



MIKE ROHRKASTE

STATE REPRESENTATIVE • 55TH ASSEMBLY DISTRICT

Assembly Bill 192

Testimony of State Representative Mike Rohrkaste
Assembly Committee on Public Benefit Reform
April 30, 2015

Thank you, Chair Born, and members of the Committee on Public Benefit Reform for holding this public hearing.

Assembly Bill 192, like Assembly Bill 191, is similar to legislation that has already been presented in Governor Walker's budget. I have added more structure to the process than what is seen in the governor's budget, which I believe enhances this legislation.

The purpose of Assembly Bill 192 is to provide those receiving unemployment benefits with the help they need to succeed in the workforce. Far too often, job opportunities remain vacant and positions go unfilled because potential employees are not able to pass a drug test. With thousands of job openings around the state of Wisconsin, this bill allows us to identify individuals who may be suffering from substance abuse and helps them receive state-sponsored treatment, putting them on a path to employment.

Assembly Bill 192 would require the Department of Workforce Development to develop a program for screening applicants for Unemployment Insurance benefits, as allowable under federal law, for illegal drug use. More importantly, Assembly Bill 192 requires the development of a program to ensure that those who test positive for unlawful drug use are provided, at the expense of the state, the treatment that they need to be drug free and thus eligible for work in a suitable prospective occupation.

UI applicants, for whom suitable work is only available in occupations that regularly screen their employers for substance abuse, would be subject to a survey developed by DWD. Should the results of this survey provide a reasonable suspicion that the applicant is using unlawful drugs that applicant will be required to submit to a drug test. If the applicant tests positive, they will be required to enter into a drug-treatment program in order to remain eligible for benefits.

This treatment will be entirely paid for by the State through a \$500,000 appropriation that is created in this bill. This portion of the bill was extremely important for me. The purpose of this screening is not to be punitive but to provide help to those who are truly seeking it, and ultimately to take a meaningful step towards getting folks back to work. We want to make sure that those who are looking for work and need help, have access to quality treatment at no expense.



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Ultimately this is not just a jobs bill, but is a way to provide treatment and improve the lives of Wisconsinites in need. These reforms will help give people the resources they need to seek meaningful employment. We need to ensure that we are providing a way for everyone to get ahead and achieve their dreams. Ultimately we want to make sure that in Wisconsin, everyone who wants a job can find a job.

Thank you for your time. I'm happy to answer any questions.



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director

TO: REPRESENTATIVE MIKE ROHRKASTE

FROM: Zach Ramirez, Staff Attorney

RE: Description of Drug Testing and Treatment Provisions for the Unemployment Insurance Program in 2015 Assembly Bill 192; and Comparison With Those Provisions in the 2015-17 Biennial Budget Bill

DATE: April 29, 2015

This memorandum, prepared at your request, describes the drug testing and treatment requirements for the unemployment insurance (UI) program under 2015 Assembly Bill 192, and compares those requirements with the drug testing and treatment provisions for the UI program in 2015 Assembly Bill 21 (the 2015-2017 Biennial Budget Bill; hereinafter "the proposed budget"). The memorandum also describes the federal laws that govern the screening and testing of claimants in the UI program for use of a controlled substance without a valid prescription.

BACKGROUND

Federal Laws Regarding Drug Testing in the UI Program

The Middle Class Tax Relief and Job Creation Act of 2012 authorizes states to enact legislation that would allow state UI agencies to test certain UI applicants for unlawful use of a controlled substance. Specifically, the Act authorizes states to enact legislation requiring an applicant for UI benefits to submit to a test if the applicant was terminated from employment with his or her most recent employer because of unlawful use of a controlled substance. [42 U.S.C. s. 503 (l) (1) (A) (i).]

The Act also authorizes states to enact legislation requiring applicants in certain occupations to submit to a test. Specifically, the Act requires the U.S. Department of Labor to promulgate federal regulations identifying occupations that are regularly subject to testing for use of controlled substances. If the state UI agency determines that "suitable work" is only available for the applicant in one of the identified occupations, then the state UI agency may test the applicant and deny benefits on the basis of the test results. [42 U.S.C. s. 503 (l) (1).] In Wisconsin, the Department of Workforce Development (DWD) determines which occupations

constitute “suitable work” for an applicant based upon the applicant’s training, experience, duration of unemployment, and the availability of jobs in the labor market. [s. DWD 100 (61), Wis. Adm. Code.]

Proposed Federal Regulations Identifying Occupations That are Regularly Subject to Testing

In October 2014, the U.S. Department of Labor published proposed regulations interpreting the Act and implementing its provisions. [Federal Register, Vol. 79, No. 196, 61013.] The proposed regulations state that, because the Act applies to “applicants,” testing is permitted only for an individual who files an initial claim for UI benefits, and is not permitted for an individual filing a continued claim for UI benefits. Additionally, the proposed regulations indicate that federal funds will be withheld from any state that implements a testing program that does not comply with the requirements of the Act and the regulations.

The proposed regulations identify occupations that are considered to be regularly subject to testing, including:

- Occupations that require an employee to carry a firearm.
- Aviation flight crew members and traffic controllers.
- Commercial drivers.
- Railroad operating crew members.
- Public transportation operators.
- Pipeline operation and maintenance crew members.
- Crew members and maritime credential holders on a commercial vessel.
- Any occupations specifically identified as requiring an employee to be tested for controlled substances in a state law that took effect no later than October 9, 2014.

As of April 20, 2015, final federal regulations had not been issued.

Comments Submitted by Wisconsin in Response to the Proposed Federal Regulations

In December 2014, Governor Walker and DWD submitted comments to the U.S. Department of Labor regarding the proposed regulations. The comments expressed concern that the proposed regulations will prohibit DWD from testing applicants in several occupations that are regularly subject to drug testing in Wisconsin. This is because the occupations are not included in the list created by the U.S. Department of Labor and Wisconsin did not have laws in effect by October 9, 2014, that specifically require employees in those occupations to be tested for controlled substances. The Governor’s comments requested that the U.S. Department of Labor expand the list of occupations regularly subject to drug testing.

COMPARISON OF 2015 ASSEMBLY BILL 192 TO THE PROPOSED BUDGET

2015 Assembly Bill 192

The bill contains several requirements regarding screening and testing UI claimants for use of a controlled substance without a valid prescription, and it authorizes the DWD secretary to waive compliance with any of the requirements if the secretary determines that waiving the requirement is necessary in order to permit Wisconsin to continue to receive federal funding for the UI program.

First, the bill requires DWD to screen claimants for whom suitable work is only available in one of the occupations identified by the U.S. Department of Labor, as described above. If the results of a screening indicate that there is a reasonable suspicion that a claimant has engaged in the unlawful use of a controlled substance, DWD must require the claimant to submit to a test for the use of a controlled substance.

Second, the bill requires DWD to promulgate rules identifying occupations for which drug testing is regularly conducted in Wisconsin, which may include occupations not identified by the U.S. Department of Labor. The bill requires DWD to include occupations that:

- Regularly involve work with or around children.
- Regularly require the operation of a motorized vehicle.
- Are in the field of construction.
- Require the operation of heavy machinery.
- Require a person to regularly carry a firearm.
- Are occupations for which more than 50% of employers in a survey to be conducted every 10 years by DWD report requiring drug testing as a condition of obtaining or continuing employment.

Under the bill, claimants for whom suitable work is only available in one of the occupations identified by DWD are subject to the same screening and testing requirements as claimants for whom suitable work is only available in one of the occupations identified by the U.S. Department of Labor. If the results of a screen indicate that there is a reasonable suspicion that a claimant has engaged in the unlawful use of a controlled substance, DWD must require the claimant to submit to a test for the use of a controlled substance.

The bill provides that, if a claimant declines to submit to a test for use of a controlled substance, the claimant is ineligible for UI benefits for 52 weeks or until he or she files a subsequent claim for benefits, whichever is later.

If a claimant tests positive for one or more controlled substances without a valid prescription, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim

for benefits, whichever is later, unless he or she enrolls in a state-sponsored substance abuse treatment program and undergoes a state-sponsored jobs skills assessment.

Third, the bill allows an employer, if it chooses, to submit to DWD the results of a drug test that was conducted on an individual as preemployment screening or notify DWD that an individual declined to submit to such a test. If an individual tests positive for one or more controlled substances without a valid prescription, or if the individual declines to submit to such a test, the bill provides that there is a presumption that the claimant has failed to accept suitable work when offered. DWD must promulgate rules specifying how the presumption may be rebutted. If the presumption is not rebutted, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for benefits, whichever is later, unless he or she enrolls in a state-sponsored substance abuse treatment program and undergoes a state-sponsored job skills assessment.

Lastly, under the bill, if a claimant continues to receive benefits after testing positive for the unlawful use of a controlled substance, the employment reserve fund is charged for those benefits, rather than an employer who had been responsible for the person's benefits.

The Proposed Budget's Provisions Regarding Drug Testing in the UI Program

The proposed budget contains many of the same provisions as the bill, including requirements for DWD to screen claimants for whom suitable work is only available in one of the occupations identified by the U.S. Department of Labor, to test claimants based on the results of a screening, and to waive compliance with any provision if the DWD secretary determines that doing so is necessary to permit Wisconsin to continue to receive federal funding for the UI program. The proposed budget and the bill provide the same consequences for claimants who refuse to submit to a test or who test positive for use of a controlled substance. The proposed budget and the bill also contain the same provisions authorizing employers to voluntarily submit to DWD the results of a drug test.

The proposed budget and the bill differ with regard to three provisions. First, although the proposed budget and the bill both require DWD to promulgate rules identifying occupations in Wisconsin that are regularly subject to drug testing, they differ with regard to what DWD must include in the rules. The bill includes the additional requirement, not found in the budget, that DWD must include certain types of occupations and it requires DWD to survey Wisconsin employers and include in its rules occupations for which a majority of surveyed employers reported requiring drug testing of employees.

Second, the bill and the proposed budget differ with regard to how screening results are used to determine whether a claimant must be tested for use of a controlled substance. The bill specifies that a claimant must be tested if the screening results indicate a reasonable suspicion that a claimant has engaged in the unlawful use of a controlled substance; whereas, the proposed budget requires a claimant to be tested if the screening results indicate that "the claimant should be required to submit to a test for the presence of controlled substances."

Third, the bill and the proposed budget differ with regard to the circumstances in which the employment reserve fund is charged when a claimant continues to receive benefits after testing positive for the unlawful use of a controlled substance. The proposed budget requires the fund to be charged only in the circumstance of a drug test conducted on an individual by an employer as preemployment screening.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

ZR:ksm

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**Assembly Committee on Public Benefit Reform
Provided by Secretary Reggie Newson, Assembly Bill 192
April 30, 2015**

Chairperson Born and members of the Assembly Committee on Public Benefit Reform, I wish to offer my support to Assembly Bill 192 relating to drug testing certain individuals who apply for unemployment insurance benefits.

With the support of the legislature over the last two years, the state of Wisconsin has invested more than \$135 million in training efforts for state workers. Additionally, through common sense entitlement reforms passed last session, our state's Unemployment Insurance Trust Fund reached positive territory late last year; cutting WI employers federal UI taxes by 60%. This was following a \$1.4 billion deficit in the Unemployment Trust Fund since January 2011. In addition, Wisconsin's unemployment rate in March fell to 4.6%, the lowest since June 2008, and well below the national average of 5.5%.

With these investments and reforms in place and building from a strengthened economic base, the State must look to continue this success. Unfortunately, substance abuse and addiction can be a barrier to an individual seeking employment. If an individual in the Unemployment Insurance program cannot pass a drug test, their ability to transition to independence and employment is hindered. Congress and President Obama recognized this barrier when they passed, in a bipartisan fashion, Public Law 112-96, giving states the ability to drug test certain individuals applying for Unemployment Insurance benefits.

I hear time and again from employers who say they have a potential employee, only to have them fail a drug test. Drug testing is a common-sense measure to ensure those who collect unemployment benefits are ready and able to work.

Assembly Bill 192 would require the Department of Workforce Development to administer drug testing for certain individuals whose only suitable employment is in an occupation that regularly conducts drug testing as determined by the Federal Government and a survey of Wisconsin employers. In addition, there would need to be a reasonable suspicion that the individual would engage in the unlawful use of an illegal substance before testing. At this point, if an individual cannot pass a drug test, they would have the option to enroll in a substance abuse treatment program and job skills assessment.

I view this bill as a measure to promote workforce readiness, not to punish or push individuals off benefits. The proposal will reinforce the intent of unemployment benefits as a temporary safety net while helping people address barriers that keep them from being work ready. Programs that develop talent and promote work readiness are tied to economic development. When a robust pool of qualified and work-ready applicants exist, employers are willing to hire, expand, and relocate in Wisconsin.

Thank you again committee members for this opportunity to offer my support of AB 192.



Wisconsin

Memorandum

TO: Members of the Assembly Committee on Public Benefit Reform
FROM: Bill G. Smith, State Director
DATE: April 30, 2015
RE: Assembly Bill 192

Regretfully, I am unable to attend today's public hearing for Assembly Bill 192.

In recent years, several states have considered proposals that establish drug testing as a criteria to determine eligibility for unemployment insurance benefits. Small business employers support this requirement because they feel drug addiction interferes with the "ready and willing" criteria currently necessary to qualify for UI benefits. Small business owners believe workplace safety is compromised by employees who attempt to perform their job responsibilities while under the influence of drugs. These individuals would benefit from a drug testing requirement because it would help encourage them to seek appropriate treatment and move from government dependence to independence.

This legislation has the overwhelming support of Wisconsin's small business community based on recent survey study results that show **87 percent of small business employers favor legislation that would require passing a drug test to be eligible to receive unemployment insurance benefits.**

Therefore, on behalf of small and independent business, I respectfully **urge your support to recommend Assembly Bill 192 for passage.**

Thank you for your consideration.



Wisconsin Independent Businesses Inc.
The voice of independent business in state government

April 30, 2015

**TO: Members
Assembly Committee on Public Benefit Reform**

**FR: Brian Dake
Legislative Director
Wisconsin Independent Businesses**

RE: 2015 Assembly Bill (AB) 192 relating to requiring certain unemployment insurance claimants to submit to drug tests for unemployment insurance benefits following a drug test, granting rule-making authority, and making an appropriation

Chairman Born and committee members, thank you for the opportunity to testify in support of 2015 Assembly Bill 192.

By way of background, Wisconsin Independent Businesses was formed nearly forty years ago to provide small, independent businesses with a voice in the legislative and administrative activities of state government. We have more than 4,000 members – the vast majority of whom own and operate businesses with fewer than 25 employees and/or annual gross revenues of less than \$5 million.

While I will defer to the bill's author and Legislative Council on the specifics of this legislation, I want to provide you with facts, commentary and perspective which speak to the merits of this legislation.

1. The Unemployment Insurance (UI) program is financed solely through employer contributions (taxes). The UI program is not operated as a part of the Federal Social Security system, the state Worker's Compensation program or any federal or state welfare program.

UI benefits should not be used to directly or indirectly subsidize the illegal drug use or abuse of an unemployed worker.

2. Unemployment Insurance (UI) laws are intended to provide a source of income to those temporarily unemployed through no fault of their own. To be eligible for UI benefits, a UI claimant must be able and available for work.

An unemployed worker who is using or addicted to drugs is not able to carry out even the most basic job-related duties.

3. According to the National Council on Alcoholism and Drug Dependence:
 - a) Drug abuse costs employers \$81 billion annually; and
 - b) 70% of the estimated 14.8 million Americans who use illegal drugs are employed.

Drug abuse in the workplace is a serious problem. Small employers have a duty and responsibility to operate a safe workplace for their employees, customers and clients. A worker under the influence of drugs while on the job is inherently dangerous to the safe operation of the business.

2015 Assembly Bill (AB) 192 is very similar to legislative proposals being discussed and debated in more than two dozen states. The bill recognizes that drug and alcohol abuse is a barrier to gainful employment. Individuals who are struggling with drug addiction need treatment. Drug testing of UI claimants is a proactive measure to identify individuals in need of treatment for their addiction. With successful treatment, these individuals are then able to seek and obtain gainful employment.