

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1017 Reemployment Assistance Fraud
SPONSOR(S): Economic Development & Tourism Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	White	Duncan
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Proctor	Davis
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill creates the "Department of Economic Opportunity Cybercrime Prevention Act." The bill permits the Florida Department of Highway Safety and Motor Vehicles to disclose to DEO, pursuant to an interagency agreement, images of licensees that it maintains, for the purpose of facilitating the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits.

The bill modifies the disqualification period imposed on claimants who make false or fraudulent representations for the purpose of obtaining benefits. A claimant found to have committed fraud would be disqualified from benefits for up to one year after DEO discovers the false or fraudulent representation, as provided by current law. However, if the false or fraudulent representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, then the claimant would be disqualified from benefits for five years for the first such act; and 10 years for subsequent acts.

The bill amends the definition of "racketeering activity," as it relates to Florida's Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as "racketeering activity," the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

The bill may have an indeterminate, but likely insignificant fiscal impact on the state. On January 29, 2016, the Criminal Justice Impact Conference met on the Senate companion measure, SB 1216. Regarding the provision expanding the definition of racketeering activity, the conference adopted a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). See fiscal comments.

The bill provides that it takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Reemployment Assistance

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 the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.² States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act (FUTA) or the Social Security Act requirements.³

Florida's unemployment insurance program was created by the Legislature in 1937,⁴ and rebranded as the "reemployment assistance" program in 2012.⁵ The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division of Workforce Services (Division). The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.⁶

Collection of Taxes Associated with Reemployment Assistance

Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service (IRS) collects an annual federal payroll tax under FUTA.⁷ FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. Additionally, FUTA pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁸ The IRS charges each liable employer a federal unemployment tax of 6.0 percent.⁹ If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net tax rate 0.6 percent.¹⁰

In Florida, RA benefits are financed solely through contributions by employers.¹¹ The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience," the balance of the Unemployment Compensation Trust Fund (UCTF), and other factors. The employer's experience rating is based on the employer's own employment records,¹² and serves to stabilize the UCTF, as well as ensure that all employers pay their fair share based on their own

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 Jan. 26, 2016).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, Annual Statistical Supplement, *available at* <https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html> (Last visited Jan., 26, 2016).

³ *Id.*

⁴ Chapter 18402, L.O.F.

⁵ Chapter 2012-30, L.O.F.

⁶ Section 443.1316, F.S.

⁷ FUTA is codified at 26 U.S.C. ss. 3301-3311.

⁸ United States Department of Labor, Employment and Training Administration, "Unemployment Insurance Tax Topic," *available at* <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (Last visited Jan. 26, 2016).

⁹ 26 U.S.C. s. 3301.

¹⁰ *Supra* note 8.

¹¹ As of Jan. 2015, contributing employers pay taxes on the first \$7,000 of each employee's wages, instead of \$8,000. *See* s. 443.1217(2)(a), F.S. While most employers are "contributory employers," state and local governments are "reimbursing employers." As such, they pay into the UCTF on a dollar-for-dollar basis for benefits paid to former employees. *See* s. 443.1312, F.S.

¹² Florida DOR, "Employer Guide to Reemployment Tax," *available at* <http://dor.myflorida.com/dor/forms/current/rt800002.pdf> (Last visited Jan. 26, 2016).

experience rating. An employer's tax rate is adjusted annually, and may vary from the maximum rate of 5.4 percent to the minimum rate, which varies each year based on adjustment factors.¹³

Recovery of Overpayments for Non-Fraudulent Claims

State laws generally differ in their identification, establishment, and collection of overpayments. Like most states, Florida's recovery of non-fraudulent overpayments includes several options, such as wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.¹⁴

Upon discovering an overpayment, DEO makes a determination of the amount of overpayment and attempts to make recovery of the overpayment. However, DEO must obtain a final judgment through the civil court system before it may utilize the wage garnishment process provided for in ch. 77, F.S.¹⁵ Interest is not assessed, unless and until a civil judgement is entered. For both fraudulent and non-fraudulent cases, the commencement of collections must be initiated within seven years.¹⁶

Fraudulent Claims

When an unemployed individual files a claim for unemployment assistance,¹⁷ DEO validates their identity based on daily cross matches with external entities, obtained through inter-agency agreements.¹⁸ A cross match with the Social Security Administration (SSA) is conducted for all new claims to establish that the social security number used to file a claim is the number assigned to that individual. To further validate identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (HSMV). Because DEO does not have access to the full databases of these external partners, DEO must complete additional verification procedures when exceptions occur.¹⁹ The Fraud Initiative and Rules Rating Engine (FIRRE) unit, within DEO, uses specially-developed "algorithms to identify falsely filed claims and block them from receiving benefits."²⁰ In its first year of operation, FIRRE identified nearly 70,000 fraudulent claims.²¹

In addition to recovery of overpayments, a case in which fraud is established subjects the claimant to disqualification from receiving benefits for up to one year from the date DEO discovers the false or fraudulent representation, and until the overpayment has been repaid in full.²² Additionally, DEO may refer the case to the state attorney for prosecution as a third degree felony.²³

The duration of disqualification for fraud in other states is comparable to Florida's, with the majority of states setting it at 52 weeks. Some states further penalize subsequent offenses, such as Alabama which provides a 104 week disqualification for second and subsequent offenses, or Maine which penalizes a third offense with a disqualification to be set by the commissioner of the state RA program. Kansas appears to have the strictest duration of disqualification, which it sets at the latter of five years after commission of the fraudulent act, or after the first day following the last week for which benefits were paid. No states have imposed, in law, a lifetime disqualification.²⁴

¹³ *Id.*, at 14.

¹⁴ For state laws on over payments, see US Dept. of Labor, Comparison of State Unemployment Laws, *Chapter 6 Overpayments*, available at <http://www.unemploymentinsurance.doleta.gov/unemploy/comparison2015.asp> (Last visited Jan. 28, 2016).

¹⁵ Section 443.151(6)(e), F.S.

¹⁶ Section 443.151(6)(a), F.S.

¹⁷ Section 443.151(2), F.S., requires claims to be filed using the Internet.

¹⁸ In 2013, DEO implemented a new Reemployment Assistance Claims and Benefits Information System pursuant to the requirements of s. 443.1113, F.S.

¹⁹ DEO has limited access to HSMV's Driver and Vehicle Information Database (DAVID) through an inter-agency agreement.

²⁰ DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017, at 3 (Jan. 7, 2016).

²¹ Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. Fla. DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).

²² Section 443.101(6), F.S.

²³ Section 443.071, F.S. makes it a third degree felony to make "a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any benefits or other payment..."

²⁴ Information for this paragraph is summarized from tables by the US Dept. of Labor. *Supra* note 14.

Identity Fraud

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.²⁵ Identity fraud, which is also known as identity theft, is a criminal act that occurs when a person illegally obtains someone else's personal information and uses that information to commit fraud or theft.²⁶ According to the Federal Trade Commission's most recent Consumer Sentinel Network Data Book, "Florida is the state with the highest per capita rate of reported identity theft complaints...."²⁷ Identity thieves often take names, Social Security numbers (coupled with birth dates), bank account and credit card numbers, and passwords to obtain credit and credit cards, drain money from bank accounts, establish new accounts, apply for loans using the victims' names, and commit other crimes to enrich themselves.²⁸

Racketeering

Section 895.02, F.S., defines a racketeering activity to include the creation of fictitious employer schemes, by reference to s. 443.071(4), F.S. However, the definition of racketeering does not encompass employment benefit fraud, a third degree felony. Instead, s. 443.071(1), F.S., makes employment benefit fraud punishable by a possible combination of penalties, fines, and mandatory minimum prison terms set out in ss. 775.082-084, F.S.

DEO has stated that increased amounts of fraudulent claims have their origin in "organized criminal enterprises... attacking public-benefit systems."²⁹ When benefits are obtained by an individual who is using a stolen identity to obtain benefits, DEO cannot investigate the individual making the fraudulent claim, but instead refers such cases to the Florida Department of Law Enforcement and the Inspector General of the U.S. Department of Labor.³⁰

Effect of Proposed Changes

The bill creates the "Department of Economic Opportunity Cybercrimes Prevention Act."

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes HSMV to disclose images and signatures of licensees to DEO, pursuant to an interagency agreement. The images and signatures of licensees maintained by HSMV are not public records and are exempt from the provisions of s. 119.07(1), F.S.

The bill modifies the duration of disqualification for reemployment assistance benefits obtained by false or fraudulent representation. A claimant found to have committed fraud, continues to be subject to a disqualification from benefits for up to one year after the date DEO discovers the false or fraudulent representation was made. However, a claimant making a false or fraudulent representation, in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information would be subject to:

- Five years disqualification from unemployment benefits for the first such act; and
- 10 years disqualification from unemployment benefits for subsequent acts.

²⁵ Black's Law Dictionary (9th ed. 2009).

²⁶ Federal Bureau of Investigation, *Identity Theft Overview*, available at http://www.fbi.gov/about-us/investigate/cyber/identity_theft/identity-theft-overview (last visited Feb. 1, 2016).

²⁷ Federal Trade Commission, *Consumer Sentinel Network Data Book for January-December 2013* (February 2014) p. 3, available at <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> (last visited on Feb. 1, 2016).

²⁸ Florida Office of the Attorney General, *About Identity Theft Crimes*, available at <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited Feb. 1, 2016).

²⁹ Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exec. Dir. FL DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).

³⁰ DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017 (Jan. 7, 2016).

The bill amends the definition of “racketeering activity,” as it relates to Florida’s Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as “racketeering activity,” the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

Lastly, the bill provides that it becomes effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1: Creates the “Department of Economic Opportunity Cybercrimes Prevention Act.”
- Section 2: Amends chapter 322.142, F.S., authorizing HSMV to provide DEO with the color photographic or digital imaged licenses and signatures of licensees that they maintain.
- Section 3: Amends s. 443.101(6), F.S., providing additional disqualifications for reemployment assistance benefits for claimants making false or fraudulent representations in furtherance of crimes related to identity theft.
- Section 4: Amends s. 895.02(1)(a)7, F.S., to provide that ‘racketeering activity’ includes a crime that is chargeable under ss. 443.071(1), F.S., relating to reemployment assistance fraud.
- Section 5: Provides that the bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.

- 2. Expenditures:

The bill may have an insignificant impact due to the data sharing option provided with the Department of Highway Safety and Motor Vehicles. The Department of Economic Opportunity is already engaged in activities to prevent fraud in the reemployment assistance claims process using existing resources.

On January 29, 2016, the Criminal Justice Impact Conference met on the Senate companion measure, SB 1216. Regarding the provision expanding the definition of racketeering activity, the conference adopted a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.

- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate insignificant fiscal impact related to any reduction in the payment of unemployment taxes as a result of any reduction achieved in fraudulent RA claims.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Economic Development & Tourism Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions authorizing DEO to hire law enforcement officer.
- Altered the duration of disqualification for fraudulent claims linked to identity theft.
- Removed provisions authorizing DEO to recover overpayments of reemployment assistance benefits through attachment and garnishment proceedings.

This analysis has been updated to reflect the amendment.