

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 149**

As Amended by House Committee of the Whole

**Brief\***

SB 149, as amended, 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 use of 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,

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\*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 is a parent or guardian of a minor child, the Secretary for Children and Families (Secretary) could then approve a protective payee, recommended by the parent or guardian, to receive payments for the child's benefit. If the Secretary determines there is a reasonable suspicion the designated protective payee 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, a first-time offender 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.

### ***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 Labor would be authorized to promulgate rules and regulations to implement the requirements of the bill.

Employers would be required to report to the Secretary of Labor 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, Lieutenant Governor, Attorney General, and persons in sensitive safety positions or employed in certain state institutions.

### **Background**

Proponents of the bill present at the House Committee hearing included Senator King and a representative of a cabinet manufacturer. 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 2012, Congress granted states permissive authority to drug test individuals receiving UI benefits.

A representative of the Kansas Chapter of the National Organization for Women spoke in opposition to the bill, expressing concern state officials could presume persons accepting assistance also are taking unlawful controlled substances.

Representatives of the Kansas Chapter of the National Association of Social Workers and DCF provided neutral testimony, explaining their respective experiences 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 use funds from the State General Fund.

The House Committee on Commerce, Labor, and Economic Development amended the bill to:

- Delete reference to the sources of funding for substance abuse treatment; and
- Delete the requirement of employers to provide the Department of Labor with information about employees discharged for misconduct.

In addition to making a technical amendment, the House Committee of the Whole amended the bill to delete a confidentiality exception allowing the results of drug screenings to be used in criminal prosecutions.

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.