

State Senator Tommy Williams' Testimony
House Committee on Ways and Means
Subcommittee on Human Resources
April 16, 2013

Good morning Mr. Chairman and Members. I'm State Senator Tommy Williams. I represent Senate District 4, which includes the southeastern portion of the State of Texas and the northern and eastern parts of the Greater Houston Area. My Senate District overlaps with Congressman Brady; he is my neighbor and my Congressman.

I serve as Chairman of the Senate Finance Committee. The Senate Finance Committee has jurisdiction over the state's \$196 billion (all funds) biennial budget and state tax policy.

I am pleased for the opportunity to appear before the committee today to testify about the Middle Class Tax Relief and Job Creation Act, or Public Law 112-96. The bill contained major provisions, as you know, relating to unemployment insurance and TANF benefits.

There have been two bills filed in the 83rd Texas Legislature that would enact drug testing provisions for certain unemployment insurance claimants authorized by House Resolution 3630.

I am the author of Senate Bill (SB) 21, which relates to drug screening/ testing as a condition for receiving unemployment compensation benefits by certain individuals. Its House companion is carried by Rep. Brandon Creighton. SB 21 passed out of the State Senate, 31-0, on Thursday, April 11. The bill received bipartisan support.

The bill would require applicants for unemployment insurance benefits to submit to a drug screening, if their only suitable work is for an occupation identified by the U.S. Secretary of Labor as one that regularly requires drug testing. If the applicant's drug screening indicates that person has used illegal drugs, they then would be required to submit and pass a drug test before being eligible to receive unemployment insurance benefits. If the individual is required to take a drug test and tests positive, they would be ineligible for benefits. They must retake and pass the drug test no sooner than four weeks after the failed test in order to become eligible for unemployment insurance.

There also are provisions that would allow people with a false positive to challenge the test. The bill also allows persons who test positive to continue receiving unemployment benefits if they enroll and attend a drug treatment program. I expect this bill will enjoy broad bipartisan support in the Texas House, as it did in the Senate, and to be on the governor's desk in a few weeks.

The Texas Senate also passed SB 11, which subjects high-risk TANF applicants to drug testing. Those who fail the drug test would be disqualified from TANF benefits for one year. However, applicants who fail the drug test could reapply for benefits if they enter a drug treatment program. Applicants who tested positive for drugs three times would be permanently disqualified from receiving TANF benefits.

Senator Jane Nelson, author of SB 11, modified her original bill to address concerns that children would be hurt if TANF applicants flunked the drug test. The final Senate version allows TANF benefits to continue helping dependents through a third party, known as a protective payee, if an

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adult applicant tested positive for drugs. This legislation also received broad bipartisan support, passing the Senate, 31-0, on Wednesday, April 10.

The bill also would remove all sanctions if an adult recipient, who tested positive for drugs, submits to a new drug test after six months and the test is negative.

The bill requires the Health and Human Services Commission to use the most efficient and cost-effective drug screening assessment tool that is developed jointly with the Department of State Health Services, based on validated controlled substance use screening assessment tools.

Public law 112-96 also creates new cost-neutral "waiver" authority, providing states with unprecedented flexibility on how they use unemployment benefits to promote the type of pro-work reforms that led to successful welfare reform in the 1990s. Texas submitted a waiver request to the Department of Labor on February 24th, 2012, which was denied on March 16th, 2012. On April 19th, 2012 the Department of Labor issued another statement providing guidance on Unemployment Insurance demonstration projects.

House Bill 3005 by Rep. Burkett has been introduced in the Texas House , which would amend the Texas Labor Code to allow the Texas Workforce Commission to use money in the Unemployment Compensation Fund for re-employment demonstration projects pursuant to an agreement - or waiver - from the U.S. Secretary of Labor. We already have a highly successful program called Texas Back to Work.

Under that program:

- More than 5,000 employers had made nearly 31,000 hires as of Oct. 29, 2012.
- Overall, 57.6 percent of Texas Back To Work claimants were still employed in the quarter after the incentive period ended. The percentage jumps to 83.8 percent when looking only at those whose placements were successful.
- A Texas Back to Work placement is \$595 cheaper on average than the total benefit cost for a similar claimant who was not placed.

Federal law now also includes a lay-off aversion program that allows employers to reduce the amount of hours an employee is working to collect a portion of the unemployment insurance benefits. Our state already operates a short-term compensation program, which is called "Shared Work." This program offers employers an opportunity to avert temporary layoffs of employees by reducing the number of hours in a workweek while allowing those workers to receive unemployment insurance benefits to make up for the reduced hours.

In order to continue operating the program, our State would have to amend Texas law to comply with the federal requirements. There are two bills pending in the Texas Legislature that would bring our short-term compensation program into federal compliance. SB 919 by Sen. Eltife related to the shared work/unemployment compensation program is recommended for the Senate Local and Uncontested Calendar this Thursday. HB 2035 by Rep. Vo addresses the same issue and passed the Texas House last week.

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Public Law 112-96 also created a national jobs search requirement for everyone collecting state and federal unemployment insurance benefits, from the first through the last week of benefits.

The Texas Workforce Commission, by commission rule, currently requires that claimants actively seek work to remain eligible for unemployment insurance benefits. House Resolution 3630 requires this to be in statute. There are two bills pending in the Texas Legislature that would put this into state statute: SB 920 by Sen. Eltife, which has passed the Senate and been referred to the House Economic and Small Business Development Committee, and HB 1995 by Rep. Reynolds, which was reported favorably from committee and is no doubt awaiting the arrival of the Senate bill.

The law also requires reemployment eligibility assessments for persons before beginning to collect deferrable unemployment insurance benefits to determine what services and activities they need to return to work. It provides \$1 billion in new, limited time funds to assist the long-term unemployed. Currently, our State has reached out to 232,999 claimants for reemployment eligibility assessments. We anticipate outreach to a total of approximately 355,000 by completion of this initiative.

Public Law 112-96 requires states to reduce current State and Federal Unemployment benefit checks to recover prior overpayments. The Texas Workforce Commission has taken aggressive steps to reduce overpayments by more than 2 percentage points in a year. The total annual overpayment rate in Texas is now 9.17 percent as compared to 11.7 percent in 2011.

The federal law also reduces the maximum number of weeks of all Unemployment benefits payable in states based on average unemployment rates. Eligible unemployed Texans can receive up to 54 weeks of Unemployment benefits:

- 26 weeks of regular Unemployment Insurance benefits;
- 14 weeks under Tier I of Emergency Unemployment Compensation; and
- 14 weeks under Tier II of Emergency Unemployment Compensation.

Public Law 112-96 also allows states the option to implement a self-employment assistance program. No bills have been filed in Texas to allow for a Self-Employment Assistance.

Finally, in addition to the provisions above, the law also included restrictions of TANF dollars. TANF funds cannot be accessed at ATMs in strip clubs, liquor stores, or casinos in Texas.

Thank you, Mr. Chairman and Committee Members, for allowing me to update you on the Middle Class Tax Relief and Job Creation Act and its application in Texas. I would be happy to respond to any questions you may have.

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BILL ANALYSIS

Senate Research Center
83R18952 KSD-F

C.S.S.B. 21
By: Williams et al.
Economic Development
4/3/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 21 amends Texas law to ensure that all individuals referred by the Texas Workforce Commission are ready to work. Changes in federal law allow states to require drug-testing for claimants of unemployment insurance under certain circumstances.

This legislation amends the Texas Unemployment Compensation Act by adding a drug-testing eligibility requirement for applicants to receive unemployment compensation benefits. The Texas Workforce Commission would not be testing all applicants, but only those who fail a pre-screen test and work in certain identified industries. Claimants who refuse drug testing or fail such tests would be barred from receiving unemployment insurance benefits until the individual passes a test at least four weeks after the date of the failed test.

C.S.S.B. 21 amends current law relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 (Section 207.021, Labor Code) and SECTION 2 (Section 207.026, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 207.021, Labor Code, by adding Subsection (b-1), as follows:

(b-1) Provides that an individual for whom suitable work is available only in an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is available for work for purposes of Subsection (a)(4) (relating to the eligibility of a person to receive benefits by being available to work) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the Texas Workforce Commission (TWC) under Section 207.026. Requires TWC to adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

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SECTION 2. Amends Subchapter B, Chapter 207, Labor Code, by adding Section 207.026, as follows:

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) Requires TWC by rule to adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. Requires that the program comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by TWC; and be designed to protect the rights of benefit applicants and recipients.

(b) Requires each individual under the program to whom Section 207.021(b-1) applies who files an initial claim to submit to and pass a drug screening assessment developed and administered by or on behalf of TWC for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. Requires that the assessment tool used under this subsection consist of a written questionnaire to be completed by the individual applying for benefits and be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code. Requires an individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter to submit to and pass a drug test administered by or on behalf of TWC to establish the individual's eligibility for benefits under this subtitle. Provides that an individual who fails a drug test under this subsection is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of TWC not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Provides that an individual is not disqualified from receiving benefits based on the individual's failure to pass a drug test, notwithstanding Subsection (b), if, on the basis of evidence presented by the individual, TWC determines that the individual is participating in a treatment program for drug abuse, or the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

(d) Requires TWC by rule to prescribe procedures for an appeal and the retaking of a failed drug test by an individual under this section.

(e) Requires TWC to administer the program under this section using existing administrative funds and any funds appropriated to TWC for the purposes of this section.

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SECTION 3. Makes application of the changes in law made by this Act prospective to February 1, 2014.

SECTION 4. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 5. Effective date: September 1, 2013.