

BILL ANALYSIS

C.S.S.B. 21
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Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent changes in federal law authorize states to enact legislation requiring an applicant to submit to and pass a drug test for the unlawful use of controlled substances if the individual has been terminated from the individual's most recent employment because of the unlawful use of controlled substances or if the individual's only suitable work involved employment in an occupation, as determined by certain federal regulations, that regularly conducts drug testing. Some Texans believe that adding a drug testing eligibility requirement for unemployment compensation applicants is necessary to protect Texas businesses. These parties would like to implement a realistic method for this requirement by only testing those who fail a pre-screen test or who work in certain identified industries. According to these parties, an applicant who refuses a drug test or fails such a test should be disqualified from receiving benefits until the individual passes a subsequent test. C.S.S.B. 21 seeks to address these issues.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.S.B. 21 amends the Labor Code to specify that an individual for whom suitable work is available only in an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is considered available for work for purposes of determining eligibility for benefits under the Texas Unemployment Compensation Act only if the individual complies with the applicable requirements of the drug screening and testing program administered by the Texas Workforce Commission (TWC) under the bill's provisions. The bill requires TWC to adopt rules for determining the type of work that is suitable for an individual for purposes of this provision.

C.S.S.B. 21 requires TWC by rule to adopt a drug screening and testing program as part of the requirements for the receipt of unemployment compensation benefits by an individual for whom suitable work is available only in such a designated occupation. The bill requires the program to comply with certain federal drug testing requirements or other similar national requirements for drug testing programs recognized by TWC and to be designed to protect the rights of benefit applicants and recipients.

C.S.S.B. 21 requires each individual for whom suitable work is available only in such a designated occupation who files an initial claim to submit to and pass a drug screening assessment developed and administered by or on behalf of TWC as a prerequisite to receiving unemployment compensation benefits. The bill requires the individual applying for the benefits to complete an assessment tool consisting of a written questionnaire designed to accurately determine the reasonable likelihood that an applicant is using a substance subject to regulation under the Texas Controlled Substances Act. The bill requires an applicant whose drug screening assessment indicates a reasonable likelihood of such use to submit to and pass a drug test

administered by or on behalf of TWC to establish the individual's eligibility for unemployment compensation benefits. The bill makes an applicant who fails such a required drug test under a final determination or decision ineligible to receive the benefits until the applicant has passed a subsequent drug test administered by or on behalf of TWC not earlier than four weeks after the date the applicant submitted to the failed drug test.

C.S.S.B. 21 provides that an individual is not ineligible to receive unemployment compensation benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, TWC determines that the individual is participating in a drug abuse treatment program, that the individual enrolls in and attends a drug abuse treatment program not later than the seventh day after the date initial notice of the failed drug test is sent to the individual, or that the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

C.S.S.B. 21 requires TWC to prescribe procedures for providing initial notice to an individual who fails a required drug test for an appeal under statutory provisions relating to disputing a resolution and for the retaking of a drug test failed by an individual under the bill's provisions. The bill sets out the items those procedures are required to provide. The bill requires TWC to administer the drug screening and testing program using existing administrative funds and any funds appropriated to TWC for the purposes of administering the program.

C.S.S.B. 21 applies its provisions only to a claim for unemployment compensation benefits that is filed with TWC on or after February 1, 2014.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 21 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 207.021, Labor Code, is amended.

SECTION 2. Subchapter B, Chapter 207, Labor Code, is amended by adding Section 207.026 to read as follows:

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:

(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Subchapter B, Chapter 207, Labor Code, is amended by adding Section 207.026 to read as follows:

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:

(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug

testing programs recognized by the commission; and

(2) be designed to protect the rights of benefit applicants and recipients.

(b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who is determined to have failed a drug test under this subsection under a final determination or decision made by the commission under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Notwithstanding Subsection (b), an individual is not disqualified from receiving benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that:

(1) the individual is participating in a treatment program for drug abuse;

(2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date the individual receives initial notice of the failed drug test result; or

(3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically

testing programs recognized by the commission; and

(2) be designed to protect the rights of benefit applicants and recipients.

(b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who fails a drug test required under this subsection under a final determination or decision under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Notwithstanding Subsection (b), an individual is not ineligible to receive benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that, subject to Section 207.021(a)(4):

(1) the individual is participating in a treatment program for drug abuse;

(2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date initial notice of the failed drug test is sent to the individual; or

(3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically

necessary for the individual.

(d) The commission by rule shall prescribe procedures for an appeal and the retaking of a failed drug test by an individual under this section.

(e) The commission's procedures for an appeal and the retaking of a failed drug test under Subsection (d) must provide for:

(1) the provision to each individual who fails a drug test under Subsection (b) of:

(A) privacy with regard to the individual's test result for at least 10 days following the date the individual receives initial notice of the result during which the individual may appeal the result or retake the failed drug test; and

(B) prompt notice regarding:

(i) the manner in which the individual may appeal the result or retake the failed drug test; and

(ii) common potential causes of a false positive test result; and

(2) full payment by the commission of the costs of the retaking of failed drug tests by any individual who contests the individual's failed drug test as a false positive result and passes a subsequently taken test.

No equivalent provision.

(f) The commission shall administer the

necessary for the individual.

(d) The commission shall prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212, and for the retaking of a failed drug test by an individual under this section.

The procedures must provide:

(See Subdivision (1) below.)

(2) for privacy with regard to the individual's drug test result until not later than the 14th day after the date the initial notice of the failed drug test was mailed to the individual during which time the individual may appeal and retake the failed drug test; and

(1) for prompt initial notice by mail to an individual who fails a drug test under Subsection (b) regarding:

(A) the fact of the individual's failure of the drug test;

(B) the manner in which the individual may notify the commission that the individual has enrolled in and is attending a treatment program for drug abuse;

(C) the manner in which the individual may appeal and retake the failed drug test; and

(D) common potential causes of a false positive test result;

No equivalent provision.

(3) that a determination or decision that an individual has failed a drug test under this section becomes final on:

(A) the 15th day after the date the initial notice of the failed drug test was mailed to the individual if the individual does not appeal and retake the individual's failed drug test as provided by this section; or

(B) the date that a retest conducted pursuant to an appeal by the individual as provided by this section confirms the positive drug test result.

(e) The commission shall administer the

program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

SECTION 3. The changes in law made by this Act apply only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after February 1, 2014.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2013.

program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.