

SENATE BILL 1668

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 7, relative to drug testing certain individuals for unemployment benefits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-302(a), is amended by adding the following new appropriately designated subdivision:

( ) The claimant has satisfied the initial drug testing requirements of § 50-7-614;

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 7, Part 6, is amended by adding the following as a new section:

50-7-614.

(a) For purposes of this section:

(1) "Controlled substances" means a "controlled substance" as defined by 21 U.S.C. § 802;

(2) "Department" means the department of labor and workforce development;

(3) "Drug screening assessment" means a written questionnaire to be completed by the claimant applying for benefits that is developed and administered by or on behalf of the department and designed to accurately determine the reasonable likelihood that an individual is using a controlled substance;

(4) "Occupation that regularly conducts pre-employment drug testing" is any occupation determined under regulations issued by the secretary of labor as an occupation that regularly conducts drug testing; and

(5) "Suitable work" means "suitable work" as defined by § 50-7-305(d)(3).

(b) An unemployment claimant shall comply with the applicable requirements of a drug screening and testing program administered by the department if:

(1) The only suitable work available for the claimant is in an occupation that regularly conducts pre-employment drug testing; or

(2) The claimant was terminated from employment with the claimant's most recent employer because of the unlawful use of a controlled substances.

(c)

(1) Any claimant to whom subsection (b) applies and who files an initial claim for benefits under this chapter 7 must submit to and pass a drug screening assessment as a prerequisite to receiving benefits under this chapter 7. A claimant whose drug screening assessment indicates a reasonable likelihood of use by the individual of a controlled substance must submit to and pass a drug test administered by or on behalf of the department to establish the claimant's eligibility for benefits under this chapter 7.

(2) Except as otherwise provided in subsection (d), a claimant who fails a drug test required under subdivision (c)(1) and has had an opportunity to appeal the findings of the test pursuant to rules promulgated by the department is not eligible to receive benefits under this chapter 7 until the individual has passed a subsequent drug test administered by or on behalf of the department not earlier than four (4) weeks after the date the individual submitted to the failed drug test.

(d) Notwithstanding subsection (c), a claimant is eligible to receive benefits based on the claimant's failure to pass a drug test if, on the basis of evidence presented by the claimant, the department determines that:

(1) The claimant is participating in a treatment program for drug abuse that has been approved by the department;

(2) The claimant 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 claimant; or

(3) The claimant's failure to pass the test was caused by the use of a controlled substance that was prescribed by a health care practitioner as medically necessary for the claimant.

(e) Notwithstanding § 10-7-503, documents, materials, or other information in the possession or control of the department that concern the drug testing requirements of this section are confidential by law and privileged, are not subject to open records requests or sunshine laws, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(f) The department shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this chapter 7 by a claimant to whom subsection (b) applies. The program shall:

(1) Comply with the drug testing requirements of 49 C.F.R. part 382 or other similar national requirements for drug testing programs recognized by the department;

(2) Be designed to protect the rights of unemployment claimants and recipients;

(3) Provide for an appeal under § 50-7-304 and for the retaking of a failed drug test by a claimant under subsection (c); and

(4) Provide for prompt initial notice by mail to a claimant who fails a drug test under subsection (c) regarding:

(A) The fact of the claimant's failure of the drug test;

(B) The manner in which the claimant may notify the department that the claimant has enrolled in and is attending a treatment program for drug abuse;

(C) The manner in which the claimant may appeal and retake the failed drug test;

(D) The fact that a determination or decision that a claimant has failed a drug test under this section becomes final on:

(i) The fifteenth day after the date the initial notice of the failed drug test was mailed to the claimant if the claimant does not appeal and retake the claimant's failed drug test as provided by subsection (c); or

(ii) The date that a retest conducted pursuant to an appeal by the claimant as provided confirms the positive drug test result;  
and

(E) Common potential causes of a false positive test result.

SECTION 3. If before implementing any provision of this act, the department determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it; for all other purposes this act shall

take effect January 1, 2015, and shall apply only to claims for unemployment compensation benefits filed with the department of labor and workforce development on or after that date.