

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143 Defrauding or Attempting to Defraud a Drug Test
SPONSOR(S): White
TIED BILLS: **IDEN./SIM. BILLS:** SB 886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Tuszynski	Sumner
2) Justice Appropriations Subcommittee	9 Y, 0 N	Welty	Gusky
3) Judiciary Committee	15 Y, 0 N	Tuszynski	Poche

SUMMARY ANALYSIS

Urine drug tests are the most popular method used to detect the presence of chemical or controlled substances in the body, as collection is noninvasive and simple, allowing for a relatively wide detection window for most drugs. However, hair, saliva, and blood can also be used in certain tests.

A major challenge of urine drug testing is adulteration, which involves the introduction of a chemical substance to produce a false negative test result. Common adulterants include household chemicals such as bleach, laundry detergent, salt, and toilet bowl cleaner, as well as many commercial products available on the internet. Current law makes it a first-degree misdemeanor to defraud or attempt to defraud any lawfully administered urine test or to manufacture, advertise, sell, or distribute any substance or device which is intended to defraud or attempt to defraud any lawfully administered urine test.

HB 1143 amends s. 817.565, F.S., making it a criminal offense to defraud or attempt to defraud a hair follicle test. The bill also adds "give away" and "transport into the state" to the list of prohibited willful actions related to a substance or device used with intent to defraud a urine or hair follicle test.

The bill defines "adulterant" to include any substance not expected to be in human urine or a substance expected to be in urine but in higher concentrations than is consistent with human urine, and includes a non-exhaustive list of adulterants.

The bill creates a presumption of intent to defraud if the following accompanies the substance or device designed to defeat a urine or hair follicle test:

- A heating element or any other device used to thwart a test; or
- Instructions that provide a method for thwarting a test.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses created and modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system. The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that it would increase the need for prison beds by an insignificant amount.

The bill is effective October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Drug Testing

Drug tests are designed to detect the presence of illicit drugs such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids; certain prescription drugs; and alcohol within the human body.¹ Drug tests vary, depending on the type of drug being tested and the type of specimen being collected.² Urine is most often the preferred test substance because of ease of collection and the noninvasiveness of the test. Concentrations of drugs and metabolites also tend to be high in urine, allowing longer detection times.³ However, hair, saliva, and blood are also usable with different testing methods.⁴

Adulteration

One of the major challenges of urine drug testing is adulteration, which involves the introduction of a chemical adulterant to produce a false negative or otherwise disrupt test results.⁵ Generally, adulteration can occur in three different ways, urine substitution,⁶ in-vivo,⁷ and in-vitro.⁸ This problem is compounded by the number of chemicals that can effectively adulterate a urine specimen. Common adulterants include some household chemicals such as hypochlorite bleach, laundry detergent, table salt, toilet bowl cleaner, and many commercial products available on the internet, such as:^{9,10}

- Purine, powdered urine;¹¹
- Quick Fix and Urine Luck;¹²
- Klear;¹³
- Peepack;¹⁴
- Urinator;¹⁵ and
- Whizzinator¹⁶

Adulterants can invalidate a screening test result, a confirmatory test result, or both.¹⁷ To counteract urine adulteration, drug testing laboratories have developed a number of analytical methods to detect

¹ United States Department of Health and Human Service, Substance Abuse and Mental Health Services Administration, *Drug Testing*, available at: <https://www.samhsa.gov/workplace/resources/drug-testing> (last accessed February 13, 2018).

² Id.

³ Moeller K., Lee K, and Kissack J, *Urine Drug Screening: Practical Guide for Clinicians*, available at: [http://www.mayoclinicproceedings.org/article/S0025-6196\(11\)61120-8/pdf](http://www.mayoclinicproceedings.org/article/S0025-6196(11)61120-8/pdf) (last accessed February 13, 2018).

⁴ Supra, FN 1.

⁵ Shanlin Fu, *Advances in Clinical Chemistry, Volume 76, Adulterants in Urine Drug Testing* [abstract], 2016 Elsevier Inc., available at: <https://www.ncbi.nlm.nih.gov/pubmed/27645818> (last accessed February 13, 2018).

⁶ Replacement of a urine specimen with drug-free urine, some non-urine liquid, or commercially available synthetic urine.

⁷ The deliberate consumption of a copious volume of water or other fluids to dilute urine or the intentional ingestion of products to increase metabolism and excretion of drugs.

⁸ Adding foreign chemicals into or cleaning a specimen outside of the body.

⁹ <http://www.cleartest.com/products>; <http://www.ultrakleanurine.com/>; <http://www.testclear.com>

¹⁰ Supra, FN 5.

¹¹ Testclear, PURINE, available at: <http://www.testclear.com/Powdered-Urine-Kit-P13.aspx> (last accessed February 13, 2018).

¹² Spectrum Labs, available at: <https://urineluck.com/> (last accessed February 13, 2018).

¹³ Clear Co., NuKlear, available at: <https://www.nu-klear.com/> (last accessed February 13, 2018).

¹⁴ PEEPACK, Medical Grade Apparatus, available at: <https://peepack.com/> (last accessed February 13, 2018).

¹⁵ The Urinator, available at: <https://www.urinator.com/> (last accessed February 13, 2018).

¹⁶ ALS, The Whizzinator, available at: <https://www.thewhizzinator.com/> (last accessed February 13, 2018).

¹⁷ Supra, FN 5.

adulterants. While these methods are useful in detecting urine adulteration, they do not reveal what types of drugs are being concealed.¹⁸

Florida Law

Current law makes it a first degree misdemeanor to “defraud or attempt to defraud any lawfully administered *urine test* designed to detect the presence of chemical substances or controlled substances.”¹⁹ Additionally, it is a first degree misdemeanor “to manufacture, advertise, sell, or distribute any substance or device which is intended to defraud or attempt to defraud any lawfully administered urine test designed to detect the presence of chemical substances or controlled substances.”²⁰ The standard of intent is “willfully,” which is defined as “voluntary and intentional, but not necessarily malicious.”²¹

Effect of Proposed Language

HB 1143 amends s. 817.565, F.S., making it a criminal offense to defraud or attempt to defraud a hair follicle test. Defrauding a hair follicle test is a first-degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.²²

The bill defines “adulterant” to include any substance not expected to be in human urine or a substance expected to be in urine but in higher concentrations than is consistent with human urine, and includes a non-exhaustive list of adulterants:

- Bleach;
- Chromium;
- Creatinine;²³
- Detergent;
- Glutaraldehyde;²⁴
- Glutaraldehyde/Squalene;²⁵
- Hydrochloric acid;
- Hydroiodic acid;²⁶
- Iodine;
- Nitrite;
- Peroxidase;²⁷
- Potassium dichromate;²⁸

¹⁸ Id.

¹⁹ S. 817.565, F.S.

²⁰ Id.

²¹ Black’s Law Dictionary (10th ed. 2014), willfully.

²² SS. 775.082 or 775.083, F.S.

²³ A waste product in the blood that is filtered by the kidneys and eliminated in urine, creatinine is released by the muscles during activity and is also a byproduct of protein in the diet. A measure of creatinine levels, with a urine or blood (serum) test, can help monitor kidney function. It is usually found in constant quantities in the urine, greater than normal intake of water will increase urine water content and lower the creatinine level. Redwood Toxicology Laboratory, *Creatinine*, available at:

https://www.redwoodtoxicology.com/resources/drug_info/creatinine (last accessed February 13, 2018).

²⁴ A colorless, oily, liquid-chemical most often used in the health care industry to disinfect equipment that cannot be heat sterilized such as dialysis instruments, surgical instruments, suction bottles, bronchoscopes, endoscopes, and ear, nose, and throat instruments. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Glutaraldehyde*, available at:

<https://www.cdc.gov/niosh/topics/glutaraldehyde/default.html> (last accessed February 13, 2018).

²⁵ A mixture of glutaraldehyde and squalene, a natural compound and metabolite in the synthesis of cholesterol. It is not susceptible to lipid peroxidation and provides skin protection. It is ubiquitously distributed in human tissues. National Institutes of Health, National Library of Medicine, *Squalene*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/squalene> (last accessed February 13, 2018).

²⁶ A colorless to yellow liquid with a pungent odor. Consists of a solution of hydrogen iodide in water. Historically used as an expectorant in the treatment of bronchitis and bronchial asthma. National Institutes of Health, National Library of Medicine, *Hydroiodic Acid*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/24841> (last accessed February 13, 2018).

²⁷ Hydrogen peroxide-peroxidase is an effective oxidizing urine adulterant used to conceal marijuana-positive results. Paul BD, Jacobs A, Effects of oxidizing adulterants on detection of 11-nor-delta9-THC-9-carboxylic acid in urine [abstract], *Journal of Analytical Toxicology*, 2002 Oct;26(7):460-3, available at: <https://www.ncbi.nlm.nih.gov/pubmed/12423000> (last accessed February 13, 2018).

- Potassium nitrite;²⁹
- Pyridinium chlorochromate,³⁰ and
- Sodium nitrite.³¹

The bill adds "give away" and "transport into the state" to the list of prohibited willful actions related to a substance or device used with intent to defraud a urine or hair follicle test. A violation is a first-degree misdemeanor. A second or subsequent violation is a third-degree felony, punishable by up to five years imprisonment and a \$5,000 fine.³²

The bill adds a presumption of intent to defraud if the following accompanies the substance or device:

- A heating element or any other device used to thwart a test; or
- Instructions that provide a method for thwarting a test.

The bill expands the title of s. 817.565, F.S., from "Urine Testing" to "Chemical and controlled substance testing" to encompass the changes made by the bill.

The bill is effective October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.565, F.S., relating to urine testing, fraudulent practices; and penalties.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that it would increase the need for prison beds by an insignificant amount.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

²⁸ A compound having bright orange-red crystals used in dyeing, staining, and tanning leather, and used medically as an antiseptic. National Institutes of Health, National Library of Medicine, *Potassium Dichromate*, available at: https://pubchem.ncbi.nlm.nih.gov/compound/potassium_dichromate (last accessed February 13, 2018).

²⁹ A yellowish white crystalline solid used to make other chemicals and in chemical analysis. National Institutes of Health, National Library of Medicine, *Potassium Nitrite*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/516910> (last accessed February 13, 2018).

³⁰ This is the active ingredient in Urine Luck adulterant. Supra, FN 5; Urine Luck is marketed as a chemical solution, which destroys drug metabolites in the urine. Supra, FN 12.

³¹ A salt used in many industrial processes and in meat curing, coloring, and preserving. National Institutes of Health, National Library of Medicine, *Sodium Nitrite*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/23668193> (last accessed February 13, 2018).

³² SS. 775.082, 775.083, or 775.084, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses created and modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES