



327386

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: WD/2R

.

03/10/2016 12:05 PM

.

.

Senator Grimsley moved the following:

1 **Senate Amendment to Amendment (673118) (with title**
2 **amendment)**

3
4 Between lines 4 and 5
5 insert:

6 Section 1. Subsection (9) of section 205.022, Florida
7 Statutes, is amended to read:

8 205.022 Definitions.—When used in this chapter, the
9 following terms and phrases shall have the meanings ascribed to
10 them in this section, except when the context clearly indicates
11 a different meaning:



327386

12 (9) "Independent contractor" includes: ~~has the same meaning~~

13 (a) All persons that meet the criteria as provided in s.

14 440.02(15)(d)1.a. and b.; and

15 (b) Qualified marketplace contractors as provided in s.

16 440.02(15)(d)14.

17 Section 2. Paragraph (d) of subsection (15) of section
18 440.02, Florida Statutes, is amended, and subsections (42) and
19 (43) are added to that section, to read:

20 440.02 Definitions.—When used in this chapter, unless the
21 context clearly requires otherwise, the following terms shall
22 have the following meanings:

23 (15)

24 (d) "Employee" does not include:

25 1. An independent contractor who is not engaged in the
26 construction industry.

27 a. In order to meet the definition of independent
28 contractor, at least four of the following criteria must be met:

29 (I) The independent contractor maintains a separate
30 business with his or her own work facility, truck, equipment,
31 materials, or similar accommodations;

32 (II) The independent contractor holds or has applied for a
33 federal employer identification number, unless the independent
34 contractor is a sole proprietor who is not required to obtain a
35 federal employer identification number under state or federal
36 regulations;

37 (III) The independent contractor receives compensation for
38 services rendered or work performed and such compensation is
39 paid to a business rather than to an individual;

40 (IV) The independent contractor holds one or more bank



327386

41 accounts in the name of the business entity for purposes of
42 paying business expenses or other expenses related to services
43 rendered or work performed for compensation;

44 (V) The independent contractor performs work or is able to
45 perform work for any entity in addition to or besides the
46 employer at his or her own election without the necessity of
47 completing an employment application or process; or

48 (VI) The independent contractor receives compensation for
49 work or services rendered on a competitive-bid basis or
50 completion of a task or a set of tasks as defined by a
51 contractual agreement, unless such contractual agreement
52 expressly states that an employment relationship exists.

53 b. If four of the criteria listed in sub-subparagraph a. do
54 not exist, an individual may still be presumed to be an
55 independent contractor and not an employee based on full
56 consideration of the nature of the individual situation with
57 regard to satisfying any of the following conditions:

58 (I) The independent contractor performs or agrees to
59 perform specific services or work for a specific amount of money
60 and controls the means of performing the services or work.

61 (II) The independent contractor incurs the principal
62 expenses related to the service or work that he or she performs
63 or agrees to perform.

64 (III) The independent contractor is responsible for the
65 satisfactory completion of the work or services that he or she
66 performs or agrees to perform.

67 (IV) The independent contractor receives compensation for
68 work or services performed for a commission or on a per-job
69 basis and not on any other basis.



327386

70 (V) The independent contractor may realize a profit or
71 suffer a loss in connection with performing work or services.

72 (VI) The independent contractor has continuing or recurring
73 business liabilities or obligations.

74 (VII) The success or failure of the independent
75 contractor's business depends on the relationship of business
76 receipts to expenditures.

77 c. Notwithstanding anything to the contrary in this
78 subparagraph, an individual claiming to be an independent
79 contractor has the burden of proving that he or she is an
80 independent contractor for purposes of this chapter.

81 2. A real estate licensee, if that person agrees, in
82 writing, to perform for remuneration solely by way of
83 commission.

84 3. Bands, orchestras, and musical and theatrical
85 performers, including disk jockeys, performing in licensed
86 premises as defined in chapter 562, if a written contract
87 evidencing an independent contractor relationship is entered
88 into before the commencement of such entertainment.

89 4. An owner-operator of a motor vehicle who transports
90 property under a written contract with a motor carrier which
91 evidences a relationship by which the owner-operator assumes the
92 responsibility of an employer for the performance of the
93 contract, if the owner-operator is required to furnish motor
94 vehicle equipment as identified in the written contract and the
95 principal costs incidental to the performance of the contract,
96 including, but not limited to, fuel and repairs, provided a
97 motor carrier's advance of costs to the owner-operator when a
98 written contract evidences the owner-operator's obligation to



327386

99 reimburse such advance shall be treated as the owner-operator
100 furnishing such cost and the owner-operator is not paid by the
101 hour or on some other time-measured basis.

102 5. A person whose employment is both casual and not in the
103 course of the trade, business, profession, or occupation of the
104 employer.

105 6. A volunteer, except a volunteer worker for the state or
106 a county, municipality, or other governmental entity. A person
107 who does not receive monetary remuneration for services is
108 presumed to be a volunteer unless there is substantial evidence
109 that a valuable consideration was intended by both employer and
110 employee. For purposes of this chapter, the term "volunteer"
111 includes, but is not limited to:

112 a. Persons who serve in private nonprofit agencies and who
113 receive no compensation other than expenses in an amount less
114 than or equivalent to the standard mileage and per diem expenses
115 provided to salaried employees in the same agency or, if such
116 agency does not have salaried employees who receive mileage and
117 per diem, then such volunteers who receive no compensation other
118 than expenses in an amount less than or equivalent to the
119 customary mileage and per diem paid to salaried workers in the
120 community as determined by the department; and

121 b. Volunteers participating in federal programs established
122 under Pub. L. No. 93-113.

123 7. Unless otherwise prohibited by this chapter, any officer
124 of a corporation who elects to be exempt from this chapter. Such
125 officer is not an employee for any reason under this chapter
126 until the notice of revocation of election filed pursuant to s.
127 440.05 is effective.



327386

128 8. An officer of a corporation that is engaged in the
129 construction industry who elects to be exempt from the
130 provisions of this chapter, as otherwise permitted by this
131 chapter. Such officer is not an employee for any reason until
132 the notice of revocation of election filed pursuant to s. 440.05
133 is effective.

134 9. An exercise rider who does not work for a single horse
135 farm or breeder, and who is compensated for riding on a case-by-
136 case basis, provided a written contract is entered into prior to
137 the commencement of such activity which evidences that an
138 employee/employer relationship does not exist.

139 10. A taxicab, limousine, or other passenger vehicle-for-
140 hire driver who operates said vehicles pursuant to a written
141 agreement with a company which provides any dispatch, marketing,
142 insurance, communications, or other services under which the
143 driver and any fees or charges paid by the driver to the company
144 for such services are not conditioned upon, or expressed as a
145 proportion of, fare revenues.

146 11. A person who performs services as a sports official for
147 an entity sponsoring an interscholastic sports event or for a
148 public entity or private, nonprofit organization that sponsors
149 an amateur sports event. For purposes of this subparagraph, such
150 a person is an independent contractor. For purposes of this
151 subparagraph, the term "sports official" means any person who is
152 a neutral participant in a sports event, including, but not
153 limited to, umpires, referees, judges, linespersons,
154 scorekeepers, or timekeepers. This subparagraph does not apply
155 to any person employed by a district school board who serves as
156 a sports official as required by the employing school board or



327386

157 who serves as a sports official as part of his or her
158 responsibilities during normal school hours.

159 12. Medicaid-enrolled clients under chapter 393 who are
160 excluded from the definition of employment under s.
161 443.1216(4) (d) and served by Adult Day Training Services under
162 the Home and Community-Based or the Family and Supported Living
163 Medicaid Waiver program in a sheltered workshop setting licensed
164 by the United States Department of Labor for the purpose of
165 training and earning less than the federal hourly minimum wage.

166 13. Medicaid-enrolled clients under chapter 393 who are
167 excluded from the definition of employment under s.
168 443.1216(4) (d) and served by Adult Day Training Services under
169 the Family and Supported Living Medicaid Waiver program in a
170 sheltered workshop setting licensed by the United States
171 Department of Labor for the purpose of training and earning less
172 than the federal hourly minimum wage.

173 14. A qualified marketplace contractor if:

174 a. The services performed by the qualified marketplace
175 contractor are governed by a written contract executed between
176 such contractor and a qualified marketplace platform; and

177 b. The written contract provides the following:

178 (I) That the qualified marketplace contractor is providing
179 services as an independent contractor, and not as an employee;

180 (II) That the qualified marketplace contractor may work any
181 hours or schedules that he or she chooses. However, if a
182 qualified marketplace contractor elects to work specified hours
183 or schedules, the contract or other written arrangement may
184 require the qualified marketplace contractor to perform work
185 during the selected hours or schedules;



327386

186 (III) That the contractor is free to engage in any other
187 occupation or business opportunity, including performing
188 services through other qualified marketplace platforms;

189 (IV) That the qualified marketplace contractor must
190 provide, at the contractor's own expense, all or substantially
191 all of the necessary equipment, tools, and other materials to
192 perform the services; and

193 (V) That the qualified marketplace contractor is
194 responsible for tax on the qualified marketplace contractor's
195 own income.

196 c. For services performed by a qualified marketplace
197 contractor before the effective date of this subparagraph, the
198 term "employee" does not include a qualified marketplace
199 contractor if the services performed by the qualified
200 marketplace contractor were governed by a written contract
201 executed between the qualified marketplace contractor and a
202 qualified marketplace platform that conforms to the requirements
203 of sub-subparagraph (d)14.b.

204 (42) "Qualified marketplace contractor" means any person or
205 organization, including, but not limited to, a natural person,
206 corporation, limited liability company, partnership, sole
207 proprietor, or other entity, which enters into an agreement with
208 a qualified marketplace platform to use the qualified
209 marketplace platform's digital platform to provide services to
210 third-party individuals or entities seeking those services.

211 (43) "Qualified marketplace platform" means an
212 organization, including, but not limited to, a corporation,
213 limited liability company, partnership, sole proprietor, or any
214 other entity, which operates a digital platform that facilitates



327386

215 the provision of services by qualified marketplace contractors
216 to third-party individuals or entities seeking those services.

217 Section 3. Subsections (36) through (46) of section
218 443.036, Florida Statutes, are redesignated as subsections (38)
219 through (48), respectively, and new subsections (36) and (37)
220 are added to that section, to read:

221 443.036 Definitions.—As used in this chapter, the term:

222 (36) "Qualified marketplace contractor" means any person or
223 organization, including, but not limited to, a natural person,
224 corporation, limited liability company, partnership, sole
225 proprietor, or other entity, which enters into an agreement with
226 a qualified marketplace platform to use the qualified
227 marketplace platform's digital platform to provide services to
228 third-party individuals or entities seeking those services.

229 (37) "Qualified marketplace platform" means an
230 organization, including, but not limited to, a corporation,
231 limited liability company, partnership, sole proprietor, or any
232 other entity, which operates a digital platform that facilitates
233 the provision of services by qualified marketplace contractors
234 to third-party individuals or entities seeking those services.

235 Section 4. Paragraph (z) is added to subsection (13) of
236 section 443.1216, Florida Statutes, to read:

237 443.1216 Employment.—Employment, as defined in s. 443.036,
238 is subject to this chapter under the following conditions:

239 (13) The following are exempt from coverage under this
240 chapter:

241 (z) Services performed by or as a qualified marketplace
242 contractor if:

243 1. The services performed by the qualified marketplace



327386

244 contractor are governed by a written contract executed between
245 such contractor and a qualified marketplace platform; and

246 2. The written contract provides the following:

247 a. That the qualified marketplace contractor is providing
248 services as an independent contractor, and not as an employee;

249 b. That the qualified marketplace contractor may work any
250 hours or schedules that he or she chooses. However, if a
251 qualified marketplace contractor elects to work specified hours
252 or schedules, the contract or other written arrangement may
253 require the qualified marketplace contractor to perform work
254 during the selected hours or schedules;

255 c. That the contractor is free to engage in any other
256 occupation or business opportunity, including performing
257 services through other qualified marketplace platforms;

258 d. That the qualified marketplace contractor must provide,
259 at the contractor's own expense, all or substantially all of the
260 necessary equipment, tools, and other materials to perform the
261 services; and

262 e. That the qualified marketplace contractor is responsible
263 for tax on the qualified marketplace contractor's own income;
264 and

265 3. For services performed by a qualified marketplace
266 contractor before the effective date of this paragraph, the term
267 "employee" does not include a qualified marketplace contractor
268 if the services performed by the qualified marketplace
269 contractor were governed by a written contract executed between
270 the qualified marketplace contractor and a qualified marketplace
271 platform that conforms to the requirements of subparagraph (z)2.

272 Section 5. Subsection (2) of section 448.101, Florida



327386

273 Statutes, is amended, present subsections (5) and (6) of that
274 section are redesignated as subsections (7) and (8),
275 respectively, and new subsections (5) and (6) are added to that
276 section, to read:

277 448.101 Definitions.—As used in ss. 448.101-448.105, the
278 term:

279 (2) "Employee" means a person who performs services for and
280 under the control and direction of an employer for wages or
281 other remuneration. The term does not include an independent
282 contractor or qualified marketplace contractor.

283 (5) "Qualified marketplace contractor" means:

284 (a) Any person or organization, including, but not limited
285 to, a natural person, corporation, limited liability company,
286 partnership, sole proprietor, or other entity, which enters into
287 a written agreement with a qualified marketplace platform to use
288 the qualified marketplace platform's digital platform if the
289 written contract provides the following:

290 1. That the qualified marketplace contractor is providing
291 services as an independent contractor, and not as an employee;

292 2. That the qualified marketplace contractor may work any
293 hours or schedules that he or she chooses. However, if a
294 qualified marketplace contractor elects to work specified hours
295 or schedules, the contract or other written arrangement may
296 require the qualified marketplace contractor to perform work
297 during the selected hours or schedules;

298 3. That the contractor is free to engage in any other
299 occupation or business opportunity, including performing
300 services through other qualified marketplace platforms;

301 4. That the qualified marketplace contractor must provide,



327386

302 at the contractor's own expense, all or substantially all of the
303 necessary equipment, tools, and other materials to perform the
304 services; and

305 5. That the qualified marketplace contractor is responsible
306 for tax on the qualified marketplace contractor's own income.

307 (b) The written contract referenced in paragraph (a)
308 includes written contracts entered into before the effective
309 date of this subsection.

310 (6) "Qualified marketplace platform" means an organization,
311 including, but not limited to, a corporation, limited liability
312 company, partnership, sole proprietor, or any other entity,
313 which operates a digital platform that facilitates the provision
314 of services by qualified marketplace contractors to third-party
315 individuals or entities seeking those services.

316 Section 6. If any provision of the amendments made by this
317 act to s. 205.022, s. 440.02, s. 443.036, s. 443.1216, or s.
318 448.101, Florida Statutes, or the application of any provision
319 of the amendments to any person or circumstance is held invalid,
320 the invalidity shall not affect other provisions or applications
321 of the amendments which can be given effect without the invalid
322 provision or application, and to this end, the provisions of the
323 amendments to those sections are declared to be severable.

324
325 ===== T I T L E A M E N D M E N T =====

326 And the title is amended as follows:

327 Delete line 1288

328 and insert:

329 An act relating to taxation; amending ss. 205.022,
330 440.02, 443.036, 443.1216, and 448.101, F.S.; revising



327386

331 definitions and defining terms; providing
332 severability; amending s. 125.0104,