

1 A bill to be entitled
2 An act relating to unemployment compensation drug testing;
3 creating s. 443.093, F.S.; creating the Drug Deterrence
4 Program within the Agency for Workforce Innovation;
5 providing legislative intent; providing the scope of
6 eligibility for benefits; defining terms; providing for
7 the selection process of individuals to be tested;
8 providing for notice; providing terms of disqualification
9 of benefits; requiring the agency to supply information on
10 drug-treatment programs; requiring tested individuals to
11 bear the cost of tests; providing for the reporting of
12 positive results of certain individuals to a law
13 enforcement agency; requiring that the agency contract
14 with qualified laboratories to administer the tests;
15 providing qualifying standards for laboratories; providing
16 for authentication and the admissibility of drug tests in
17 unemployment compensation hearings; creating a rebuttable
18 presumption; providing testing procedures to be followed
19 by laboratories; providing for the preservation of test
20 samples; providing for the retesting of test samples;
21 providing for an appeals process; requiring the agency to
22 adopt rules; directing the agency to submit a report to
23 the Governor, the President of the Senate, and the Speaker
24 of the House of Representatives; directing the Office of
25 Program Policy Analysis and Government Accountability to
26 submit a report to the Governor, the President of the
27 Senate, and the Speaker of the House of Representatives;
28 providing for expiration of the program; providing an

29 effective date.

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

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33 Section 1. Section 443.093, Florida Statutes, is created
34 to read:

35 443.093 Drug Deterrence Program.--

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

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

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

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

54 (b) "Drug" means an amphetamine, a cannabinoid, cocaine,
55 phencyclidine (PCP), a hallucinogen, methaqualone, an opiate, a
56 barbiturate, a benzodiazepine, a synthetic narcotic, a designer

57 drug, or a metabolite of any of the substances listed in this
 58 paragraph.

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

65 (4) CREATION.--

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

69 1. Ten percent of individuals who make a claim for
 70 benefits; and

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

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

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

78 2. Make a determination of eligibility under s.
 79 443.101(1)(d) before an applicant is selected for drug testing;

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

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

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85 refuse to take the drug test.

86 (5) TESTING; USE OF RESULTS.--

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

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

90 2. Upon testing positive for drugs as a result of a test
91 under this section.

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

97 (c) The agency shall provide any individual who tests
98 positive with information on drug-treatment programs that may be
99 available in the area in which he or she resides; however,
100 neither the agency nor the state is responsible for providing or
101 paying for drug-treatment as part of the testing conducted under
102 this section.

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

111 (e) The agency shall report to a local law enforcement
112 agency the identification and test results of any person who

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113 tests positive for a drug and who is under community supervision
114 for a drug-related criminal offense. Community supervision
115 includes parole, probation, conditional release, or supervision
116 in a diversion or drug court program.

117 (6) TESTING; FACILITIES.--

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

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

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

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

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

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

140 b. A form for the person being tested to provide any

141 information he or she considers relevant to the test, including
142 identification of currently or recently used prescription or
143 nonprescription medication or other relevant medical
144 information. The form must provide notice of the most common
145 medications by brand name or common name, as applicable, as well
146 as by chemical name, which may alter or affect a drug test. The
147 providing of information does not preclude the administration of
148 the drug test, but must be taken into account in interpreting
149 any positive, confirmed test result.

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

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

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

166 (7) APPEAL.--Any person who is deemed ineligible, or
167 becomes ineligible, for unemployment benefits because of a
168 positive drug test has a right to appeal the agency's decision

169 pursuant to s. 443.151(4).

170 (8) RULES.--The agency shall adopt rules under ss.
 171 120.536(1) and 120.54 to administer the provisions of this
 172 section.

173 (9) REPORT.--

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

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

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

183 3. Describes any obstacles to implementation of the
 184 program;

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

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

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

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

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

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197 (b) Before the 2012 Regular Session of the Legislature,
198 the Office of Program Policy Analysis and Government
199 Accountability shall review and evaluate the Drug Deterrence
200 Program and submit a report to the Governor, the President of
201 the Senate, and the Speaker of the House of Representatives. The
202 report must evaluate whether the program is cost-effective and
203 deters drug users from receiving benefits and make a
204 recommendation to the Legislature to abolish, continue,
205 reorganize, or expand the program.

206 (10) EXPIRATION.--This section expires June 30, 2012.
207 Section 2. This act shall take effect July 1, 2009.