

By Senator Holzendorf

2-1290-98

1 A bill to be entitled
 2 An act relating to rulemaking authority
 3 relating to unemployment compensation (RAB);
 4 amending ss. 443.036, 443.091, 443.101,
 5 443.131, 443.141, 443.151, F.S.; authorizing
 6 rulemaking by the Division of Unemployment
 7 Compensation of the Department of Labor and
 8 Employment Security; allowing the division to
 9 define specified terms; allowing the division
 10 to adopt rules regarding total succession, to
 11 prescribe by rule the procedures for changing
 12 methods of reporting, to determine by rule how
 13 partial payments are to be applied, and to
 14 adopt rules for monetary and nonmonetary
 15 investigations and determinations and for
 16 giving notice to affected claimants and
 17 employees; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Subsection (6) and paragraphs (g) and (n)
 22 of subsection (19) of section 443.036, Florida Statutes, are
 23 amended to read:

24 443.036 Definitions.--As used in this chapter, unless
 25 the context clearly requires otherwise:

26 (6) BENEFIT YEAR.--"Benefit year," with respect to any
 27 individual, means the 1-year period beginning with the first
 28 day of the first week with respect to which the individual
 29 first files a valid claim for benefits and, thereafter, the
 30 1-year period beginning with the first day of the first week
 31 with respect to which the individual next files a valid claim

1 for benefits after the termination of his or her last
2 preceding benefit year. Any claim for benefits made in
3 accordance with s. 443.151(2) shall be deemed to be a "valid
4 claim" for the purposes of this subsection if the individual
5 has been paid wages for insured work in accordance with the
6 provisions of s. 443.091(1)(e) and is unemployed as defined in
7 subsection (32) at the time of the filing of such claim.
8 However, the division may in its discretion provide by rule
9 for the establishment of a uniform benefit year for all
10 workers in one or more groups or classes of service or within
11 a particular industry when and if it has been determined by
12 the division, after notice to the industry and to the workers
13 in such industry and an opportunity to be heard in the matter,
14 that such groups or classes of workers in a particular
15 industry periodically experience unemployment resulting from
16 layoffs or shutdowns for limited periods of time. The division
17 may define by rule the term "temporary layoff."

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

21 (g) Domestic service.--The term "employment" includes
22 domestic service after December 31, 1977, in a private home,
23 local college club, or local chapter of a college fraternity
24 or sorority performed for a person who paid cash remuneration
25 of \$1,000 or more after December 31, 1977, in any calendar
26 quarter in the current calendar year or the preceding calendar
27 year to individuals employed in such domestic service. The
28 division may define by rule the term "domestic service."

29 (n) Exclusions generally.--The term "employment" does
30 not include:

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

4 2. Service performed on or in connection with a vessel
5 or aircraft not an American vessel or American aircraft, if
6 the employee is employed on and in connection with such vessel
7 or aircraft when outside the United States.

8 3. Service performed by an individual in, or as an
9 officer or member of the crew of a vessel while it is engaged
10 in, the catching, taking, harvesting, cultivating, or farming
11 of any kind of fish, shellfish, crustacea, sponges, seaweeds,
12 or other aquatic forms of animal and vegetable life, including
13 service performed by any such individual as an ordinary
14 incident to any such activity, except:

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

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

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

25 5. Service performed in the employ of the United
26 States Government or of an instrumentality of the United
27 States which is:

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

29 b. Exempt from the tax imposed by s. 3301 of the
30 Internal Revenue Code by virtue of any provision of federal
31 law which specifically refers to such section, or the

1 corresponding section of prior law, in granting such
2 exemption; except that to the extent that the Congress shall
3 permit states to require any instrumentalities of the United
4 States to make payments into an unemployment fund under a
5 state unemployment compensation law, all of the provisions of
6 this law shall be applicable to such instrumentalities, and to
7 services performed for such instrumentalities, in the same
8 manner, to the same extent, and on the same terms as to all
9 other employers, employing units, individuals, and services.
10 If this state is not certified for any year by the Secretary
11 of Labor under s. 3304 of the federal Internal Revenue Code,
12 the payments required of such instrumentalities with respect
13 to such year shall be refunded by the division from the fund
14 in the same manner and within the same period as is provided
15 in s. 443.141(6) with respect to contributions erroneously
16 collected.

17 6. Service performed in the employ of a state, or any
18 political subdivision thereof, or any instrumentality of any
19 one or more of the foregoing which is wholly owned by one or
20 more states or political subdivisions, except as provided in
21 paragraph (b), and any service performed in the employ of any
22 instrumentality of one or more states or political
23 subdivisions, to the extent that the instrumentality is, with
24 respect to such service, immune under the Constitution of the
25 United States from the tax imposed by s. 3301 of the Internal
26 Revenue Code.

27 7. Service performed in the employ of a corporation,
28 community chest, fund, or foundation, organized and operated
29 exclusively for religious, charitable, scientific, testing for
30 public safety, literary, or educational purposes, or for the
31 prevention of cruelty to children or animals, no part of the

1 net earnings of which inures to the benefit of any private
2 shareholder or individual, no substantial part of the
3 activities of which is carrying on propaganda or otherwise
4 attempting to influence legislation, and which does not
5 participate in, or intervene in (including the publishing or
6 distributing of statements), any political campaign on behalf
7 of any candidate for public office, except as provided in
8 paragraph (c).

9 8. Service with respect to which unemployment
10 compensation is payable under an unemployment compensation
11 system established by an Act of Congress.

12 9.a. Service performed in any calendar quarter in the
13 employ of any organization exempt from income tax under s.
14 501(a) of the Internal Revenue Code, other than an
15 organization described in s. 401(a), or under s. 521, if the
16 remuneration for such service is less than \$50.

17 b. Service performed in the employ of a school,
18 college, or university, if such service is performed by a
19 student who is enrolled and is regularly attending classes at
20 such school, college, or university.

21 10. Service performed in the employ of a foreign
22 government, including service as a consular or other officer
23 or employee of a nondiplomatic representative.

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

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

29 b. The Secretary of State shall certify to the
30 Secretary of the Treasury that the foreign government, with
31 respect to whose instrumentality exemption is claimed, grants

1 an equivalent exemption with respect to similar service
2 performed in the foreign country by employees of the United
3 States Government and of instrumentalities thereof.

4 12. Service performed as a student nurse in the employ
5 of a hospital or a nurses' training school by an individual
6 who is enrolled and is regularly attending classes in a
7 nurses' training school chartered or approved pursuant to a
8 state law; service performed as an intern in the employ of a
9 hospital by an individual who has completed a 4-year course in
10 a medical school chartered or approved pursuant to state law;
11 and service performed by a patient of a hospital for such
12 hospital.

13 13. Service performed by an individual for a person as
14 an insurance agent or as an insurance solicitor, if all such
15 service performed by such individual for such person is
16 performed for remuneration solely by way of commission, except
17 for such services performed in accordance with 26 U.S.C.S. s.
18 3306(c)(7) and (8). For purposes of this subsection, those
19 benefits excluded from the definition of wages pursuant to
20 subparagraphs (33)(b)2.-6., inclusive, shall not be considered
21 remuneration.

22 14. Service performed by an individual for a person as
23 a real estate salesperson or agent, if all such service
24 performed by such individual for such person is performed for
25 remuneration solely by way of commission.

26 15. Service performed by an individual under the age
27 of 18 in the delivery or distribution of newspapers or
28 shopping news, not including delivery or distribution to any
29 point for subsequent delivery or distribution.

30 16. Service covered by an arrangement between the
31 division and the agency charged with the administration of any

1 other state or federal unemployment compensation law pursuant
2 to which all services performed by an individual for an
3 employing unit during the period covered by such employing
4 unit's duly approved election are deemed to be performed
5 entirely within such agency's state or under such federal law.

6 17. Service performed by an individual who is enrolled
7 at a nonprofit or public educational institution which
8 normally maintains a regular faculty and curriculum and
9 normally has a regularly organized body of students in
10 attendance at the place where its educational activities are
11 carried on as a student in a full-time program, taken for
12 credit at such institution, which combines academic
13 instruction with work experience, if such service is an
14 integral part of such program, and such institution has so
15 certified to the employer, except that this subparagraph does
16 not apply to service performed in a program established for or
17 on behalf of an employer or group of employers.

18 18. Service performed by an individual for a person as
19 a barber, if all such service performed by such individual for
20 such person is performed for remuneration solely by way of
21 commission.

22 19. Casual labor not in the course of the employer's
23 trade or business.

24 20. Service performed by a speech therapist,
25 occupational therapist, or physical therapist who is
26 nonsalaried and working pursuant to a written contract with a
27 home health agency as defined in s. 400.462.

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

30 a.(I) Who is engaged in the trade or business of
31 selling or soliciting the sale of consumer products to buyers

1 on a buy-sell basis or a deposit-commission basis, or on any
2 similar basis, for resale in the home or in any other place
3 that is not a permanent retail establishment; or

4 (II) Who is engaged in the trade or business of
5 selling or soliciting the sale of consumer products in the
6 home or in any other place that is not a permanent retail
7 establishment;

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

12 c. Who performs such services pursuant to a written
13 contract with the person for whom the services are performed,
14 which contract provides that the person will not be treated as
15 an employee with respect to such services for federal tax
16 purposes.

17 22. Service performed by a nonresident alien
18 individual for the period he or she is temporarily present in
19 the United States as a nonimmigrant under subparagraph (F) or
20 subparagraph (J) of s. 101(a)(15) of the Immigration and
21 Nationality Act, and which is performed to carry out the
22 purpose specified in subparagraph (F) or subparagraph (J), as
23 the case may be.

24 23. Service performed by an individual for
25 remuneration for a private, for-profit delivery or messenger
26 service, if the individual:

27 a. Is free to accept or reject jobs from the delivery
28 or messenger service and the delivery or messenger service has
29 no control over when the individual works;

30 b. Is remunerated for each delivery, or the
31 remuneration is based on factors that relate to the work

1 performed, including receipt of a percentage of any rate
2 schedule;

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

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

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

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

11 g. Enters into a contract with the delivery or
12 messenger service which specifies the relationship of the
13 individual to the delivery or messenger service to be that of
14 an independent contractor and not that of an employee; and

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

16 24. Service performed in agricultural labor by an
17 individual who is an alien admitted to the United States to
18 perform service in agricultural labor pursuant to ss.
19 101(a)(15)(H) and 214(c) of the Immigration and Nationality
20 Act. The division may define by rule the term "family
21 relationships."

22 Section 2. Paragraph (c) of subsection (1), paragraph
23 (a) of subsection (3), and subsection (5) of section 443.091,
24 Florida Statutes, are amended to read:

25 443.091 Benefit eligibility conditions.--

26 (1) An unemployed individual shall be eligible to
27 receive benefits with respect to any week only if the division
28 finds that:

29 (c)1. She or he is able to work and is available for
30 work. The division may define by rule the terms "able to work"
31 and "available for work."

1 2. Notwithstanding any other provisions in this
2 section, no otherwise eligible individual shall be denied
3 benefits for any week because she or he is in training with
4 the approval of the division, nor shall such individual be
5 denied benefits with respect to any week in which she or he is
6 in training with the approval of the division by reason of the
7 application of provisions in subparagraph 1. relating to
8 availability for work, or the provisions of s. 443.101(2)
9 relating to failure to apply for, or refusal to accept,
10 suitable work. The division may define by rule the term
11 "approved training."

12 3. Notwithstanding any other provision of this
13 chapter, an individual who is in training approved under s.
14 236(a)(1) of the Trade Act of 1974, as amended, may not be
15 determined to be ineligible or disqualified for benefits with
16 respect to her or his enrollment in such training or because
17 of leaving work which is not suitable employment to enter such
18 training. For the purposes of this subparagraph, the term
19 "suitable employment" means, with respect to a worker, work of
20 a substantially equal or higher skill level than the worker's
21 past adversely affected employment, as defined for purposes of
22 the Trade Act of 1974, as amended, the wages for which are not
23 less than 80 percent of the worker's average weekly wage as
24 determined for purposes of the Trade Act of 1974, as amended.

25 4. Notwithstanding any other provision of this
26 section, an otherwise eligible individual shall not be denied
27 benefits for any week by reason of the application of
28 subparagraph 1. because she or he is before any court of the
29 United States or any state pursuant to a lawfully issued
30 summons to appear for jury duty.

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

6 (a) Benefits shall not be paid based on services in an
7 instructional, research, or principal administrative capacity
8 for an educational institution or an institution of higher
9 education for any week of unemployment commencing during the
10 period between 2 successive academic years; during a similar
11 period between two regular terms, whether or not successive;
12 or during a period of paid sabbatical leave provided for in
13 the individual's contract, to any individual, if such
14 individual performs such services in the first of such
15 academic years or terms and there is a contract or a
16 reasonable assurance that such individual will perform
17 services in any such capacity for any educational institution
18 or institution of higher education in the second of such
19 academic years or terms. The division may define by rule the
20 terms "contract" and "reasonable assurance."

21 (5) Benefits shall not be paid to any individual on
22 the basis of any service, substantially all of which consists
23 of participating in sports or athletic events or training, or
24 preparing to so participate, for any week which commences
25 during the period between two successive sport seasons (or
26 similar periods) if such individual performed such service in
27 the first of such seasons (or similar periods) and there is a
28 reasonable assurance that such individual will perform such
29 services in the later of such seasons (or similar periods).
30 The division may define by rule the term "substantially."
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1 Section 3. Paragraph (c) of subsection (1) of section
2 443.101, Florida Statutes, is amended to read:

3 443.101 Disqualification for benefits.--An individual
4 shall be disqualified for benefits:

5 (1)

6 (c) For any week with respect to which the division
7 finds that his or her unemployment is due to a leave of
8 absence, if such leave was voluntarily initiated by such
9 individual. The division may define by rule the term "leave of
10 absence."

11 Section 4. Paragraph (g) of subsection (3) and
12 paragraph (d) of subsection (5) of section 443.131, Florida
13 Statutes, are amended to read:

14 443.131 Contributions.--

15 (3) CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.--

16 (g)1. For the purposes of this subsection, two or more
17 employers who are parties to a transfer of business or the
18 subject of a merger, consolidation, or other form of
19 reorganization, effecting a change in legal identity or form,
20 shall be deemed to be a single employer and shall be
21 considered as one employer with a continuous employment record
22 if the division finds that the successor employer continues to
23 carry on the employing enterprises of the predecessor employer
24 or employers and that the successor employer has paid all
25 contributions required of and due from the predecessor
26 employer or employers and has assumed liability for all
27 contributions that may become due from the predecessor
28 employer or employers. As used in this paragraph, the term
29 "contributions" means all indebtedness to the division,
30 including, but not limited to, interest, penalty, collection
31 fee, and service fee. A successor has 30 days from the date of

1 the official notification of liability by succession to accept
2 the transfer of the predecessor's or predecessors' employment
3 record or records. If the predecessor or predecessors have
4 unpaid contributions or outstanding quarterly reports, the
5 successor has 30 days from the date of the notice listing the
6 total amount due to pay the total amount with certified funds.
7 After the total indebtedness has been paid, the employment
8 record or records of the predecessor or predecessors will be
9 transferred to the successor. The division may adopt rules
10 regarding total succession.

11 2. Whether or not there is a transfer of employment
12 record as contemplated in this paragraph, the predecessor
13 shall in the event he or she again employs persons be treated
14 as an employer without previous employment record or, if his
15 or her coverage has been terminated as provided in s. 443.121,
16 as a new employing unit.

17 3. The division may provide by rule for partial
18 transfer of experience rating when an employer has transferred
19 at any time an identifiable and segregable portion of his or
20 her payrolls and business to a successor employing unit. As a
21 condition of such partial transfer of experience, the rules
22 shall require an application by the successor, agreement by
23 the predecessor, and such evidence as the division may
24 prescribe of the experience and payrolls attributable to the
25 transferred portion up to the date of transfer. The rules
26 shall provide that the successor employing unit, if not
27 already an employer, shall become an employer as of the date
28 of the transfer and that the experience of the transferred
29 portion of the predecessor's account shall be removed from the
30 experience-rating record of the predecessor, and for each
31 calendar year following the date of the transfer of the

1 employment record on the books of the division, the division
2 shall compute the rate of contribution payable by the
3 successor on the basis of his or her experience, if any,
4 combined with the experience of the portion of the record
5 transferred. The rules may also provide what rates shall be
6 payable by the predecessor and successor employers for the
7 period between the date of the transfer of the employment
8 record of the transferred unit on the books of the division
9 and the first day of the next calendar year.

10 4. This paragraph shall not apply to the employee
11 leasing company and client contractual agreement as defined in
12 s. 443.036. The client shall, in the event of termination of
13 the contractual agreement or failure by the employee leasing
14 company to submit reports or pay contributions as required by
15 the division, be treated as a new employer without previous
16 employment record unless otherwise eligible for a rate
17 computation.

18 (5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE
19 AND POLITICAL SUBDIVISIONS OF THE STATE.--Benefits paid to
20 employees of this state or any instrumentality of this state,
21 or to employees of any political subdivision of this state or
22 any instrumentality thereof, based upon service defined in s.
23 443.036(19)(b), shall be financed in accordance with this
24 subsection.

25 (d) Upon establishing a financing method as provided
26 by this subsection, such financing method shall be applicable
27 for not less than 2 calendar years. Nothing herein shall be
28 construed to prevent an employer subject to the provisions of
29 this subsection from electing to change its method of
30 financing after completing 2 calendar years under another
31 financing method, so long as such new election is timely

1 filed. The division may prescribe by rule the procedures for
2 changing methods of reporting.

3 Section 5. Paragraph (a) of subsection (1) of section
4 443.141, Florida Statutes, is amended to read:

5 443.141 Collection of contributions.--

6 (1) PAST DUE CONTRIBUTIONS.--

7 (a) Interest.--Contributions unpaid on the date on
8 which they are due and payable shall bear interest at the rate
9 of 1 percent per month from and after such date until payment
10 plus accrued interest is received by the division, unless the
11 division finds that the employing unit has or had good reason
12 for failure to pay contributions when due. Interest collected
13 pursuant to this subsection shall be paid into the Special
14 Employment Security Administration Trust Fund. The division
15 may determine by rule how partial payments are to be applied
16 and may define by rule the term "good reason."

17 Section 6. Subsection (2) of section 443.151, Florida
18 Statutes, is amended to read:

19 443.151 Procedure concerning claims.--

20 (2) FILING OF CLAIM; INVESTIGATIONS; NOTIFICATION OF
21 CLAIMANTS AND EMPLOYERS.--Claims for benefits shall be made in
22 accordance with such rules as the division may adopt
23 prescribe. The division may also adopt rules for monetary and
24 nonmonetary investigations and determinations and may provide
25 by rule for notification of the affected claimants and
26 employers.

27 Section 7. This act shall take effect upon becoming a
28 law.

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SENATE SUMMARY

Authorizes the Division of Unemployment Compensation of the Department of Labor and Employment Security to define by rule specified terms used in ch. 443, F.S. Allows the division to adopt rules relating to total succession, to prescribe by rule the procedures for changing methods of reporting, to determine by rule how partial payments are to be applied, and to adopt rules for monetary and nonmonetary investigations and determinations and for giving notice to affected claimants and employees.