

By: Williams, et al.

S.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 207.021, Labor Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) 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 available for work for purposes of Subsection (a)(4) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the commission under Section 207.026. The commission shall adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

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

1 C.F.R. Part 382 or other similar national requirements for drug  
2 testing programs recognized by the commission; and

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

5 (b) Under the program, each individual to whom Section  
6 207.021(b-1) applies who files an initial claim must submit to and  
7 pass a drug screening assessment developed and administered by or  
8 on behalf of the commission for purposes of this subsection as a  
9 prerequisite to receiving benefits under this subtitle. The  
10 assessment tool used under this subsection must consist of a  
11 written questionnaire to be completed by the individual applying  
12 for benefits and must be designed to accurately determine the  
13 reasonable likelihood that an individual is using a substance that  
14 is subject to regulation under Chapter 481, Health and Safety Code.  
15 An individual whose drug screening assessment indicates a  
16 reasonable likelihood of use by the individual of a substance  
17 subject to regulation under that chapter must submit to and pass a  
18 drug test administered by or on behalf of the commission to  
19 establish the individual's eligibility for benefits under this  
20 subtitle. An individual who is determined to have failed a drug  
21 test under this subsection under a final determination or decision  
22 made by the commission under this section is not eligible to receive  
23 benefits under this subtitle until the individual has passed a  
24 subsequent drug test administered by or on behalf of the commission  
25 not earlier than four weeks after the date the individual submitted  
26 to the failed drug test.

27 (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 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

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

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

7                    (f) The commission shall administer the program under this  
8 section using existing administrative funds and any funds  
9 appropriated to the commission for the purposes of this section.

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

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

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