

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 372

INTRODUCER: Senator Stargel

SUBJECT: Reemployment Assistance Fraud

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	Favorable
3.	<u>Little</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 372 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to provide certain driver license images to the Department of Economic Opportunity (DEO) in order to facilitate in the detection of fraudulent reemployment assistance claims.

The DHSMV estimates programing and implementation of the bill will cost approximately \$20,025. The bill may have an indeterminate positive fiscal impact on DEO's Reemployment Assistance Program.

The bill is effective upon becoming law.

II. Present Situation:

Reemployment Assistance Program

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet eligibility requirements of state law.¹ The program is administered as a partnership of the federal government and the states.²

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "Reemployment Assistance Program" in 2012.⁴ The DEO is

¹ United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Mar. 7, 2017).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ Chapter 18402, Laws of Fla.

⁴ Chapter 2012-30, Laws of Fla.

responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.⁵

An unemployed individual must apply to the DEO for benefits using Florida's Online Reemployment Assistance System.⁶ The DEO application process requires the claimant to provide their social security number and a secondary form of identification. Acceptable secondary forms of identification include any of the following:

- A driver's license containing a photograph or identifying information such as name, date of birth, sex, height, and address;
- Documentation issued by a federal, state, or local government agency containing a photograph or identifying information such as name, date of birth, sex, height, and address;
- A school identification card with photograph;
- A United States (U.S.) military ID, dependent's ID card, or U.S. Coast Guard Merchant Mariner card;
- Native American tribal document;
- U.S. passport (expired or unexpired); or
- Certificate of U.S. Citizenship or Certificate of Naturalization.⁷

In order to receive benefits, an applicant must also meet certain monetary and nonmonetary eligibility requirements.⁸ Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.⁹

Fraudulent Claims

In 2014, the DEO implemented the Fraud Initiative and Rules Rating Engine (FIRRE) program in order to detect fraud and identity theft within public-assistance programs. In the first year of implementation, the FIRRE program detected over 70,000 fraudulent claims for reemployment assistance benefits.¹⁰

In order to identify falsely filed claims, the FIRRE program cross matches identification information with external entities, including the claimant's social security and driver license information.¹¹ To cross match driver license information, the DEO has been provided limited access to the information database used by the DHSMV.¹² The DEO's current access does not include digital images contained in DHSMV's Driver and Vehicle Information Database

⁵ Section 20.60(5)(c), F.S. and s. 443.171, F.S.

⁶ Rule 73B-11.013(1), F.A.C.

⁷ Rule 73B-11.013(6), F.A.C.

⁸ See s. 443.091, F.S. and Rule 73B-11.013, F.A.C.

⁹ Section 443.151(3)(a), F.S.

¹⁰ Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. DEO, RE: Identify Theft and Fraud in Public Benefit Systems (March 13, 2015), available at <http://floridajobs.org/docs/default-source/communicationsfiles/3-13-15-deo-letter.pdf> (last visited Mar. 7, 2017).

¹¹ Department of Economic Opportunity, *Senate Bill 1216 Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

¹² *Id.*

(DAVID). Under s. 322.142, F.S., other state agencies have been given access to reproductions of the digital images for similar purposes.¹³ Federal law allows states to make such information available for a government agency to carry out its functions.¹⁴

Penalties and Disqualification

Under current law, any person who establishes a fictitious employing unit¹⁵ by submitting fraudulent documents through a computer system, by alteration or destruction of computer files, or by theft of financial instruments, data, and other assets for the purpose of enabling any person to receive benefits under the reemployment program commits a felony of the third degree.¹⁶ Establishment of a fictitious employing unit in violation of the reemployment assistance program is considered racketeering activity under Florida law.¹⁷

Any person who makes false or fraudulent representations for the purpose of obtaining benefits contrary to the reemployment assistance program commits a felony of the third degree. Each false or fraudulent representation constitutes a separate offense.¹⁸ A person who makes such representation is subject to a disqualification of benefits, beginning with the week in which the false or fraudulent representation is made. The disqualification may be imposed for a period of up to one year following the date the DEO discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation is repaid in full.¹⁹ The duration of disqualification for false or fraudulent representations in other states is comparable to Florida's current penalty, as the disqualification time period in most states is 52 weeks.²⁰

Recovery for Overpayment

Any person who receives benefits by fraud, to which he or she is not entitled, is liable for repaying those benefits to the DEO. Florida law also allows the DEO to impose a penalty equal to 15 percent of the amount overpaid.²¹

Upon discovery of an overpayment, the DEO makes a determination of the amount of overpayment and attempts to make recovery of the payment. To enforce this provision, the DEO must find the existence of fraud through a redetermination or a decision within two years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within

¹³ Section 322.142(4), F.S., provides access to digital license images, through interagency agreement, to the Department of Business and Professional Regulation, the Department of Health, the Department of State, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Financial Services.

¹⁴ 18 U.S.C. s. 2721(b)(1)

¹⁵ An employing unit means "an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing; or the legal representative of a deceased person; which has or had in its employ one or more individuals performing services for it within this state." Section 443.036(20), F.S.

¹⁶ Section 443.071(4), F.S.

¹⁷ Section 895.02(8)(a)7., F.S.

¹⁸ Section 443.071(1), F.S.

¹⁹ Section 443.101(6), F.S.

²⁰ For a review of other state laws, see US Dept. of Labor, *2016 Comparison of State Unemployment Laws*, available at <https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2016/complete.pdf> (last visited Mar. 7, 2017).

²¹ Section 443.151(6)(a), F.S.

seven years after the redetermination or decision.²² The DEO is required to collect the repayment of benefits without interest by the deduction of benefits through a redetermination or by a civil action.²³

III. Effect of Proposed Changes:

The bill amends s. 322.142, F.S., relating to color photographic or digital imaged licenses, to authorize the DHSMV to make and issue reproductions of color photographic or digital imaged licenses and signatures of licensees to the DEO. The DEO will be able to use such reproductions to facilitate in the validation of reemployment assistance claims and to identify fraudulent or false reemployment assistance claims.

Allowing the DEO access to the DHSMV database will likely increase the number of fraudulent and false claims detected by the DEO.²⁴

The bill provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

Private Sector Impact:

None.

²² *Id.*

²³ Section 443.151(6)(e), F.S.

²⁴ Department of Economic Opportunity, *Senate Bill 1216 Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

B. Government Sector Impact:

The DHSMV estimates programing and implementation of the bill will cost approximately \$20,025.²⁵

To the extent that the bill increases the number of fraudulent or false reemployment assistance claims detected by the DEO, there may be a positive fiscal impact to the Unemployment Compensation Benefit Trust Fund²⁶.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 322.142 of the Florida Statutes

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Department of Highway Safety and Motor Vehicles, *Senate Bill 372 Agency Legislative Bill Analysis*, (Feb. 6, 2017) (on file with the Senate Committee on Commerce and Tourism).

²⁶ Section 443.191, F.S.