

STORAGE NAME: h0935b.flc

DATE: April 14, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Family Law and Children
ANALYSIS**

BILL #: HB 935

RELATING TO: Unemployment Compensation/Good Cause

SPONSOR(S): Representatives Frankel, Chestnut, Dockery and others

COMPANION BILL(S): SB 1340(S) and SB 134(C)

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

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 0
 - (2) FAMILY LAW AND CHILDREN YEAS 3 NAYS 2
 - (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill specifies domestic violence as an additional criterion of "good cause" for purposes of an exception from disqualification from unemployment benefits for separating from employment.

The bill provides grounds for separating from employment due to domestic violence and provides for confidentiality of evidence of domestic violence.

The fiscal impact of this bill is indeterminate at this time.

The bill would take effect October 1, 1999.

See Amendments or Committee Substitute Changes, Section VI.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 443.101(1)(a)(1), Florida Statutes, provides that an individual who has voluntarily quit employment is subject to disqualification from receiving unemployment compensation benefits for the full period of unemployment next ensuing after he or she has left work and until such individual has earned income equal to at least 17 times the weekly benefit amount of the claim. However, if the worker voluntarily quit work with "good cause" he or she is not subject to disqualification. "Good cause" includes only cause that is attributable to the employer, or illness or disability of the individual requiring separation from his or her work.

Pursuant to sections 443.171(7) and 443.1715, F. S., records maintained by the Division of Unemployment Compensation which reveal the identity of an employing unit or an individual are, except to the extent necessary for the proper presentation of a claim, confidential and exempt from the provisions of section 119.07(1) and section 24(a), Article I of the State Constitution. Such records are not open to public inspection. Records in the custody of the division can only be released to public employees in the performance of their public duties or upon the written authorization of a claimant who has a workers' compensation claim pending. Failure to maintain the confidentiality of the division's records is a misdemeanor of the second-degree and punishable as provided in sections 775.082 or 775.083, Florida Statutes.

When an appeal has been filed with respect to a determination issued on a claim, legal interpretations of Florida law have found that such administrative hearings are public pursuant to section 286.011, F.S. Therefore, upon a request for information contained in a claim record that has been through the appellate process outlined in chapter 443, F.S., records must be released in accordance with the request.

B. EFFECT OF PROPOSED CHANGES:

The bill proposes to amend the disqualification provision for voluntarily quitting work by adding to the meaning of "good cause" such cause as is directly the result of an individual's experience of domestic violence. The bill delineates the grounds by which an individual's job separation will be considered to be due to circumstances directly resulting from the experience of domestic violence. These circumstances are:

1. The employee's reasonable fear of future domestic violence at or en route to or from the employee's place of employment;
2. The employee's wish to relocate to another geographic area in order to avoid future domestic violence against the employee or the employee's family;
3. The employee's need to recover from traumatic stress resulting from the employee's experience of domestic violence; or
4. Any other circumstance in which domestic violence causes the employee to reasonably believe that termination of employment is necessary for the future safety of the employee or the employee's family.

The bill requires the division to hold in strictest confidence all evidence of domestic violence experienced by an individual, including the individual's statement, corroborating evidence, and the fact that the individual has filed a claim. Such information may only be disclosed upon the consent of the individual when necessary to protect the individual's safety.

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:

Section 443.101, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 Provides that "good cause" for quitting work includes such cause as is due to circumstances directly resulting from the individual's experience of domestic violence. An employee's job separation shall be treated as due to circumstances directly resulting from domestic violence when the individual has a reasonable fear of future domestic violence at or en route to or from the workplace; when the prospect of domestic violence against the individual or his or her family creates a desire to relocate; when the individual needs to recover from stress caused by domestic violence; or whenever the individual reasonably believes that terminating from work is necessary for personal safety or the safety of his or her family. Creates sub-subparagraph a. in subparagraph 1. of paragraph (a) under subsection (1) of Section 443.101, Florida Statutes.

Requires the division to hold in strictest confidence all evidence of domestic violence experienced by an individual, including the individual's statement, corroborating evidence, and the fact that the individual has filed a claim. Such information may only be disclosed upon the consent of the individual when necessary to protect the individual's safety. Creates the new sub-subparagraph b. in subparagraph 1. of paragraph (a) under subsection (1) of Section 443.101, Florida Statutes.

Section 2 Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

Ordinarily, Unemployment Compensation Insurance is paid quarterly by employers according to how many workers they employ. If a worker applies for Unemployment Compensation, those funds come from the Unemployment Compensation Trust Fund which the employers pay into with their quarterly contributions.

Victims of domestic violence who take advantage of this program will also receive their unemployment benefits directly from the Unemployment Compensation Trust Fund. **However, employers will neither pay into nor will they need to reimburse the Fund for this program.** Therefore, the program will be instituted by the state with no direct cost to employers.

It is estimated that this program will cost the \$300,000 a year, with funds taken from the multi-billion dollar Unemployment Compensation Trust Fund. In comparison to the costs incurred from domestic violence (estimated to be more than \$3 - 5 million annually nationwide in lost productivity, absences and medical costs), this is a sound economic decision. See "Unemployment Compensation for Victims of Domestic Violence: An Important Link to Economic and Employment Security," Clearinghouse Review, 1996. Currently, unemployment and thus unemployment claims are at an all time low in the state of Florida. The amount of money companies have to pay into the fund has been reduced by recent legislation, and lawmakers are considering whether to allow the money to be used for a wider range of purposes, including worker training. See "Lawmakers Propose Giving Domestic Violence Victims Jobless Pay for Missed Work," Palm Beach Post, March 6, 1999. Additionally, just one incident where an abuser injures workers in the workplace can cost a company in excess of \$3 million. See Jurg W. Mattman, "Preventing Violence in the Workplace," Workplace Violence Research Institute, 1999.

Victims of domestic violence often have their work performance negatively affected by the violence, either by a loss of concentration, or harassing phone calls and faxes and visits from the abuser. See "Statement Introducing Workplace Violence Prevention Tax Credit Act," Congresswoman Nita Lowey, May 31, 1996. Many workers who are victims of domestic violence sustain injuries which cause them to be absent from or late to work. The company also suffers direct losses due to the behavior of the abuser. The harassing phone calls may take other employees from their work; visits from the abuser may cause disruptions at the workplace; abusers may cause emotional scenes and property damage at the workplace; and abusers may choose the workplace to injure their victim or others in the workplace, especially if the victim has attempted to leave the abuser and the workplace is the only place the abuser may reach the victim. See id.

According to the Department of Labor, no data is available to indicate how many of the unemployment compensation claims filed are as a result of individuals experiencing domestic

violence. However, Maine has had a similar statute in place for 6 years and claims from victims of domestic violence have amounted to less than 1% of voluntary quit claims. See, Letter from Director, Maine Department of Unemployment Compensation, 2/5/99. When compared with Florida Department of Labor, Division of Unemployment Compensation statistics, taking into account the percentage of voluntary quit claims and the number of those claims paid, Florida can expect only about an additional 190 claims per year (out of 103,531 claims in an 18-month period, 21,683 of which were paid). See, Carol Laymance, Memo of Comparison, Children's Advocacy Center, Florida State University College of Law. See also, Florida Department of Labor Statistics.

Pursuant to the provisions of Section 443.131, F.S., the unemployment compensation tax accounts of employers in the private sector would be eligible for relief from benefit charges when a former employee leaves work due to circumstances directly resulting from the experience of domestic violence. However, the department does not anticipate that this bill would have any substantive effect on the Unemployment Compensation Trust Fund.

The Department estimates a non-recurring fiscal impact of \$5,000 for computer programming, training, and manual updates.

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:

The Division of Unemployment Compensation has expressed some concerns with the bill has suggested the following: The division recommends avoiding the use of the term "employment" as found on page 2, lines 4, 11, 17, and 26 so as to avoid confusion with the definition of employment as found in s. 443.036(19), F.S. By using the word employment, the bill may be interpreted to mean that a victim of domestic violence could only qualify for benefits when he or she quit a job that meets the statutory definition of "employment" and no other type of work. Not all work is considered "employment." The division recommends using the term "work" in lieu of the term "employment", which makes the proposal consistent with the language currently contained in paragraph (a) of subsection (1) of section 443.101, F.S.

The division also recommends avoiding use of the term "employee" as used on page 2. At the time an individual files a claim for unemployment compensation benefits, the worker is unemployed and is no longer an employee. Language consistent with chapter 443 would replace the term "employee" with the term "individual."

The bill does not define who encompasses an individual's family.

Except to the extent chapter 286, F.S., requires the records of an appeals hearing to be considered public records, unemployment compensation records have always been held confidential pursuant to the requirements of the federal government. This is to ensure the proper administration of the unemployment compensation program. By maintaining the confidentiality of claim records as well as employer records, the unemployment compensation program can avoid controversy and adverse publicity that may interfere with its ability to provide the service for which it was designed. In order for the bill to have the full affect that it intends, it should create an exemption from chapter 286, F.S.

There is a potential conflict between the bill's confidentiality provision and the existing language in chapter 443, F.S., which allows for the release of information upon the written authorization of an individual who

has a workers' compensation claim pending. Such authorization is required of insurance carriers for information necessary for the proper disposition of workers compensation claims.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1999, The Committee on Business Development and International Trade adopted one amendment. The amendment does the following:

Defines domestic violence as defined in s. 414.0252, Florida Statutes.

Further defines "corroborating evidence" to include but not be limited to: an injunction for protection against domestic or repeat violence; police reports; hospital records of injury; counseling or mental health records; pictures of injuries; a letter verifying services from a domestic violence center; the names, addresses and phone numbers of people who have knowledge of the abuse; or any other record of the abuse.

The amendment substitutes the word "employee" with the word "individual" and substitutes the word "employment" with the word "work".

The amendment revises provisions relating to an employee's separation from employment resulting from domestic violence under certain conditions as follows:

Changes the employee's *reasonable fear of future domestic violence at or en route to or from the employee's place of employment* to the individual's *reasonable fear of immediate domestic violence against an individual at the individual's place of work*.

Changes the employee's *wish to relocate to another area to avoid future domestic violence against the employee or the employee's family* to the individual's *need to relocate to avoid immediate domestic violence against the individual*.

Removes provisions relating to the employees need to recover from traumatic stress resulting from domestic violence and *any other circumstance in which domestic violence causes the employee to reasonably believe that termination of employment is necessary for the future safety of the employee or the employee's family*.

Finally, the amendment removes provisions relating to the confidentiality of evidence relating to domestic violence.

FROM FAMILY LAW & CHILDREN:

The amendments above address several concerns this committee had upon analyzing the original bill.

On April 5, 1999, The Committee on Family Law and Children adopted one amendment. The amendment does the following:

The amendment requires that if an arrest is made of an abuser and that arrest is used as corroborating evidence as required by this bill as amended, the victim must cooperate with the state attorney's office in prosecution of the individual in order to be eligible for unemployment compensation. If a criminal domestic violence incident occurred within a year of the worker's separation from work, the worker must file a criminal complaint regarding the incident and cooperate in the prosecution of the individual.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

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