

By the Committee on Commerce; and Senator Bennett

577-04103-09

20092062c1

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 defining terms; providing for the screening of
9 individuals to determine which individuals must be
10 tested; providing for notice; providing terms of
11 disqualification of benefits; requiring the agency to
12 supply information on drug treatment programs;
13 providing for authentication and the admissibility of
14 drug tests in unemployment compensation hearings;
15 creating a rebuttable presumption; providing testing
16 procedures; providing for the preservation of test
17 samples; providing for the retesting of test samples;
18 providing for an appeals process; authorizing the
19 agency to adopt rules; directing the agency to submit
20 a report to the Governor, the President of the Senate,
21 and the Speaker of the House of Representatives;
22 directing the Office of Program Policy Analysis and
23 Government Accountability to submit a report to the
24 Governor, the President of the Senate, and the Speaker
25 of the House of Representatives; providing for
26 expiration of the program; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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31 Section 1. Section 443.093, Florida Statutes, is created to
32 read:

33 443.093 Drug Deterrence Pilot Program.—

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

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

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

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

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

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

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59 (4) CREATION.—

60 (a) The Agency for Workforce Innovation shall implement an
61 unemployment compensation drug testing pilot program with
62 Regional Workforce Board 18 no later than October 1, 2009.

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

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

67 2. Drug test individuals assessed to be likely illicit drug
68 users;

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

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117 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 with 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.—Any person who is deemed ineligible for, or is
138 disqualified from, receiving unemployment benefits because of a
139 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 under ss.
142 120.536(1) and 120.54 to administer the provisions of this
143 section.

144 (9) REPORT.—

145 (a) The agency shall submit a report to the Governor, the

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146 President of the Senate, and the Speaker of the House of
147 Representatives by January 1, 2011, which at a minimum:

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

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

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

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

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

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

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

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

167 (b) Before the 2011 Regular Session of the Legislature, the
168 Office of Program Policy Analysis and Government Accountability
169 shall review and evaluate the Drug Deterrence Pilot Program and
170 submit a report to the Governor, the President of the Senate,
171 and the Speaker of the House of Representatives. The report must
172 evaluate whether the program is cost-effective and deters drug
173 users from receiving benefits and make a recommendation to the
174 Legislature to abolish, continue, reorganize, or expand the

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175 program.

176 (10) EXPIRATION.-This section expires June 30, 2011.

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