

SENATE BILL No. 245

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Drug testing of unemployment insurance applicants. Requires an individual to undergo a drug test as a condition of the individual's initial eligibility for unemployment benefits (benefits) if the individual: (1) was discharged from employment by the individual's most recent employer because of the individual's unlawful use of a controlled substance; or (2) is an individual for whom suitable work is only available in an occupation that the United States Department of Labor has determined by rule is an occupation that regularly conducts drug testing. If the individual tests positive or refuses to take a drug test, provides that the individual is ineligible for waiting period or benefit rights for the week in which the positive test results or refusal occurred and until: (1) the individual earns remuneration in employment in at least eight weeks; and (2) the remuneration earned equals or exceeds the product of the individual's weekly benefit amount multiplied by eight. Provides that an individual is not disqualified from receiving benefits, if the individual: (1) obtained the controlled substance for which the individual tested positive by means of a prescription issued by a practitioner authorized to prescribe the controlled substance; and (2) ingested, injected, or inhaled the controlled substance that was prescribed in accordance with the practitioner's directions. Provides that the department of workforce development (department) may not require an individual to pay any of the costs of a drug test. Provides that the fact that the individual took a drug test and the results of the test are confidential to the extent required by 20 CFR 603. Requires the department to ensure that a drug test meets or exceeds: (1) standards of the mandatory guidelines for federal workplace drug testing programs published by the Substance (Continued next page)

Effective: July 1, 2016.

Ford

January 7, 2016, read first time and referred to Committee on Pensions & Labor.



Digest Continued

Abuse and Mental Health Services Administration (SAMHSA); or (2) procedures established by the United States Department of Transportation.



Introduced

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 245

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-14-1, AS AMENDED BY P.L.2-2011,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1. (a) Except as provided in IC 22-4-5-1 or
4 subsection (b) or (c), an unemployed individual shall be eligible to
5 receive benefits with respect to any week only if the individual:
6 (1) has made a claim for benefits in accordance with IC 22-4-17;
7 **and**
8 (2) **if required to undergo a drug test as a condition of the**
9 **individual's initial eligibility for benefits under section 12 of**
10 **this chapter, passes a drug test.**
11 (b) A person who:
12 (1) accepts a layoff under an inverse seniority clause of a validly
13 negotiated contract; and
14 (2) otherwise meets the eligibility requirements established by
15 this article;



1 is entitled to receive benefits in the same amounts, under the same
 2 terms, and subject to the same conditions as any other unemployed
 3 person.

4 (c) This subsection applies to initial claims for unemployment filed
 5 for a week that begins after March 14, 2008, and before October 1,
 6 2011. This subsection does not apply to a person who elects to retire in
 7 connection with a layoff or plant closure and receive pension,
 8 retirement, or annuity payments. Except as provided in IC 22-4-5-1, a
 9 person who:

10 (1) accepts an offer of payment or other compensation offered by
 11 an employer to avert or lessen the effect of a layoff or plant
 12 closure; and

13 (2) otherwise meets the eligibility requirements established by
 14 this article;

15 is entitled to receive benefits in the same amounts, under the same
 16 terms, and subject to the same conditions as any other unemployed
 17 person.

18 SECTION 2. IC 22-4-14-12 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2016]: **Sec. 12. (a) As used in this section, "controlled substance"**
 21 **has the meaning set forth in section 102 of the federal Controlled**
 22 **Substances Act (21 U.S.C. 802).**

23 (b) As used in this section, "drug test" means either of the
 24 following conducted to determine whether a controlled substance
 25 is present in a biological specimen taken from an individual's body:

26 (1) A chemical test of an individual's urine.

27 (2) An oral fluid test that uses a swab.

28 (c) As used in this section, "practitioner" has the meaning set
 29 forth in IC 16-42-19-5.

30 (d) As used in this section, "prescription" has the meaning set
 31 forth in IC 16-42-19-7.

32 (e) If either of the following apply to an individual who files an
 33 initial claim for benefits under IC 22-4-17-1, the department shall
 34 require the individual to undergo a drug test as a condition of the
 35 individual's initial eligibility for benefits:

36 (1) The individual was discharged from employment by the
 37 individual's most recent employer because of the individual's
 38 unlawful use of a controlled substance.

39 (2) The individual is an individual for whom suitable work is
 40 only available in an occupation that the United States
 41 Department of Labor has determined by rule is an occupation
 42 that regularly conducts drug testing.



1 (f) Except as provided in subsection (g), if an individual:

2 (1) takes a drug test required under subsection (e) and the
3 results of the test are positive, indicating the presence of a
4 controlled substance in a biological specimen taken from the
5 individual's body; or

6 (2) refuses to take a drug test required under subsection (e);
7 the individual is ineligible for waiting period or benefit rights for
8 the week in which the positive test results or refusal occurred and
9 until the individual qualifies for waiting period or benefit rights
10 under IC 22-4-15-1(a).

11 (g) An individual is not subject to disqualification under
12 subsection (f) if the individual:

13 (1) obtained the controlled substance for which the individual
14 tested positive by means of a prescription issued by a
15 practitioner authorized to prescribe the controlled substance;
16 and

17 (2) ingested, injected, or inhaled the controlled substance that
18 was prescribed in accordance with the practitioner's
19 directions.

20 (h) The department may not require an individual who takes a
21 drug test required under this section to pay any of the costs of the
22 test.

23 (i) The following are confidential to the extent required by 20
24 CFR 603:

25 (1) The fact that an individual took a drug test required by
26 this section.

27 (2) The results of an individual's drug test required by this
28 section.

29 (j) The department shall do the following:

30 (1) Ensure that a drug test conducted under this section meets
31 or exceeds:

32 (A) standards of the mandatory guidelines for federal
33 workplace drug testing programs published by the
34 Substance Abuse and Mental Health Services
35 Administration of the United States Department of Health
36 and Human Services (SAMHSA); or

37 (B) procedures established by the United States
38 Department of Transportation.

39 (2) Adopt rules under IC 4-22-2, including emergency rules in
40 the manner provided under IC 4-22-37.1, as the department
41 considers necessary to administer this section.

42 SECTION 3. IC 22-4-17-1, AS AMENDED BY P.L.175-2009,



1 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 JULY 1, 2016]: Sec. 1. (a) Claims for benefits shall be made in
 3 accordance with rules adopted by the department. The department shall
 4 adopt reasonable procedures consistent with the provisions of this
 5 article for the expediting of the taking of claims of individuals for
 6 benefits in instances of mass layoffs by employers, the purpose of
 7 which shall be to minimize the amount of time required for such
 8 individuals to file claims upon becoming unemployed as the result of
 9 such mass layoffs. **If required as a condition of an individual's**
 10 **initial eligibility for benefits, an individual filing an initial claim**
 11 **shall undergo a drug test in accordance with IC 22-4-14-12.**

12 (b) Except when the result would be inconsistent with the other
 13 provisions of this article, as provided in the rules of the department, the
 14 provisions of this article which apply to claims for, or the payment of,
 15 regular benefits shall apply to claims for, and the payment of, extended
 16 benefits.

17 (c) Whenever an extended benefit period is to become effective in
 18 this state as a result of a state "on" indicator, or an extended benefit
 19 period is to be terminated in this state as a result of a state "off"
 20 indicator, the commissioner shall make an appropriate public
 21 announcement.

22 (d) Computations required by the provisions of IC 22-4-2-34(f) shall
 23 be made by the department in accordance with regulations prescribed
 24 by the United States Department of Labor.

25 (e) Each employer shall display and maintain in places readily
 26 accessible to all employees posters concerning its regulations and shall
 27 make available to each such individual at the time the individual
 28 becomes unemployed printed benefit rights information furnished by
 29 the department.

30 SECTION 4. IC 22-4-17-2, AS AMENDED BY P.L.154-2013,
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2016]: Sec. 2. (a) When an individual files an initial claim
 33 **and, if required as a condition of the individual's initial eligibility**
 34 **for benefits by IC 22-4-14-12, passes a drug test,** the department
 35 shall promptly make a determination of the individual's status as an
 36 insured worker in a form prescribed by the department. A written
 37 notice of the determination of insured status shall be furnished to the
 38 individual promptly. Each such determination shall be based on and
 39 include a written statement showing the amount of wages paid to the
 40 individual for insured work by each employer during the individual's
 41 base period and shall include a finding as to whether such wages meet
 42 the requirements for the individual to be an insured worker, and, if so,



1 the week ending date of the first week of the individual's benefit period,
2 the individual's weekly benefit amount, and the maximum amount of
3 benefits that may be paid to the individual for weeks of unemployment
4 in the individual's benefit period. For the individual who is not insured,
5 the notice shall include the reason for the determination. Unless the
6 individual, within ten (10) days after such determination was mailed to
7 the individual's last known address, or otherwise delivered to the
8 individual, asks a hearing thereon before an administrative law judge,
9 such determination shall be final and benefits shall be paid or denied
10 in accordance therewith.

11 (b) The department shall promptly furnish each employer in the base
12 period whose experience or reimbursable account is potentially
13 chargeable with benefits to be paid to such individual with a notice in
14 writing of the employer's benefit liability. The notice shall contain the
15 date, the name and Social Security account number of the individual,
16 the ending date of the individual's base period, and the week ending
17 date of the first week of the individual's benefit period. The notice shall
18 further contain information as to the proportion of benefits chargeable
19 to the employer's experience or reimbursable account in ratio to the
20 earnings of such individual from such employer. Unless the employer
21 within ten (10) days after such notice of benefit liability was mailed to
22 the employer's last known address, or otherwise delivered to the
23 employer, asks a hearing thereon before an administrative law judge,
24 such determination shall be final and benefits paid shall be charged in
25 accordance therewith.

26 (c) An employing unit, including an employer, having knowledge
27 of any facts which may affect an individual's eligibility or right to
28 waiting period credits or benefits, shall notify the department of such
29 facts within ten (10) days after the mailing of notice that a former
30 employee has filed an initial or additional claim for benefits on a form
31 prescribed by the department.

32 (d) In addition to the foregoing determination of insured status by
33 the department, the deputy shall, throughout the benefit period,
34 determine the claimant's eligibility with respect to each week for which
35 the claimant claims waiting period credit or benefit rights, the validity
36 of the claimant's claim therefor, and the cause for which the claimant
37 left the claimant's work, or may refer such claim to an administrative
38 law judge who shall make the initial determination with respect thereto
39 in accordance with the procedure in section 3 of this chapter.

40 (e) In cases where the claimant's benefit eligibility or
41 disqualification is disputed, the department shall promptly notify the
42 claimant and the employer or employers directly involved or connected



1 with the issue raised as to the validity of such claim, the eligibility of
2 the claimant for waiting period credit or benefits, or the imposition of
3 a disqualification period or penalty, or the denial thereof, and of the
4 cause for which the claimant left the claimant's work, of such
5 determination and the reasons thereof.

6 (f) Except as otherwise hereinafter provided in this section
7 regarding parties located in Alaska, Hawaii, and Puerto Rico, unless
8 the claimant or such employer, within ten (10) days after the
9 notification required by subsection (e), was mailed to the claimant's or
10 the employer's last known address or otherwise delivered to the
11 claimant or the employer, asks for a hearing before an administrative
12 law judge thereon, such decision shall be final and benefits shall be
13 paid or denied in accordance therewith.

14 (g) For a notice of disputed administrative determination or decision
15 mailed or otherwise delivered to the claimant or employer either of
16 whom is located in Alaska, Hawaii, or Puerto Rico, unless the claimant
17 or employer, within fifteen (15) days after the notification required by
18 subsection (e), was mailed to the claimant's or employer's last known
19 address or otherwise delivered to the claimant or employer, asks for a
20 hearing before an administrative law judge thereon, such decision shall
21 be final and benefits shall be paid or denied in accordance therewith.

22 (h) If a claimant or an employer requests a hearing under subsection
23 (f) or (g), the request therefor shall be filed with the department in
24 writing within the prescribed periods as above set forth in this section
25 and shall be in such form as the department may prescribe. In the event
26 a hearing is requested by an employer or the department after it has
27 been administratively determined that benefits should be allowed to a
28 claimant, entitled benefits shall continue to be paid to said claimant
29 unless said administrative determination has been reversed by a due
30 process hearing. Benefits with respect to any week not in dispute shall
31 be paid promptly regardless of any appeal.

32 (i) A person may not participate on behalf of the department in any
33 case in which the person is an interested party.

34 (j) Solely on the ground of obvious administrative error appearing
35 on the face of an original determination, and within the benefit year of
36 the affected claims, the commissioner, or a representative authorized
37 by the commissioner to act in the commissioner's behalf, may
38 reconsider and direct the deputy to revise the original determination so
39 as to correct the obvious error appearing therein. Time for filing an
40 appeal and requesting a hearing before an administrative law judge
41 regarding the determinations handed down pursuant to this subsection
42 shall begin on the date following the date of revision of the original



1 determination and shall be filed with the commissioner in writing
2 within the prescribed periods as above set forth in subsection (c).
3 (k) Notice to the employer and the claimant that the determination
4 of the department is final if a hearing is not requested shall be
5 prominently displayed on the notice of the determination which is sent
6 to the employer and the claimant.
7 (l) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made
8 by the individual at the time of the claim for benefits, the department
9 shall not notify the employer of the claimant's current address or
10 physical location.

