

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. This Act shall be known as the Ken Legler Act.

SECTION 2. 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 3. 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 (1) comply with the drug testing requirements of 49
2 C.F.R. Part 382 or other similar national requirements for drug
3 testing programs recognized by the commission; and

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

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

27 (c) Notwithstanding Subsection (b), an individual is not

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

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

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

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

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

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

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

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

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

27 (D) common potential causes of a false positive

1 test result;

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

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

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

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

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

20 SECTION 4. The changes in law made by this Act apply only to
21 a claim for unemployment compensation benefits that is filed with
22 the Texas Workforce Commission on or after February 1, 2014.

23 SECTION 5. If before implementing any provision of this Act
24 a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 6. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 21 passed the Senate on April 11, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 21 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 104, Nays 42, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor