

**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 Committee on Commerce and Tourism

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BILL: SB 1216

INTRODUCER: Senator Stargel

SUBJECT: Reemployment Assistance Fraud

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 1216 creates the “Department of Economic Opportunity Cybercrime Prevention Act.” The bill authorizes the Department of Economic Opportunity (DEO) to hire law enforcement officers in order to investigate, enforce, and prosecute violations of Florida’s Reemployment Assistance program. The bill also provides the Department of Highway Safety and Motor Vehicles the authority to issue reproductions of images and signatures from driver’s licenses to the DEO for the purpose of facilitating the detection of fraud and identity theft in reemployment assistance claims.

The bill increases the penalties required to be imposed when an individual is found to have knowingly made a false or fraudulent representation in order to receive reemployment assistance benefits the individual would not otherwise be entitled to. Upon DEO’s discovery of false or fraudulent representations made, an individual will be disqualified from receipt of reemployment benefits as follows:

- 5 years (up from the current 1 year) from the discovery of the first false or fraudulent representation and until any amount received due to the representation is repaid;
- 10 years from the discovery of a second false or fraudulent representation and until any amount received due to the representation is repaid; and
- The lifetime of the individual from the discovery of a third false or fraudulent representation.

The bill allows the repayment of benefits received by false or fraudulent representation to be collected by the DEO through attachment or garnishment. Upon application of the DEO to the clerk of court, the clerk will issue a writ without bond on the DEO.

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

The bill takes effect 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>1</sup> The program is administered as a partnership of the federal government and the states.<sup>2</sup>

Florida's unemployment insurance program was created by the Legislature in 1937.<sup>3</sup> The program was rebranded as the "Reemployment Assistance Program" in 2012.<sup>4</sup> The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.<sup>5</sup>

An unemployed individual must apply to the DEO for benefits using Florida's Online Reemployment Assistance System.<sup>6</sup> To receive benefits, a claimant must meet certain monetary and nonmonetary eligibility requirements and provide proof of identification.<sup>7</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>8</sup>

### Determinations and Redeterminations

The DEO issues determinations and redeterminations on monetary and nonmonetary eligibility requirements.<sup>9</sup> Determinations and redeterminations are statements by the DEO regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration and the DEO must review the information on which the request is based and issue a redetermination.

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee.<sup>10</sup> Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.

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<sup>1</sup> United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Feb. 11, 2016).

<sup>2</sup> There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

<sup>3</sup> Chapter 18402, L.O.F.

<sup>4</sup> Chapter 2012-30, L.O.F.

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

<sup>6</sup> Rule 73B-11.013, F.A.C.

<sup>7</sup> See s. 443.091, F.S., and Rule 73B-11.013, F.A.C.

<sup>8</sup> Section 445.151(3)(a), F.S.

<sup>9</sup> See s. 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>10</sup> Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests.

A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission.<sup>11</sup> The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission.<sup>12</sup> However, the commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.<sup>13</sup>

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.<sup>14</sup> The notice of appeal should be filed either in the district court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.

### **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>15</sup> In the first year of implementation, the FIRRE program detected over 70,000 fraudulent claims for reemployment assistance benefits.<sup>16</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>17</sup> To cross match driver's license information, the DEO has been provided limited access to the information database used by the Department of Highway Safety and Motor Vehicles (HSMV).<sup>18</sup> The DEO's current access does not provide digital images contained in HSMV's Driver and Vehicle Information Database (DAVID), because such access is not provided by current law.<sup>19</sup> Under s. 322.142, F.S., other state agencies have been given access to reproductions of the digital images for similar purposes.<sup>20</sup>

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<sup>11</sup> Section 443.151(3)(c), F.S.

<sup>12</sup> Rule 73B-22, F.A.C. The commission will review the appeals referee's decision to determine whether the findings are supported by competent, substantial evidence in the record and the legal conclusions are in accord with the essential requirements of law.

<sup>13</sup> *Id.*

<sup>14</sup> Section 443.151(4)(c), (d), and (e), F.S.

<sup>15</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>16</sup> *Id.*

<sup>17</sup> Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</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.

## Penalties and Disqualification

Under current law, any person who establishes a fictitious employing unit<sup>21</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>22</sup> Establishment of a fictitious employing unit in violation of the reemployment assistance program is considered racketeering activity under Florida law.<sup>23</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>24</sup> Each false or fraudulent representation constitutes a separate offense.<sup>25</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>26</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 any overpayment of benefits resulting from such representation is repaid in full.<sup>27</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>28</sup>

A disqualification may be appealed in the same manner as set forth above with regard to appeals of determinations and redeterminations. However, a conviction of an offense prohibited by s. 443.071, F.S., is conclusive upon the appeals referee and the commission of the making of the false or fraudulent statement.<sup>29</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>30</sup> Florida law also allows the DEO to impose a penalty equal to 15 percent of the amount overpaid.<sup>31</sup>

Upon discovery of an overpayment, the DEO makes a determination of the amount of overpayment and attempts to make recovery of the payment. 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

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<sup>21</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>22</sup> Section 443.071(4), F.S.

<sup>23</sup> Section 865.02(1)(a)7., F.S.

<sup>24</sup> Section 443.071(1), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 443.101(6), F.S.

<sup>27</sup> *Id.*

<sup>28</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>29</sup> *Id.*

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

<sup>31</sup> *Id.*

years after the redetermination or decision.<sup>32</sup> The DEO is required to collect the repayment of benefits without interest by the deduction of benefits through a redetermination or by a civil action.<sup>33</sup>

### III. Effect of Proposed Changes:

**Section 1** creates the “Department of Economic Opportunity Cybercrimes Prevention Act.”

**Section 2** amends s. 20.60, F.S., to authorize the DEO’s Division of Workforce Services to employ law enforcement officers. Such law enforcement officers must meet existing requirements for law enforcement officers, pursuant to s. 943.13, F.S., and must be certified as a law enforcement officer under ch. 943, F.S.

The bill sets forth the responsibilities of law enforcement officers hired by the Division of Workforce Services as follows:

- The primary responsibility of each law enforcement officer is to provide the statewide investigation, enforcement, and prosecution of violations of the Reemployment Assistance Program, rules adopted to enforce the program, and other state laws the division is authorized to enforce; and
- The secondary responsibility of each law enforcement officer is to enforce all other state laws incidental to the officer’s exercise of his or her primary responsibility. To exercise the powers of a deputy sheriff an officer must coordinate or consult with the appropriate local sheriff’s office or municipal department, unless the division participates in the Florida Mutual Aid plan during a declared state emergency.

**Section 3** amends s. 322.142, F.S., to provide the HSMV authorization 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 the identification of 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>34</sup>

**Section 4** amends s. 443.101(6), F.S., 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 fraudulent representations in violation of the Reemployment Assistance Program.

The bill provides that an individual will be disqualified from receipt of reemployment benefits upon the DEO’s discovery of false or fraudulent representations made. The three disqualification levels are identified as follows:

- For the first incident, an individual will be disqualified for 5 years after the date the DEO discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation is repaid in full;

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<sup>32</sup> *Id.*

<sup>33</sup> Section 445.151(6)(e), F.S.

<sup>34</sup> Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

- For the second incident, an individual will be disqualified for 10 years after the date the DEO discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation is repaid in full. The second incident must occur in a benefit year other than the benefit year of the first incident; and
- For the third incident, an individual will be disqualified for the lifetime of the individual after the date the DEO discovers the false or fraudulent representation, which must occur in a benefit year that is not the same benefit year as the first or second incident.

**Section 5** amends s. 443.151(6), F.S., to authorize the DEO to recover overpayments through attachment and garnishment in the same manner as provided in chs. 76 and 77, F.S. for a debt due. After the DEO applies to the clerk of court, a writ will be issued by the clerk, without bond required of the DEO. The bill provides that issues raised under attachment or garnishment proceedings must be tried by the court in the same manner as a judgment under chs. 76 and 77, F.S. The bill also provides that Leon County is the venue for attachment or garnishment proceedings originating under the Reemployment Assistance Program.

**Section 6** amends s. 895.02(1)(a)7, F.S., to provide that “racketeering activity” includes additional actions found to violate the Reemployment Assistance Program. Specifically, the bill includes 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 7** 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 anticipates a need to create an investigation unit of 6 FTE and estimates a budget of \$550,000 in order to implement the bill.<sup>35</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 322.142, 443.101, 443.151, 895.02.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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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<sup>35</sup> *Id.*