

Adopted Rejected

COMMITTEE REPORT

YES: 13
NO: 0

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:*

- 1 Page 1, between lines 10 and 11, begin a new line blocked left and
- 2 insert:
- 3 **"A drug test described in this SECTION must be performed at a**
- 4 **United States Department of Health and Human Services certified**
- 5 **laboratory, with specimen collection performed by a collector**
- 6 **certified by the United States Department of Transportation and**
- 7 **the cost of the drug test paid by the employer.**
- 8 SECTION 2. IC 22-4-15-2, AS AMENDED BY P.L.175-2009,
- 9 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 JULY 1, 2011]: Sec. 2. (a) With respect to benefit periods established
- 11 on and after July 3, 1977, an individual is ineligible for waiting period
- 12 or benefit rights, or extended benefit rights, if the department finds that,
- 13 being totally, partially, or part-totally unemployed at the time when the
- 14 work offer is effective or when the individual is directed to apply for

1 work, the individual fails without good cause:

2 (1) to apply for available, suitable work when directed by the
3 commissioner, the deputy, or an authorized representative of the
4 department of workforce development or the United States
5 training and employment service;

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

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

14 (b) With respect to benefit periods established on and after July 6,
15 1980, the ineligibility shall continue for the week in which the failure
16 occurs and until the individual earns remuneration in employment
17 equal to or exceeding the weekly benefit amount of the individual's
18 claim in each of eight (8) weeks. If the qualification amount has not
19 been earned at the expiration of an individual's benefit period, the
20 unearned amount shall be carried forward to an extended benefit period
21 or to the benefit period of a subsequent claim.

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

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

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

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

36 (B) seventy-five percent (75%);
37 rounded (if not already a multiple of one dollar (\$1)) to the next
38 higher dollar.

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

1 wage. However, work is not considered suitable under this section if
 2 the work pays less than Indiana's minimum wage as determined under
 3 IC 22-2-2. For an individual who is subject to section 1(c)(8) of this
 4 chapter, the determination of suitable work for the individual must
 5 reasonably accommodate the individual's need to address the physical,
 6 psychological, legal, and other effects of domestic or family violence.

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

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

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

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

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

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

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

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

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

- 1 (B) the amount (if any) of supplemental unemployment
 2 compensation benefits (as defined in Section 501(c)(17)(D) of
 3 the Internal Revenue Code) payable to the individual for such
 4 week.
- 5 (2) If the position was not offered to the individual in writing or
 6 was not listed with the department of workforce development.
- 7 (3) If such failure would not result in a denial of compensation
 8 under the provisions of this article to the extent that such
 9 provisions are not inconsistent with the applicable federal law.
- 10 (4) If the position pays wages less than the higher of:
- 11 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
 12 Fair Labor Standards Act of 1938), without regard to any
 13 exemption; or
- 14 (B) the state minimum wage (IC 22-2-2).
- 15 (i) The department of workforce development shall refer individuals
 16 eligible for extended benefits to any suitable work (as defined in
 17 subsection (g)) to which subsection (h) would not apply.
- 18 **(j) For benefit periods established on and after June 30, 2011, an
 19 individual is ineligible for waiting period or benefit rights, or
 20 extended benefit rights, if the department finds as provided in
 21 section 9 of this chapter that, being totally, partially, or part-totally
 22 unemployed at the time when the work offer is effective or as a
 23 prerequisite to a work offer, the individual:**
- 24 **(1) tested positive for drugs after a drug test given on behalf
 25 of a prospective employer; or**
- 26 **(2) refused to submit to a drug test.**
- 27 SECTION 3. IC 22-4-15-9 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2011]: **Sec. 9. (a) Notwithstanding any other provision of this
 30 article, an individual who is otherwise eligible for benefits may be
 31 disqualified for benefits under section 2 of this chapter, if the
 32 individual:**
- 33 **(1) is found to have tested positive for drugs after a drug test
 34 is given on behalf of a prospective employer; or**
- 35 **(2) refuses to submit to a drug test;**
- 36 **after an offer of employment has been made or as a prerequisite to
 37 an offer of employment by an employer. For purposes of this
 38 article, the failure to report for a scheduled drug test shall not**

1 constitute a refusal to submit to a drug test unless the individual
2 scheduled to be tested fails to reschedule and submit to a
3 subsequent drug test within a seventy-two (72) hour period after
4 the original time and date required that the individual was to
5 submit to a drug test.

6 (b) A prospective employer that:

7 (1) receives a report of a positive drug test that has been given
8 on behalf of the prospective employer; or

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

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

15 (1) a second confirmation test:

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

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

23 (i) the laboratory results described in clause (A);

24 (ii) the individual's medical history; and

25 (iii) other relevant biomedical information;

26 confirm a positive result of the drug tests; or

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

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

33 (1) That the department has received a report described in
34 subsection (b) concerning the individual.

35 (2) That the individual may be disqualified for benefits under
36 this section as the result of the report.

37 (3) That the individual may appeal the report by requesting
38 a hearing as provided in IC 22-4-17-2.

1 (e) An individual who is disqualified for benefits under
2 subsection (a) may resume eligibility for benefits upon submission
3 of a negative drug test to the department.

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

7 (1) the period of ineligibility for benefits between the time that
8 the drug test is given and a positive result is reported to the
9 department;

10 (2) the manner in which a subsequent negative drug test may
11 be submitted to the department after a positive drug test has
12 been reported;

13 (3) any penalty against an employer that does not report the
14 information in subsection (b), if other than that provided for
15 in IC 22-4-34-4; and

16 (4) the manner by which a report of a false positive drug test
17 may be appealed to the department."

18 Page 1, delete lines 11 through 17.

19 Page 2, delete lines 1 through 32.

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

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

24 (2) refuses to submit to a drug test;

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

28 Page 3, delete lines 15 through 23.

29 Renumber all SECTIONS consecutively.

(Reference is to HB 1267 as introduced.)

and when so amended that said bill do pass.

Representative Gutwein