

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 of 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 for benefits; requiring the agency to  
12      supply information concerning drug treatment programs;  
13      providing for authentication and the admissibility of  
14      drug tests in unemployment compensation hearings;  
15      creating a rebuttable presumption of drug use under  
16      certain circumstances; providing testing procedures;  
17      providing for the preservation of test samples;  
18      providing for the retesting of test samples; providing  
19      for an appeals process; authorizing the agency to  
20      adopt rules; directing the agency to submit a report  
21      to the Governor and Legislature; directing the Office  
22      of Program Policy Analysis and Government  
23      Accountability to submit a report to the Governor and  
24      Legislature; providing for expiration of the program;  
25      providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

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29       Section 1. Section 443.093, Florida Statutes, is created to

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30 read:

31 443.093 Drug Deterrence Pilot Program.-

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

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

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

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

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

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

57 (4) CREATION.-

58 (a) The Agency for Workforce Innovation shall implement an

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59 unemployment compensation drug testing pilot program with  
60 Regional Workforce Board 18 no later than October 1, 2010.

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

63 1. Develop a screening mechanism by which to assess whether  
64 a person is likely to be an illicit drug user;

65 2. Drug test individuals who are assessed to be likely  
66 illicit drug users;

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

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

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

76 (5) TESTING; USE OF RESULTS.-

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

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

80 2. Upon testing positive for drugs as a result of a test  
81 under this section.

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

87 (c) The agency shall provide any individual who tests

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88 positive with information concerning drug treatment programs  
89 that may be available in the area in which he or she resides;  
90 however, the agency or the state is not responsible for  
91 providing or paying for drug treatment as part of the testing  
92 conducted under this section.

93 (6) TESTING.—

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

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

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

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

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

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

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

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

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

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

139 (8) RULES.—The agency shall adopt rules under ss.  
140 120.536(1) and 120.54 to administer this section.

141 (9) REPORT.—

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

145 1. Gives the number of individuals tested, the substances

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146 tested for, and the results of the testing;

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

151 3. Describes any obstacles to implementation of the  
152 program;

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

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

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

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

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

164 (b) Before the 2012 Regular Session of the Legislature, the  
165 Office of Program Policy Analysis and Government Accountability  
166 shall review and evaluate the Drug Deterrence Pilot Program and  
167 submit a report to the Governor, the President of the Senate,  
168 and the Speaker of the House of Representatives. The report must  
169 evaluate whether the program is cost-effective and deters drug  
170 users from receiving benefits and make a recommendation to the  
171 Legislature to abolish, continue, reorganize, or expand the  
172 program.

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

174 Section 2. This act shall take effect July 1, 2010.