

HB 653

2011

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           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 an effective  
23          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 Program.—

30 (1) PURPOSE.—It is the intent of the Legislature to create  
 31 within the Agency for Workforce Innovation the Drug Deterrence  
 32 Program. The Legislature finds that illegal drug use is a threat  
 33 to public safety. The purpose of this program is to require the  
 34 drug testing of certain individuals as a condition for  
 35 unemployment benefits in order to prevent the enabling of drug  
 36 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 is  
 40 subject to this section. As a condition to making a claim for  
 41 benefits or accepting receipt of benefits, an individual must  
 42 agree to comply with the terms of this section, including, but  
 43 not limited to, agreeing to be subject to drug testing at the  
 44 individual's expense.

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

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

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

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

55 (4) CREATION.—

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

HB 653

2011

57 unemployment compensation drug testing program no later than  
58 October 1, 2011.

59 (b) In creating and implementing the program, the agency  
60 shall:

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

63 2. Drug test individuals who are assessed to be likely  
64 illicit drug users;

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

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

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

74 (5) TESTING; USE OF RESULTS.—

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

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

78 2. Upon testing positive for drugs as a result of a test  
79 under this section.

80 (b) If the individual fails the drug test required under  
81 this section, the individual is entitled to only 5 percent of  
82 his or her unemployment benefits for up to 52 weeks, under rules  
83 adopted by the agency, and until he or she has earned income of  
84 at least 17 times his or her weekly benefit amount.

HB 653

2011

85        (c) The agency shall provide any individual who tests  
86 positive with information concerning drug treatment programs  
87 that may be available in the area in which he or she resides;  
88 however, the agency or the state is not responsible for  
89 providing or paying for drug treatment as part of the testing  
90 conducted under this section.

91        (6) TESTING.—

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

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

99            2. Specimen collection must be documented, and the  
100 documentation procedures must include:

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

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

HB 653

2011

113 any positive, confirmed test result.

114

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

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

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

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

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

137 (8) RULES.—The agency shall adopt rules under ss.  
138 120.536(1) and 120.54 to administer this section.

139 (9) REPORT.—

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

HB 653

2011

141 President of the Senate, and the Speaker of the House of  
142 Representatives by January 1, 2013, which at a minimum:

- 143 1. Gives the number of individuals tested, the substances  
144 tested for, and the results of the testing;
- 145 2. Gives the number of individuals denied unemployment  
146 compensation benefits for failing a drug test upon claiming  
147 benefits and the number of individuals for whom benefits were  
148 terminated for failing a test while receiving benefits;
- 149 3. Describes any obstacles to implementation of the  
150 program;
- 151 4. Gives the number of applicants who refused to be  
152 tested;
- 153 5. Gives the number of weeks and the amount of benefits  
154 for which individuals would have been eligible if they had not  
155 tested positive or refused to take the test;
- 156 6. Estimates the costs of the drug testing program,  
157 including the average cost of individual tests and the cost of  
158 administering the program;
- 159 7. Estimates savings, if any, under the program to the  
160 Unemployment Compensation Trust Fund; and
- 161 8. Includes a recommendation on whether the Legislature  
162 should maintain the program.

163 (b) Before the 2013 Regular Session of the Legislature,  
164 the Office of Program Policy Analysis and Government  
165 Accountability shall review and evaluate the Drug Deterrence  
166 Program and submit a report to the Governor, the President of  
167 the Senate, and the Speaker of the House of Representatives. The  
168 report must evaluate whether the program is cost-effective and

HB 653

2011

169 | deters drug users from receiving benefits and make a  
170 | recommendation to the Legislature to abolish, continue,  
171 | reorganize, or expand the program.

172 |       Section 2. This act shall take effect July 1, 2011.