

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget** Drafter: **mduchek**
 By: **Hynek** Secondary Drafters:
 Date: **2/4/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **DOASBOStatLanguage@wisconsin.gov**
MaryAlice.McGreevy@legis.wisconsin.gov

Pre Topic:

DOA:.....Hynek, BB0277 -

Topic:

UI Drug Testing

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 2/5/2019				
/P1	mduchek 2/21/2019	csicilia 2/21/2019	lparisi 2/6/2019		State S&L
/P2			dwalker 2/21/2019		State S&L

FE Sent For: **<END>**

Duchek, Michael

From: Hanaman, Cathlene
Sent: Monday, February 04, 2019 3:33 PM
To: Duchek, Michael; McGreevy, Mary Alice
Subject: FW: Statutory Language Drafting Request - 2019-21

From: Hynek, Sara - DOA <Sara.Hynek@wisconsin.gov>
Sent: Monday, February 04, 2019 3:26 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Hynek, Sara - DOA <Sara.Hynek@wisconsin.gov>; Hynek, Sara - DOA <Sara.Hynek@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: UI Drug Testing

Tracking Code: BB0277

SBO Team: EWD

SBO Analyst: Hynek, Sara - DOA
Phone: (608) 266-1037
E-mail: Sara.Hynek@Wisconsin.gov

Agency Acronym: 445

Agency Number: 445

Priority: Medium

Intent:

Intent: eliminate drug testing programs for UI benefits. Repeal 108.133 and 20.445(1)(aL).

Attachments: False

Please send completed drafts to SBOStatlanguage@spsmail.enterprise.wistate.us



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1774/P1

MED: *GF*

DOA:.....Hynek, BB0277 - UI Drug Testing

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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 February 5, 2019, final federal regulations have not been issued.

Current state law requires DWD to establish a program to test claimants who apply for unemployment insurance benefits for the presence of controlled substances. Under the program, certain claimants may be required to submit to such tests, and a claimant who declines to submit to such a test or who tests positive for one or more controlled substances for which the claimant does not have a valid prescription is ineligible for UI benefits, except that a claimant who tests positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. DWD must promulgate rules to implement the program. Also under current law, an employer may voluntarily submit to the DWD the results of a test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an

However,

individual declined to submit to such a test, along with information necessary to identify the individual. If DWD then verifies that submission, the employee may be ineligible for benefits until certain criteria are satisfied, ^{However,} ~~except that~~ a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment.

This bill repeals both the requirement to establish the drug testing program and the preemployment drug testing provisions.

For further information see the *state and local* 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) (aL) of the statutes is repealed.

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

****NOTE: Note that pursuant to a change in 2017 Act 157, this appropriation would not only fund the drug testing program if it were implemented, but the unencumbered balance on June 30 of each odd-numbered year in this account is transferred to the unemployment program integrity fund, which is used to fund DWD program integrity activities. Let me know if you want me to add anything to preserve this program integrity funding.

2 **SECTION 2.** 49.791 (4) (f) (intro.) of the statutes is amended to read:

3 49.791 (4) (f) *Accepting test results from other programs.* (intro.) For purposes
4 of this section, an administering agency may use results of a drug test performed by
5 the administering agency for the purpose of eligibility for another state program,
6 including a work experience program under s. 49.162, or 49.36, ~~or 108.133,~~
7 performed at the request of the department of corrections, or performed by other drug
8 testing providers as approved by the department to determine whether to refer an
9 able-bodied adult to treatment if all of the following apply:

History: 2017 a. 370.

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

11 108.04 (8) (a) ~~Except as provided in par. (b), if~~ if an employee fails, without good
12 cause, to accept suitable work when offered, the employee is ineligible to receive
13 benefits until the employee earns wages after the week in which the failure occurs

1 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
 2 employment or other work covered by the unemployment insurance law of any state
 3 or the federal government. For purposes of requalification, the employee's weekly
 4 benefit rate shall be that rate which would have been paid had the failure not
 5 occurred. This paragraph does not preclude an employee from establishing a benefit
 6 year during a period in which the employee is ineligible to receive benefits under this
 7 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
 8 ~~Except as provided in par. (b),~~ ^{The} the department shall charge to the fund's balancing
 9 account any benefits otherwise chargeable to the account of an employer that is
 10 subject to the contribution requirements under ss. 108.17 and 108.18 whenever an
 11 employee of that employer fails, without good cause, to accept suitable work offered
 12 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; 2015 a. 55, 86, 195; 2015 a. 197 s. 51; 2015 a. 334; 2017 a. 157; 2017 a. 364 s. 49; 2017 a. 366, 370; s. 13.92 (2) (i).

As affected by 2017 Wisconsin Act 157,

Cross-reference: See also chs. DWD 132 and 133, Wis. adm. code.

13 **SECTION 4.** 108.04 (8) (b) of the statutes is repealed.

14 **SECTION 5.** 108.133 of the statutes is repealed.

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

16 108.14 (8n) (e) The department shall charge this state's share of any benefits
 17 paid under this subsection to the account of each employer by which the employee
 18 claiming benefits was employed in the applicable base period, in proportion to the
 19 total amount of wages he or she earned from each employer in the base period, except
 20 that if s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) ~~or (b),~~
 21 ~~or 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f)~~ would have applied to employment by
 22 such an employer who is subject to the contribution requirements of ss. 108.17 and
 23 108.18, the department shall charge the share of benefits based on employment with

As affected by 2017 Wisconsin Act 157, sections 26 to 37

1 that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07
 2 (3) would have applied to an employer that is not subject to the contribution
 3 requirements of ss. 108.17 and 108.18, the department shall charge the share of
 4 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The
 5 department shall also charge the fund's balancing account with any other state's
 6 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; 2015 a. 55, 334.

Cross-reference: See also ch. DWD 100 to ch. DWD 150, Wis. adm. code.

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

8 108.141 (7) (a) The department shall charge the state's share of each week of
 9 extended benefits to each employer's account in proportion to the employer's share
 10 of the total wages of the employee receiving the benefits in the employee's base
 11 period, except that if the employer is subject to the contribution requirements of ss.
 12 108.17 and 108.18 the department shall charge the share of extended benefits to
 13 which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) ~~or (b),~~
 14 or 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) 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; 2015 a. 55, 334.

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

16 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),
 17 (7) (h), (8) (a) ~~or (b),~~ (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), ~~108.133~~
 18 (3) (f), 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; 2015 a. 55, 86, 334; 2017 a. 157.

19 **SECTION 9.** 108.19 (1s) (a) 5. of the statutes is repealed.

20 **SECTION 10.** 2017 Wisconsin Act 157, sections 10, 26 to 36 (except for the
 21 treatment of section 108.133 (3) (e)), 71 (4) and 73 (2) are repealed.

1 **SECTION 9350. Initial applicability; Workforce Development.**

2 ^{a.f.} (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of ss. 108.04 (8) (b) ✓
3 and 108.133 (4) (a) first applies to initial claims for benefits filed on the effective date
4 of this subsection.

5 **SECTION 9450. Effective dates; Workforce Development.**

6 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. *e No 9*

7 (a) The treatment of ss. 49.791 (4) (f) (intro.), 108.04 (8) (a) and (b), 108.133, ✓
8 108.14 (8n) (e), 108.141 (7) (a), and 108.19 (1s) (a) 5. and Section 9350 (1) of this act ✓
9 take effect on the Sunday after publication. *CS a.f. 108.16 (6m)(a)*

10 (b) The treatment of 2017 Wisconsin Act 157, sections 10, 26 to 36, 71 (4) and
11 73 (2) takes effect on the Sunday after publication, except that if the treatment of ss.
12 108.04 (8) (b) and 108.133 (1) (a) and (ag), (2) (intro.), (a) 1., 2., 3., 4., and 5. and (b),
13 (3) (a), (b), (c), and (d), and (4) (a) by 2017 Wisconsin Act 157 have gone into effect by
14 the effective date of this subsection, then the treatment of 2017 Wisconsin Act 157,
15 sections 10, 26 to 36, sections 26 to 37, 71 (4) and 73 (2) is void.

16 **(END)**



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-17747P1

MED:kjf

DOA:.....Hynek, BB0277 - UI Drug Testing

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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 federal secretary of labor (federal regulations). As of February 5, 2019, final federal regulations have not been issued.

Current state law requires DWD to establish a program to test claimants who apply for UI benefits for the presence of controlled substances. Under the program, certain claimants may be required to submit to such tests, and a claimant who declines to submit to such a test or who tests positive for one or more controlled substances for which the claimant does not have a valid prescription is ineligible for UI benefits. However, a claimant who tests positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. DWD must promulgate rules to implement the program. Also under current law, an employer may voluntarily submit to DWD the results of a test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test, along with information necessary to identify the individual. If DWD then

verifies that submission, the employee may be ineligible for benefits until certain criteria are satisfied. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment.

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1 employment or other work covered by the unemployment insurance law of any state
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4 occurred. This paragraph does not preclude an employee from establishing a benefit
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6 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
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22 or 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by
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24 108.18, the department shall charge the share of benefits based on employment with
25 that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07

1 (3) would have applied to an employer that is not subject to the contribution
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19 **SECTION 9350. Initial applicability; Workforce Development.**

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21 and 108.133 (4) (a) first applies to initial claims for benefits filed on the effective date
22 of this subsection.

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24 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of ss. 49.791 (4) (f)
25 (intro.), 108.04 (8) (a) and (b), 108.133, 108.14 (8n) (e), 108.141 (7) (a), 108.16 (6m)

1 (a), and 108.19 (1s) (a) 5. and SECTION 9350 (1) of this act take effect on the Sunday
2 after publication.

3 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1774/P2dn

MED:...

cjs

✓ ✓ ✓
This draft reconciles LRB-1731/P2, LRB-1288/P1 and LRB-1774/P1. All of these drafts should continue to appear in the compiled bill.

Michael Duchek
Senior Legislative Attorney
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1774/P2dn
MED:cjs

February 21, 2019

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Michael Duchek
Senior Legislative Attorney
(608) 504-5830
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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1774/P2
MED:kjf&cjs

DOA:.....Hynek, BB0277 - UI Drug Testing

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

EMPLOYMENT

1. Unemployment insurance; drug testing

Current state law requires DWD to establish a program to test for the presence of controlled substances certain claimants who apply for unemployment insurance (UI) benefits. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. However, under federal law, the state may only require the drug testing under the program in accordance with regulations issued by the federal secretary of labor. As of February 13, 2019, final federal regulations have not been issued. This bill repeals the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a preemployment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test. If DWD then verifies that submission, the employee may be ineligible for benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. This bill repeals these preemployment drug testing provisions.

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25 or 108.07 (3), (3r), or (5) (b), ~~or 108.133 (3) (f)~~ applies to the fund's balancing account.

