

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to unemployment compensation; amending s.  
7 120.80, F.S.; providing an exemption for special deputies  
8 from uniform rules of procedure; amending s. 443.071,  
9 F.S.; providing penalties for false employer schemes;  
10 providing the requirements for establishing prima facie  
11 evidence; authorizing certain access to records relating  
12 to investigations of unemployment compensation fraud;  
13 amending s. 443.091, F.S.; clarifying benefit eligibility;  
14 amending s. 443.1216, F.S.; clarifying the persons that  
15 employee leasing companies may lease to a client;  
16 clarifying the exemption of certain service from the  
17 definition of employment; amending s. 443.1217, F.S.;  
18 clarifying exempt wages for the purpose of determining  
19 employer contributions; amending s. 443.131, F.S.;  
20 revising the definition of "total excess payments";  
21 prohibiting the transfer of unemployment experience by  
22 acquisition of a business in certain cases; providing for  
23 calculation of unemployment experience rating; providing

HB 1693

2005  
CS

24 penalties; amending s. 443.151, F.S.; providing for  
 25 dismissal of untimely filed appeals; extending a deadline  
 26 for recoupment of benefits; amending s. 895.02, F.S.;  
 27 revising the definition of "racketeering activity";  
 28 reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g),  
 29 and 905.34(3), F.S., relating to the Office of Statewide  
 30 Prosecution, the Florida Control of Money Laundering in  
 31 Financial Institutions Act, the Florida Money Laundering  
 32 Act, and the powers and duties of a statewide grand jury,  
 33 respectively, to incorporate the amendment to s. 895.02,  
 34 F.S., in references thereto; providing an effective date.

35

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

37

38 Section 1. Paragraph (b) of subsection (10) of section  
 39 120.80, Florida Statutes, is amended to read:

40 120.80 Exceptions and special requirements; agencies.--

41 (10) AGENCY FOR WORKFORCE INNOVATION.--

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

46 Section 2. Subsection (4) of section 443.071, Florida  
 47 Statutes, is renumbered as subsection (5) and amended, and new  
 48 subsections (4), (6), (7), and (8) are added to said section, to  
 49 read:

50 443.071 Penalties.--

51       (4) Any person who establishes a fictitious employing unit  
 52 by submitting to the Agency for Workforce Innovation or its tax  
 53 collection service provider fraudulent employing unit records or  
 54 tax or wage reports by the introduction of fraudulent records  
 55 into a computer system, the intentional or deliberate alteration  
 56 or destruction of computerized information or files, or the  
 57 theft of financial instruments, data, and other assets, for the  
 58 purpose of enabling herself or himself or any other person to  
 59 receive benefits under this chapter to which such person is not  
 60 entitled, commits a felony of the third degree, punishable as  
 61 provided in s. 775.082, s. 775.083, or s. 775.084.

62       (5)~~(4)~~ In any prosecution or action under this section,  
 63 the entry into evidence of the signature of a person on a  
 64 document, letter, or other writing constitutes prima facie  
 65 evidence of the person's identity if the following conditions  
 66 exist:

67       (a) The document includes the person's name, residence  
 68 address, and social security number ~~person gives her or his~~  
 69 ~~name, residence address, home telephone number, present or~~  
 70 ~~former place of employment, gender, date of birth, social~~  
 71 ~~security number, height, weight, and race.~~

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

76       (6) The entry into evidence of an application for  
 77 unemployment benefits initiated by the use of the internet  
 78 claims program or the interactive voice response system

HB 1693

2005  
CS

79 | telephone claims program of the Agency for Workforce Innovation  
 80 | constitutes prima facie evidence of the establishment of a  
 81 | personal benefit account by or for an individual if the  
 82 | following information is provided: the applicant's name,  
 83 | residence address, date of birth, social security number, and  
 84 | present or former place of work.

85 |       (7) The entry into evidence of a transaction history  
 86 | generated by a personal identification number establishing that  
 87 | a certification or claim for one or more weeks of benefits was  
 88 | made against the benefit account of the individual, together  
 89 | with documentation that payment was paid by a state warrant made  
 90 | to the order of the person or by direct deposit via electronic  
 91 | means, constitutes prima facie evidence that the person claimed  
 92 | and received unemployment benefits from the state.

93 |       (8) All records relating to investigations of unemployment  
 94 | compensation fraud in the custody of the Agency for Workforce  
 95 | Innovation or its tax collection service provider are available  
 96 | for examination by the Department of Law Enforcement, the states  
 97 | attorneys, or the Office of the Statewide Prosecutor in the  
 98 | prosecution of offenses under s. 817.568 or in proceedings  
 99 | brought under this chapter.

100 |       Section 3. Paragraph (c) of subsection (1) of section  
 101 | 443.091, Florida Statutes, is amended to read:

102 |       443.091 Benefit eligibility conditions.--

103 |       (1) An unemployed individual is eligible to receive  
 104 | benefits for any week only if the Agency for Workforce  
 105 | Innovation finds that:

HB 1693

2005  
CS

106 (c)1. She or he is able to work and is available for work.  
 107 In order to assess eligibility for a claimed week of  
 108 unemployment, the Agency for Workforce Innovation shall develop  
 109 criteria to determine a claimant's ability to work and  
 110 availability for work.

111 2. Notwithstanding any other provision of this paragraph  
 112 or paragraphs (b) and (d) section, an otherwise eligible  
 113 individual may not be denied benefits for any week because she  
 114 or he is in training with the approval of the Agency for  
 115 Workforce Innovation, and such an individual may not be denied  
 116 benefits for any week in which she or he is in training with the  
 117 approval of the Agency for Workforce Innovation by reason of  
 118 subparagraph 1. relating to availability for work, or s.  
 119 443.101(2) relating to failure to apply for, or refusal to  
 120 accept, suitable work. Training may be approved by the Agency  
 121 for Workforce Innovation in accordance with criteria prescribed  
 122 by rule. A claimant's eligibility during approved training is  
 123 contingent upon satisfying eligibility conditions prescribed by  
 124 rule.

125 3. Notwithstanding any other provision of this chapter, an  
 126 individual who is in training approved under s. 236(a)(1) of the  
 127 Trade Act of 1974, as amended, may not be determined to be  
 128 ineligible or disqualified for benefits with respect to her or  
 129 his enrollment in such training or because of leaving work that  
 130 is not suitable employment to enter such training. As used in  
 131 this subparagraph, the term "suitable employment" means, for a  
 132 worker, work of a substantially equal or higher skill level than  
 133 the worker's past adversely affected employment, as defined for

HB 1693

2005  
CS

134 | purposes of the Trade Act of 1974, as amended, the wages for  
 135 | which are at least 80 percent of the worker's average weekly  
 136 | wage as determined for purposes of the Trade Act of 1974, as  
 137 | amended.

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

143 |         Section 4. Subsections (1) and (13) of section 443.1216,  
 144 | Florida Statutes, are amended to read:

145 |             443.1216 Employment.--Employment, as defined in s.  
 146 | 443.036, is subject to this chapter under the following  
 147 | conditions:

148 |             (1)(a) The employment subject to this chapter includes a  
 149 | service performed, including a service performed in interstate  
 150 | commerce, by:

151 |                 1. An officer of a corporation.

152 |                 2. An individual who, under the usual common-law rules  
 153 | applicable in determining the employer-employee relationship, is  
 154 | an employee. However, whenever a client, as defined in s.  
 155 | 443.036(18), which would otherwise be designated as an employing  
 156 | unit has contracted with an employee leasing company to supply  
 157 | it with workers, those workers are considered employees of the  
 158 | employee leasing company. An employee leasing company may lease  
 159 | corporate officers of the client to the client and ~~to~~ other  
 160 | workers to the client, except as prohibited by regulations of  
 161 | the Internal Revenue Service. Employees of an employee leasing

162 | company must be reported under the employee leasing company's  
 163 | tax identification number and contribution rate for work  
 164 | performed for the employee leasing company.

165 |         3. An individual other than an individual who is an  
 166 | employee under subparagraph 1. or subparagraph 2., who performs  
 167 | services for remuneration for any person:

168 |             a. As an agent-driver or commission-driver engaged in  
 169 | distributing meat products, vegetable products, fruit products,  
 170 | bakery products, beverages other than milk, or laundry or  
 171 | drycleaning services for his or her principal.

172 |             b. As a traveling or city salesperson engaged on a full-  
 173 | time basis in the solicitation on behalf of, and the  
 174 | transmission to, his or her principal of orders from  
 175 | wholesalers, retailers, contractors, or operators of hotels,  
 176 | restaurants, or other similar establishments for merchandise for  
 177 | resale or supplies for use in their business operations. This  
 178 | sub-subparagraph does not apply to an agent-driver or a  
 179 | commission-driver and does not apply to sideline sales  
 180 | activities performed on behalf of a person other than the  
 181 | salesperson's principal.

182 |         4. The services described in subparagraph 3. are  
 183 | employment subject to this chapter only if:

184 |             a. The contract of service contemplates that substantially  
 185 | all of the services are to be performed personally by the  
 186 | individual;

187 |             b. The individual does not have a substantial investment  
 188 | in facilities used in connection with the services, other than  
 189 | facilities used for transportation; and

190 c. The services are not in the nature of a single  
 191 transaction that is not part of a continuing relationship with  
 192 the person for whom the services are performed.

193 (b) Notwithstanding any other provision of this section,  
 194 service for which a tax is required to be paid under any federal  
 195 law imposing a tax against which credit may be taken for  
 196 contributions required to be paid into a state unemployment fund  
 197 or which as a condition for full tax credit against the tax  
 198 imposed by the Federal Unemployment Tax Act is required to be  
 199 covered under this chapter.

200 (c) If the services performed during at least one-half of  
 201 a pay period by an employee for the person employing him or her  
 202 constitute employment, all of the services performed by the  
 203 employee during the period are deemed to be employment. If the  
 204 services performed during more than one-half of the pay period  
 205 by an employee for the person employing him or her do not  
 206 constitute employment, all of the services performed by the  
 207 employee during the period are not deemed to be employment. This  
 208 paragraph does not apply to services performed in a pay period  
 209 by an employee for the person employing him or her if any of  
 210 those services are exempted under paragraph (13)(g).

211 (d) If two or more related corporations concurrently  
 212 employ the same individual and compensate the individual through  
 213 a common paymaster, each related corporation is considered to  
 214 have paid wages to the individual only in the amounts actually  
 215 disbursed by that corporation to the individual and is not  
 216 considered to have paid the wages actually disbursed to the  
 217 individual by another of the related corporations.



HB 1693

2005  
CS

218 1. As used in this paragraph, the term "common paymaster"  
219 means a member of a group of related corporations that disburses  
220 wages to concurrent employees on behalf of the related  
221 corporations and that is responsible for keeping payroll records  
222 for those concurrent employees. A common paymaster is not  
223 required to disburse wages to all the employees of the related  
224 corporations; however, this subparagraph does not apply to wages  
225 of concurrent employees which are not disbursed through a common  
226 paymaster. A common paymaster must pay concurrently employed  
227 individuals under this subparagraph by one combined paycheck.

228 2. As used in this paragraph, the term "concurrent  
229 employment" means the existence of simultaneous employment  
230 relationships between an individual and related corporations.  
231 Those relationships require the performance of services by the  
232 employee for the benefit of the related corporations, including  
233 the common paymaster, in exchange for wages that, if deductible  
234 for the purposes of federal income tax, are deductible by the  
235 related corporations.

236 3. Corporations are considered related corporations for an  
237 entire calendar quarter if they satisfy any one of the following  
238 tests at any time during the calendar quarter:

239 a. The corporations are members of a "controlled group of  
240 corporations" as defined in s. 1563 of the Internal Revenue Code  
241 of 1986 or would be members if paragraph 1563(a)(4) and  
242 subsection 1563(b) did not apply.

243 b. In the case of a corporation that does not issue stock,  
244 at least 50 percent of the members of the board of directors or  
245 other governing body of one corporation are members of the board

246 | of directors or other governing body of the other corporation or  
 247 | the holders of at least 50 percent of the voting power to select  
 248 | those members are concurrently the holders of at least 50  
 249 | percent of the voting power to select those members of the other  
 250 | corporation.

251 |       c. At least 50 percent of the officers of one corporation  
 252 | are concurrently officers of the other corporation.

253 |       d. At least 30 percent of the employees of one corporation  
 254 | are concurrently employees of the other corporation.

255 |       4. The common paymaster must report to the tax collection  
 256 | service provider, as part of the unemployment compensation  
 257 | quarterly tax and wage report, the state unemployment  
 258 | compensation account number and name of each related corporation  
 259 | for which concurrent employees are being reported. Failure to  
 260 | timely report this information shall result in the related  
 261 | corporations being denied common paymaster status for that  
 262 | calendar quarter.

263 |       5. The common paymaster also has the primary  
 264 | responsibility for remitting contributions due under this  
 265 | chapter for the wages it disburses as the common paymaster. The  
 266 | common paymaster must compute these contributions as though it  
 267 | were the sole employer of the concurrently employed individuals.  
 268 | If a common paymaster fails to timely remit these contributions  
 269 | or reports, in whole or in part, the common paymaster remains  
 270 | liable for the full amount of the unpaid portion of these  
 271 | contributions. In addition, each of the other related  
 272 | corporations using the common paymaster is jointly and severally

HB 1693

2005  
CS

273 | liable for its appropriate share of these contributions. Each  
274 | related corporation's share equals the greater of:

275 |       a. The liability of the common paymaster under this  
276 | chapter, after taking into account any contributions made.

277 |       b. The liability under this chapter which, notwithstanding  
278 | this section, would have existed for the wages from the other  
279 | related corporations, reduced by an allocable portion of any  
280 | contributions previously paid by the common paymaster for those  
281 | wages.

282 |       (13) The following are ~~employment is~~ exempt from coverage  
283 | under this chapter:

284 |       (a) Domestic service in a private home, local college  
285 | club, or local chapter of a college fraternity or sorority,  
286 | except as provided in subsection (6).

287 |       (b) Service performed on or in connection with a vessel or  
288 | aircraft that is not an American vessel or American aircraft, if  
289 | the employee is employed on and in connection with the vessel or  
290 | aircraft while the vessel or aircraft is outside the United  
291 | States.

292 |       (c) Service performed by an individual engaged in, or as  
293 | an officer or member of the crew of a vessel engaged in, the  
294 | catching, taking, harvesting, cultivating, or farming of any  
295 | kind of fish, shellfish, crustacea, sponges, seaweeds, or other  
296 | aquatic forms of animal and vegetable life, including service  
297 | performed by an individual as an ordinary incident to engaging  
298 | in those activities, except:

299 |       1. Service performed in connection with the catching or  
300 | taking of salmon or halibut for commercial purposes.

HB 1693

2005  
CS

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

305           (d) Service performed by an individual in the employ of  
306 his or her son, daughter, or spouse, including step  
307 relationships, and service performed by a child, or stepchild,  
308 under the age of 21 in the employ of his or her father, mother,  
309 stepfather, or stepmother.

310           (e) Service performed in the employ of the Federal  
311 Government or of an instrumentality of the Federal Government  
312 which is:

- 313           1. Wholly or partially owned by the United States.
- 314           2. Exempt from the tax imposed by s. 3301 of the Internal  
315 Revenue Code under a federal law that specifically cites s.  
316 3301, or the corresponding section of prior law, in granting the  
317 exemption. However, to the extent that the United States  
318 Congress permits the state to require an instrumentality of the  
319 Federal Government to make payments into the Unemployment  
320 Compensation Trust Fund under this chapter, this chapter applies  
321 to that instrumentality, and to services performed for that  
322 instrumentality, in the same manner, to the same extent, and on  
323 the same terms as other employers, employing units, individuals,  
324 and services. If this state is not certified for any year by the  
325 Secretary of Labor under s. 3304 of the federal Internal Revenue  
326 Code, the tax collection service provider shall refund the  
327 payments required of each instrumentality of the Federal  
328 Government for that year from the fund in the same manner and

HB 1693

2005  
CS

329 | within the same period as provided in s. 443.141(6) for  
330 | contributions erroneously collected.

331 |       (f) Service performed in the employ of a public employer  
332 | as defined in s. 443.036, except as provided in subsection (2),  
333 | and service performed in the employ of an instrumentality of a  
334 | public employer as described in s. 443.036(35)(b) or (c), to the  
335 | extent that the instrumentality is immune under the United  
336 | States Constitution from the tax imposed by s. 3301 of the  
337 | Internal Revenue Code for that service.

338 |       (g) Service performed in the employ of a corporation,  
339 | community chest, fund, or foundation that is organized and  
340 | operated exclusively for religious, charitable, scientific,  
341 | testing for public safety, literary, or educational purposes or  
342 | for the prevention of cruelty to children or animals. This  
343 | exemption does not apply to an employer if part of the  
344 | employer's net earnings inures to the benefit of any private  
345 | shareholder or individual or if a substantial part of the  
346 | employer's activities involve carrying on propaganda, otherwise  
347 | attempting to influence legislation, or participating or  
348 | intervening in, including the publishing or distributing of  
349 | statements, a political campaign on behalf of a candidate for  
350 | public office, except as provided in subsection (3).

351 |       (h) Service for which unemployment compensation is payable  
352 | under an unemployment compensation system established by the  
353 | United States Congress, of which this chapter is not a part.

354 |       (i)1. Service performed during a calendar quarter in the  
355 | employ of an organization exempt from the federal income tax  
356 | under s. 501(a) of the Internal Revenue Code, other than an

357 organization described in s. 401(a), or under s. 521, if the  
358 remuneration for the service is less than \$50.

359 2. Service performed in the employ of a school, college,  
360 or university, if the service is performed by a student who is  
361 enrolled and is regularly attending classes at the school,  
362 college, or university.

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

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

368 1. The service is of a character similar to that performed  
369 in foreign countries by employees of the Federal Government or  
370 of an instrumentality of the Federal Government; and

371 2. The United States Secretary of State certifies to the  
372 United States Secretary of the Treasury that the foreign  
373 government for whose instrumentality the exemption is claimed  
374 grants an equivalent exemption for similar service performed in  
375 the foreign country by employees of the Federal Government and  
376 of instrumentalities of the Federal Government.

377 (l) Service performed as a student nurse in the employ of  
378 a hospital or a nurses' training school by an individual who is  
379 enrolled and is regularly attending classes in a nurses'  
380 training school chartered or approved under state law, service  
381 performed as an intern in the employ of a hospital by an  
382 individual who has completed a 4-year course in a medical school  
383 chartered or approved under state law, and service performed by  
384 a patient of a hospital for the hospital.

HB 1693

2005  
CS

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

393 (n) Service performed by an individual for a person as a  
394 real estate salesperson or agent, if all of the service  
395 performed by the individual for that person is performed for  
396 remuneration solely by way of commission.

397 (o) Service performed by an individual under the age of 18  
398 in the delivery or distribution of newspapers or shopping news,  
399 excluding delivery or distribution to any point for subsequent  
400 delivery or distribution.

401 (p) Service covered by an arrangement between the Agency  
402 for Workforce Innovation, or its tax collection service  
403 provider, and the agency charged with the administration of  
404 another state or federal unemployment compensation law under  
405 which all services performed by an individual for an employing  
406 unit during the period covered by the employing unit's duly  
407 approved election is deemed to be performed entirely within the  
408 other agency's state or under the federal law.

409 (q) Service performed by an individual enrolled at a  
410 nonprofit or public educational institution that normally  
411 maintains a regular faculty and curriculum and normally has a  
412 regularly organized body of students in attendance at the place

HB 1693

2005  
CS

413 | where its educational activities are carried on, if the  
414 | institution certifies to the employer that the individual is a  
415 | student in a full-time program, taken for credit at the  
416 | institution that combines academic instruction with work  
417 | experience, and that the service is an integral part of the  
418 | program. This paragraph does not apply to service performed in a  
419 | program established for or on behalf of an employer or group of  
420 | employers.

421 |       (r) Service performed by an individual for a person as a  
422 | barber, if all of the service performed by the individual for  
423 | that person is performed for remuneration solely by way of  
424 | commission.

425 |       (s) Casual labor not in the course of the employer's trade  
426 | or business.

427 |       (t) Service performed by a speech therapist, occupational  
428 | therapist, or physical therapist who is nonsalaried and working  
429 | under a written contract with a home health agency as defined in  
430 | s. 400.462.

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

433 |       1.a. Who is engaged in the trade or business of selling or  
434 | soliciting the sale of consumer products to buyers on a buy-sell  
435 | basis, on a deposit-commission basis, or on a similar basis, for  
436 | resale in the home or in another place that is not a permanent  
437 | retail establishment; or

438 |       b. Who is engaged in the trade or business of selling or  
439 | soliciting the sale of consumer products in the home or in  
440 | another place that is not a permanent retail establishment;

Page 16 of 45



HB 1693

2005  
CS

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

445           3. Who performs the services under a written contract with  
446 the person for whom the services are performed, if the contract  
447 provides that the person will not be treated as an employee for  
448 those services for federal tax purposes.

449           (v) Service performed by a nonresident alien for the  
450 period he or she is temporarily present in the United States as  
451 a nonimmigrant under subparagraph (F) or subparagraph (J) of s.  
452 101(a)(15) of the Immigration and Nationality Act, and which is  
453 performed to carry out the purpose specified in subparagraph (F)  
454 or subparagraph (J), as applicable.

455           (w) Service performed by an individual for remuneration  
456 for a private, for-profit delivery or messenger service, if the  
457 individual:

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

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

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

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

HB 1693

2005  
CS

468           5. Determines the method of performing the service,  
 469 including selection of routes and order of deliveries;  
 470           6. Is responsible for the completion of a specific job and  
 471 is liable for any failure to complete that job;  
 472           7. Enters into a contract with the delivery or messenger  
 473 service which specifies that the individual is an independent  
 474 contractor and not an employee of the delivery or messenger  
 475 service; and  
 476           8. Provides the vehicle used to perform the service.  
 477           (x) Service performed in agricultural labor by an  
 478 individual who is an alien admitted to the United States to  
 479 perform service in agricultural labor under ss. 101(a)(15)(H)  
 480 and 214(c) of the Immigration and Nationality Act.  
 481           (y) Service performed by a person who is an inmate of a  
 482 penal institution.  
 483           Section 5. Subsection (2) of section 443.1217, Florida  
 484 Statutes, is amended to read:  
 485           443.1217 Wages.--  
 486           (2) For the purpose of determining an employer's  
 487 contributions, the following wages are exempt from this chapter:  
 488           (a) That part of remuneration paid to an individual by an  
 489 employer for employment during a calendar year in excess of the  
 490 first \$7,000 of remuneration paid to the individual by the  
 491 employer or his or her predecessor during that calendar year,  
 492 unless that part of the remuneration is subject to a tax, under  
 493 a federal law imposing the tax, against which credit may be  
 494 taken for contributions required to be paid into a state  
 495 unemployment fund. As used in this section only, the term

HB 1693

2005  
CS

496 "employment" includes services constituting employment under any  
 497 employment security law of another state or of the Federal  
 498 Government.

499 (b) Payment by an employing unit with respect to services  
 500 performed for, or on behalf of, an individual employed by the  
 501 employing unit under a plan or system established by the  
 502 employing unit which provides for payment to its employees  
 503 generally or to a class of its employees, including any amount  
 504 paid by the employing unit for insurance or annuities or paid  
 505 into a fund on account of:

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

510 2. Medical and hospitalization expenses in connection with  
 511 sickness or accident disability.

512 3. Death, if the employee:

513 a. Does not have the option to receive, in lieu of the  
 514 death benefit, part of the payment or, if the death benefit is  
 515 insured, part of the premiums or contributions to premiums paid  
 516 by his or her employing unit; and

517 b. Does not have the right under the plan, system, or  
 518 policy providing the death benefit to assign the benefit or to  
 519 receive cash consideration in lieu of the benefit upon his or  
 520 her withdrawal from the plan or system; upon termination of the  
 521 plan, system, or policy; or upon termination of his or her  
 522 services with the employing unit.

HB 1693

2005  
CS

523 (c) Payment on account of sickness or accident disability,  
524 or payment of medical or hospitalization expenses in connection  
525 with sickness or accident disability, by an employing unit to,  
526 or on behalf of, an individual performing services for the  
527 employing unit more than 6 calendar months after the last  
528 calendar month the individual performed services for the  
529 employing unit.

530 (d) Payment by an employing unit, without deduction from  
531 the remuneration of an individual employed by the employing  
532 unit, of the tax imposed upon the individual under s. 3101 of  
533 the federal Internal Revenue Code for services performed.

534 (e) The value of:

535 1. Meals furnished to an employee or the employee's spouse  
536 or dependents by the employer on the business premises of the  
537 employer for the convenience of the employer; or

538 2. Lodging furnished to an employee or the employee's  
539 spouse or dependents by the employer on the business premises of  
540 the employer for the convenience of the employer when lodging is  
541 included as a condition of employment.

542 (f) Payment made by an employing unit to, or on behalf of,  
543 an individual performing services for the employing unit or a  
544 beneficiary of the individual:

545 1. From or to a trust described in s. 401(a) of the  
546 Internal Revenue Code of 1954 which is exempt from tax under s.  
547 501(a) at the time of payment, unless payment is made to an  
548 employee of the trust as remuneration for services rendered as  
549 an employee of the trust and not as a beneficiary of the trust;

HB 1693

2005  
CS

- 550           2. Under or to an annuity plan that, at the time of  
551 payment, is a plan described in s. 403(a) of the Internal  
552 Revenue Code of 1954;
- 553           3. Under a simplified employee pension if, at the time of  
554 payment, it is reasonable to believe that the employee is  
555 entitled to a deduction under s. 219(b)(2) of the Internal  
556 Revenue Code of 1954 for the payment;
- 557           4. Under or to an annuity contract described in s. 403(b)  
558 of the Internal Revenue Code of 1954, other than a payment for  
559 the purchase of an annuity contract as part of a salary  
560 reduction agreement, regardless of whether the agreement is  
561 evidenced by a written instrument or otherwise;
- 562           5. Under or to an exempt governmental deferred  
563 compensation plan described in s. 3121(v)(3) of the Internal  
564 Revenue Code of 1954;
- 565           6. To supplement pension benefits under a plan or trust  
566 described in subparagraphs 1.-5. to account for some portion or  
567 all of the increase in the cost of living, as determined by the  
568 United States Secretary of Labor, since retirement, but only if  
569 the supplemental payments are under a plan that is treated as a  
570 welfare plan under s. 3(2)(B)(ii) of the Employee Retirement  
571 Income Security Act of 1974; or
- 572           7. Under a cafeteria plan, as defined in s. 125 of the  
573 Internal Revenue Code of 1986, as amended, if the payment would  
574 not be treated as wages without regard to such plan and it is  
575 reasonable to believe that, if s. 125 of the Internal Revenue  
576 Code of 1986, as amended, applied for purposes of this section,

HB 1693

2005  
CS

577 s. 125 of the Internal Revenue Code of 1986, as amended, would  
578 not treat any wages as constructively received.

579 (g) Payment made, or benefit provided, by an employing  
580 unit to or for the benefit of an individual performing services  
581 for the employing unit or a beneficiary of the individual if, at  
582 the time of such payment or provision of the benefit, it is  
583 reasonable to believe that the individual may exclude the  
584 payment or benefit from income under s. 127 of the Internal  
585 Revenue Code of 1986, as amended.

586 Section 6. Paragraphs (e) through (j) of subsection (3) of  
587 section 443.131, Florida Statutes, are amended to read:

588 443.131 Contributions.--

589 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT  
590 EXPERIENCE.--

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

592 1. The tax collection service provider shall assign a  
593 variation from the standard rate of contributions for each  
594 calendar year to each eligible employer. In determining the  
595 contribution rate, varying from the standard rate to be assigned  
596 each employer, adjustment factors computed under sub-  
597 subparagraphs a.-c. shall be added to the benefit ratio. This  
598 addition shall be accomplished in two steps by adding a variable  
599 adjustment factor and a final adjustment factor. The sum of  
600 these adjustment factors computed under sub-subparagraphs a.-c.  
601 shall first be algebraically summed. The sum of these adjustment  
602 factors shall next be divided by a gross benefit ratio  
603 determined as follows: Total benefit payments for the 3-year  
604 period described in subparagraph (b)2. shall be charged to

HB 1693

2005  
CS

605 employers eligible for a variation from the standard rate, minus  
606 excess payments for the same period, divided by taxable payroll  
607 entering into the computation of individual benefit ratios for  
608 the calendar year for which the contribution rate is being  
609 computed. The ratio of the sum of the adjustment factors  
610 computed under sub-subparagraphs a.-c. to the gross benefit  
611 ratio shall be multiplied by each individual benefit ratio that  
612 is less than the maximum contribution rate to obtain variable  
613 adjustment factors; except that in any instance in which the sum  
614 of an employer's individual benefit ratio and variable  
615 adjustment factor exceeds the maximum contribution rate, the  
616 variable adjustment factor shall be reduced in order that the  
617 sum equals the maximum contribution rate. The variable  
618 adjustment factor for each of these employers is multiplied by  
619 his or her taxable payroll entering into the computation of his  
620 or her benefit ratio. The sum of these products shall be divided  
621 by the taxable payroll of the employers who entered into the  
622 computation of their benefit ratios. The resulting ratio shall  
623 be subtracted from the sum of the adjustment factors computed  
624 under sub-subparagraphs a.-c. to obtain the final adjustment  
625 factor. The variable adjustment factors and the final adjustment  
626 factor shall be computed to five decimal places and rounded to  
627 the fourth decimal place. This final adjustment factor shall be  
628 added to the variable adjustment factor and benefit ratio of  
629 each employer to obtain each employer's contribution rate. An  
630 employer's contribution rate may not, however, be rounded to  
631 less than 0.1 percent.

632 a. An adjustment factor for noncharge benefits shall be  
 633 computed to the fifth decimal place and rounded to the fourth  
 634 decimal place by dividing the amount of noncharge benefits  
 635 during the 3-year period described in subparagraph (b)2. by the  
 636 taxable payroll of employers eligible for a variation from the  
 637 standard rate who have a benefit ratio for the current year  
 638 which is less than the maximum contribution rate. For purposes  
 639 of computing this adjustment factor, the taxable payroll of  
 640 these employers is the taxable payrolls for the 3 years ending  
 641 June 30 of the current calendar year as reported to the tax  
 642 collection service provider by September 30 of the same calendar  
 643 year. As used in this sub-subparagraph, the term "noncharge  
 644 benefits" means benefits paid to an individual from the  
 645 Unemployment Compensation Trust Fund, but which were not charged  
 646 to the employment record of any employer.

647 b. An adjustment factor for excess payments shall be  
 648 computed to the fifth decimal place, and rounded to the fourth  
 649 decimal place by dividing the total excess payments during the  
 650 3-year period described in subparagraph (b)2. by the taxable  
 651 payroll of employers eligible for a variation from the standard  
 652 rate who have a benefit ratio for the current year which is less  
 653 than the maximum contribution rate. For purposes of computing  
 654 this adjustment factor, the taxable payroll of these employers  
 655 is the same figure used to compute the adjustment factor for  
 656 noncharge benefits under sub-subparagraph a. As used in this  
 657 sub-subparagraph, the term "excess payments" means the amount of  
 658 benefits charged to the employment record of an employer during  
 659 the 3-year period described in subparagraph (b)2., less the



HB 1693

2005  
CS

660 product of the maximum contribution rate and the employer's  
 661 taxable payroll for the 3 years ending June 30 of the current  
 662 calendar year as reported to the tax collection service provider  
 663 by September 30 of the same calendar year. As used in this sub-  
 664 subparagraph, the term "total excess payments" means the sum of  
 665 the individual employer excess payments for those employers that  
 666 were eligible to be considered for assignment of a contribution  
 667 rate different from a variation from the standard rate.

668 c. If the balance of the Unemployment Compensation Trust  
 669 Fund on June 30 of the calendar year immediately preceding the  
 670 calendar year for which the contribution rate is being computed  
 671 is less than 3.7 percent of the taxable payrolls for the year  
 672 ending June 30 as reported to the tax collection service  
 673 provider by September 30 of that calendar year, a positive  
 674 adjustment factor shall be computed. The positive adjustment  
 675 factor shall be computed annually to the fifth decimal place and  
 676 rounded to the fourth decimal place by dividing the sum of the  
 677 total taxable payrolls for the year ending June 30 of the  
 678 current calendar year as reported to the tax collection service  
 679 provider by September 30 of that calendar year into a sum equal  
 680 to one-fourth of the difference between the balance of the fund  
 681 as of June 30 of that calendar year and the sum of 4.7 percent  
 682 of the total taxable payrolls for that year. The positive  
 683 adjustment factor remains in effect for subsequent years until  
 684 the balance of the Unemployment Compensation Trust Fund as of  
 685 June 30 of the year immediately preceding the effective date of  
 686 the contribution rate equals or exceeds 3.7 percent of the  
 687 taxable payrolls for the year ending June 30 of the current

HB 1693

2005  
CS

688 | calendar year as reported to the tax collection service provider  
 689 | by September 30 of that calendar year. If the balance of the  
 690 | Unemployment Compensation Trust Fund as of June 30 of the year  
 691 | immediately preceding the calendar year for which the  
 692 | contribution rate is being computed exceeds 4.7 percent of the  
 693 | taxable payrolls for the year ending June 30 of the current  
 694 | calendar year as reported to the tax collection service provider  
 695 | by September 30 of that calendar year, a negative adjustment  
 696 | factor shall be computed. The negative adjustment factor shall  
 697 | be computed annually to the fifth decimal place and rounded to  
 698 | the fourth decimal place by dividing the sum of the total  
 699 | taxable payrolls for the year ending June 30 of the current  
 700 | calendar year as reported to the tax collection service provider  
 701 | by September 30 of the calendar year into a sum equal to one-  
 702 | fourth of the difference between the balance of the fund as of  
 703 | June 30 of the current calendar year and 4.7 percent of the  
 704 | total taxable payrolls of that year. The negative adjustment  
 705 | factor remains in effect for subsequent years until the balance  
 706 | of the Unemployment Compensation Trust Fund as of June 30 of the  
 707 | year immediately preceding the effective date of the  
 708 | contribution rate is less than 4.7 percent, but more than 3.7  
 709 | percent of the taxable payrolls for the year ending June 30 of  
 710 | the current calendar year as reported to the tax collection  
 711 | service provider by September 30 of that calendar year.

712 |         d. The maximum contribution rate that may be assigned to  
 713 | an employer is 5.4 percent, except employers participating in an  
 714 | approved short-time compensation plan may be assigned a maximum  
 715 | contribution rate that is 1 percent greater than the maximum

716 contribution rate for other employers in any calendar year in  
717 which short-time compensation benefits are charged to the  
718 employer's employment record.

719 2. If the transfer of an employer's employment record to  
720 an employing unit under paragraph (f) which, before the  
721 transfer, was an employer, the tax collection service provider  
722 shall recompute a benefit ratio for the successor employer based  
723 on the combined employment records and reassign an appropriate  
724 contribution rate to the successor employer effective on the  
725 first day of the calendar quarter immediately after the  
726 effective date of the transfer.

727 (f) Transfer of employment records.--

728 1. For the purposes of this subsection, two or more  
729 employers who are parties to a transfer of business or the  
730 subject of a merger, consolidation, or other form of  
731 reorganization, effecting a change in legal identity or form,  
732 are deemed a single employer and are considered to be one  
733 employer with a continuous employment record if the tax  
734 collection service provider finds that the successor employer  
735 continues to carry on the employing enterprises of all of the  
736 predecessor employers and that the successor employer has paid  
737 all contributions required of and due from all of the  
738 predecessor employers and has assumed liability for all  
739 contributions that may become due from all of the predecessor  
740 employers. In addition, an employer may not be considered a  
741 successor under this subparagraph if the employer purchases a  
742 company with a lower rate into which employees with job  
743 functions unrelated to the business endeavors of the predecessor

HB 1693

2005  
CS

744 are transferred for the purpose of acquiring the low rate and  
 745 avoiding payment of contributions. As used in this paragraph,  
 746 notwithstanding s. 443.036(14), the term "contributions" means  
 747 all indebtedness to the tax collection service provider,  
 748 including, but not limited to, interest, penalty, collection  
 749 fee, and service fee. A successor employer must accept the  
 750 transfer of all of the predecessor employers' employment records  
 751 within 30 days after the date of the official notification of  
 752 liability by succession. If a predecessor employer has unpaid  
 753 contributions or outstanding quarterly reports, the successor  
 754 employer must pay the total amount with certified funds within  
 755 30 days after the date of the notice listing the total amount  
 756 due. After the total indebtedness is paid, the tax collection  
 757 service provider shall transfer the employment records of all of  
 758 the predecessor employers to the successor employer's employment  
 759 record. The tax collection service provider shall determine the  
 760 contribution rate of the combined successor and predecessor  
 761 employers upon the transfer of the employment records, as  
 762 prescribed by rule, in order to calculate any change in the  
 763 contribution rate resulting from the transfer of the employment  
 764 records.

765 2. Regardless of whether a predecessor employer's  
 766 employment record is transferred to a successor employer under  
 767 this paragraph, the tax collection service provider shall treat  
 768 the predecessor employer, if he or she subsequently employs  
 769 individuals, as an employer without a previous employment record  
 770 or, if his or her coverage is terminated under s. 443.121, as a  
 771 new employing unit.

HB 1693

2005  
CS

772           3. The state agency providing unemployment tax collection  
773 services may adopt rules governing the partial transfer of  
774 experience rating when an employer transfers an identifiable and  
775 segregable portion of his or her payrolls and business to a  
776 successor employing unit. As a condition of each partial  
777 transfer, these rules must require the following to be filed  
778 with the tax collection service provider: an application by the  
779 successor employing unit, an agreement by the predecessor  
780 employer, and the evidence required by the tax collection  
781 service provider to show the benefit experience and payrolls  
782 attributable to the transferred portion through the date of the  
783 transfer. These rules must provide that the successor employing  
784 unit, if not an employer subject to this chapter, becomes an  
785 employer as of the date of the transfer and that the transferred  
786 portion of the predecessor employer's employment record is  
787 removed from the employment record of the predecessor employer.  
788 For each calendar year after the date of the transfer of the  
789 employment record in the records of the tax collection service  
790 provider, the service provider shall compute the contribution  
791 rate payable by the successor employer or employing unit based  
792 on his or her employment record, combined with the transferred  
793 portion of the predecessor employer's employment record. These  
794 rules may also prescribe what contribution rates are payable by  
795 the predecessor and successor employers for the period between  
796 the date of the transfer of the transferred portion of the  
797 predecessor employer's employment record in the records of the  
798 tax collection service provider and the first day of the next  
799 calendar year.

Page 29 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1693-01-c1

800           4. This paragraph does not apply to an employee leasing  
801 company and client contractual agreement as defined in s.  
802 443.036. The tax collection service provider shall, if the  
803 contractual agreement is terminated or the employee leasing  
804 company fails to submit reports or pay contributions as required  
805 by the service provider, treat the client as a new employer  
806 without previous employment record unless the client is  
807 otherwise eligible for a variation from the standard rate.

808           (g) Transfer of unemployment experience upon transfer or  
809 acquisition of a business.--Notwithstanding any other provision  
810 of law, the following shall apply regarding assignment of rates  
811 and transfers of experience:

812           1.a. If an employer transfers its trade or business, or a  
813 portion thereof, to another employer and, at the time of the  
814 transfer, there is any common ownership, management, or control  
815 of the two employers, then the unemployment experience  
816 attributable to the transferred trade or business shall be  
817 transferred to the employer to whom such business is so  
818 transferred. The rates of both employers shall be recalculated  
819 and made effective as of the beginning of the calendar quarter  
820 immediately following the date of the transfer of trade or  
821 business unless the transfer occurred on the first day of a  
822 calendar quarter in which case the rate shall be recalculated as  
823 of that date.

824           b. If, following a transfer of experience under sub-  
825 subparagraph a., the Agency for Workforce Innovation or the tax  
826 collection service provider determines that a substantial  
827 purpose of the transfer of trade or business was to obtain a

828 reduced liability for contributions, then the experience rating  
 829 account of the employers involved shall be combined into a  
 830 single account and a single rate assigned to such account.

831 2. Whenever a person who is not an employer under this  
 832 chapter at the time it acquires the trade or business of an  
 833 employer, the unemployment experience of the acquired business  
 834 shall not be transferred to such person if the Agency for  
 835 Workforce Innovation or the tax collection service provider  
 836 finds that such person acquired the business solely or primarily  
 837 for the purpose of obtaining a lower rate of contributions.  
 838 Instead, such person shall be assigned the new employer rate  
 839 under paragraph (2)(a). In determining whether the business was  
 840 acquired solely or primarily for the purpose of obtaining a  
 841 lower rate of contributions, the tax collection service provider  
 842 shall consider, but not be limited to, the following factors:

- 843 a. Whether the person continued the business enterprise of  
 844 the acquired business;
- 845 b. How long such business enterprise was continued; or
- 846 c. Whether a substantial number of new employees were  
 847 hired for performance of duties unrelated to the business  
 848 activity conducted prior to acquisition.

849 3. If a person knowingly violates or attempts to violate  
 850 subparagraphs 1. or 2. or any other provision of this chapter  
 851 related to determining the assignment of a contribution rate, or  
 852 if a person knowingly advises another person to violate the law,  
 853 the person shall be subject to the following penalties:

- 854 a. If the person is an employer, then such employer shall  
 855 be assigned the highest rate assignable under this chapter for

HB 1693

2005  
CS

856 the rate year during which such violation or attempted violation  
 857 occurred and the 3 rate years immediately following this rate  
 858 year. However, if the person's business is already at such  
 859 highest rate for any year, or if the amount of increase in the  
 860 person's rate would be less than 2 percent for such year, then a  
 861 penalty rate of contributions of 2 percent of taxable wages  
 862 shall be imposed for such year and the following 3 rate years.

863 b. If the person is not an employer, such person shall be  
 864 subject to a civil money penalty of not more than \$5,000. The  
 865 procedures for the assessment of a penalty shall be in  
 866 accordance with the procedures set forth in s. 443.141(2), and  
 867 the provisions of s. 443.141(3) shall apply to the collection of  
 868 the penalty. Any such penalty shall be deposited in the penalty  
 869 and interest account established under s. 443.211(2).

870 4. For purposes of subparagraph 3., the term:

871 a. "Knowingly" means having actual knowledge of or acting  
 872 with deliberate ignorance or reckless disregard for the  
 873 prohibition involved.

874 b. "Violates or attempts to violate" includes, but is not  
 875 limited to, intent to evade, misrepresentation, or willful  
 876 nondisclosure.

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

881 6. The Agency for Workforce Innovation and the tax  
 882 collection service provider shall establish procedures to  
 883 identify the transfer or acquisition of a business for purposes



HB 1693

2005  
CS

884 | of this paragraph and shall adopt any rules necessary to  
885 | administer this paragraph.

886 | 7. For purposes of this paragraph:

887 | a. "Person" has the meaning given such term by s.  
888 | 7701(a)(1) of the Internal Revenue Code of 1986.

889 | b. "Trade or business" shall include the employer's  
890 | workforce.

891 | 8. This paragraph shall be interpreted and applied in such  
892 | manner as to meet the minimum requirements contained in any  
893 | guidance or regulations issued by the United States Department  
894 | of Labor.

895 | (h)(g) Additional conditions for variation from the  
896 | standard rate.--An employer's contribution rate may not be  
897 | reduced below the standard rate under this section unless:

898 | 1. All contributions, reimbursements, interest, and  
899 | penalties incurred by the employer for wages paid by him or her  
900 | in all previous calendar quarters, except the 4 calendar  
901 | quarters immediately preceding the calendar quarter or calendar  
902 | year for which the benefit ratio is computed, are paid; and

903 | 2. The employer entitled to a rate reduction must have at  
904 | least one annual payroll as defined in subparagraph (b)1. unless  
905 | the employer is eligible for additional credit under the Federal  
906 | Unemployment Tax Act. If the Federal Unemployment Tax Act is  
907 | amended or repealed in a manner affecting credit under the  
908 | federal act, this section applies only to the extent that  
909 | additional credit is allowed against the payment of the tax  
910 | imposed by the Federal Unemployment Tax Act.

911 |

HB 1693

2005  
CS

912 The tax collection service provider shall assign an earned  
 913 contribution rate to an employer under subparagraph 1. the  
 914 quarter immediately after the quarter in which all  
 915 contributions, reimbursements, interest, and penalties are paid  
 916 in full.

917 (i)~~(h)~~ Notice of determinations of contribution rates;  
 918 redeterminations.--The state agency providing tax collection  
 919 services:

920 1. Shall promptly notify each employer of his or her  
 921 contribution rate as determined for any calendar year under this  
 922 section. The determination is conclusive and binding on the  
 923 employer unless within 20 days after mailing the notice of  
 924 determination to the employer's last known address, or, in the  
 925 absence of mailing, within 20 days after delivery of the notice,  
 926 the employer files an application for review and redetermination  
 927 setting forth the grounds for review. An employer may not, in  
 928 any proceeding involving his or her contribution rate or  
 929 liability for contributions, contest the chargeability to his or  
 930 her employment record of any benefits paid in accordance with a  
 931 determination, redetermination, or decision under s. 443.151,  
 932 except on the ground that the benefits charged were not based on  
 933 services performed in employment for him or her and then only if  
 934 the employer was not a party to the determination,  
 935 redetermination, or decision, or to any other proceeding under  
 936 this chapter, in which the character of those services was  
 937 determined.

938 2. Shall, upon discovery of an error in computation,  
 939 reconsider any prior determination or redetermination of a

HB 1693

2005  
CS

940 contribution rate after the 20-day period has expired and issue  
941 a revised notice of contribution rate as redetermined. A  
942 redetermination is subject to review, and is conclusive and  
943 binding if review is not sought, in the same manner as review of  
944 a determination under subparagraph 1. A reconsideration may not  
945 be made after March 31 of the calendar year immediately after  
946 the calendar year for which the contribution rate is applicable,  
947 and interest may not accrue on any additional contributions  
948 found to be due until 30 days after the employer is mailed  
949 notice of his or her revised contribution rate.

950 3. May adopt rules providing for periodic notification to  
951 employers of benefits paid and charged to their employment  
952 records or of the status of those employment records. A  
953 notification, unless an application for redetermination is filed  
954 in the manner and within the time limits prescribed by the  
955 Agency for Workforce Innovation, is conclusive and binding on  
956 the employer under this chapter. The redetermination, and the  
957 Agency for Workforce Innovation's finding of fact in connection  
958 with the redetermination, may be introduced in any subsequent  
959 administrative or judicial proceeding involving the  
960 determination of the contribution rate of an employer for any  
961 calendar year. A redetermination becomes final in the same  
962 manner provided in this subsection for findings of fact made by  
963 the Agency for Workforce Innovation in proceedings to  
964 redetermine the contribution rate of an employer. Pending a  
965 redetermination or an administrative or judicial proceeding, the  
966 employer must file reports and pay contributions in accordance  
967 with this section.

968        (j)~~(i)~~ Employment records of employers entering the armed  
969 forces.--

970            1. If the tax collection service provider finds that an  
971 employer's business is closed solely because of the entrance of  
972 one or more of the owners, officers, partners, or the majority  
973 stockholder into the Armed Forces of the United States, or any  
974 of its allies, or of the United Nations, the employer's  
975 employment record may not be terminated. If the business is  
976 resumed within 2 years after the discharge or release from  
977 active duty in the armed forces of that person or persons, the  
978 employer's benefit experience is deemed to have been continuous  
979 throughout that period. The benefit ratio of the employer for  
980 the calendar year in which he or she resumed business and the 3  
981 calendar years immediately after resuming business is a  
982 percentage equal to the total of his or her benefit charges,  
983 including charges of benefits paid to any individual during the  
984 period the employer was in the armed forces based on wages paid  
985 by him or her before the employer's entrance into the armed  
986 forces for the 3 most recently completed calendar years divided  
987 by that part of his or her total payroll, for which  
988 contributions were paid to the tax collection service provider,  
989 for the 3 most recent calendar years during the whole of which,  
990 respectively, the employer was in business.

991            2. A refund made under this paragraph shall be made in  
992 accordance with s. 443.141(6).

993        (k)~~(j)~~ Applicability to contributing employers.--This  
994 subsection applies only to contributing employers.

HB 1693

2005  
CS

995 Section 7. Paragraph (b) of subsection (4) and paragraph  
996 (b) of subsection (6) of section 443.151, Florida Statutes, are  
997 amended to read:

998 443.151 Procedure concerning claims.--

999 (4) APPEALS.--

1000 (b) Filing and hearing.--

1001 1. The claimant or any other party entitled to notice of a  
1002 determination may appeal an adverse determination to an appeals  
1003 referee within 20 days after the date of mailing of the notice  
1004 to her or his last known address or, if the notice is not  
1005 mailed, within 20 days after the date of delivery of the notice.

1006 2. Unless the appeal is untimely or withdrawn or review is  
1007 initiated by the commission, the appeals referee, after mailing  
1008 all parties and attorneys of record a notice of hearing at least  
1009 10 days before the date of hearing, notwithstanding the 14-day  
1010 notice requirement in s. 120.569(2)(b), may only affirm, modify,  
1011 or reverse the determination. An appeal may not be withdrawn  
1012 without the permission of the appeals referee.

1013 3. However, when an appeal appears to have been filed  
1014 after the permissible time limit, the Office of Appeals may  
1015 issue an order to show cause to the appellant, requiring the  
1016 appellant to show why the appeal should not be dismissed as  
1017 untimely. If the appellant does not, within 15 days after the  
1018 mailing date of the order to show cause, provide written  
1019 evidence of timely filing or good cause for failure to appeal  
1020 timely, the appeal shall be dismissed.

1021 ~~4.3.~~ When an appeal involves a question of whether  
1022 services were performed by a claimant in employment or for an

HB 1693

2005  
CS

1023 employer, the referee must give special notice of the question  
 1024 and of the pendency of the appeal to the employing unit and to  
 1025 the Agency for Workforce Innovation, both of which become  
 1026 parties to the proceeding.

1027 ~~5.4~~ The parties must be notified promptly of the  
 1028 referee's decision. The referee's decision is final unless  
 1029 further review is initiated under paragraph (c) within 20 days  
 1030 after the date of mailing notice of the decision to the party's  
 1031 last known address or, in lieu of mailing, within 20 days after  
 1032 the delivery of the notice.

1033 (6) RECOVERY AND RECOUPMENT.--

1034 (b) Any person who, by reason other than her or his fraud,  
 1035 receives benefits under this chapter to which, under a  
 1036 redetermination or decision pursuant to this section, she or he  
 1037 is found not entitled, is liable to repay those benefits to the  
 1038 Agency for Workforce Innovation on behalf of the trust fund or,  
 1039 in the agency's discretion, to have those benefits deducted from  
 1040 any future benefits payable to her or him under this chapter.  
 1041 Any recovery or recoupment of benefits must be effected within 3  
 1042 ~~2~~ years after the redetermination or decision.

1043 Section 8. Paragraph (a) of subsection (1) of section  
 1044 895.02, Florida Statutes, is amended to read:

1045 895.02 Definitions.--As used in ss. 895.01-895.08, the  
 1046 term:

1047 (1) "Racketeering activity" means to commit, to attempt to  
 1048 commit, to conspire to commit, or to solicit, coerce, or  
 1049 intimidate another person to commit:

HB 1693

2005  
CS

1050 (a) Any crime which is chargeable by indictment or  
 1051 information under the following provisions of the Florida  
 1052 Statutes:

1053 1. Section 210.18, relating to evasion of payment of  
 1054 cigarette taxes.

1055 2. Section 403.727(3)(b), relating to environmental  
 1056 control.

1057 3. Section 409.920 or s. 409.9201, relating to Medicaid  
 1058 fraud.

1059 4. Section 414.39, relating to public assistance fraud.

1060 5. Section 440.105 or s. 440.106, relating to workers'  
 1061 compensation.

1062 6. Section 443.071(4), relating to creation of a  
 1063 fictitious employer scheme to commit unemployment compensation  
 1064 fraud.

1065 ~~7.6.~~ Section 465.0161, relating to distribution of  
 1066 medicinal drugs without a permit as an Internet pharmacy.

1067 ~~8.7.~~ Sections 499.0051, 499.0052, 499.00535, 499.00545,  
 1068 and 499.0691, relating to crimes involving contraband and  
 1069 adulterated drugs.

1070 ~~9.8.~~ Part IV of chapter 501, relating to telemarketing.

1071 ~~10.9.~~ Chapter 517, relating to sale of securities and  
 1072 investor protection.

1073 ~~11.10.~~ Section 550.235, s. 550.3551, or s. 550.3605,  
 1074 relating to dogracing and horseracing.

1075 ~~12.11.~~ Chapter 550, relating to jai alai frontons.

1076 ~~13.12.~~ Chapter 552, relating to the manufacture,  
 1077 distribution, and use of explosives.

HB 1693

2005  
CS

1078        ~~14.13.~~ Chapter 560, relating to money transmitters, if the  
1079 violation is punishable as a felony.

1080        ~~15.14.~~ Chapter 562, relating to beverage law enforcement.

1081        ~~16.15.~~ Section 624.401, relating to transacting insurance  
1082 without a certificate of authority, s. 624.437(4)(c)1., relating  
1083 to operating an unauthorized multiple-employer welfare  
1084 arrangement, or s. 626.902(1)(b), relating to representing or  
1085 aiding an unauthorized insurer.

1086        ~~17.16.~~ Section 655.50, relating to reports of currency  
1087 transactions, when such violation is punishable as a felony.

1088        ~~18.17.~~ Chapter 687, relating to interest and usurious  
1089 practices.

1090        ~~19.18.~~ Section 721.08, s. 721.09, or s. 721.13, relating  
1091 to real estate timeshare plans.

1092        ~~20.19.~~ Chapter 782, relating to homicide.

1093        ~~21.20.~~ Chapter 784, relating to assault and battery.

1094        ~~22.21.~~ Chapter 787, relating to kidnapping.

1095        ~~23.22.~~ Chapter 790, relating to weapons and firearms.

1096        ~~24.23.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045,  
1097 s. 796.05, or s. 796.07, relating to prostitution and sex  
1098 trafficking.

1099        ~~25.24.~~ Chapter 806, relating to arson.

1100        ~~26.25.~~ Section 810.02(2)(c), relating to specified  
1101 burglary of a dwelling or structure.

1102        ~~27.26.~~ Chapter 812, relating to theft, robbery, and  
1103 related crimes.

1104        ~~28.27.~~ Chapter 815, relating to computer-related crimes.



HB 1693

2005  
CS

1105 |       ~~29.28.~~ Chapter 817, relating to fraudulent practices,  
1106 | false pretenses, fraud generally, and credit card crimes.  
1107 |       ~~30.29.~~ Chapter 825, relating to abuse, neglect, or  
1108 | exploitation of an elderly person or disabled adult.  
1109 |       ~~31.30.~~ Section 827.071, relating to commercial sexual  
1110 | exploitation of children.  
1111 |       ~~32.31.~~ Chapter 831, relating to forgery and  
1112 | counterfeiting.  
1113 |       ~~33.32.~~ Chapter 832, relating to issuance of worthless  
1114 | checks and drafts.  
1115 |       ~~34.33.~~ Section 836.05, relating to extortion.  
1116 |       ~~35.34.~~ Chapter 837, relating to perjury.  
1117 |       ~~36.35.~~ Chapter 838, relating to bribery and misuse of  
1118 | public office.  
1119 |       ~~37.36.~~ Chapter 843, relating to obstruction of justice.  
1120 |       ~~38.37.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,  
1121 | or s. 847.07, relating to obscene literature and profanity.  
1122 |       ~~39.38.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or  
1123 | s. 849.25, relating to gambling.  
1124 |       ~~40.39.~~ Chapter 874, relating to criminal street gangs.  
1125 |       ~~41.40.~~ Chapter 893, relating to drug abuse prevention and  
1126 | control.  
1127 |       ~~42.41.~~ Chapter 896, relating to offenses related to  
1128 | financial transactions.  
1129 |       ~~43.42.~~ Sections 914.22 and 914.23, relating to tampering  
1130 | with a witness, victim, or informant, and retaliation against a  
1131 | witness, victim, or informant.

HB 1693

2005  
CS

1132        ~~44.43-~~ Sections 918.12 and 918.13, relating to tampering  
1133 with jurors and evidence.

1134        Section 9. For the purpose of incorporating the amendment  
1135 to section 895.02, Florida Statutes, in a reference thereto,  
1136 paragraph (a) of subsection (1) of section 16.56, Florida  
1137 Statutes, is reenacted to read:

1138        16.56 Office of Statewide Prosecution.--

1139        (1) There is created in the Department of Legal Affairs an  
1140 Office of Statewide Prosecution. The office shall be a separate  
1141 "budget entity" as that term is defined in chapter 216. The  
1142 office may:

1143        (a) Investigate and prosecute the offenses of:

1144        1. Bribery, burglary, criminal usury, extortion, gambling,  
1145 kidnapping, larceny, murder, prostitution, perjury, robbery,  
1146 carjacking, and home-invasion robbery;

1147        2. Any crime involving narcotic or other dangerous drugs;

1148        3. Any violation of the provisions of the Florida RICO  
1149 (Racketeer Influenced and Corrupt Organization) Act, including  
1150 any offense listed in the definition of racketeering activity in  
1151 s. 895.02(1)(a), providing such listed offense is investigated  
1152 in connection with a violation of s. 895.03 and is charged in a  
1153 separate count of an information or indictment containing a  
1154 count charging a violation of s. 895.03, the prosecution of  
1155 which listed offense may continue independently if the  
1156 prosecution of the violation of s. 895.03 is terminated for any  
1157 reason;

1158        4. Any violation of the provisions of the Florida Anti-  
1159 Fencing Act;

HB 1693

2005  
CS

1160           5. Any violation of the provisions of the Florida  
 1161 Antitrust Act of 1980, as amended;  
 1162           6. Any crime involving, or resulting in, fraud or deceit  
 1163 upon any person;  
 1164           7. Any violation of s. 847.0135, relating to computer  
 1165 pornography and child exploitation prevention, or any offense  
 1166 related to a violation of s. 847.0135;  
 1167           8. Any violation of the provisions of chapter 815;  
 1168           9. Any criminal violation of part I of chapter 499;  
 1169           10. Any violation of the provisions of the Florida Motor  
 1170 Fuel Tax Relief Act of 2004; or  
 1171           11. Any criminal violation of s. 409.920 or s. 409.9201;  
 1172  
 1173 or any attempt, solicitation, or conspiracy to commit any of the  
 1174 crimes specifically enumerated above. The office shall have such  
 1175 power only when any such offense is occurring, or has occurred,  
 1176 in two or more judicial circuits as part of a related  
 1177 transaction, or when any such offense is connected with an  
 1178 organized criminal conspiracy affecting two or more judicial  
 1179 circuits.  
 1180           Section 10. For the purpose of incorporating the amendment  
 1181 to section 895.02, Florida Statutes, in a reference thereto,  
 1182 paragraph (g) of subsection (3) of section 655.50, Florida  
 1183 Statutes, is reenacted to read:  
 1184           655.50 Florida Control of Money Laundering in Financial  
 1185 Institutions Act; reports of transactions involving currency or  
 1186 monetary instruments; when required; purpose; definitions;  
 1187 penalties.--

HB 1693

2005  
CS

1188 (3) As used in this section, the term:

1189 (g) "Specified unlawful activity" means any "racketeering  
1190 activity" as defined in s. 895.02.

1191 Section 11. For the purpose of incorporating the amendment  
1192 to section 895.02, Florida Statutes, in a reference thereto,  
1193 paragraph (g) of subsection (2) of section 896.101, Florida  
1194 Statutes, is reenacted to read:

1195 896.101 Florida Money Laundering Act; definitions;  
1196 penalties; injunctions; seizure warrants; immunity.--

1197 (2) As used in this section, the term:

1198 (g) "Specified unlawful activity" means any "racketeering  
1199 activity" as defined in s. 895.02.

1200 Section 12. For the purpose of incorporating the amendment  
1201 to section 895.02, Florida Statutes, in a reference thereto,  
1202 subsection (3) of section 905.34, Florida Statutes, is reenacted  
1203 to read:

1204 905.34 Powers and duties; law applicable.--The  
1205 jurisdiction of a statewide grand jury impaneled under this  
1206 chapter shall extend throughout the state. The subject matter  
1207 jurisdiction of the statewide grand jury shall be limited to the  
1208 offenses of:

1209 (3) Any violation of the provisions of the Florida RICO  
1210 (Racketeer Influenced and Corrupt Organization) Act, including  
1211 any offense listed in the definition of racketeering activity in  
1212 s. 895.02(1)(a), providing such listed offense is investigated  
1213 in connection with a violation of s. 895.03 and is charged in a  
1214 separate count of an information or indictment containing a  
1215 count charging a violation of s. 895.03, the prosecution of

HB 1693

2005  
CS

1216 | which listed offense may continue independently if the  
 1217 | prosecution of the violation of s. 895.03 is terminated for any  
 1218 | reason;  
 1219 |  
 1220 | or any attempt, solicitation, or conspiracy to commit any  
 1221 | violation of the crimes specifically enumerated above, when any  
 1222 | such offense is occurring, or has occurred, in two or more  
 1223 | judicial circuits as part of a related transaction or when any  
 1224 | such offense is connected with an organized criminal conspiracy  
 1225 | affecting two or more judicial circuits. The statewide grand  
 1226 | jury may return indictments and presentments irrespective of the  
 1227 | county or judicial circuit where the offense is committed or  
 1228 | triable. If an indictment is returned, it shall be certified and  
 1229 | transferred for trial to the county where the offense was  
 1230 | committed. The powers and duties of, and law applicable to,  
 1231 | county grand juries shall apply to a statewide grand jury except  
 1232 | when such powers, duties, and law are inconsistent with the  
 1233 | provisions of ss. 905.31-905.40.  
 1234 |       Section 13. This act shall take effect July 1, 2005.