

SENATE BILL 3020

By Campfield

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to drug screenings in the employment security program.

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

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 7, is amended by adding Sections 2 through 5 as a new part thereto:

SECTION 2. For the purposes of this part:

(1) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results;

(2) "Confirmation test," "confirmed test" or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy;

(3) "Drug" means any controlled substance subject to testing pursuant to drug testing rules and regulations promulgated by the commissioner of labor and workforce development;

(4) "Drug rehabilitation program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of employee drug or alcohol abuse;

(5) “Drug test” or “test” means any chemical, biological or physical instrumental analysis administered by a laboratory for the purpose of determining the presence or absence of a drug or its metabolites pursuant to rules and regulations governing drug testing promulgated by the commissioner of labor and workforce development;

(6) “Initial drug test” means a procedure that qualifies as a “screening test” or “initial test” pursuant to rules and regulations governing drug testing promulgated by the commissioner of labor and workforce development; and

(7) “Specimen” means tissue, fluid or a product of the human body capable of revealing the presence of drugs or their metabolites.

### SECTION 3.

(a)

(1) The department shall require a urine drug test consistent with chapter 9 of this title, to screen each individual who files a new claim for benefits under this chapter in the same manner as testing for job applicant alcohol and drug testing. The cost of drug testing is the responsibility of the individual tested.

(2) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive benefits under this chapter for one (1) year after the date of the positive drug test, unless the individual meets the requirements of subsection (c). An individual may not be denied benefits on the sole basis of a positive test result that has not been verified by a confirmation test.

(b) The department shall:

(1) Provide notice of drug testing to each individual at the time of filing a claim. The notice must advise the individual that drug testing will be conducted as a condition for receiving benefits under this chapter and that the individual

must bear the cost of testing. The individual shall be advised that the required drug testing may be avoided if the individual does not file a claim for benefits;

(2) Advise each individual to be tested, before the test is conducted, that the individual may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication the individual is taking;

(3) Require each individual to be tested to sign a written acknowledgment that the individual has received and understood the notice and advice provided under subdivisions (b)(1) and (2);

(4) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one (1) or more additional tests;

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for benefits under this chapter that the individual may reapply for such benefits one (1) year after the date of the positive drug test; provided, the individual may apply sooner upon meeting the requirements of subsection (c). If the individual tests positive again, the individual is ineligible to receive benefits for three (3) years from the date of the second positive drug; and

(7) Provide any individual who tests positive with a list of licensed substance abuse treatment providers that meet the requirements of the Mental Health, Developmental Disability, and Personal Support Services Licensure Law, compiled in title 33, chapter 2, part 4, and are licensed by the department of mental health. Neither the department nor the state is responsible for providing or

paying for substance abuse treatment as part of the screening conducted under this section.

(c) An individual who tests positive under this section and is denied benefits under this chapter as a result may reapply for those benefits after six (6) months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of the Mental Health, Developmental Disability, and Personal Support Services Licensure Law, and is licensed by the department of mental health. An individual who has met the requirements of this subsection (c) and who reapplies for benefits must also pass a drug test and meet the requirements of this section. Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (a). The cost of any drug testing and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails a drug test upon an initial application for benefits may reapply only once for benefits under this subsection (c).

SECTION 4. The commissioner shall adopt rules to implement this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner shall consider:

- (1) Body specimens and minimum specimen amounts that are appropriate for drug testing;
- (2) Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests;
- (3) Minimum cut-off detection levels for each drug or metabolites of the drug for the purposes of determining a positive test result;

(4) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and

(5) Retention, storage and transportation procedures to ensure reliable results on confirmation tests and retests.

SECTION 5. This part may only take effect to the extent that federal law does not prohibit such drug testing or its related requirements.

SECTION 6. Tennessee Code Annotated, Section 50-7-302(a), is amended by adding the following language as a new, appropriately designated subdivision:

( ) The claimant, at the sole expense of the claimant, participates in a substance abuse screening program established by the department pursuant to Section 3 of this act.

SECTION 7. For purposes of rulemaking 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, 2013, the public welfare requiring it.