



Reprinted
March 15, 2011

**ENGROSSED
HOUSE BILL No. 1267**

DIGEST OF HB 1267 (Updated March 14, 2011 3:06 pm - DI 102)

Citations Affected: IC 22-4.

Synopsis: Drug testing and unemployment benefits. Provides that an individual is considered to have refused an offer of suitable work if the individual: (1) tests positive for drugs after; or (2) refuses without good cause to submit to; a drug test required by a prospective employer as a condition of an offer of employment. Provides that the department of workforce development's records concerning the results of a drug test may not be admitted against a defendant in a criminal proceeding.

Effective: July 1, 2011.

Kubacki, Mahan, Leonard, Ubelhor
(SENATE SPONSORS — LEISING, TALLIAN, SCHNEIDER, KRUSE,
HEAD)

January 12, 2011, read first time and referred to Committee on Employment, Labor and Pensions.
February 8, 2011, amended, reported — Do Pass.
February 10, 2011, read second time, ordered engrossed. Engrossed.
February 14, 2011, read third time, passed. Yeas 89, nays 0.
SENATE ACTION
February 17, 2011, read first time and referred to Committee on Pensions and Labor.
March 3, 2011, amended, reported favorably — Do Pass.
March 14, 2011, read second time, amended, ordered engrossed.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1267

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 40. As used in this article, "drug test" means a test**
4 **that contains at least a five (5) drug panel that tests for the**
5 **following:**

- 6 (1) Amphetamines.
- 7 (2) Cocaine.
- 8 (3) Opiates (2,000 ng/ml).
- 9 (4) PCP.
- 10 (5) THC.

11 **A drug test described in this section must be performed at a United**
12 **States Department of Health and Human Services certified**
13 **laboratory, with specimen collection performed by a collector**
14 **certified by the United States Department of Transportation and**
15 **the cost of the drug test paid by the employer.**

16 SECTION 2. IC 22-4-15-2, AS AMENDED BY P.L.175-2009,
17 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

EH 1267—LS 7259/DI 96+



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1 JULY 1, 2011]: Sec. 2. (a) With respect to benefit periods established
2 on and after July 3, 1977, an individual is ineligible for waiting period
3 or benefit rights, or extended benefit rights, if the department finds that,
4 being totally, partially, or part-totally unemployed at the time when the
5 work offer is effective or when the individual is directed to apply for
6 work, the individual fails without good cause:

7 (1) to apply for available, suitable work when directed by the
8 commissioner, the deputy, or an authorized representative of the
9 department of workforce development or the United States
10 training and employment service;

11 (2) to accept, at any time after the individual is notified of a
12 separation, suitable work when found for and offered to the
13 individual by the commissioner, the deputy, or an authorized
14 representative of the department of workforce development or the
15 United States training and employment service, or an employment
16 unit; or

17 (3) to return to the individual's customary self-employment when
18 directed by the commissioner or the deputy.

19 (b) With respect to benefit periods established on and after July 6,
20 1980, the ineligibility shall continue for the week in which the failure
21 occurs and until the individual earns remuneration in employment
22 equal to or exceeding the weekly benefit amount of the individual's
23 claim in each of eight (8) weeks. If the qualification amount has not
24 been earned at the expiration of an individual's benefit period, the
25 unearned amount shall be carried forward to an extended benefit period
26 or to the benefit period of a subsequent claim.

27 (c) With respect to extended benefit periods established on and after
28 July 5, 1981, the ineligibility shall continue for the week in which the
29 failure occurs and until the individual earns remuneration in
30 employment equal to or exceeding the weekly benefit amount of the
31 individual's claim in each of four (4) weeks.

32 (d) If an individual failed to apply for or accept suitable work as
33 outlined in this section, the maximum benefit amount of the
34 individual's current claim, as initially determined, shall be reduced by
35 an amount determined as follows:

36 (1) For the first failure to apply for or accept suitable work, the
37 maximum benefit amount of the individual's current claim is
38 equal to the result of:

39 (A) the maximum benefit amount of the individual's current
40 claim, as initially determined; multiplied by

41 (B) seventy-five percent (75%);
42 rounded (if not already a multiple of one dollar (\$1)) to the next

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- 1 higher dollar.
- 2 (2) For the second failure to apply for or accept suitable work, the
3 maximum benefit amount of the individual's current claim is
4 equal to the result of:
- 5 (A) the maximum benefit amount of the individual's current
6 claim determined under subdivision (1); multiplied by
7 (B) eighty-five percent (85%);
8 rounded (if not already a multiple of one dollar (\$1)) to the next
9 higher dollar.
- 10 (3) For the third and any subsequent failure to apply for or accept
11 suitable work, the maximum benefit amount of the individual's
12 current claim is equal to the result of:
- 13 (A) the maximum benefit amount of the individual's current
14 claim determined under subdivision (2); multiplied by
15 (B) ninety percent (90%);
16 rounded (if not already a multiple of one dollar (\$1)) to the next
17 higher dollar.
- 18 (e) In determining whether or not any such work is suitable for an
19 individual, the department shall consider:
- 20 (1) the degree of risk involved to such individual's health, safety,
21 and morals;
- 22 (2) the individual's physical fitness and prior training and
23 experience;
- 24 (3) the individual's length of unemployment and prospects for
25 securing local work in the individual's customary occupation; and
26 (4) the distance of the available work from the individual's
27 residence.
- 28 However, work under substantially the same terms and conditions
29 under which the individual was employed by a base-period employer,
30 which is within the individual's prior training and experience and
31 physical capacity to perform, shall be considered to be suitable work
32 unless the claimant has made a bona fide change in residence which
33 makes such offered work unsuitable to the individual because of the
34 distance involved. During the fifth through the eighth consecutive week
35 of claiming benefits, work is not considered unsuitable solely because
36 the work pays not less than ninety percent (90%) of the individual's
37 prior weekly wage. After eight (8) consecutive weeks of claiming
38 benefits, work is not considered unsuitable solely because the work
39 pays not less than eighty percent (80%) of the individual's prior weekly
40 wage. However, work is not considered suitable under this section if
41 the work pays less than Indiana's minimum wage as determined under
42 IC 22-2-2. For an individual who is subject to section 1(c)(8) of this

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chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation

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1 under the provisions of this article to the extent that such
 2 provisions are not inconsistent with the applicable federal law.
 3 (4) If the position pays wages less than the higher of:
 4 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
 5 Fair Labor Standards Act of 1938), without regard to any
 6 exemption; or
 7 (B) the state minimum wage (IC 22-2-2).
 8 (i) The department of workforce development shall refer individuals
 9 eligible for extended benefits to any suitable work (as defined in
 10 subsection (g)) to which subsection (h) would not apply.
 11 **(j) An individual is considered to have refused an offer of**
 12 **suitable work under subsection (a) if an offer of work is withdrawn**
 13 **by an employer after an individual:**
 14 **(1) tests positive for drugs after a drug test given on behalf of**
 15 **the prospective employer as a condition of an offer of**
 16 **employment; or**
 17 **(2) refuses, without good cause, to submit to a drug test**
 18 **required by the prospective employer as a condition of an**
 19 **offer of employment.**
 20 **(k) The department's records concerning the results of a drug**
 21 **test described in subsection (j) may not be admitted against a**
 22 **defendant in a criminal proceeding.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1267, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 10 and 11, begin a new line blocked left and insert:

"A drug test described in this SECTION must be performed at a United States Department of Health and Human Services certified laboratory, with specimen collection performed by a collector certified by the United States Department of Transportation and the cost of the drug test paid by the employer.

SECTION 2. IC 22-4-15-2, AS AMENDED BY P.L.175-2009, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

- (1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
- (2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or
- (3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the

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failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions

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under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended

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benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or
(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

(j) For benefit periods established on and after June 30, 2011, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds as provided in section 9 of this chapter that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or as a prerequisite to a work offer, the individual:

(1) tested positive for drugs after a drug test given on behalf of a prospective employer; or

(2) refused to submit to a drug test.

SECTION 3. IC 22-4-15-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) Notwithstanding any other provision of this article, an individual who is otherwise eligible for benefits may be disqualified for benefits under section 2 of this chapter, if the individual:**

(1) is found to have tested positive for drugs after a drug test is given on behalf of a prospective employer; or

(2) refuses to submit to a drug test;

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after an offer of employment has been made or as a prerequisite to an offer of employment by an employer. For purposes of this article, the failure to report for a scheduled drug test shall not constitute a refusal to submit to a drug test unless the individual scheduled to be tested fails to reschedule and submit to a subsequent drug test within a seventy-two (72) hour period after the original time and date required that the individual was to submit to a drug test.

(b) A prospective employer that:

- (1) receives a report of a positive drug test that has been given on behalf of the prospective employer; or
 - (2) is aware that a prospective employee has refused to submit to a drug test that would be given on behalf of the employer;
- shall immediately report the information in subdivision (1) or (2) to the department.

(c) For purposes of this article, a drug test is not found to be positive unless:

(1) a second confirmation test:

(A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and

(B) has been reviewed by a licensed physician and:

- (i) the laboratory results described in clause (A);
- (ii) the individual's medical history; and
- (iii) other relevant biomedical information;

confirm a positive result of the drug tests; or

(2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test.

(d) Whenever the department receives a report under subsection (b) concerning an individual, the department shall provide written notice to the individual of the following:

- (1) That the department has received a report described in subsection (b) concerning the individual.
- (2) That the individual may be disqualified for benefits under this section as the result of the report.
- (3) That the individual may appeal the report by requesting a hearing as provided in IC 22-4-17-2.

(e) An individual who is disqualified for benefits under

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subsection (a) may resume eligibility for benefits upon submission of a negative drug test to the department.

(f) The department shall adopt rules under IC 4-22-2 to effectuate this section to the extent authorized by federal law. The rules may include, but are not limited to, rules concerning:

- (1) the period of ineligibility for benefits between the time that the drug test is given and a positive result is reported to the department;
- (2) the manner in which a subsequent negative drug test may be submitted to the department after a positive drug test has been reported;
- (3) any penalty against an employer that does not report the information in subsection (b), if other than that provided for in IC 22-4-34-4; and
- (4) the manner by which a report of a false positive drug test may be appealed to the department."

Page 1, delete lines 11 through 17.

Page 2, delete lines 1 through 32.

Page 3, line 14, after "the individual" insert "**may be disqualified for benefits if the individual:**

- (1) is found to have a positive drug test after a drug test is given on behalf of a prospective employer; or
- (2) refuses to submit to a drug test;

after an offer of employment has been made or as a prerequisite to an offer of employment by the employer, as provided in IC 22-4-15-9."

Page 3, delete lines 15 through 23.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1267 as introduced.)

GUTWEIN, Chair

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1267, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 11, delete "SECTION" and insert "**section**".

Page 5, delete lines 11 through 42, begin a new paragraph and insert:

"(j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn by an employer after an individual:

(1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment; or

(2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment."

Delete pages 6 through 7.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1267 as printed February 8, 2011.)

BOOTS, Chairperson

Committee Vote: Yeas 7, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 1267 be amended to read as follows:

Page 5, after line 19, begin a new paragraph and insert:

"(k) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding."

(Reference is to EHB 1267 as printed March 4, 2011.)

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