

- SUBJECT:** Drug testing as a condition of unemployment benefits
- COMMITTEE:** Economic and Small Business Development — committee substitute recommended
- VOTE:** 5 ayes — J. Davis, Bell, Isaac, Murphy, Workman  
4 nays — Vo, Y. Davis, Perez, E. Rodriguez
- SENATE VOTE:** On final passage, April 11 — 31-0
- WITNESSES:** *(On House companion bill, HB 1281:)*  
For — Bill Hammond, Texas Association of Business; *(Registered, but did not testify:* Kathy Barber, NFIB Texas; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Cathy Dewitt, Texas Association of Business; Jon Fisher, Associated Builders and Contractors of Texas; Stephanie Gibson, Texas Retailers Association; Scott Stewart, Zachry Industrial; Kurtiss Summers, NFIB Texas; Kathy Williams, Texas Association of Staffing)  
  
Against — Leslie Helmcamp, Center for Public Policy Priorities; Rick Levy, Texas AFL-CIO; *(Registered, but did not testify:* Michael Cunningham, Texas State Building and Construction Trades Council; Cornelius English, Jr., United Transportation Union; Currie Hallford, CWA; Ted Melina Raab, Texas American Federation of Teachers; Kamron Saunders, United Transportation Union; Dee Simpson, AFSCME; Matt Simpson, ACLU of Texas)  
  
On — Larry Temple, Texas Workforce Commission
- BACKGROUND:** The Unemployment Compensation Act (Labor Code, ch. 201) stipulates that an individual is entitled to unemployment benefits based upon wages actually received during the individual's base period of employment. Labor Code, ch. 207, subch. B specifies when an individual is eligible to receive unemployment benefits for a base period.  
  
The Texas Controlled Substances Act (Health and Safety Code, ch. 481) defines the types of drugs regulated in Texas and sets forth the limitations

on their use.

**DIGEST:**

CSSB 21 would amend Labor Code, ch. 207 to require the Texas Workforce Commission (TWC) to adopt a drug-screening and testing program for certain applicants for unemployment benefits. An individual, seeking work in an occupation that required preemployment drug testing, in submitting an initial claim for unemployment benefits, would have to submit to a drug-screening assessment adopted by the TWC.

The drug-screening test would have to consist of a written questionnaire designed to determine the reasonable likelihood that an individual was using a substance regulated by the Texas Controlled Substances Act. If a reasonable likelihood of drug use was found, the applicant would have to pass a drug test to be eligible for unemployment benefits.

Prompt notice would have to be mailed to an individual who failed a drug test with information on how he or she could appeal and retake the failed drug test. After four weeks, an individual who failed drug test could reapply for unemployment benefits and take another drug test.

The bill would provide exceptions in which unemployment benefits could not be denied: An individual undergoing or who promptly began drug treatment after receiving the initial notice of the failed drug test could not be denied benefits, nor could someone who failed a drug test because the person used a substance prescribed by a doctor for medical reasons.

The program would have to comply with certain federal requirements for drug testing. TWC, in designing the program, would have to protect the rights of unemployment benefit applicants and recipients.

The bill would take effect on September 1, 2013. The bill would only apply to claims for unemployment benefits filed with TWC on or after February 1, 2014.

**SUPPORTERS  
SAY:**

With this bill, the state would take an important step in ensuring recipients of unemployment benefits were drug-free, on a path to self-sufficiency, and ready to work. Under current law, the fact that someone can fail a drug test and still receive unemployment benefits sends the wrong statement.

Drug screening and testing for those applying for unemployment benefits

would only apply to individuals seeking employment within professions that already require drug testing, such as aviation, trucking and logistics. Those unable to pass a drug test to enter a profession where drug screening is already required are unfit to work and should not receive unemployment benefits without receiving treatment. Under the bill, these individuals would be permitted to reapply for unemployment benefits after four weeks.

According to the National Conference of State Legislatures, seven other states have passed similar measures. The bill would be narrowly tailored, consistent with those laws in other states that have cleared benchmarks in the courts. Courts have only had issues with broadly worded laws, such as the one in Florida applying to all public welfare recipients.

Exemptions within the bill and the ability to reapply would protect those who need help the most, while at the same time protecting the interests of taxpayers. With the ability for applicants who failed a drug test to attend drug treatment and reapply for unemployment benefits, the bill would provide a way for these individuals to receive rehabilitation.

Even if statistics do not point to drug use among those in need of government assistance, a significant amount of drug abuse exists within our society in general. The bill would provide a way of combating this problem on a some small level. The business community as a whole has expressed support for this bill.

Concerns about a lack of drug treatment programs are unfounded. A number of community, family, and church treatment programs exist to treat individuals who fail a drug test. Unlike alternative policy approaches that risk providing unemployment benefits to those who later fail an employment drug test, the bill would provide a way to address this issue up front.

**OPPONENTS  
SAY:**

The proposal to drug-test Texans who have lost their jobs through no fault of their own would add insult to injury. By definition, Texans are ineligible for unemployment benefits if they have lost their jobs because of illegal drug use or any other bad behavior that causes termination. Requiring people to prove to the state that they were drug-free would not be a fair constraint.

The bill is in search of a problem that does not exist. There is no trend of

increased drug use among those on unemployment. Data are also lacking to suggest people in need of government assistance are more likely to be drug users.

In addition, only a small subset of employers would be subject to the bill's requirements. Everyone else would have to subsidize this program for these few employers. The state does not need to take on this expense. Moreover, people with drug problems who receive unemployment benefits typically do not have the money to gain access to treatment programs.

The bill should adopt an alternative approach. If a drug test was required for a position, and a person failed the drug test, at that point it would be acceptable to cut off that person's unemployment benefits.

NOTES:

The committee substitute differs from the Senate-passed version by removing the requirement for the Texas Workforce Commission to pay the costs of the retaking of a failed drug test claimed to have resulted from a false positive result. The substitute also makes changes to the wording in the Senate-passed version to comply with federal laws and regulations.

The companion bill, HB 1281 by Creighton, was left pending in the House Economic and Small Business Development Committee on April 10.