

By: Williams, et al. S.B. No. 21
(Creighton, Bonnen of Brazoria, Riddle, Sheffield of Bell)

Substitute the following for S.B. No. 21:

By: Murphy C.S.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 fails a drug test required under this
21 subsection under a final determination or decision under this
22 section is not eligible to receive benefits under this subtitle
23 until the individual has passed a subsequent drug test administered
24 by or on behalf of the commission not earlier than four weeks after
25 the date the individual submitted to the failed drug test.

26 (c) Notwithstanding Subsection (b), an individual is not
27 ineligible to receive benefits based on the individual's failure to

1 pass a drug test if, on the basis of evidence presented by the
2 individual, the commission determines that, subject to Section
3 207.021(a)(4):

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

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

9 (3) the failure to pass the test is caused by the use
10 of a substance that was prescribed by a health care practitioner as
11 medically necessary for the individual.

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

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

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

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

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

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

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

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

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

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

16 (e) The commission shall administer the program under this
17 section using existing administrative funds and any funds
18 appropriated to the commission for the purposes of this section.

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

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

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