CHAPTER 98-149

Committee Substitute for Senate Bill No. 1708

An act relating to rulemaking authority with respect to the Department of Labor and Employment Security (RAB); amending s. 370.0805, F.S.; correcting cross-reference; amending s. 413.011, F.S.; authorizing rulemaking for vocational rehabilitation programs and forms; amending s. 413.051, F.S.; authorizing rulemaking for a vending facility program; amending ss. 443.036, 443.091, 443.121, 443.131, 443.141, 443.151, F.S.; defining and modifying specific terms; correcting cross-references; allowing the Division of Unemployment Compensation to adopt rules to determine a claimant's ability to work and availability for work; allowing the division to prescribe by rule training criteria; clarifying types of contracts; allowing the division to adopt rules regarding total succession, procedures for changing methods of reporting, the application of partial payments and monetary and nonmonetary determinations and investigations of eligibility; amending s. 450.121, F.S.; authorizing the Division of Jobs and Benefits to adopt rules that define terms, prescribe documentation for proof of age, prescribe procedure with respect to removal of disability of nonage, require certain safety equipment and a safe workplace for minors, prescribe deadlines for responses to records requests, and state an official address; amending s. 450.30, F.S.; authorizing the division to adopt rules prescribing procedures for registering as a farm labor contractor; amending s. 450.33, F.S.; requiring insurance carriers to notify the division of impending cancellation of insurance on vehicles that transport farm workers; amending s. 450.38, F.S.; authorizing the division to adopt rules containing criteria for determining the amount of civil penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 370.0805, Florida Statutes, is amended to read:

370.0805 Net ban assistance program.—

(4) ECONOMIC ASSISTANCE FOR LOSS OF INCOME.—

(a) Any fisher who is partially or totally unemployed as a result of the implementation of the net ban amendment in s. 16, Art. X of the State Constitution, notwithstanding s. 443.036(21)(n)3. ~~s. 443.036(19)(n)3.~~, is eligible for retroactive elective coverage pursuant to s. 443.121(3)(a). Retroactive elective coverage shall be limited to fishers who, during the base period, as defined in s. 443.036, possessed a valid saltwater products license issued under s. 370.06 and had recorded landings of the species affected by the net ban. Eligible fishers may apply for retroactive elective coverage any time on or before December 31, 1995. Liability for contributions due as a result of retroactive coverage must be satisfied prior to the payment of unemployment benefits.

Section 2. Paragraphs (l) and (m) are added to subsection (1) of section 413.011, Florida Statutes, to read:

413.011 Division of Blind Services, internal organizational structure; Advisory Council for the Blind.—

(1) The internal organizational structure of the Division of Blind Services shall be designed for the purpose of insuring the greatest possible efficiency and effectiveness of services to the blind and to be consistent with chapter 20. The Division of Blind Services shall plan, supervise, and carry out the following activities:

(l) Adopt by rule procedures for providing vocational rehabilitation services for the blind.

(m) Adopt by rule forms and instructions to be used by the division in its general administration.

Section 3. Subsection (12) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(12) The Division of Blind Services may adopt ~~is authorized to promulgate~~ rules to permit the division to establish and maintain vending facilities, issue licenses, establish and maintain a vending-facility training program, provide vendors access to financial data of the program, set aside funds from net proceeds of the vending facility, provide for the transfer and promotion of vendors, establish a vendors committee, provide for an operation agreement, provide duties and responsibilities of the division with respect to the vending facility program, and provide procedures for newspaper vending sales ~~as needed to implement the provisions of this section~~.

Section 4. Section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(1) ABLE TO WORK.—The term "able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.

(2)~~(1)~~ AGRICULTURAL LABOR.—The term "agricultural labor" means any remunerated service performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging

timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. s. 1141j ~~s. 114j~~); the ginning of cotton; or the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d)1. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

2. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph 1., but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

3. The provisions of subparagraphs 1. and 2. shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with grading, packing, packaging, or processing fresh citrus fruits.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(3)~~(2)~~ AMERICAN AIRCRAFT.—The term "American aircraft" means an aircraft registered under the laws of the United States.

(4)~~(3)~~ AMERICAN EMPLOYER.—An "American employer" means:

(a) An individual who is a resident of the United States.

(b) A partnership, if two-thirds or more of the partners are residents of the United States.

(c) A trust, if all of the trustees are residents of the United States.

(d) A corporation organized under the laws of the United States or of any state.

(5)~~(4)~~ AMERICAN VESSEL.—The term "American vessel" means any vessel documented or numbered under the laws of the United States and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(6) AVAILABLE FOR WORK.—The term "available for work" means actively seeking and being ready and willing to accept suitable employment.

(7)~~(5)~~ BASE PERIOD.—"Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(8)~~(6)~~ BENEFIT YEAR.—"Benefit year," with respect to any individual, means the 1-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with s. 443.151(2) shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work in accordance with the provisions of s. 443.091(1)(f) ~~s. 443.091(1)(e)~~ and is unemployed as defined in subsection (39) ~~(32)~~ at the time of the filing of such claim. However, the division may in its discretion provide by rule for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry when and if it has been determined by the division, after notice to the industry and to the workers in such industry and an opportunity to be heard in the matter, that such groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(9)~~(7)~~ BENEFITS.—"Benefits" means the money payable to an individual, as provided in this chapter, with respect to his or her unemployment.

(10)~~(8)~~ CALENDAR QUARTER.—"Calendar quarter" means each period of 3 consecutive calendar months ending on March 31, June 30, September 30, and December 31.

(11)~~(9)~~ CASUAL LABOR.—"Casual labor" means labor which is occasional, incidental, or irregular, not exceeding 200 person-hours in total duration. "Duration" means the period of time from the commencement to the completion of the particular job or project. However, services performed by an employee for his or her employer during a period of 1 calendar month or any 2 consecutive calendar months shall be deemed to be casual labor only if such service is performed on not more than 10 calendar days, whether or not such days are consecutive. If any of the services of an individual on a particular labor project are not casual labor, as defined, then none of the services of such individual on such job or project shall be deemed casual labor. In order for services to be exempt under this subsection, such services shall constitute casual labor, as defined, and not in the course of the employer's trade or business, as defined.

(12)~~(10)~~ COMMISSION.—"Commission" means the Unemployment Appeals Commission of the Department of Labor and Employment Security.

(13)~~(11)~~ CONTRIBUTIONS.—"Contributions" means the money payments to the Unemployment Compensation Trust Fund required by this chapter.

(14)~~(12)~~ CREW LEADER.—"Crew leader" means an individual who:

(a) Furnishes individuals to perform service in agricultural labor for any other person.

(b) Pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them.

(c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(15)~~(13)~~ DIVISION.—"Division" means the Division of Unemployment Compensation of the Department of Labor and Employment Security.

(16)~~(14)~~ EARNED INCOME.—The term "earned income" means gross remuneration derived from work, professional service, or self-employment but does not include income derived from invested capital or ownership of property. The term includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in any medium other than cash.

(17)~~(15)~~ EDUCATIONAL INSTITUTION.—With the exception of an institution of higher education as defined in subsection (26) ~~(24)~~, "educational institution" means an institution:

(a) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of, an instructor or teacher;

(b) Which is approved, licensed, or issued a permit to operate as a school by the Department of Education or other governmental agency that is authorized within the state to approve, license, or issue a permit for the operation of a school; and

(c) Which offers courses of study or training which are academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(18)~~(16)~~ EMPLOYEE LEASING COMPANY.—The term "employee leasing company" means an employing unit which maintains a valid and active license under chapter 468 and which maintains the records required by s. 443.171(7) and, in addition, maintains a listing of the clients of the employee leasing company and of the employees, including their social security numbers, who have been assigned to work at each client company job site. Further, each client company job site must be identified by industry, products or services, and address. The client list shall be provided to the division by June 30 and by December 31 of each year. For purposes of this subsection, "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. Leased employees shall include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. The employee leasing company shall notify the division within 30 days of the initiation or

termination of the company's relationship with any client company pursuant to chapter 468.

(19)~~(17)~~ EMPLOYER.—"Employer" means:

(a) Any employing unit which:

1. In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1,500 or more; or

2. For any portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual, irrespective of whether the same individual was in employment in each such day.

(b) Any employing unit for which service in employment, as defined in paragraph (21)(b) ~~(19)(b)~~, is performed, except as provided in paragraph (e).

(c) Any employing unit for which service in employment, as defined in paragraph (21)(c) ~~(19)(c)~~, is performed, except as provided in paragraph (e).

(d)1. Any employing unit for which agricultural labor, as defined in paragraph (21)(e) ~~(19)(e)~~, is performed after December 31, 1977.

2. Any employing unit for which domestic service in employment, as defined in paragraph (21)(g) ~~(19)(g)~~, is performed after December 31, 1977.

(e)1. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (a), paragraph (b), or paragraph (c) or subparagraph (d)1., the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

2. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (a), paragraph (b), or paragraph (c) or subparagraph (d)2., the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined to be an employer of agricultural labor, the employing unit shall be determined an employer for the purposes of paragraph (a).

(f) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter or which acquired a part of the organization, trade, or business of another which at the time of such acquisition was an employer subject to this chapter, provided such other would have been an employer under paragraph (a) if such part had constituted its entire organization, trade, or business.

(g) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, if the employment record of the predecessor prior to such acquisition together with the employment record of such individual or employing

unit subsequent to such acquisition, both within the same calendar year, would be sufficient to render an employing unit subject to this chapter as an employer under paragraph (a).

(h) Any employing unit not an employer by reason of any other paragraph of this subsection:

1. For which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

2. Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an "employer" under this chapter.

(i) Any employing unit which has become an employer under paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e), paragraph (f), paragraph (g), or paragraph (h) and has not ceased to be an employer subject to this chapter, as provided in s. 443.121.

(j) For the effective period of its election, any other employing unit which has elected to become subject to this chapter.

(k) Any employing unit which fails to keep the records of employment required by this chapter and by the rules of the division shall be presumed to be an employer liable for the payment of contributions pursuant to the provisions of this chapter, regardless of the number of individuals employed by such employing unit. However, the division shall make written demand that such employing unit keep and maintain required payroll records, and such demand shall have been made not less than 6 months before assessing contributions against any employing unit determined to have become an "employer" solely by reason of this paragraph.

For purposes of this subsection, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed 1 calendar week, and the days beginning January 1, another such week.

(20)~~(18)~~ EMPLOYING UNIT.—"Employing unit" means any individual or type of organization, including any partnership, 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.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(b) All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

(c) Any person who is an officer of a corporation and who performs services for such corporation within this state, whether or not such services are continuous, shall be deemed an employee of the corporation during all of each week of his or her tenure of office, regardless of whether or not he or she is compensated for such services. Services shall be presumed to have been rendered the corporation in cases where such officer is compensated by means other than dividends upon shares of stock of such corporation owned by him or her.

(21)~~(19)~~ EMPLOYMENT.—"Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him or her.

(a) Generally.—

1. The term "employment" includes any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, including service in interstate commerce, by:

a. Any officer of a corporation.

b. Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. However, whenever a company, hereafter referred to as "client," which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers shall, after December 31, 1986, be considered employees of the employee leasing company. The employee leasing company shall be permitted to lease corporate officers of the client to the client and such other workers where not prohibited by Internal Revenue Service regulations. Employees of the employee leasing company shall be reported under the employee leasing company's tax identification number and tax rate for work performed for the employee leasing company.

c. Any individual other than an individual who is an employee under sub-subparagraph a. or sub-subparagraph b., who performs services for remuneration for any person:

(I) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services for his or her principal.

(II) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retail-

ers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of sub-subparagraph c., the term "employment" includes services described in sub-sub-subparagraphs (I) and (II) only if: The contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

2. Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

3. If the services performed during one-half or more of any pay period by an employee for the person employing him or her constitute employment, all of the services of such employee for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. This subparagraph shall not be applicable with respect to services performed in a pay period by an employee for the person employing him or her, when any of such service is excepted by subparagraph (n)7.

4. If two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster, each related corporation shall be considered to have paid as wages to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as wages to such individual any amounts actually disbursed to such individual by another of such corporations.

a. A "common paymaster" is any member of a group of related corporations that disburses wages to concurrent employees on behalf of the related corporations and that is responsible for keeping payroll records with respect to those concurrent employees. The common paymaster is not required to disburse wages to all the employees of the related corporations, but the provisions of this section shall not apply to any wages to concurrent employees that are not disbursed through a common paymaster. The common paymaster shall pay concurrently employed individuals under this section by one combined paycheck.

b. "Concurrent employment" means the existence of simultaneous employment relationships, as defined in this chapter, between an individual and related corporations. Such relationships require the performance of

services by the employee for the benefit of the related corporations, including the common paymaster, in exchange for wages which, if deductible for the purposes of federal income tax, would be deductible by the related corporations.

c. Corporations shall be considered related corporations for an entire calendar quarter, as defined in subsection (10) ~~(8)~~, if they satisfy any one of the following four tests at any time during that calendar quarter:

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

(II) In the case of a corporation that does not issue stock, either 50 percent or more of the members of the board of directors or other governing body of one corporation are members of the board of directors or other governing body of the other corporation, or the holders of 50 percent or more of the voting power to select such members are concurrently the holders of more than 50 percent of that power with respect to the other corporation.

(III) Fifty percent or more of the officers of one corporation are concurrently officers of the other corporation.

(IV) Thirty percent or more of the employees of one corporation are concurrently employees of the other corporation.

d. The common paymaster shall report to the division, as a part of the unemployment compensation quarterly tax and wage report, the state unemployment compensation account number and name of each related corporation for which concurrent employees are being reported. Failure to timely report this information shall result in the related corporations being denied common paymaster status for that calendar quarter.

e. The common paymaster shall also have the primary responsibility for remitting contributions due under this chapter with respect to the wages it disburses as the common paymaster. The common paymaster shall compute these contributions as though it were the sole employer of the concurrently employed individuals. If the common paymaster fails to timely remit these contributions or reports, in whole or in part, it shall remain liable for the full amount of the unpaid portion of these taxes. In addition, each of the other related corporations using the common paymaster shall be jointly and severally liable for its appropriate share of these contributions. Such share shall be an amount equal to the greater of the following:

(I) The amount of the liability of the common paymaster under this chapter, after taking into account any contributions made.

(II) The amount of the liability under this chapter which, but for this section, would have existed with respect to the wages from such other related corporations, reduced by an allocable portion of any contributions previously paid by the common paymaster with respect to those wages.

f. This subsection may apply to all contributions and reports due for the first quarter of 1997 and thereafter.

(b) Public employees.—The term "employment" includes service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities, any instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other states or political subdivisions, provided such service is excluded from "employment" as defined in s. 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under paragraph (d) of this subsection.

(c) Religious, charitable, etc., employees.—The term "employment" includes service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:

1. The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and

2. The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(d) Exclusions from paragraphs (b) and (c).—For the purposes of paragraphs (b) and (c), the term "employment" does not apply to service performed:

1. In the employ of:

a. A church or convention or association of churches.

b. An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

3. Prior to January 1, 1978, in the employ of a nonprofit educational institution which is not an institution of higher education and which would otherwise be employment as defined in paragraph (c).

4. In the employ of a governmental entity referred to in paragraph (b), if such service is performed by an individual in the exercise of duties:

a. As an elected official.

b. As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.

c. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

d. In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position or a

policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.

5. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

6. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training, except that this subparagraph does not apply to unemployment work-relief or work-training programs for which unemployment compensation coverage is required under a federal law, rule, or regulation.

7. By an inmate of a custodial or penal institution.

(e) Agricultural service.—The term "employment" includes service performed after December 31, 1977, by an individual in agricultural labor, as defined in subsection (2) ~~(1)~~, when:

1. Such service is performed before January 1, 1988, for a person who:

a. During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor.

b. For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

2. Such service is performed after December 31, 1987, for a person who:

a. During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $10,000 or more to individuals employed in agricultural labor.

b. For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor five or more individuals, regardless of whether they were employed at the same moment of time.

3. Such service is performed by any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person.

a. For the purposes of this subparagraph, a crew member shall be treated as an employee of the crew leader:

(I) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 or if substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

(II) If such individual is not an employee of such other person within the meaning of paragraph (a).

b. For the purposes of this subparagraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under sub-subparagraph a.:

(I) Such other person and not the crew leader shall be treated as the employer of such individual; and

(II) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on the behalf of such other person, for the service in agricultural labor performed for such other person.

(f) Exclusion from paragraph (e).—The term "employment" does not include service performed by an individual in agricultural labor, except as provided in paragraph (e); however, the provisions of paragraph (e) shall not reduce the coverage provided under subparagraph (d)3.

(g) Domestic service.—The term "employment" includes domestic service after December 31, 1977, <u>performed by maids, cooks, maintenance workers, chauffeurs, social secretaries, caretakers, private yacht crews, butlers, and houseparents,</u> in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more after December 31, 1977, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(h) Service outside state.—The term "employment" includes an individual's entire service, performed within or both within and without this state if:

1. The service is localized in this state; or

2. The service is not localized in any state, but some of the service is performed in this state, and:

a. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

b. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(i) Employer election to include service outside state.—Services not covered under subparagraph (h)2. and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(j) Service deemed to be localized within state.—Service shall be deemed to be localized within a state if:

1. The service is performed entirely within such state; or

2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, it is temporary or transitory in nature or consists of isolated transactions.

(k) Service outside United States.—The term "employment" includes the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada) in the employ of an American employer, other than service which is deemed "employment" under the provisions of paragraph (b) or paragraph (c) or the parallel provisions of another state's law, if:

1. The employer's principal place of business in the United States is located in this state.

2. The employer has no place of business in the United States, but:

a. The employer is an individual who is a resident of this state.

b. The employer is a corporation which is organized under the laws of this state.

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

3. None of the criteria of subsection (4) ~~(3)~~ and this paragraph is met, but the employer has elected coverage in this state, or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.

(l) Service on American vessel or aircraft.—The term "employment" includes all service performed by an officer or member of a crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, provided that the operating office, from which the operations of such vessel or aircraft operating within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(m) Service under other unemployment compensation law.—The term "employment" includes services covered by an arrangement pursuant to s. 443.221 between the division and the agency charged with the administration of any other state unemployment compensation law or Federal Unemployment Compensation Law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, if the division has approved an election of the employing unit for which such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(n) Exclusions generally.—The term "employment" does not include:

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g).

2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

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

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

4. Service performed by an individual in the employ of his or her son, daughter, or spouse, <u>including step relationships,</u> and service performed by a child<u>, or stepchild,</u> under the age of 21 in the employ of his or her father or mother<u>, or stepfather or stepmother</u>.

5. Service performed in the employ of the United States Government or of an instrumentality of the United States which is:

a. Wholly or partially owned by the United States.

b. Exempt from the tax imposed by s. 3301 of the Internal Revenue Code by virtue of any provision of federal law which specifically refers to such section, or the corresponding section of prior law, in granting such exemption; except that to the extent that the Congress shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year

by the Secretary of Labor under s. 3304 of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.

6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s. 501(a) of the Internal Revenue Code, other than an organization described in s. 401(a), or under s. 521, if the remuneration for such service is less than $50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

10. Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative.

11. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar

service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.

13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission, except for such services performed in accordance with 26 U.S.C.S. s. 3306(c)(7) and (8). For purposes of this subsection, those benefits excluded from the definition of wages pursuant to subparagraphs (33)(b)2.-6., inclusive, shall not be considered remuneration.

14. Service performed by an individual for a person as a real estate salesperson or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Service performed by a speech therapist, occupational therapist, or physical therapist who is nonsalaried and working pursuant to a written contract with a home health agency as defined in s. 400.462.

21. Service performed by a direct seller. For purposes of this subparagraph, the term "direct seller" means a person:

a.(I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis or a deposit-commission basis, or on any similar basis, for resale in the home or in any other place that is not a permanent retail establishment; or

(II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;

b. Substantially all of whose remuneration for services described in sub-subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and

c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

22. Service performed by a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or subparagraph (J) of s. 101(a)(15) of the Immigration and Nationality Act, and which is performed to carry out the purpose specified in subparagraph (F) or subparagraph (J), as the case may be.

23. Service performed by an individual for remuneration for a private, for-profit delivery or messenger service, if the individual:

a. Is free to accept or reject jobs from the delivery or messenger service and the delivery or messenger service has no control over when the individual works;

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

c. Pays all expenses and the opportunity for profit or loss rests solely with the individual;

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

e. Determines the method of performing the service, including selection of routes and order of deliveries;

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

g. Enters into a contract with the delivery or messenger service which specifies the relationship of the individual to the delivery or messenger service to be that of an independent contractor and not that of an employee; and

h. Provides the vehicle used to perform the service.

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

(22)~~(20)~~ EMPLOYMENT OFFICE.—"Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(23)~~(21)~~ FARM.—"Farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(24)~~(22)~~ FUND.—"Fund" means the Unemployment Compensation Trust Fund created by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(25)~~(23)~~ HOSPITAL.—"Hospital" means an institution which has been licensed, certified, or approved by the Department of Health and Rehabilitative Services as a hospital.

(26)~~(24)~~ INSTITUTION OF HIGHER EDUCATION.—"Institution of higher education" means an educational institution which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state and recognized as such by this state are institutions of higher education for purposes of this section.

(27)~~(25)~~ INSURED WORK.—"Insured work" means employment for employers.

(28) LEAVE OF ABSENCE.—The term "leave of absence" means a temporary break in service to an employer, for a specified period of time, during

which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

(29)~~(26)~~ MISCONDUCT.—"Misconduct" includes, but is not limited to, the following, which shall not be construed in pari materia with each other:

(a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his or her employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

(30) MONETARY DETERMINATION.—The term "monetary determination" means a determination of whether and in what amount a claimant is eligible for benefits based on the claimant's employment during the base period of the claim.

(31) NONMONETARY DETERMINATION.—The term "nonmonetary determination" means a determination of the claimant's eligibility for benefits on all issues other than monetary entitlement and benefit overpayment.

(32)~~(27)~~ NOT IN THE COURSE OF THE EMPLOYER'S TRADE OR BUSINESS.—"Not in the course of the employer's trade or business" means that which does not promote or advance the trade or business of the employer.

(33)~~(28)~~ PAY PERIOD.—"Pay period" means a period of not more than 31 consecutive days for which a payment or remuneration is ordinarily made to the employee by the person employing him or her.

(34) REASONABLE ASSURANCE.—The term "reasonable assurance" means a written or verbal agreement or an agreement between the employer and the worker understood through tradition within the trade or occupation or as defined in employer policy.

(35)~~(29)~~ REIMBURSABLE EMPLOYER.—"Reimbursable employer" means an employer who is liable for payments in lieu of contributions as required by this chapter.

(36)~~(30)~~ STATE.—"State" includes the states of the United States, the District of Columbia, Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

(37)~~(31)~~ STATE LAW.—"State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under s. 3304 of the Internal Revenue Code of 1954.

(38) TEMPORARY LAYOFF.—The term "temporary layoff" means a job separation due to lack of work which does not exceed 8 weeks in duration and which has a fixed or approximate return to work date.

(39)~~(32)~~ UNEMPLOYMENT.—"Unemployment" means:

(a) An individual shall be deemed "totally unemployed" in any week during which he or she performs no services and with respect to which no earned income is payable to him or her, or shall be deemed "partially unemployed" in any week of less than full-time work if the earned income payable to him or her with respect to such week is less than his or her weekly benefit amount. The division shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the division deems necessary.

(b) An individual's week of unemployment shall be deemed to commence only after his or her registration at an employment office, except as the division may by rule otherwise prescribe.

(40)~~(33)~~ WAGES.—

(a) "Wages" means all remuneration for employment, including commissions, bonuses, back pay awards, and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division. After January 1, 1986, the term "wages" includes tips or gratuities which are received while performing services which constitute employment and are included in a written statement furnished to the employer pursuant to s. 6053(a) of the Internal Revenue Code of 1954.

(b) "Wages" does not include:

1. That part of remuneration which, after remuneration equal to $6,000 prior to January 1, 1983, and $7,000 after December 31, 1982, has been paid in a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax, under a federal law imposing the tax, against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, the term "employment" includes services constituting employment under any employment security law of another state or of the Federal Government.

2. The amount of any payment, with respect to services performed, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:

a. Sickness or accident disability, but, in the case of payments made to an employee or any of his or her dependents, this subparagraph shall exclude from the term "wages" only those payments received under a workers' compensation law.

b. Medical and hospitalization expenses in connection with sickness or accident disability.

c. Death, provided the individual in its employ:

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums, or contributions to premiums, paid by his or her employing unit; and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his or her withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his or her services with such employing unit.

3. The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of 6 calendar months following the last calendar month in which the individual performed services for such employing unit.

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under s. 3101 of the federal Internal Revenue Code with respect to services performed.

5. The value of:

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

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

6. The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or a beneficiary of such individual:

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

b. Under or to an annuity plan which, at the time of such payment, is a plan described in s. 403(a) of the Internal Revenue Code of 1954;

c. Under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under s. 219(b)(2) of the Internal Revenue Code of 1954 for such payment;

d. Under or to an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise;

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

f. To supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the United States Secretary of Labor, since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan under s. 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.

g. Under a cafeteria plan, within the meaning of s. 125 of the Internal Revenue Code of 1986, as amended, if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that, if s. 125 of the Internal Revenue Code of 1986, as amended, applied for purposes of this section, s. 125 of the Internal Revenue Code of 1986, as amended, would not treat any wages as constructively received.

(41)~~(34)~~ WEEK.—"Week" means such period of 7 consecutive days as the division may by rule prescribe. The division may by rule prescribe that a week shall be deemed to be "in," "within," or "during" that benefit year which includes the greater part of such week.

(42)~~(35)~~ HIGH QUARTER.—"High quarter" means that quarter in the base period in which the claimant had the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

(43)~~(36)~~ VOLUNTARY CONTRIBUTION.—"Voluntary contribution" means any payment made to the Unemployment Compensation Trust Fund in excess of any payments required under this chapter.

Section 5. Section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(a) She or he has made a claim for benefits with respect to such week in accordance with such rules as the division may prescribe.

(b) She or he has registered for work at, and thereafter continued to report at, the division, which shall be responsible for notification of the Division of Jobs and Benefits ~~Florida State Employment Service~~ in accordance with such rules as the division may prescribe; except that the division may, by rule not inconsistent with the purposes of this law, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs; but no such rule shall conflict with s. 443.111(1).

(c)1. She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the division shall develop criteria to determine a claimant's ability to work and availability for work.

2. Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because she or he is in training with the approval of the division, nor shall such individual be denied benefits with respect to any week in which she or he is in training with the approval of the division by reason of the application of provisions in subparagraph 1. relating to availability for work, or the provisions of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the division in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

3. Notwithstanding any other provision of this chapter, an individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined to be ineligible or disqualified for benefits with respect to her or his enrollment in such training or because of leaving work which is not suitable employment to enter such training. For the purposes of this subparagraph, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are not less than 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

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

(d) She or he participates in reemployment services, such as job search assistance services, whenever the individual has been determined, pursuant to a profiling system established by rule of the division, to be likely to exhaust regular benefits and to be in need of reemployment services.

(e) She or he has been unemployed for a waiting period of 1 week. No week shall be counted as a week of unemployment for the purposes of this subsection:

1. Unless it occurs within the benefit year which includes the week with respect to which she or he claims payment of benefits.

2. If benefits have been paid with respect thereto.

3. Unless the individual was eligible for benefits with respect thereto as provided in this section and s. 443.101 except for the requirements of this subsection and of s. 443.101(5).

(f) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an

unemployed individual is not eligible to receive benefits if the base period wages are less than $3,400. As amended by this act, this paragraph applies only to benefit years beginning on or after July 1, 1996.

(2) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which she or he received benefits, she or he performed service, whether or not in employment as defined in s. 443.036, and earned remuneration for such service in an amount equal to not less than 3 times her or his weekly benefit amount as determined for her or his current benefit year.

(3) Benefits based on service in employment defined in s. 443.036(21)(b) ~~s. 443.036(19)(b)~~ and (c) shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(a) Benefits shall not be paid based on services in an instructional, research, or principal administrative capacity for an educational institution or an institution of higher education for any week of unemployment commencing during the period between 2 successive academic years; during a similar period between two regular terms, whether or not successive; or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution or institution of higher education in the second of such academic years or terms.

(b) Benefits shall not be based on services in any other capacity for an educational institution or an institution of higher education to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of the academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of the academic years or terms; except that, if compensation is denied to any individual under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, that individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.

(c) Benefits shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs any services described in paragraph (a) or paragraph (b) in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform any such service in the period immediately following such vacation period or holiday recess.

(d) Benefits shall not be payable on the basis of services in any such capacities as specified in paragraphs (a), (b), and (c) to any individual who performed such services in an educational institution while in the employ

of a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(e) Benefits shall not be payable on the basis of services in any such capacities as specified in paragraphs (a), (b), (c), and (d) to any individual who provided such services to or on behalf of an educational institution, or an institution of higher education.

(f) As used in this subsection, the term "fixed contract" means a written agreement of employment for a specified period of time, and the term "continuing contract" means a written agreement that is automatically renewed until terminated by one of the parties to the contract.

(4) In the event of national emergency, in the course of which the Federal Emergency Unemployment Payment Plan is, at the request of the Governor, invoked for all or any part of the state, such plan shall supersede the procedures prescribed by this chapter, and by rules adopted hereunder, and the division shall act as the Florida agency for the United States Department of Labor in the administration of such plan.

(5) Benefits shall not be paid to any individual on the basis of any service, 90 percent or more ~~substantially all~~ of which consists of participating in sports or athletic events or training, or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such service in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(6) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services, the term "previously uncovered services" means services:

(a) Which were not employment as defined in this chapter prior to January 1, 1978, and were not services covered pursuant to s. 443.121(3) at any time during the 1-year period ending December 31, 1975; and

(b) Which are:

1. Agricultural labor or domestic service as defined in s. 443.036; or

2. Services performed by an employee of this state or a political subdivision thereof, as provided in s. 443.036(21)(b) ~~s. 443.036(19)(b)~~, or by an employee of a nonprofit educational institution which is not an institution of higher education.

(7) Benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in subsection (6), shall not be charged to the employer or the employer's experience rating account,

to the extent that such individual would not have been eligible to receive such compensation had the state not provided for payment of compensation on the basis of such previously uncovered services, and provided benefits shall be paid for such previously uncovered service only to the extent that the division determines that the unemployment compensation fund may be reimbursed for such benefits pursuant to Pub. L. No. 94-566, s. 121.

Section 6. Subsection (1), subsection (2), and paragraph (c) of subsection (3) of section 443.121, Florida Statutes, are amended to read:

443.121 Employing units affected.—

(1) PERIODS OF LIABILITY.—

(a) Any employing unit which is or becomes an employer subject to this chapter as defined in s. 443.036(19)(a) ~~s. 443.036(17)(a)~~, (b), (c), (d), or (e) within any calendar year shall be subject to this chapter during the whole of such calendar year.

(b) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of s. 443.036(19)(f) ~~s. 443.036(17)(f)~~ shall be subject to this chapter only during its operation of the business acquired.

(c) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of s. 443.036(19)(g) ~~s. 443.036(17)(g)~~ shall be subject to this chapter only with respect to employment occurring subsequent to the date of such acquisition.

(2) TERMINATION OF COVERAGE.—

(a) General.—Except as otherwise provided in this section, an employing unit shall cease to be an employer subject to this chapter as of January 1 of any calendar year only if it files with the division, by April 30 of the year for which termination is requested, a written application for termination of coverage and the division finds that the employing unit, in the preceding calendar year, did not meet the requirements of an employer, as defined in s. 443.036(19)(a) ~~s. 443.036(17)(a)~~, (d), or (e). However, the above-prescribed time limitation for the filing of such written application may be waived by the division in cases where such time limitation had expired prior to the establishment in the records of the division of the liability of such employing unit. For the purposes of this subsection, the two or more employing units mentioned in s. 443.036(19)(f) ~~s. 443.036(17)(f)~~, (g), and (i) shall be treated as a single employing unit.

(b) Nonprofit organizations.—Except as otherwise provided in subsection (4), an employing unit subject to this chapter by reason of s. 443.036(21)(c) ~~s. 443.036(19)(c)~~ shall cease to be an employer so subject as of January 1 of any calendar year only if it files with the division, by April 30 of the year for which termination is requested, a written application for termination of coverage and the division finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed four or more individuals in employ-

ment subject to this chapter. The timely filing of application may be waived as provided in paragraph (a).

(c) State and political subdivisions.—The state and any political subdivision of the state shall remain an employer subject to this chapter for the duration of any employment defined in s. 443.036(21)(b) ~~s. 443.036(19)(b)~~ and shall cease being so subject only pursuant to subsection (4).

(3) ELECTIVE COVERAGE.—

(c) Certain services for political subdivisions.—

1. Any political subdivision of this state may elect to cover under this chapter, for not less than 1 calendar year, service performed by employees in all of the hospitals and institutions of higher education operated by such political subdivision. Election is to be made by filing with the division a notice of such election at least 30 days prior to the effective date of such election. The election may exclude any services described in s. 443.036(21)(d) ~~s. 443.036(19)(d)~~. Any political subdivision electing coverage under this paragraph shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in s. 443.131(4)(b) and (d).

2. The provisions in s. 443.091(4) with respect to benefit rights based on service for nonprofit organizations and state hospitals and institutions of higher education shall be applicable also to service covered by an election under this section.

3. The amounts required to be paid in lieu of contributions by any political subdivision under this paragraph shall be billed and payment made as provided in s. 443.131(4)(b) with respect to similar payments by nonprofit organizations.

4. An election under this paragraph may be terminated after not less than 1 calendar year of coverage by filing with the division written notice not later than 30 days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of January 1 of the next ensuing calendar year with respect to services performed after that date.

Section 7. Subsection (1), paragraph (g) of subsection (3), paragraph (a) of subsection (4), paragraphs (a), (b), and (d) of subsection (5), and paragraph (b) of subsection (6) of section 443.131, Florida Statutes, are amended to read:

443.131 Contributions.—

(1) WHEN PAYABLE.—Contributions shall accrue and become payable by each employer for each calendar quarter in which he or she is subject to this chapter, with respect to wages paid during such calendar quarter for employment. Such contributions shall become due and be paid by each employer to the division for the fund, in accordance with such rules as the division may prescribe. However, nothing in this subsection shall be construed to prohibit the division from allowing, on a limited basis, at the

request of the employer, certain employers of employees performing domestic services, as defined in s. 443.036(21)(g) ~~s. 443.036(19)(g)~~ and by rule of the division, to pay contributions or report wages at intervals other than quarterly when such payment or reporting is to the advantage of the division and the employers, and when such nonquarterly payment and reporting is authorized under federal law. This provision gives employers of employees performing domestic services the option to elect to report wages and pay taxes annually, with a due date of April 1 and a delinquency date of April 30. In order to qualify for this election, the employer must have only domestic employees, be in good standing, apply to this program no later than December 30 of the preceding calendar year, and agree to provide the division with any special reports which might be requested, as required by rule 38B-2.025(5), including copies of all federal employment tax forms. Failure to furnish any information when required may result in the employer's loss of the privilege to elect participation in this program. Contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(3) CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(g)1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, shall be deemed to be a single employer and shall be considered as one employer with a continuous employment record if the division finds that the successor employer continues to carry on the employing enterprises of the predecessor employer or employers and that the successor employer has paid all contributions required of and due from the predecessor employer or employers and has assumed liability for all contributions that may become due from the predecessor employer or employers. As used in this paragraph, the term "contributions" means all indebtedness to the division, including, but not limited to, interest, penalty, collection fee, and service fee. A successor has 30 days from the date of the official notification of liability by succession to accept the transfer of the predecessor's or predecessors' employment record or records. If the predecessor or predecessors have unpaid contributions or outstanding quarterly reports, the successor has 30 days from the date of the notice listing the total amount due to pay the total amount with certified funds. After the total indebtedness has been paid, the employment record or records of the predecessor or predecessors will be transferred to the successor. Employment records may be transferred by the division. The tax rate of total successor and predecessor upon the transfer of employment records shall be determined by the division as prescribed by rule in order to calculate any tax rate change resulting from the transfer of employment records.

2. Whether or not there is a transfer of employment record as contemplated in this paragraph, the predecessor shall in the event he or she again employs persons be treated as an employer without previous employment record or, if his or her coverage has been terminated as provided in s. 443.121, as a new employing unit.

3. The division may provide by rule for partial transfer of experience rating when an employer has transferred at any time an identifiable and segregable portion of his or her payrolls and business to a successor employing unit. As a condition of such partial transfer of experience, the rules shall require an application by the successor, agreement by the predecessor, and such evidence as the division may prescribe of the experience and payrolls attributable to the transferred portion up to the date of transfer. The rules shall provide that the successor employing unit, if not already an employer, shall become an employer as of the date of the transfer and that the experience of the transferred portion of the predecessor's account shall be removed from the experience-rating record of the predecessor, and for each calendar year following the date of the transfer of the employment record on the books of the division, the division shall compute the rate of contribution payable by the successor on the basis of his or her experience, if any, combined with the experience of the portion of the record transferred. The rules may also provide what rates shall be payable by the predecessor and successor employers for the period between the date of the transfer of the employment record of the transferred unit on the books of the division and the first day of the next calendar year.

4. This paragraph shall not apply to the employee leasing company and client contractual agreement as defined in s. 443.036. The client shall, in the event of termination of the contractual agreement or failure by the employee leasing company to submit reports or pay contributions as required by the division, be treated as a new employer without previous employment record unless otherwise eligible for a rate computation.

(4) FINANCING BENEFITS PAID TO EMPLOYEES OF NONPROFIT ORGANIZATIONS.—Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a "nonprofit" organization is an organization or group of organizations described in s. 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under s. 501(a) of such code.

(a) Liability for contributions and election of reimbursement.—Any nonprofit organization which, pursuant to s. 443.036(19)(c) ~~s. 443.036(17)(c)~~ or s. 443.121(3)(a) is, or becomes, subject to this chapter shall pay contributions under the provisions of subsection (1), unless it elects, in accordance with this paragraph, to pay to the division for the Unemployment Compensation Trust Fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

1. Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for not less than the period beginning with the date on which such subjectivity begins and ending at the end of the next calendar year by filing a written notice of its election with the division not later than 30 days immediately following the date of the determination of such subjectivity.

2. Any nonprofit organization which makes an election in accordance with subparagraph 1. will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

3. Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the division not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

4. The division, in accordance with such rules as the division may prescribe, shall notify each nonprofit organization of any determination of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of s. 443.141(2)(b).

(5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE.—Benefits paid to employees of this state or any instrumentality of this state, or to employees of any political subdivision of this state or any instrumentality thereof, based upon service defined in s. 443.036(21)(b) ~~s. 443.036(19)(b)~~, shall be financed in accordance with this subsection.

(a)1. Unless an election is made as provided in paragraph (c), the state or any political subdivision of the state shall pay into the Unemployment Compensation Trust Fund an amount equivalent to the amount of regular benefits, short-time compensation benefits, and extended benefits paid to individuals, based on wages paid by the state or the political subdivision for service defined in s. 443.036(21)(b) ~~s. 443.036(19)(b)~~.

2. Should any state agency become more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, the division shall certify to the Comptroller the amount due and the Comptroller shall transfer the amount due to the Unemployment Compensation Trust Fund from the funds of such agency that may legally be used for such purpose. In the event any political subdivision of the state or any instrumentality thereof becomes more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, then, upon request by the division after a hearing, the Department of Revenue or the Department of Banking and Finance, as the case may be, shall deduct the amount owed by the political subdivision or instrumentality from any funds to be distributed by it to the county, city, special district, or consolidated form of government for further distribution to the trust fund in accordance with this chapter. Should any employer for whom the city or county tax collector collects taxes fail to make the reimbursements to the Unemployment Compensation Trust Fund required by this chapter, the tax collector after a hearing, at the request of the division and upon receipt of a certificate showing the amount owed by the employer, shall deduct the amount so certified from any taxes

collected for the employer and remit same to the Department of Labor and Employment Security for further distribution to the trust fund in accordance with this chapter. This subparagraph does not apply to those amounts due for benefits paid prior to October 1, 1979. This subparagraph does not apply to amounts owed by a political subdivision for benefits erroneously paid where the claimant is required to repay to the division under s. 443.151(6)(a) or (b) any sum as benefits received.

(b) The provisions of paragraphs (4)(b), (d), and (e), relating to reimbursement payments, allocation of benefit costs, and group accounts with respect to nonprofit organizations, are applicable also, to the extent allowed by federal law, with respect to the duties of this state or any political subdivision of this state as an employer by reason of s. 443.036(19)(b) ~~s. 443.036(17)(b)~~.

(d) Upon establishing a financing method as provided by this subsection, such financing method shall be applicable for not less than 2 calendar years. Nothing herein shall be construed to prevent an employer subject to the provisions of this subsection from electing to change its method of financing or its method of reporting after completing 2 calendar years under another financing method, so long as such new election is timely filed. The division may prescribe by rule the procedures for changing methods of reporting.

(6) PUBLIC EMPLOYERS UNEMPLOYMENT COMPENSATION BENEFIT ACCOUNT.—

(b) Governmental entities subject to the Florida Unemployment Compensation Law under s. 443.036(21)(b) ~~s. 443.036(19)(b)~~ who exercise the option to elect the contributory system of financing unemployment compensation benefits shall have their accounts maintained and shall be subject to the provisions of subsections (1), (2), and (3), except that:

1. The term “taxable wages” means total gross wages.

2. The initial contribution rate shall be 0.25 percent.

3. Any election by an employer to be taxed under this subsection shall be effective January 1 and shall be taxed at the initial rate. Effective January 1 of the following year, the rate shall be computed based on 2 calendar quarters of chargeability and payroll; effective January 1 of the second year after such election, the rate shall be computed based on 6 quarters of chargeability and payroll; and effective January 1 of the third year after such election, the rate shall be computed based on 10 quarters of chargeability and payrolls. Each January 1 thereafter, the tax rates shall be computed based on 12 quarters of chargeability and payroll.

4. An employer electing to be taxed under the provisions of this subsection shall make such election not later than 30 days prior to January 1 of the year for which the election is to be effective. Upon electing this financing method, such method shall be applicable for not less than 2 years.

5. Any election under this subsection may be terminated by filing with the division, not later than 30 days prior to January 1, a written notice of termination.

Section 8. Paragraph (b) of subsection (1) of section 443.141, Florida Statutes, is amended, paragraph (c) is added to that subsection, and subsection (6) is amended to read:

443.141 Collection of contributions.—

(1) PAST DUE CONTRIBUTIONS.—

(b) Penalty for delinquent reports.—

1. Any employing unit which fails to file any reports required by the division in the administration of this chapter, in accordance with rules adopted by the division, shall pay to the division with respect to each such report the sum of $25 for each 30 days or fraction thereof that such employing unit is delinquent, unless the division finds that such employing unit has or had good reason for failure to file such report or reports.

2. Sums collected as penalties under the provisions of subparagraph 1. shall be deposited by the division in the Special Employment Security Administration Trust Fund.

3. A waiver of penalty and interest for delinquent reports may be authorized where impositions of interest or a penalty would be inequitable.

(c) Application of partial payments.—When a delinquency exists in the account of an employer not in bankruptcy, and payment in an amount less than the total delinquency is submitted, the division shall apply such partial payment as the payer directs. In the absence of specific direction, the division shall apply the partial payment to the payer's account as prescribed by rule.

(6) REFUNDS.—If, not later than 4 years after the date of payment of any amount as contributions, interest, or penalties, an employing unit that has paid such contributions, interest, or penalties makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the division determines that such contributions, interest, or penalties or any portion thereof was erroneously collected, the division shall allow such employing unit to make an adjustment thereof without interest in connection with subsequent contribution payment by it, or if such adjustment cannot be made, the division shall refund said amount, without interest, from the fund. For like cause, and within the same period, adjustment or refund may be made on the division's own initiative. However, nothing in this chapter shall be construed to authorize a refund of contributions which were properly paid in accordance with the provisions of this chapter at the time of such payment, except as required by s. 443.036(21)(n)5. ~~s. 443.036(19)(n)5.~~; further, refunds under this subsection and under s. 443.036(21)(n)5. ~~s. 443.036(19)(n)5.~~ may be paid from either the clearing account or the benefit account of the Unemployment Compensation Trust Fund and from the Special Employment Security Administration Trust Fund with respect to interest or penalties which have been previously paid into such fund, the provisions of s. 443.191(2) to the contrary notwithstanding.

Section 9. Subsection (2) of section 443.151, Florida Statutes, is amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—Claims for benefits shall be made in accordance with such rules as the division may adopt ~~prescribe~~. The division shall notify claimants and employers regarding monetary and nonmonetary determinations of eligibility. Investigations of issues raised in connection with a claimant which may affect a claimant's eligibility for benefits or charges to an employer's account shall be conducted by the division as prescribed by rule.

Section 10. Subsection (5) is added to section 450.121, Florida Statutes, to read:

450.121 Enforcement of Child Labor Law.—

(5) The division may adopt rules:

(a) Defining words, phrases, or terms used in the child labor rule or in this part, as long as the word, phrase, or term is not a word, phrase, or term defined in s. 450.012.

(b) Prescribing additional documents that may be used to prove the age of a minor and the procedure to be followed before a person who claims his or her disability of nonage has been removed by a court of competent jurisdiction may be employed.

(c) Requiring certain safety equipment and a safe work place environment for employees who are minors.

(d) Prescribing the deadlines applicable to a response to a request for records under subsection (2).

(e) Providing an official address from which child labor forms, rules, laws, and posters may be requested and prescribing the forms to be used in connection with this part.

Section 11. Subsection (8) is added to section 450.30, Florida Statutes, to read:

450.30 Requirement of certificate of registration; education and examination program.—

(8) The division may adopt rules prescribing the procedures to be followed to register as a farm labor contractor.

Section 12. Subsection (5) of section 450.33, Florida Statutes, is amended to read:

450.33 Duties of farm labor contractor.—Every farm labor contractor must:

(5) Take out a policy of insurance with any insurance carrier which policy insures such registrant against liability for damage to persons or property arising out of the operation or ownership of any vehicle or vehicles for the transportation of individuals in connection with his or her business, activities, or operations as a farm labor contractor. In no event may the amount of such liability insurance be less than that required by the provisions of the financial responsibility law of this state. Any insurance carrier that is licensed to operate in this state and that has issued a policy of liability insurance to operate a vehicle used to transport farm workers shall notify the division when it intends to cancel such policy.

Section 13. Subsection (2) of section 450.38, Florida Statutes, is amended to read:

450.38 Enforcement of farm labor contractor laws.—

(2) Any person who, on or after June 19, 1985, commits a violation of this part or of any rule adopted thereunder may be assessed a civil penalty of not more than $1,000 for each such violation. Such assessed penalties shall be paid in cash, certified check, or money order and shall be deposited into the General Revenue Fund. The division shall not institute or maintain any administrative proceeding to assess a civil penalty under this subsection when the violation is the subject of a criminal indictment or information under this section which results in a criminal penalty being imposed, or of a criminal, civil, or administrative proceeding by the United States government or an agency thereof which results in a criminal or civil penalty being imposed. The division may adopt rules prescribing the criteria to be used to determine the amount of the civil penalty and to provide notification to persons assessed a civil penalty under this section.

Section 14. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.