

STORAGE NAME: h1759.bdt

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
ANALYSIS**

BILL #: HB 1759

RELATING TO: Unemployment Compensation

SPONSOR(S): Representative Patterson and others

COMPANION BILL(S): SB 1688(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
 - (2) FINANCIAL SERVICES
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

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

The fiscal impact of this bill is (\$250,000) for FY 99-2000, (\$45,000) for FY 2000-01, and (\$45,000) for FY 2001-02. The bill directs that revenues generated by the contract be used to pay for the cost of providing access to the information.

The bill would take effect July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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

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

Sections 443.171(7) and 443.1715, F.S., 1998 Supp., provide that information revealing an individual's identity obtained from an employer or from any individual pursuant to the administration of the unemployment compensation program, and any determination revealing such information, must, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending, be held confidential and exempt from the Public Records Law (s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution). This information may be made available only to public employees in the performance of their public duties. Any employee or member of the Unemployment Appeals Commission or any employee of the division, or any other person receiving confidential information, who violates the record's confidentiality, commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.

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

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

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

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.
- (b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency

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

²Chapter 119, F.S.

may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

The federal Fair Credit Reporting Act (FCRA) regulates the operations of consumer credit reporting agencies and users of consumer reports. Section 1681a, 15 U.S.C., provides definitions and rules of construction for the FCRA, and defines the term "consumer reporting agency" as any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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

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

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

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

The department must establish minimum audit, security, net-worth, and liability-insurance standards, technical requirements, and any other terms and conditions considered necessary in the discretion of the

department to safeguard the confidentiality of the information released under this section and to otherwise serve the public interest.

Furthermore, in accordance with federal regulations, any additional revenues generated by the department or the state under this section must be paid into the department's trust fund for the administration of the unemployment compensation system.

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

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

This bill takes effect July 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 443, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 Creates Section 443.1716, Florida Statutes to allow electronic access to employer information contained in the records of the Division of Unemployment Compensation. Requires DLES to contract with consumer-reporting agencies. These agencies will provide creditors with electronic access to employer-provided information relating to quarterly wage reports submitted in accordance with the unemployment compensation program. The division will be required to allow access to 16 quarters of wage data submitted by employers.

Requires qualified creditors to obtain a written and signed consent from the credit applicant that must include the following:

- a. Specific notice that the individual's wage and employment history will be released to a consumer-reporting agency.
- b. Notice that such release is made for the sole purpose of reviewing a specific credit application made by the individual.
- c. Notice that records in DLES containing wage and employment history information submitted by the individual or the individual's employer may be accessed.
- d. A listing of the parties authorized to receive the released information.

The bill provides that the information released by DLES may be used only to support a single consumer credit transaction for a subscriber and can be used only to satisfy standard financial underwriting requirements and the subscriber's obligations under applicable state and federal Fair Credit Reporting laws and rules.

The bill requires DLES establish minimum audit, security, net-worth, and liability standards, technical requirements and any other terms and conditions considered necessary in the department's discretion to safeguard the confidentiality of the information released. Requires DLES to coordinate with any necessary state agency to create audit procedures to ensure compliance by the consumer-reporting agency.

DLES is prohibited from providing any information to a consumer-reporting agency before such agency with whom DLES has a contract pays all developmental and start-up costs incurred by the state in connection with the design, installation, and administration of technological systems and procedures for electronic access to the data source.

The release of any information under this section must be in a manner permitted by the U.S. Department of Labor.

Provides that the term consumer-reporting agency has the same meaning as set forth in the Federal Fair Credit Reporting Act, 15 U.S.C. s. 1681a.

Section 2 Provides the act shall take effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

(\$250,000) FY 99-2000

2. Recurring Effects:

(\$45,000) FY 2000-01, (\$45,000) FY 2001-02

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Any revenues DLES generates by contracting with consumer-reporting agencies must be used to pay for the cost of providing the information to the consumer-reporting agencies. If after those costs have been recovered, any additional revenues must be deposited in the Unemployment Compensation Administration Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

STORAGE NAME: h1759.bdt

DATE: April 6, 1999

PAGE 8

2. Direct Private Sector Benefits:

Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

Any revenues DLES generates by contracting with consumer-reporting agencies must be used to pay for the cost of providing the information to the consumer-reporting agencies. If after those costs have been recovered, any additional revenues must be deposited in the Unemployment Compensation Administration Trust Fund.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

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