



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2015 LRB-1431/P4 (For: LRB)

has been copied/added to the drafting file for


2015 LRB-0958 (For: DOA - Budget)

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



RESEARCH APPENDIX - PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 01/27/2015 (Per: MED)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the digital drafting file.

2015 DRAFTING REQUEST

Bill

Received: **1/24/2015** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Legislative Reference Bureau** By/Representing: **MED**
May Contact: Drafter: **mduchek**
Subject: **Unemployment Insurance** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **michael.duchek@legis.wisconsin.gov**
Carbon copy (CC) to: **Bryan.Kirschbaum@wisconsin.gov**
Janell.Knutson@dwd.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Drug Testing for UI

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/24/2015	csicilia 1/25/2015	rschlue 1/25/2015	_____			
/P1	mduchek 1/26/2015	csicilia 1/26/2015	jmurphy 1/26/2015	_____	sbasford 1/25/2015		State
/P2	mduchek 1/26/2015	csicilia 1/26/2015	rschlue 1/26/2015	_____	sbasford 1/26/2015		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	mduchek 1/27/2015	csicilia 1/27/2015	rschluet 1/27/2015	_____	mbarman 1/26/2015		State
/P4				_____	mbarman 1/27/2015		State

FE Sent For:

<END>

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/P1	mduchek 1/26/2015	csicilia 1/26/2015	jmurphy 1/26/2015	_____	sbasford 1/25/2015		State
/P2	mduchek 1/26/2015	csicilia 1/26/2015	rschluet 1/26/2015	_____	sbasford 1/26/2015		State

Handwritten signature and date: 1/27/15

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3				_____	mbarman 1/26/2015		State

/P4 cjs 1/27
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/?	mduchek 1/24/2015	csicilia 1/25/2015	rschluet 1/25/2015	_____			
/P1	mduchek 1/26/2015	csicilia 1/26/2015	jmurphy 1/26/2015	_____	sbasford 1/25/2015		State
/P2				_____	sbasford 1/26/2015		State

FE Sent For:

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/?	mduchek 1/24/2015	csicilia 1/25/2015	rschluet 1/25/2015	_____			
/P1				_____	sbasford 1/25/2015		State

FE Sent For:

P2 g's 1/26
Jan 1/26
Jan 1/26
<END>

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/?	mduchek 1/24/2015	Plcjs 1/25 1.5		==			

FE Sent For:

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(SUN 1/25)

State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1431/P1

LRB-0958/P2

MED:cjs:rs

stays

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

FOR 2015-2017 BUDGET - NOT READY FOR INTRODUCTION

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do NOT gen ^{head} EMPLOYMENT

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:

No. 1. 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

Biennially

whichever is later

for 52 weeks or

for each week

or if the individual refused such a test

or an individual's refusal of such a test

that

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).

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****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.

by the department under sub. (2) (d) ✓

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 (1) (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:

for claimants who misuse controlled substances

Identify the parameters for a job skills assessment and

and

that

be considered in full compliance with requirements of

be considered in full compliance with requirements of the

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

WS S-16

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).

X 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

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6-3

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.

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

or such an individual refuses to submit to a test given as a condition of employment with information necessary to identify the individual

Under par. (b)

in accordance with rules promulgated by the department

Ins 7-20

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.**

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 the first Sunday of the 7th
14 month beginning after publication.

15 (END)

108.04(8)(a) and (b)

and SECTION 9351 (#) of this act take

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1431/P1ins
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X SECTION 1. 108.04 (8) (a) of the statutes is amended to read:

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

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236; 2013 a. 11, 20, 36; 2013 a. 173 ss. 13, 33; 2013 a. 276; s. 13.92 (2) (i); s. 35.17 correction in (13) (d) 3. a.

X SECTION 2. 108.04 (8) (b) of the statutes is created to read:

108.04 (8) (b) An employee's failure, without good cause, to accept suitable work when offered includes the employee refusing to submit to a test for the presence of controlled substances in a test conducted on the employee as preemployment screening or the employee testing positive for one or more controlled substances in such a test without evidence of a valid prescription, as evidenced by a report submitted to the department by an employing unit in accordance with s. 108.133 (4).

shall be

In the case of a such a refusal, the employee shall be ineligible for benefits as if the employee had refused a test under s. 108.133 (3) (a), beginning with the week in which the department receives the report. In the case of such a positive test, the employee (is) ineligible for benefits as if the employee had tested positive under s. 108.133 (3) (c), beginning with the week in which the department receives the report, except as provided under s. 108.133 (3) (d). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

INSERT 5-16

(d) Create and conduct job skills assessments in accordance with the rules promulgated under par. (a) 5.

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

(d) A claimant who tests positive for one or more controlled substances without presenting evidence of a valid prescription as provided in par. (c) may maintain his or her eligibility for benefits under this chapter by enrolling in the substance abuse

described

treatment program and undergoing a job skills assessment. Such a claimant remains eligible for benefits under this chapter, if otherwise eligible, for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment, as determined by the department in accordance with the rules promulgated under sub. (2) (a) 3. and 5.

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Upon receipt of any such results or refusal of a test conducted and certified in a manner approved by the department, the department shall determine whether the individual is a claimant receiving benefits. If the individual is a claimant receiving benefits, the department shall use the results or refusal of any such test submitted in accordance with rules promulgated by the department under par. (b) for purposes of determining eligibility under s. 108.04 (8) (b).

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

(5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) to (d) and (3), subs. (2) (b) to (d) and (3) do not apply until the rules required under sub. (2) (a) take effect, except that the department may request approval of the joint committee on finance to delay implementation of subs. (2) (b) to (d) and (3) by submitting a request to the cochairpersons of the committee. If the cochairpersons notify the department and the legislative reference bureau that the committee has approved a delay in implementation of subs. (2) (b) to (d) and (3) until a date specified by the committee, the department may delay implementation of subs. (2) (b) to (d) and (3) until the date specified by the committee. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which subs. (2) (b) to (d) and (3) will be implemented.

(b) Notwithstanding sub. (4) (a), sub. (4) (a) does not apply until the rules required under sub. (4) (b) take effect, except that the department may request approval of the joint committee on finance to delay implementation of sub. (4) (a) by submitting a request to the cochairpersons of the committee. If the cochairpersons notify the department and the legislative reference bureau that the committee has approved a delay in implementation of sub. (4) (a) until a date specified by the committee, the department may delay implementation of sub. (4) (a) until the date specified by the committee. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (4) (a) will be implemented.

(c) The department may modify or suspend any provision of this section as provided and in accordance with ins. 108.14 (13).

SECTION 3. 108.14 (8n) (e) of the statutes is amended to read:

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

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

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255; 1989 a. 77, 139, 303, 359; 1991 a. 89; 1993 a. 373, 490, 492; 1995 a. 27, 118, 225; 1997 a. 39; 1999 a. 83; 2001 a. 35, 105; 2003 a. 197; 2009 a. 11; 2011 a. 234; 2013 a. 20, 36, 105, 173.

SECTION 4. 108.141 (7) (a) of the statutes is amended to read:

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

History: 1971 c. 53; 1973 c. 247; 1975 c. 1, 343; 1977 c. 29, 133, 418; 1979 c. 52; 1981 c. 36 ss. 19 to 32, 45; 1981 c. 315, 390; 1983 a. 8 ss. 28 to 33, 53, 55 (3), (14) and (15) and 56; 1983 a. 27 ss. 1400g and 1807m; 1983 a. 189 ss. 162, 329 (28); 1985 a. 17; 1987 a. 38; 1991 a. 39, 89, 189, 269; 1993 a. 184, 373, 492; 1995 a. 27 ss. 3780, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 35, 39; 2001 a. 35; 2009 a. 1, 11; 2011 a. 42; 2013 a. 20, 36, 173.

SECTION 5. 108.16 (6m) (a) of the statutes is amended to read:

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

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.



TODAY by 10:30 AM
State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1431/

MED:cjs:rs

slays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

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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 15, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to ^{to submit to drug tests} ~~submit to a drug test~~ ^{require} 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 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.

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

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 ~~an individual's refusal~~ of 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 ~~refused~~ such a test, 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.

or declined to submit to

or declined to submit to

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

that an individual declined to submit to

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:
 6 20.445 (1) (aL) *Unemployment insurance administration; controlled*
 7 *substances testing.* Biennially, the amounts in the schedule to conduct testing for

1 controlled substances and for related expenses under s. 108.133, other than
2 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.

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

4 108.04 (8) (a) ~~If Except as provided in par. (b), if~~ an employee fails, without good
5 cause, to accept suitable work when offered, the employee is ineligible to receive
6 benefits until the employee earns wages after the week in which the failure occurs
7 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
8 employment or other work covered by the unemployment insurance law of any state
9 or the federal government. For purposes of requalification, the employee's weekly
10 benefit rate shall be that rate which would have been paid had the failure not
11 occurred. This paragraph does not preclude an employee from establishing a benefit
12 year during a period in which the employee is ineligible to receive benefits under this
13 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).

14 The department shall charge to the fund's balancing account any benefits otherwise
15 chargeable to the account of an employer that is subject to the contribution
16 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
17 fails, without good cause, to accept suitable work offered by that employer.

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

19 108.04 (8) (b) ~~An employee's failure~~, without good cause, to accept suitable ~~work~~ ^{if there is a rebuttable presumption that an employee has failed}
20 work when offered ~~includes the employee refusing~~ ^{& if the employee declines} to submit to a test for the presence
21 of controlled substances in a test conducted on the employee as preemployment
22 screening or the employee ~~(testing)~~ ^{at tests} positive for one or more controlled substances in
23 such a test without evidence of a valid prescription, as evidenced by a report

The department shall promulgate rules specifying how
a claimant may overcome the presumption in this paragraph.

1 submitted to the department by an employing unit in accordance with s. 108.133 (4).
 2 ^(an employee's) In the case of ~~a~~ such a refusal, the employee shall be ineligible for benefits as if the
 3 employee had ~~refused~~ ^{declining to submit to such a test} a test under s. 108.133 (3) (a), beginning with the week in
 4 which the department receives the report. In the case of ~~such a~~ ^{declined to submit to} positive test, ^{an employee's testing} the
 5 employee shall be ineligible for benefits as if the employee had tested positive under
 6 s. 108.133 (3) (c), beginning with the week in which the department receives the
 7 report, except as provided under s. 108.133 (3) (d). The department shall charge to
 8 the fund's balancing account any benefits otherwise chargeable to the account of an
 9 employer that is subject to the contribution requirements under ss. 108.17 and
 10 108.18 whenever an employee of that employer fails, without good cause, to accept
 11 suitable work offered by that employer.

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

13 108.133 Testing for controlled substances. (1) DEFINITIONS. In this
 14 section:

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

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

19 (c) "Occupation that regularly conducts drug testing" means an occupation
 20 identified in the regulations issued by the federal secretary of labor under 42 USC
 21 503 (l) (1) (A) (ii).

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

24 (e) "Substance abuse treatment program" means the program provided by the
 25 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 and specify criteria that a claimant
17 must satisfy in order to be considered in full compliance with requirements of the
18 substance abuse 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. Identify the parameters for a job skills assessment for claimants who misuse
22 controlled substances and specify criteria that a claimant must satisfy in order to be
23 considered in full compliance with the requirements of the job skills assessment.

24 (b) When a claimant applies for regular benefits under this chapter, do all of
25 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 (d) Create and conduct job skills assessments in accordance with the rules
18 promulgated under par. (a) 5.

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

23 (b) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
24 presence of controlled substances submits to the test and does not test positive for
25 any controlled substance or the claimant presents evidence satisfactory to the

1 department that the claimant possesses a valid prescription for each controlled
2 substance for which the claimant tests positive, the claimant may receive benefits
3 under this chapter if otherwise eligible and may not be required to submit to any
4 further test for the presence of controlled substances until a subsequent benefit year.

5 (c) If a claimant who is requested under sub. (2) (b) 5. to submit to a test for the
6 presence of controlled substances tests positive for one or more controlled substances
7 without presenting evidence satisfactory to the department that the claimant
8 possesses a valid prescription for each controlled substance for which the claimant
9 tested positive, the claimant is ineligible for benefits under this chapter until 52
10 weeks after the date of the test or until the claimant qualifies for benefits in a
11 subsequent benefit year, whichever occurs later, except as provided in par. (d).

12 (d) A claimant who tests positive for one or more controlled substances without
13 presenting evidence of a valid prescription as described in par. (c) may maintain his
14 or her eligibility for benefits under this chapter by enrolling in the substance abuse
15 treatment program and undergoing a job skills assessment. Such a claimant
16 remains eligible for benefits under this chapter, if otherwise eligible, for each week
17 the claimant is in full compliance with any requirements of the substance abuse
18 treatment program and job skills assessment, as determined by the department in
19 accordance with the rules promulgated under sub. (2) (a) 3. and 5.

20 (4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance
21 with the rules promulgated by the department under par. (b), voluntarily submit to
22 the department the results of a test for the presence of controlled substances that was
23 conducted on an individual as preemployment screening or such an individual's
24 ^e refusal to submit to such a test as a condition of employment, along with information
25 necessary to identify the individual. Upon receipt of any such results or (refusal) of

notify the department
that an individual
declined

SECTION 5

or notification that an individual declined to submit to such a test.

1 a test conducted and certified in a manner approved by the department, the
2 department shall determine whether the individual is a claimant receiving benefits.

3 If the individual is a claimant receiving benefits, the department shall use the results

4 or refusal of any such test submitted in accordance with rules promulgated by the

5 department under par. (b) for purposes of determining eligibility under s. 108.04 (8)

6 (b). use that information for benefits

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

8 (5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) to (d) and
9 (3), subs. (2) (b) to (d) and (3) do not apply until the rules required under sub. (2) (a)
10 take effect, except that the department may request approval of the joint committee
11 on finance to delay implementation of subs. (2) (b) to (d) and (3) by submitting a
12 request to the cochairpersons of the committee. If the cochairpersons notify the
13 department and the legislative reference bureau that the committee has approved
14 a delay in implementation of subs. (2) (b) to (d) and (3) until a date specified by the
15 committee, the department may delay implementation of subs. (2) (b) to (d) and (3)
16 until the date specified by the committee. The department shall submit to the
17 legislative reference bureau for publication in the Wisconsin administrative register
18 a notice identifying the date on which subs. (2) (b) to (d) and (3) will be implemented.

19 (b) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b) sub. (4) (a) does not apply until the rules
20 required under sub. (4) (b) take effect, except that the department may request
21 approval of the joint committee on finance to delay implementation of sub. (4) (a) by
22 submitting a request to the cochairpersons of the committee. If the cochairpersons
23 notify the department and the legislative reference bureau that the committee has
24 approved a delay in implementation of sub. (4) (a) and s. 108.04 (8) (b) until a date specified by the
25 committee, the department may delay implementation of sub. (4) (a) until the date

and s. 108.04 (8) (b)

1 specified by the committee. The department shall submit to the legislative reference
2 bureau for publication in the Wisconsin administrative register a notice identifying
3 the date on which sub. (4) (a) will be implemented.

4 (c) The department may modify or suspend any provision of this section as
5 provided in and in accordance with s. 108.14 (13).

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

7 108.14 (8n) (e) The department shall charge this state's share of any benefits
8 paid under this subsection to the account of each employer by which the employee
9 claiming benefits was employed in the applicable base period, in proportion to the
10 total amount of wages he or she earned from each employer in the base period, except
11 that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
12 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who
13 is subject to the contribution requirements of ss. 108.17 and 108.18, the department
14 shall charge the share of benefits based on employment with that employer to the
15 fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied
16 to an employer that is not subject to the contribution requirements of ss. 108.17 and
17 108.18, the department shall charge the share of benefits based on that employment
18 in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the
19 fund's balancing account with any other state's share of such benefits pending
20 reimbursement by that state.

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

22 108.141 (7) (a) The department shall charge the state's share of each week of
23 extended benefits to each employer's account in proportion to the employer's share
24 of the total wages of the employee receiving the benefits in the employee's base
25 period, except that if the employer is subject to the contribution requirements of ss.

1 108.17 and 108.18 the department shall charge the share of extended benefits to
2 which s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or
3 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.

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

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

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

9 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of sections 108.04
10 (8) (a) and (b), 108.133 (2) (b) to (d), (3), (4), 108.14 (8n) (e), 108.141 (7) (a), and 108.16
11 (6m) (a) of the statutes first applies to determinations issued under section 108.09
12 of the statutes on the effective date of this subsection.

13 (END)

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2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 **SECTION 9151. Nonstatutory provisions; Workforce Development.**
2 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The department of workforce
3 development shall present the statements of scope of the rules required under
4 section ^{SY}108.133 (2) (a) and (4) (b) of the statutes, as created by this act, to the governor
5 for approval under section 227.135 (2) of the statutes no later than the 180th day
6 after the effective date of this subsection.

108.04 (g)(b) and