

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

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BILL: CS/SB 1216

INTRODUCER: Commerce and Tourism Committee and Senator Stargel

SUBJECT: Reemployment Assistance Fraud

DATE: February 17, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SB 1216 creates the “Department of Economic Opportunity Cybercrime Prevention Act.” The bill provides the Department of Highway Safety and Motor Vehicles (DHSMV) the authority to provide reproductions of images and signatures from driver licenses to the Department of Economic Opportunity (DEO) for the purpose of facilitating the detection of fraud and identity theft in reemployment assistance claims.

The bill modifies the disqualification period imposed when an individual is found to have knowingly made a false or fraudulent representation in order to receive reemployment assistance benefits to which the individual would not otherwise be entitled. Specifically, if the false or fraudulent representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, the individual will be disqualified from receiving reemployment assistance benefits until any amount received due to the misrepresentation is repaid in full and as follows:

- Five years from the date of the individual’s first conviction; and
- 10 years from the date of the individual’s second or subsequent conviction.

The bill amends the definition of “racketeering activity” to include false or fraudulent representations made in violation of the Reemployment Assistance Program.

The DEO indicates that it will establish a dedicated reemployment assistance fraud investigation unit, requiring four full-time equivalent (FTE) positions and \$286,376 of recurring funds, to

implement the bill.<sup>1</sup> SB 2500, 1<sup>st</sup> Engrossed, the Senate General Appropriations Bill, includes the requested positions and funding. Expanding the definition of “racketeering activity” to include the third degree felony offense of making a false statement or representation to obtain reemployment assistance benefits is expected to have a positive, insignificant prison bed impact on the Department of Corrections.<sup>2</sup> Expanding the information that the DHSMV shares with the DEO is expected to have a minimal, negative fiscal impact to the DHSMV. See Section V.

The bill provides an effective date of upon becoming law.

## II. Present Situation:

### Reemployment Assistance Program

The federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.<sup>3</sup> The program is administered as a partnership of the federal government and the states.<sup>4</sup>

Florida’s unemployment insurance program was created by the Legislature in 1937.<sup>5</sup> The program was rebranded as the “Reemployment Assistance Program” in 2012.<sup>6</sup> The DEO is responsible for administering Florida’s reemployment assistance laws, primarily through its Division for Workforce Services.<sup>7</sup>

An unemployed individual must apply to the DEO for benefits using Florida’s Online Reemployment Assistance System.<sup>8</sup> To receive benefits, a claimant must meet certain monetary and nonmonetary eligibility requirements and provide proof of identification.<sup>9</sup> Key eligibility requirements involve a claimant’s earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant’s efforts to find new employment. A notice of claim is sent to a claimant’s most recent employer and all employers whose employment records are liable for benefits.<sup>10</sup>

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<sup>1</sup> E-mail from Damon Steffens, Budget Chief, Department of Economic Opportunity, dated January 26, 2016 (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

<sup>2</sup> Criminal Justice Impact Conference, *SB 1216 – Reemployment Assistance Fraud* (Jan. 29, 2016), available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1216.pdf>

<sup>3</sup> United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcsecurity.dol.gov/unemploy/uifactsheet.asp> (last visited Feb. 11, 2016).

<sup>4</sup> There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

<sup>5</sup> Chapter 18402, L.O.F.

<sup>6</sup> Chapter 2012-30, L.O.F.

<sup>7</sup> Section 20.60(5)(c), F.S., and s. 443.171, F.S.

<sup>8</sup> Rule 73B-11.013, F.A.C.

<sup>9</sup> See s. 443.091, F.S., and Rule 73B-11.013, F.A.C.

<sup>10</sup> Section 445.151(3)(a), F.S.

### **Fraudulent Claims**

In 2014, the DEO implemented the Fraud Initiative and Rules Rating Engine (FIRRE) program in order to detect fraud and identity theft within public-assistance programs.<sup>11</sup> In the first year of implementation, the FIRRE program detected over 70,000 fraudulent claims for reemployment assistance benefits.<sup>12</sup>

In order to identify falsely filed claims, the FIRRE program cross matches identification information with external entities, including the claimant's social security and driver's license information.<sup>13</sup> To cross match driver's license information, the DEO has been provided limited access to the information database used by the DHSMV.<sup>14</sup> The DEO's current access does not provide digital images contained in DHSMV's Driver and Vehicle Information Database (DAVID), because such access is not authorized under current law.<sup>15</sup> Under s. 322.142, F.S., other state agencies have been given access to reproductions of the digital images for similar purposes.<sup>16</sup>

### **Penalties and Disqualification**

Under current law, any person who establishes a fictitious employing unit<sup>17</sup> by submitting fraudulent documents through a computer system, by alteration or destruction of computer files, or by theft of financial instruments, data, and other assets for the purpose of enabling any person to receive benefits under the reemployment program commits a felony of the third degree.<sup>18</sup> Establishment of a fictitious employing unit in violation of the Reemployment Assistance Program is considered racketeering activity under Florida law.<sup>19</sup>

Any person who makes false or fraudulent representations for the purpose of obtaining benefits contrary to the Reemployment Assistance Program commits a felony of the third degree.<sup>20</sup> Each false or fraudulent representation constitutes a separate offense.<sup>21</sup> A person who makes such representation is subject to a disqualification of benefits, beginning with the week in which the false or fraudulent representation is made.<sup>22</sup> The disqualification may be imposed for a period of up to 1 year following the date the DEO discovers the false or fraudulent representation and until

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<sup>11</sup> Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. DEO, RE: Identify Theft and Fraud in Public Benefit Systems (March 13, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 322.142(4), F.S., provides access to the digital images contained in DAVID to the Department of Business and Professional Regulation, the Department of Health, the Department of State, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Financial Services.

<sup>17</sup> An employing unit means "an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing; or the legal representative of a deceased person; which has or had in its employ one or more individuals performing services for it within this state." Section 443.036(20), F.S.

<sup>18</sup> Section 443.071(4), F.S.

<sup>19</sup> Section 865.02(1)(a)7., F.S.

<sup>20</sup> Section 443.071(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 443.101(6), F.S.

any overpayment of benefits resulting from such representation is repaid in full.<sup>23</sup> The duration of disqualification for false or fraudulent representations in other states is comparable to Florida's current penalty, as the disqualification time period in most states is 52 weeks.<sup>24</sup>

A disqualification may be appealed in the same manner as appeals of determinations and redeterminations.<sup>25</sup> However, a conviction of an offense prohibited by s. 443.071, F.S., is conclusive upon a reemployment assistance appeals referee and the Reemployment Assistance Appeals Commission of the making of the false or fraudulent statement.<sup>26</sup>

### **Recovery for Overpayment**

Any person who receives benefits by fraud, to which he or she is not entitled, is liable for repaying those benefits to the DEO.<sup>27</sup> Florida law also allows the DEO to impose a penalty equal to 15 percent of the amount overpaid.<sup>28</sup>

Upon discovery of an overpayment, the DEO determines the amount of overpayment and attempts to recover the overpayment. To enforce this provision, the DEO must find the existence of fraud through a redetermination or a decision within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within 7 years after the redetermination or decision.<sup>29</sup> The DEO is required to collect the repayment of benefits without interest by the deduction of benefits through a redetermination of benefits or by a civil action.<sup>30</sup>

### **III. Effect of Proposed Changes:**

**Section 1** provides that the act may be cited as the "Department of Economic Opportunity Cybercrimes Prevention Act."

**Section 2** amends s. 322.142, F.S., relating to color photographic or digital imaged licenses, to authorize the HSMV to make and issue reproductions of color photographic or digital imaged licenses and signatures of licensees to the DEO. The DEO will be able to use such reproductions for the purpose of facilitating the validation of reemployment assistance claims and identifying fraudulent or false reemployment assistance claims. Allowing the DEO access to the HSMV database will likely increase the number of false or fraudulent claims detected by the DEO.<sup>31</sup>

**Section 3** amends s. 443.101(6), F.S., relating to the disqualification for reemployment assistance benefits, to increase the time period for which an individual can be disqualified from receiving reemployment assistance benefits when the individual is found to have made false or

<sup>23</sup> *Id.*

<sup>24</sup> For a review of other state laws, see US Dept. of Labor, *Comparison of State Unemployment Laws*, available at <http://www.unemploymentinsurance.doleta.gov/unemploy/comparison2015.asp> (last visited Feb. 12, 2016).

<sup>25</sup> Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).

<sup>26</sup> *Id.*

<sup>27</sup> Section 445.151(6)(a), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 445.151(6)(e), F.S.

<sup>31</sup> Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

fraudulent representations in violation of the Reemployment Assistance Program. Specifically, the bill provides that if the false or fraudulent representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, the individual will be disqualified from receiving reemployment assistance benefits until any amount received due to the misrepresentation is repaid in full and as follows:

- Five years from the date of the individual's first conviction; and
- 10 years from the date of the individual's second or subsequent conviction.

**Section 4** amends s. 895.02(1)(a)7, F.S., relating to the definition of "racketeering activity," to include additional actions found to violate the Reemployment Assistance Program. Specifically, the bill expands the offense of racketeering activity to include the crime of making a false or fraudulent representation in order to receive reemployment assistance benefits, which is chargeable under s. 443.01(1), F.S.

**Section 5** provides that the bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEO is already engaged in activities to prevent fraud in the reemployment assistance program within existing resources. The DEO indicates that it will establish a dedicated reemployment assistance fraud investigation unit, requiring 4 full-time equivalent (FTE) positions and \$286,376 of recurring funds, to implement the bill.<sup>32</sup> SB 2500, 1<sup>st</sup>

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<sup>32</sup> E-mail from Damon Steffens, Budget Chief, Department of Economic Opportunity, dated January 26, 2016 (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

Engrossed, the Senate General Appropriations Bill, includes an interagency transfer of vacant positions and recurring funding from the Special Employment Security Administration Trust Fund to support the fraud investigation unit.

Expanding the definition of “racketeering activity” to include the third degree felony offense of making a false statement or representation to obtain reemployment assistance benefits is expected to have a positive, insignificant prison bed impact on the Department of Corrections.<sup>33</sup>

The DHSMV already shares data with the DEO; expanding the data shared to include reproductions of images and signatures from driver licenses is expected to have a minimal negative fiscal impact to the DHSMV.

## **VI. Technical Deficiencies:**

Generally, laws that create or modify a criminal offense have an effective date of July 1<sup>st</sup> or October 1<sup>st</sup> to give the public and the judicial branch sufficient notice. Staff recommends that sections 3 and 4 of the bill have an effective date of July 1, 2016.

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 322.142, 443.101, and 895.02.

## **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **CS by Commerce and Tourism on February 16, 2016:**

The committee substitute:

- Removes the authority of the DEO to hire law enforcement officers in order to investigate, enforce, and prosecute violations of the Reemployment Assistance Program;
- Changes the penalties required to be imposed when an individual is found to have knowingly made a false or fraudulent representation in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information; and
- Removes the authority of the DEO to collect the repayment of benefits received by an individual’s false or fraudulent representations through attachment or garnishment.

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<sup>33</sup> Criminal Justice Impact Conference, *SB 1216 – Reemployment Assistance Fraud* (Jan. 29, 2016), available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1216.pdf>

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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