

By Senator Garcia

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1 A bill to be entitled
2 An act relating to unemployment compensation; amending
3 s. 443.131, F.S.; correcting a cross-reference;
4 amending s. 443.141, F.S.; updating a cross-reference;
5 amending s. 443.163, F.S.; specifying that the Agency
6 for Workforce Innovation or its service provider shall
7 prescribe the form and procedures for electronic
8 filing; deleting an obsolete provision; amending s.
9 443.1715, F.S.; specifying that an employer may obtain
10 employee wage information from the agency or its tax
11 collection services provider; providing an effective
12 date.

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

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16 Section 1. Paragraph (g) of subsection (3) of section
17 443.131, Florida Statutes, is amended to read:

18 443.131 Contributions.—

19 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
20 EXPERIENCE.—

21 (g) *Transfer of unemployment experience upon transfer or*
22 *acquisition of a business.*—Notwithstanding any other provision
23 of law, upon transfer or acquisition of a business, the
24 following conditions apply to the assignment of rates and to
25 transfers of unemployment experience:

26 1.a. If an employer transfers its trade or business, or a
27 portion thereof, to another employer and, at the time of the
28 transfer, there is any common ownership, management, or control
29 of the two employers, the unemployment experience attributable

40-01668-10

20101736__

30 to the transferred trade or business is ~~shall be~~ transferred to
31 the employer to whom the business is ~~se~~ transferred. The rates
32 of both employers shall be recalculated and made effective as of
33 the beginning of the calendar quarter immediately following the
34 date of the transfer ~~of the trade or business~~ unless the
35 transfer occurred on the first day of a calendar quarter, in
36 which case the rate shall be recalculated as of that date.

37 b. If, following a transfer of unemployment experience
38 under sub-subparagraph a., the Agency for Workforce Innovation
39 or the tax collection service provider determines that a
40 substantial purpose of the transfer of trade or business was to
41 obtain a reduced liability for contributions, the experience
42 rating account of the employers involved shall be combined into
43 a single account and a single rate assigned to the account.

44 2. If ~~Whenever~~ a person ~~who~~ is not an employer under this
45 chapter at the time it acquires the trade or business of an
46 employer, the unemployment experience of the acquired business
47 may ~~shall~~ not be transferred to such ~~the~~ person if the Agency
48 for Workforce Innovation or the tax collection service provider
49 finds that such person acquired the business solely or primarily
50 for the purpose of obtaining a lower rate of contributions.
51 Instead, the ~~such~~ person shall be assigned the new employer rate
52 under paragraph (2) (a). In determining whether the business was
53 acquired solely or primarily for the purpose of obtaining a
54 lower rate of contributions, the tax collection service provider
55 shall, at a minimum, consider, ~~but not be limited to,~~ the
56 following ~~factors~~:

57 a. Whether the person continued the business enterprise of
58 the acquired business;

40-01668-10

20101736__

59 b. How long such business enterprise was continued; or

60 c. Whether a substantial number of new employees were ~~was~~
61 hired for performance of duties unrelated to the business
62 activity conducted before the acquisition.

63 3. If a person knowingly violates or attempts to violate
64 subparagraph 1. or subparagraph 2. or any other provision of
65 this chapter related to determining the assignment of a
66 contribution rate, or if a person knowingly advises another
67 person to violate the law, the person is ~~shall be~~ subject to the
68 following penalties:

69 a. If the person is an employer, the employer shall be
70 assigned the highest rate assignable under this chapter for the
71 rate year during which the ~~such~~ violation or attempted violation
72 occurred and for the 3 rate years immediately following the ~~this~~
73 rate year. However, if the person's business is already at the
74 highest rate for any year, or if the amount of increase in the
75 person's rate would be less than 2 percent for such year, ~~then~~ a
76 penalty rate of contribution of 2 percent of taxable wages shall
77 be imposed for that ~~such~~ year and the following 3 rate years.

78 b. If the person is not an employer, such person is ~~shall~~
79 ~~be~~ subject to a civil money penalty of up to ~~not more than~~
80 \$5,000. The procedures for the assessment of a penalty shall be
81 in accordance with ~~the procedures set forth in~~ s. 443.141(2),
82 and the provisions of s. 443.141(3) shall apply to the
83 collection of the penalty. Any such penalty shall be deposited
84 in the penalty and interest account established under s.
85 443.211(2).

86 4. As used in subparagraph 3. ~~For purposes of this~~
87 ~~paragraph,~~ the term:

40-01668-10

20101736

88 a. "Knowingly" means having actual knowledge of or acting
89 with deliberate ignorance or reckless disregard for the
90 prohibition involved.

91 b. "Violates or attempts to violate" includes, but is not
92 limited to, intent to evade, misrepresent, or willfully
93 nondisclose.

94 5. In addition to the penalty imposed by subparagraph 3.,
95 any person who violates this paragraph commits a felony of the
96 third degree, punishable as provided in s. 775.082, s. 775.083,
97 or s. 775.084.

98 6. The Agency for Workforce Innovation and the tax
99 collection service provider shall establish procedures to
100 identify the transfer or acquisition of a business for the
101 purposes of this paragraph and shall adopt any rules necessary
102 to administer this paragraph.

103 7. As used in ~~For purposes of~~ this paragraph, the term:

104 a. "Person" has the meaning given to the term by s.
105 7701(a)(1) of the Internal Revenue Code of 1986.

106 b. "Trade or business" includes ~~shall include~~ the
107 employer's workforce.

108 8. This paragraph shall be interpreted and applied in such
109 a manner as to meet the minimum requirements contained in any
110 guidance or regulations issued by the United States Department
111 of Labor.

112 Section 2. Subsection (5) of section 443.141, Florida
113 Statutes, is amended to read:

114 443.141 Collection of contributions and reimbursements.—

115 (5) PRIORITIES UNDER LEGAL DISSOLUTION OR DISTRIBUTIONS.—In
116 the event of any distribution of an ~~any~~ employer's assets

40-01668-10

20101736

117 pursuant to an order of any court under the laws of this state,
118 including any receivership, assignment for the benefit of
119 creditors, adjudicated insolvency, composition, administration
120 of estates of decedents, or other similar proceeding,
121 contributions or reimbursements then or subsequently due must be
122 paid in full before all other claims except claims for wages of
123 \$250 or less to each claimant, earned within 6 months after the
124 commencement of the proceeding, and on a parity with all other
125 tax claims wherever those tax claims are given priority. In the
126 administration of the estate of a ~~any~~ decedent, the filing of
127 notice of lien is a proceeding required upon protest of the
128 claim filed by the tax collection service provider for
129 contributions or reimbursements due under this chapter, and the
130 claim must be allowed by the circuit judge. However, the
131 personal representative of the decedent, ~~however,~~ may, by
132 petition to the circuit court, object to the validity of the tax
133 collection service provider's claim, and proceedings shall be
134 conducted in the circuit court for the determination of the
135 validity of the service provider's claim. Further, the bond of
136 the personal representative may not be discharged until the
137 claim is finally determined by the circuit court. If ~~When~~ a bond
138 is not given by the personal representative, the assets of the
139 estate may not be distributed until the final determination by
140 the circuit court. Upon distribution of the assets of the estate
141 ~~of any decedent,~~ the tax collection service provider's claim has
142 a class 8 priority as established in s. 733.707(1)(h), subject
143 to the above limitations with reference to wages. In the event
144 of an ~~any~~ employer's adjudication in bankruptcy, judicially
145 confirmed extension proposal, or composition, under the Federal

40-01668-10

20101736

146 Bankruptcy Reform Act of 1978, ~~1898~~, as amended, contributions
147 or reimbursements then or subsequently due are entitled to
148 priority as is provided in 11 U.S.C. s. 507(a)(8) ~~s. 64B of that~~
149 ~~act (U.S.C. Title II, s. 104(b), as amended).~~

150 Section 3. Subsection (1) of section 443.163, Florida
151 Statutes, is amended to read:

152 443.163 Electronic reporting and remitting of contributions
153 and reimbursements.—

154 (1) An employer may file any report and remit any
155 contributions or reimbursements required under this chapter by
156 electronic means. The Agency for Workforce Innovation or the
157 state agency providing unemployment tax collection services
158 shall adopt rules prescribing the format and instructions
159 necessary for electronically filing reports and remitting
160 contributions and reimbursements to ensure a full collection of
161 contributions and reimbursements due. The acceptable method of
162 transfer, the method, form, and content of the electronic means,
163 and the method, if any, by which the employer will be provided
164 with an acknowledgment shall be prescribed by the Agency for
165 Workforce Innovation or its tax collection service provider.
166 However, an ~~any~~ employer who employed 10 or more employees in
167 any quarter during the preceding state fiscal year must file the
168 Employers Quarterly Reports (UCT-6) for the current calendar
169 year and remit the contributions and reimbursements due by
170 electronic means approved by the agency or its tax collection
171 service provider. A person who prepared and reported for 100 or
172 more employers in any quarter during the preceding state fiscal
173 year must file the Employers Quarterly Reports (UCT-6) for each
174 calendar quarter in the current calendar year, ~~beginning with~~

40-01668-10

20101736

175 ~~reports due for the second calendar quarter of 2003,~~ by
176 electronic means approved by the agency or its tax collection
177 service provider.

178 Section 4. Paragraph (b) of subsection (2) of section
179 443.1715, Florida Statutes, is amended to read:

180 443.1715 Disclosure of information; confidentiality.—

181 (2) DISCLOSURE OF INFORMATION.—

182 (b)~~1~~. The employer or the employer's workers' compensation
183 carrier against whom a claim for benefits under chapter 440 has
184 been made, or a representative of either, may request from the
185 Agency for Workforce Innovation or its tax collection services
186 provider ~~division~~ records of wages of the employee reported to
187 the agency or its provider ~~division~~ by any employer for the
188 quarter that includes the date of the accident that is the
189 subject of such claim and for subsequent quarters.

190 1. The request must be made with the authorization or
191 consent of the employee or any employer who paid wages to the
192 employee after ~~subsequent to~~ the date of the accident.

193 2. The employer or carrier shall make the request on a form
194 prescribed by rule for such purpose by the agency or its service
195 provider ~~division~~. Such form shall contain a certification by
196 the requesting party that it is a party entitled to the
197 information requested ~~as authorized by this paragraph~~.

198 3. The agency or its service provider ~~division~~ shall
199 provide the most current information readily available within 15
200 days after receiving the request.

201 Section 5. This act shall take effect July 1, 2010.