

## **BILL ANALYSIS**

Senate Research Center

S.B. 21  
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Economic Development  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 21 amends Texas law to ensure that all individuals referred by the Texas Workforce Commission are ready to work. Changes in federal law allow states to require drug-testing for claimants of unemployment insurance under certain circumstances.

This legislation amends the Texas Unemployment Compensation Act by adding a drug-testing eligibility requirement for applicants to receive unemployment compensation benefits. The Texas Workforce Commission would not be testing all applicants, but only those who fail a pre-screen test and work in certain identified industries. Claimants who refuse drug testing or fail such tests would be barred from receiving unemployment insurance benefits until the individual passes a test at least four weeks after the date of the failed test.

S.B. 21 amends current law relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 2 (Section 207.021, Labor Code) and SECTION 3 (Section 207.026, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires that this Act be known as the Ken Legler Act.

SECTION 2. Amends Section 207.021, Labor Code, by adding Subsection (b-1), as follows:

(b-1) Provides 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 available for work for purposes of Subsection (a)(4) (relating to the eligibility of a person to receive benefits by being available to work) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the Texas Workforce Commission (TWC) under Section 207.026. Requires TWC to adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

SECTION 3. Amends Subchapter B, Chapter 207, Labor Code, by adding Section 207.026, as follows:

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) Requires TWC by rule to 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. Requires that the program comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by TWC; and be designed to protect the rights of benefit applicants and recipients.

(b) Requires each individual under the program to whom Section 207.021(b-1) applies who files an initial claim to submit to and pass a drug screening assessment developed and administered by or on behalf of TWC for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. Requires that the assessment tool used under this subsection consist of a written questionnaire to be completed by the individual applying for benefits and be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code. Requires an individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter to submit to and pass a drug test administered by or on behalf of TWC to establish the individual's eligibility for benefits under this subtitle. Provides that 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 TWC not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Provides that an individual is not ineligible to receive benefits based on the individual's failure to pass a drug test, notwithstanding Subsection (b), if, on the basis of evidence presented by the individual, TWC determines that, subject to Section 207.021(a)(4) (relating to providing that an individual is eligible to receive benefits for a benefit period if the individual is available to work), the individual is participating in a treatment program for drug abuse, 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 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) Requires TWC to prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212 (Dispute Resolution), and for the retaking of a failed drug test by an individual under this section. Requires that the procedures provide:

(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 TWC 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;

(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

(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) Requires TWC to administer the program under this section using existing administrative funds and any funds appropriated to TWC for the purposes of this section.

SECTION 4. Makes application of the changes in law made by this Act prospective to February 1, 2014.

SECTION 5. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 6. Effective date: September 1, 2013.