

Amendment No.

CHAMBER ACTION

SenateHouse

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Representative Eskamani offered the following:

Amendment (with title amendment)

Remove lines 20-74 and insert:

Section 2. Section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of

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14 Commerce. As used in this paragraph, the term "work" means any
15 work, whether full-time, part-time, or temporary.

16 1. Disqualification for voluntarily quitting continues for
17 the full period of unemployment next ensuing after the
18 individual has left his or her full-time, part-time, or
19 temporary work voluntarily without good cause and until the
20 individual has earned income equal to or greater than 17 times
21 his or her weekly benefit amount. As used in this subsection,
22 the term "good cause" includes only that cause attributable to
23 the employing unit which would compel a reasonable employee to
24 cease working or attributable to the individual's illness or
25 disability requiring separation from his or her work. Any other
26 disqualification may not be imposed.

27 2. An individual is not disqualified under this subsection
28 for:

29 a. Voluntarily leaving temporary work to return
30 immediately when called to work by the permanent employing unit
31 that temporarily terminated his or her work within the previous
32 6 calendar months;

33 b. Voluntarily leaving work to relocate as a result of his
34 or her military-connected spouse's permanent change of station
35 orders, activation orders, or unit deployment orders; or

36 c. Voluntarily leaving work if he or she proves that his
37 or her discontinued employment is a direct result of
38 circumstances related to domestic violence as defined in s.

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741.28. An individual who voluntarily leaves work under this sub-subparagraph must:

(I) Make reasonable efforts to preserve employment, unless the individual establishes that such remedies are likely to be futile or to increase the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment.

3. The employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under sub-subparagraph 2.c.

4. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the

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64 seriousness of the misconduct, under the department's rules for
65 determining disqualification for benefits for misconduct.

66 5. If an individual has provided notification to the
67 employing unit of his or her intent to voluntarily leave work
68 and the employing unit discharges the individual for reasons
69 other than misconduct before the date the voluntary quit was to
70 take effect, the individual, if otherwise entitled, shall
71 receive benefits from the date of the employer's discharge until
72 the effective date of his or her voluntary quit.

73 6. If an individual is notified by the employing unit of
74 the employer's intent to discharge the individual for reasons
75 other than misconduct and the individual quits without good
76 cause before the date the discharge was to take effect, the
77 claimant is ineligible for benefits pursuant to s. 443.091(1)(d)
78 for failing to be available for work for the week or weeks of
79 unemployment occurring before the effective date of the
80 discharge.

81 (b) For any week with respect to which the department
82 finds that his or her unemployment is due to a suspension for
83 misconduct connected with the individual's work.

84 (c) For any week with respect to which the department
85 finds that his or her unemployment is due to a leave of absence,
86 if the leave was voluntarily initiated by the individual.

87 (d) For any week with respect to which the department
88 finds that his or her unemployment is due to a discharge for

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89 misconduct connected with the individual's work, consisting of
90 drug use, as evidenced by a positive, confirmed drug test.

91 (2) If the Department of Commerce finds that the
92 individual has failed without good cause to apply for available
93 suitable work, including contacting the required number of
94 prospective employers per week for any week of unemployment
95 claimed in the benefit year in accordance with s. 443.091, or
96 failed to appear on three or more occasions for a scheduled job
97 interview without notifying the prospective employer of the need
98 to cancel or reschedule the interview, to accept suitable work
99 when offered to him or her, to ~~or~~ return to the individual's
100 customary self-employment when directed by the department, or to
101 return to employment when recalled to work by the individual's
102 employer after a temporary layoff, the disqualification
103 continues for the full period of unemployment next ensuing after
104 he or she failed without good cause to apply for available
105 suitable work, accept suitable work, or return to his or her
106 customary employment or self-employment, and until the
107 individual has earned income of at least 17 times his or her
108 weekly benefit amount. The department shall by rule adopt
109 criteria to implement this subsection, including for determining
110 the "suitability of work," as used in this section. In
111 developing these rules, the department shall consider the
112 duration of a claimant's unemployment in determining the
113 suitability of work and the suitability of proposed rates of

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114 compensation for available work. Further, after an individual
115 has received 25 weeks of benefits in a single year, suitable
116 work is a job that pays the minimum wage and is 120 percent or
117 more of the weekly benefit amount the individual is drawing.

118 (a) In determining whether or not any work is suitable for
119 an individual, the department shall consider the degree of risk
120 to the individual's health, safety, and morals; the individual's
121 physical fitness, prior training, experience, prior earnings,
122 length of unemployment, and prospects for securing local work in
123 his or her customary occupation; and the distance of the
124 available work from his or her residence.

125 (b) Notwithstanding any other provisions of this chapter,
126 work is not deemed suitable and benefits may not be denied to
127 any otherwise eligible individual for refusing to accept new
128 work under any of the following conditions:

129 1. The position offered is vacant due directly to a
130 strike, lockout, or other labor dispute.

131 2. The wages, hours, or other conditions of the work
132 offered are substantially less favorable to the individual than
133 those prevailing for similar work in the locality.

134 3. As a condition of being employed, the individual is
135 required to join a company union or to resign from or refrain
136 from joining any bona fide labor organization.

137 (c) If the department finds that an individual was
138 rejected for offered employment as the direct result of a

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139 positive, confirmed drug test required as a condition of
140 employment, the individual is disqualified for refusing to
141 accept an offer of suitable work.

142 (3) For any week with respect to which he or she is
143 receiving or has received remuneration in the form of:

144 (a) Wages in lieu of notice.

145 (b) Severance pay. The number of weeks that an
146 individual's severance pay disqualifies the individual is equal
147 to the amount of the severance pay divided by that individual's
148 average weekly wage received from the employer that paid the
149 severance pay, rounded down to the nearest whole number,
150 beginning with the week the individual is separated from
151 employment.

152 (c) Compensation for temporary total disability or
153 permanent total disability under the workers' compensation law
154 of any state or under a similar law of the United States.

155
156 If the remuneration referred to in this subsection is less than
157 the benefits that would otherwise be due under this chapter, an
158 individual who is otherwise eligible is entitled to receive for
159 that week benefits reduced by the amount of the remuneration.

160 (4) For any week with respect to which the department
161 finds that his or her total or partial unemployment is due to a
162 labor dispute in active progress which exists at the factory,
163 establishment, or other premises at which he or she is or was

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164 last employed; except that this subsection does not apply if it
165 is shown to the satisfaction of the department that:

166 (a)1. He or she is not participating in, financing, or
167 directly interested in the labor dispute that is in active
168 progress; however, the payment of regular union dues may not be
169 construed as financing a labor dispute within the meaning of
170 this section; and

171 2. He or she does not belong to a grade or class of
172 workers of which immediately before the commencement of the
173 labor dispute there were members employed at the premises at
174 which the labor dispute occurs any of whom are participating in,
175 financing, or directly interested in the dispute; if in any case
176 separate branches of work are commonly conducted as separate
177 businesses in separate premises, or are conducted in separate
178 departments of the same premises, each department, for the
179 purpose of this subsection, is deemed to be a separate factory,
180 establishment, or other premise.

181 (b) His or her total or partial unemployment results from
182 a lockout by his or her employer. As used in this section, the
183 term "lockout" means a situation in which employees have not
184 gone on strike, nor have employees notified the employer of a
185 date certain for a strike, but in which employees have been
186 denied entry to the factory, establishment, or other premises of
187 employment by the employer. However, benefits are not payable
188 under this paragraph if the lockout action was taken in response

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189 to threats, actions, or other indications of impending damage to
190 property and equipment or possible physical violence by
191 employees or in response to actual damage or violence or a
192 substantial reduction in production instigated or perpetrated by
193 employees.

194 (5) For any week with respect to which or a part of which
195 he or she has received or is seeking reemployment assistance or
196 unemployment benefits under a reemployment assistance or
197 unemployment compensation law of another state or of the United
198 States. For the purposes of this subsection, a reemployment
199 assistance or unemployment compensation law of the United States
200 is any law of the United States which provides for payment of
201 any type and in any amounts for periods of unemployment due to
202 lack of work. However, if the appropriate agency of the other
203 state or of the United States finally determines that he or she
204 is not entitled to reemployment assistance or unemployment
205 benefits, this disqualification does not apply.

206 (6) For making any false or fraudulent representation for
207 the purpose of obtaining benefits contrary to this chapter,
208 constituting a violation under s. 443.071. The disqualification
209 imposed under this subsection shall begin with the week for
210 which the false or fraudulent representation was made and shall
211 continue for a period not to exceed 1 year after the date the
212 Department of Commerce discovers the false or fraudulent
213 representation and until any overpayment of benefits resulting

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214 from such representation has been repaid in full. This
215 disqualification may be appealed in the same manner as any other
216 disqualification imposed under this section. A conviction by any
217 court of competent jurisdiction in this state of the offense
218 prohibited or punished by s. 443.071 is conclusive upon the
219 appeals referee and the commission of the making of the false or
220 fraudulent representation for which disqualification is imposed
221 under this section.

222 (7) If the Department of Commerce finds that the
223 individual is an alien, unless the alien is an individual who
224 has been lawfully admitted for permanent residence or otherwise
225 is permanently residing in the United States under color of law,
226 including an alien who is lawfully present in the United States
227 as a result of the application of s. 203(a)(7) or s. 212(d)(5)
228 of the Immigration and Nationality Act, if any modifications to
229 s. 3304(a)(14) of the Federal Unemployment Tax Act, as provided
230 by Pub. L. No. 94-566, which specify other conditions or other
231 effective dates than those stated under federal law for the
232 denial of benefits based on services performed by aliens, and
233 which modifications are required to be implemented under state
234 law as a condition for full tax credit against the tax imposed
235 by the Federal Unemployment Tax Act, are deemed applicable under
236 this section, if:

237 (a) Any data or information required of individuals
238 applying for benefits to determine whether benefits are not

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payable to them because of their alien status is uniformly required from all applicants for benefits; and

(b) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to such individual are not payable because of his or her alien status may not be made except by a preponderance of the evidence.

If the department finds that the individual has refused without good cause an offer of resettlement or relocation, which offer provides for suitable employment for the individual notwithstanding the distance of relocation, resettlement, or employment from the current location of the individual in this state, this disqualification continues for the week in which the failure occurred and for not more than 17 weeks immediately after that week, or a reduction by not more than 5 weeks from the duration of benefits, as determined by the department in each case.

(8) For any week with respect to which he or she has received, from a base period employer, benefits from a retirement, pension, or annuity program embodied in a union contract or either a public or private employee benefit program, except:

(a) For any week in which benefits from a retirement, pension, or annuity program, as referred to in this subsection,

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are less than the weekly benefits that would otherwise be due under this chapter, he or she is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of benefits from the retirement, pension, or annuity program, prorated to a weekly basis;

(b) For any week in which an individual has received benefits from a retirement, pension, or annuity program, as referred to in this subsection, for which program he or she has paid at least one-half of the contributions, the individual is entitled to receive for that week, if otherwise eligible, benefits reduced by one-half of the amount of benefits from the retirement, pension, or annuity program, prorated on a weekly basis; or

(c) For any week in which he or she has received benefits from a retirement, pension, or annuity program under the United States Social Security Act, for which program he or she has paid any contribution, benefits may not be reduced because of the contribution.

For the purpose of this subsection, benefits from the United States Social Security Act, a disability benefit program, or any other similar periodic payment based on the previous work of the individual are considered retirement income, except as provided in paragraph (c).

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288 (9) If the individual was terminated from his or her work
289 as follows:

290 (a) If the Department of Commerce or the Reemployment
291 Assistance Appeals Commission finds that the individual was
292 terminated from work for violation of any criminal law, under
293 any jurisdiction, which was in connection with his or her work,
294 and the individual was convicted, or entered a plea of guilty or
295 nolo contendere, the individual is not entitled to reemployment
296 assistance benefits for up to 52 weeks, pursuant to rules
297 adopted by the department, and until he or she has earned income
298 of at least 17 times his or her weekly benefit amount. If,
299 before an adjudication of guilt, an admission of guilt, or a
300 plea of nolo contendere, the employer proves by competent
301 substantial evidence to the department that the arrest was due
302 to a crime against the employer or the employer's business,
303 customers, or invitees, the individual is not entitled to
304 reemployment assistance benefits.

305 (b) If the department or the Reemployment Assistance
306 Appeals Commission finds that the individual was terminated from
307 work for any dishonest act in connection with his or her work,
308 the individual is not entitled to reemployment assistance
309 benefits for up to 52 weeks, pursuant to rules adopted by the
310 department, and until he or she has earned income of at least 17
311 times his or her weekly benefit amount. If the employer
312 terminates an individual as a result of a dishonest act in

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connection with his or her work and the department finds misconduct in connection with his or her work, the individual is not entitled to reemployment assistance benefits.

If an individual is disqualified for benefits, the account of the terminating employer, if the employer is in the base period, is noncharged at the time the disqualification is imposed.

(10) Subject to the requirements of this subsection, if the claim is made based on the loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm.

(a) As used in this subsection, the term:

1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects, and includes a labor pool as defined in s. 448.22. The term also includes a firm created by an entity licensed under s. 125.012(6), which hires employees assigned by a union for the purpose of supplementing or supporting the workforce of the temporary help firm's clients. The term does not include employee leasing companies regulated under part XI of chapter 468.

2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm. The term also includes

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338 a day laborer performing day labor, as defined in s. 448.22, who
339 is employed by a labor pool as defined in s. 448.22.

340 3. "Leased employee" means an employee assigned to work
341 for the clients of an employee leasing company regulated under
342 part XI of chapter 468.

343 (b) A temporary or leased employee is deemed to have
344 voluntarily quit employment and is disqualified for benefits
345 under subparagraph (1)(a)1. if, upon conclusion of his or her
346 latest assignment, the temporary or leased employee, without
347 good cause, failed to contact the temporary help or employee-
348 leasing firm for reassignment, if the employer advised the
349 temporary or leased employee at the time of hire and that the
350 leased employee is notified also at the time of separation that
351 he or she must report for reassignment upon conclusion of each
352 assignment, regardless of the duration of the assignment, and
353 that reemployment assistance benefits may be denied for failure
354 to report. For purposes of this section, the time of hire for a
355 day laborer is upon his or her acceptance of the first
356 assignment following completion of an employment application
357 with the labor pool. The labor pool as defined in s. 448.22(1)
358 must provide notice to the temporary employee upon conclusion of
359 the latest assignment that work is available the next business
360 day and that the temporary employee must report for reassignment
361 the next business day. The notice must be given by means of a
362 notice printed on the paycheck, written notice included in the

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363 pay envelope, or other written notification at the conclusion of
364 the current assignment.

365 (11) If an individual is discharged from employment for
366 drug use as evidenced by a positive, confirmed drug test as
367 provided in paragraph (1)(d), or is rejected for offered
368 employment because of a positive, confirmed drug test as
369 provided in paragraph (2)(c), test results and chain of custody
370 documentation provided to the employer by a licensed and
371 approved drug-testing laboratory is self-authenticating and
372 admissible in reemployment assistance hearings, and such
373 evidence creates a rebuttable presumption that the individual
374 used, or was using, controlled substances, subject to the
375 following conditions:

376 (a) To qualify for the presumption described in this
377 subsection, an employer must have implemented a drug-free
378 workplace program under ss. 440.101 and 440.102, and must submit
379 proof that the employer has qualified for the insurance
380 discounts provided under s. 627.0915, as certified by the
381 insurance carrier or self-insurance unit. In lieu of these
382 requirements, an employer who does not fit the definition of
383 "employer" in s. 440.102 may qualify for the presumption if the
384 employer is in compliance with equivalent or more stringent
385 drug-testing standards established by federal law or regulation.

386 (b) Only laboratories licensed and approved as provided in
387 s. 440.102(9), or as provided by equivalent or more stringent

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licensing requirements established by federal law or regulation may perform the drug tests.

(c) Disclosure of drug test results and other information pertaining to drug testing of individuals who claim or receive compensation under this chapter shall be governed by s. 443.1715.

(12) For any week in which the individual is unavailable for work due to incarceration or imprisonment.

(13) For any week with respect to which the department finds that his or her unemployment is due to a discharge from employment for failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties. For purposes of this subsection, the term "good cause" includes, but is not limited to, failure of the employer to submit information required for a license, registration, or certification; short-term physical injury which prevents the employee from completing or taking a required test; and inability to take or complete a required test that is outside the employee's control.

The Department of Commerce shall publish quarterly data on the number of individuals who are denied benefits and the reasons for the denials; the average response time for unemployment claims; and the number of individuals who were disqualified from

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benefits due to failure to contact the required number of
prospective employers per week, to appear on three or more
occasions for a scheduled job interview without notifying the
prospective employer of the need to cancel or reschedule the
interview, or to return to employment when recalled to work by
the individuals' employers after a temporary layoff pursuant to
subsection (2).

T I T L E A M E N D M E N T

Remove line 7 and insert:

benefits; requiring the department to publish
quarterly data on specified information; creating s.
443.1112, F.S.; requiring the

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