

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

1 A bill to be entitled

2 An act relating to unemployment compensation; amending s.  
3 120.80, F.S.; providing an exemption for special deputies  
4 from uniform rules of procedure; amending s. 443.071,  
5 F.S.; providing penalties for false employer schemes;  
6 providing the requirements for establishing prima facie  
7 evidence; authorizing certain access to records relating  
8 to investigations of unemployment compensation fraud;  
9 amending s. 443.091, F.S.; clarifying benefit eligibility;  
10 amending s. 443.1216, F.S.; clarifying the persons that  
11 employee leasing companies may lease to a client;  
12 clarifying the exemption of certain service from the  
13 definition of employment; amending s. 443.1217, F.S.;  
14 clarifying exempt wages for the purpose of determining  
15 employer contributions; amending s. 443.131, F.S.;  
16 revising the definition of "total excess payments";  
17 prohibiting the transfer of unemployment experience by  
18 acquisition of a business in certain cases; providing for  
19 calculation of unemployment experience rating; providing  
20 penalties; amending s. 443.151, F.S.; providing for  
21 dismissal of untimely filed appeals; extending a deadline  
22 for recoupment of benefits; amending s. 895.02, F.S.;  
23 revising the definition of "racketeering activity";  
24 reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g),  
25 and 905.34(3), F.S., relating to the Office of Statewide  
26 Prosecution, the Florida Control of Money Laundering in  
27 Financial Institutions Act, the Florida Money Laundering  
28 Act, and the powers and duties of a statewide grand jury,

Page 1 of 45

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

hb1693-03-er

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

29           respectively, to incorporate the amendment to s. 895.02,  
 30           F.S., in references thereto; providing an effective date.

31

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

33

34           Section 1. Paragraph (b) of subsection (10) of section  
 35 120.80, Florida Statutes, is amended to read:

36           120.80 Exceptions and special requirements; agencies.--

37           (10) AGENCY FOR WORKFORCE INNOVATION.--

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

42           Section 2. Subsection (4) of section 443.071, Florida  
 43 Statutes, is renumbered as subsection (5) and amended, and new  
 44 subsections (4), (6), (7), and (8) are added to said section, to  
 45 read:

46           443.071 Penalties.--

47           (4) Any person who establishes a fictitious employing unit  
 48 by submitting to the Agency for Workforce Innovation or its tax  
 49 collection service provider fraudulent employing unit records or  
 50 tax or wage reports by the introduction of fraudulent records  
 51 into a computer system, the intentional or deliberate alteration  
 52 or destruction of computerized information or files, or the  
 53 theft of financial instruments, data, and other assets, for the  
 54 purpose of enabling herself or himself or any other person to  
 55 receive benefits under this chapter to which such person is not

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

56 entitled, commits a felony of the third degree, punishable as  
 57 provided in s. 775.082, s. 775.083, or s. 775.084.

58 (5)(4) In any prosecution or action under this section,  
 59 the entry into evidence of the signature of a person on a  
 60 document, letter, or other writing constitutes prima facie  
 61 evidence of the person's identity if the following conditions  
 62 exist:

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

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

72 (6) The entry into evidence of an application for  
 73 unemployment benefits initiated by the use of the internet  
 74 claims program or the interactive voice response system  
 75 telephone claims program of the Agency for Workforce Innovation  
 76 constitutes prima facie evidence of the establishment of a  
 77 personal benefit account by or for an individual if the  
 78 following information is provided: the applicant's name,  
 79 residence address, date of birth, social security number, and  
 80 present or former place of work.

81 (7) The entry into evidence of a transaction history  
 82 generated by a personal identification number establishing that  
 83 a certification or claim for one or more weeks of benefits was

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

84 made against the benefit account of the individual, together  
 85 with documentation that payment was paid by a state warrant made  
 86 to the order of the person or by direct deposit via electronic  
 87 means, constitutes prima facie evidence that the person claimed  
 88 and received unemployment benefits from the state.

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

96 Section 3. Paragraph (c) of subsection (1) of section  
 97 443.091, Florida Statutes, is amended to read:

98 443.091 Benefit eligibility conditions.--

99 (1) An unemployed individual is eligible to receive  
 100 benefits for any week only if the Agency for Workforce  
 101 Innovation finds that:

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

107 2. Notwithstanding any other provision of this paragraph  
 108 or paragraphs (b) and (d) section, an otherwise eligible  
 109 individual may not be denied benefits for any week because she  
 110 or he is in training with the approval of the Agency for  
 111 Workforce Innovation, and such an individual may not be denied

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

112 benefits for any week in which she or he is in training with the  
113 approval of the Agency for Workforce Innovation by reason of  
114 subparagraph 1. relating to availability for work, or s.  
115 443.101(2) relating to failure to apply for, or refusal to  
116 accept, suitable work. Training may be approved by the Agency  
117 for Workforce Innovation in accordance with criteria prescribed  
118 by rule. A claimant's eligibility during approved training is  
119 contingent upon satisfying eligibility conditions prescribed by  
120 rule.

121 3. Notwithstanding any other provision of this chapter, an  
122 individual who is in training approved under s. 236(a)(1) of the  
123 Trade Act of 1974, as amended, may not be determined to be  
124 ineligible or disqualified for benefits with respect to her or  
125 his enrollment in such training or because of leaving work that  
126 is not suitable employment to enter such training. As used in  
127 this subparagraph, the term "suitable employment" means, for a  
128 worker, work of a substantially equal or higher skill level than  
129 the worker's past adversely affected employment, as defined for  
130 purposes of the Trade Act of 1974, as amended, the wages for  
131 which are at least 80 percent of the worker's average weekly  
132 wage as determined for purposes of the Trade Act of 1974, as  
133 amended.

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

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

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

141 443.1216 Employment.--Employment, as defined in s.  
 142 443.036, is subject to this chapter under the following  
 143 conditions:

144 (1)(a) The employment subject to this chapter includes a  
 145 service performed, including a service performed in interstate  
 146 commerce, by:

- 147 1. An officer of a corporation.
- 148 2. An individual who, under the usual common-law rules  
 149 applicable in determining the employer-employee relationship, is  
 150 an employee. However, whenever a client, as defined in s.  
 151 443.036(18), which would otherwise be designated as an employing  
 152 unit has contracted with an employee leasing company to supply  
 153 it with workers, those workers are considered employees of the  
 154 employee leasing company. An employee leasing company may lease  
 155 corporate officers of the client to the client and ~~to~~ other  
 156 workers to the client, except as prohibited by regulations of  
 157 the Internal Revenue Service. Employees of an employee leasing  
 158 company must be reported under the employee leasing company's  
 159 tax identification number and contribution rate for work  
 160 performed for the employee leasing company.

161 3. An individual other than an individual who is an  
 162 employee under subparagraph 1. or subparagraph 2., who performs  
 163 services for remuneration for any person:

- 164 a. As an agent-driver or commission-driver engaged in  
 165 distributing meat products, vegetable products, fruit products,

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

166 bakery products, beverages other than milk, or laundry or  
167 drycleaning services for his or her principal.

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

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

180       a. The contract of service contemplates that substantially  
181 all of the services are to be performed personally by the  
182 individual;

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

186       c. The services are not in the nature of a single  
187 transaction that is not part of a continuing relationship with  
188 the person for whom the services are performed.

189       (b) Notwithstanding any other provision of this section,  
190 service for which a tax is required to be paid under any federal  
191 law imposing a tax against which credit may be taken for  
192 contributions required to be paid into a state unemployment fund  
193 or which as a condition for full tax credit against the tax

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

194 imposed by the Federal Unemployment Tax Act is required to be  
195 covered under this chapter.

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

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

214 1. As used in this paragraph, the term "common paymaster"  
215 means a member of a group of related corporations that disburses  
216 wages to concurrent employees on behalf of the related  
217 corporations and that is responsible for keeping payroll records  
218 for those concurrent employees. A common paymaster is not  
219 required to disburse wages to all the employees of the related  
220 corporations; however, this subparagraph does not apply to wages  
221 of concurrent employees which are not disbursed through a common



ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

222 | paymaster. A common paymaster must pay concurrently employed  
 223 | individuals under this subparagraph by one combined paycheck.

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

232 |       3. Corporations are considered related corporations for an  
 233 | entire calendar quarter if they satisfy any one of the following  
 234 | tests at any time during the calendar quarter:

235 |       a. The corporations are members of a "controlled group of  
 236 | corporations" as defined in s. 1563 of the Internal Revenue Code  
 237 | of 1986 or would be members if paragraph 1563(a)(4) and  
 238 | subsection 1563(b) did not apply.

239 |       b. In the case of a corporation that does not issue stock,  
 240 | at least 50 percent of the members of the board of directors or  
 241 | other governing body of one corporation are members of the board  
 242 | of directors or other governing body of the other corporation or  
 243 | the holders of at least 50 percent of the voting power to select  
 244 | those members are concurrently the holders of at least 50  
 245 | percent of the voting power to select those members of the other  
 246 | corporation.

247 |       c. At least 50 percent of the officers of one corporation  
 248 | are concurrently officers of the other corporation.

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

249           d. At least 30 percent of the employees of one corporation  
 250 are concurrently employees of the other corporation.

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

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

271           a. The liability of the common paymaster under this  
 272 chapter, after taking into account any contributions made.

273           b. The liability under this chapter which, notwithstanding  
 274 this section, would have existed for the wages from the other  
 275 related corporations, reduced by an allocable portion of any

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

276 | contributions previously paid by the common paymaster for those  
 277 | wages.

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

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

283 |       (b) Service performed on or in connection with a vessel or  
 284 | aircraft that is not an American vessel or American aircraft, if  
 285 | the employee is employed on and in connection with the vessel or  
 286 | aircraft while the vessel or aircraft is outside the United  
 287 | States.

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

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

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

301 |       (d) Service performed by an individual in the employ of  
 302 | his or her son, daughter, or spouse, including step  
 303 | relationships, and service performed by a child, or stepchild,

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

304 | under the age of 21 in the employ of his or her father, mother,  
 305 | stepfather, or stepmother.

306 |         (e) Service performed in the employ of the Federal  
 307 | Government or of an instrumentality of the Federal Government  
 308 | which is:

- 309 |             1. Wholly or partially owned by the United States.  
 310 |             2. Exempt from the tax imposed by s. 3301 of the Internal  
 311 | Revenue Code under a federal law that specifically cites s.  
 312 | 3301, or the corresponding section of prior law, in granting the  
 313 | exemption. However, to the extent that the United States  
 314 | Congress permits the state to require an instrumentality of the  
 315 | Federal Government to make payments into the Unemployment  
 316 | Compensation Trust Fund under this chapter, this chapter applies  
 317 | to that instrumentality, and to services performed for that  
 318 | instrumentality, in the same manner, to the same extent, and on  
 319 | the same terms as other employers, employing units, individuals,  
 320 | and services. If this state is not certified for any year by the  
 321 | Secretary of Labor under s. 3304 of the federal Internal Revenue  
 322 | Code, the tax collection service provider shall refund the  
 323 | payments required of each instrumentality of the Federal  
 324 | Government for that year from the fund in the same manner and  
 325 | within the same period as provided in s. 443.141(6) for  
 326 | contributions erroneously collected.

327 |         (f) Service performed in the employ of a public employer  
 328 | as defined in s. 443.036, except as provided in subsection (2),  
 329 | and service performed in the employ of an instrumentality of a  
 330 | public employer as described in s. 443.036(35)(b) or (c), to the  
 331 | extent that the instrumentality is immune under the United

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

332 States Constitution from the tax imposed by s. 3301 of the  
 333 Internal Revenue Code for that service.

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

347 (h) Service for which unemployment compensation is payable  
 348 under an unemployment compensation system established by the  
 349 United States Congress, of which this chapter is not a part.

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

355 2. Service performed in the employ of a school, college,  
 356 or university, if the service is performed by a student who is  
 357 enrolled and is regularly attending classes at the school,  
 358 college, or university.

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

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

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

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

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

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

381 (m) Service performed by an individual for a person as an  
382 insurance agent or as an insurance solicitor, if all of the  
383 service performed by the individual for that person is performed  
384 for remuneration solely by way of commission, except for  
385 services performed in accordance with 26 U.S.C. s. 3306(c)(7)  
386 and (8). For purposes of this section, those benefits excluded

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

387 | from the wages subject to this chapter under s. 443.1217(2) (b) -  
 388 | (f), inclusive, are not considered remuneration.

389 |       (n) Service performed by an individual for a person as a  
 390 | real estate salesperson or agent, if all of the service  
 391 | performed by the individual for that person is performed for  
 392 | remuneration solely by way of commission.

393 |       (o) Service performed by an individual under the age of 18  
 394 | in the delivery or distribution of newspapers or shopping news,  
 395 | excluding delivery or distribution to any point for subsequent  
 396 | delivery or distribution.

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

405 |       (q) Service performed by an individual enrolled at a  
 406 | nonprofit or public educational institution that normally  
 407 | maintains a regular faculty and curriculum and normally has a  
 408 | regularly organized body of students in attendance at the place  
 409 | where its educational activities are carried on, if the  
 410 | institution certifies to the employer that the individual is a  
 411 | student in a full-time program, taken for credit at the  
 412 | institution that combines academic instruction with work  
 413 | experience, and that the service is an integral part of the  
 414 | program. This paragraph does not apply to service performed in a

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

415 program established for or on behalf of an employer or group of  
416 employers.

417 (r) Service performed by an individual for a person as a  
418 barber, if all of the service performed by the individual for  
419 that person is performed for remuneration solely by way of  
420 commission.

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

423 (t) Service performed by a speech therapist, occupational  
424 therapist, or physical therapist who is nonsalaried and working  
425 under a written contract with a home health agency as defined in  
426 s. 400.462.

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

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

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

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

441 3. Who performs the services under a written contract with  
442 the person for whom the services are performed, if the contract



ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

443 provides that the person will not be treated as an employee for  
 444 those services for federal tax purposes.

445 (v) Service performed by a nonresident alien for the  
 446 period he or she is temporarily present in the United States as  
 447 a nonimmigrant under subparagraph (F) or subparagraph (J) of s.  
 448 101(a)(15) of the Immigration and Nationality Act, and which is  
 449 performed to carry out the purpose specified in subparagraph (F)  
 450 or subparagraph (J), as applicable.

451 (w) Service performed by an individual for remuneration  
 452 for a private, for-profit delivery or messenger service, if the  
 453 individual:

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

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

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

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

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

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

468 7. Enters into a contract with the delivery or messenger  
 469 service which specifies that the individual is an independent

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

470 contractor and not an employee of the delivery or messenger  
 471 service; and

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

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

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

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

481 443.1217 Wages.--

482 (2) For the purpose of determining an employer's  
 483 contributions, the following wages are exempt from this chapter:

484 (a) That part of remuneration paid to an individual by an  
 485 employer for employment during a calendar year in excess of the  
 486 first \$7,000 of remuneration paid to the individual by the  
 487 employer or his or her predecessor during that calendar year,  
 488 unless that part of the remuneration is subject to a tax, under  
 489 a federal law imposing the tax, against which credit may be  
 490 taken for contributions required to be paid into a state  
 491 unemployment fund. As used in this section only, the term  
 492 "employment" includes services constituting employment under any  
 493 employment security law of another state or of the Federal  
 494 Government.

495 (b) Payment by an employing unit with respect to services  
 496 performed for, or on behalf of, an individual employed by the  
 497 employing unit under a plan or system established by the

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

498 | employing unit which provides for payment to its employees  
499 | generally or to a class of its employees, including any amount  
500 | paid by the employing unit for insurance or annuities or paid  
501 | into a fund on account of:

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

506 |       2. Medical and hospitalization expenses in connection with  
507 | sickness or accident disability.

508 |       3. Death, if the employee:

509 |       a. Does not have the option to receive, in lieu of the  
510 | death benefit, part of the payment or, if the death benefit is  
511 | insured, part of the premiums or contributions to premiums paid  
512 | by his or her employing unit; and

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

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

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

526 (d) Payment by an employing unit, without deduction from  
 527 the remuneration of an individual employed by the employing  
 528 unit, of the tax imposed upon the individual under s. 3101 of  
 529 the federal Internal Revenue Code for services performed.

530 (e) The value of:

531 1. Meals furnished to an employee or the employee's spouse  
 532 or dependents by the employer on the business premises of the  
 533 employer for the convenience of the employer; or

534 2. Lodging furnished to an employee or the employee's  
 535 spouse or dependents by the employer on the business premises of  
 536 the employer for the convenience of the employer when lodging is  
 537 included as a condition of employment.

538 (f) Payment made by an employing unit to, or on behalf of,  
 539 an individual performing services for the employing unit or a  
 540 beneficiary of the individual:

541 1. From or to a trust described in s. 401(a) of the  
 542 Internal Revenue Code of 1954 which is exempt from tax under s.  
 543 501(a) at the time of payment, unless payment is made to an  
 544 employee of the trust as remuneration for services rendered as  
 545 an employee of the trust and not as a beneficiary of the trust;

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

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

ENROLLED

HB 1693, Engrossed 1

2005 Legislature

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

558 5. Under or to an exempt governmental deferred  
 559 compensation plan described in s. 3121(v)(3) of the Internal  
 560 Revenue Code of 1954;

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

568 7. Under a cafeteria plan, as defined in s. 125 of the  
 569 Internal Revenue Code of 1986, as amended, if the payment would  
 570 not be treated as wages without regard to such plan and it is  
 571 reasonable to believe that, if s. 125 of the Internal Revenue  
 572 Code of 1986, as amended, applied for purposes of this section,  
 573 s. 125 of the Internal Revenue Code of 1986, as amended, would  
 574 not treat any wages as constructively received.

575 (g) Payment made, or benefit provided, by an employing  
 576 unit to or for the benefit of an individual performing services  
 577 for the employing unit or a beneficiary of the individual if, at  
 578 the time of such payment or provision of the benefit, it is  
 579 reasonable to believe that the individual may exclude the

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

580 | payment or benefit from income under s. 127 of the Internal  
581 | Revenue Code of 1986, as amended.

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

584 |       443.131 Contributions.--

585 |       (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT  
586 | EXPERIENCE.--

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

588 |       1. The tax collection service provider shall assign a  
589 | variation from the standard rate of contributions for each  
590 | calendar year to each eligible employer. In determining the  
591 | contribution rate, varying from the standard rate to be assigned  
592 | each employer, adjustment factors computed under sub-  
593 | subparagraphs a.-c. shall be added to the benefit ratio. This  
594 | addition shall be accomplished in two steps by adding a variable  
595 | adjustment factor and a final adjustment factor. The sum of  
596 | these adjustment factors computed under sub-subparagraphs a.-c.  
597 | shall first be algebraically summed. The sum of these adjustment  
598 | factors shall next be divided by a gross benefit ratio  
599 | determined as follows: Total benefit payments for the 3-year  
600 | period described in subparagraph (b)2. shall be charged to  
601 | employers eligible for a variation from the standard rate, minus  
602 | excess payments for the same period, divided by taxable payroll  
603 | entering into the computation of individual benefit ratios for  
604 | the calendar year for which the contribution rate is being  
605 | computed. The ratio of the sum of the adjustment factors  
606 | computed under sub-subparagraphs a.-c. to the gross benefit  
607 | ratio shall be multiplied by each individual benefit ratio that

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

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

628 a. An adjustment factor for noncharge benefits shall be  
629 computed to the fifth decimal place and rounded to the fourth  
630 decimal place by dividing the amount of noncharge benefits  
631 during the 3-year period described in subparagraph (b)2. by the  
632 taxable payroll of employers eligible for a variation from the  
633 standard rate who have a benefit ratio for the current year  
634 which is less than the maximum contribution rate. For purposes  
635 of computing this adjustment factor, the taxable payroll of

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

636 | these employers is the taxable payrolls for the 3 years ending  
 637 | June 30 of the current calendar year as reported to the tax  
 638 | collection service provider by September 30 of the same calendar  
 639 | year. As used in this sub-subparagraph, the term "noncharge  
 640 | benefits" means benefits paid to an individual from the  
 641 | Unemployment Compensation Trust Fund, but which were not charged  
 642 | to the employment record of any employer.

643 |       b. An adjustment factor for excess payments shall be  
 644 | computed to the fifth decimal place, and rounded to the fourth  
 645 | decimal place by dividing the total excess payments during the  
 646 | 3-year period described in subparagraph (b)2. by the taxable  
 647 | payroll of employers eligible for a variation from the standard  
 648 | rate who have a benefit ratio for the current year which is less  
 649 | than the maximum contribution rate. For purposes of computing  
 650 | this adjustment factor, the taxable payroll of these employers  
 651 | is the same figure used to compute the adjustment factor for  
 652 | noncharge benefits under subparagraph a. As used in this  
 653 | sub-subparagraph, the term "excess payments" means the amount of  
 654 | benefits charged to the employment record of an employer during  
 655 | the 3-year period described in subparagraph (b)2., less the  
 656 | product of the maximum contribution rate and the employer's  
 657 | taxable payroll for the 3 years ending June 30 of the current  
 658 | calendar year as reported to the tax collection service provider  
 659 | by September 30 of the same calendar year. As used in this sub-  
 660 | subparagraph, the term "total excess payments" means the sum of  
 661 | the individual employer excess payments for those employers that  
 662 | were eligible to be considered for assignment of a contribution  
 663 | rate different from ~~a variation from~~ the standard rate.



## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

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

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

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

708 d. The maximum contribution rate that may be assigned to  
709 an employer is 5.4 percent, except employers participating in an  
710 approved short-time compensation plan may be assigned a maximum  
711 contribution rate that is 1 percent greater than the maximum  
712 contribution rate for other employers in any calendar year in  
713 which short-time compensation benefits are charged to the  
714 employer's employment record.

715 2. If the transfer of an employer's employment record to  
716 an employing unit under paragraph (f) which, before the  
717 transfer, was an employer, the tax collection service provider  
718 shall recompute a benefit ratio for the successor employer based  
719 on the combined employment records and reassign an appropriate

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

720 contribution rate to the successor employer effective on the  
721 first day of the calendar quarter immediately after the  
722 effective date of the transfer.

723 (f) Transfer of employment records.--

724 1. For the purposes of this subsection, two or more  
725 employers who are parties to a transfer of business or the  
726 subject of a merger, consolidation, or other form of  
727 reorganization, effecting a change in legal identity or form,  
728 are deemed a single employer and are considered to be one  
729 employer with a continuous employment record if the tax  
730 collection service provider finds that the successor employer  
731 continues to carry on the employing enterprises of all of the  
732 predecessor employers and that the successor employer has paid  
733 all contributions required of and due from all of the  
734 predecessor employers and has assumed liability for all  
735 contributions that may become due from all of the predecessor  
736 employers. In addition, an employer may not be considered a  
737 successor under this subparagraph if the employer purchases a  
738 company with a lower rate into which employees with job  
739 functions unrelated to the business endeavors of the predecessor  
740 are transferred for the purpose of acquiring the low rate and  
741 avoiding payment of contributions. As used in this paragraph,  
742 notwithstanding s. 443.036(14), the term "contributions" means  
743 all indebtedness to the tax collection service provider,  
744 including, but not limited to, interest, penalty, collection  
745 fee, and service fee. A successor employer must accept the  
746 transfer of all of the predecessor employers' employment records  
747 within 30 days after the date of the official notification of

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

748 liability by succession. If a predecessor employer has unpaid  
749 contributions or outstanding quarterly reports, the successor  
750 employer must pay the total amount with certified funds within  
751 30 days after the date of the notice listing the total amount  
752 due. After the total indebtedness is paid, the tax collection  
753 service provider shall transfer the employment records of all of  
754 the predecessor employers to the successor employer's employment  
755 record. The tax collection service provider shall determine the  
756 contribution rate of the combined successor and predecessor  
757 employers upon the transfer of the employment records, as  
758 prescribed by rule, in order to calculate any change in the  
759 contribution rate resulting from the transfer of the employment  
760 records.

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

768 3. The state agency providing unemployment tax collection  
769 services may adopt rules governing the partial transfer of  
770 experience rating when an employer transfers an identifiable and  
771 segregable portion of his or her payrolls and business to a  
772 successor employing unit. As a condition of each partial  
773 transfer, these rules must require the following to be filed  
774 with the tax collection service provider: an application by the  
775 successor employing unit, an agreement by the predecessor

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

776 employer, and the evidence required by the tax collection  
777 service provider to show the benefit experience and payrolls  
778 attributable to the transferred portion through the date of the  
779 transfer. These rules must provide that the successor employing  
780 unit, if not an employer subject to this chapter, becomes an  
781 employer as of the date of the transfer and that the transferred  
782 portion of the predecessor employer's employment record is  
783 removed from the employment record of the predecessor employer.  
784 For each calendar year after the date of the transfer of the  
785 employment record in the records of the tax collection service  
786 provider, the service provider shall compute the contribution  
787 rate payable by the successor employer or employing unit based  
788 on his or her employment record, combined with the transferred  
789 portion of the predecessor employer's employment record. These  
790 rules may also prescribe what contribution rates are payable by  
791 the predecessor and successor employers for the period between  
792 the date of the transfer of the transferred portion of the  
793 predecessor employer's employment record in the records of the  
794 tax collection service provider and the first day of the next  
795 calendar year.

796 4. This paragraph does not apply to an employee leasing  
797 company and client contractual agreement as defined in s.  
798 443.036. The tax collection service provider shall, if the  
799 contractual agreement is terminated or the employee leasing  
800 company fails to submit reports or pay contributions as required  
801 by the service provider, treat the client as a new employer  
802 without previous employment record unless the client is  
803 otherwise eligible for a variation from the standard rate.

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

804       (g) Transfer of unemployment experience upon transfer or  
 805 acquisition of a business.--Notwithstanding any other provision  
 806 of law, the following shall apply regarding assignment of rates  
 807 and transfers of experience:

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

820       b. If, following a transfer of experience under sub-  
 821 subparagraph a., the Agency for Workforce Innovation or the tax  
 822 collection service provider determines that a substantial  
 823 purpose of the transfer of trade or business was to obtain a  
 824 reduced liability for contributions, then the experience rating  
 825 account of the employers involved shall be combined into a  
 826 single account and a single rate assigned to such account.

827       2. Whenever a person who is not an employer under this  
 828 chapter at the time it acquires the trade or business of an  
 829 employer, the unemployment experience of the acquired business  
 830 shall not be transferred to such person if the Agency for  
 831 Workforce Innovation or the tax collection service provider

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

832 finds that such person acquired the business solely or primarily  
833 for the purpose of obtaining a lower rate of contributions.  
834 Instead, such person shall be assigned the new employer rate  
835 under paragraph (2)(a). In determining whether the business was  
836 acquired solely or primarily for the purpose of obtaining a  
837 lower rate of contributions, the tax collection service provider  
838 shall consider, but not be limited to, the following factors:

839 a. Whether the person continued the business enterprise of  
840 the acquired business;

841 b. How long such business enterprise was continued; or  
842 c. Whether a substantial number of new employees were  
843 hired for performance of duties unrelated to the business  
844 activity conducted prior to acquisition.

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

850 a. If the person is an employer, then such employer shall  
851 be assigned the highest rate assignable under this chapter for  
852 the rate year during which such violation or attempted violation  
853 occurred and the 3 rate years immediately following this rate  
854 year. However, if the person's business is already at such  
855 highest rate for any year, or if the amount of increase in the  
856 person's rate would be less than 2 percent for such year, then a  
857 penalty rate of contributions of 2 percent of taxable wages  
858 shall be imposed for such year and the following 3 rate years.

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

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

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

867        a. "Knowingly" means having actual knowledge of or acting  
 868 with deliberate ignorance or reckless disregard for the  
 869 prohibition involved.

870        b. "Violates or attempts to violate" includes, but is not  
 871 limited to, intent to evade, misrepresentation, or willful  
 872 nondisclosure.

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

877        6. The Agency for Workforce Innovation and the tax  
 878 collection service provider shall establish procedures to  
 879 identify the transfer or acquisition of a business for purposes  
 880 of this paragraph and shall adopt any rules necessary to  
 881 administer this paragraph.

882        7. For purposes of this paragraph:

883        a. "Person" has the meaning given such term by s.  
 884 7701(a)(1) of the Internal Revenue Code of 1986.

885        b. "Trade or business" shall include the employer's  
 886 workforce.



ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

887        8. This paragraph shall be interpreted and applied in such  
 888 manner as to meet the minimum requirements contained in any  
 889 guidance or regulations issued by the United States Department  
 890 of Labor.

891        (h)~~(g)~~ Additional conditions for variation from the  
 892 standard rate.--An employer's contribution rate may not be  
 893 reduced below the standard rate under this section unless:

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

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

907  
 908 The tax collection service provider shall assign an earned  
 909 contribution rate to an employer under subparagraph 1. the  
 910 quarter immediately after the quarter in which all  
 911 contributions, reimbursements, interest, and penalties are paid  
 912 in full.

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

913 |        (i)~~(h)~~ Notice of determinations of contribution rates;  
914 | redeterminations.--The state agency providing tax collection  
915 | services:

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

934 |           2. Shall, upon discovery of an error in computation,  
935 | reconsider any prior determination or redetermination of a  
936 | contribution rate after the 20-day period has expired and issue  
937 | a revised notice of contribution rate as redetermined. A  
938 | redetermination is subject to review, and is conclusive and  
939 | binding if review is not sought, in the same manner as review of  
940 | a determination under subparagraph 1. A reconsideration may not

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

941 | be made after March 31 of the calendar year immediately after  
 942 | the calendar year for which the contribution rate is applicable,  
 943 | and interest may not accrue on any additional contributions  
 944 | found to be due until 30 days after the employer is mailed  
 945 | notice of his or her revised contribution rate.

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

964 |         (j)~~(i)~~ Employment records of employers entering the armed  
 965 | forces.--

966 |         1. If the tax collection service provider finds that an  
 967 | employer's business is closed solely because of the entrance of  
 968 | one or more of the owners, officers, partners, or the majority

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

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

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

989 (k)~~(j)~~ Applicability to contributing employers.--This  
 990 subsection applies only to contributing employers.

991 Section 7. Paragraph (b) of subsection (4) and paragraph  
 992 (b) of subsection (6) of section 443.151, Florida Statutes, are  
 993 amended to read:

994 443.151 Procedure concerning claims.--

995 (4) APPEALS.--

996 (b) Filing and hearing.--

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

997 | 1. The claimant or any other party entitled to notice of a  
 998 | determination may appeal an adverse determination to an appeals  
 999 | referee within 20 days after the date of mailing of the notice  
 1000 | to her or his last known address or, if the notice is not  
 1001 | mailed, within 20 days after the date of delivery of the notice.

1002 | 2. Unless the appeal is untimely or withdrawn or review is  
 1003 | initiated by the commission, the appeals referee, after mailing  
 1004 | all parties and attorneys of record a notice of hearing at least  
 1005 | 10 days before the date of hearing, notwithstanding the 14-day  
 1006 | notice requirement in s. 120.569(2)(b), may only affirm, modify,  
 1007 | or reverse the determination. An appeal may not be withdrawn  
 1008 | without the permission of the appeals referee.

1009 | 3. However, when an appeal appears to have been filed  
 1010 | after the permissible time limit, the Office of Appeals may  
 1011 | issue an order to show cause to the appellant, requiring the  
 1012 | appellant to show why the appeal should not be dismissed as  
 1013 | untimely. If the appellant does not, within 15 days after the  
 1014 | mailing date of the order to show cause, provide written  
 1015 | evidence of timely filing or good cause for failure to appeal  
 1016 | timely, the appeal shall be dismissed.

1017 | ~~4.3-~~ When an appeal involves a question of whether  
 1018 | services were performed by a claimant in employment or for an  
 1019 | employer, the referee must give special notice of the question  
 1020 | and of the pendency of the appeal to the employing unit and to  
 1021 | the Agency for Workforce Innovation, both of which become  
 1022 | parties to the proceeding.

1023 | ~~5.4-~~ The parties must be notified promptly of the  
 1024 | referee's decision. The referee's decision is final unless

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

1025 further review is initiated under paragraph (c) within 20 days  
 1026 after the date of mailing notice of the decision to the party's  
 1027 last known address or, in lieu of mailing, within 20 days after  
 1028 the delivery of the notice.

1029 (6) RECOVERY AND RECOUPMENT.--

1030 (b) Any person who, by reason other than her or his fraud,  
 1031 receives benefits under this chapter to which, under a  
 1032 redetermination or decision pursuant to this section, she or he  
 1033 is found not entitled, is liable to repay those benefits to the  
 1034 Agency for Workforce Innovation on behalf of the trust fund or,  
 1035 in the agency's discretion, to have those benefits deducted from  
 1036 any future benefits payable to her or him under this chapter.  
 1037 Any recovery or recoupment of benefits must be effected within 3  
 1038 ~~2~~ years after the redetermination or decision.

1039 Section 8. Paragraph (a) of subsection (1) of section  
 1040 895.02, Florida Statutes, is amended to read:

1041 895.02 Definitions.--As used in ss. 895.01-895.08, the  
 1042 term:

1043 (1) "Racketeering activity" means to commit, to attempt to  
 1044 commit, to conspire to commit, or to solicit, coerce, or  
 1045 intimidate another person to commit:

1046 (a) Any crime which is chargeable by indictment or  
 1047 information under the following provisions of the Florida  
 1048 Statutes:

1049 1. Section 210.18, relating to evasion of payment of  
 1050 cigarette taxes.

1051 2. Section 403.727(3)(b), relating to environmental  
 1052 control.

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

- 1053 |           3. Section 409.920 or s. 409.9201, relating to Medicaid
- 1054 | fraud.
- 1055 |           4. Section 414.39, relating to public assistance fraud.
- 1056 |           5. Section 440.105 or s. 440.106, relating to workers'
- 1057 | compensation.
- 1058 |           6. Section 443.071(4), relating to creation of a
- 1059 | fictitious employer scheme to commit unemployment compensation
- 1060 | fraud.
- 1061 |           ~~7.6-~~ Section 465.0161, relating to distribution of
- 1062 | medicinal drugs without a permit as an Internet pharmacy.
- 1063 |           ~~8.7-~~ Sections 499.0051, 499.0052, 499.00535, 499.00545,
- 1064 | and 499.0691, relating to crimes involving contraband and
- 1065 | adulterated drugs.
- 1066 |           ~~9.8-~~ Part IV of chapter 501, relating to telemarketing.
- 1067 |           ~~10.9-~~ Chapter 517, relating to sale of securities and
- 1068 | investor protection.
- 1069 |           ~~11.10-~~ Section 550.235, s. 550.3551, or s. 550.3605,
- 1070 | relating to dogracing and horseracing.
- 1071 |           ~~12.11-~~ Chapter 550, relating to jai alai frontons.
- 1072 |           ~~13.12-~~ Chapter 552, relating to the manufacture,
- 1073 | distribution, and use of explosives.
- 1074 |           ~~14.13-~~ Chapter 560, relating to money transmitters, if the
- 1075 | violation is punishable as a felony.
- 1076 |           ~~15.14-~~ Chapter 562, relating to beverage law enforcement.
- 1077 |           ~~16.15-~~ Section 624.401, relating to transacting insurance
- 1078 | without a certificate of authority, s. 624.437(4)(c)1., relating
- 1079 | to operating an unauthorized multiple-employer welfare

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

1080 arrangement, or s. 626.902(1)(b), relating to representing or  
 1081 aiding an unauthorized insurer.

1082 ~~17.16.~~ Section 655.50, relating to reports of currency  
 1083 transactions, when such violation is punishable as a felony.

1084 ~~18.17.~~ Chapter 687, relating to interest and usurious  
 1085 practices.

1086 ~~19.18.~~ Section 721.08, s. 721.09, or s. 721.13, relating  
 1087 to real estate timeshare plans.

1088 ~~20.19.~~ Chapter 782, relating to homicide.

1089 ~~21.20.~~ Chapter 784, relating to assault and battery.

1090 ~~22.21.~~ Chapter 787, relating to kidnapping.

1091 ~~23.22.~~ Chapter 790, relating to weapons and firearms.

1092 ~~24.23.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045,  
 1093 s. 796.05, or s. 796.07, relating to prostitution and sex  
 1094 trafficking.

1095 ~~25.24.~~ Chapter 806, relating to arson.

1096 ~~26.25.~~ Section 810.02(2)(c), relating to specified  
 1097 burglary of a dwelling or structure.

1098 ~~27.26.~~ Chapter 812, relating to theft, robbery, and  
 1099 related crimes.

1100 ~~28.27.~~ Chapter 815, relating to computer-related crimes.

1101 ~~29.28.~~ Chapter 817, relating to fraudulent practices,  
 1102 false pretenses, fraud generally, and credit card crimes.

1103 ~~30.29.~~ Chapter 825, relating to abuse, neglect, or  
 1104 exploitation of an elderly person or disabled adult.

1105 ~~31.30.~~ Section 827.071, relating to commercial sexual  
 1106 exploitation of children.



ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

1107 |        ~~32.31.~~ Chapter 831, relating to forgery and  
 1108 | counterfeiting.  
 1109 |        ~~33.32.~~ Chapter 832, relating to issuance of worthless  
 1110 | checks and drafts.  
 1111 |        ~~34.33.~~ Section 836.05, relating to extortion.  
 1112 |        ~~35.34.~~ Chapter 837, relating to perjury.  
 1113 |        ~~36.35.~~ Chapter 838, relating to bribery and misuse of  
 1114 | public office.  
 1115 |        ~~37.36.~~ Chapter 843, relating to obstruction of justice.  
 1116 |        ~~38.37.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,  
 1117 | or s. 847.07, relating to obscene literature and profanity.  
 1118 |        ~~39.38.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or  
 1119 | s. 849.25, relating to gambling.  
 1120 |        ~~40.39.~~ Chapter 874, relating to criminal street gangs.  
 1121 |        ~~41.40.~~ Chapter 893, relating to drug abuse prevention and  
 1122 | control.  
 1123 |        ~~42.41.~~ Chapter 896, relating to offenses related to  
 1124 | financial transactions.  
 1125 |        ~~43.42.~~ Sections 914.22 and 914.23, relating to tampering  
 1126 | with a witness, victim, or informant, and retaliation against a  
 1127 | witness, victim, or informant.  
 1128 |        ~~44.43.~~ Sections 918.12 and 918.13, relating to tampering  
 1129 | with jurors and evidence.  
 1130 |        Section 9. For the purpose of incorporating the amendment  
 1131 | to section 895.02, Florida Statutes, in a reference thereto,  
 1132 | paragraph (a) of subsection (1) of section 16.56, Florida  
 1133 | Statutes, is reenacted to read:  
 1134 |        16.56 Office of Statewide Prosecution.--

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

1135 (1) There is created in the Department of Legal Affairs an  
 1136 Office of Statewide Prosecution. The office shall be a separate  
 1137 "budget entity" as that term is defined in chapter 216. The  
 1138 office may:

1139 (a) Investigate and prosecute the offenses of:

1140 1. Bribery, burglary, criminal usury, extortion, gambling,  
 1141 kidnapping, larceny, murder, prostitution, perjury, robbery,  
 1142 carjacking, and home-invasion robbery;

1143 2. Any crime involving narcotic or other dangerous drugs;

1144 3. Any violation of the provisions of the Florida RICO  
 1145 (Racketeer Influenced and Corrupt Organization) Act, including  
 1146 any offense listed in the definition of racketeering activity in  
 1147 s. 895.02(1)(a), providing such listed offense is investigated  
 1148 in connection with a violation of s. 895.03 and is charged in a  
 1149 separate count of an information or indictment containing a  
 1150 count charging a violation of s. 895.03, the prosecution of  
 1151 which listed offense may continue independently if the  
 1152 prosecution of the violation of s. 895.03 is terminated for any  
 1153 reason;

1154 4. Any violation of the provisions of the Florida Anti-  
 1155 Fencing Act;

1156 5. Any violation of the provisions of the Florida  
 1157 Antitrust Act of 1980, as amended;

1158 6. Any crime involving, or resulting in, fraud or deceit  
 1159 upon any person;

1160 7. Any violation of s. 847.0135, relating to computer  
 1161 pornography and child exploitation prevention, or any offense  
 1162 related to a violation of s. 847.0135;

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

- 1163 | 8. Any violation of the provisions of chapter 815;
- 1164 | 9. Any criminal violation of part I of chapter 499;
- 1165 | 10. Any violation of the provisions of the Florida Motor
- 1166 | Fuel Tax Relief Act of 2004; or
- 1167 | 11. Any criminal violation of s. 409.920 or s. 409.9201;
- 1168 |

1169 | or any attempt, solicitation, or conspiracy to commit any of the  
 1170 | crimes specifically enumerated above. The office shall have such  
 1171 | power only when any such offense is occurring, or has occurred,  
 1172 | in two or more judicial circuits as part of a related  
 1173 | transaction, or when any such offense is connected with an  
 1174 | organized criminal conspiracy affecting two or more judicial  
 1175 | circuits.

1176 | Section 10. For the purpose of incorporating the amendment  
 1177 | to section 895.02, Florida Statutes, in a reference thereto,  
 1178 | paragraph (g) of subsection (3) of section 655.50, Florida  
 1179 | Statutes, is reenacted to read:

1180 | 655.50 Florida Control of Money Laundering in Financial  
 1181 | Institutions Act; reports of transactions involving currency or  
 1182 | monetary instruments; when required; purpose; definitions;  
 1183 | penalties.--

1184 | (3) As used in this section, the term:

1185 | (g) "Specified unlawful activity" means any "racketeering  
 1186 | activity" as defined in s. 895.02.

1187 | Section 11. For the purpose of incorporating the amendment  
 1188 | to section 895.02, Florida Statutes, in a reference thereto,  
 1189 | paragraph (g) of subsection (2) of section 896.101, Florida  
 1190 | Statutes, is reenacted to read:

ENROLLED  
 HB 1693, Engrossed 1

2005 Legislature

1191 896.101 Florida Money Laundering Act; definitions;  
 1192 penalties; injunctions; seizure warrants; immunity.--

1193 (2) As used in this section, the term:

1194 (g) "Specified unlawful activity" means any "racketeering  
 1195 activity" as defined in s. 895.02.

1196 Section 12. For the purpose of incorporating the amendment  
 1197 to section 895.02, Florida Statutes, in a reference thereto,  
 1198 subsection (3) of section 905.34, Florida Statutes, is reenacted  
 1199 to read:

1200 905.34 Powers and duties; law applicable.--The  
 1201 jurisdiction of a statewide grand jury impaneled under this  
 1202 chapter shall extend throughout the state. The subject matter  
 1203 jurisdiction of the statewide grand jury shall be limited to the  
 1204 offenses of:

1205 (3) Any violation of the provisions of the Florida RICO  
 1206 (Racketeer Influenced and Corrupt Organization) Act, including  
 1207 any offense listed in the definition of racketeering activity in  
 1208 s. 895.02(1)(a), providing such listed offense is investigated  
 1209 in connection with a violation of s. 895.03 and is charged in a  
 1210 separate count of an information or indictment containing a  
 1211 count charging a violation of s. 895.03, the prosecution of  
 1212 which listed offense may continue independently if the  
 1213 prosecution of the violation of s. 895.03 is terminated for any  
 1214 reason;

1215  
 1216 or any attempt, solicitation, or conspiracy to commit any  
 1217 violation of the crimes specifically enumerated above, when any  
 1218 such offense is occurring, or has occurred, in two or more

## ENROLLED

HB 1693, Engrossed 1

2005 Legislature

1219 | judicial circuits as part of a related transaction or when any  
1220 | such offense is connected with an organized criminal conspiracy  
1221 | affecting two or more judicial circuits. The statewide grand  
1222 | jury may return indictments and presentments irrespective of the  
1223 | county or judicial circuit where the offense is committed or  
1224 | triable. If an indictment is returned, it shall be certified and  
1225 | transferred for trial to the county where the offense was  
1226 | committed. The powers and duties of, and law applicable to,  
1227 | county grand juries shall apply to a statewide grand jury except  
1228 | when such powers, duties, and law are inconsistent with the  
1229 | provisions of ss. 905.31-905.40.

1230 |       Section 13. This act shall take effect July 1, 2005.