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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 Deterrence
5 Pilot Program within the Agency for Workforce Innovation;
6 providing legislative intent; providing the scope of
7 eligibility for benefits; defining terms; providing for
8 the screening of individuals to determine which
9 individuals must be tested; providing for notice;
10 providing terms of disqualification for benefits;
11 requiring the agency to supply information concerning drug
12 treatment programs; providing for authentication and the
13 admissibility of drug tests in unemployment compensation
14 hearings; creating a rebuttable presumption of drug use
15 under certain circumstances; providing testing procedures;
16 providing for the preservation of test samples; providing
17 for the retesting of test samples; providing for an
18 appeals process; authorizing the agency to adopt rules;
19 directing the agency to submit a report to the Governor
20 and Legislature; directing the Office of Program Policy
21 Analysis and Government Accountability to submit a report
22 to the Governor and Legislature; providing for expiration
23 of the program; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 443.093, Florida Statutes, is created
28 to read:

29 443.093 Drug Deterrence Pilot Program.—

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

37 (2) SCOPE.—In addition to any benefit eligibility or
 38 disqualification conditions prescribed in this chapter, any
 39 individual making a claim for benefits or receiving benefits and
 40 residing within Regional Workforce Board 18 or Regional
 41 Workforce Board 24 is subject to this section. As a condition to
 42 making a claim for benefits or accepting receipt of benefits, an
 43 individual must agree to comply with the terms of this section,
 44 including, but not limited to, agreeing to be subject to drug
 45 testing.

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

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

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

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

56 (4) CREATION.—

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57 (a) The Agency for Workforce Innovation shall implement an
58 unemployment compensation drug testing pilot program with
59 Regional Workforce Board 18 and Regional Workforce Board 24 no
60 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
64 whether 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
68 and 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,

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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
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

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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.

116
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.

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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
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
154 tested;

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

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

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

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

165 (b) Before the 2012 Regular Session of the Legislature,
166 the Office of Program Policy Analysis and Government
167 Accountability shall review and evaluate the Drug Deterrence
168 Pilot Program and submit a report to the Governor, the President

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169 | of the Senate, and the Speaker of the House of Representatives.
170 | The report must evaluate whether the program is cost-effective
171 | and deters drug users from receiving benefits and make a
172 | recommendation to the Legislature to abolish, continue,
173 | reorganize, or expand the program.

174 | (10) EXPIRATION.—This section expires June 30, 2012.
175 | Section 2. This act shall take effect July 1, 2010.