

By the Committee on Community Affairs; and Senator Detert

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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 individual licensed and operating as a broker
9 associate or sales associate is an employee;
10 specifying that an independent contractor is not an
11 employee; prohibiting a local governing authority from
12 holding an exempt employee liable for the failure of a
13 principal or employer to comply with certain
14 obligations related to a local business tax or
15 requiring an exempt employee to take certain actions
16 related to a local business tax; prohibiting a local
17 governing authority from requiring a principal or
18 employer to provide personal or contact information
19 for exempt individuals in order to obtain a local
20 business tax receipt; amending s. 205.194, F.S.;
21 requiring a person applying for or renewing a local
22 business tax receipt to engage in or manage any
23 business or occupation regulated by a state agency to
24 exhibit proof of an active registration or license;
25 providing for online renewals; deleting obsolete
26 provisions; deleting a requirement that the Department
27 of Business and Professional Regulation provide
28 certain professional regulation information to local
29 officials who issue business tax receipts; deleting a

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30 provision prohibiting a local official who issues
31 business tax receipts from renewing a license under
32 certain circumstances; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

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

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

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

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

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

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

55 4. The independent contractor holds one or more bank
56 accounts in the name of the business entity for purposes of
57 paying business expenses or other expenses related to services
58 rendered or work performed for compensation;

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

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

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

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

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

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

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

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

87 6. The independent contractor has continuing or recurring

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88 business liabilities or obligations.

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

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

94 205.066 Exemptions; employees acting in an individual
95 capacity.-

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

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

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

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117 local business tax receipt.

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

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

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

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

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

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146 489.521, or s. 489.537.

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