A bill to be entitled

An act relating to reemployment assistance; amending s. 443.036, F.S.; defining the term "alternative base period" and revising the definition of the term "high quarter" for purposes of the Reemployment Assistance Program Law; amending s. 443.091, F.S.; revising requirements for reemployment assistance benefits eligibility; creating s. 443.092, F.S.; prohibiting the Department of Economic Opportunity from denying a person reemployment assistance solely on the basis of pregnancy; amending s. 443.111, F.S.; requiring an alternative base period to be used under certain circumstances when calculating wages in determining qualification for reemployment assistance benefits; requiring the department to contact an individual's employer if certain wage information is unavailable through specified means; specifying that wages that fall within an alternative base period are not available for reuse in subsequent benefit years; requiring the department to adopt rules; revising the weekly benefit amounts an individual may receive; replacing the term "Florida average unemployment rate" with the term "most recent monthly unemployment rate"; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit

year; increasing the duration of benefits; amending ss. 215.425, 443.1216, and 443.131, F.S.; conforming cross-references; reenacting ss. 443.041(2)(b) and 443.1116(6), (7), and (8)(a), F.S., relating to fees and short-time compensation, respectively, to incorporate the amendments made by the act; providing an effective date.

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

Section 1. Subsections (3) through (46) of section 443.036, Florida Statutes, are renumbered as subsections (4) through (47), respectively, present subsection (24) is amended, and a new subsection (3) is added to that section, to read:

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

(3) "Alternative base period" means the four most recently completed calendar quarters before an individual's benefit year, if such quarters qualify the individual for benefits and were not previously used to establish a prior valid benefit year.

(25) ~~(24)~~ "High quarter" means the quarter in an individual's base period, or in an individual's alternative base period if an alternative base period is used for determining benefits eligibility, in which the individual has the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

Section 2. Paragraphs (d) and (g) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least three ~~five~~ prospective employers for each week of unemployment claimed. For the purposes of meeting the requirements of this paragraph, a claimant may contact a prospective employer by submitting a resume to an employer through an online job search service. A claimant who submits a resume to at least three employers through an online job search service satisfies the work search requirements of this paragraph. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the

initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least three ~~five~~ prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this

subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least two ~~three~~ prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

(g) She or he has been paid wages for insured work equal

to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than $3,400. If an unemployed individual is ineligible for benefits based on base period wages, her or his wages shall be calculated using the alternative base period and her or his claim shall be established using such wages.

Section 3. Section 443.092, Florida Statutes, is created to read:

443.092 Denial of reemployment assistance solely on the basis of pregnancy prohibited.—The Department of Economic Opportunity may not deny a person reemployment assistance solely on the basis of pregnancy.

Section 4. Subsections (2) and (3) and paragraphs (a), (b), and (c) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) of that section is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking

work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(2) QUALIFYING REQUIREMENTS.—

(a) To establish a benefit year for reemployment assistance benefits, an individual must have:

1.~~(a)~~ Wage credits in two or more calendar quarters of the individual's base period or alternative base period.

2.~~(b)~~ Minimum total base period wage credits equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period, or in the alternative base period if the alternative base period is used for benefits eligibility.

(b)1. If an individual is ineligible for benefits based on base period wages, wages for that individual must be calculated using the alternative base period and the claim shall be established using such wages.

2. If the wage information for an individual's most recently completed calendar quarter is unavailable to the Department of Economic Opportunity from regular quarterly reports of systematically accessible wage information, the department must promptly contact the individual's employer to obtain the wage information.

3. Wages that fall within the alternative base period of

claims established under this paragraph are not available for reuse in qualifying for any subsequent benefit years.

4. The department shall adopt rules to administer this paragraph.

(3) WEEKLY BENEFIT AMOUNT.—

(a) Except as provided in paragraph (b), an individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than $100 ~~$32~~ or more than $375 ~~$275~~. The weekly benefit amount, if not a multiple of $1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(b) If an individual's weekly benefit amount calculated pursuant to paragraph (a) would result in a weekly benefit amount of less than $100, the individual's weekly benefit amount may not exceed one-thirteenth of the total wages for insured work paid during the quarter of the base period in which the total wages paid were the highest or $100, whichever is less.

(5) DURATION OF BENEFITS.—

(a) As used in this section, the term "most recent monthly unemployment rate" ~~"Florida average unemployment rate"~~ means the most recently available month's ~~average of the 3 months for the~~

~~most recent third calendar year quarter of the~~ seasonally adjusted statewide unemployment rate ~~rates~~ as published by the Department of Economic Opportunity.

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $9,375 ~~$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a month ~~calendar year~~, the duration of benefits is limited to:

1. Fourteen ~~Twelve~~ weeks if this state's most recent monthly ~~average~~ unemployment rate is at or below 5 percent.

2. An additional week in addition to the 14 ~~12~~ weeks for each 0.5 percent increment in this state's most recent monthly ~~average~~ unemployment rate above 5 percent.

3. Up to a maximum of 25 ~~23~~ weeks if this state's most recent monthly ~~average~~ unemployment rate equals or exceeds 10.5 percent.

Section 5. Paragraph (a) of subsection (4) of section 215.425, Florida Statutes, is amended to read:

215.425 Extra compensation claims prohibited; bonuses;

severance pay.—

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036 ~~s. 443.036(29)~~, by the unit of government.

Section 6. Paragraph (a) of subsection (1) and paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, are amended to read:

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

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s.

443.036 ~~s. 443.036(18)~~, which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions, and, whichever method is chosen, such election may not impact any other aspect of state law. An employee leasing company that elects the client method must pay contributions at the rates assigned to each client company.

(I) The election applies to all of the employee leasing company's current and future clients.

(II) The employee leasing company must notify the Department of Revenue of its election by July 1, 2012, and such election applies to reports and contributions for the first quarter of the following calendar year. The notification must include:

(A) A list of each client company and the unemployment account number or, if one has not yet been issued, the federal employment identification number, as established by the employee leasing company upon the election to file by client method;

(B) A list of each client company's current and previous employees and their respective social security numbers for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied;

(C) The wage data and benefit charges associated with each client company for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied. If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 2.7 percent; and

(D) The wage data and benefit charges for the prior 3

state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an

employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The applicable client company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The employee leasing company or its applicable client company is not liable for any violation of s. 443.071 engaged in by the other party or by the other party's officers or agents.

(VIII) If an employee leasing company fails to select the client method of reporting not later than July 1, 2012, the entity is required to report under the employee leasing company's tax identification number and contribution rate.

(IX) After an employee leasing company is licensed pursuant to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

(X) Irrespective of the election, each transfer of trade or business, including workforce, or a portion thereof, between employee leasing companies is subject to the provisions of s. 443.131(3)(h) if, at the time of the transfer, there is common

ownership, management, or control between the entities.

b. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Department of Economic Opportunity which includes each client establishment and each establishment of the leasing company, or as otherwise directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance account number, if available;

(III) The former federal employer's identification number, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify

each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

d. The department shall adopt rules as necessary to administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

e. For the purposes of this subparagraph, the term

"establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than

facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

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

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) or (c) ~~s. 443.036(35)(b) or (c)~~, to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 7. Paragraph (g) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(g) Transfer of employment records.—

1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, are deemed a single employer and are considered to be one employer with a continuous employment record if the tax

collection service provider finds that the successor employer continues to carry on the employing enterprises of all of the predecessor employers and that the successor employer has paid all contributions required of and due from all of the predecessor employers and has assumed liability for all contributions that may become due from all of the predecessor employers. In addition, an employer may not be considered a successor under this subparagraph if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions. As used in this paragraph, notwithstanding s. 443.036 ~~s. 443.036(14)~~, the term "contributions" means all indebtedness to the tax collection service provider, including, but not limited to, interest, penalty, collection fee, and service fee. A successor employer must accept the transfer of all of the predecessor employers' employment records within 30 days after the date of the official notification of liability by succession. If a predecessor employer has unpaid contributions or outstanding quarterly reports, the successor employer must pay the total amount with certified funds within 30 days after the date of the notice listing the total amount due. After the total indebtedness is paid, the tax collection service provider shall transfer the employment records of all of the predecessor employers to the

successor employer's employment record. The tax collection service provider shall determine the contribution rate of the combined successor and predecessor employers upon the transfer of the employment records, as prescribed by rule, in order to calculate any change in the contribution rate resulting from the transfer of the employment records.

2. Regardless of whether a predecessor employer's employment record is transferred to a successor employer under this paragraph, the tax collection service provider shall treat the predecessor employer, if he or she subsequently employs individuals, as an employer without a previous employment record or, if his or her coverage is terminated under s. 443.121, as a new employing unit.

3. The state agency providing reemployment assistance tax collection services may adopt rules governing the partial transfer of experience rating when an employer transfers an identifiable and segregable portion of his or her payrolls and business to a successor employing unit. As a condition of each partial transfer, these rules must require the following to be filed with the tax collection service provider: an application by the successor employing unit, an agreement by the predecessor employer, and the evidence required by the tax collection service provider to show the benefit experience and payrolls attributable to the transferred portion through the date of the transfer. These rules must provide that the successor employing

unit, if not an employer subject to this chapter, becomes an employer as of the date of the transfer and that the transferred portion of the predecessor employer's employment record is removed from the employment record of the predecessor employer. For each calendar year after the date of the transfer of the employment record in the records of the tax collection service provider, the service provider shall compute the contribution rate payable by the successor employer or employing unit based on his or her employment record, combined with the transferred portion of the predecessor employer's employment record. These rules may also prescribe what contribution rates are payable by the predecessor and successor employers for the period between the date of the transfer of the transferred portion of the predecessor employer's employment record in the records of the tax collection service provider and the first day of the next calendar year.

4. This paragraph does not apply to an employee leasing company and client contractual agreement as defined in s. 443.036, except as provided in s. 443.1216(1)(a)2.a. The tax collection service provider shall, if the contractual agreement is terminated or the employee leasing company fails to submit reports or pay contributions as required by the service provider, treat the client as a new employer without previous employment record unless the client is otherwise eligible for a variation from the standard rate.

Section 8. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 443.041, Florida Statutes, is reenacted to read:

443.041 Waiver of rights; fees; privileged communications.—

(2) FEES.—

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida is entitled to counsel fees payable by the department as set by the court if the petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than provided in the decision from which appeal was taken. The amount of the fee may not exceed 50 percent of the total amount of regular benefits permitted under s. 443.111(5)(b) during the benefit year.

Section 9. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in references thereto, subsections (6) and (7) and paragraph (a) of subsection (8) of section 443.1116, Florida Statutes, are reenacted to read:

443.1116 Short-time compensation.—

(6) WEEKLY SHORT-TIME COMPENSATION BENEFIT AMOUNT.—The weekly short-time compensation benefit amount payable to an individual is equal to the product of her or his weekly benefit

amount as provided in s. 443.111(3) and the ratio of the number of normal weekly hours of work for which the employer would not compensate the individual to the individual's normal weekly hours of work. The benefit amount, if not a multiple of $1, is rounded downward to the next lower multiple of $1.

(7) TOTAL SHORT-TIME COMPENSATION BENEFIT AMOUNT.—An individual may not be paid benefits under this section in any benefit year for more than the maximum entitlement provided in s. 443.111(5), and an individual may not be paid short-time compensation benefits for more than 26 weeks in any benefit year.

(8) EFFECT OF SHORT-TIME COMPENSATION BENEFITS RELATING TO THE PAYMENT OF REGULAR AND EXTENDED BENEFITS.—

(a) The short-time compensation benefits paid to an individual shall be deducted from the total benefit amount established for that individual in s. 443.111(5).

Section 10. This act shall take effect July 1, 2023.