

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1688

SPONSOR: Senator Meek and others

SUBJECT: Unemployment Compensation

DATE: March 26, 1999 REVISED: 3/29/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires the Department of Labor and Employment Security to contract with one or more consumer reporting agencies to provide creditors with secured electronic access to quarterly wage reports submitted by employers pursuant to the unemployment compensation law.

This bill creates s. 443.1716, Florida Statutes.

II. Present Situation:

Chapter 443, F.S., the unemployment compensation law, was established to implement the provisions of the Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code. The chapter delineates how Florida carries out these federal requirements, especially with regard to the tax on employers, the duration and amount of benefits paid to eligible claimants, procedures to appeal benefit and tax determinations, and the regulation of the Unemployment Compensation Trust Fund. The Division of Unemployment Compensation in the Department of Labor and Employment Security is responsible for implementing the provisions of ch. 443, F.S.

Rule 38B-2.025, F.A.C., provides that employers liable for unemployment compensation contributions must file a quarterly wage and tax report. These reports are due no later than the last day of the month following the calendar quarter for which they apply, and become delinquent on the first working day of the following month. Rule 38B-2.023, F.A.C., requires all reports submitted to the division to include the worker's social security number.

Sections 443.171(7) and 443.1715, F.S., 1998 Supp., provide that information revealing an individual's identity obtained from an employer or from any individual pursuant to the administration of the unemployment compensation program, and any determination revealing such information, must, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending, be held confidential and exempt from the Public Records Law (s. 119.07(1), F.S., and s. 24(a), Art. I of

the State Constitution). This information may be made available only to public employees in the performance of their public duties. Any employee or member of the Unemployment Appeals Commission or any employee of the division, or any other person receiving confidential information, who violates the record's confidentiality, commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.

The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹ Article I, s. 24, Florida Constitution, provides:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law² specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. This law further authorizes the custodian of the records to charge for the costs associated with providing access to these records. Section 119.07(1)(a) and (b), F.S., 1998 Supp., requires in part:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.
- (b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

The federal Fair Credit Reporting Act (FCRA) regulates the operations of consumer credit reporting agencies and users of consumer reports. Section 1681a, 15 U.S.C., provides definitions and rules of construction for the FCRA, and defines the term "consumer reporting agency" as any

¹Article I, s. 24 of the Florida Constitution.

²Chapter 119, F.S.

person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The U.S. Department of Labor's Employment and Training Administration (department) interprets federal law requirements pertaining to unemployment compensation as part of its role in the administration of the federal-state unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to state employment security agencies. Because of a growing interest by private entities to have electronic access to the wage data collected by states in order to verify income for individuals who apply for loans, UIPL 23-96 was released in May 1996, which advised states to the department's interpretation of federal law in regard to the disclosure of this information to private entities. In this UIPL, the department concluded that states may disclose employment and wage information to a private entity under a written agreement which:

- Requires informed consent from the individual to whom the information pertains;
- Continues to safeguard the information once in the hands of the private entity, and permits states to terminate the agreement if the state determines that the confidentiality provisions are not adhered to; and
- Requires the private entity to pay all costs associated with disclosure.

Furthermore, it is the department's position that income generated by a state unemployment compensation agency from the sale of its wage records must be used only as necessary for the proper and efficient administration of the unemployment compensation program pursuant to administrative requirements for grants to the states. (See 29 CFR 97.25(g)(2) and Employment and Training Handbook No. 336, the *Program and Budget Plan*.)

To date, Iowa, Minnesota, Texas, North Carolina, and Pennsylvania provide consumer reporting agencies with access to unemployment compensation wage reports.

III. Effect of Proposed Changes:

This bill creates s. 443.1716, F.S., to require the Florida Department of Labor and Employment Security (department) to contract with consumer reporting agencies to provide creditors with secured electronic access to employer-provided information relating to the quarterly wage reports submitted pursuant to the unemployment compensation law. Such access is subject to s. 119.07(1), F.S., s. 24(a) of Art. I of the State Constitution, and the federal Fair Credit Reporting Act (15 U.S.C. s. 1681a), and is limited to the wage reports for the preceding 16 calendar quarters.

The information released under this section may be used only to support a single consumer credit transaction, and qualified creditors must obtain a signed written consent from the credit applicant, which contains:

- Specific notice that the individual's wage and employment history information will be released to an approved consumer reporting agency;
- Notice that such release is made for the sole purpose of reviewing a specific application for credit made by the individual;
- Notice that the files of the department containing wage and employment history information submitted by the individual or his or her employers may be accessed; and
- A listing of the parties authorized to receive the released information.

The department must establish minimum audit, security, net-worth, and liability-insurance standards, technical requirements, and any other terms and conditions considered necessary in the discretion of the department to safeguard the confidentiality of the information released under this section and to otherwise serve the public interest.

In contracting with one or more consumer reporting agencies under this section, any revenues generated by such contract must be used to pay the entire cost of providing access to the information. Furthermore, in accordance with federal regulations, any additional revenues generated by the department or the state under this section must be paid into the department's trust fund for the administration of the unemployment compensation system.

The department may not provide wage and employment history information to any consumer reporting agency before the consumer reporting agency or agencies under contract with the department pay all development and other startup costs incurred by the state in connection with the design, installation, and administration of technological systems and procedures for the electronic-access program.

The release of any information under this section must be for a purpose authorized by and in the manner permitted by the U.S. Department of Labor and any subsequent rules or regulations adopted by that department.

This bill takes effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Labor and Employment Security estimates that the initial cost to develop a system for creditors to access unemployment compensation wage records is \$250,000, and \$45,000 annually to maintain the system. As required by the bill, the state would be required to use the revenues generated from providing access to wage records to cover these costs. Any additional revenues collected by the department would be required to be deposited in the department's trust fund for administration of the unemployment compensation program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its first review of the bill, the U.S. Department of Labor's Employment and Training Administration found that the bill does not meet all of the criteria set out in UIPL 23-96, and therefore, may not be in conformity with federal law and regulations. Specifically, once private entities are in possession of the wage information, they are not required to maintain its confidentiality, and the state is not given authority to terminate a contract for breach of confidentiality.

VIII. Amendments:

#1 by Commerce and Economic Opportunities:

Requires private entities to safeguard the confidentiality of wage reports. Provides that the Department of Labor and Employment Security must terminate the contract with the private entity for violation of law. Removes references to public records. Provides a definition for the word "creditor." (WITH TITLE AMENDMENT)