

By Senator Detert

23-00795-11

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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
4 contractor"; creating s. 205.066, F.S.; exempting an
5 individual engaging in or managing a business in an
6 individual capacity as an employee from requirements
7 related to local business taxes; specifying that an
8 independent contractor is not an employee; prohibiting
9 a local governing authority from holding an exempt
10 employee liable for the failure of a principal or
11 employer to comply with certain obligations related to
12 a local business tax or requiring an exempt employee
13 to take certain actions related to a local business
14 tax; prohibiting a local governing authority from
15 requiring a principal or employer to provide personal
16 or contact information for exempt individuals in order
17 to obtain a local business tax receipt; amending s.
18 205.194, F.S.; deleting obsolete provisions; deleting
19 a requirement that the Department of Business and
20 Professional Regulation provide certain professional
21 regulation information to local officials who issue
22 business tax receipts; deleting a provision
23 prohibiting a local official who issues business tax
24 receipts from renewing a license under certain
25 circumstances; providing an effective date.

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

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29 Section 1. Subsection (9) is added to section 205.022,

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30 Florida Statutes, to read:

31 205.022 Definitions.—When used in this chapter, the
32 following terms and phrases shall have the meanings ascribed to
33 them in this section, except when the context clearly indicates
34 a different meaning:

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

37 1. The independent contractor maintains a separate business
38 with his or her own work facility, truck, equipment, materials,
39 or similar accommodations;

40 2. The independent contractor holds or has applied for a
41 federal employer identification number, unless the independent
42 contractor is a sole proprietor who is not required to obtain a
43 federal employer identification number under state or federal
44 regulations;

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

48 4. The independent contractor holds one or more bank
49 accounts in the name of the business entity for purposes of
50 paying business expenses or other expenses related to services
51 rendered or work performed for compensation;

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

56 6. The independent contractor receives compensation for
57 work or services rendered on a competitive-bid basis or
58 completion of a task or a set of tasks as defined by a

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59 contractual agreement, unless such contractual agreement
60 expressly states that an employment relationship exists.

61 (b) If four of the criteria listed in paragraph (a) are not
62 met, an individual may still be presumed to be an independent
63 contractor based on full consideration of the nature of the
64 individual situation with regard to satisfying any of the
65 following conditions:

66 1. The independent contractor performs or agrees to perform
67 specific services or work for a specific amount of money and
68 controls the means of performing the services or work.

69 2. The independent contractor incurs the principal expenses
70 related to the service or work that he or she performs or agrees
71 to perform.

72 3. The independent contractor is responsible for the
73 satisfactory completion of the work or services that he or she
74 performs or agrees to perform.

75 4. The independent contractor receives compensation for
76 work or services performed for a commission or on a per-job
77 basis and not on any other basis.

78 5. The independent contractor may realize a profit or
79 suffer a loss in connection with performing work or services.

80 6. The independent contractor has continuing or recurring
81 business liabilities or obligations.

82 7. The success or failure of the independent contractor's
83 business depends on the relationship of business receipts to
84 expenditures.

85 Section 2. Section 205.066, Florida Statutes, is created to
86 read:

87 205.066 Exemptions; employees acting in an individual

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88 capacity.-

89 (1) An individual who engages in or manages a business,
90 profession, or occupation in an individual capacity as an
91 employee of another person is not required to apply for an
92 exemption from a local business tax, pay a local business tax,
93 or obtain a local business tax receipt. An individual acting in
94 the capacity of an independent contractor is not an employee.

95 (2) An employee may not be held liable by any local
96 governing authority for the failure of a principal or employer
97 to apply for an exemption from a local business tax, pay a local
98 business tax, or obtain a local business tax receipt. An
99 individual exempt under this section may not be required by any
100 local governing authority to apply for an exemption from a local
101 business tax, otherwise prove his or her exempt status, or pay
102 any tax or fee related to a local business tax.

103 (3) A principal or employer who is required to obtain a
104 local business tax receipt may not be required by a local
105 governing authority to provide personal or contact information
106 for individuals exempt under this section in order to obtain a
107 local business tax receipt.

108 Section 3. Section 205.194, Florida Statutes, is amended to
109 read:

110 205.194 Prohibition of local business tax receipt without
111 exhibition of state license or registration.-

112 (1) Any person applying for or renewing a local business
113 tax receipt ~~for the period beginning October 1, 1985,~~ to
114 practice any profession regulated by the Department of Business
115 and Professional Regulation, or any board or commission thereof,
116 must exhibit an active state certificate, registration, or

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117 license, or proof of copy of the same, before such local receipt
118 may be issued. ~~Thereafter, only persons applying for the first~~
119 ~~time for a receipt must exhibit such certification,~~
120 ~~registration, or license.~~

121 ~~(2) The Department of Business and Professional Regulation~~
122 ~~shall, by August 1 of each year, supply to the local official~~
123 ~~who issues local business tax receipts a current list of~~
124 ~~professions it regulates and information regarding those persons~~
125 ~~for whom receipts should not be renewed due to the suspension,~~
126 ~~revocation, or inactivation of such person's state license,~~
127 ~~certificate, or registration. The official who issues local~~
128 ~~business tax receipts shall not renew such license unless such~~
129 ~~person can exhibit an active state certificate, registration, or~~
130 ~~license.~~

131 ~~(2)(3)~~ This section shall not apply to s. 489.113, s.
132 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.
133 489.521, or s. 489.537.

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