

1 A bill to be entitled
2 An act relating to local business taxes; amending s.
3 205.022, F.S.; defining the term "independent contractor";
4 creating s. 205.066, F.S.; exempting an individual
5 engaging in or managing a business in an individual
6 capacity as an employee from requirements related to local
7 business taxes; specifying that an individual licensed and
8 operating as a broker associate or sales associate is an
9 employee; specifying that an independent contractor is not
10 an employee; prohibiting a local governing authority from
11 holding an exempt employee liable for the failure of a
12 principal or employer to comply with certain obligations
13 related to a local business tax or requiring an exempt
14 employee to take certain actions related to a local
15 business tax; prohibiting a local governing authority from
16 requiring a principal or employer to provide personal or
17 contact information for exempt individuals in order to
18 obtain a local business tax receipt; amending s. 205.194,
19 F.S.; deleting obsolete language; requiring a person
20 applying for or renewing a local business tax receipt to
21 engage in or manage a business or occupation regulated by
22 a state agency to exhibit certain documentation before
23 such receipt may be issued; authorizing online renewals as
24 a means of providing electronic certifications that meet
25 such requirement; deleting a requirement that the
26 Department of Business and Professional Regulation provide
27 certain professional regulation information to local
28 officials who issue business tax receipts; deleting a

29 provision prohibiting a local official who issues business
 30 tax receipts from renewing a license under certain
 31 circumstances; providing an effective date.

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33 Be It Enacted by the Legislature of the State of Florida:

34

35 Section 1. Subsection (9) is added to section 205.022,
 36 Florida Statutes, to read:

37 205.022 Definitions.—When used in this chapter, the
 38 following terms and phrases shall have the meanings ascribed to
 39 them in this section, except when the context clearly indicates
 40 a different meaning:

41 (9) (a) "Independent contractor" means a person who meets
 42 at least four of the following criteria:

43 1. The independent contractor maintains a separate
 44 business with his or her own work facility, truck, equipment,
 45 materials, or similar accommodations;

46 2. The independent contractor holds or has applied for a
 47 federal employer identification number, unless the independent
 48 contractor is a sole proprietor who is not required to obtain a
 49 federal employer identification number under state or federal
 50 regulations;

51 3. The independent contractor receives compensation for
 52 services rendered or work performed and such compensation is
 53 paid to a business rather than to an individual;

54 4. The independent contractor holds one or more bank
 55 accounts in the name of the business entity for purposes of
 56 paying business expenses or other expenses related to services

57 rendered or work performed for compensation;

58 5. The independent contractor performs work or is able to
 59 perform work for any entity in addition to or besides the
 60 employer at his or her own election without the necessity of
 61 completing an employment application or process; or

62 6. The independent contractor receives compensation for
 63 work or services rendered on a competitive-bid basis or
 64 completion of a task or a set of tasks as defined by a
 65 contractual agreement, unless such contractual agreement
 66 expressly states that an employment relationship exists.

67 (b) If four of the criteria listed in paragraph (a) are
 68 not met, an individual may still be presumed to be an
 69 independent contractor based on full consideration of the nature
 70 of the individual situation with regard to satisfying any of the
 71 following conditions:

72 1. The independent contractor performs or agrees to
 73 perform specific services or work for a specific amount of money
 74 and controls the means of performing the services or work.

75 2. The independent contractor incurs the principal
 76 expenses related to the service or work that he or she performs
 77 or agrees to perform.

78 3. The independent contractor is responsible for the
 79 satisfactory completion of the work or services that he or she
 80 performs or agrees to perform.

81 4. The independent contractor receives compensation for
 82 work or services performed for a commission or on a per-job
 83 basis and not on any other basis.

84 5. The independent contractor may realize a profit or

85 suffer a loss in connection with performing work or services.

86 6. The independent contractor has continuing or recurring
 87 business liabilities or obligations.

88 7. The success or failure of the independent contractor's
 89 business depends on the relationship of business receipts to
 90 expenditures.

91 Section 2. Section 205.066, Florida Statutes, is created
 92 to read:

93 205.066 Exemptions; employees acting in an individual
 94 capacity.—

95 (1) An individual who engages in or manages a business,
 96 profession, or occupation in an individual capacity as an
 97 employee of another person is not required to apply for an
 98 exemption from a local business tax, pay a local business tax,
 99 or obtain a local business tax receipt. For purposes of this
 100 section, an individual licensed and operating as a broker
 101 associate or sales associate under chapter 475 is an employee.
 102 An individual acting in the capacity of an independent
 103 contractor is not an employee.

104 (2) An employee may not be held liable by any local
 105 governing authority for the failure of a principal or employer
 106 to apply for an exemption from a local business tax, pay a local
 107 business tax, or obtain a local business tax receipt. An
 108 individual exempt under this section may not be required by any
 109 local governing authority to apply for an exemption from a local
 110 business tax, otherwise prove his or her exempt status, or pay
 111 any tax or fee related to a local business tax.

112 (3) A principal or employer who is required to obtain a
 113 local business tax receipt may not be required by a local
 114 governing authority to provide personal or contact information
 115 for individuals exempt under this section in order to obtain a
 116 local business tax receipt.

117 Section 3. Section 205.194, Florida Statutes, is amended
 118 to read:

119 205.194 Prohibition of local business tax receipt without
 120 exhibition of state license or registration.—

121 (1) Any person applying for or renewing a local business
 122 tax receipt ~~for the period beginning October 1, 1985,~~ to
 123 practice any profession or engage in or manage any business or
 124 occupation regulated by the Department of Business and
 125 Professional Regulation or any other state regulatory agency,
 126 including ~~or~~ any board or commission thereof, must exhibit an
 127 active state certificate, registration, or license, or proof of
 128 copy of the same, before such local receipt may be issued.
 129 Online renewals may provide for electronic certification by an
 130 applicant to meet this requirement. Thereafter, only persons
 131 applying for the first time for a receipt must exhibit such
 132 certification, registration, or license.

133 ~~(2) The Department of Business and Professional Regulation~~
 134 ~~shall, by August 1 of each year, supply to the local official~~
 135 ~~who issues local business tax receipts a current list of~~
 136 ~~professions it regulates and information regarding those persons~~
 137 ~~for whom receipts should not be renewed due to the suspension,~~
 138 ~~revocation, or inactivation of such person's state license,~~
 139 ~~certificate, or registration. The official who issues local~~

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140 ~~business tax receipts shall not renew such license unless such~~
141 ~~person can exhibit an active state certificate, registration, or~~
142 ~~license.~~

143 (2)~~(3)~~ This section shall not apply to s. 489.113, s.
144 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.
145 489.521, or s. 489.537.

146 Section 4. This act shall take effect July 1, 2011.