

SENATE BILL No. 298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Drug testing of unemployment insurance claimants. 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 certain occupations that regularly conduct drug testing. Provides that if the individual tests positive or refuses to take a drug test, 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

Effective: July 1, 2020.

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January 9, 2020, read first time and referred to Committee on Pensions and Labor.



Digest Continued

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 Abuse and Mental Health Services Administration (SAMHSA); or (2) procedures established by the United States Department of Transportation. Requires a prospective employer to notify the department whenever an individual tests positive for drugs on, or refuses, without good cause, to submit to, a drug test given by or on behalf of the prospective employer as a condition of an offer of employment.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 298



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, 2020]: 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, 2020]: **Sec. 12. (a) As used in this section, "controlled substance"**
 21 **has the meaning set forth in Section 802 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 any of the following applies 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 available only in an occupation:

41 (A) that the United States Department of Labor has
 42 determined by rule is an occupation that regularly



- 1 **conducts drug testing;**
 2 **(B) that is identified in state law as requiring an employee**
 3 **to be tested for a controlled substance; or**
 4 **(C) for which the department has a factual basis for**
 5 **finding that employers hiring employees in the occupation**
 6 **conduct pre- or post-hire drug testing as a standard**
 7 **eligibility requirement for obtaining or maintaining**
 8 **employment in the occupation.**
- 9 **(f) Except as provided in subsection (g), if an individual:**
 10 **(1) takes a drug test required under subsection (e) and the**
 11 **results of the test are positive, indicating the presence of a**
 12 **controlled substance in a biological specimen taken from the**
 13 **individual's body; or**
 14 **(2) refuses to take a drug test required under subsection (e);**
 15 **the individual is ineligible for waiting period or benefit rights for**
 16 **the week in which the positive test results or refusal occurred and**
 17 **until the individual qualifies for waiting period or benefit rights**
 18 **under IC 22-4-15-1(a).**
- 19 **(g) An individual is not subject to disqualification under**
 20 **subsection (f) if the individual:**
 21 **(1) obtained the controlled substance for which the individual**
 22 **tested positive by means of a prescription issued by a**
 23 **practitioner authorized to prescribe the controlled substance;**
 24 **and**
 25 **(2) ingested, injected, or inhaled the controlled substance that**
 26 **was prescribed in accordance with the practitioner's**
 27 **directions.**
- 28 **(h) The department may not require an individual who takes a**
 29 **drug test required under this section to pay any of the costs of the**
 30 **test.**
- 31 **(i) The following are confidential to the extent required by 20**
 32 **CFR 603:**
 33 **(1) The fact that an individual took a drug test required by**
 34 **this section.**
 35 **(2) The results of an individual's drug test required by this**
 36 **section.**
- 37 **(j) The department shall do the following:**
 38 **(1) Ensure that a drug test conducted under this section meets**
 39 **or exceeds:**
 40 **(A) standards of the mandatory guidelines for federal**
 41 **workplace drug testing programs published by the**
 42 **Substance Abuse and Mental Health Services**



1 **Administration of the United States Department of Health**
 2 **and Human Services (SAMHSA); or**

3 **(B) procedures established by the United States**
 4 **Department of Transportation.**

5 **(2) Adopt rules under IC 4-22-2, including emergency rules in**
 6 **the manner provided under IC 4-22-2-37.1, as the department**
 7 **considers necessary to administer this section.**

8 SECTION 3. IC 22-4-15-2, AS AMENDED BY P.L.183-2015,
 9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2020]: Sec. 2. (a) With respect to benefit periods established
 11 on and after July 3, 1977, an individual is ineligible for waiting period
 12 or benefit rights, or extended benefit rights, if the department finds that,
 13 being totally, partially, or part-totally unemployed at the time when the
 14 work offer is effective or when the individual is directed to apply for
 15 work, the individual fails without good cause:

16 (1) to apply for available, suitable work when directed by the
 17 commissioner, the deputy, or an authorized representative of the
 18 department of workforce development or the United States
 19 training and employment service;

20 (2) to accept, at any time after the individual is notified of a
 21 separation, suitable work when found for and offered to the
 22 individual by the commissioner, the deputy, or an authorized
 23 representative of the department of workforce development or the
 24 United States training and employment service, or an employment
 25 unit; or

26 (3) to return to the individual's customary self-employment when
 27 directed by the commissioner or the deputy.

28 (b) With respect to benefit periods established on and after July 6,
 29 1980, the ineligibility shall continue for the week in which the failure
 30 occurs and until the individual earns:

31 (1) remuneration in employment in at least each of eight (8)
 32 weeks; and

33 (2) remuneration equal to or exceeding the product of the
 34 individual's weekly benefit amount multiplied by eight (8).

35 If the qualification amount has not been earned at the expiration of an
 36 individual's benefit period, the unearned amount shall be carried
 37 forward to an extended benefit period or to the benefit period of a
 38 subsequent claim.

39 (c) With respect to extended benefit periods established on and after
 40 July 5, 1981, the ineligibility shall continue for the week in which the
 41 failure occurs and until the individual earns remuneration in
 42 employment equal to or exceeding the weekly benefit amount of the



1 individual's claim in each of four (4) weeks.

2 (d) If an individual failed to apply for or accept suitable work as
3 outlined in this section, the maximum benefit amount of the
4 individual's current claim, as initially determined, shall be reduced by
5 an amount determined as follows:

6 (1) For the first failure to apply for or accept suitable work, the
7 maximum benefit amount of the individual's current claim is
8 equal to the result of:

9 (A) the maximum benefit amount of the individual's current
10 claim, as initially determined; multiplied by

11 (B) seventy-five percent (75%);
12 rounded (if not already a multiple of one dollar (\$1)) to the next
13 higher dollar.

14 (2) For the second failure to apply for or accept suitable work, the
15 maximum benefit amount of the individual's current claim is
16 equal to the result of:

17 (A) the maximum benefit amount of the individual's current
18 claim determined under subdivision (1); multiplied by

19 (B) eighty-five percent (85%);
20 rounded (if not already a multiple of one dollar (\$1)) to the next
21 higher dollar.

22 (3) For the third and any subsequent failure to apply for or accept
23 suitable work, the maximum benefit amount of the individual's
24 current claim is equal to the result of:

25 (A) the maximum benefit amount of the individual's current
26 claim determined under subdivision (2); multiplied by

27 (B) ninety percent (90%);
28 rounded (if not already a multiple of one dollar (\$1)) to the next
29 higher dollar.

30 (e) In determining whether or not any such work is suitable for an
31 individual, the department shall consider:

32 (1) the degree of risk involved to such individual's health, safety,
33 and morals;

34 (2) the individual's physical fitness and prior training and
35 experience;

36 (3) the individual's length of unemployment and prospects for
37 securing local work in the individual's customary occupation; and

38 (4) the distance of the available work from the individual's
39 residence.

40 However, work under substantially the same terms and conditions
41 under which the individual was employed by a base-period employer,
42 which is within the individual's prior training and experience and



1 physical capacity to perform, shall be considered to be suitable work
2 unless the claimant has made a bona fide change in residence which
3 makes such offered work unsuitable to the individual because of the
4 distance involved. During the fifth through the eighth consecutive week
5 of claiming benefits, work is not considered unsuitable solely because
6 the work pays not less than ninety percent (90%) of the individual's
7 prior weekly wage. After eight (8) consecutive weeks of claiming
8 benefits, work is not considered unsuitable solely because the work
9 pays not less than eighty percent (80%) of the individual's prior weekly
10 wage. However, work is not considered suitable under this section if
11 the work pays less than Indiana's minimum wage as determined under
12 IC 22-2-2. For an individual who is subject to section 1(c)(8) of this
13 chapter, the determination of suitable work for the individual must
14 reasonably accommodate the individual's need to address the physical,
15 psychological, legal, and other effects of domestic or family violence.

16 (f) Notwithstanding any other provisions of this article, no work
17 shall be considered suitable and benefits shall not be denied under this
18 article to any otherwise eligible individual for refusing to accept new
19 work under any of the following conditions:

20 (1) If the position offered is vacant due directly to a strike,
21 lockout, or other labor dispute.

22 (2) If the remuneration, hours, or other conditions of the work
23 offered are substantially less favorable to the individual than
24 those prevailing for similar work in the locality.

25 (3) If as a condition of being employed the individual would be
26 required to join a company union or to resign from or refrain from
27 joining a bona fide labor organization.

28 (4) If as a condition of being employed the individual would be
29 required to discontinue training into which the individual had
30 entered with the approval of the department.

31 (g) Notwithstanding subsection (e), with respect to extended benefit
32 periods established on and after July 5, 1981, "suitable work" means
33 any work which is within an individual's capabilities. However, if the
34 individual furnishes evidence satisfactory to the department that the
35 individual's prospects for obtaining work in the individual's customary
36 occupation within a reasonably short period are good, the
37 determination of whether any work is suitable work shall be made as
38 provided in subsection (e).

39 (h) With respect to extended benefit periods established on and after
40 July 5, 1981, no work shall be considered suitable and extended
41 benefits shall not be denied under this article to any otherwise eligible
42 individual for refusing to accept new work under any of the following



- 1 conditions:
- 2 (1) If the gross average weekly remuneration payable to the
- 3 individual for the position would not exceed the sum of:
- 4 (A) the individual's average weekly benefit amount for the
- 5 individual's benefit year; plus
- 6 (B) the amount (if any) of supplemental unemployment
- 7 compensation benefits (as defined in Section 501(c)(17)(D) of
- 8 the Internal Revenue Code) payable to the individual for such
- 9 week.
- 10 (2) If the position was not offered to the individual in writing or
- 11 was not listed with the department of workforce development.
- 12 (3) If such failure would not result in a denial of compensation
- 13 under the provisions of this article to the extent that such
- 14 provisions are not inconsistent with the applicable federal law.
- 15 (4) If the position pays wages less than the higher of:
- 16 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
- 17 Fair Labor Standards Act of 1938), without regard to any
- 18 exemption; or
- 19 (B) the state minimum wage (IC 22-2-2).
- 20 (i) The department of workforce development shall refer individuals
- 21 eligible for extended benefits to any suitable work (as defined in
- 22 subsection (g)) to which subsection (h) would not apply.
- 23 (j) An individual is considered to have refused an offer of suitable
- 24 work under subsection (a) if an offer of work is withdrawn by an
- 25 employer after an individual:
- 26 (1) tests positive for drugs after a drug test given on behalf of the
- 27 prospective employer as a condition of an offer of employment;
- 28 or
- 29 (2) refuses, without good cause, to submit to a drug test required
- 30 by the prospective employer as a condition of an offer of
- 31 employment.
- 32 **An employer shall notify the department on a form prescribed by**
- 33 **the department that the individual tested positive for drugs on, or**
- 34 **refused, without good cause, to submit to, a drug test.**
- 35 (k) The department's records concerning the results of a drug test
- 36 described in subsection (j) may not be admitted against a defendant in
- 37 a criminal proceeding.
- 38 SECTION 4. IC 22-4-17-1, AS AMENDED BY P.L.175-2009,
- 39 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 40 JULY 1, 2020]: Sec. 1. (a) Claims for benefits shall be made in
- 41 accordance with rules adopted by the department. The department shall
- 42 adopt reasonable procedures consistent with the provisions of this



1 article for the expediting of the taking of claims of individuals for
 2 benefits in instances of mass layoffs by employers, the purpose of
 3 which shall be to minimize the amount of time required for such
 4 individuals to file claims upon becoming unemployed as the result of
 5 such mass layoffs. **If required as a condition of an individual's**
 6 **initial eligibility for benefits, an individual filing an initial claim**
 7 **shall undergo a drug test in accordance with IC 22-4-14-12.**

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

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

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

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

26 SECTION 5. IC 22-4-17-2, AS AMENDED BY P.L.122-2019,
 27 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2020]: Sec. 2. (a) When an individual files an initial claim
 29 **and, if required as a condition of the individual's initial eligibility**
 30 **for benefits by IC 22-4-14-12, passes a drug test,** the department
 31 shall promptly make a determination of the individual's status as an
 32 insured worker. A notice of the determination of insured status shall be
 33 furnished to the individual promptly. Each determination shall be based
 34 on and include a statement showing the amount of wages paid to the
 35 individual for insured work by each employer during the individual's
 36 base period and shall include a finding as to whether the wages meet
 37 the requirements for the individual to be an insured worker, and, if so,
 38 the week ending date of the first week of the individual's benefit period,
 39 the individual's weekly benefit amount, and the maximum amount of
 40 benefits that may be paid to the individual for weeks of unemployment
 41 in the individual's benefit period. For the individual who is not insured,
 42 the notice shall include the reason for the determination. Unless the



1 individual, within ten (10) days after the determination was sent by the
2 department to the individual, asks for a hearing before an
3 administrative law judge, the determination shall be final and benefits
4 shall be paid or denied in accordance with the determination.

5 (b) The department shall promptly furnish each employer in the base
6 period whose experience or reimbursable account is potentially
7 chargeable with benefits to be paid to the individual with a notice of
8 the employer's benefit liability. The notice shall contain the date, the
9 name and Social Security account number of the individual, the ending
10 date of the individual's base period, and the week ending date of the
11 first week of the individual's benefit period. The notice shall further
12 contain information as to the proportion of benefits chargeable to the
13 employer's experience or reimbursable account in ratio to the earnings
14 of the individual from the employer. Unless the employer within ten
15 (10) days after the notice of benefit liability was sent by the department
16 to the employer, asks for a hearing before an administrative law judge,
17 the determination shall be final and benefits paid shall be charged in
18 accordance with the determination.

19 (c) An employing unit, including an employer, having knowledge
20 of any facts which may affect an individual's eligibility or right to
21 waiting period credits or benefits, shall notify the department in the
22 form and manner prescribed by the department of those facts within ten
23 (10) days after the claim for benefits was sent by the department.

24 (d) In addition to the foregoing determination of insured status by
25 the department, the deputy shall, throughout the benefit period,
26 determine the claimant's eligibility with respect to each week for which
27 the claimant claims waiting period credit or benefit rights, the validity
28 of the claimant's claim, and the cause for which the claimant left the
29 claimant's work, or may refer the claim to an administrative law judge
30 who shall make the initial determination in accordance with the
31 procedure in section 3 of this chapter.

32 (e) In cases where the claimant's benefit eligibility or
33 disqualification is disputed, the department shall promptly notify the
34 claimant and the employer or employers directly involved or connected
35 with the issue raised as to the validity of the claim, the eligibility of the
36 claimant for waiting period credit or benefits, or the imposition of a
37 disqualification period or penalty, or the denial of the claim, and of the
38 cause for which the claimant left the claimant's work, of the
39 determination and the reasons for the determination.

40 (f) Except as otherwise provided in this section regarding parties
41 located in Alaska, Hawaii, and Puerto Rico, unless the claimant or the
42 employer, within ten (10) days after the notification required by



1 subsection (e), was sent by the department to the claimant or the
2 employer, asks for a hearing before an administrative law judge, the
3 decision shall be final and benefits shall be paid or denied in
4 accordance with the decision.

5 (g) For a notice of disputed administrative determination or decision
6 sent by the department to the claimant or employer either of whom is
7 located in Alaska, Hawaii, or Puerto Rico, unless the claimant or
8 employer, within fifteen (15) days after the notification required by
9 subsection (e) was sent to the claimant or employer, asks for a hearing
10 before an administrative law judge, the decision shall be final and
11 benefits shall be paid or denied in accordance with the decision.

12 (h) If a claimant or an employer requests a hearing under subsection
13 (f) or (g), the request shall be filed with the department within the
14 prescribed periods provided in this section and shall be in the form and
15 manner prescribed by the department. In the event a hearing is
16 requested by an employer or the department after it has been
17 administratively determined that benefits should be allowed to a
18 claimant, entitled benefits shall continue to be paid to the claimant
19 unless the administrative determination has been reversed by a due
20 process hearing. Benefits with respect to any week not in dispute shall
21 be paid promptly regardless of any appeal.

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

24 (j) Solely on the ground of obvious administrative error appearing
25 on the face of an original determination, and within the benefit year of
26 the affected claims, the commissioner, or a representative authorized
27 by the commissioner to act in the commissioner's behalf, may
28 reconsider and direct the deputy to revise the original determination so
29 as to correct the obvious error. Time for filing an appeal and requesting
30 a hearing before an administrative law judge regarding the
31 determinations handed down pursuant to this subsection shall begin on
32 the date following the date of revision of the original determination and
33 shall be filed with the commissioner in the form and manner prescribed
34 by the department within the prescribed periods provided in subsection
35 (c).

36 (k) Notice to the employer and the claimant that the determination
37 of the department is final if a hearing is not requested shall be
38 prominently displayed on the notice of the determination which is sent
39 to the employer and the claimant.

40 (l) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made
41 by the individual at the time of the claim for benefits, the department
42 shall not notify the employer of the claimant's current address or



1 physical location.

