the individual for benefits and were
15 not previously used to establish a prior valid benefit year.

16 ~~(25)-(24)~~ "High quarter" means the quarter in an
17 individual's base period, or in the individual's alternative
18 base period if an alternative base period is used for
19 determining benefits eligibility, in which the individual has
20 the greatest amount of wages paid, regardless of the number of
21 employers paying wages in that quarter.

22 Section 15. Paragraph (g) of subsection (1) of section
23 443.091, Florida Statutes, is amended to read:

24 443.091 Benefit eligibility conditions.—

25 (1) An unemployed individual is eligible to receive
26 benefits for any week only if the Department of Economic
27 Opportunity finds that:

28 (g) She or he has been paid wages for insured work equal to
29 1.5 times her or his high quarter wages during her or his base
30 period, except that an unemployed individual is not eligible to
31 receive benefits if the base period wages are less than \$3,400.
32 If an unemployed individual is ineligible for benefits based on
33 base period wages, his or her wages shall be calculated using
34 the alternative base period, and his or her claim shall be
35 established using such wages.

36 Section 16. Subsections (2) and (3) of section 443.111,
37 Florida Statutes, are amended to read:

38 443.111 Payment of benefits.—

39 (2) QUALIFYING REQUIREMENTS.—

40 (a) To establish a benefit year for reemployment assistance



279984

41 benefits, an individual must have:

42 1. ~~(a)~~ Wage credits in two or more calendar quarters of the
43 individual's base period or alternative base period.

44 2. ~~(b)~~ Minimum total base period wage credits equal to the
45 high quarter wages multiplied by 1.5, but at least \$3,400 in the
46 base period, or in the alternative base period if the
47 alternative base period is used for benefits eligibility.

48 (b)1. If a worker is ineligible for benefits based on base
49 period wages, wages for that worker must be calculated using an
50 alternative base period and the claim shall be established using
51 such wages.

52 2. If the wage information for an individual's most
53 recently completed calendar quarter is unavailable to the
54 department from regular quarterly reports of systematically
55 accessible wage information, the department must promptly
56 contact the individual's employer to obtain the wage
57 information.

58 3. Wages that fall within the alternative base period of
59 claims established under this paragraph are not available for
60 reuse in qualifying for any subsequent benefit years.

61 4. The department shall adopt rules to administer this
62 paragraph.

63 (3) WEEKLY BENEFIT AMOUNT.—

64 (a) An individual's "weekly benefit amount" is an amount
65 equal to one twenty-sixth of the total wages for insured work
66 paid during that quarter of the base period in which the total
67 wages paid were the highest, but not less than \$32 or more than
68 \$275. The weekly benefit amount, if not a multiple of \$1, is
69 rounded downward to the nearest full dollar amount. The maximum



279984

70 weekly benefit amount in effect at the time the claimant
71 establishes an individual weekly benefit amount is the maximum
72 benefit amount applicable throughout the claimant's benefit
73 year.

74 (b) The weekly benefit amount shall be based on either the
75 claimant's base period wages or alternative base period wages,
76 whichever period results in the greater benefit amount.

77 Section 17. Paragraph (a) of subsection (4) of section
78 215.425, Florida Statutes, is amended to read:

79 215.425 Extra compensation claims prohibited; bonuses;
80 severance pay.—

81 (4) (a) On or after July 1, 2011, a unit of government that
82 enters into a contract or employment agreement, or renewal or
83 renegotiation of an existing contract or employment agreement,
84 that contains a provision for severance pay with an officer,
85 agent, employee, or contractor must include the following
86 provisions in the contract:

87 1. A requirement that severance pay provided may not exceed
88 an amount greater than 20 weeks of compensation.

89 2. A prohibition of provision of severance pay when the
90 officer, agent, employee, or contractor has been fired for
91 misconduct, as defined in s. 443.036(30) ~~s. 443.036(29)~~, by the
92 unit of government.

93 Section 18. Paragraph (a) of subsection (1) and paragraph
94 (f) of subsection (13) of section 443.1216, Florida Statutes,
95 are amended to read:

96 443.1216 Employment.—Employment, as defined in s. 443.036,
97 is subject to this chapter under the following conditions:

98 (1) (a) The employment subject to this chapter includes a



279984

99 service performed, including a service performed in interstate
100 commerce, by:

101 1. An officer of a corporation.

102 2. An individual who, under the usual common-law rules
103 applicable in determining the employer-employee relationship, is
104 an employee. However, whenever a client, as defined in s.
105 443.036(19) ~~s. 443.036(18)~~, which would otherwise be designated
106 as an employing unit has contracted with an employee leasing
107 company to supply it with workers, those workers are considered
108 employees of the employee leasing company. An employee leasing
109 company may lease corporate officers of the client to the client
110 and other workers to the client, except as prohibited by
111 regulations of the Internal Revenue Service. Employees of an
112 employee leasing company must be reported under the employee
113 leasing company's tax identification number and contribution
114 rate for work performed for the employee leasing company.

115 a. However, except for the internal employees of an
116 employee leasing company, each employee leasing company may make
117 a separate one-time election to report and pay contributions
118 under the tax identification number and contribution rate for
119 each client of the employee leasing company. Under the client
120 method, an employee leasing company choosing this option must
121 assign leased employees to the client company that is leasing
122 the employees. The client method is solely a method to report
123 and pay unemployment contributions, and, whichever method is
124 chosen, such election may not impact any other aspect of state
125 law. An employee leasing company that elects the client method
126 must pay contributions at the rates assigned to each client
127 company.



279984

128 (I) The election applies to all of the employee leasing
129 company's current and future clients.

130 (II) The employee leasing company must notify the
131 Department of Revenue of its election by July 1, 2012, and such
132 election applies to reports and contributions for the first
133 quarter of the following calendar year. The notification must
134 include:

135 (A) A list of each client company and the unemployment
136 account number or, if one has not yet been issued, the federal
137 employment identification number, as established by the employee
138 leasing company upon the election to file by client method;

139 (B) A list of each client company's current and previous
140 employees and their respective social security numbers for the
141 prior 3 state fiscal years or, if the client company has not
142 been a client for the prior 3 state fiscal years, such portion
143 of the prior 3 state fiscal years that the client company has
144 been a client must be supplied;

145 (C) The wage data and benefit charges associated with each
146 client company for the prior 3 state fiscal years or, if the
147 client company has not been a client for the prior 3 state
148 fiscal years, such portion of the prior 3 state fiscal years
149 that the client company has been a client must be supplied. If
150 the client company's employment record is chargeable with
151 benefits for less than 8 calendar quarters while being a client
152 of the employee leasing company, the client company must pay
153 contributions at the initial rate of 2.7 percent; and

154 (D) The wage data and benefit charges for the prior 3 state
155 fiscal years that cannot be associated with a client company
156 must be reported and charged to the employee leasing company.



279984

157 (III) Subsequent to choosing the client method, the
158 employee leasing company may not change its reporting method.

159 (IV) The employee leasing company shall file a Florida
160 Department of Revenue Employer's Quarterly Report for each
161 client company by approved electronic means, and pay all
162 contributions by approved electronic means.

163 (V) For the purposes of calculating experience rates when
164 the client method is chosen, each client's own benefit charges
165 and wage data experience while with the employee leasing company
166 determines each client's tax rate where the client has been a
167 client of the employee leasing company for at least 8 calendar
168 quarters before the election. The client company shall continue
169 to report the nonleased employees under its tax rate.

170 (VI) The election is binding on each client of the employee
171 leasing company for as long as a written agreement is in effect
172 between the client and the employee leasing company pursuant to
173 s. 468.525(3)(a). If the relationship between the employee
174 leasing company and the client terminates, the client retains
175 the wage and benefit history experienced under the employee
176 leasing company.

177 (VII) Notwithstanding which election method the employee
178 leasing company chooses, the applicable client company is an
179 employing unit for purposes of s. 443.071. The employee leasing
180 company or any of its officers or agents are liable for any
181 violation of s. 443.071 engaged in by such persons or entities.
182 The applicable client company or any of its officers or agents
183 are liable for any violation of s. 443.071 engaged in by such
184 persons or entities. The employee leasing company or its
185 applicable client company is not liable for any violation of s.



279984

186 443.071 engaged in by the other party or by the other party's
187 officers or agents.

188 (VIII) If an employee leasing company fails to select the
189 client method of reporting not later than July 1, 2012, the
190 entity is required to report under the employee leasing
191 company's tax identification number and contribution rate.

192 (IX) After an employee leasing company is licensed pursuant
193 to part XI of chapter 468, each newly licensed entity has 30
194 days after the date the license is granted to notify the tax
195 collection service provider in writing of their selection of the
196 client method. A newly licensed employee leasing company that
197 fails to timely select reporting pursuant to the client method
198 of reporting must report under the employee leasing company's
199 tax identification number and contribution rate.

200 (X) Irrespective of the election, each transfer of trade or
201 business, including workforce, or a portion thereof, between
202 employee leasing companies is subject to the provisions of s.
203 443.131(3)(h) ~~s. 443.131(3)(g)~~ if, at the time of the transfer,
204 there is common ownership, management, or control between the
205 entities.

206 b. In addition to any other report required to be filed by
207 law, an employee leasing company shall submit a report to the
208 Labor Market Statistics Center within the Department of Economic
209 Opportunity which includes each client establishment and each
210 establishment of the leasing company, or as otherwise directed
211 by the department. The report must include the following
212 information for each establishment:

213 (I) The trade or establishment name;

214 (II) The former reemployment assistance account number, if



279984

215 available;

216 (III) The former federal employer's identification number,
217 if available;

218 (IV) The industry code recognized and published by the
219 United States Office of Management and Budget, if available;

220 (V) A description of the client's primary business activity
221 in order to verify or assign an industry code;

222 (VI) The address of the physical location;

223 (VII) The number of full-time and part-time employees who
224 worked during, or received pay that was subject to reemployment
225 assistance taxes for, the pay period including the 12th of the
226 month for each month of the quarter;

227 (VIII) The total wages subject to reemployment assistance
228 taxes paid during the calendar quarter;

229 (IX) An internal identification code to uniquely identify
230 each establishment of each client;

231 (X) The month and year that the client entered into the
232 contract for services; and

233 (XI) The month and year that the client terminated the
234 contract for services.

235 c. The report must be submitted electronically or in a
236 manner otherwise prescribed by the Department of Economic
237 Opportunity in the format specified by the Bureau of Labor
238 Statistics of the United States Department of Labor for its
239 Multiple Worksite Report for Professional Employer
240 Organizations. The report must be provided quarterly to the
241 Labor Market Statistics Center within the department, or as
242 otherwise directed by the department, and must be filed by the
243 last day of the month immediately after the end of the calendar



279984

244 quarter. The information required in sub-sub-subparagraphs b. (X)
245 and (XI) need be provided only in the quarter in which the
246 contract to which it relates was entered into or terminated. The
247 sum of the employment data and the sum of the wage data in this
248 report must match the employment and wages reported in the
249 reemployment assistance quarterly tax and wage report.

250 d. The department shall adopt rules as necessary to
251 administer this subparagraph, and may administer, collect,
252 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
253 the report required by this subparagraph.

254 e. For the purposes of this subparagraph, the term
255 "establishment" means any location where business is conducted
256 or where services or industrial operations are performed.

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

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

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



279984

273 4. The services described in subparagraph 3. are employment
274 subject to this chapter only if:

275 a. The contract of service contemplates that substantially
276 all of the services are to be performed personally by the
277 individual;

278 b. The individual does not have a substantial investment in
279 facilities used in connection with the services, other than
280 facilities used for transportation; and

281 c. The services are not in the nature of a single
282 transaction that is not part of a continuing relationship with
283 the person for whom the services are performed.

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

286 (f) Service performed in the employ of a public employer as
287 defined in s. 443.036, except as provided in subsection (2), and
288 service performed in the employ of an instrumentality of a
289 public employer as described in s. 443.036(36)(b) or (c) ~~s.~~
290 ~~443.036(35)(b) or (c)~~, to the extent that the instrumentality is
291 immune under the United States Constitution from the tax imposed
292 by s. 3301 of the Internal Revenue Code for that service.

293 Section 19. Paragraph (g) of subsection (3) of section
294 443.131, Florida Statutes, as amended by section 20 of this act,
295 is amended to read:

296 443.131 Contributions.—

297 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
298 EXPERIENCE.—

299 (g) *Transfer of employment records.*—

300 1. For the purposes of this subsection, two or more
301 employers who are parties to a transfer of business or the



279984

302 subject of a merger, consolidation, or other form of
303 reorganization, effecting a change in legal identity or form,
304 are deemed a single employer and are considered to be one
305 employer with a continuous employment record if the tax
306 collection service provider finds that the successor employer
307 continues to carry on the employing enterprises of all of the
308 predecessor employers and that the successor employer has paid
309 all contributions required of and due from all of the
310 predecessor employers and has assumed liability for all
311 contributions that may become due from all of the predecessor
312 employers. In addition, an employer may not be considered a
313 successor under this subparagraph if the employer purchases a
314 company with a lower rate into which employees with job
315 functions unrelated to the business endeavors of the predecessor
316 are transferred for the purpose of acquiring the low rate and
317 avoiding payment of contributions. As used in this paragraph,
318 notwithstanding s. 443.036(15) ~~s. 443.036(14)~~, the term
319 "contributions" means all indebtedness to the tax collection
320 service provider, including, but not limited to, interest,
321 penalty, collection fee, and service fee. A successor employer
322 must accept the transfer of all of the predecessor employers'
323 employment records within 30 days after the date of the official
324 notification of liability by succession. If a predecessor
325 employer has unpaid contributions or outstanding quarterly
326 reports, the successor employer must pay the total amount with
327 certified funds within 30 days after the date of the notice
328 listing the total amount due. After the total indebtedness is
329 paid, the tax collection service provider shall transfer the
330 employment records of all of the predecessor employers to the



279984

331 successor employer's employment record. The tax collection
332 service provider shall determine the contribution rate of the
333 combined successor and predecessor employers upon the transfer
334 of the employment records, as prescribed by rule, in order to
335 calculate any change in the contribution rate resulting from the
336 transfer of the employment records.

337 2. Regardless of whether a predecessor employer's
338 employment record is transferred to a successor employer under
339 this paragraph, the tax collection service provider shall treat
340 the predecessor employer, if he or she subsequently employs
341 individuals, as an employer without a previous employment record
342 or, if his or her coverage is terminated under s. 443.121, as a
343 new employing unit.

344 3. The state agency providing reemployment assistance tax
345 collection services may adopt rules governing the partial
346 transfer of experience rating when an employer transfers an
347 identifiable and segregable portion of his or her payrolls and
348 business to a successor employing unit. As a condition of each
349 partial transfer, these rules must require the following to be
350 filed with the tax collection service provider: an application
351 by the successor employing unit, an agreement by the predecessor
352 employer, and the evidence required by the tax collection
353 service provider to show the benefit experience and payrolls
354 attributable to the transferred portion through the date of the
355 transfer. These rules must provide that the successor employing
356 unit, if not an employer subject to this chapter, becomes an
357 employer as of the date of the transfer and that the transferred
358 portion of the predecessor employer's employment record is
359 removed from the employment record of the predecessor employer.



279984

360 For each calendar year after the date of the transfer of the
361 employment record in the records of the tax collection service
362 provider, the service provider shall compute the contribution
363 rate payable by the successor employer or employing unit based
364 on his or her employment record, combined with the transferred
365 portion of the predecessor employer's employment record. These
366 rules may also prescribe what contribution rates are payable by
367 the predecessor and successor employers for the period between
368 the date of the transfer of the transferred portion of the
369 predecessor employer's employment record in the records of the
370 tax collection service provider and the first day of the next
371 calendar year.

372 4. This paragraph does not apply to an employee leasing
373 company and client contractual agreement as defined in s.
374 443.036, except as provided in s. 443.1216(1)(a)2.a. The tax
375 collection service provider shall, if the contractual agreement
376 is terminated or the employee leasing company fails to submit
377 reports or pay contributions as required by the service
378 provider, treat the client as a new employer without previous
379 employment record unless the client is otherwise eligible for a
380 variation from the standard rate.

381
382 ===== T I T L E A M E N D M E N T =====

383 And the title is amended as follows:

384 Delete lines 2130 - 2211

385 and insert:

386 An act relating to state financial matters; providing
387 a short title; amending s. 212.02, F.S.; revising the
388 definition of the term "retail sale" to include sales



279984

389 facilitated through a marketplace; conforming a
390 provision to changes made by the act; amending s.
391 212.05, F.S.; conforming provisions to changes made by
392 the act; amending s. 212.054, F.S.; requiring
393 marketplace providers and persons located outside of
394 this state to remit discretionary sales surtax when
395 delivering tangible personal property to a county
396 imposing a surtax; amending s. 212.0596, F.S.;
397 replacing provisions relating to the taxation of mail
398 order sales with provisions relating to the taxation
399 of remote sales; defining the terms "remote sale" and
400 "substantial number of remote sales"; providing that
401 every person making a substantial number of remote
402 sales is a dealer for purposes of the sales and use
403 tax; authorizing the Department of Revenue to adopt
404 rules for collecting use taxes from unregistered
405 persons; requiring marketplace providers and persons
406 required to report remote sales to remit discretionary
407 sales surtax when delivering tangible personal
408 property to a county imposing a surtax; creating s.
409 212.05965, F.S.; defining terms; providing that
410 certain marketplace providers are dealers for purposes
411 of the sales and use tax; requiring certain
412 marketplace providers to provide a certain
413 certification to their marketplace sellers; specifying
414 requirements for marketplace sellers; requiring
415 certain marketplace providers to allow the Department
416 of Revenue to examine and audit their books and
417 records; specifying the examination and audit



279984

418 authority of the Department of Revenue; providing that
419 a marketplace seller, rather than the marketplace
420 provider, is liable for sales tax collection and
421 remittance under certain circumstances; authorizing
422 marketplace providers and marketplace sellers to enter
423 into agreements for the recovery of certain taxes,
424 interest, and penalties; providing construction and
425 applicability; amending s. 212.05965, F.S.; requiring
426 marketplace providers to collect and remit certain
427 additional fees at the time of sale; authorizing
428 marketplace providers and marketplace sellers to
429 contractually agree for marketplace sellers to collect
430 applicable taxes and fees; specifying requirements for
431 marketplace sellers who collect such taxes and fees;
432 providing for liability of sellers who fail to collect
433 or remit such taxes and fees; amending s. 212.06,
434 F.S.; revising the definition of the term "dealer";
435 conforming provisions to changes made by the act;
436 amending s. 212.07, F.S.; conforming a cross-
437 reference; amending s. 212.11, F.S.; requiring certain
438 marketplace providers or persons required to report
439 remote sales to file returns and pay taxes
440 electronically; amending s. 212.12, F.S.; deleting the
441 authority of the Department of Revenue's executive
442 director to negotiate a collection allowance with
443 certain dealers; deleting the requirement that certain
444 sales and use taxes on communications services be
445 collected on the basis of a certain addition;
446 requiring that certain sales and use taxes be



279984

447 calculated based on a specified rounding algorithm,
448 rather than specified brackets; conforming provisions
449 to changes made by the act; amending s. 212.18, F.S.;
450 requiring certain marketplace providers or persons
451 required to report remote sales to file a registration
452 application electronically; conforming a provision to
453 changes made by the act; amending s. 212.20, F.S.;
454 providing applicability of requirements for refund of
455 taxes adjudicated unconstitutionally collected to
456 taxes levied or collected pursuant to marketplace
457 provisions; requiring certain amounts to be deposited
458 into the Unemployment Compensation Trust Fund during
459 specified periods; specifying requirements for the
460 Department of Revenue in reducing distributions by
461 certain refund amounts paid out of the General Revenue
462 Fund; requiring the Office of Economic and Demographic
463 Research to certify to the Department of Revenue
464 whether the trust fund balance exceeds a certain
465 amount; providing for contingent future repeal;
466 amending s. 443.036, F.S.; defining and revising terms
467 for purposes of the Reemployment Assistance Program
468 Law; amending s. 443.091, F.S.; revising conditions
469 under which an individual may qualify for reemployment
470 assistance benefits; amending s. 443.111, F.S.;
471 requiring an alternative base period to be used under
472 certain circumstances when calculating wages in
473 determining qualification for reemployment assistance
474 benefits; requiring the Department of Economic
475 Opportunity to contact an individual's employer if



279984

476 certain wage information is unavailable through
477 specified means; specifying that wages that fall
478 within an alternative base period are not available
479 for reuse in subsequent benefit years; requiring the
480 department to adopt rules; providing that weekly
481 benefit amounts be determined based on the greater of
482 the base period or alternative base period; amending
483 ss. 215.425 and 443.1216, F.S.; conforming cross-
484 references; amending s. 443.131, F.S.; conforming a
485 cross-reference; specifying, at