

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 149

As Amended by Senate Committee of the Whole

Brief*

SB 149 would authorize the screening of applicants or recipients of cash assistance programs or employment security benefits, commonly referred to as Unemployment Insurance (UI) benefits, for unlawful controlled substances or unlawful controlled substance analogs, as defined by KSA 21-5701 and 21 U.S.C. § 802.

Screening for Cash Assistance

The Secretary of the Department for Children and Families (DCF) would be required to establish a drug screening program by January 1, 2014, for applicants or recipients of cash assistance. The Secretary would be authorized to adopt rules and regulations. Persons would be screened whenever there is a reasonable suspicion the person is using a controlled substance.

Should an individual's screening test be positive, the person could request an additional test at a different drug testing facility. The person would be required to pay for that test and would be reimbursed if the second test results were negative.

If the results of a screening test were positive, the person would be required to complete a substance abuse treatment program and a job skills program. A person who fails or refuses to complete either program would become ineligible for benefits. If a person tests positive a second time,

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

cash assistance from DCF would terminate for 12 months or until both the substance abuse treatment program and the job skills program were completed a second time, whichever occurs later.

If a person who becomes ineligible due to a screening test happens to be a parent or guardian of a minor child, the Secretary of DCF could then approve a protective payee, recommended by the parent or guardian, to receive payments for the child's benefit. If the Secretary of DCF determines there is a reasonable suspicion that the designated protective is using an unlawful controlled substance, that person would be required to submit to a screening test. If the proposed payee's test was positive, the Secretary would select another payee.

Starting on July 1, 2013, first-time offenders convicted of a controlled substance-related felony, as classified by federal law or the law of a state, would be ineligible for cash assistance for five years. Persons convicted of subsequent controlled substance felonies would be ineligible for cash assistance for life.

Drug screening results would be confidential, except for DCF hearings or criminal prosecutions.

Screening for Unemployment Insurance (UI) Benefits

The bill would repeal the current disqualification for receiving UI benefits if the person fails a pre-employment drug screening. In its place, UI applicants or recipients would be required to submit to controlled substance screening tests. If test results are positive, the person would be required to complete both a substance abuse treatment program and a job skills program. Subject to applicable federal law, a person who fails or refuses to complete either program would become ineligible for UI benefits. After a second positive test, a person would lose UI benefits for 12 months or until another substance abuse treatment program and a job skills program

is completed, whichever occurs later. After a third positive test, and subject to applicable federal law, a person would no longer be eligible for UI benefits. The Secretary of the Department of Labor would be authorized to promulgate rules and regulations to implement the requirements of the bill.

Employers would be required to report the following to the Secretary of the Department of Labor:

- The name and address of each employee who was discharged for misconduct, as defined by employment security law;
- The name and address of each applicant who was refused employment by reason of misconduct; and
- Other information required by the Secretary.

Other Provisions

The bill would add members of the Senate and House of Representatives to the list of state employees who are eligible for drug screening. If a reasonable suspicion is present, the Division of Personnel within the Department of Administration is authorized under current law to test the Governor, Lt. Governor, Attorney General, and persons in sensitive safety positions, certain state institutions.

The bill would direct funding for substance abuse treatment to come from federal funding for Temporary Assistance for Needy Families (TANF), if allowed by federal law and regulations. If federal restrictions did not allow for the expenditure, or if funding from federal or other sources was unavailable, the Secretary of DCF would be required to spend funds from the State General Fund.

Background

Proponents of the bill present at the Senate Committee hearing included Senator King and a representative of

SouthEast Kansas, Inc. Proponents stated the purpose of the bill is to identify those people with substance abuse problems and assist them to become productive members of the job market. According to their testimony, in February of 2012, Congress granted states permissive authority to drug test individuals receiving UI benefits.

Opponents of the bill included Senator Faust-Goudeau, and representatives of the American Civil Liberties Union for Kansas and Missouri, Kansas Association of Addiction Professionals, the Kansas Chapter of the National Organization for Women, and the Unified Community Services of Johnson County. Opponents were concerned state officials could presume persons accepting assistance also are taking unlawful controlled substances. Opponents noted the U.S. Department of Labor has not yet promulgated guidelines for drug testing of UI recipients who worked in certain occupations.

Representatives of the Kansas Chapter of the National Association of Social Workers, the Kansas Department for Children and Families, and Neosho Community College provided neutral testimony, explaining their respective experience with screening and training programs.

The Senate Committee of the Whole amended the bill to:

- Clarify the controlled substances to be tested for are unlawful;
- Include members of the Senate and House of Representatives in the state's drug screening program;
- Require reasonable suspicion to be present before a designated protective payee must submit to a screening test; and

- Direct funding for substance abuse treatment to come from federal funds, if available. If no other funding is available, DCF would be required to funds from the State General Fund.

According to the revised fiscal note prepared by the Division of the Budget, in consultation with the Departments of Labor and Children and Families, the net effect of the bill would be an increase in expenditures in FY 2014 of \$1,095,468 from all funding sources, including \$461,665 from the State General Fund, and an additional 4.0 FTE positions in DCF. The Department of Labor does not anticipate additional expenditures.