

By Senators Holzendorf and Clary

2-932-98

See HB

1 A bill to be entitled
2 An act relating to unemployment compensation;
3 amending s. 443.036, F.S.; revising definitions
4 of employment and wages to incorporate
5 additional exclusions; amending s. 443.091,
6 F.S.; clarifying certain benefit eligibility
7 conditions relating to services at educational
8 institutions; amending s. 443.191, F.S.;
9 limiting use of certain moneys in the
10 Unemployment Compensation Trust Fund for a time
11 certain; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraphs (d) and (n) of subsection (19)
16 and paragraph (b) of subsection (33) of section 443.036,
17 Florida Statutes, are amended to read:

18 443.036 Definitions.--As used in this chapter, unless
19 the context clearly requires otherwise:

20 (19) EMPLOYMENT.--"Employment," subject to the other
21 provisions of this chapter, means any service performed by an
22 employee for the person employing him or her.

23 (d) Exclusions from paragraphs (b) and (c).--For the
24 purposes of paragraphs (b) and (c), the term "employment" does
25 not apply to service performed:

- 26 1. In the employ of:
- 27 a. A church or convention or association of churches.
 - 28 b. An organization which is operated primarily for
 - 29 religious purposes and which is operated, supervised,
 - 30 controlled, or principally supported by a church or convention
 - 31 or association of churches.

1 2. By a duly ordained, commissioned, or licensed
2 minister of a church in the exercise of his or her ministry or
3 by a member of a religious order in the exercise of duties
4 required by such order.

5 3. Prior to January 1, 1978, in the employ of a
6 nonprofit educational institution which is not an institution
7 of higher education and which would otherwise be employment as
8 defined in paragraph (c).

9 4. In the employ of a governmental entity referred to
10 in paragraph (b), if such service is performed by an
11 individual in the exercise of duties:

12 a. As an elected official.

13 b. As a member of a legislative body, or a member of
14 the judiciary, of a state or political subdivision.

15 c. As an employee serving on a temporary basis in case
16 of fire, storm, snow, earthquake, flood, or similar emergency.

17 d. In a position which, under or pursuant to the laws
18 of this state, is designated as a major nontenured
19 policymaking or advisory position or a policymaking or
20 advisory position, the performance of the duties of which
21 ordinarily does not require more than 8 hours per week.

22 e. As an election official or election worker if the
23 amount of remuneration received by the individual during the
24 calendar year for such services is less than \$1,000.

25 5. In a facility conducted for the purpose of carrying
26 out a program of rehabilitation for individuals whose earning
27 capacity is impaired by age or physical or mental deficiency
28 or injury or providing remunerative work for individuals who,
29 because of their impaired physical or mental capacity, cannot
30 be readily absorbed in the competitive labor market, by an
31 individual receiving such rehabilitation or remunerative work.

1 6. As part of an unemployment work-relief or
2 work-training program assisted or financed in whole or in part
3 by any federal agency or an agency of a state or political
4 subdivision thereof, by an individual receiving such work
5 relief or work training, except that this subparagraph does
6 not apply to unemployment work-relief or work-training
7 programs for which unemployment compensation coverage is
8 required under a federal law, rule, or regulation.

9 7. By an inmate of a custodial or penal institution.

10 (n) Exclusions generally.--The term "employment" does
11 not include:

12 1. Domestic service in a private home, local college
13 club, or local chapter of a college fraternity or sorority,
14 except as provided in paragraph (g).

15 2. Service performed on or in connection with a vessel
16 or aircraft not an American vessel or American aircraft, if
17 the employee is employed on and in connection with such vessel
18 or aircraft when outside the United States.

19 3. Service performed by an individual in, or as an
20 officer or member of the crew of a vessel while it is engaged
21 in, the catching, taking, harvesting, cultivating, or farming
22 of any kind of fish, shellfish, crustacea, sponges, seaweeds,
23 or other aquatic forms of animal and vegetable life, including
24 service performed by any such individual as an ordinary
25 incident to any such activity, except:

26 a. Service performed in connection with the catching
27 or taking of salmon or halibut for commercial purposes.

28 b. Service performed on, or in connection with, a
29 vessel of more than 10 net tons, determined in the manner
30 provided for determining the register tonnage of merchant
31 vessels under the laws of the United States.

1 4. Service performed by an individual in the employ of
2 his or her son, daughter, or spouse, and service performed by
3 a child under the age of 21 in the employ of his or her father
4 or mother.

5 5. Service performed in the employ of the United
6 States Government or of an instrumentality of the United
7 States which is:

8 a. Wholly or partially owned by the United States.

9 b. Exempt from the tax imposed by s. 3301 of the
10 Internal Revenue Code by virtue of any provision of federal
11 law which specifically refers to such section, or the
12 corresponding section of prior law, in granting such
13 exemption; except that to the extent that the Congress shall
14 permit states to require any instrumentalities of the United
15 States to make payments into an unemployment fund under a
16 state unemployment compensation law, all of the provisions of
17 this law shall be applicable to such instrumentalities, and to
18 services performed for such instrumentalities, in the same
19 manner, to the same extent, and on the same terms as to all
20 other employers, employing units, individuals, and services.
21 If this state is not certified for any year by the Secretary
22 of Labor under s. 3304 of the federal Internal Revenue Code,
23 the payments required of such instrumentalities with respect
24 to such year shall be refunded by the division from the fund
25 in the same manner and within the same period as is provided
26 in s. 443.141(6) with respect to contributions erroneously
27 collected.

28 6. Service performed in the employ of a state, or any
29 political subdivision thereof, or any instrumentality of any
30 one or more of the foregoing which is wholly owned by one or
31 more states or political subdivisions, except as provided in

1 paragraph (b), and any service performed in the employ of any
2 instrumentality of one or more states or political
3 subdivisions, to the extent that the instrumentality is, with
4 respect to such service, immune under the Constitution of the
5 United States from the tax imposed by s. 3301 of the Internal
6 Revenue Code.

7 7. Service performed in the employ of a corporation,
8 community chest, fund, or foundation, organized and operated
9 exclusively for religious, charitable, scientific, testing for
10 public safety, literary, or educational purposes, or for the
11 prevention of cruelty to children or animals, no part of the
12 net earnings of which inures to the benefit of any private
13 shareholder or individual, no substantial part of the
14 activities of which is carrying on propaganda or otherwise
15 attempting to influence legislation, and which does not
16 participate in, or intervene in (including the publishing or
17 distributing of statements), any political campaign on behalf
18 of any candidate for public office, except as provided in
19 paragraph (c).

20 8. Service with respect to which unemployment
21 compensation is payable under an unemployment compensation
22 system established by an Act of Congress.

23 9.a. Service performed in any calendar quarter in the
24 employ of any organization exempt from income tax under s.
25 501(a) of the Internal Revenue Code, other than an
26 organization described in s. 401(a), or under s. 521, if the
27 remuneration for such service is less than \$50.

28 b. Service performed in the employ of a school,
29 college, or university, if such service is performed by a
30 student who is enrolled and is regularly attending classes at
31 such school, college, or university.

1 10. Service performed in the employ of a foreign
2 government, including service as a consular or other officer
3 or employee of a nondiplomatic representative.

4 11. Service performed in the employ of an
5 instrumentality wholly owned by a foreign government:

6 a. If the service is of a character similar to that
7 performed in foreign countries by employees of the United
8 States Government or of an instrumentality thereof; and

9 b. The Secretary of State shall certify to the
10 Secretary of the Treasury that the foreign government, with
11 respect to whose instrumentality exemption is claimed, grants
12 an equivalent exemption with respect to similar service
13 performed in the foreign country by employees of the United
14 States Government and of instrumentalities thereof.

15 12. Service performed as a student nurse in the employ
16 of a hospital or a nurses' training school by an individual
17 who is enrolled and is regularly attending classes in a
18 nurses' training school chartered or approved pursuant to a
19 state law; service performed as an intern in the employ of a
20 hospital by an individual who has completed a 4-year course in
21 a medical school chartered or approved pursuant to state law;
22 and service performed by a patient of a hospital for such
23 hospital.

24 13. Service performed by an individual for a person as
25 an insurance agent or as an insurance solicitor, if all such
26 service performed by such individual for such person is
27 performed for remuneration solely by way of commission, except
28 for such services performed in accordance with 26 U.S.C.S. s.
29 3306(c)(7) and (8). For purposes of this subsection, those
30 benefits excluded from the definition of wages pursuant to
31

1 subparagraphs (33)(b)2.-6., inclusive, shall not be considered
2 remuneration.

3 14. Service performed by an individual for a person as
4 a real estate salesperson or agent, if all such service
5 performed by such individual for such person is performed for
6 remuneration solely by way of commission.

7 15. Service performed by an individual under the age
8 of 18 in the delivery or distribution of newspapers or
9 shopping news, not including delivery or distribution to any
10 point for subsequent delivery or distribution.

11 16. Service covered by an arrangement between the
12 division and the agency charged with the administration of any
13 other state or federal unemployment compensation law pursuant
14 to which all services performed by an individual for an
15 employing unit during the period covered by such employing
16 unit's duly approved election are deemed to be performed
17 entirely within such agency's state or under such federal law.

18 17. Service performed by an individual who is enrolled
19 at a nonprofit or public educational institution which
20 normally maintains a regular faculty and curriculum and
21 normally has a regularly organized body of students in
22 attendance at the place where its educational activities are
23 carried on as a student in a full-time program, taken for
24 credit at such institution, which combines academic
25 instruction with work experience, if such service is an
26 integral part of such program, and such institution has so
27 certified to the employer, except that this subparagraph does
28 not apply to service performed in a program established for or
29 on behalf of an employer or group of employers.

30 18. Service performed by an individual for a person as
31 a barber, if all such service performed by such individual for

1 such person is performed for remuneration solely by way of
2 commission.

3 19. Casual labor not in the course of the employer's
4 trade or business.

5 20. Service performed by a speech therapist,
6 occupational therapist, or physical therapist who is
7 nonsalaried and working pursuant to a written contract with a
8 home health agency as defined in s. 400.462.

9 21. Service performed by a direct seller. For purposes
10 of this subparagraph, the term "direct seller" means a person:

11 a.(I) Who is engaged in the trade or business of
12 selling or soliciting the sale of consumer products to buyers
13 on a buy-sell basis or a deposit-commission basis, or on any
14 similar basis, for resale in the home or in any other place
15 that is not a permanent retail establishment; or

16 (II) Who is engaged in the trade or business of
17 selling or soliciting the sale of consumer products in the
18 home or in any other place that is not a permanent retail
19 establishment;

20 b. Substantially all of whose remuneration for
21 services described in sub-subparagraph a., whether or not paid
22 in cash, is directly related to sales or other output, rather
23 than to the number of hours worked; and

24 c. Who performs such services pursuant to a written
25 contract with the person for whom the services are performed,
26 which contract provides that the person will not be treated as
27 an employee with respect to such services for federal tax
28 purposes.

29 22. Service performed by a nonresident alien
30 individual for the period he or she is temporarily present in
31 the United States as a nonimmigrant under subparagraph (F) or

1 subparagraph (J) of s. 101(a)(15) of the Immigration and
2 Nationality Act, and which is performed to carry out the
3 purpose specified in subparagraph (F) or subparagraph (J), as
4 the case may be.

5 23. Service performed by an individual for
6 remuneration for a private, for-profit delivery or messenger
7 service, if the individual:

8 a. Is free to accept or reject jobs from the delivery
9 or messenger service and the delivery or messenger service has
10 no control over when the individual works;

11 b. Is remunerated for each delivery, or the
12 remuneration is based on factors that relate to the work
13 performed, including receipt of a percentage of any rate
14 schedule;

15 c. Pays all expenses and the opportunity for profit or
16 loss rests solely with the individual;

17 d. Is responsible for operating costs, including fuel,
18 repairs, supplies, and motor vehicle insurance;

19 e. Determines the method of performing the service,
20 including selection of routes and order of deliveries;

21 f. Is responsible for the completion of a specific job
22 and is liable for any failure to complete that job;

23 g. Enters into a contract with the delivery or
24 messenger service which specifies the relationship of the
25 individual to the delivery or messenger service to be that of
26 an independent contractor and not that of an employee; and

27 h. Provides the vehicle used to perform the service.

28 24. Service performed in agricultural labor by an
29 individual who is an alien admitted to the United States to
30 perform service in agricultural labor pursuant to ss.

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1 101(a)(15)(H) and 214(c) of the Immigration and Nationality
2 Act.

3 25. Service performed by a person who is an inmate of
4 a penal institution.

5 (33) WAGES.--

6 (b) "Wages" does not include:

7 1. That part of remuneration which, after remuneration
8 equal to \$6,000 prior to January 1, 1983, and \$7,000 after
9 December 31, 1982, has been paid in a calendar year to an
10 individual by an employer or his or her predecessor with
11 respect to employment during any calendar year, is paid to
12 such individual by such employer during such calendar year,
13 unless that part of the remuneration is subject to a tax,
14 under a federal law imposing the tax, against which credit may
15 be taken for contributions required to be paid into a state
16 unemployment fund. For the purposes of this subsection, the
17 term "employment" includes services constituting employment
18 under any employment security law of another state or of the
19 Federal Government.

20 2. The amount of any payment, with respect to services
21 performed, to, or on behalf of, an individual in its employ
22 under a plan or system established by an employing unit which
23 makes provision for individuals in its employ generally or for
24 a class or classes of such individuals, including any amount
25 paid by an employing unit for insurance or annuities, or into
26 a fund, to provide for any such payment, on account of:

27 a. Sickness or accident disability, but, in the case
28 of payments made to an employee or any of his or her
29 dependents, this subparagraph shall exclude from the term
30 "wages" only those payments received under a workers'
31 compensation law.

1 b. Medical and hospitalization expenses in connection
2 with sickness or accident disability.

3 c. Death, provided the individual in its employ:

4 (I) Has not the option to receive, instead of
5 provision for such death benefit, any part of such payment or,
6 if such death benefit is insured, any part of the premiums, or
7 contributions to premiums, paid by his or her employing unit;
8 and

9 (II) Has not the right, under the provisions of the
10 plan or system or policy of insurance providing for such death
11 benefit, to assign such benefit or to receive cash
12 consideration in lieu of such benefit either upon his or her
13 withdrawal from the plan or system providing for such benefit
14 or upon termination of such plan or system or policy of
15 insurance or of his or her services with such employing unit.

16 3. The amount of any payment on account of sickness or
17 accident disability, or medical or hospitalization expenses in
18 connection with sickness or accident disability, made by an
19 employing unit to, or on behalf of, an individual performing
20 services for it after the expiration of 6 calendar months
21 following the last calendar month in which the individual
22 performed services for such employing unit.

23 4. The payment by an employing unit, without deduction
24 from the remuneration of the individual in its employ, of the
25 tax imposed upon an individual in its employ under s. 3101 of
26 the federal Internal Revenue Code with respect to services
27 performed.

28 5. The value of:

29 a. Meals furnished to an employee or the employee's
30 spouse or dependents by the employer on the business premises
31 of the employer for the convenience of the employer; or

1 b. Lodging furnished to an employee or the employee's
2 spouse or dependents by the employer on the business premises
3 of the employer for the convenience of the employer when such
4 lodging is included as a condition of employment.

5 6. The amount of any payment made by an employing unit
6 to, or on behalf of, an individual performing services for it
7 or a beneficiary of such individual:

8 a. From or to a trust described in s. 401(a) of the
9 Internal Revenue Code of 1954 which is exempt from tax under
10 s. 501(a) at the time of such payment unless such payment is
11 made to an employee of the trust as remuneration for services
12 rendered as such employee and not as a beneficiary of the
13 trust;

14 b. Under or to an annuity plan which, at the time of
15 such payment, is a plan described in s. 403(a) of the Internal
16 Revenue Code of 1954;

17 c. Under a simplified employee pension if, at the time
18 of the payment, it is reasonable to believe that the employee
19 will be entitled to a deduction under s. 219(b)(2) of the
20 Internal Revenue Code of 1954 for such payment;

21 d. Under or to an annuity contract described in s.
22 403(b) of the Internal Revenue Code of 1954, other than a
23 payment for the purchase of such contract which is made by
24 reason of a salary reduction agreement, whether evidenced by a
25 written instrument or otherwise;

26 e. Under or to an exempt governmental deferred
27 compensation plan as described in s. 3121(v)(3) of the
28 Internal Revenue Code of 1954; or

29 f. To supplement pension benefits under a plan or
30 trust described in any of the foregoing provisions of this
31 subparagraph to take into account some portion or all of the

1 increase in the cost of living, as determined by the United
2 States Secretary of Labor, since retirement, but only if such
3 supplemental payments are under a plan which is treated as a
4 welfare plan under s. 3(2)(B)(ii) of the Employee Retirement
5 Income Security Act of 1974.

6 g. Under a cafeteria plan, within the meaning of s.
7 125 of the Internal Revenue Code of 1986, as amended, if such
8 payment would not be treated as wages without regard to such
9 plan and it is reasonable to believe that, if s. 125 of the
10 Internal Revenue Code of 1986, as amended, applied for
11 purposes of this section, s. 125 of the Internal Revenue Code
12 of 1986, as amended, would not treat any wages as
13 constructively received.

14 h. Any payment made, or benefit provided, to or for
15 the benefit of an employee if at the time of such payment or
16 provision of benefit it is reasonable to believe that the
17 employee will be able to exclude such payment or benefit from
18 income under s. 127 of the Internal Revenue Code of 1986, as
19 amended.

20 Section 2. Paragraph (c) of subsection (3) of section
21 443.091, Florida Statutes, is amended to read:

22 443.091 Benefit eligibility conditions.--

23 (3) Benefits based on service in employment defined in
24 s. 443.036(19)(b) and (c) shall be payable in the same amount,
25 on the same terms, and subject to the same conditions as
26 benefits payable on the basis of other service subject to this
27 chapter, except that:

28 (c) Benefits shall not be paid, based on services
29 provided to an educational institution or institution of
30 higher learning, to any individual for any week which
31 commences during an established and customary vacation period

1 or holiday recess if such individual performs any services
2 described in paragraph (a) or paragraph (b) in the period
3 immediately before such vacation period or holiday recess and
4 there is a reasonable assurance that such individual will
5 perform any such service in the period immediately following
6 such vacation period or holiday recess.

7 Section 3. Paragraph (a) of subsection (5) of section
8 443.191, Florida Statutes, is amended to read:

9 443.191 Unemployment Compensation Trust Fund;
10 establishment and control.--

11 (5) MONEY CREDITED UNDER SECTION 903 OF THE SOCIAL
12 SECURITY ACT.--

13 (a) Money credited to the account of this state in the
14 Unemployment Compensation Trust Fund by the Secretary of the
15 Treasury of the United States pursuant to s. 903 of the Social
16 Security Act may not be requisitioned from this state's
17 account or used except for the payment of benefits and for the
18 payment of expenses incurred for the administration of this
19 law. Such money may be requisitioned pursuant to subsection
20 (3) for the payment of benefits. Such money may also be
21 requisitioned and used for the payment of expenses incurred
22 for the administration of this law but only pursuant to a
23 specific appropriation by the Legislature and only if the
24 expenses are incurred and the money is requisitioned after the
25 enactment of an appropriation law which:

26 1. Specifies the purposes for which such money is
27 appropriated and the amounts appropriated therefor;

28 2. Limits the period within which such money may be
29 obligated to a period ending not more than 2 years after the
30 date of the enactment of the appropriation law; and
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1 3. Limits the amount which may be obligated during any
2 12-month period beginning on July 1 and ending on the next
3 June 30 to an amount which does not exceed the amount by which
4 the aggregate of the amounts credited to the account of this
5 state pursuant to s. 903 of the Social Security Act during the
6 same 12-month period and the 34 preceding 12-month periods,
7 exceeds the aggregate of the amounts obligated for
8 administration and paid out for benefits and charged against
9 the amounts credited to the account of this state during such
10 35 12-month periods.

11 4. Notwithstanding subparagraph 1., money credited
12 with respect to federal fiscal years 1999, 2000, and 2001
13 shall be used solely for the administration of the
14 unemployment compensation program and such money shall not
15 otherwise be subject to the requirements of subparagraph 1.
16 when appropriated by the Legislature.

17 Section 4. This act shall take effect October 1 of the
18 year in which enacted.

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21 LEGISLATIVE SUMMARY

22 Revises the definitions of employment and wages to
23 provide additional exclusions. Clarifies ineligibility
24 for benefits for employment at an educational institution
25 or institution of higher learning relating to vacation
26 periods or holidays. Provides a limited use of moneys
27 from the Federal Government for unemployment compensation
28 administration. (See bill for details.)
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