By Senator Bennett

21-00405A-11    2011302__

A bill to be entitled
An act relating to the drug testing of potential and existing beneficiaries for unemployment compensation;
creating s. 443.093, F.S.; creating the Drug Deterrence Pilot Program within the Agency for Workforce Innovation; providing legislative intent;
providing the scope of eligibility for benefits;
designating the specific workforce board that is subject to the pilot program; defining terms;
providing for the screening of individuals to determine which individuals must be tested; providing for notice; providing terms of disqualification of benefits; requiring the agency to supply information on drug treatment programs; providing for authentication and the admissibility of drug tests in unemployment compensation hearings; creating a rebuttable presumption; providing testing procedures;
providing for the preservation of test samples;
providing for the retesting of test samples; providing for an appeals process; authorizing the agency to adopt rules; directing the agency to submit a report to the Governor and Legislature; directing the Office of Program Policy Analysis and Government Accountability to submit a report to the Governor and Legislature; providing for future expiration of the program; providing an effective date.

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

443.093 Drug Deterrence Pilot Program.—
(1) PURPOSE.—It is the intent of the Legislature to create within the Agency for Workforce Innovation the Drug Deterrence Pilot Program. The Legislature finds that illegal drug use is a threat to public safety. The purpose of this pilot program is to require the drug testing of certain individuals as a condition for unemployment benefits in order to prevent the enabling of drug use with government funds, thereby protecting the public.
(2) SCOPE.—In addition to any benefit eligibility or disqualification conditions prescribed in this chapter, any individual making a claim for benefits or receiving benefits and residing within Regional Workforce Board 18 is subject to this section. As a condition to making a claim for benefits or accepting receipt of benefits, an individual must agree to comply with the terms of this section, including, but not limited to, agreeing to be subject to drug testing.
(3) DEFINITIONS.—As used in this section, the term:
(a) “Agency” means the Agency for Workforce Innovation.
(b) “Drug” means an amphetamine, a cannabinoid, cocaine, phencyclidine (PCP), a hallucinogen, methaqualone, an opiate, a barbiturate, a benzodiazepine, a synthetic narcotic, a designer drug, or a metabolite of any of the substances listed in this paragraph.
(c) “Drug test” or “test” means any chemical, biological, or physical instrumental analysis for the purpose of determining the presence or absence of a drug or its metabolites.
(4) CREATION.—
(a) The Agency for Workforce Innovation shall implement an unemployment compensation drug testing pilot program with Regional Workforce Board 18 by October 1, 2011.

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

1. Develop a screening mechanism used to assess whether a person is likely to be an illicit drug user;
2. Require that individuals claiming or receiving benefits who are assessed as likely illicit drug users to be subject to drug testing;
3. Make a determination of eligibility under s. 443.091 and disqualification under s. 443.101 before an applicant is selected for drug testing;
4. Provide notice of the potential for drug testing to individuals claiming and receiving benefits; and
5. Require an individual to be tested to sign an acknowledgement that he or she has received notice of the agency’s drug testing policy and that he or she has a right to refuse to take the drug test.

(5) TESTING; USE OF RESULTS.—

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

1. Refusing to submit to testing under this section; or
2. Upon testing positive for drugs as a result of a test under this section.

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

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

(6) TESTING.—

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

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

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

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

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

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

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

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

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

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

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

(9) REPORT.—
(a) The agency shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of
Representatives by January 1, 2013, which, at a minimum:

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

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

3. Describes any obstacles to implementation of the program;

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

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

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

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

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

(b) Before the 2013 Regular Session of the Legislature, the Office of Program Policy Analysis and Government Accountability shall review and evaluate the Drug Deterrence Pilot Program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must evaluate whether the program is cost-effective and deters drug users from receiving benefits and make a recommendation to the Legislature to abolish, continue, reorganize, or expand the program.
(10) EXPIRATION.—This section expires June 30, 2013.
Section 2. This act shall take effect July 1, 2011.