

By the Committee on Commerce and Economic Opportunities and
Senator Holzendorf

310-1828-98

1 A bill to be entitled
2 An act relating to rulemaking authority with
3 respect to the Department of Labor and
4 Employment Security (RAB); amending s. 413.011,
5 F.S.; authorizing rulemaking for vocational
6 rehabilitation programs and forms; amending s.
7 413.051, F.S.; authorizing rulemaking for a
8 vending facility program; amending ss. 443.036,
9 443.091, 443.131, 443.141, 443.151, F.S.;
10 defining and modifying specific terms; allowing
11 the Division of Unemployment Compensation to
12 adopt rules to determine a claimant's ability
13 to work and availability for work; allowing the
14 division to prescribe by rule training
15 criteria; clarifying types of contracts;
16 allowing the division to adopt rules regarding
17 total succession, procedures for changing
18 methods of reporting, the application of
19 partial payments and monetary and nonmonetary
20 determinations and investigations of
21 eligibility; amending s. 450.121, F.S.;
22 authorizing the Division of Jobs and Benefits
23 to adopt rules that define terms, prescribe
24 documentation for proof of age, prescribe
25 procedure with respect to removal of disability
26 of nonage, require certain safety equipment and
27 a safe workplace for minors, prescribe
28 deadlines for responses to records requests,
29 and state an official address; amending s.
30 450.30, F.S.; authorizing the division to adopt
31 rules prescribing procedures for registering as

1 a farm labor contractor; amending s. 450.33,
2 F.S.; requiring insurance carriers to notify
3 the division of impending cancellation of
4 insurance on vehicles that transport farm
5 workers; amending s. 450.38, F.S.; authorizing
6 the division to adopt rules containing criteria
7 for determining the amount of civil penalties;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraphs (l) and (m) are added to
13 subsection (1) of section 413.011, Florida Statutes, to read:

14 413.011 Division of Blind Services, internal
15 organizational structure; Advisory Council for the Blind.--

16 (1) The internal organizational structure of the
17 Division of Blind Services shall be designed for the purpose
18 of insuring the greatest possible efficiency and effectiveness
19 of services to the blind and to be consistent with chapter 20.
20 The Division of Blind Services shall plan, supervise, and
21 carry out the following activities:

22 (l) Adopt by rule procedures for providing vocational
23 rehabilitation services for the blind.

24 (m) Adopt by rule forms and instructions to be used by
25 the division in its general administration.

26 Section 2. Subsection (12) of section 413.051, Florida
27 Statutes, is amended to read:

28 413.051 Eligible blind persons; operation of vending
29 stands.--

30 (12) The Division of Blind Services may adopt ~~is~~
31 ~~authorized to promulgate~~ rules to permit the division to

1 establish and maintain vending facilities, issue licenses,
2 establish and maintain a vending-facility training program,
3 provide vendors access to financial data of the program, set
4 aside funds from net proceeds of the vending facility, provide
5 for the transfer and promotion of vendors, establish a vendors
6 committee, provide for an operation agreement, provide duties
7 and responsibilities of the division with respect to the
8 vending facility program, and provide procedures for newspaper
9 vending sales ~~as needed to implement the provisions of this~~
10 ~~section.~~

11 Section 3. Section 443.036, Florida Statutes, is
12 amended to read:

13 443.036 Definitions.--As used in this chapter, unless
14 the context clearly requires otherwise:

15 (1) ABLE TO WORK.--The term "able to work" means
16 physically and mentally capable of performing the duties of
17 the occupation in which work is being sought.

18 (2)~~(1)~~ AGRICULTURAL LABOR.--The term "agricultural
19 labor" means any remunerated service performed:

20 (a) On a farm, in the employ of any person, in
21 connection with cultivating the soil or in connection with
22 raising or harvesting any agricultural or horticultural
23 commodity, including the raising, shearing, feeding, caring
24 for, training, and management of livestock, bees, poultry, and
25 fur-bearing animals and wildlife.

26 (b) In the employ of the owner or tenant or other
27 operator of a farm in connection with the operation,
28 management, conservation, improvement, or maintenance of such
29 farm and its tools and equipment, or in salvaging timber or
30 clearing land of brush and other debris left by a hurricane if
31 the major part of such service is performed on a farm.

1 (c) In connection with the production or harvesting of
2 any commodity defined as an agricultural commodity in s. 15(g)
3 of the Agricultural Marketing Act, as amended (46 Stat. 1550,
4 s. 3; 12 U.S.C. s. 1141j ~~s. 114j~~); the ginning of cotton; or
5 the operation or maintenance of ditches, canals, reservoirs,
6 or waterways, not owned or operated for profit, used
7 exclusively for supplying and storing water for farming
8 purposes.

9 (d)1. In the employ of the operator of a farm in
10 handling, planting, drying, packing, packaging, processing,
11 freezing, grading, storing, or delivering to storage or to
12 market or to a carrier for transportation to market, in its
13 unmanufactured state, any agricultural or horticultural
14 commodity, but only if such operator produced more than
15 one-half of the commodity with respect to which such service
16 is performed.

17 2. In the employ of a group of operators of farms (or
18 a cooperative organization of which such operators are
19 members) in the performance of service described in
20 subparagraph 1., but only if such operators produced more than
21 one-half of the commodity with respect to which such service
22 is performed.

23 3. The provisions of subparagraphs 1. and 2. shall not
24 be deemed to be applicable with respect to service performed
25 in connection with commercial canning or commercial freezing
26 or in connection with any agricultural or horticultural
27 commodity after its delivery to a terminal market for
28 distribution for consumption or in connection with grading,
29 packing, packaging, or processing fresh citrus fruits.

30 (e) On a farm operated for profit if such service is
31 not in the course of the employer's trade or business.

1 ~~(3)(2)~~ AMERICAN AIRCRAFT.--The term "American
2 aircraft" means an aircraft registered under the laws of the
3 United States.

4 ~~(4)(3)~~ AMERICAN EMPLOYER.--An "American employer"
5 means:

6 (a) An individual who is a resident of the United
7 States.

8 (b) A partnership, if two-thirds or more of the
9 partners are residents of the United States.

10 (c) A trust, if all of the trustees are residents of
11 the United States.

12 (d) A corporation organized under the laws of the
13 United States or of any state.

14 ~~(5)(4)~~ AMERICAN VESSEL.--The term "American vessel"
15 means any vessel documented or numbered under the laws of the
16 United States and includes any vessel which is neither
17 documented or numbered under the laws of the United States nor
18 documented under the laws of any foreign country, if its crew
19 is employed solely by one or more citizens or residents of the
20 United States or corporations organized under the laws of the
21 United States or of any state.

22 (6) AVAILABLE FOR WORK.--The term "available for work"
23 means actively seeking and being ready and willing to accept
24 suitable employment.

25 ~~(7)(5)~~ BASE PERIOD.--"Base period" means the first
26 four of the last five completed calendar quarters immediately
27 preceding the first day of an individual's benefit year.

28 ~~(8)(6)~~ BENEFIT YEAR.--"Benefit year," with respect to
29 any individual, means the 1-year period beginning with the
30 first day of the first week with respect to which the
31 individual first files a valid claim for benefits and,

1 thereafter, the 1-year period beginning with the first day of
2 the first week with respect to which the individual next files
3 a valid claim for benefits after the termination of his or her
4 last preceding benefit year. Any claim for benefits made in
5 accordance with s. 443.151(2) shall be deemed to be a "valid
6 claim" for the purposes of this subsection if the individual
7 has been paid wages for insured work in accordance with the
8 provisions of s. 443.091(1)(f)~~s. 443.091(1)(e)~~ and is
9 unemployed as defined in subsection (39)~~(32)~~ at the time of
10 the filing of such claim. However, the division may in its
11 discretion provide by rule for the establishment of a uniform
12 benefit year for all workers in one or more groups or classes
13 of service or within a particular industry when and if it has
14 been determined by the division, after notice to the industry
15 and to the workers in such industry and an opportunity to be
16 heard in the matter, that such groups or classes of workers in
17 a particular industry periodically experience unemployment
18 resulting from layoffs or shutdowns for limited periods of
19 time.

20 (9)~~(7)~~ BENEFITS.--"Benefits" means the money payable
21 to an individual, as provided in this chapter, with respect to
22 his or her unemployment.

23 (10)~~(8)~~ CALENDAR QUARTER.--"Calendar quarter" means
24 each period of 3 consecutive calendar months ending on March
25 31, June 30, September 30, and December 31.

26 (11)~~(9)~~ CASUAL LABOR.--"Casual labor" means labor
27 which is occasional, incidental, or irregular, not exceeding
28 200 person-hours in total duration. "Duration" means the
29 period of time from the commencement to the completion of the
30 particular job or project. However, services performed by an
31 employee for his or her employer during a period of 1 calendar

1 month or any 2 consecutive calendar months shall be deemed to
2 be casual labor only if such service is performed on not more
3 than 10 calendar days, whether or not such days are
4 consecutive. If any of the services of an individual on a
5 particular labor project are not casual labor, as defined,
6 then none of the services of such individual on such job or
7 project shall be deemed casual labor. In order for services to
8 be exempt under this subsection, such services shall
9 constitute casual labor, as defined, and not in the course of
10 the employer's trade or business, as defined.

11 (12)~~(10)~~ COMMISSION.--"Commission" means the
12 Unemployment Appeals Commission of the Department of Labor and
13 Employment Security.

14 (13)~~(11)~~ CONTRIBUTIONS.--"Contributions" means the
15 money payments to the Unemployment Compensation Trust Fund
16 required by this chapter.

17 (14)~~(12)~~ CREW LEADER.--"Crew leader" means an
18 individual who:

19 (a) Furnishes individuals to perform service in
20 agricultural labor for any other person.

21 (b) Pays, either on his or her own behalf or on behalf
22 of such other person, the individuals so furnished by him or
23 her for the service in agricultural labor performed by them.

24 (c) Has not entered into a written agreement with such
25 other person under which such individual is designated as an
26 employee of such other person.

27 (15)~~(13)~~ DIVISION.--"Division" means the Division of
28 Unemployment Compensation of the Department of Labor and
29 Employment Security.

30 (16)~~(14)~~ EARNED INCOME.--The term "earned income"
31 means gross remuneration derived from work, professional

1 service, or self-employment but does not include income
2 derived from invested capital or ownership of property. The
3 term includes commissions, bonuses, back pay awards, and the
4 cash value of all remuneration paid in any medium other than
5 cash.

6 (17)~~(15)~~ EDUCATIONAL INSTITUTION.--With the exception
7 of an institution of higher education as defined in subsection
8 (26)~~(24)~~, "educational institution" means an institution:

9 (a) In which participants, trainees, or students are
10 offered an organized course of study or training designed to
11 transfer to them knowledge, skills, information, doctrines,
12 attitudes, or abilities from, by, or under the guidance of, an
13 instructor or teacher;

14 (b) Which is approved, licensed, or issued a permit to
15 operate as a school by the Department of Education or other
16 governmental agency that is authorized within the state to
17 approve, license, or issue a permit for the operation of a
18 school; and

19 (c) Which offers courses of study or training which
20 are academic, technical, trade, or preparation for gainful
21 employment in a recognized occupation.

22 (18)~~(16)~~ EMPLOYEE LEASING COMPANY.--The term "employee
23 leasing company" means an employing unit which maintains a
24 valid and active license under chapter 468 and which maintains
25 the records required by s. 443.171(7) and, in addition,
26 maintains a listing of the clients of the employee leasing
27 company and of the employees, including their social security
28 numbers, who have been assigned to work at each client company
29 job site. Further, each client company job site must be
30 identified by industry, products or services, and address. The
31 client list shall be provided to the division by June 30 and

1 by December 31 of each year. For purposes of this subsection,
2 "client" means a party who has contracted with an employee
3 leasing company to provide a worker, or workers, to perform
4 services for the client. Leased employees shall include
5 employees subsequently placed on the payroll of the employee
6 leasing company on behalf of the client. The employee leasing
7 company shall notify the division within 30 days of the
8 initiation or termination of the company's relationship with
9 any client company pursuant to chapter 468.

10 (19)~~(17)~~ EMPLOYER.--"Employer" means:

11 (a) Any employing unit which:

12 1. In any calendar quarter in either the current or
13 preceding calendar year paid for service in employment wages
14 of \$1,500 or more; or

15 2. For any portion of a day in each of 20 different
16 calendar weeks, whether or not such weeks were consecutive, in
17 either the current or the preceding calendar year, had in
18 employment at least one individual, irrespective of whether
19 the same individual was in employment in each such day.

20 (b) Any employing unit for which service in
21 employment, as defined in paragraph(21)(b)~~(19)(b)~~, is
22 performed, except as provided in paragraph (e).

23 (c) Any employing unit for which service in
24 employment, as defined in paragraph(21)(c)~~(19)(c)~~, is
25 performed, except as provided in paragraph (e).

26 (d)1. Any employing unit for which agricultural labor,
27 as defined in paragraph(21)(e)~~(19)(e)~~, is performed after
28 December 31, 1977.

29 2. Any employing unit for which domestic service in
30 employment, as defined in paragraph(21)(g)~~(19)(g)~~, is
31 performed after December 31, 1977.

1 (e)1. In determining whether or not an employing unit
2 for which service other than domestic service is also
3 performed is an employer under paragraph (a), paragraph (b),
4 or paragraph (c) or subparagraph (d)1., the wages earned or
5 the employment of an employee performing domestic service
6 after December 31, 1977, shall not be taken into account.

7 2. In determining whether or not an employing unit for
8 which service other than agricultural labor is also performed
9 is an employer under paragraph (a), paragraph (b), or
10 paragraph (c) or subparagraph (d)2., the wages earned or the
11 employment of an employee performing service in agricultural
12 labor after December 31, 1977, shall not be taken into
13 account. If an employing unit is determined to be an employer
14 of agricultural labor, the employing unit shall be determined
15 an employer for the purposes of paragraph (a).

16 (f) Any individual or employing unit which acquired
17 the organization, trade, or business, or substantially all the
18 assets thereof, of another which at the time of such
19 acquisition was an employer subject to this chapter or which
20 acquired a part of the organization, trade, or business of
21 another which at the time of such acquisition was an employer
22 subject to this chapter, provided such other would have been
23 an employer under paragraph (a) if such part had constituted
24 its entire organization, trade, or business.

25 (g) Any individual or employing unit which acquired
26 the organization, trade, or business, or substantially all the
27 assets thereof, of another employing unit, if the employment
28 record of the predecessor prior to such acquisition together
29 with the employment record of such individual or employing
30 unit subsequent to such acquisition, both within the same
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1 calendar year, would be sufficient to render an employing unit
2 subject to this chapter as an employer under paragraph (a).

3 (h) Any employing unit not an employer by reason of
4 any other paragraph of this subsection:

5 1. For which, within either the current or preceding
6 calendar year, service is or was performed with respect to
7 which such employing unit is liable for any federal tax
8 against which credit may be taken for contributions required
9 to be paid into a state unemployment fund.

10 2. Which, as a condition for approval of this chapter
11 for full tax credit against the tax imposed by the Federal
12 Unemployment Tax Act, is required pursuant to such act to be
13 an "employer" under this chapter.

14 (i) Any employing unit which has become an employer
15 under paragraph (a), paragraph (b), paragraph (c), paragraph
16 (d), paragraph (e), paragraph (f), paragraph (g), or paragraph
17 (h) and has not ceased to be an employer subject to this
18 chapter, as provided in s. 443.121.

19 (j) For the effective period of its election, any
20 other employing unit which has elected to become subject to
21 this chapter.

22 (k) Any employing unit which fails to keep the records
23 of employment required by this chapter and by the rules of the
24 division shall be presumed to be an employer liable for the
25 payment of contributions pursuant to the provisions of this
26 chapter, regardless of the number of individuals employed by
27 such employing unit. However, the division shall make written
28 demand that such employing unit keep and maintain required
29 payroll records, and such demand shall have been made not less
30 than 6 months before assessing contributions against any
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1 employing unit determined to have become an "employer" solely
2 by reason of this paragraph.

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4 For purposes of this subsection, if any week includes both
5 December 31 and January 1, the days of that week up to January
6 1 shall be deemed 1 calendar week, and the days beginning
7 January 1, another such week.

8 (20)~~(18)~~ EMPLOYING UNIT.--"Employing unit" means any
9 individual or type of organization, including any partnership,
10 association, trust, estate, joint-stock company, insurance
11 company, or corporation, whether domestic or foreign; the
12 receiver, trustee in bankruptcy, trustee, or successor of any
13 of the foregoing; or the legal representative of a deceased
14 person, which has or had in its employ one or more individuals
15 performing services for it within this state.

16 (a) Each individual employed to perform or to assist
17 in performing the work of any agent or employee of an
18 employing unit shall be deemed to be employed by such
19 employing unit for all the purposes of this chapter, whether
20 such individual was hired or paid directly by such employing
21 unit or by such agent or employee, provided the employing unit
22 had actual or constructive knowledge of the work.

23 (b) All individuals performing services within this
24 state for any employing unit which maintains two or more
25 separate establishments within this state shall be deemed to
26 be performing services for a single employing unit for all the
27 purposes of this chapter.

28 (c) Any person who is an officer of a corporation and
29 who performs services for such corporation within this state,
30 whether or not such services are continuous, shall be deemed
31 an employee of the corporation during all of each week of his

1 or her tenure of office, regardless of whether or not he or
2 she is compensated for such services. Services shall be
3 presumed to have been rendered the corporation in cases where
4 such officer is compensated by means other than dividends upon
5 shares of stock of such corporation owned by him or her.

6 (21)~~(19)~~ EMPLOYMENT.--"Employment," subject to the
7 other provisions of this chapter, means any service performed
8 by an employee for the person employing him or her.

9 (a) Generally.--

10 1. The term "employment" includes any service
11 performed prior to January 1, 1978, which was employment as
12 defined in this subsection prior to such date and, subject to
13 the other provisions of this subsection, service performed
14 after December 31, 1977, including service in interstate
15 commerce, by:

16 a. Any officer of a corporation.

17 b. Any individual who, under the usual common-law
18 rules applicable in determining the employer-employee
19 relationship, has the status of an employee. However, whenever
20 a company, hereafter referred to as "client," which would
21 otherwise be designated as an employing unit has contracted
22 with an employee leasing company to supply it with workers,
23 those workers shall, after December 31, 1986, be considered
24 employees of the employee leasing company. The employee
25 leasing company shall be permitted to lease corporate officers
26 of the client to the client and such other workers where not
27 prohibited by Internal Revenue Service regulations. Employees
28 of the employee leasing company shall be reported under the
29 employee leasing company's tax identification number and tax
30 rate for work performed for the employee leasing company.

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1 c. Any individual other than an individual who is an
2 employee under sub-subparagraph a. or sub-subparagraph b., who
3 performs services for remuneration for any person:

4 (I) As an agent-driver or commission-driver engaged in
5 distributing meat products, vegetable products, fruit
6 products, bakery products, beverages (other than milk), or
7 laundry or drycleaning services for his or her principal.

8 (II) As a traveling or city salesperson, other than as
9 an agent-driver or commission-driver, engaged on a full-time
10 basis in the solicitation on behalf of, and the transmission
11 to, his or her principal (except for sideline sales activities
12 on behalf of some other person) of orders from wholesalers,
13 retailers, contractors, or operators of hotels, restaurants,
14 or other similar establishments for merchandise for resale or
15 supplies for use in their business operations.

16
17 For purposes of sub-subparagraph c., the term "employment"
18 includes services described in sub-sub-subparagraphs (I) and
19 (II) only if: The contract of service contemplates that
20 substantially all of the services are to be performed
21 personally by such individual; the individual does not have a
22 substantial investment in facilities used in connection with
23 the performance of the services, other than in facilities for
24 transportation; and the services are not in the nature of a
25 single transaction that is not part of a continuing
26 relationship with the person for whom the services are
27 performed.

28 2. Notwithstanding any other provisions of this
29 subsection, service with respect to which a tax is required to
30 be paid under any federal law imposing a tax against which
31 credit may be taken for contributions required to be paid into

1 a state unemployment fund or which as a condition for full tax
2 credit against the tax imposed by the Federal Unemployment Tax
3 Act is required to be covered under this chapter.

4 3. If the services performed during one-half or more
5 of any pay period by an employee for the person employing him
6 or her constitute employment, all of the services of such
7 employee for such period shall be deemed to be employment, but
8 if the services performed during more than one-half of any
9 such pay period by an employee for the person employing him or
10 her do not constitute employment, then none of the services of
11 such employee for such period shall be deemed to be
12 employment. This subparagraph shall not be applicable with
13 respect to services performed in a pay period by an employee
14 for the person employing him or her, when any of such service
15 is excepted by subparagraph (n)7.

16 4. If two or more related corporations concurrently
17 employ the same individual and compensate such individual
18 through a common paymaster, each related corporation shall be
19 considered to have paid as wages to such individual only the
20 amounts actually disbursed by it to such individual and shall
21 not be considered to have paid as wages to such individual any
22 amounts actually disbursed to such individual by another of
23 such corporations.

24 a. A "common paymaster" is any member of a group of
25 related corporations that disburses wages to concurrent
26 employees on behalf of the related corporations and that is
27 responsible for keeping payroll records with respect to those
28 concurrent employees. The common paymaster is not required to
29 disburse wages to all the employees of the related
30 corporations, but the provisions of this section shall not
31 apply to any wages to concurrent employees that are not

1 disbursed through a common paymaster. The common paymaster
2 shall pay concurrently employed individuals under this section
3 by one combined paycheck.

4 b. "Concurrent employment" means the existence of
5 simultaneous employment relationships, as defined in this
6 chapter, between an individual and related corporations. Such
7 relationships require the performance of services by the
8 employee for the benefit of the related corporations,
9 including the common paymaster, in exchange for wages which,
10 if deductible for the purposes of federal income tax, would be
11 deductible by the related corporations.

12 c. Corporations shall be considered related
13 corporations for an entire calendar quarter, as defined in
14 subsection (10)~~(8)~~, if they satisfy any one of the following
15 four tests at any time during that calendar quarter:

16 (I) The corporations are members of a "controlled
17 group of corporations" as defined in s. 1563 of the Internal
18 Revenue Code of 1986 or would be members if paragraph
19 1563(a)(4) and subsection 1563(b) did not apply.

20 (II) In the case of a corporation that does not issue
21 stock, either 50 percent or more of the members of the board
22 of directors or other governing body of one corporation are
23 members of the board of directors or other governing body of
24 the other corporation, or the holders of 50 percent or more of
25 the voting power to select such members are concurrently the
26 holders of more than 50 percent of that power with respect to
27 the other corporation.

28 (III) Fifty percent or more of the officers of one
29 corporation are concurrently officers of the other
30 corporation.

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1 (IV) Thirty percent or more of the employees of one
2 corporation are concurrently employees of the other
3 corporation.

4 d. The common paymaster shall report to the division,
5 as a part of the unemployment compensation quarterly tax and
6 wage report, the state unemployment compensation account
7 number and name of each related corporation for which
8 concurrent employees are being reported. Failure to timely
9 report this information shall result in the related
10 corporations being denied common paymaster status for that
11 calendar quarter.

12 e. The common paymaster shall also have the primary
13 responsibility for remitting contributions due under this
14 chapter with respect to the wages it disburses as the common
15 paymaster. The common paymaster shall compute these
16 contributions as though it were the sole employer of the
17 concurrently employed individuals. If the common paymaster
18 fails to timely remit these contributions or reports, in whole
19 or in part, it shall remain liable for the full amount of the
20 unpaid portion of these taxes. In addition, each of the other
21 related corporations using the common paymaster shall be
22 jointly and severally liable for its appropriate share of
23 these contributions. Such share shall be an amount equal to
24 the greater of the following:

25 (I) The amount of the liability of the common
26 paymaster under this chapter, after taking into account any
27 contributions made.

28 (II) The amount of the liability under this chapter
29 which, but for this section, would have existed with respect
30 to the wages from such other related corporations, reduced by
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1 an allocable portion of any contributions previously paid by
2 the common paymaster with respect to those wages.

3 f. This subsection may apply to all contributions and
4 reports due for the first quarter of 1997 and thereafter.

5 (b) Public employees.--The term "employment" includes
6 service performed in the employ of this state or any of its
7 instrumentalities or any political subdivision thereof or any
8 of its instrumentalities, any instrumentality of more than one
9 of the foregoing, or any instrumentality of any of the
10 foregoing and one or more other states or political
11 subdivisions, provided such service is excluded from
12 "employment" as defined in s. 3306(c)(7) of the Federal
13 Unemployment Tax Act and is not excluded from "employment"
14 under paragraph (d) of this subsection.

15 (c) Religious, charitable, etc., employees.--The term
16 "employment" includes service performed by an individual in
17 the employ of a religious, charitable, educational, or other
18 organization, but only if the following conditions are met:

19 1. The service is excluded from "employment" as
20 defined in the Federal Unemployment Tax Act solely by reason
21 of s. 3306(c)(8) of that act; and

22 2. The organization had four or more individuals in
23 employment for some portion of a day in each of 20 different
24 weeks, whether or not such weeks were consecutive, within
25 either the current or preceding calendar year, regardless of
26 whether they were employed at the same moment of time.

27 (d) Exclusions from paragraphs (b) and (c).--For the
28 purposes of paragraphs (b) and (c), the term "employment" does
29 not apply to service performed:

30 1. In the employ of:

31 a. A church or convention or association of churches.

1 b. An organization which is operated primarily for
2 religious purposes and which is operated, supervised,
3 controlled, or principally supported by a church or convention
4 or association of churches.

5 2. By a duly ordained, commissioned, or licensed
6 minister of a church in the exercise of his or her ministry or
7 by a member of a religious order in the exercise of duties
8 required by such order.

9 3. Prior to January 1, 1978, in the employ of a
10 nonprofit educational institution which is not an institution
11 of higher education and which would otherwise be employment as
12 defined in paragraph (c).

13 4. In the employ of a governmental entity referred to
14 in paragraph (b), if such service is performed by an
15 individual in the exercise of duties:

16 a. As an elected official.

17 b. As a member of a legislative body, or a member of
18 the judiciary, of a state or political subdivision.

19 c. As an employee serving on a temporary basis in case
20 of fire, storm, snow, earthquake, flood, or similar emergency.

21 d. In a position which, under or pursuant to the laws
22 of this state, is designated as a major nontenured
23 policymaking or advisory position or a policymaking or
24 advisory position, the performance of the duties of which
25 ordinarily does not require more than 8 hours per week.

26 5. In a facility conducted for the purpose of carrying
27 out a program of rehabilitation for individuals whose earning
28 capacity is impaired by age or physical or mental deficiency
29 or injury or providing remunerative work for individuals who,
30 because of their impaired physical or mental capacity, cannot
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1 be readily absorbed in the competitive labor market, by an
2 individual receiving such rehabilitation or remunerative work.

3 6. As part of an unemployment work-relief or
4 work-training program assisted or financed in whole or in part
5 by any federal agency or an agency of a state or political
6 subdivision thereof, by an individual receiving such work
7 relief or work training, except that this subparagraph does
8 not apply to unemployment work-relief or work-training
9 programs for which unemployment compensation coverage is
10 required under a federal law, rule, or regulation.

11 7. By an inmate of a custodial or penal institution.

12 (e) Agricultural service.--The term "employment"
13 includes service performed after December 31, 1977, by an
14 individual in agricultural labor, as defined in subsection(2)
15 ~~(1)~~, when:

16 1. Such service is performed before January 1, 1988,
17 for a person who:

18 a. During any calendar quarter in either the current
19 or the preceding calendar year paid remuneration in cash of
20 \$20,000 or more to individuals employed in agricultural labor.

21 b. For some portion of a day in each of 20 different
22 calendar weeks, whether or not such weeks were consecutive, in
23 either the current or the preceding calendar year, employed in
24 agricultural labor 10 or more individuals, regardless of
25 whether they were employed at the same moment of time.

26 2. Such service is performed after December 31, 1987,
27 for a person who:

28 a. During any calendar quarter in either the current
29 or the preceding calendar year paid remuneration in cash of
30 \$10,000 or more to individuals employed in agricultural labor.

31

1 b. For some portion of a day in each of 20 different
2 calendar weeks, whether or not such weeks were consecutive, in
3 either the current or the preceding calendar year, employed in
4 agricultural labor five or more individuals, regardless of
5 whether they were employed at the same moment of time.

6 3. Such service is performed by any individual who is
7 a member of a crew furnished by a crew leader to perform
8 service in agricultural labor for any other person.

9 a. For the purposes of this subparagraph, a crew
10 member shall be treated as an employee of the crew leader:

11 (I) If the crew leader holds a valid certificate of
12 registration under the Migrant and Seasonal Agricultural
13 Worker Protection Act of 1983 or if substantially all of the
14 members of the crew operate or maintain tractors, mechanized
15 harvesting or crop-dusting equipment, or any other mechanized
16 equipment which is provided by the crew leader; and

17 (II) If such individual is not an employee of such
18 other person within the meaning of paragraph (a).

19 b. For the purposes of this subparagraph, in the case
20 of an individual who is furnished by a crew leader to perform
21 service in agricultural labor for any other person and who is
22 not treated as an employee of the crew leader under
23 sub-subparagraph a.:

24 (I) Such other person and not the crew leader shall be
25 treated as the employer of such individual; and

26 (II) Such other person shall be treated as having paid
27 cash remuneration to such individual in an amount equal to the
28 amount of cash remuneration paid to such individual by the
29 crew leader, either on his or her own behalf or on the behalf
30 of such other person, for the service in agricultural labor
31 performed for such other person.

1 (f) Exclusion from paragraph (e).--The term
2 "employment" does not include service performed by an
3 individual in agricultural labor, except as provided in
4 paragraph (e); however, the provisions of paragraph (e) shall
5 not reduce the coverage provided under subparagraph (d)3.

6 (g) Domestic service.--The term "employment" includes
7 domestic service after December 31, 1977, performed by maids,
8 cooks, maintenance workers, chauffeurs, social secretaries,
9 caretakers, private yacht crews, butlers, and houseparents,in
10 a private home, local college club, or local chapter of a
11 college fraternity or sorority performed for a person who paid
12 cash remuneration of \$1,000 or more after December 31, 1977,
13 in any calendar quarter in the current calendar year or the
14 preceding calendar year to individuals employed in such
15 domestic service.

16 (h) Service outside state.--The term "employment"
17 includes an individual's entire service, performed within or
18 both within and without this state if:

19 1. The service is localized in this state; or
20 2. The service is not localized in any state, but some
21 of the service is performed in this state, and:

22 a. The base of operations, or, if there is no base of
23 operations, then the place from which such service is directed
24 or controlled, is in this state; or

25 b. The base of operations or place from which such
26 service is directed or controlled is not in any state in which
27 some part of the service is performed, but the individual's
28 residence is in this state.

29 (i) Employer election to include service outside
30 state.--Services not covered under subparagraph (h)2. and
31 performed entirely without this state, with respect to no part

1 of which contributions are required and paid under an
2 unemployment compensation law of any other state or of the
3 Federal Government, shall be deemed to be employment subject
4 to this chapter if the individual performing such services is
5 a resident of this state and the division approves the
6 election of the employing unit for whom such services are
7 performed that the entire service of such individual shall be
8 deemed to be employment subject to this chapter.

9 (j) Service deemed to be localized within
10 state.--Service shall be deemed to be localized within a state
11 if:

12 1. The service is performed entirely within such
13 state; or

14 2. The service is performed both within and without
15 such state, but the service performed without such state is
16 incidental to the individual's service within the state; for
17 example, it is temporary or transitory in nature or consists
18 of isolated transactions.

19 (k) Service outside United States.--The term
20 "employment" includes the service of an individual who is a
21 citizen of the United States, performed outside the United
22 States (except in Canada) in the employ of an American
23 employer, other than service which is deemed "employment"
24 under the provisions of paragraph (b) or paragraph (c) or the
25 parallel provisions of another state's law, if:

26 1. The employer's principal place of business in the
27 United States is located in this state.

28 2. The employer has no place of business in the United
29 States, but:

30 a. The employer is an individual who is a resident of
31 this state.

1 b. The employer is a corporation which is organized
2 under the laws of this state.

3 c. The employer is a partnership or a trust and the
4 number of the partners or trustees who are residents of this
5 state is greater than the number who are residents of any one
6 other state.

7 3. None of the criteria of subsection (4)~~(3)~~ and this
8 paragraph is met, but the employer has elected coverage in
9 this state, or, the employer having failed to elect coverage
10 in any state, the individual has filed a claim for benefits,
11 based on such service, under the laws of this state.

12 (1) Service on American vessel or aircraft.--The term
13 "employment" includes all service performed by an officer or
14 member of a crew of an American vessel or American aircraft on
15 or in connection with such vessel or aircraft, provided that
16 the operating office, from which the operations of such vessel
17 or aircraft operating within or within and without the United
18 States is ordinarily and regularly supervised, managed,
19 directed, and controlled, is within this state.

20 (m) Service under other unemployment compensation
21 law.--The term "employment" includes services covered by an
22 arrangement pursuant to s. 443.221 between the division and
23 the agency charged with the administration of any other state
24 unemployment compensation law or Federal Unemployment
25 Compensation Law, pursuant to which all services performed by
26 an individual for an employing unit are deemed to be performed
27 entirely within this state, if the division has approved an
28 election of the employing unit for which such services are
29 performed, pursuant to which the entire service of such
30 individual during the period covered by such election is
31 deemed to be insured work.

1 (n) Exclusions generally.--The term "employment" does
2 not include:

3 1. Domestic service in a private home, local college
4 club, or local chapter of a college fraternity or sorority,
5 except as provided in paragraph (g).

6 2. Service performed on or in connection with a vessel
7 or aircraft not an American vessel or American aircraft, if
8 the employee is employed on and in connection with such vessel
9 or aircraft when outside the United States.

10 3. Service performed by an individual in, or as an
11 officer or member of the crew of a vessel while it is engaged
12 in, the catching, taking, harvesting, cultivating, or farming
13 of any kind of fish, shellfish, crustacea, sponges, seaweeds,
14 or other aquatic forms of animal and vegetable life, including
15 service performed by any such individual as an ordinary
16 incident to any such activity, except:

17 a. Service performed in connection with the catching
18 or taking of salmon or halibut for commercial purposes.

19 b. Service performed on, or in connection with, a
20 vessel of more than 10 net tons, determined in the manner
21 provided for determining the register tonnage of merchant
22 vessels under the laws of the United States.

23 4. Service performed by an individual in the employ of
24 his or her son, daughter, or spouse, including step
25 relationships, and service performed by a child, or stepchild,
26 under the age of 21 in the employ of his or her father or
27 mother, or stepfather or stepmother.

28 5. Service performed in the employ of the United
29 States Government or of an instrumentality of the United
30 States which is:

31 a. Wholly or partially owned by the United States.

1 b. Exempt from the tax imposed by s. 3301 of the
2 Internal Revenue Code by virtue of any provision of federal
3 law which specifically refers to such section, or the
4 corresponding section of prior law, in granting such
5 exemption; except that to the extent that the Congress shall
6 permit states to require any instrumentalities of the United
7 States to make payments into an unemployment fund under a
8 state unemployment compensation law, all of the provisions of
9 this law shall be applicable to such instrumentalities, and to
10 services performed for such instrumentalities, in the same
11 manner, to the same extent, and on the same terms as to all
12 other employers, employing units, individuals, and services.
13 If this state is not certified for any year by the Secretary
14 of Labor under s. 3304 of the federal Internal Revenue Code,
15 the payments required of such instrumentalities with respect
16 to such year shall be refunded by the division from the fund
17 in the same manner and within the same period as is provided
18 in s. 443.141(6) with respect to contributions erroneously
19 collected.

20 6. Service performed in the employ of a state, or any
21 political subdivision thereof, or any instrumentality of any
22 one or more of the foregoing which is wholly owned by one or
23 more states or political subdivisions, except as provided in
24 paragraph (b), and any service performed in the employ of any
25 instrumentality of one or more states or political
26 subdivisions, to the extent that the instrumentality is, with
27 respect to such service, immune under the Constitution of the
28 United States from the tax imposed by s. 3301 of the Internal
29 Revenue Code.

30 7. Service performed in the employ of a corporation,
31 community chest, fund, or foundation, organized and operated

1 exclusively for religious, charitable, scientific, testing for
2 public safety, literary, or educational purposes, or for the
3 prevention of cruelty to children or animals, no part of the
4 net earnings of which inures to the benefit of any private
5 shareholder or individual, no substantial part of the
6 activities of which is carrying on propaganda or otherwise
7 attempting to influence legislation, and which does not
8 participate in, or intervene in (including the publishing or
9 distributing of statements), any political campaign on behalf
10 of any candidate for public office, except as provided in
11 paragraph (c).

12 8. Service with respect to which unemployment
13 compensation is payable under an unemployment compensation
14 system established by an Act of Congress.

15 9.a. Service performed in any calendar quarter in the
16 employ of any organization exempt from income tax under s.
17 501(a) of the Internal Revenue Code, other than an
18 organization described in s. 401(a), or under s. 521, if the
19 remuneration for such service is less than \$50.

20 b. Service performed in the employ of a school,
21 college, or university, if such service is performed by a
22 student who is enrolled and is regularly attending classes at
23 such school, college, or university.

24 10. Service performed in the employ of a foreign
25 government, including service as a consular or other officer
26 or employee of a nondiplomatic representative.

27 11. Service performed in the employ of an
28 instrumentality wholly owned by a foreign government:

29 a. If the service is of a character similar to that
30 performed in foreign countries by employees of the United
31 States Government or of an instrumentality thereof; and

1 b. The Secretary of State shall certify to the
2 Secretary of the Treasury that the foreign government, with
3 respect to whose instrumentality exemption is claimed, grants
4 an equivalent exemption with respect to similar service
5 performed in the foreign country by employees of the United
6 States Government and of instrumentalities thereof.

7 12. Service performed as a student nurse in the employ
8 of a hospital or a nurses' training school by an individual
9 who is enrolled and is regularly attending classes in a
10 nurses' training school chartered or approved pursuant to a
11 state law; service performed as an intern in the employ of a
12 hospital by an individual who has completed a 4-year course in
13 a medical school chartered or approved pursuant to state law;
14 and service performed by a patient of a hospital for such
15 hospital.

16 13. Service performed by an individual for a person as
17 an insurance agent or as an insurance solicitor, if all such
18 service performed by such individual for such person is
19 performed for remuneration solely by way of commission, except
20 for such services performed in accordance with 26 U.S.C.S. s.
21 3306(c)(7) and (8). For purposes of this subsection, those
22 benefits excluded from the definition of wages pursuant to
23 subparagraphs (33)(b)2.-6., inclusive, shall not be considered
24 remuneration.

25 14. Service performed by an individual for a person as
26 a real estate salesperson or agent, if all such service
27 performed by such individual for such person is performed for
28 remuneration solely by way of commission.

29 15. Service performed by an individual under the age
30 of 18 in the delivery or distribution of newspapers or
31

1 shopping news, not including delivery or distribution to any
2 point for subsequent delivery or distribution.

3 16. Service covered by an arrangement between the
4 division and the agency charged with the administration of any
5 other state or federal unemployment compensation law pursuant
6 to which all services performed by an individual for an
7 employing unit during the period covered by such employing
8 unit's duly approved election are deemed to be performed
9 entirely within such agency's state or under such federal law.

10 17. Service performed by an individual who is enrolled
11 at a nonprofit or public educational institution which
12 normally maintains a regular faculty and curriculum and
13 normally has a regularly organized body of students in
14 attendance at the place where its educational activities are
15 carried on as a student in a full-time program, taken for
16 credit at such institution, which combines academic
17 instruction with work experience, if such service is an
18 integral part of such program, and such institution has so
19 certified to the employer, except that this subparagraph does
20 not apply to service performed in a program established for or
21 on behalf of an employer or group of employers.

22 18. Service performed by an individual for a person as
23 a barber, if all such service performed by such individual for
24 such person is performed for remuneration solely by way of
25 commission.

26 19. Casual labor not in the course of the employer's
27 trade or business.

28 20. Service performed by a speech therapist,
29 occupational therapist, or physical therapist who is
30 nonsalaried and working pursuant to a written contract with a
31 home health agency as defined in s. 400.462.

1 21. Service performed by a direct seller. For purposes
2 of this subparagraph, the term "direct seller" means a person:

3 a.(I) Who is engaged in the trade or business of
4 selling or soliciting the sale of consumer products to buyers
5 on a buy-sell basis or a deposit-commission basis, or on any
6 similar basis, for resale in the home or in any other place
7 that is not a permanent retail establishment; or

8 (II) Who is engaged in the trade or business of
9 selling or soliciting the sale of consumer products in the
10 home or in any other place that is not a permanent retail
11 establishment;

12 b. Substantially all of whose remuneration for
13 services described in sub-subparagraph a., whether or not paid
14 in cash, is directly related to sales or other output, rather
15 than to the number of hours worked; and

16 c. Who performs such services pursuant to a written
17 contract with the person for whom the services are performed,
18 which contract provides that the person will not be treated as
19 an employee with respect to such services for federal tax
20 purposes.

21 22. Service performed by a nonresident alien
22 individual for the period he or she is temporarily present in
23 the United States as a nonimmigrant under subparagraph (F) or
24 subparagraph (J) of s. 101(a)(15) of the Immigration and
25 Nationality Act, and which is performed to carry out the
26 purpose specified in subparagraph (F) or subparagraph (J), as
27 the case may be.

28 23. Service performed by an individual for
29 remuneration for a private, for-profit delivery or messenger
30 service, if the individual:

31

1 a. Is free to accept or reject jobs from the delivery
2 or messenger service and the delivery or messenger service has
3 no control over when the individual works;

4 b. Is remunerated for each delivery, or the
5 remuneration is based on factors that relate to the work
6 performed, including receipt of a percentage of any rate
7 schedule;

8 c. Pays all expenses and the opportunity for profit or
9 loss rests solely with the individual;

10 d. Is responsible for operating costs, including fuel,
11 repairs, supplies, and motor vehicle insurance;

12 e. Determines the method of performing the service,
13 including selection of routes and order of deliveries;

14 f. Is responsible for the completion of a specific job
15 and is liable for any failure to complete that job;

16 g. Enters into a contract with the delivery or
17 messenger service which specifies the relationship of the
18 individual to the delivery or messenger service to be that of
19 an independent contractor and not that of an employee; and

20 h. Provides the vehicle used to perform the service.

21 24. Service performed in agricultural labor by an
22 individual who is an alien admitted to the United States to
23 perform service in agricultural labor pursuant to ss.
24 101(a)(15)(H) and 214(c) of the Immigration and Nationality
25 Act.

26 (22)~~(20)~~ EMPLOYMENT OFFICE.--"Employment office" means
27 a free public employment office or branch thereof operated by
28 this or any other state as a part of a state-controlled system
29 of public employment offices or by a federal agency charged
30 with the administration of an unemployment compensation
31 program or free public employment offices.

1 (23)~~(21)~~ FARM.--"Farm" includes stock, dairy, poultry,
2 fruit, fur-bearing animal, and truck farms, plantations,
3 ranches, nurseries, ranges, greenhouses or other similar
4 structures used primarily for the raising of agricultural or
5 horticultural commodities, and orchards.

6 (24)~~(22)~~ FUND.--"Fund" means the Unemployment
7 Compensation Trust Fund created by this chapter, to which all
8 contributions required and from which all benefits provided
9 under this chapter shall be paid.

10 (25)~~(23)~~ HOSPITAL.--"Hospital" means an institution
11 which has been licensed, certified, or approved by the
12 Department of Health and Rehabilitative Services as a
13 hospital.

14 (26)~~(24)~~ INSTITUTION OF HIGHER
15 EDUCATION.--"Institution of higher education" means an
16 educational institution which:

17 (a) Admits as regular students only individuals having
18 a certificate of graduation from a high school, or the
19 recognized equivalent of such a certificate;

20 (b) Is legally authorized in this state to provide a
21 program of education beyond high school;

22 (c) Provides an educational program for which it
23 awards a bachelor's or higher degree, or provides a program
24 which is acceptable for full credit toward such a degree, a
25 program of postgraduate or postdoctoral studies, or a program
26 of training to prepare students for gainful employment in a
27 recognized occupation; and

28 (d) Is a public or other nonprofit institution.

29

30 Notwithstanding any of the foregoing provisions of this
31 subsection, all colleges and universities in this state and

1 recognized as such by this state are institutions of higher
2 education for purposes of this section.

3 (27)~~(25)~~ INSURED WORK.--"Insured work" means
4 employment for employers.

5 (28) LEAVE OF ABSENCE.--The term "leave of absence"
6 means a temporary break in service to an employer, for a
7 specified period of time, during which the employing unit
8 guarantees the same or a comparable position to the worker at
9 the expiration of the leave.

10 (29)~~(26)~~ MISCONDUCT.--"Misconduct" includes, but is
11 not limited to, the following, which shall not be construed in
12 pari materia with each other:

13 (a) Conduct evincing such willful or wanton disregard
14 of an employer's interests as is found in deliberate violation
15 or disregard of standards of behavior which the employer has
16 the right to expect of his or her employee; or

17 (b) Carelessness or negligence of such a degree or
18 recurrence as to manifest culpability, wrongful intent, or
19 evil design or to show an intentional and substantial
20 disregard of the employer's interests or of the employee's
21 duties and obligations to his or her employer.

22 (30) MONETARY DETERMINATION.--The term "monetary
23 determination" means a determination of whether and in what
24 amount a claimant is eligible for benefits based on the
25 claimant's employment during the base period of the claim.

26 (31) NONMONETARY DETERMINATION.--The term "nonmonetary
27 determination" means a determination of the claimant's
28 eligibility for benefits on all issues other than monetary
29 entitlement and benefit overpayment.

30 (32)~~(27)~~ NOT IN THE COURSE OF THE EMPLOYER'S TRADE OR
31 BUSINESS.--"Not in the course of the employer's trade or

1 business" means that which does not promote or advance the
2 trade or business of the employer.

3 (33)~~(28)~~ PAY PERIOD.--"Pay period" means a period of
4 not more than 31 consecutive days for which a payment or
5 remuneration is ordinarily made to the employee by the person
6 employing him or her.

7 (34) REASONABLE ASSURANCE.--The term "reasonable
8 assurance" means a written or verbal agreement or an agreement
9 between the employer and the worker understood through
10 tradition within the trade or occupation or as defined in
11 employer policy.

12 (35)~~(29)~~ REIMBURSABLE EMPLOYER.--"Reimbursable
13 employer" means an employer who is liable for payments in lieu
14 of contributions as required by this chapter.

15 (36)~~(30)~~ STATE.--"State" includes the states of the
16 United States, the District of Columbia, Canada, the
17 Commonwealth of Puerto Rico, and the Virgin Islands.

18 (37)~~(31)~~ STATE LAW.--"State law" means the
19 unemployment insurance law of any state, approved by the
20 United States Secretary of Labor under s. 3304 of the Internal
21 Revenue Code of 1954.

22 (38) TEMPORARY LAYOFF.--The term "temporary layoff"
23 means a job separation due to lack of work which does not
24 exceed 8 weeks in duration and which has a fixed or
25 approximate return to work date.

26 (39)~~(32)~~ UNEMPLOYMENT.--"Unemployment" means:

27 (a) An individual shall be deemed "totally unemployed"
28 in any week during which he or she performs no services and
29 with respect to which no earned income is payable to him or
30 her, or shall be deemed "partially unemployed" in any week of
31 less than full-time work if the earned income payable to him

1 or her with respect to such week is less than his or her
2 weekly benefit amount. The division shall prescribe
3 regulations applicable to unemployed individuals making such
4 distinctions in the procedures as to total unemployment,
5 part-time unemployment, partial unemployment of individuals
6 attached to their regular jobs, and other forms of short-time
7 work, as the division deems necessary.

8 (b) An individual's week of unemployment shall be
9 deemed to commence only after his or her registration at an
10 employment office, except as the division may by rule
11 otherwise prescribe.

12 (40)~~(33)~~ WAGES.--

13 (a) "Wages" means all remuneration for employment,
14 including commissions, bonuses, back pay awards, and the cash
15 value of all remuneration paid in any medium other than cash.
16 The reasonable cash value of remuneration in any medium other
17 than cash shall be estimated and determined in accordance with
18 rules prescribed by the division. After January 1, 1986, the
19 term "wages" includes tips or gratuities which are received
20 while performing services which constitute employment and are
21 included in a written statement furnished to the employer
22 pursuant to s. 6053(a) of the Internal Revenue Code of 1954.

23 (b) "Wages" does not include:

24 1. That part of remuneration which, after remuneration
25 equal to \$6,000 prior to January 1, 1983, and \$7,000 after
26 December 31, 1982, has been paid in a calendar year to an
27 individual by an employer or his or her predecessor with
28 respect to employment during any calendar year, is paid to
29 such individual by such employer during such calendar year,
30 unless that part of the remuneration is subject to a tax,
31 under a federal law imposing the tax, against which credit may

1 be taken for contributions required to be paid into a state
2 unemployment fund. For the purposes of this subsection, the
3 term "employment" includes services constituting employment
4 under any employment security law of another state or of the
5 Federal Government.

6 2. The amount of any payment, with respect to services
7 performed, to, or on behalf of, an individual in its employ
8 under a plan or system established by an employing unit which
9 makes provision for individuals in its employ generally or for
10 a class or classes of such individuals, including any amount
11 paid by an employing unit for insurance or annuities, or into
12 a fund, to provide for any such payment, on account of:

13 a. Sickness or accident disability, but, in the case
14 of payments made to an employee or any of his or her
15 dependents, this subparagraph shall exclude from the term
16 "wages" only those payments received under a workers'
17 compensation law.

18 b. Medical and hospitalization expenses in connection
19 with sickness or accident disability.

20 c. Death, provided the individual in its employ:

21 (I) Has not the option to receive, instead of
22 provision for such death benefit, any part of such payment or,
23 if such death benefit is insured, any part of the premiums, or
24 contributions to premiums, paid by his or her employing unit;
25 and

26 (II) Has not the right, under the provisions of the
27 plan or system or policy of insurance providing for such death
28 benefit, to assign such benefit or to receive cash
29 consideration in lieu of such benefit either upon his or her
30 withdrawal from the plan or system providing for such benefit
31

1 or upon termination of such plan or system or policy of
2 insurance or of his or her services with such employing unit.

3 3. The amount of any payment on account of sickness or
4 accident disability, or medical or hospitalization expenses in
5 connection with sickness or accident disability, made by an
6 employing unit to, or on behalf of, an individual performing
7 services for it after the expiration of 6 calendar months
8 following the last calendar month in which the individual
9 performed services for such employing unit.

10 4. The payment by an employing unit, without deduction
11 from the remuneration of the individual in its employ, of the
12 tax imposed upon an individual in its employ under s. 3101 of
13 the federal Internal Revenue Code with respect to services
14 performed.

15 5. The value of:

16 a. Meals furnished to an employee or the employee's
17 spouse or dependents by the employer on the business premises
18 of the employer for the convenience of the employer; or

19 b. Lodging furnished to an employee or the employee's
20 spouse or dependents by the employer on the business premises
21 of the employer for the convenience of the employer when such
22 lodging is included as a condition of employment.

23 6. The amount of any payment made by an employing unit
24 to, or on behalf of, an individual performing services for it
25 or a beneficiary of such individual:

26 a. From or to a trust described in s. 401(a) of the
27 Internal Revenue Code of 1954 which is exempt from tax under
28 s. 501(a) at the time of such payment unless such payment is
29 made to an employee of the trust as remuneration for services
30 rendered as such employee and not as a beneficiary of the
31 trust;

1 b. Under or to an annuity plan which, at the time of
2 such payment, is a plan described in s. 403(a) of the Internal
3 Revenue Code of 1954;

4 c. Under a simplified employee pension if, at the time
5 of the payment, it is reasonable to believe that the employee
6 will be entitled to a deduction under s. 219(b)(2) of the
7 Internal Revenue Code of 1954 for such payment;

8 d. Under or to an annuity contract described in s.
9 403(b) of the Internal Revenue Code of 1954, other than a
10 payment for the purchase of such contract which is made by
11 reason of a salary reduction agreement, whether evidenced by a
12 written instrument or otherwise;

13 e. Under or to an exempt governmental deferred
14 compensation plan as described in s. 3121(v)(3) of the
15 Internal Revenue Code of 1954; or

16 f. To supplement pension benefits under a plan or
17 trust described in any of the foregoing provisions of this
18 subparagraph to take into account some portion or all of the
19 increase in the cost of living, as determined by the United
20 States Secretary of Labor, since retirement, but only if such
21 supplemental payments are under a plan which is treated as a
22 welfare plan under s. 3(2)(B)(ii) of the Employee Retirement
23 Income Security Act of 1974.

24 g. Under a cafeteria plan, within the meaning of s.
25 125 of the Internal Revenue Code of 1986, as amended, if such
26 payment would not be treated as wages without regard to such
27 plan and it is reasonable to believe that, if s. 125 of the
28 Internal Revenue Code of 1986, as amended, applied for
29 purposes of this section, s. 125 of the Internal Revenue Code
30 of 1986, as amended, would not treat any wages as
31 constructively received.

1 (41)~~(34)~~ WEEK.--"Week" means such period of 7
2 consecutive days as the division may by rule prescribe. The
3 division may by rule prescribe that a week shall be deemed to
4 be "in," "within," or "during" that benefit year which
5 includes the greater part of such week.

6 (42)~~(35)~~ HIGH QUARTER.--"High quarter" means that
7 quarter in the base period in which the claimant had the
8 greatest amount of wages paid, regardless of the number of
9 employers paying wages in that quarter.

10 (43)~~(36)~~ VOLUNTARY CONTRIBUTION.--"Voluntary
11 contribution" means any payment made to the Unemployment
12 Compensation Trust Fund in excess of any payments required
13 under this chapter.

14 Section 4. Section 443.091, Florida Statutes, is
15 amended to read:

16 443.091 Benefit eligibility conditions.--

17 (1) An unemployed individual shall be eligible to
18 receive benefits with respect to any week only if the division
19 finds that:

20 (a) She or he has made a claim for benefits with
21 respect to such week in accordance with such rules as the
22 division may prescribe.

23 (b) She or he has registered for work at, and
24 thereafter continued to report at, the division, which shall
25 be responsible for notification of the Division of Jobs and
26 Benefits ~~Florida State Employment Service~~ in accordance with
27 such rules as the division may prescribe; except that the
28 division may, by rule not inconsistent with the purposes of
29 this law, waive or alter either or both of the requirements of
30 this subsection as to individuals attached to regular jobs;
31 but no such rule shall conflict with s. 443.111(1).

1 (c)1. She or he is able to work and is available for
2 work. In order to assess eligibility for a claimed week of
3 unemployment, the division shall develop criteria to determine
4 a claimant's ability to work and availability for work.

5 2. Notwithstanding any other provisions in this
6 section, no otherwise eligible individual shall be denied
7 benefits for any week because she or he is in training with
8 the approval of the division, nor shall such individual be
9 denied benefits with respect to any week in which she or he is
10 in training with the approval of the division by reason of the
11 application of provisions in subparagraph 1. relating to
12 availability for work, or the provisions of s. 443.101(2)
13 relating to failure to apply for, or refusal to accept,
14 suitable work. Training may be approved by the division in
15 accordance with criteria prescribed by rule. A claimant's
16 eligibility during approved training is contingent upon
17 satisfying eligibility conditions prescribed by rule.

18 3. Notwithstanding any other provision of this
19 chapter, an individual who is in training approved under s.
20 236(a)(1) of the Trade Act of 1974, as amended, may not be
21 determined to be ineligible or disqualified for benefits with
22 respect to her or his enrollment in such training or because
23 of leaving work which is not suitable employment to enter such
24 training. For the purposes of this subparagraph, the term
25 "suitable employment" means, with respect to a worker, work of
26 a substantially equal or higher skill level than the worker's
27 past adversely affected employment, as defined for purposes of
28 the Trade Act of 1974, as amended, the wages for which are not
29 less than 80 percent of the worker's average weekly wage as
30 determined for purposes of the Trade Act of 1974, as amended.

31

1 4. Notwithstanding any other provision of this
2 section, an otherwise eligible individual shall not be denied
3 benefits for any week by reason of the application of
4 subparagraph 1. because she or he is before any court of the
5 United States or any state pursuant to a lawfully issued
6 summons to appear for jury duty.

7 (d) She or he participates in reemployment services,
8 such as job search assistance services, whenever the
9 individual has been determined, pursuant to a profiling system
10 established by rule of the division, to be likely to exhaust
11 regular benefits and to be in need of reemployment services.

12 (e) She or he has been unemployed for a waiting period
13 of 1 week. No week shall be counted as a week of unemployment
14 for the purposes of this subsection:

15 1. Unless it occurs within the benefit year which
16 includes the week with respect to which she or he claims
17 payment of benefits.

18 2. If benefits have been paid with respect thereto.

19 3. Unless the individual was eligible for benefits
20 with respect thereto as provided in this section and s.
21 443.101 except for the requirements of this subsection and of
22 s. 443.101(5).

23 (f) She or he has been paid wages for insured work
24 equal to 1.5 times her or his high quarter wages during her or
25 his base period, except that an unemployed individual is not
26 eligible to receive benefits if the base period wages are less
27 than \$3,400. As amended by this act, this paragraph applies
28 only to benefit years beginning on or after July 1, 1996.

29 (2) No individual may receive benefits in a benefit
30 year unless, subsequent to the beginning of the next preceding
31 benefit year during which she or he received benefits, she or

1 he performed service, whether or not in employment as defined
2 in s. 443.036, and earned remuneration for such service in an
3 amount equal to not less than 3 times her or his weekly
4 benefit amount as determined for her or his current benefit
5 year.

6 (3) Benefits based on service in employment defined in
7 s. 443.036(19)(b) and (c) shall be payable in the same amount,
8 on the same terms, and subject to the same conditions as
9 benefits payable on the basis of other service subject to this
10 chapter, except that:

11 (a) Benefits shall not be paid based on services in an
12 instructional, research, or principal administrative capacity
13 for an educational institution or an institution of higher
14 education for any week of unemployment commencing during the
15 period between 2 successive academic years; during a similar
16 period between two regular terms, whether or not successive;
17 or during a period of paid sabbatical leave provided for in
18 the individual's contract, to any individual, if such
19 individual performs such services in the first of such
20 academic years or terms and there is a contract or a
21 reasonable assurance that such individual will perform
22 services in any such capacity for any educational institution
23 or institution of higher education in the second of such
24 academic years or terms.

25 (b) Benefits shall not be based on services in any
26 other capacity for an educational institution or an
27 institution of higher education to any individual for any week
28 which commences during a period between 2 successive academic
29 years or terms if such individual performs such services in
30 the first of the academic years or terms and there is a
31 reasonable assurance that such individual will perform such

1 services in the second of the academic years or terms; except
2 that, if compensation is denied to any individual under this
3 paragraph and such individual was not offered an opportunity
4 to perform such services for the educational institution for
5 the second of such academic years or terms, that individual
6 shall be entitled to a retroactive payment of compensation for
7 each week for which the individual filed a timely claim for
8 compensation and for which compensation was denied solely by
9 reason of this paragraph.

10 (c) Benefits shall not be paid to any individual for
11 any week which commences during an established and customary
12 vacation period or holiday recess if such individual performs
13 any services described in paragraph (a) or paragraph (b) in
14 the period immediately before such vacation period or holiday
15 recess and there is a reasonable assurance that such
16 individual will perform any such service in the period
17 immediately following such vacation period or holiday recess.

18 (d) Benefits shall not be payable on the basis of
19 services in any such capacities as specified in paragraphs
20 (a), (b), and (c) to any individual who performed such
21 services in an educational institution while in the employ of
22 a governmental agency or governmental entity which is
23 established and operated exclusively for the purpose of
24 providing such services to one or more educational
25 institutions.

26 (e) Benefits shall not be payable on the basis of
27 services in any such capacities as specified in paragraphs
28 (a), (b), (c), and (d) to any individual who provided such
29 services to or on behalf of an educational institution, or an
30 institution of higher education.

31

1 (f) As used in this subsection, the term "fixed
2 contract" means a written agreement of employment for a
3 specified period of time, and the term "continuing contract"
4 means a written agreement that is automatically renewed until
5 terminated by one of the parties to the contract.

6 (4) In the event of national emergency, in the course
7 of which the Federal Emergency Unemployment Payment Plan is,
8 at the request of the Governor, invoked for all or any part of
9 the state, such plan shall supersede the procedures prescribed
10 by this chapter, and by rules adopted hereunder, and the
11 division shall act as the Florida agency for the United States
12 Department of Labor in the administration of such plan.

13 (5) Benefits shall not be paid to any individual on
14 the basis of any service, 90 percent or more ~~substantially all~~
15 of which consists of participating in sports or athletic
16 events or training, or preparing to so participate, for any
17 week which commences during the period between two successive
18 sport seasons (or similar periods) if such individual
19 performed such service in the first of such seasons (or
20 similar periods) and there is a reasonable assurance that such
21 individual will perform such services in the later of such
22 seasons (or similar periods).

23 (6) With respect to weeks of unemployment beginning on
24 or after January 1, 1978, wages for insured work shall include
25 wages paid for previously uncovered services. For the
26 purposes of this subsection, except to the extent that
27 assistance under Title II of the Emergency Jobs and
28 Unemployment Assistance Act of 1974 was paid on the basis of
29 such services, the term "previously uncovered services" means
30 services:

31

1 (a) Which were not employment as defined in this
2 chapter prior to January 1, 1978, and were not services
3 covered pursuant to s. 443.121(3) at any time during the
4 1-year period ending December 31, 1975; and

5 (b) Which are:

6 1. Agricultural labor or domestic service as defined
7 in s. 443.036; or

8 2. Services performed by an employee of this state or
9 a political subdivision thereof, as provided in s.

10 443.036(19)(b), or by an employee of a nonprofit educational
11 institution which is not an institution of higher education.

12 (7) Benefits paid to any individual whose base period
13 wages include wages for previously uncovered services, as
14 defined in subsection (6), shall not be charged to the
15 employer or the employer's experience rating account, to the
16 extent that such individual would not have been eligible to
17 receive such compensation had the state not provided for
18 payment of compensation on the basis of such previously
19 uncovered services, and provided benefits shall be paid for
20 such previously uncovered service only to the extent that the
21 division determines that the unemployment compensation fund
22 may be reimbursed for such benefits pursuant to Pub. L. No.
23 94-566, s. 121.

24 Section 5. Paragraph (g) of subsection (3) and
25 paragraph (d) of subsection (5) of section 443.131, Florida
26 Statutes, are amended to read:

27 443.131 Contributions.--

28 (3) CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.--

29 (g)1. For the purposes of this subsection, two or more
30 employers who are parties to a transfer of business or the
31 subject of a merger, consolidation, or other form of

1 reorganization, effecting a change in legal identity or form,
2 shall be deemed to be a single employer and shall be
3 considered as one employer with a continuous employment record
4 if the division finds that the successor employer continues to
5 carry on the employing enterprises of the predecessor employer
6 or employers and that the successor employer has paid all
7 contributions required of and due from the predecessor
8 employer or employers and has assumed liability for all
9 contributions that may become due from the predecessor
10 employer or employers. As used in this paragraph, the term
11 "contributions" means all indebtedness to the division,
12 including, but not limited to, interest, penalty, collection
13 fee, and service fee. A successor has 30 days from the date of
14 the official notification of liability by succession to accept
15 the transfer of the predecessor's or predecessors' employment
16 record or records. If the predecessor or predecessors have
17 unpaid contributions or outstanding quarterly reports, the
18 successor has 30 days from the date of the notice listing the
19 total amount due to pay the total amount with certified funds.
20 After the total indebtedness has been paid, the employment
21 record or records of the predecessor or predecessors will be
22 transferred to the successor. Employment records may be
23 transferred by the division. The tax rate of total successor
24 and predecessor upon the transfer of employment records shall
25 be determined by the division as prescribed by rule in order
26 to calculate any tax rate change resulting from the transfer
27 of employment records.

28 2. Whether or not there is a transfer of employment
29 record as contemplated in this paragraph, the predecessor
30 shall in the event he or she again employs persons be treated
31 as an employer without previous employment record or, if his

1 or her coverage has been terminated as provided in s. 443.121,
2 as a new employing unit.

3 3. The division may provide by rule for partial
4 transfer of experience rating when an employer has transferred
5 at any time an identifiable and segregable portion of his or
6 her payrolls and business to a successor employing unit. As a
7 condition of such partial transfer of experience, the rules
8 shall require an application by the successor, agreement by
9 the predecessor, and such evidence as the division may
10 prescribe of the experience and payrolls attributable to the
11 transferred portion up to the date of transfer. The rules
12 shall provide that the successor employing unit, if not
13 already an employer, shall become an employer as of the date
14 of the transfer and that the experience of the transferred
15 portion of the predecessor's account shall be removed from the
16 experience-rating record of the predecessor, and for each
17 calendar year following the date of the transfer of the
18 employment record on the books of the division, the division
19 shall compute the rate of contribution payable by the
20 successor on the basis of his or her experience, if any,
21 combined with the experience of the portion of the record
22 transferred. The rules may also provide what rates shall be
23 payable by the predecessor and successor employers for the
24 period between the date of the transfer of the employment
25 record of the transferred unit on the books of the division
26 and the first day of the next calendar year.

27 4. This paragraph shall not apply to the employee
28 leasing company and client contractual agreement as defined in
29 s. 443.036. The client shall, in the event of termination of
30 the contractual agreement or failure by the employee leasing
31 company to submit reports or pay contributions as required by

1 the division, be treated as a new employer without previous
2 employment record unless otherwise eligible for a rate
3 computation.

4 (5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE
5 AND POLITICAL SUBDIVISIONS OF THE STATE.--Benefits paid to
6 employees of this state or any instrumentality of this state,
7 or to employees of any political subdivision of this state or
8 any instrumentality thereof, based upon service defined in s.
9 443.036(19)(b), shall be financed in accordance with this
10 subsection.

11 (d) Upon establishing a financing method as provided
12 by this subsection, such financing method shall be applicable
13 for not less than 2 calendar years. Nothing herein shall be
14 construed to prevent an employer subject to the provisions of
15 this subsection from electing to change its method of
16 financing or its method of reporting after completing 2
17 calendar years under another financing method, so long as such
18 new election is timely filed. The division may prescribe by
19 rule the procedures for changing methods of reporting.

20 Section 6. Paragraph (b) of subsection (1) of section
21 443.141, Florida Statutes, is amended and paragraph (c) is
22 added to that subsection to read:

23 443.141 Collection of contributions.--

24 (1) PAST DUE CONTRIBUTIONS.--

25 (b) Penalty for delinquent reports.--

26 1. Any employing unit which fails to file any reports
27 required by the division in the administration of this
28 chapter, in accordance with rules adopted by the division,
29 shall pay to the division with respect to each such report the
30 sum of \$25 for each 30 days or fraction thereof that such
31 employing unit is delinquent, unless the division finds that

1 such employing unit has or had good reason for failure to file
2 such report or reports.

3 2. Sums collected as penalties under the provisions of
4 subparagraph 1. shall be deposited by the division in the
5 Special Employment Security Administration Trust Fund.

6 3. A waiver of penalty and interest for delinquent
7 reports may be authorized where impositions of interest or a
8 penalty would be inequitable.

9 (c) Application of partial payments.--When a
10 delinquency exists in the account of an employer not in
11 bankruptcy, and payment in an amount less than the total
12 delinquency is submitted, the division shall apply such
13 partial payment as the payer directs. In the absence of
14 specific direction, the division shall apply the partial
15 payment to the payer's account as prescribed by rule.

16 Section 7. Subsection (2) of section 443.151, Florida
17 Statutes, is amended to read:

18 443.151 Procedure concerning claims.--

19 (2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF
20 CLAIMANTS AND EMPLOYERS.--Claims for benefits shall be made in
21 accordance with such rules as the division may adopt
22 prescribe. The division shall notify claimants and employers
23 regarding monetary and nonmonetary determinations of
24 eligibility. Investigations of issues raised in connection
25 with a claimant which may affect a claimant's eligibility for
26 benefits or charges to an employer's account shall be
27 conducted by the division as prescribed by rule.

28 Section 8. Subsection (5) is added to section 450.121,
29 Florida Statutes, to read:

30 450.121 Enforcement of Child Labor Law.--

31 (5) The division may adopt rules:

1 (a) Defining words, phrases, or terms used in the
2 child labor rule or in this part, as long as the word, phrase,
3 or term is not a word, phrase, or term defined in s. 450.012.

4 (b) Prescribing additional documents that may be used
5 to prove the age of a minor and the procedure to be followed
6 before a person who claims his or her disability of nonage has
7 been removed by a court of competent jurisdiction may be
8 employed.

9 (c) Requiring certain safety equipment and a safe work
10 place environment for employees who are minors.

11 (d) Prescribing the deadlines applicable to a response
12 to a request for records under subsection (2).

13 (e) Providing an official address from which child
14 labor forms, rules, laws, and posters may be requested and
15 prescribing the forms to be used in connection with this part.

16 Section 9. Subsection (8) is added to section 450.30,
17 Florida Statutes, to read:

18 450.30 Requirement of certificate of registration;
19 education and examination program.--

20 (8) The division may adopt rules prescribing the
21 procedures to be followed to register as a farm labor
22 contractor.

23 Section 10. Subsection (5) of section 450.33, Florida
24 Statutes, is amended to read:

25 450.33 Duties of farm labor contractor.--Every farm
26 labor contractor must:

27 (5) Take out a policy of insurance with any insurance
28 carrier which policy insures such registrant against liability
29 for damage to persons or property arising out of the operation
30 or ownership of any vehicle or vehicles for the transportation
31 of individuals in connection with his or her business,

1 activities, or operations as a farm labor contractor. In no
2 event may the amount of such liability insurance be less than
3 that required by the provisions of the financial
4 responsibility law of this state. Any insurance carrier that
5 is licensed to operate in this state and that has issued a
6 policy of liability insurance to operate a vehicle used to
7 transport farm workers shall notify the division when it
8 intends to cancel such policy.

9 Section 11. Subsection (2) of section 450.38, Florida
10 Statutes, is amended to read:

11 450.38 Enforcement of farm labor contractor laws.--

12 (2) Any person who, on or after June 19, 1985, commits
13 a violation of this part or of any rule adopted thereunder may
14 be assessed a civil penalty of not more than \$1,000 for each
15 such violation. Such assessed penalties shall be paid in cash,
16 certified check, or money order and shall be deposited into
17 the General Revenue Fund. The division shall not institute or
18 maintain any administrative proceeding to assess a civil
19 penalty under this subsection when the violation is the
20 subject of a criminal indictment or information under this
21 section which results in a criminal penalty being imposed, or
22 of a criminal, civil, or administrative proceeding by the
23 United States government or an agency thereof which results in
24 a criminal or civil penalty being imposed. The division may
25 adopt rules prescribing the criteria to be used to determine
26 the amount of the civil penalty and to provide notification to
27 persons assessed a civil penalty under this section.

28 Section 12. This act shall take effect upon becoming a
29 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1708

This committee substitute is the Department of Labor and Employment Security's rule authorizing bill, and authorizes the Division of Blind Services to adopt rules and forms related to vocational rehabilitation services and the establishment of vending facilities programs. This committee substitute also defines and clarifies specific terms relating to the administration of unemployment compensation, and authorizes the Division of Unemployment Compensation to develop criteria to determine a claimants ability to work and availability for work. The committee substitute further authorizes the Division of Unemployment Compensation to approve training in accordance with criteria prescribed by rule; to adopt rules regarding total succession; to adopt by rule procedures for changing methods of reporting; to develop by rule application of partial payments; and to adopt rules regarding monetary and nonmonetary investigations. This committee substitute requires any insurance carrier that is licensed to operate in this state and that has issued a policy of liability insurance to operate a vehicle used to transport farm workers to notify the division when it intends to cancel such policy.