2017 ASSEMBLY BILL 385

June 14, 2017 - Introduced by Representatives ANDERSON, CROWLEY, YOUNG, KOLSTE, C. TAYLOR, BERCEAU, BOWEN, OHNSTAD, FIELDS and HEBL, cosponsored by Senators JOHNSON and HANSEN. Referred to Committee on State Affairs.

AN ACT to create 238.121 of the statutes; relating to: requiring controlled substance abuse screening, testing, and treatment for eligibility for economic development programs.

Analysis by the Legislative Reference Bureau

This bill requires each individual applying to the Wisconsin Economic Development Corporation to participate in an economic development program in his or her individual capacity and each individual who is an owner, shareholder, partner, member, principal, officer, director, or manager, subject to certain limitations, of a business applying to WEDC to participate in an economic development program to complete a questionnaire or other screening instrument concerning the abuse of controlled substances. If, on the basis of screening results, WEDC determines that there is a reasonable suspicion that an individual is abusing a controlled substance, WEDC must require the individual to undergo a test for the use of a controlled substance in order for the individual or business to be eligible to participate in an economic development program administered by WEDC. Unless an individual has a prescription for the controlled substance, positive test results make an individual or business ineligible to participate in an economic development program.

Under the bill, an individual or business may still participate in an economic development program if an individual who tests positive for the use of a controlled substance takes part in a substance abuse treatment program. Under the bill, failure to satisfactorily complete a substance abuse treatment program results in ineligibility to continue to participate in the economic development program and

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results in the requirement to repay to WEDC all grants, loans, and other benefits the individual or business may have received under the economic development program.

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:

SECTION 1. 238.121 of the statutes is created to read:

238.121 Substance abuse screening and testing for participants in economic development programs. (1) In this section:

(a) “Business applicant” means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association, that applies to participate in an economic development program administered by the corporation.

(b) “Controlled substance” has the meaning given in s. 961.01 (4).

(c) “Controlled substance abuse screening” means a questionnaire, a criminal background check, or any other controlled substance abuse screening mechanism identified by the corporation in its policies and procedures.

(d) “Individual applicant” means an individual who applies on his or her own behalf to participate in his or her individual capacity in an economic development program administered by the corporation.

(e) “Responsible person” means each individual who is an owner, shareholder, partner, member, principal, officer, director, or manager of a business applicant if any of the following applies:
1. The individual has any level of responsibility for the day-to-day management of the business applicant or authority over any individual having responsibility for the day-to-day management of the business applicant.

2. The individual maintains at least a 20 percent ownership interest in the business applicant.

(1m) In order to participate in an economic development program administered by the corporation, an individual applicant and each responsible person of a business applicant shall complete a controlled substance abuse screening. If, on the basis of the controlled substance abuse screening results, the corporation determines that there is a reasonable suspicion that an individual applicant who is otherwise eligible to participate in an economic development program or any responsible person of a business applicant that is otherwise eligible to participate in an economic development program is abusing a controlled substance, the corporation shall require the individual applicant or responsible person to undergo a test for the use of a controlled substance.

(2) If an individual applicant or responsible person refuses to submit to a test under sub. (1m), the individual applicant or business applicant is not eligible to participate in an economic development program administered by the corporation until the individual applicant or responsible person complies with the requirement to undergo a test for the use of a controlled substance.

(3) If an individual applicant or responsible person who undergoes a test under sub. (1m) tests negative for the use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the corporation that the individual applicant or responsible person possesses a valid prescription for each controlled substance for which he or she tests positive, the individual applicant
or responsible person will have satisfactorily completed the substance abuse testing requirements under this section.

(4) (a) If an individual applicant or responsible person who undergoes a test under sub. (1m) tests positive for the use of a controlled substance without presenting evidence of a valid prescription as described in sub. (3), the corporation shall require the individual applicant or responsible person to participate in substance abuse treatment for the individual applicant or business applicant to remain eligible to participate in an economic development program administered by the corporation. If the individual applicant or responsible person refuses to participate in substance abuse treatment, the individual applicant or business applicant is not eligible to participate in an economic development program administered by the corporation until the individual applicant or responsible person complies with the requirement to participate in substance abuse treatment.

(b) During the time that an individual applicant or responsible person is receiving substance abuse treatment under par. (a), the corporation shall require he or she to undergo random testing for the use of a controlled substance. For the individual applicant or business applicant to remain eligible for an economic development program administered by the corporation, the individual applicant or responsible person must cooperate with the testing and the results of the tests must be negative or, if any results are positive, the individual applicant or responsible person must present evidence of a valid prescription as described in sub. (3). If the results of any test during treatment are positive for the use of a controlled substance and the individual applicant or responsible person does not present evidence of a valid prescription for the controlled substance as described in sub. (3), the individual applicant or responsible person shall have the opportunity to begin the treatment
again one time, as determined by the corporation. If the individual applicant or responsible person begins the substance abuse treatment again, the individual applicant or business applicant shall remain eligible for an economic development program administered by the corporation as long as the results of all tests of the individual applicant or responsible person for the use of a controlled substance during the subsequent treatment are negative for the use of a controlled substance or, if any results are positive, the individual applicant or responsible person presents evidence of a valid prescription for the controlled substance as described in sub. (3).

(c) If an individual applicant or responsible person receiving treatment under par. (b) completes treatment and, at the conclusion of the treatment, tests negative for the use of a controlled substance or presents evidence of a valid prescription for any controlled substance as described in sub. (3) for which the individual applicant or responsible person tests positive, the individual applicant or responsible person will have satisfactorily completed the substance abuse testing requirements under this section.

(5) If an individual applicant or responsible person fails to satisfactorily complete the substance abuse testing requirements under this section, the individual applicant or business applicant shall repay to the corporation all grants, loans, and other benefits the individual applicant or business applicant received under the economic development program in which the individual applicant or business applicant is participating when the individual applicant or responsible person fails to satisfactorily complete the substance abuse testing requirements under this section.

SECTION 2. Initial applicability.
(1) Screening and testing under economic development programs. This act first applies to an individual applicant, as defined in section 238.121 (1) (d) of the statutes, or business applicant, as defined in section 238.121 (1) (a) of the statutes, that applies on the effective date of this subsection to participate in an economic development program, as defined in section 238.01 (3) of the statutes, administered by the Wisconsin Economic Development Corporation.