



SUN 1/25

State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0958/~~12~~ P3
MED:cjs:rs

Stays

DOA:.....Kirschbaum, BB0308 - Drug Testing for UI

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

Head
EMPLOYMENT
do NOT gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 15, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to submit to a drug test claimants who apply for regular UI benefits. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must request that the claimant submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits until the claimant submits to the test or until

a subsequent claim for benefits; if the claimant submits to the drug test, but does not test positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits until a subsequent claim for benefits, except as follows:

Following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains temporarily eligible for benefits while the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment. After a period of time determined by DWD, DWD must request the claimant to submit to a second drug test. If the claimant does not test positive on the second test without a valid prescription, the claimant may receive UI benefits with no further testing. If the claimant declines to submit to a second test or if the claimant again tests positive without a valid prescription, the claimant is ineligible to receive benefits until 52 weeks have elapsed or the claimant successfully completes the treatment program and job skills assessment and takes a third drug test. The bill provides that if the claimant submits to a third test and again tests positive without a valid prescription, the claimant is simply ineligible to receive UI benefits for 52 weeks.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits as if the claimant had tested positive in a drug test conducted by DWD, beginning with the week in which DWD receives the report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.445 (1) (ak) of the statutes is created to read:
2 20.445 (1) (ak) *Unemployment insurance administration; substance abuse*
3 *treatment.* As a continuing appropriation, the amounts in the schedule to provide

le Biennially

1 substance abuse treatment to claimants for unemployment insurance under s.
2 108.133 (2) (c).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

3 SECTION 2. 20.445 (1) (aL) of the statutes is created to read:

4 20.445 (1) (aL) *Unemployment insurance administration; controlled*
5 *substances testing.* As a continuing appropriation, the amounts in the schedule to
6 conduct testing for controlled substances and for related expenses under s. 108.133,
7 other than providing substance abuse treatment under s. 108.133 (2) (c).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

8 SECTION 3. 108.133 of the statutes is created to read:

9 108.133 **Testing for controlled substances.** (1) DEFINITIONS. In this
10 section:

11 (a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning
12 given in 21 USC 802.

13 (b) "Job skills assessment" means an assessment conducted under s. 108.04
14 (15) (a) 1.

15 (c) "Occupation that regularly conducts drug testing" means an occupation
16 identified in the regulations issued by the federal secretary of labor under 42 USC
17 503 (l) (1) (A) (ii).

18 (d) "Screening" means the screening process created by the department under
19 sub. (2) (a) 4.

20 (e) "Substance abuse treatment program" means the program provided by the
21 department under sub. (2) (c).

1 (f) "Valid prescription" means a prescription, as defined in s. 450.01 (19), for a
2 controlled substance for which the supply of the controlled substance indicated by
3 the prescription has not run out.

4 (2) DRUG TESTING PROGRAM. The department shall establish a program to test
5 claimants who apply for regular benefits under this chapter for the presence of
6 controlled substances in accordance with this section and shall, under the program,
7 do all of the following:

8 (a) Promulgate rules to establish the program. The department shall do all of
9 the following in the rules promulgated under this paragraph:

10 1. Identify occupations for which drug testing is regularly conducted in this
11 state.

12 2. Establish a process to test claimants for the presence of controlled
13 substances. In establishing the process, the department shall adhere to any
14 applicable federal requirements regarding drug testing.

15 3. Identify the parameters for a substance abuse treatment program for
16 claimants who misuse controlled substances, which shall specify what criteria a
17 claimant must satisfy in order to have successfully completed the substance abuse
18 treatment program.

19 4. Create a screening process for determining whether a claimant should be
20 required to submit to a test for the presence of controlled substances.

21 5. Specify what criteria a claimant must satisfy in order to have successfully
22 completed a job skills assessment.

23 (b) When a claimant applies for regular benefits under this chapter, do all of
24 the following:

1 1. Determine whether the claimant is an individual for whom suitable work is
2 only available in an occupation that regularly conducts drug testing.

3 2. Determine whether the claimant is an individual for whom suitable work is
4 only available in an occupation identified in the rules promulgated under par. (a) 1.

5 3. If the claimant is determined by the department under subd. 1. to be an
6 individual for whom suitable work is only available in an occupation that regularly
7 conducts drug testing, conduct a screening on the claimant.

8 4. If the claimant is determined by the department under subd. 2. to be an
9 individual for whom suitable work is only available in an occupation identified in the
10 rules promulgated under par. (a) 1., conduct a screening on the claimant if a
11 screening is not already required under subd. 3.

12 5. If a screening conducted as required under subd. 3. or 4. indicates that the
13 claimant should be required to submit to a test for the presence of controlled
14 substances, request that the claimant submit to such a test.

15 (c) Create and provide a substance abuse treatment program in accordance
16 with the rules promulgated under par. (a) 3.

17 **(3) DRUG TESTING.** (a) If a claimant is requested under sub. (2) (b) 5. to submit
18 to a test for the presence of controlled substances and the claimant declines to submit
19 to such a test, the claimant is ineligible for benefits under this chapter until the
20 claimant qualifies for benefits in a subsequent benefit year.

21 (b) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
22 presence of controlled substances submits to the test and does not test positive for
23 any controlled substance or the claimant presents evidence satisfactory to the
24 department that the claimant possesses a valid prescription for each controlled
25 substance for which the claimant tests positive, the claimant may receive benefits

1 under this chapter if otherwise eligible and may not be required to submit to any
2 further test for the presence of controlled substances until a subsequent benefit year.

3 (c) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
4 presence of controlled substances tests positive for one or more controlled substances
5 without presenting evidence satisfactory to the department that the claimant
6 possesses a valid prescription for each controlled substance for which the claimant
7 tested positive, the claimant is ineligible for benefits under this chapter until the
8 claimant qualifies for benefits in a subsequent benefit year, except as provided in
9 sub. (4).

10 (4) CLAIMANTS WITH POSITIVE DRUG TESTS. If a claimant tests positive for one or
11 more controlled substances without presenting evidence of a valid prescription as
12 provided under sub. (3) (c), all of the following apply:

13 (a) Following the positive test, the claimant may maintain his or her eligibility
14 for benefits under this chapter if the claimant enrolls in the substance abuse
15 treatment program and undergoes a job skills assessment. Subject to pars. (b) and
16 (c), the claimant remains eligible for benefits under this chapter, if otherwise eligible,
17 while the claimant is in full compliance with any requirements of the substance
18 abuse treatment program and job skills assessment.

19 (b) After a period of time determined by the department in the rules
20 promulgated under sub. (2) (a), the department shall request a claimant who has
21 remained eligible for benefits under par. (a) to submit to a 2nd test for the presence
22 of controlled substances. If the claimant does not test positive for any controlled
23 substance without presenting evidence satisfactory to the department of a valid
24 prescription, the claimant may receive benefits under this chapter if otherwise
25 eligible and may not be required to submit to any further test for the presence of

1 controlled substances until a subsequent benefit year. If the claimant declines to
2 submit to a test under this paragraph or if the claimant again tests positive for one
3 or more controlled substances without presenting evidence of a valid prescription,
4 the claimant is ineligible to receive benefits until whichever of the following occurs
5 first:

6 1. Fifty-two weeks have elapsed since the claimant declined to submit to the
7 2nd test or tested positive at that 2nd test.

8 2. The claimant provides the department with evidence of successfully
9 completing the substance abuse treatment program and job skills assessment and
10 submits to a 3rd test for the presence of controlled substances and does not test
11 positive for any controlled substance without presenting evidence of a valid
12 prescription.

13 (c) If a claimant, upon submitting to a 3rd test for the presence of controlled
14 substances under par. (b) 2., again tests positive for one or more controlled
15 substances without presenting evidence satisfactory to the department of a valid
16 prescription, the claimant is ineligible to receive UI benefits until 52 weeks have
17 elapsed since the claimant tested positive at that 3rd test. *along with information necessary*

18 (5) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may voluntarily
19 submit to the department the results of a test for the presence of controlled
20 substances that was conducted on an individual as preemployment screening. The
21 department shall retain the information received from employing units under this
22 paragraph for the purpose of determining eligibility for benefits. If the results of the
23 test indicate that the individual has tested positive for one or more controlled
24 substances without evidence of a valid prescription, the individual is ineligible for
25 benefits under this chapter, subject to par. (b), as if the individual had tested positive

*to identify
the
individual*

1 under sub. (3) (c), beginning with the week in which the department receives a report
2 of the individual's positive test under this paragraph.

3 (b) An individual is not ineligible for benefits under par. (a) unless the
4 individual was afforded the opportunity to request that the specimen be sent to a
5 different testing facility for an additional test. This paragraph does not require an
6 employing unit or the department to pay the costs of any additional test.

7 **SECTION 9351. Initial applicability; Workforce Development.**

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8 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of section 108.133
9 (2) (b) and (c), (3), (4), and (5) of the statutes first applies to determinations issued
10 under section 108.09 of the statutes on the effective date of this subsection.

11 **SECTION 9451. Effective dates; Workforce Development.**

12 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of section 108.133
13 (2) (b) and (c), (3), (4), and (5) of the statutes takes effect ^{on} the first Sunday of the 7th
14 month beginning after publication.

15 (END)

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of this act take



State of Wisconsin
2015 - 2016 LEGISLATURE

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EMPLOYMENT

Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 15, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to submit to a drug test claimants who apply for regular UI benefits. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must request that the claimant submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits until the claimant submits to the test or until

a subsequent claim for benefits; if the claimant submits to the drug test, but does not test positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits until a subsequent claim for benefits, except as follows:

Following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains temporarily eligible for benefits while the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment. After a period of time determined by DWD, DWD must request the claimant to submit to a second drug test. If the claimant does not test positive on the second test without a valid prescription, the claimant may receive UI benefits with no further testing. If the claimant declines to submit to a second test or if the claimant again tests positive without a valid prescription, the claimant is ineligible to receive benefits until 52 weeks have elapsed or the claimant successfully completes the treatment program and job skills assessment and takes a third drug test. The bill provides that if the claimant submits to a third test and again tests positive without a valid prescription, the claimant is simply ineligible to receive UI benefits for 52 weeks.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits as if the claimant had tested positive in a drug test conducted by DWD, beginning with the week in which DWD receives the report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (ak) of the statutes is created to read:

1 20.445 (1) (ak) *Unemployment insurance administration; substance abuse*
2 *treatment.* Biennially, the amounts in the schedule to provide substance abuse
3 treatment to claimants for unemployment insurance under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 2.** 20.445 (1) (aL) of the statutes is created to read:

5 20.445 (1) (aL) *Unemployment insurance administration; controlled*
6 *substances testing.* Biennially, the amounts in the schedule to conduct testing for
7 controlled substances and for related expenses under s. 108.133, other than
8 providing substance abuse treatment under s. 108.133 (2) (c).

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14 (b) “Job skills assessment” means an assessment conducted under s. 108.04
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17 identified in the regulations issued by the federal secretary of labor under 42 USC
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19 (d) “Screening” means the screening process created by the department under
20 sub. (2) (a) 4.

21 (e) “Substance abuse treatment program” means the program provided by the
22 department under sub. (2) (c).

1 (f) “Valid prescription” means a prescription, as defined in s. 450.01 (19), for a
2 controlled substance for which the supply of the controlled substance indicated by
3 the prescription has not run out.

4 (2) DRUG TESTING PROGRAM. The department shall establish a program to test
5 claimants who apply for regular benefits under this chapter for the presence of
6 controlled substances in accordance with this section and shall, under the program,
7 do all of the following:

8 (a) Promulgate rules to establish the program. The department shall do all of
9 the following in the rules promulgated under this paragraph:

10 1. Identify occupations for which drug testing is regularly conducted in this
11 state.

12 2. Establish a process to test claimants for the presence of controlled
13 substances. In establishing the process, the department shall adhere to any
14 applicable federal requirements regarding drug testing.

15 3. Identify the parameters for a substance abuse treatment program for
16 claimants who misuse controlled substances, which shall specify what criteria a
17 claimant must satisfy in order to have successfully completed the substance abuse
18 treatment program.

19 4. Create a screening process for determining whether a claimant should be
20 required to submit to a test for the presence of controlled substances.

21 5. Specify what criteria a claimant must satisfy in order to have successfully
22 completed a job skills assessment.

23 (b) When a claimant applies for regular benefits under this chapter, do all of
24 the following:

1 1. Determine whether the claimant is an individual for whom suitable work is
2 only available in an occupation that regularly conducts drug testing.

3 2. Determine whether the claimant is an individual for whom suitable work is
4 only available in an occupation identified in the rules promulgated under par. (a) 1.

5 3. If the claimant is determined by the department under subd. 1. to be an
6 individual for whom suitable work is only available in an occupation that regularly
7 conducts drug testing, conduct a screening on the claimant.

8 4. If the claimant is determined by the department under subd. 2. to be an
9 individual for whom suitable work is only available in an occupation identified in the
10 rules promulgated under par. (a) 1., conduct a screening on the claimant if a
11 screening is not already required under subd. 3.

12 5. If a screening conducted as required under subd. 3. or 4. indicates that the
13 claimant should be required to submit to a test for the presence of controlled
14 substances, request that the claimant submit to such a test.

15 (c) Create and provide a substance abuse treatment program in accordance
16 with the rules promulgated under par. (a) 3.

17 **(3) DRUG TESTING.** (a) If a claimant is requested under sub. (2) (b) 5. to submit
18 to a test for the presence of controlled substances and the claimant declines to submit
19 to such a test, the claimant is ineligible for benefits under this chapter until the
20 claimant qualifies for benefits in a subsequent benefit year.

21 (b) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
22 presence of controlled substances submits to the test and does not test positive for
23 any controlled substance or the claimant presents evidence satisfactory to the
24 department that the claimant possesses a valid prescription for each controlled
25 substance for which the claimant tests positive, the claimant may receive benefits

1 under this chapter if otherwise eligible and may not be required to submit to any
2 further test for the presence of controlled substances until a subsequent benefit year.

3 (c) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
4 presence of controlled substances tests positive for one or more controlled substances
5 without presenting evidence satisfactory to the department that the claimant
6 possesses a valid prescription for each controlled substance for which the claimant
7 tested positive, the claimant is ineligible for benefits under this chapter until the
8 claimant qualifies for benefits in a subsequent benefit year, except as provided in
9 sub. (4).

10 (4) CLAIMANTS WITH POSITIVE DRUG TESTS. If a claimant tests positive for one or
11 more controlled substances without presenting evidence of a valid prescription as
12 provided under sub. (3) (c), all of the following apply:

13 (a) Following the positive test, the claimant may maintain his or her eligibility
14 for benefits under this chapter if the claimant enrolls in the substance abuse
15 treatment program and undergoes a job skills assessment. Subject to pars. (b) and
16 (c), the claimant remains eligible for benefits under this chapter, if otherwise eligible,
17 while the claimant is in full compliance with any requirements of the substance
18 abuse treatment program and job skills assessment.

19 (b) After a period of time determined by the department in the rules
20 promulgated under sub. (2) (a), the department shall request a claimant who has
21 remained eligible for benefits under par. (a) to submit to a 2nd test for the presence
22 of controlled substances. If the claimant does not test positive for any controlled
23 substance without presenting evidence satisfactory to the department of a valid
24 prescription, the claimant may receive benefits under this chapter if otherwise
25 eligible and may not be required to submit to any further test for the presence of

1 controlled substances until a subsequent benefit year. If the claimant declines to
2 submit to a test under this paragraph or if the claimant again tests positive for one
3 or more controlled substances without presenting evidence of a valid prescription,
4 the claimant is ineligible to receive benefits until whichever of the following occurs
5 first:

6 1. Fifty-two weeks have elapsed since the claimant declined to submit to the
7 2nd test or tested positive at that 2nd test.

8 2. The claimant provides the department with evidence of successfully
9 completing the substance abuse treatment program and job skills assessment and
10 submits to a 3rd test for the presence of controlled substances and does not test
11 positive for any controlled substance without presenting evidence of a valid
12 prescription.

13 (c) If a claimant, upon submitting to a 3rd test for the presence of controlled
14 substances under par. (b) 2., again tests positive for one or more controlled
15 substances without presenting evidence satisfactory to the department of a valid
16 prescription, the claimant is ineligible to receive benefits until 52 weeks have
17 elapsed since the claimant tested positive at that 3rd test.

18 (5) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may voluntarily
19 submit to the department the results of a test for the presence of controlled
20 substances that was conducted on an individual as preemployment screening along
21 with information necessary to identify the individual. The department shall retain
22 the information received from employing units under this paragraph for the purpose
23 of determining eligibility for benefits. If the results of the test indicate that the
24 individual has tested positive for one or more controlled substances without evidence
25 of a valid prescription, the individual is ineligible for benefits under this chapter,

1 subject to par. (b), as if the individual had tested positive under sub. (3) (c), beginning
2 with the week in which the department receives a report of the individual's positive
3 test under this paragraph.

4 (b) An individual is not ineligible for benefits under par. (a) unless the
5 individual was afforded the opportunity to request that the specimen be sent to a
6 different testing facility for an additional test. This paragraph does not require an
7 employing unit or the department to pay the costs of any additional test.

8 **SECTION 9351. Initial applicability; Workforce Development.**

9 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of section 108.133
10 (2) (b) and (c), (3), (4), and (5) of the statutes first applies to determinations issued
11 under section 108.09 of the statutes on the effective date of this subsection.

12 **SECTION 9451. Effective dates; Workforce Development.**

13 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of section 108.133
14 (2) (b) and (c), (3), (4), and (5) of the statutes and SECTION 9351 (1) of this act take
15 effect on the first Sunday of the 7th month beginning after publication.

16 (END)

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MED) (Date: 1/27/2015)


Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"


(exception: companion bills)




2015

 Please transfer the drafting file for 2011 LRB - 1431 (For: Rep./Sen. LRB-Internal, draft) to the drafting file for

2015

 Please copy the drafting file for 2013 LRB - 0958 (For: Rep./Sen. DOA-Budget)

-----OR-----

 Please copy the drafting file for 2013 LRB / _____ (and the version) (For: Rep./Sen. _____) and place it in the drafting file for

2013 LRB (For: Rep./Sen. _____)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: _____



State of Wisconsin
2015 - 2016 LEGISLATURE

-0958/P4

LRB-1481/P4

MED:cjs:rs

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 27, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to require claimants who apply for regular UI benefits to submit to drug tests. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must require the claimant to submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for *benefits, whichever is later, if the claimant submits to the drug test, but does not test



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positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for benefits, whichever is later, except that following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains eligible for benefits for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening or that an individual declined to submit to such a test. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, or if the individual declined to submit to such a test, the bill provides that there is a presumption, rebuttable as provided in rules promulgated by DWD, that the claimant has failed to accept suitable work when offered. If the presumption is not rebutted, the claimant is ineligible for UI benefits as if the claimant had tested positive in or declined to submit to a drug test conducted by DWD, beginning with the week in which DWD receives the report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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4 providing substance abuse treatment under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 3.** 108.04 (8) (a) of the statutes is amended to read:

6 108.04 (8) (a) If Except as provided in par. (b), if an employee fails, without good
7 cause, to accept suitable work when offered, the employee is ineligible to receive
8 benefits until the employee earns wages after the week in which the failure occurs
9 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
10 employment or other work covered by the unemployment insurance law of any state
11 or the federal government. For purposes of requalification, the employee's weekly
12 benefit rate shall be that rate which would have been paid had the failure not
13 occurred. This paragraph does not preclude an employee from establishing a benefit
14 year during a period in which the employee is ineligible to receive benefits under this
15 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
16 The department shall charge to the fund's balancing account any benefits otherwise
17 chargeable to the account of an employer that is subject to the contribution
18 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
19 fails, without good cause, to accept suitable work offered by that employer.

20 **SECTION 4.** 108.04 (8) (b) of the statutes is created to read:

21 108.04 (8) (b) There is a rebuttable presumption that an employee has failed,
22 without good cause, to accept suitable work when offered if the employee declines to
23 submit to a test for the presence of controlled substances in a test conducted on the

1 employee as preemployment screening or the employee tests positive for one or more
2 controlled substances in such a test without evidence of a valid prescription, as
3 evidenced by a report submitted to the department by an employing unit in
4 accordance with s. 108.133 (4). If the employee declines to submit to such a test, the
5 employee shall be ineligible for benefits as if the employee had declined to submit to
6 a test under s. 108.133 (3) (a), beginning with the week in which the department
7 receives the report. If the employee tests positive in such a test without evidence of
8 a valid prescription, the employee shall be ineligible for benefits as if the employee
9 had tested positive under s. 108.133 (3) (c), beginning with the week in which the
10 department receives the report, except as provided under s. 108.133 (3) (d). The
11 department shall promulgate rules specifying how a claimant may overcome the
12 presumption in this paragraph. The department shall charge to the fund's balancing
13 account any benefits otherwise chargeable to the account of an employer that is
14 subject to the contribution requirements under ss. 108.17 and 108.18 whenever an
15 employee of that employer fails, without good cause, to accept suitable work offered
16 by that employer.

17 **SECTION 5.** 108.133 of the statutes is created to read:

18 **108.133 Testing for controlled substances.** (1) **DEFINITIONS.** In this
19 section:

20 (a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning
21 given in 21 USC 802.

22 (b) "Job skills assessment" means an assessment conducted by the department
23 under sub. (2) (d).

1 (c) "Occupation that regularly conducts drug testing" means an occupation
2 identified in the regulations issued by the federal secretary of labor under 42 USC
3 503 (l) (1) (A) (ii).

4 (d) "Screening" means the screening process created by the department under
5 sub. (2) (a) 3.

6 (e) "Substance abuse treatment program" means the program provided by the
7 department under sub. (2) (c).

8 (f) "Valid prescription" means a prescription, as defined in s. 450.01 (19), for a
9 controlled substance for which the supply of the controlled substance indicated by
10 the prescription has not run out.

11 **(2) DRUG TESTING PROGRAM.** The department shall establish a program to test
12 claimants who apply for regular benefits under this chapter for the presence of
13 controlled substances in accordance with this section and shall, under the program,
14 do all of the following:

15 (a) Promulgate rules to establish the program. The department shall do all of
16 the following in the rules promulgated under this paragraph:

17 1. Establish a process to test claimants for the presence of controlled
18 substances. In establishing the process, the department shall adhere to any
19 applicable federal requirements regarding drug testing.

20 2. Identify the parameters for a substance abuse treatment program for
21 claimants who misuse controlled substances and specify criteria that a claimant
22 must satisfy in order to be considered in full compliance with requirements of the
23 substance abuse treatment program.

24 3. Create a screening process for determining whether a claimant should be
25 required to submit to a test for the presence of controlled substances.

1 4. Identify the parameters for a job skills assessment for claimants who misuse
2 controlled substances and specify criteria that a claimant must satisfy in order to be
3 considered in full compliance with the requirements of the job skills assessment.

4 (am) Promulgate rules identifying occupations for which drug testing is
5 regularly conducted in this state.

6 (b) When a claimant applies for regular benefits under this chapter, do all of
7 the following:

8 1. Determine whether the claimant is an individual for whom suitable work is
9 only available in an occupation that regularly conducts drug testing.

10 2. Determine whether the claimant is an individual for whom suitable work is
11 only available in an occupation identified in the rules promulgated under par. (am).

12 3. If the claimant is determined by the department under subd. 1. to be an
13 individual for whom suitable work is only available in an occupation that regularly
14 conducts drug testing, conduct a screening on the claimant.

15 4. If the claimant is determined by the department under subd. 2. to be an
16 individual for whom suitable work is only available in an occupation identified in the
17 rules promulgated under par. (am), conduct a screening on the claimant if a
18 screening is not already required under subd. 3.

19 5. If a screening conducted as required under subd. 3. or 4. indicates that the
20 claimant should be required to submit to a test for the presence of controlled
21 substances, require that the claimant submit to such a test.

22 (c) Create and provide a substance abuse treatment program in accordance
23 with the rules promulgated under par. (a) 2.

24 (d) Create and conduct job skills assessments in accordance with the rules
25 promulgated under par. (a) 4.

1 **(3) DRUG TESTING.** (a) If a claimant is required under sub. (2) (b) 5. to submit
2 to a test for the presence of controlled substances and the claimant declines to submit
3 to such a test, the claimant is ineligible for benefits under this chapter until 52 weeks
4 after the date of the declining or until the claimant qualifies for benefits in a
5 subsequent benefit year, whichever occurs later.

6 (b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
7 presence of controlled substances submits to the test and does not test positive for
8 any controlled substance or the claimant presents evidence satisfactory to the
9 department that the claimant possesses a valid prescription for each controlled
10 substance for which the claimant tests positive, the claimant may receive benefits
11 under this chapter if otherwise eligible and may not be required to submit to any
12 further test for the presence of controlled substances until a subsequent benefit year.

13 (c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
14 presence of controlled substances submits to the test and tests positive for one or
15 more controlled substances without presenting evidence satisfactory to the
16 department that the claimant possesses a valid prescription for each controlled
17 substance for which the claimant tested positive, the claimant is ineligible for
18 benefits under this chapter until 52 weeks after the date of the test or until the
19 claimant qualifies for benefits in a subsequent benefit year, whichever occurs later,
20 except as provided in par. (d).

21 (d) A claimant who tests positive for one or more controlled substances without
22 presenting evidence of a valid prescription as described in par. (c) may maintain his
23 or her eligibility for benefits under this chapter by enrolling in the substance abuse
24 treatment program and undergoing a job skills assessment. Such a claimant
25 remains eligible for benefits under this chapter, if otherwise eligible, for each week

1 the claimant is in full compliance with any requirements of the substance abuse
2 treatment program and job skills assessment, as determined by the department in
3 accordance with the rules promulgated under sub. (2) (a) 2. and 4.

4 (4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance
5 with the rules promulgated by the department under par. (b), voluntarily submit to
6 the department the results of a test for the presence of controlled substances that was
7 conducted on an individual as preemployment screening or notify the department
8 that an individual declined to submit to such a test as a condition of employment,
9 along with information necessary to identify the individual. Upon receipt of any such
10 results of a test conducted and certified in a manner approved by the department or
11 notification that an individual declined to submit to such a test, the department shall
12 determine whether the individual is a claimant receiving benefits. If the individual
13 is a claimant receiving benefits, the department shall, in accordance with rules
14 promulgated by the department under par. (b), use that information for purposes of
15 determining eligibility for benefits under s. 108.04 (8) (b).

16 (b) The department shall promulgate rules necessary to implement par. (a).

17 (5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and
18 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until
19 the rules required under sub. (2) (a) take effect. The department shall submit to the
20 legislative reference bureau for publication in the Wisconsin administrative register
21 a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3)
22 will be implemented.

23 (b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until
24 the rules required under sub. (2) (am) take effect. The department shall submit to
25 the legislative reference bureau for publication in the Wisconsin administrative

1 register a notice identifying the date on which sub. (2) (b) 2. and 4. will be
2 implemented.

3 (c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04
4 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The
5 department shall submit to the legislative reference bureau for publication in the
6 Wisconsin administrative register a notice identifying the date on which sub. (4) (a)
7 and s. 108.04 (8) (b) will be implemented.

8 (d) The secretary may waive compliance with any provision under this section
9 and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is
10 necessary to permit continued certification of this chapter for grants to this state
11 under Title III of the federal Social Security Act or for maximum credit allowances
12 to employers under the federal Unemployment Tax Act.

13 **SECTION 6.** 108.14 (8n) (e) of the statutes is amended to read:

14 108.14 (8n) (e) The department shall charge this state's share of any benefits
15 paid under this subsection to the account of each employer by which the employee
16 claiming benefits was employed in the applicable base period, in proportion to the
17 total amount of wages he or she earned from each employer in the base period, except
18 that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
19 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who
20 is subject to the contribution requirements of ss. 108.17 and 108.18, the department
21 shall charge the share of benefits based on employment with that employer to the
22 fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied
23 to an employer that is not subject to the contribution requirements of ss. 108.17 and
24 108.18, the department shall charge the share of benefits based on that employment
25 in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the

1 fund's balancing account with any other state's share of such benefits pending
2 reimbursement by that state.

3 **SECTION 7.** 108.141 (7) (a) of the statutes is amended to read:

4 108.141 (7) (a) The department shall charge the state's share of each week of
5 extended benefits to each employer's account in proportion to the employer's share
6 of the total wages of the employee receiving the benefits in the employee's base
7 period, except that if the employer is subject to the contribution requirements of ss.
8 108.17 and 108.18 the department shall charge the share of extended benefits to
9 which s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
10 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.

11 **SECTION 8.** 108.16 (6m) (a) of the statutes is amended to read:

12 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),
13 (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.14
14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

15 **SECTION 9151. Nonstatutory provisions; Workforce Development.**

16 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The department of workforce
17 development shall present the statements of scope of the rules required under
18 sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as
19 created by this act, to the governor for approval under section 227.135 (2) of the
20 statutes no later than the 180th day after the effective date of this subsection.

21 (END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0958/P4 25
MED:cjs:rs
Stays

DOA:.....Kirschbaum, BB0308 – Drug Testing for UI

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

Insert

do NOT go

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 27, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to require claimants who apply for regular UI benefits to submit to drug tests. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must require the claimant to submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for

benefits, whichever is later. If the claimant submits to the drug test, but does not test positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for benefits, whichever is later, except that following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains eligible for benefits for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening or that an individual declined to submit to such a test. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, or if the individual declined to submit to such a test, the bill provides that there is a presumption, rebuttable as provided in rules promulgated by DWD, that the claimant has failed to accept suitable work when offered. If the presumption is not rebutted, the claimant is ineligible for UI benefits as if the claimant had tested positive in or declined to submit to a drug test conducted by DWD, beginning with the week in which DWD receives the report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (ak) of the statutes is created to read:
2 20.445 (1) (ak) *Unemployment insurance administration; substance abuse*
3 *treatment.* Biennially, the amounts in the schedule to provide substance abuse
4 treatment to claimants for unemployment insurance under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 2.** 20.445 (1) (aL) of the statutes is created to read:

1 20.445 (1) (aL) *Unemployment insurance administration; controlled*
2 *substances testing.* Biennially, the amounts in the schedule to conduct testing for
3 controlled substances and for related expenses under s. 108.133, other than
4 providing substance abuse treatment under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 3.** 108.04 (8) (a) of the statutes is amended to read:

6 108.04 (8) (a) ~~If Except as provided in par. (b), if~~ an employee fails, without good
7 cause, to accept suitable work when offered, the employee is ineligible to receive
8 benefits until the employee earns wages after the week in which the failure occurs
9 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
10 employment or other work covered by the unemployment insurance law of any state
11 or the federal government. For purposes of requalification, the employee's weekly
12 benefit rate shall be that rate which would have been paid had the failure not
13 occurred. This paragraph does not preclude an employee from establishing a benefit
14 year during a period in which the employee is ineligible to receive benefits under this
15 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
16 The department shall charge to the fund's balancing account any benefits otherwise
17 chargeable to the account of an employer that is subject to the contribution
18 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
19 fails, without good cause, to accept suitable work offered by that employer.

20 **SECTION 4.** 108.04 (8) (b) of the statutes is created to read:

21 108.04 (8) (b) There is a rebuttable presumption that an employee has failed,
22 without good cause, to accept suitable work when offered if the employee declines to
23 submit to a test for the presence of controlled substances in a test conducted on the

1 employee as preemployment screening or the employee tests positive for one or more
2 controlled substances in such a test without evidence of a valid prescription, as
3 evidenced by a report submitted to the department by an employing unit in
4 accordance with s. 108.133 (4). If the employee declines to submit to such a test, the
5 employee shall be ineligible for benefits as if the employee had declined to submit to
6 a test under s. 108.133 (3) (a), beginning with the week in which the department
7 receives the report. If the employee tests positive in such a test without evidence of
8 a valid prescription, the employee shall be ineligible for benefits as if the employee
9 had tested positive under s. 108.133 (3) (c), beginning with the week in which the
10 department receives the report, except as provided under s. 108.133 (3) (d). The
11 department shall promulgate rules specifying how a claimant may overcome the
12 presumption in this paragraph. The department shall charge to the fund's balancing
13 account any benefits otherwise chargeable to the account of an employer that is
14 subject to the contribution requirements under ss. 108.17 and 108.18 whenever an
15 employee of that employer fails, without good cause, to accept suitable work offered
16 by that employer.

17 **SECTION 5.** 108.133 of the statutes is created to read:

18 **108.133 Testing for controlled substances.** (1) **DEFINITIONS.** In this
19 section:

20 (a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning
21 given in 21 USC 802.

22 (b) "Job skills assessment" means an assessment conducted by the department
23 under sub. (2) (d).

1 (c) “Occupation that regularly conducts drug testing” means an occupation
2 identified in the regulations issued by the federal secretary of labor under 42 USC
3 503 (l) (1) (A) (ii).

4 (d) “Screening” means the screening process created by the department under
5 sub. (2) (a) 3.

6 (e) “Substance abuse treatment program” means the program provided by the
7 department under sub. (2) (c).

8 (f) “Valid prescription” means a prescription, as defined in s. 450.01 (19), for a
9 controlled substance for which the supply of the controlled substance indicated by
10 the prescription has not run out.

11 (2) DRUG TESTING PROGRAM. The department shall establish a program to test
12 claimants who apply for regular benefits under this chapter for the presence of
13 controlled substances in accordance with this section and shall, under the program,
14 do all of the following:

15 (a) Promulgate rules to establish the program. The department shall do all of
16 the following in the rules promulgated under this paragraph:

17 1. Establish a process to test claimants for the presence of controlled
18 substances. In establishing the process, the department shall adhere to any
19 applicable federal requirements regarding drug testing.

20 2. Identify the parameters for a substance abuse treatment program for
21 claimants who misuse controlled substances and specify criteria that a claimant
22 must satisfy in order to be considered in full compliance with requirements of the
23 substance abuse treatment program.

24 3. Create a screening process for determining whether a claimant should be
25 required to submit to a test for the presence of controlled substances.

1 4. Identify the parameters for a job skills assessment for claimants who misuse
2 controlled substances and specify criteria that a claimant must satisfy in order to be
3 considered in full compliance with the requirements of the job skills assessment.

4 (am) Promulgate rules identifying occupations for which drug testing is
5 regularly conducted in this state.

6 (b) When a claimant applies for regular benefits under this chapter, do all of
7 the following:

8 1. Determine whether the claimant is an individual for whom suitable work is
9 only available in an occupation that regularly conducts drug testing.

10 2. Determine whether the claimant is an individual for whom suitable work is
11 only available in an occupation identified in the rules promulgated under par. (am).

12 3. If the claimant is determined by the department under subd. 1. to be an
13 individual for whom suitable work is only available in an occupation that regularly
14 conducts drug testing, conduct a screening on the claimant.

15 4. If the claimant is determined by the department under subd. 2. to be an
16 individual for whom suitable work is only available in an occupation identified in the
17 rules promulgated under par. (am), conduct a screening on the claimant if a
18 screening is not already required under subd. 3.

19 5. If a screening conducted as required under subd. 3. or 4. indicates that the
20 claimant should be required to submit to a test for the presence of controlled
21 substances, require that the claimant submit to such a test.

22 (c) Create and provide a substance abuse treatment program in accordance
23 with the rules promulgated under par. (a) 2.

24 (d) Create and conduct job skills assessments in accordance with the rules
25 promulgated under par. (a) 4.

1 **(3) DRUG TESTING.** (a) If a claimant is required under sub. (2) (b) 5. to submit
2 to a test for the presence of controlled substances and the claimant declines to submit
3 to such a test, the claimant is ineligible for benefits under this chapter until 52 weeks
4 after the date of the declining or until the claimant qualifies for benefits in a
5 subsequent benefit year, whichever occurs later.

6 (b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
7 presence of controlled substances submits to the test and does not test positive for
8 any controlled substance or the claimant presents evidence satisfactory to the
9 department that the claimant possesses a valid prescription for each controlled
10 substance for which the claimant tests positive, the claimant may receive benefits
11 under this chapter if otherwise eligible and may not be required to submit to any
12 further test for the presence of controlled substances until a subsequent benefit year.

13 (c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
14 presence of controlled substances submits to the test and tests positive for one or
15 more controlled substances without presenting evidence satisfactory to the
16 department that the claimant possesses a valid prescription for each controlled
17 substance for which the claimant tested positive, the claimant is ineligible for
18 benefits under this chapter until 52 weeks after the date of the test or until the
19 claimant qualifies for benefits in a subsequent benefit year, whichever occurs later,
20 except as provided in par. (d).

21 (d) A claimant who tests positive for one or more controlled substances without
22 presenting evidence of a valid prescription as described in par. (c) may maintain his
23 or her eligibility for benefits under this chapter by enrolling in the substance abuse
24 treatment program and undergoing a job skills assessment. Such a claimant
25 remains eligible for benefits under this chapter, if otherwise eligible, for each week

1 the claimant is in full compliance with any requirements of the substance abuse
2 treatment program and job skills assessment, as determined by the department in
3 accordance with the rules promulgated under sub. (2) (a) 2. and 4.

4 (4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance
5 with the rules promulgated by the department under par. (b), voluntarily submit to
6 the department the results of a test for the presence of controlled substances that was
7 conducted on an individual as preemployment screening or notify the department
8 that an individual declined to submit to such a test as a condition of employment,
9 along with information necessary to identify the individual. Upon receipt of any such
10 results of a test conducted and certified in a manner approved by the department or
11 notification that an individual declined to submit to such a test, the department shall
12 determine whether the individual is a claimant receiving benefits. If the individual
13 is a claimant receiving benefits, the department shall, in accordance with rules
14 promulgated by the department under par. (b), use that information for purposes of
15 determining eligibility for benefits under s. 108.04 (8) (b).

16 (b) The department shall promulgate rules necessary to implement par. (a).

17 (5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and
18 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until
19 the rules required under sub. (2) (a) take effect. The department shall submit to the
20 legislative reference bureau for publication in the Wisconsin administrative register
21 a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3)
22 will be implemented.

23 (b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until
24 the rules required under sub. (2) (am) take effect. The department shall submit to
25 the legislative reference bureau for publication in the Wisconsin administrative

1 register a notice identifying the date on which sub. (2) (b) 2. and 4. will be
2 implemented.

3 (c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04
4 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The
5 department shall submit to the legislative reference bureau for publication in the
6 Wisconsin administrative register a notice identifying the date on which sub. (4) (a)
7 and s. 108.04 (8) (b) will be implemented.

8 (d) The secretary may waive compliance with any provision under this section
9 and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is
10 necessary to permit continued certification of this chapter for grants to this state
11 under Title III of the federal Social Security Act or for maximum credit allowances
12 to employers under the federal Unemployment Tax Act.

13 **SECTION 6.** 108.14 (8n) (e) of the statutes is amended to read:

14 108.14 (8n) (e) The department shall charge this state's share of any benefits
15 paid under this subsection to the account of each employer by which the employee
16 claiming benefits was employed in the applicable base period, in proportion to the
17 total amount of wages he or she earned from each employer in the base period, except
18 that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
19 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who
20 is subject to the contribution requirements of ss. 108.17 and 108.18, the department
21 shall charge the share of benefits based on employment with that employer to the
22 fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied
23 to an employer that is not subject to the contribution requirements of ss. 108.17 and
24 108.18, the department shall charge the share of benefits based on that employment
25 in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the

1 fund's balancing account with any other state's share of such benefits pending
2 reimbursement by that state.

3 SECTION 7. 108.141 (7) (a) of the statutes is amended to read:

4 108.141 (7) (a) The department shall charge the state's share of each week of
5 extended benefits to each employer's account in proportion to the employer's share
6 of the total wages of the employee receiving the benefits in the employee's base
7 period, except that if the employer is subject to the contribution requirements of ss.
8 108.17 and 108.18 the department shall charge the share of extended benefits to
9 which s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
10 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.

11 SECTION 8. 108.16 (6m) (a) of the statutes is amended to read:

12 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),
13 (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.14
14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

15 SECTION 9151. Nonstatutory provisions; Workforce Development.

16 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The department of workforce
17 development shall present the statements of scope of the rules required under
18 sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as
19 created by this act, to the governor for approval under section 227.135 (2) of the
20 statutes no later than the 180th day after the effective date of this subsection.

(END)

paragraph

Ⓟ #
(a) ⊆ scope statements for rules. I

20

21

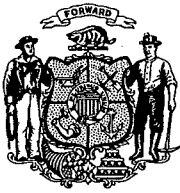
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2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 ~~#~~
2 (a) *Emergency rule authority.* Using the procedure under section 227.24 of the
3 statutes, the department of workforce development may promulgate any rules
4 required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the
5 statutes, as created by this act, for the period before the effective date of any
6 corresponding permanent rules, but not to exceed the period authorized under
7 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
8 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
9 the department is not required to provide evidence that promulgating a rule under
10 this paragraph as an emergency rule is necessary for the preservation of the public
11 peace, health, safety, or welfare and is not required to provide a finding of emergency
for a rule promulgated under this paragraph.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0958/P5
MED:cjs:jf

DOA:.....Kirschbaum, BB0308 - Drug Testing for UI

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 27, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to require claimants who apply for regular UI benefits to submit to drug tests. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must require the claimant to submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for

benefits, whichever is later. If the claimant submits to the drug test, but does not test positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for benefits, whichever is later, except that following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains eligible for benefits for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening or that an individual declined to submit to such a test. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, or if the individual declined to submit to such a test, the bill provides that there is a presumption, rebuttable as provided in rules promulgated by DWD, that the claimant has failed to accept suitable work when offered. If the presumption is not rebutted, the claimant is ineligible for UI benefits as if the claimant had tested positive in or declined to submit to a drug test conducted by DWD, beginning with the week in which DWD receives the report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (ak) of the statutes is created to read:
2 20.445 (1) (ak) *Unemployment insurance administration; substance abuse*
3 *treatment.* Biennially, the amounts in the schedule to provide substance abuse
4 treatment to claimants for unemployment insurance under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 2.** 20.445 (1) (aL) of the statutes is created to read:

1 20.445 (1) (aL) *Unemployment insurance administration; controlled*
2 *substances testing.* Biennially, the amounts in the schedule to conduct testing for
3 controlled substances and for related expenses under s. 108.133, other than
4 providing substance abuse treatment under s. 108.133 (2) (c).

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 3.** 108.04 (8) (a) of the statutes is amended to read:

6 108.04 (8) (a) ~~If Except as provided in par. (b), if~~ an employee fails, without good
7 cause, to accept suitable work when offered, the employee is ineligible to receive
8 benefits until the employee earns wages after the week in which the failure occurs
9 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
10 employment or other work covered by the unemployment insurance law of any state
11 or the federal government. For purposes of requalification, the employee's weekly
12 benefit rate shall be that rate which would have been paid had the failure not
13 occurred. This paragraph does not preclude an employee from establishing a benefit
14 year during a period in which the employee is ineligible to receive benefits under this
15 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
16 The department shall charge to the fund's balancing account any benefits otherwise
17 chargeable to the account of an employer that is subject to the contribution
18 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
19 fails, without good cause, to accept suitable work offered by that employer.

20 **SECTION 4.** 108.04 (8) (b) of the statutes is created to read:

21 108.04 (8) (b) There is a rebuttable presumption that an employee has failed,
22 without good cause, to accept suitable work when offered if the employee declines to
23 submit to a test for the presence of controlled substances in a test conducted on the

1 employee as preemployment screening or the employee tests positive for one or more
2 controlled substances in such a test without evidence of a valid prescription, as
3 evidenced by a report submitted to the department by an employing unit in
4 accordance with s. 108.133 (4). If the employee declines to submit to such a test, the
5 employee shall be ineligible for benefits as if the employee had declined to submit to
6 a test under s. 108.133 (3) (a), beginning with the week in which the department
7 receives the report. If the employee tests positive in such a test without evidence of
8 a valid prescription, the employee shall be ineligible for benefits as if the employee
9 had tested positive under s. 108.133 (3) (c), beginning with the week in which the
10 department receives the report, except as provided under s. 108.133 (3) (d). The
11 department shall promulgate rules specifying how a claimant may overcome the
12 presumption in this paragraph. The department shall charge to the fund's balancing
13 account any benefits otherwise chargeable to the account of an employer that is
14 subject to the contribution requirements under ss. 108.17 and 108.18 whenever an
15 employee of that employer fails, without good cause, to accept suitable work offered
16 by that employer.

17 **SECTION 5.** 108.133 of the statutes is created to read:

18 **108.133 Testing for controlled substances. (1) DEFINITIONS.** In this
19 section:

20 (a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning
21 given in 21 USC 802.

22 (b) "Job skills assessment" means an assessment conducted by the department
23 under sub. (2) (d).

1 (c) “Occupation that regularly conducts drug testing” means an occupation
2 identified in the regulations issued by the federal secretary of labor under 42 USC
3 503 (l) (1) (A) (ii).

4 (d) “Screening” means the screening process created by the department under
5 sub. (2) (a) 3.

6 (e) “Substance abuse treatment program” means the program provided by the
7 department under sub. (2) (c).

8 (f) “Valid prescription” means a prescription, as defined in s. 450.01 (19), for a
9 controlled substance for which the supply of the controlled substance indicated by
10 the prescription has not run out.

11 **(2) DRUG TESTING PROGRAM.** The department shall establish a program to test
12 claimants who apply for regular benefits under this chapter for the presence of
13 controlled substances in accordance with this section and shall, under the program,
14 do all of the following:

15 (a) Promulgate rules to establish the program. The department shall do all of
16 the following in the rules promulgated under this paragraph:

17 1. Establish a process to test claimants for the presence of controlled
18 substances. In establishing the process, the department shall adhere to any
19 applicable federal requirements regarding drug testing.

20 2. Identify the parameters for a substance abuse treatment program for
21 claimants who misuse controlled substances and specify criteria that a claimant
22 must satisfy in order to be considered in full compliance with requirements of the
23 substance abuse treatment program.

24 3. Create a screening process for determining whether a claimant should be
25 required to submit to a test for the presence of controlled substances.

1 4. Identify the parameters for a job skills assessment for claimants who misuse
2 controlled substances and specify criteria that a claimant must satisfy in order to be
3 considered in full compliance with the requirements of the job skills assessment.

4 (am) Promulgate rules identifying occupations for which drug testing is
5 regularly conducted in this state.

6 (b) When a claimant applies for regular benefits under this chapter, do all of
7 the following:

8 1. Determine whether the claimant is an individual for whom suitable work is
9 only available in an occupation that regularly conducts drug testing.

10 2. Determine whether the claimant is an individual for whom suitable work is
11 only available in an occupation identified in the rules promulgated under par. (am).

12 3. If the claimant is determined by the department under subd. 1. to be an
13 individual for whom suitable work is only available in an occupation that regularly
14 conducts drug testing, conduct a screening on the claimant.

15 4. If the claimant is determined by the department under subd. 2. to be an
16 individual for whom suitable work is only available in an occupation identified in the
17 rules promulgated under par. (am), conduct a screening on the claimant if a
18 screening is not already required under subd. 3.

19 5. If a screening conducted as required under subd. 3. or 4. indicates that the
20 claimant should be required to submit to a test for the presence of controlled
21 substances, require that the claimant submit to such a test.

22 (c) Create and provide a substance abuse treatment program in accordance
23 with the rules promulgated under par. (a) 2.

24 (d) Create and conduct job skills assessments in accordance with the rules
25 promulgated under par. (a) 4.

1 **(3) DRUG TESTING.** (a) If a claimant is required under sub. (2) (b) 5. to submit
2 to a test for the presence of controlled substances and the claimant declines to submit
3 to such a test, the claimant is ineligible for benefits under this chapter until 52 weeks
4 after the date of the declining or until the claimant qualifies for benefits in a
5 subsequent benefit year, whichever occurs later.

6 (b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
7 presence of controlled substances submits to the test and does not test positive for
8 any controlled substance or the claimant presents evidence satisfactory to the
9 department that the claimant possesses a valid prescription for each controlled
10 substance for which the claimant tests positive, the claimant may receive benefits
11 under this chapter if otherwise eligible and may not be required to submit to any
12 further test for the presence of controlled substances until a subsequent benefit year.

13 (c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the
14 presence of controlled substances submits to the test and tests positive for one or
15 more controlled substances without presenting evidence satisfactory to the
16 department that the claimant possesses a valid prescription for each controlled
17 substance for which the claimant tested positive, the claimant is ineligible for
18 benefits under this chapter until 52 weeks after the date of the test or until the
19 claimant qualifies for benefits in a subsequent benefit year, whichever occurs later,
20 except as provided in par. (d).

21 (d) A claimant who tests positive for one or more controlled substances without
22 presenting evidence of a valid prescription as described in par. (c) may maintain his
23 or her eligibility for benefits under this chapter by enrolling in the substance abuse
24 treatment program and undergoing a job skills assessment. Such a claimant
25 remains eligible for benefits under this chapter, if otherwise eligible, for each week

1 the claimant is in full compliance with any requirements of the substance abuse
2 treatment program and job skills assessment, as determined by the department in
3 accordance with the rules promulgated under sub. (2) (a) 2. and 4.

4 (4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance
5 with the rules promulgated by the department under par. (b), voluntarily submit to
6 the department the results of a test for the presence of controlled substances that was
7 conducted on an individual as preemployment screening or notify the department
8 that an individual declined to submit to such a test as a condition of employment,
9 along with information necessary to identify the individual. Upon receipt of any such
10 results of a test conducted and certified in a manner approved by the department or
11 notification that an individual declined to submit to such a test, the department shall
12 determine whether the individual is a claimant receiving benefits. If the individual
13 is a claimant receiving benefits, the department shall, in accordance with rules
14 promulgated by the department under par. (b), use that information for purposes of
15 determining eligibility for benefits under s. 108.04 (8) (b).

16 (b) The department shall promulgate rules necessary to implement par. (a).

17 (5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and
18 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until
19 the rules required under sub. (2) (a) take effect. The department shall submit to the
20 legislative reference bureau for publication in the Wisconsin administrative register
21 a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3)
22 will be implemented.

23 (b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until
24 the rules required under sub. (2) (am) take effect. The department shall submit to
25 the legislative reference bureau for publication in the Wisconsin administrative

1 register a notice identifying the date on which sub. (2) (b) 2. and 4. will be
2 implemented.

3 (c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04
4 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The
5 department shall submit to the legislative reference bureau for publication in the
6 Wisconsin administrative register a notice identifying the date on which sub. (4) (a)
7 and s. 108.04 (8) (b) will be implemented.

8 (d) The secretary may waive compliance with any provision under this section
9 and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is
10 necessary to permit continued certification of this chapter for grants to this state
11 under Title III of the federal Social Security Act or for maximum credit allowances
12 to employers under the federal Unemployment Tax Act.

13 **SECTION 6.** 108.14 (8n) (e) of the statutes is amended to read:

14 108.14 (8n) (e) The department shall charge this state's share of any benefits
15 paid under this subsection to the account of each employer by which the employee
16 claiming benefits was employed in the applicable base period, in proportion to the
17 total amount of wages he or she earned from each employer in the base period, except
18 that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
19 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who
20 is subject to the contribution requirements of ss. 108.17 and 108.18, the department
21 shall charge the share of benefits based on employment with that employer to the
22 fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied
23 to an employer that is not subject to the contribution requirements of ss. 108.17 and
24 108.18, the department shall charge the share of benefits based on that employment
25 in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the

1 fund's balancing account with any other state's share of such benefits pending
2 reimbursement by that state.

3 **SECTION 7.** 108.141 (7) (a) of the statutes is amended to read:

4 108.141 (7) (a) The department shall charge the state's share of each week of
5 extended benefits to each employer's account in proportion to the employer's share
6 of the total wages of the employee receiving the benefits in the employee's base
7 period, except that if the employer is subject to the contribution requirements of ss.
8 108.17 and 108.18 the department shall charge the share of extended benefits to
9 which s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
10 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.

11 **SECTION 8.** 108.16 (6m) (a) of the statutes is amended to read:

12 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),
13 (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.14
14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

15 **SECTION 9151. Nonstatutory provisions; Workforce Development.**

16 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING.

17 (a) *Scope statements for rules.* The department of workforce development shall
18 present the statements of scope of the rules required under sections 108.04 (8) (b) and
19 108.133 (2) (a) and (am) and (4) (b) of the statutes, as created by this act, to the
20 governor for approval under section 227.135 (2) of the statutes no later than the
21 180th day after the effective date of this paragraph.

22 (b) *Emergency rule authority.* Using the procedure under section 227.24 of the
23 statutes, the department of workforce development may promulgate any rules
24 required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the
25 statutes, as created by this act, for the period before the effective date of any

1 corresponding permanent rules, but not to exceed the period authorized under
2 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
3 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
4 the department is not required to provide evidence that promulgating a rule under
5 this paragraph as an emergency rule is necessary for the preservation of the public
6 peace, health, safety, or welfare and is not required to provide a finding of emergency
7 for a rule promulgated under this paragraph.

8

(END)