

By Senator Bennett

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1                                   A bill to be entitled  
2       An act relating to the drug testing of potential and  
3       existing beneficiaries for unemployment compensation;  
4       creating s. 443.093, F.S.; creating the Drug  
5       Deterrence Pilot Program within the Agency for  
6       Workforce Innovation; providing legislative intent;  
7       providing the scope of eligibility for benefits;  
8       designating the specific workforce board that is  
9       subject to the pilot program; defining terms;  
10      providing for the screening of individuals to  
11      determine which individuals must be tested; providing  
12      for notice; providing terms of disqualification of  
13      benefits; requiring the agency to supply information  
14      on drug treatment programs; providing for  
15      authentication and the admissibility of drug tests in  
16      unemployment compensation hearings; creating a  
17      rebuttable presumption; providing testing procedures;  
18      providing for the preservation of test samples;  
19      providing for the retesting of test samples; providing  
20      for an appeals process; authorizing the agency to  
21      adopt rules; directing the agency to submit a report  
22      to the Governor and Legislature; directing the Office  
23      of Program Policy Analysis and Government  
24      Accountability to submit a report to the Governor and  
25      Legislature; providing for future expiration of the  
26      program; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Section 443.093, Florida Statutes, is created to  
31 read:

32 443.093 Drug Deterrence Pilot Program.—

33 (1) PURPOSE.—It is the intent of the Legislature to create  
34 within the Agency for Workforce Innovation the Drug Deterrence  
35 Pilot Program. The Legislature finds that illegal drug use is a  
36 threat to public safety. The purpose of this pilot program is to  
37 require the drug testing of certain individuals as a condition  
38 for unemployment benefits in order to prevent the enabling of  
39 drug use with government funds, thereby protecting the public.

40 (2) SCOPE.—In addition to any benefit eligibility or  
41 disqualification conditions prescribed in this chapter, any  
42 individual making a claim for benefits or receiving benefits and  
43 residing within Regional Workforce Board 18 is subject to this  
44 section. As a condition to making a claim for benefits or  
45 accepting receipt of benefits, an individual must agree to  
46 comply with the terms of this section, including, but not  
47 limited to, agreeing to be subject to drug testing.

48 (3) DEFINITIONS.—As used in this section, the term:

49 (a) "Agency" means the Agency for Workforce Innovation.

50 (b) "Drug" means an amphetamine, a cannabinoid, cocaine,  
51 phencyclidine (PCP), a hallucinogen, methaqualone, an opiate, a  
52 barbiturate, a benzodiazepine, a synthetic narcotic, a designer  
53 drug, or a metabolite of any of the substances listed in this  
54 paragraph.

55 (c) "Drug test" or "test" means any chemical, biological,  
56 or physical instrumental analysis for the purpose of determining  
57 the presence or absence of a drug or its metabolites.

58 (4) CREATION.—

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59       (a) The Agency for Workforce Innovation shall implement an  
60 unemployment compensation drug testing pilot program with  
61 Regional Workforce Board 18 by October 1, 2011.

62       (b) In creating and implementing the program, the agency  
63 shall:

64           1. Develop a screening mechanism used to assess whether a  
65 person is likely to be an illicit drug user;

66           2. Require that individuals claiming or receiving benefits  
67 who are assessed as likely illicit drug users to be subject to  
68 drug testing;

69           3. Make a determination of eligibility under s. 443.091 and  
70 disqualification under s. 443.101 before an applicant is  
71 selected for drug testing;

72           4. Provide notice of the potential for drug testing to  
73 individuals claiming and receiving benefits; and

74           5. Require an individual to be tested to sign an  
75 acknowledgement that he or she has received notice of the  
76 agency's drug testing policy and that he or she has a right to  
77 refuse to take the drug test.

78       (5) TESTING; USE OF RESULTS.—

79       (a) An individual is disqualified from receiving or  
80 continuing to receive benefits upon:

81           1. Refusing to submit to testing under this section; or

82           2. Upon testing positive for drugs as a result of a test  
83 under this section.

84       (b) If the individual fails the drug test required under  
85 this section, the individual is not entitled to unemployment  
86 benefits for up to 52 weeks, under rules adopted by the agency,  
87 and until he or she has earned income of at least 17 times his

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88 or her weekly benefit amount.

89 (c) The agency shall provide any individual who tests  
90 positive with information on drug treatment programs that may be  
91 available in the area in which he or she resides; however, the  
92 agency or the state is not responsible for providing or paying  
93 for drug treatment as part of the testing conducted under this  
94 section.

95 (6) TESTING.—

96 (a) All specimen collection and testing for drugs under  
97 this section shall be performed in accordance with the following  
98 procedures:

99 1. A sample shall be collected with due regard to the  
100 privacy of the individual providing the sample, and in a manner  
101 reasonably calculated to prevent substitution or contamination  
102 of the sample.

103 2. Specimen collection must be documented, and the  
104 documentation procedures must include:

105 a. Labeling of specimen containers so as to reasonably  
106 preclude the likelihood of erroneous identification of test  
107 results.

108 b. A form for the person being tested to provide any  
109 information that he or she considers relevant to the test,  
110 including identification of currently or recently used  
111 prescription or nonprescription medication or other relevant  
112 medical information. The form must provide notice of the most  
113 common medications by brand name or common name, as applicable,  
114 as well as by chemical name, which may alter or affect a drug  
115 test. The providing of information does not preclude the  
116 administration of the drug test, but must be taken into account

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117 in interpreting any positive, confirmed test result.

118  
119 Specimen collection, storage, and transportation to the testing  
120 site must be performed in a manner that reasonably precludes  
121 contamination or adulteration of specimens.

122 (b) Every specimen that produces a positive test result  
123 must be preserved for at least 6 months. However, if the tested  
124 person undertakes an administrative or legal challenge to the  
125 test result, the sample shall be preserved until the case or  
126 administrative appeal is settled.

127 (c) An individual who tests positive for drugs may refute  
128 and rule out a false positive test by having the same sample  
129 retested by gas chromatography using mass spectrometry, gas  
130 chromatography, high-performance liquid chromatography, or an  
131 equally or more specific test.

132 (d) Test results and chain-of-custody documentation  
133 provided to the agency by an approved drug-testing laboratory is  
134 self-authenticating and admissible in unemployment compensation  
135 hearings, and such evidence creates a rebuttable presumption  
136 that the individual used, or was using, drugs.

137 (7) APPEAL.—An individual who is deemed ineligible for, or  
138 is disqualified from, receiving unemployment benefits because of  
139 a positive drug test has a right to appeal the agency's decision  
140 pursuant to s. 443.151(4).

141 (8) RULES.—The agency shall adopt rules pursuant to ss.  
142 120.536(1) and 120.54 to administer this section.

143 (9) REPORT.—

144 (a) The agency shall submit a report to the Governor, the  
145 President of the Senate, and the Speaker of the House of

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146 Representatives by January 1, 2013, which, at a minimum:

147 1. Gives the number of individuals tested, the substances  
148 tested for, and the results of the testing;

149 2. Gives the number of individuals denied unemployment  
150 compensation benefits for failing a drug test upon claiming  
151 benefits and the number of individuals for whom benefits were  
152 terminated for failing a test while receiving benefits;

153 3. Describes any obstacles to implementation of the  
154 program;

155 4. Gives the number of applicants who refused to be tested;

156 5. Gives the number of weeks and the amount of benefits for  
157 which individuals would have been eligible if they had not  
158 tested positive or refused to take the test;

159 6. Estimates the costs of the drug testing program,  
160 including the average cost of individual tests and the cost of  
161 administering the program;

162 7. Estimates savings, if any, under the program to the  
163 Unemployment Compensation Trust Fund; and

164 8. Includes a recommendation on whether the Legislature  
165 should maintain the program.

166 (b) Before the 2013 Regular Session of the Legislature, the  
167 Office of Program Policy Analysis and Government Accountability  
168 shall review and evaluate the Drug Deterrence Pilot Program and  
169 submit a report to the Governor, the President of the Senate,  
170 and the Speaker of the House of Representatives. The report must  
171 evaluate whether the program is cost-effective and deters drug  
172 users from receiving benefits and make a recommendation to the  
173 Legislature to abolish, continue, reorganize, or expand the  
174 program.

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175       (10) EXPIRATION.—This section expires June 30, 2013.  
176       Section 2. This act shall take effect July 1, 2011.