

1 F.S.; prescribing procedures with respect to
2 untimely appeals; amending s. 895.02, F.S.;
3 redefining the term "racketeering activity,"
4 for purposes of the criminal statutes
5 pertaining to that offense, to include creation
6 of fictitious employer schemes to commit
7 unemployment compensation fraud; providing
8 effective dates.
9

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

11
12 Section 1. Paragraph (b) of subsection (10) of section
13 120.80, Florida Statutes, is amended to read:

14 120.80 Exceptions and special requirements;
15 agencies.--

16 (10) AGENCY FOR WORKFORCE INNOVATION.--

17 (b) Notwithstanding s. 120.54(5), the uniform rules of
18 procedure do not apply to appeal proceedings conducted under
19 chapter 443 by the Unemployment Appeals Commission, special
20 deputies, or unemployment appeals referees.

21 Section 2. Present subsection (4) of section 443.071,
22 Florida Statutes, is renumbered as subsection (5) and amended,
23 and a new subsection (4) and subsections (6), (7), and (8) are
24 added to that section, to read:

25 443.071 Penalties.--

26 (4) Any person who establishes a fictitious employing
27 unit and submits to the Agency for Workforce Innovation or its
28 tax collection service provider fraudulent employing unit
29 records or tax or wage reports by:

30 (a) Introducing fraudulent records into a computer
31 system;

1 **(b) Using computer facilities without authorization;**
2 **(c) Intentionally or deliberately altering or**
3 **destroying computerized information or files; or**
4 **(d) Stealing financial instruments, data, or other**
5 **assets**
6
7 **for the purpose of enabling herself or himself or any other**
8 **person to receive benefits under this chapter to which the**
9 **recipient is not entitled commits a felony of the third**
10 **degree, punishable as provided in s. 775.082, s. 775.083, or**
11 **s. 775.084.**

12 **(5)(4)** In any prosecution or action under this
13 section, **the entry into evidence of** the signature of a person
14 on a document, letter, or other writing constitutes prima
15 facie evidence of the person's identity if the following
16 conditions exist:

17 (a) The **document includes the person's** ~~person gives~~
18 ~~her or his~~ name, residence address, **and** ~~home telephone number,~~
19 ~~present or former place of employment, gender, date of birth,~~
20 ~~social security number, height, weight, and race.~~

21 (b) The signature of the person is witnessed by an
22 agent or employee of the Agency for Workforce Innovation or
23 its tax collection service provider at the time the document,
24 letter, or other writing is filed.

25 **(6) The entry into evidence of an application for**
26 **unemployment benefits initiated by the use of the Internet**
27 **Claims program or the interactive voice response system**
28 **telephone claims program of the Agency for Workforce**
29 **Innovation constitutes prima facie evidence of the**
30 **establishment of a personal benefit account by or for an**
31 **individual if the following information is provided: the**

1 applicant's name, residence address, date of birth, social
2 security number, and present or former place of employment.

3 (7) The entry into evidence of a transaction history
4 generated by a personal identification number establishing
5 that a certification or claim for a week or weeks of benefits
6 was made against the benefit account of the individual
7 together with documentation that payment was paid by a state
8 warrant made to the order of the person or by direct deposit
9 via electronic benefit transfer constitutes prima facie
10 evidence that the person claimed and received unemployment
11 benefits from the state.

12 (8) All records relating to investigations of
13 unemployment fraud in the custody of the Agency for Workforce
14 Innovation are available for examination by the Department of
15 Law Enforcement, the state attorney, or the Office of the
16 Statewide Prosecutor in the prosecution of offenses under s.
17 817.568, criminal use of personal identification information,
18 or in proceedings brought under this chapter.

19 Section 3. Paragraph (c) of subsection (1) of section
20 443.091, Florida Statutes, is amended to read:

21 443.091 Benefit eligibility conditions.--

22 (1) An unemployed individual is eligible to receive
23 benefits for any week only if the Agency for Workforce
24 Innovation finds that:

25 (c)1. She or he is able to work and is available for
26 work. In order to assess eligibility for a claimed week of
27 unemployment, the Agency for Workforce Innovation shall
28 develop criteria to determine a claimant's ability to work and
29 availability for work.

30 2. Notwithstanding ~~any other provision of this~~
31 paragraph or paragraphs (b) and (d) section, an otherwise

1 eligible individual may not be denied benefits for any week
2 because she or he is in training with the approval of the
3 Agency for Workforce Innovation, and such an individual may
4 not be denied benefits for any week in which she or he is in
5 training with the approval of the Agency for Workforce
6 Innovation by reason of subparagraph 1. relating to
7 availability for work, or s. 443.101(2) relating to failure to
8 apply for, or refusal to accept, suitable work. Training may
9 be approved by the Agency for Workforce Innovation in
10 accordance with criteria prescribed by rule. A claimant's
11 eligibility during approved training is contingent upon
12 satisfying eligibility conditions prescribed by rule.

13 3. Notwithstanding any other provision of this
14 chapter, an individual who is in training approved under s.
15 236(a)(1) of the Trade Act of 1974, as amended, may not be
16 determined to be ineligible or disqualified for benefits with
17 respect to her or his enrollment in such training or because
18 of leaving work that is not suitable employment to enter such
19 training. As used in this subparagraph, the term "suitable
20 employment" means, for a worker, work of a substantially equal
21 or higher skill level than the worker's past adversely
22 affected employment, as defined for purposes of the Trade Act
23 of 1974, as amended, the wages for which are at least 80
24 percent of the worker's average weekly wage as determined for
25 purposes of the Trade Act of 1974, as amended.

26 4. Notwithstanding any other provision of this
27 section, an otherwise eligible individual may not be denied
28 benefits for any week by reason of subparagraph 1. because she
29 or he is before any court of the United States or any state
30 under a lawfully issued summons to appear for jury duty.

31

1 Section 4. Paragraph (a) of subsection (1) and
2 subsection (13) of section 443.1216, Florida Statutes, are
3 amended to read:

4 443.1216 Employment.--Employment, as defined in s.
5 443.036, is subject to this chapter under the following
6 conditions:

7 (1)(a) The employment subject to this chapter includes
8 a service performed, including a service performed in
9 interstate commerce, by:

10 1. An officer of a corporation.

11 2. An individual who, under the usual common-law rules
12 applicable in determining the employer-employee relationship,
13 is an employee. However, whenever a client, as defined in s.
14 443.036(18), which would otherwise be designated as an
15 employing unit has contracted with an employee leasing company
16 to supply it with workers, those workers are considered
17 employees of the employee leasing company. An employee leasing
18 company may lease corporate officers of the client to the
19 client and ~~to~~ other workers to the client, except as
20 prohibited by regulations of the Internal Revenue Service.
21 Employees of an employee leasing company must be reported
22 under the employee leasing company's tax identification number
23 and contribution rate for work performed for the employee
24 leasing company.

25 3. An individual other than an individual who is an
26 employee under subparagraph 1. or subparagraph 2., who
27 performs services for remuneration for any person:

28 a. As an agent-driver or commission-driver engaged in
29 distributing meat products, vegetable products, fruit
30 products, bakery products, beverages other than milk, or
31 laundry or drycleaning services for his or her principal.

1 b. As a traveling or city salesperson engaged on a
2 full-time basis in the solicitation on behalf of, and the
3 transmission to, his or her principal of orders from
4 wholesalers, retailers, contractors, or operators of hotels,
5 restaurants, or other similar establishments for merchandise
6 for resale or supplies for use in their business operations.
7 This sub-subparagraph does not apply to an agent-driver or a
8 commission-driver and does not apply to sideline sales
9 activities performed on behalf of a person other than the
10 salesperson's principal.

11 4. The services described in subparagraph 3. are
12 employment subject to this chapter only if:

13 a. The contract of service contemplates that
14 substantially all of the services are to be performed
15 personally by the individual;

16 b. The individual does not have a substantial
17 investment in facilities used in connection with the services,
18 other than facilities used for transportation; and

19 c. The services are not in the nature of a single
20 transaction that is not part of a continuing relationship with
21 the person for whom the services are performed.

22 (13) The following are ~~employment is~~ exempt from
23 coverage under this chapter:

24 (a) Domestic service in a private home, local college
25 club, or local chapter of a college fraternity or sorority,
26 except as provided in subsection (6).

27 (b) Service performed on or in connection with a
28 vessel or aircraft that is not an American vessel or American
29 aircraft, if the employee is employed on and in connection
30 with the vessel or aircraft while the vessel or aircraft is
31 outside the United States.

1 (c) Service performed by an individual engaged in, or
2 as an officer or member of the crew of a vessel engaged in,
3 the catching, taking, harvesting, cultivating, or farming of
4 any kind of fish, shellfish, crustacea, sponges, seaweeds, or
5 other aquatic forms of animal and vegetable life, including
6 service performed by an individual as an ordinary incident to
7 engaging in those activities, except:

8 1. Service performed in connection with the catching
9 or taking of salmon or halibut for commercial purposes.

10 2. Service performed on, or in connection with, a
11 vessel of more than 10 net tons, determined in the manner
12 provided for determining the registered tonnage of merchant
13 vessels under the laws of the United States.

14 (d) Service performed by an individual in the employ
15 of his or her son, daughter, or spouse, including step
16 relationships, and service performed by a child, or stepchild,
17 under the age of 21 in the employ of his or her father,
18 mother, stepfather, or stepmother.

19 (e) Service performed in the employ of the Federal
20 Government or of an instrumentality of the Federal Government
21 which is:

22 1. Wholly or partially owned by the United States.

23 2. Exempt from the tax imposed by s. 3301 of the
24 Internal Revenue Code under a federal law that specifically
25 cites s. 3301, or the corresponding section of prior law, in
26 granting the exemption. However, to the extent that the United
27 States Congress permits the state to require an
28 instrumentality of the Federal Government to make payments
29 into the Unemployment Compensation Trust Fund under this
30 chapter, this chapter applies to that instrumentality, and to
31 services performed for that instrumentality, in the same

1 manner, to the same extent, and on the same terms as other
2 employers, employing units, individuals, and services. If this
3 state is not certified for any year by the Secretary of Labor
4 under s. 3304 of the federal Internal Revenue Code, the tax
5 collection service provider shall refund the payments required
6 of each instrumentality of the Federal Government for that
7 year from the fund in the same manner and within the same
8 period as provided in s. 443.141(6) for contributions
9 erroneously collected.

10 (f) Service performed in the employ of a public
11 employer as defined in s. 443.036, except as provided in
12 subsection (2), and service performed in the employ of an
13 instrumentality of a public employer as described in s.
14 443.036(35)(b) or (c), to the extent that the instrumentality
15 is immune under the United States Constitution from the tax
16 imposed by s. 3301 of the Internal Revenue Code for that
17 service.

18 (g) Service performed in the employ of a corporation,
19 community chest, fund, or foundation that is organized and
20 operated exclusively for religious, charitable, scientific,
21 testing for public safety, literary, or educational purposes
22 or for the prevention of cruelty to children or animals. This
23 exemption does not apply to an employer if part of the
24 employer's net earnings inures to the benefit of any private
25 shareholder or individual or if a substantial part of the
26 employer's activities involve carrying on propaganda,
27 otherwise attempting to influence legislation, or
28 participating or intervening in, including the publishing or
29 distributing of statements, a political campaign on behalf of
30 a candidate for public office, except as provided in
31 subsection (3).

1 (h) Service for which unemployment compensation is
2 payable under an unemployment compensation system established
3 by the United States Congress, of which this chapter is not a
4 part.

5 (i)1. Service performed during a calendar quarter in
6 the employ of an organization exempt from the federal income
7 tax under s. 501(a) of the Internal Revenue Code, other than
8 an organization described in s. 401(a), or under s. 521, if
9 the remuneration for the service is less than \$50.

10 2. Service performed in the employ of a school,
11 college, or university, if the service is performed by a
12 student who is enrolled and is regularly attending classes at
13 the school, college, or university.

14 (j) Service performed in the employ of a foreign
15 government, including service as a consular or other officer
16 or employee of a nondiplomatic representative.

17 (k) Service performed in the employ of an
18 instrumentality wholly owned by a foreign government if:

19 1. The service is of a character similar to that
20 performed in foreign countries by employees of the Federal
21 Government or of an instrumentality of the Federal Government;
22 and

23 2. The United States Secretary of State certifies to
24 the United States Secretary of the Treasury that the foreign
25 government for whose instrumentality the exemption is claimed
26 grants an equivalent exemption for similar service performed
27 in the foreign country by employees of the Federal Government
28 and of instrumentalities of the Federal Government.

29 (l) Service performed as a student nurse in the employ
30 of a hospital or a nurses' training school by an individual
31 who is enrolled and is regularly attending classes in a

1 nurses' training school chartered or approved under state law,
2 service performed as an intern in the employ of a hospital by
3 an individual who has completed a 4-year course in a medical
4 school chartered or approved under state law, and service
5 performed by a patient of a hospital for the hospital.

6 (m) Service performed by an individual for a person as
7 an insurance agent or as an insurance solicitor, if all of the
8 service performed by the individual for that person is
9 performed for remuneration solely by way of commission, except
10 for services performed in accordance with 26 U.S.C. s.
11 3306(c)(7) and (8). For purposes of this section, those
12 benefits excluded from the wages subject to this chapter under
13 s. 443.1217(2)(b)-(f), inclusive, are not considered
14 remuneration.

15 (n) Service performed by an individual for a person as
16 a real estate salesperson or agent, if all of the service
17 performed by the individual for that person is performed for
18 remuneration solely by way of commission.

19 (o) Service performed by an individual under the age
20 of 18 in the delivery or distribution of newspapers or
21 shopping news, excluding delivery or distribution to any point
22 for subsequent delivery or distribution.

23 (p) Service covered by an arrangement between the
24 Agency for Workforce Innovation, or its tax collection service
25 provider, and the agency charged with the administration of
26 another state or federal unemployment compensation law under
27 which all services performed by an individual for an employing
28 unit during the period covered by the employing unit's duly
29 approved election is deemed to be performed entirely within
30 the other agency's state or under the federal law.

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1 (q) Service performed by an individual enrolled at a
2 nonprofit or public educational institution that normally
3 maintains a regular faculty and curriculum and normally has a
4 regularly organized body of students in attendance at the
5 place where its educational activities are carried on, if the
6 institution certifies to the employer that the individual is a
7 student in a full-time program, taken for credit at the
8 institution that combines academic instruction with work
9 experience, and that the service is an integral part of the
10 program. This paragraph does not apply to service performed in
11 a program established for or on behalf of an employer or group
12 of employers.

13 (r) Service performed by an individual for a person as
14 a barber, if all of the service performed by the individual
15 for that person is performed for remuneration solely by way of
16 commission.

17 (s) Casual labor not in the course of the employer's
18 trade or business.

19 (t) Service performed by a speech therapist,
20 occupational therapist, or physical therapist who is
21 nonsalaried and working under a written contract with a home
22 health agency as defined in s. 400.462.

23 (u) Service performed by a direct seller. As used in
24 this paragraph, the term "direct seller" means a person:

25 1.a. Who is engaged in the trade or business of
26 selling or soliciting the sale of consumer products to buyers
27 on a buy-sell basis, on a deposit-commission basis, or on a
28 similar basis, for resale in the home or in another place that
29 is not a permanent retail establishment; or
30
31

1 b. Who is engaged in the trade or business of selling
2 or soliciting the sale of consumer products in the home or in
3 another place that is not a permanent retail establishment;

4 2. Substantially all of whose remuneration for
5 services described in subparagraph 1., regardless of whether
6 paid in cash, is directly related to sales or other output,
7 rather than to the number of hours worked; and

8 3. Who performs the services under a written contract
9 with the person for whom the services are performed, if the
10 contract provides that the person will not be treated as an
11 employee for those services for federal tax purposes.

12 (v) Service performed by a nonresident alien for the
13 period he or she is temporarily present in the United States
14 as a nonimmigrant under subparagraph (F) or subparagraph (J)
15 of s. 101(a)(15) of the Immigration and Nationality Act, and
16 which is performed to carry out the purpose specified in
17 subparagraph (F) or subparagraph (J), as applicable.

18 (w) Service performed by an individual for
19 remuneration for a private, for-profit delivery or messenger
20 service, if the individual:

21 1. Is free to accept or reject jobs from the delivery
22 or messenger service and the delivery or messenger service
23 does not have control over when the individual works;

24 2. Is remunerated for each delivery, or the
25 remuneration is based on factors that relate to the work
26 performed, including receipt of a percentage of any rate
27 schedule;

28 3. Pays all expenses, and the opportunity for profit
29 or loss rests solely with the individual;

30 4. Is responsible for operating costs, including fuel,
31 repairs, supplies, and motor vehicle insurance;

1 5. Determines the method of performing the service,
2 including selection of routes and order of deliveries;

3 6. Is responsible for the completion of a specific job
4 and is liable for any failure to complete that job;

5 7. Enters into a contract with the delivery or
6 messenger service which specifies that the individual is an
7 independent contractor and not an employee of the delivery or
8 messenger service; and

9 8. Provides the vehicle used to perform the service.

10 (x) Service performed in agricultural labor by an
11 individual who is an alien admitted to the United States to
12 perform service in agricultural labor under ss. 101(a)(15)(H)
13 and 214(c) of the Immigration and Nationality Act.

14 (y) Service performed by a person who is an inmate of
15 a penal institution.

16 Section 5. Subsection (2) of section 443.1217, Florida
17 Statutes, is amended to read:

18 443.1217 Wages.--

19 (2) For purposes of determining an employer's
20 contributions, the following wages are exempt from this
21 chapter:

22 (a) That part of remuneration paid to an individual by
23 an employer for employment during a calendar year in excess of
24 the first \$7,000 of remuneration paid to the individual by the
25 employer or his or her predecessor during that calendar year,
26 unless that part of the remuneration is subject to a tax,
27 under a federal law imposing the tax, against which credit may
28 be taken for contributions required to be paid into a state
29 unemployment fund. As used in this section only, the term
30 "employment" includes services constituting employment under
31

1 any employment security law of another state or of the Federal
2 Government.

3 (b) Payment by an employing unit with respect to
4 services performed for, or on behalf of, an individual
5 employed by the employing unit under a plan or system
6 established by the employing unit which provides for payment
7 to its employees generally or to a class of its employees,
8 including any amount paid by the employing unit for insurance
9 or annuities or paid into a fund on account of:

10 1. Sickness or accident disability. When payment is
11 made to an employee or any of his or her dependents, this
12 subparagraph exempts from the wages subject to this chapter
13 only those payments received under a workers' compensation
14 law.

15 2. Medical and hospitalization expenses in connection
16 with sickness or accident disability.

17 3. Death, if the employee:

18 a. Does not have the option to receive, in lieu of the
19 death benefit, part of the payment or, if the death benefit is
20 insured, part of the premiums or contributions to premiums
21 paid by his or her employing unit; and

22 b. Does not have the right under the plan, system, or
23 policy providing the death benefit to assign the benefit or to
24 receive cash consideration in lieu of the benefit upon his or
25 her withdrawal from the plan or system; upon termination of
26 the plan, system, or policy; or upon termination of his or her
27 services with the employing unit.

28 (c) Payment on account of sickness or accident
29 disability, or payment of medical or hospitalization expenses
30 in connection with sickness or accident disability, by an
31 employing unit to, or on behalf of, an individual performing

1 services for the employing unit more than 6 calendar months
2 after the last calendar month the individual performed
3 services for the employing unit.

4 (d) Payment by an employing unit, without deduction
5 from the remuneration of an individual employed by the
6 employing unit, of the tax imposed upon the individual under
7 s. 3101 of the federal Internal Revenue Code for services
8 performed.

9 (e) The value of:

10 1. Meals furnished to an employee or the employee's
11 spouse or dependents by the employer on the business premises
12 of the employer for the convenience of the employer; or

13 2. Lodging furnished to an employee or the employee's
14 spouse or dependents by the employer on the business premises
15 of the employer for the convenience of the employer when
16 lodging is included as a condition of employment.

17 (f) Payment made by an employing unit to, or on behalf
18 of, an individual performing services for the employing unit
19 or a beneficiary of the individual:

20 1. From or to a trust described in s. 401(a) of the
21 Internal Revenue Code of 1954 which is exempt from tax under
22 s. 501(a) at the time of payment, unless payment is made to an
23 employee of the trust as remuneration for services rendered as
24 an employee of the trust and not as a beneficiary of the
25 trust;

26 2. Under or to an annuity plan that, at the time of
27 payment, is a plan described in s. 403(a) of the Internal
28 Revenue Code of 1954;

29 3. Under a simplified employee pension if, at the time
30 of payment, it is reasonable to believe that the employee is
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1 | entitled to a deduction under s. 219(b)(2) of the Internal
2 | Revenue Code of 1954 for the payment;

3 | 4. Under or to an annuity contract described in s.
4 | 403(b) of the Internal Revenue Code of 1954, other than a
5 | payment for the purchase of an annuity contract as part of a
6 | salary reduction agreement, regardless of whether the
7 | agreement is evidenced by a written instrument or otherwise;

8 | 5. Under or to an exempt governmental deferred
9 | compensation plan described in s. 3121(v)(3) of the Internal
10 | Revenue Code of 1954;

11 | 6. To supplement pension benefits under a plan or
12 | trust described in subparagraphs 1.-5. to account for some
13 | portion or all of the increase in the cost of living, as
14 | determined by the United States Secretary of Labor, since
15 | retirement, but only if the supplemental payments are under a
16 | plan that is treated as a welfare plan under s. 3(2)(B)(ii) of
17 | the Employee Retirement Income Security Act of 1974; or

18 | 7. Under a cafeteria plan, as defined in s. 125 of the
19 | Internal Revenue Code of 1986, as amended, if the payment
20 | would not be treated as wages without regard to such plan and
21 | it is reasonable to believe that, if s. 125 of the Internal
22 | Revenue Code of 1986, as amended, applied for purposes of this
23 | section, s. 125 of the Internal Revenue Code of 1986, as
24 | amended, would not treat any wages as constructively received.

25 | (g) Payment made, or benefit provided, by an employing
26 | unit to or for the benefit of an individual performing
27 | services for the employing unit or a beneficiary of the
28 | individual if, at the time of such payment or provision of the
29 | benefit, it is reasonable to believe that the individual may
30 | exclude the payment or benefit from income under s. 127 of the
31 | Internal Revenue Code of 1986, as amended.

1 Section 6. Effective January 1, 2006, paragraph (e) of
2 subsection (3) of section 443.131, Florida Statutes, is
3 amended, present paragraphs (g), (h), (i), and (j) of that
4 subsection, are redesignated as paragraphs (h), (i), (j), and
5 (k), respectively, and a new paragraph (g) is added to that
6 subsection to read:

7 443.131 Contributions.--

8 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
9 EXPERIENCE.--

10 (e) Assignment of variations from the standard rate.--

11 1. The tax collection service provider shall assign a
12 variation from the standard rate of contributions for each
13 calendar year to each eligible employer. In determining the
14 contribution rate, varying from the standard rate to be
15 assigned each employer, adjustment factors computed under
16 sub-subparagraphs a.-c. shall be added to the benefit ratio.
17 This addition shall be accomplished in two steps by adding a
18 variable adjustment factor and a final adjustment factor. The
19 sum of these adjustment factors computed under
20 sub-subparagraphs a.-c. shall first be algebraically summed.
21 The sum of these adjustment factors shall next be divided by a
22 gross benefit ratio determined as follows: Total benefit
23 payments for the 3-year period described in subparagraph (b)2.
24 shall be charged to employers eligible for a variation from
25 the standard rate, minus excess payments for the same period,
26 divided by taxable payroll entering into the computation of
27 individual benefit ratios for the calendar year for which the
28 contribution rate is being computed. The ratio of the sum of
29 the adjustment factors computed under sub-subparagraphs a.-c.
30 to the gross benefit ratio shall be multiplied by each
31 individual benefit ratio that is less than the maximum

1 contribution rate to obtain variable adjustment factors;
2 except that in any instance in which the sum of an employer's
3 individual benefit ratio and variable adjustment factor
4 exceeds the maximum contribution rate, the variable adjustment
5 factor shall be reduced in order that the sum equals the
6 maximum contribution rate. The variable adjustment factor for
7 each of these employers is multiplied by his or her taxable
8 payroll entering into the computation of his or her benefit
9 ratio. The sum of these products shall be divided by the
10 taxable payroll of the employers who entered into the
11 computation of their benefit ratios. The resulting ratio shall
12 be subtracted from the sum of the adjustment factors computed
13 under sub-subparagraphs a.-c. to obtain the final adjustment
14 factor. The variable adjustment factors and the final
15 adjustment factor shall be computed to five decimal places and
16 rounded to the fourth decimal place. This final adjustment
17 factor shall be added to the variable adjustment factor and
18 benefit ratio of each employer to obtain each employer's
19 contribution rate. An employer's contribution rate may not,
20 however, be rounded to less than 0.1 percent.

21 a. An adjustment factor for noncharge benefits shall
22 be computed to the fifth decimal place and rounded to the
23 fourth decimal place by dividing the amount of noncharge
24 benefits during the 3-year period described in subparagraph
25 (b)2. by the taxable payroll of employers eligible for a
26 variation from the standard rate who have a benefit ratio for
27 the current year which is less than the maximum contribution
28 rate. For purposes of computing this adjustment factor, the
29 taxable payroll of these employers is the taxable payrolls for
30 the 3 years ending June 30 of the current calendar year as
31 reported to the tax collection service provider by September

1 30 of the same calendar year. As used in this
2 sub-subparagraph, the term "noncharge benefits" means benefits
3 paid to an individual from the Unemployment Compensation Trust
4 Fund, but which were not charged to the employment record of
5 any employer.

6 b. An adjustment factor for excess payments shall be
7 computed to the fifth decimal place, and rounded to the fourth
8 decimal place by dividing the total excess payments during the
9 3-year period described in subparagraph (b)2. by the taxable
10 payroll of employers eligible for a variation from the
11 standard rate who have a benefit ratio for the current year
12 which is less than the maximum contribution rate. For purposes
13 of computing this adjustment factor, the taxable payroll of
14 these employers is the same figure used to compute the
15 adjustment factor for noncharge benefits under

16 sub-subparagraph a. As used in this sub-subparagraph, the term
17 "excess payments" means the amount of benefits charged to the
18 employment record of an employer during the 3-year period
19 described in subparagraph (b)2., less the product of the
20 maximum contribution rate and the employer's taxable payroll
21 for the 3 years ending June 30 of the current calendar year as
22 reported to the tax collection service provider by September
23 30 of the same calendar year. As used in this
24 sub-subparagraph, the term "total excess payments" means the
25 sum of the individual employer excess payments for those
26 employers that were eligible to be considered for assignment
27 of a contribution rate different ~~a variation~~ from the standard
28 rate.

29 c. If the balance of the Unemployment Compensation
30 Trust Fund on June 30 of the calendar year immediately
31 preceding the calendar year for which the contribution rate is

1 | being computed is less than 3.7 percent of the taxable
2 | payrolls for the year ending June 30 as reported to the tax
3 | collection service provider by September 30 of that calendar
4 | year, a positive adjustment factor shall be computed. The
5 | positive adjustment factor shall be computed annually to the
6 | fifth decimal place and rounded to the fourth decimal place by
7 | dividing the sum of the total taxable payrolls for the year
8 | ending June 30 of the current calendar year as reported to the
9 | tax collection service provider by September 30 of that
10 | calendar year into a sum equal to one-fourth of the difference
11 | between the balance of the fund as of June 30 of that calendar
12 | year and the sum of 4.7 percent of the total taxable payrolls
13 | for that year. The positive adjustment factor remains in
14 | effect for subsequent years until the balance of the
15 | Unemployment Compensation Trust Fund as of June 30 of the year
16 | immediately preceding the effective date of the contribution
17 | rate equals or exceeds 3.7 percent of the taxable payrolls for
18 | the year ending June 30 of the current calendar year as
19 | reported to the tax collection service provider by September
20 | 30 of that calendar year. If the balance of the Unemployment
21 | Compensation Trust Fund as of June 30 of the year immediately
22 | preceding the calendar year for which the contribution rate is
23 | being computed exceeds 4.7 percent of the taxable payrolls for
24 | the year ending June 30 of the current calendar year as
25 | reported to the tax collection service provider by September
26 | 30 of that calendar year, a negative adjustment factor shall
27 | be computed. The negative adjustment factor shall be computed
28 | annually to the fifth decimal place and rounded to the fourth
29 | decimal place by dividing the sum of the total taxable
30 | payrolls for the year ending June 30 of the current calendar
31 | year as reported to the tax collection service provider by

1 September 30 of the calendar year into a sum equal to
2 one-fourth of the difference between the balance of the fund
3 as of June 30 of the current calendar year and 4.7 percent of
4 the total taxable payrolls of that year. The negative
5 adjustment factor remains in effect for subsequent years until
6 the balance of the Unemployment Compensation Trust Fund as of
7 June 30 of the year immediately preceding the effective date
8 of the contribution rate is less than 4.7 percent, but more
9 than 3.7 percent of the taxable payrolls for the year ending
10 June 30 of the current calendar year as reported to the tax
11 collection service provider by September 30 of that calendar
12 year.

13 d. The maximum contribution rate that may be assigned
14 to an employer is 5.4 percent, except employers participating
15 in an approved short-time compensation plan may be assigned a
16 maximum contribution rate that is 1 percent greater than the
17 maximum contribution rate for other employers in any calendar
18 year in which short-time compensation benefits are charged to
19 the employer's employment record.

20 2. If the transfer of an employer's employment record
21 to an employing unit under paragraph (f) which, before the
22 transfer, was an employer, the tax collection service provider
23 shall recompute a benefit ratio for the successor employer
24 based on the combined employment records and reassign an
25 appropriate contribution rate to the successor employer
26 effective on the first day of the calendar quarter immediately
27 after the effective date of the transfer.

28 (g) Transfer of unemployment experience upon transfer
29 or acquisition of a business.--Notwithstanding any other
30 provision of law, the following apply regarding assignment of
31 rates and transfers of experience:

1 1.a. If an employer transfers its trade or business,
2 or a portion thereof, to another employer and, at the time of
3 the transfer, there is any common ownership, management, or
4 control of the two employers, the unemployment experience
5 attributable to the transferred trade or business shall be
6 transferred to the employer to whom such business is so
7 transferred. The rates of both employers shall be recalculated
8 and made effective as of the beginning of the calendar quarter
9 immediately following the date of the transfer of trade or
10 business unless the transfer occurred on the first day of a
11 calendar quarter, in which case the rate shall be recalculated
12 as of that date.

13 b. If, following a transfer of experience under
14 sub-subparagraph a., the Agency for Workforce Innovation or
15 the tax collection service provider determines that a
16 substantial purpose of the transfer of trade or business was
17 to obtain a reduced liability for contributions, the
18 experience rating account of the employers involved shall be
19 combined into a single account and a single rate assigned to
20 such account.

21 2. Whenever a person who is not at the time an
22 employer under this chapter acquires the trade or business of
23 an employer, the unemployment experience of the acquired
24 business shall not be transferred to such person if the Agency
25 for Workforce Innovation or the tax collection service
26 provider finds that such person acquired the business solely
27 or primarily for the purpose of obtaining a lower rate of
28 contributions. Instead, such person shall be assigned the new
29 employer rate under paragraph (2)(a). In determining whether
30 the business was acquired solely or primarily for the purpose
31 of obtaining a lower rate of contributions, the tax collection

1 service provider shall consider, but not be limited to, the
2 following factors:
3 a. Whether the person continued the business
4 enterprise of the acquired business;
5 b. How long such business enterprise was continued; or
6 c. Whether a substantial number of new employees was
7 hired for performance of duties unrelated to the business
8 activity conducted prior to acquisition.
9 3. If a person knowingly violates or attempts to
10 violate subparagraph 1. or subparagraph 2. or any other
11 provision of this chapter related to determining the
12 assignment of a contribution rate, or if a person knowingly
13 advises another person to violate the law, the person shall be
14 subject to the following penalties:
15 a. If the person is an employer, such employer shall
16 be assigned the highest rate assignable under this chapter for
17 the rate year during which such violation or attempted
18 violation occurred and the 3 rate years immediately following
19 this rate year. However, if the person's business is already
20 at such highest rate for any year, or if the amount of
21 increase in the person's rate would be less than 2 percent for
22 such year, then a penalty rate of contributions of 2 percent
23 of taxable wages shall be imposed for such year.
24 b. If the person is not an employer, such person shall
25 be subject to a civil penalty of not more than \$5,000. The
26 procedures for the assessment of a penalty shall be in
27 accordance with the procedures set forth in s. 443.141(2) and
28 the provisions of s. 443.141(3) shall apply to the collection
29 of the penalty. Any such penalty shall be deposited in the
30 penalty and interest account established under s. 443.211(2).
31 4. For purposes of this paragraph, the term:

1 a. "Knowingly" means having actual knowledge of or
2 acting with deliberate ignorance or reckless disregard for the
3 prohibition involved.

4 b. "Violates or attempts to violate" includes, but is
5 not limited to, intent to evade, misrepresentation, or willful
6 nondisclosure.

7 c. "Person" has the meaning given such term by s.
8 7701(a)(1) of the Internal Revenue Code of 1986; and

9 d. "Trade or business" includes the employer's
10 workforce.

11 5. In addition to the penalty imposed by subparagraph
12 3., any person who violates this paragraph commits a felony of
13 the third degree, punishable as provided in s. 775.082, s.
14 775.083, or s. 775.084.

15 6. The Agency for Workforce Innovation and the tax
16 collection service provider shall establish procedures to
17 identify the transfer or acquisition of a business for
18 purposes of this paragraph and shall adopt any rules necessary
19 to administer this paragraph.

20 7. This paragraph shall be interpreted and applied in
21 such manner as to meet the minimum requirements contained in
22 any guidance or regulations issued by the United States
23 Department of Labor.

24 Section 7. Section 443.1317, Florida Statutes, is
25 amended to read:

26 443.1317 Rulemaking authority, seal; enforcement of
27 rules.--

28 (1) AGENCY FOR WORKFORCE INNOVATION.--

29 (a) Except as otherwise provided in s. 443.012, the
30 Agency for Workforce Innovation has ultimate authority over
31 the administration of the Unemployment Compensation Program.

1 (b) The Agency for Workforce Innovation shall have an
2 official seal, which shall be judicially noticed.

3 ~~(c)(b)~~ The Agency for Workforce Innovation may adopt
4 rules under ss. 120.536(1) and 120.54 to administer the
5 provisions of this chapter conferring duties upon either the
6 agency or its tax collection service provider.

7 (2) TAX COLLECTION SERVICE PROVIDER.--The state agency
8 providing unemployment tax collection services under contract
9 with the Agency for Workforce Innovation through an
10 interagency agreement pursuant to s. 443.1316 may adopt rules
11 under ss. 120.536(1) and 120.54, subject to approval by the
12 Agency for Workforce Innovation, to administer the provisions
13 of law described in s. 443.1316(1)(a) and (b) which are within
14 this chapter. These rules must not conflict with the rules
15 adopted by the Agency for Workforce Innovation or with the
16 interagency agreement.

17 (3) ENFORCEMENT OF RULES.--The Agency for Workforce
18 Innovation may enforce any rule adopted by the state agency
19 providing unemployment tax collection services to administer
20 this chapter. The tax collection service provider may enforce
21 any rule adopted by the Agency for Workforce Innovation to
22 administer the provisions of law described in s.
23 443.1316(1)(a) and (b).

24 Section 8. Paragraph (b) of subsection (4) of section
25 443.151, Florida Statutes, is amended to read:

26 443.151 Procedure concerning claims.--

27 (4) APPEALS.--

28 (b) Filing and hearing.--

29 1. The claimant or any other party entitled to notice
30 of a determination may appeal an adverse determination to an
31 appeals referee within 20 days after the date of mailing of

1 the notice to her or his last known address or, if the notice
2 is not mailed, within 20 days after the date of delivery of
3 the notice.

4 2. Unless the appeal is untimely withdrawn or review
5 is initiated by the commission, the appeals referee, after
6 mailing all parties and attorneys of record a notice of
7 hearing at least 10 days before the date of hearing,
8 notwithstanding the 14-day notice requirement in s.
9 120.569(2)(b), may only affirm, modify, or reverse the
10 determination. An appeal may not be withdrawn without the
11 permission of the appeals referee.

12 3. However, when an appeal appears to have been filed
13 after the permissible time limit, the Office of Appeals may
14 issue an order to show cause to the appellant, requiring the
15 appellant to show why the appeal should not be dismissed as
16 untimely. If the appellant does not, within 15 days after the
17 mailing date of the order to show cause, provide written
18 evidence of timely filing or good cause for failure to appeal
19 timely, the appeal shall be dismissed.

20 ~~4.3-~~ When an appeal involves a question of whether
21 services were performed by a claimant in employment or for an
22 employer, the referee must give special notice of the question
23 and of the pendency of the appeal to the employing unit and to
24 the Agency for Workforce Innovation, both of which become
25 parties to the proceeding.

26 ~~5.4-~~ The parties must be notified promptly of the
27 referee's decision. The referee's decision is final unless
28 further review is initiated under paragraph (c) within 20 days
29 after the date of mailing notice of the decision to the
30 party's last known address or, in lieu of mailing, within 20
31 days after the delivery of the notice.

1 Section 9. Paragraph (a) of subsection (1) of section
2 895.02, Florida Statutes, is amended to read:

3 895.02 Definitions.--As used in ss. 895.01-895.08, the
4 term:

5 (1) "Racketeering activity" means to commit, to
6 attempt to commit, to conspire to commit, or to solicit,
7 coerce, or intimidate another person to commit:

8 (a) Any crime which is chargeable by indictment or
9 information under the following provisions of the Florida
10 Statutes:

11 1. Section 210.18, relating to evasion of payment of
12 cigarette taxes.

13 2. Section 403.727(3)(b), relating to environmental
14 control.

15 3. Section 409.920 or s. 409.9201, relating to
16 Medicaid fraud.

17 4. Section 414.39, relating to public assistance
18 fraud.

19 5. Section 440.105 or s. 440.106, relating to workers'
20 compensation.

21 6. Section 443.071(3), relating to creation of
22 fictitious employer schemes to commit unemployment
23 compensation fraud.

24 ~~7.6.~~ Section 465.0161, relating to distribution of
25 medicinal drugs without a permit as an Internet pharmacy.

26 ~~8.7.~~ Sections 499.0051, 499.0052, 499.00535,
27 499.00545, and 499.0691, relating to crimes involving
28 contraband and adulterated drugs.

29 ~~9.8.~~ Part IV of chapter 501, relating to
30 telemarketing.

31

1 ~~10.9.~~ Chapter 517, relating to sale of securities and
2 investor protection.
3 ~~11.10.~~ Section 550.235, s. 550.3551, or s. 550.3605,
4 relating to dogracing and horseracing.
5 ~~12.11.~~ Chapter 550, relating to jai alai frontons.
6 ~~13.12.~~ Chapter 552, relating to the manufacture,
7 distribution, and use of explosives.
8 ~~14.13.~~ Chapter 560, relating to money transmitters, if
9 the violation is punishable as a felony.
10 ~~15.14.~~ Chapter 562, relating to beverage law
11 enforcement.
12 ~~16.15.~~ Section 624.401, relating to transacting
13 insurance without a certificate of authority, s.
14 624.437(4)(c)1., relating to operating an unauthorized
15 multiple-employer welfare arrangement, or s. 626.902(1)(b),
16 relating to representing or aiding an unauthorized insurer.
17 ~~17.16.~~ Section 655.50, relating to reports of currency
18 transactions, when such violation is punishable as a felony.
19 ~~18.17.~~ Chapter 687, relating to interest and usurious
20 practices.
21 ~~19.18.~~ Section 721.08, s. 721.09, or s. 721.13,
22 relating to real estate timeshare plans.
23 ~~20.19.~~ Chapter 782, relating to homicide.
24 ~~21.20.~~ Chapter 784, relating to assault and battery.
25 ~~22.21.~~ Chapter 787, relating to kidnapping.
26 ~~23.22.~~ Chapter 790, relating to weapons and firearms.
27 ~~24.23.~~ Section 796.03, s. 796.035, s. 796.04, s.
28 796.045, s. 796.05, or s. 796.07, relating to prostitution and
29 sex trafficking.
30 ~~25.24.~~ Chapter 806, relating to arson.
31

1 ~~26.25.~~ Section 810.02(2)(c), relating to specified
2 burglary of a dwelling or structure.
3 ~~27.26.~~ Chapter 812, relating to theft, robbery, and
4 related crimes.
5 ~~28.27.~~ Chapter 815, relating to computer-related
6 crimes.
7 ~~29.28.~~ Chapter 817, relating to fraudulent practices,
8 false pretenses, fraud generally, and credit card crimes.
9 ~~30.29.~~ Chapter 825, relating to abuse, neglect, or
10 exploitation of an elderly person or disabled adult.
11 ~~31.30.~~ Section 827.071, relating to commercial sexual
12 exploitation of children.
13 ~~32.31.~~ Chapter 831, relating to forgery and
14 counterfeiting.
15 ~~33.32.~~ Chapter 832, relating to issuance of worthless
16 checks and drafts.
17 ~~34.33.~~ Section 836.05, relating to extortion.
18 ~~35.34.~~ Chapter 837, relating to perjury.
19 ~~36.35.~~ Chapter 838, relating to bribery and misuse of
20 public office.
21 ~~37.36.~~ Chapter 843, relating to obstruction of
22 justice.
23 ~~38.37.~~ Section 847.011, s. 847.012, s. 847.013, s.
24 847.06, or s. 847.07, relating to obscene literature and
25 profanity.
26 ~~39.38.~~ Section 849.09, s. 849.14, s. 849.15, s.
27 849.23, or s. 849.25, relating to gambling.
28 ~~40.39.~~ Chapter 874, relating to criminal street gangs.
29 ~~41.40.~~ Chapter 893, relating to drug abuse prevention
30 and control.
31

1 ~~42.41-~~ Chapter 896, relating to offenses related to
2 financial transactions.

3 ~~43.42-~~ Sections 914.22 and 914.23, relating to
4 tampering with a witness, victim, or informant, and
5 retaliation against a witness, victim, or informant.

6 ~~44.43-~~ Sections 918.12 and 918.13, relating to
7 tampering with jurors and evidence.

8 Section 10. Except as otherwise expressly provided in
9 this act, this act shall take effect July 1, 2005.

10 *****

11 *****
12 SENATE SUMMARY

13 Exempts proceedings conducted under ch. 443, F.S., by
14 special deputies from uniform rules of procedure. Makes
15 it a third-degree felony to establish a fictitious
16 employing unit for the purpose of obtaining unemployment
17 benefits. Prescribes those acts that constitute prima
18 facie evidence of prohibited activity. Provides that the
19 exemption of certain wages from ch. 443, F.S., applies
20 for purposes of determining an employer's contributions.
21 Provides guidelines for determining transfer of
22 unemployment experience on transfer or acquisition of a
23 business. Provides for the Agency for Workforce
24 Innovation to have an official seal. Prescribes
25 procedures when an appeal is untimely filed. Redefines
26 the term "racketeering activity" to include creating a
27 fictitious employer scheme to commit unemployment fraud.
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