

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 Program within the Agency for Workforce  
6           Innovation; providing legislative intent; providing  
7           the scope of eligibility for benefits; defining terms;  
8           providing for the selection process of individuals to  
9           be tested; providing for notice; providing terms of  
10          disqualification of benefits; requiring the agency to  
11          supply information on drug treatment programs;  
12          requiring tested individuals to bear the cost of  
13          tests; providing for the reporting of positive results  
14          of certain individuals to a law enforcement agency;  
15          requiring that the agency contract with qualified  
16          laboratories to administer the tests; providing  
17          qualifying standards for laboratories; providing for  
18          authentication and the admissibility of drug tests in  
19          unemployment compensation hearings; creating a  
20          rebuttable presumption; providing testing procedures  
21          to be followed by laboratories; providing for the  
22          preservation of test samples; providing for the  
23          retesting of test samples; providing for an appeals  
24          process; authorizing the agency to adopt rules;  
25          directing the agency to submit a report to the  
26          Governor, the President of the Senate, and the Speaker  
27          of the House of Representatives; directing the Office  
28          of Program Policy Analysis and Government  
29          Accountability to submit a report to the Governor, the

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30 President of the Senate, and the Speaker of the House  
31 of Representatives; providing for expiration of the  
32 program; providing an effective date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Section 443.093, Florida Statutes, is created to  
37 read:

38 443.093 Drug Deterrence Program.-

39 (1) PURPOSE.-It is the intent of the Legislature to create  
40 within the Agency for Workforce Innovation the Drug Deterrence  
41 Program. The Legislature finds that illegal drug use is a threat  
42 to public safety. The purpose of this program is to require  
43 random drug testing as a condition for unemployment benefits to  
44 prevent the enabling of drug use with government funds, thereby  
45 protecting the public. In addition, because the agency provides  
46 job-placement assistance, this program serves to promote safer  
47 workplaces.

48 (2) SCOPE.-In addition to any benefit eligibility or  
49 disqualification conditions prescribed in this chapter, any  
50 individual making a claim for benefits or receiving benefits is  
51 subject to this section. As a condition to making a claim for  
52 benefits or accepting receipt of benefits, an individual must  
53 agree to comply with the terms of this section, including, but  
54 not limited to, agreeing to be subject to random drug testing.

55 (3) DEFINITIONS.-As used in this section, the term:

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

57 (b) "Drug" means an amphetamine, a cannabinoid, cocaine,  
58 phencyclidine (PCP), a hallucinogen, methaqualone, an opiate, a

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59 barbiturate, a benzodiazepine, a synthetic narcotic, a designer  
60 drug, or a metabolite of any of the substances listed in this  
61 paragraph.

62 (c) "Drug test" or "test" means any chemical, biological,  
63 or physical instrumental analysis administered by a laboratory  
64 certified by the United States Department of Health and Human  
65 Services or licensed by the Agency for Health Care  
66 Administration for the purpose of determining the presence or  
67 absence of a drug or its metabolites.

68 (4) CREATION.—

69 (a) The Agency for Workforce Innovation shall implement a  
70 program no later than October 1, 2009, of drug testing, on a  
71 random basis:

72 1. Ten percent of individuals who make a claim for  
73 benefits; and

74 2. Ten percent of individuals who are receiving benefits.

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

77 1. Develop a procedure for random selection of individuals  
78 for testing and shall ensure that the testing occurs on a  
79 statewide basis and reasonably correlates to the population  
80 distribution in the state;

81 2. Make a determination of eligibility under s.  
82 443.101(1)(d) before an applicant is selected for drug testing;

83 3. Provide notice of the potential for drug testing to  
84 individuals claiming and receiving benefits; and

85 4. Require an individual to be tested to sign an  
86 acknowledgement that he or she has received notice of the  
87 agency's drug testing policy and that he or she has a right to

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88 refuse to take the drug test;

89 (5) TESTING; USE OF RESULTS.-

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

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

93 2. Upon testing positive for drugs as a result of a test  
94 under this section.

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

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

106 (d) The cost of the drug test shall be deducted from the  
107 individual's benefits or, if the individual tests positive for  
108 the presence of a drug and is ineligible for benefits, the  
109 individual shall bear the cost of the test. Any individual who  
110 takes a drug test under this section, is denied benefits, and  
111 refuses to pay for the test, is ineligible to apply for or  
112 receive assistance under this chapter until he or she pays for  
113 the test.

114 (e) The agency shall report to a local law enforcement  
115 agency the identification and test results of any person who  
116 tests positive for a drug and who is under community supervision

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117 for a drug-related criminal offense. Community supervision  
118 includes parole, probation, conditional release, or supervision  
119 in a diversion or drug court program.

120 (6) TESTING; FACILITIES.—

121 (a) The agency shall contract with one or more laboratories  
122 licensed and approved as provided in s. 440.102(9), or as  
123 provided by equivalent or more stringent licensing requirements  
124 established by federal law or regulation for conducting drug  
125 testing.

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

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

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

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

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

143 b. A form for the person being tested to provide any  
144 information he or she considers relevant to the test, including  
145 identification of currently or recently used prescription or

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146 nonprescription medication or other relevant medical  
147 information. The form must provide notice of the most common  
148 medications by brand name or common name, as applicable, as well  
149 as by chemical name, which may alter or affect a drug test. The  
150 providing of information does not preclude the administration of  
151 the drug test, but must be taken into account in interpreting  
152 any positive, confirmed test result.

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

156 (e) Every specimen that produces a positive test result  
157 must be preserved by the licensed or certified laboratory that  
158 conducted the test for at least 6 months. However, if the tested  
159 person undertakes an administrative or legal challenge to the  
160 test result, the agency shall notify the laboratory and the  
161 sample shall be retained by the laboratory until the case or  
162 administrative appeal is settled.

163 (f) An individual who tests positive for drugs may refute  
164 and rule out a false positive test by having the same sample  
165 retested by gas chromatography with mass spectrometry, gas  
166 chromatography, high performance liquid chromatography, or an  
167 equally or more specific test at the same laboratory at his or  
168 her own cost.

169 (7) APPEAL.—Any person who is deemed ineligible, or becomes  
170 ineligible, for unemployment benefits because of a positive drug  
171 test has a right to appeal the agency's decision pursuant to s.  
172 443.151(4).

173 (8) RULES.—The agency shall adopt rules under ss.  
174 120.536(1) and 120.54 to administer the provisions of this

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175 section.

176 (9) REPORT.—

177 (a) The agency shall submit a report to the Governor, the  
178 President of the Senate, and the Speaker of the House of  
179 Representatives by January 1, 2012, which at a minimum:

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

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

186 3. Describes any obstacles to implementation of the  
187 program;

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

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

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

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

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

199 (b) Before the 2012 Regular Session of the Legislature, the  
200 Office of Program Policy Analysis and Government Accountability  
201 shall review and evaluate the Drug Deterrence Program and submit  
202 a report to the Governor, the President of the Senate, and the  
203 Speaker of the House of Representatives. The report must

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204 evaluate whether the program is cost-effective and deters drug  
205 users from receiving benefits and make a recommendation to the  
206 Legislature to abolish, continue, reorganize, or expand the  
207 program.

208 (10) EXPIRATION.—This section expires on June 30, 2012.

209 Section 2. This act shall take effect July 1, 2009.