

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 86 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2011]: **Sec. 40. As used in this article, "drug test" means a test**
- 6 **that contains at least a five (5) drug panel that tests for the**
- 7 **following:**
- 8 **(1) Amphetamines.**
- 9 **(2) Cocaine.**
- 10 **(3) Opiates (2,000 ng/ml).**
- 11 **(4) PCP.**
- 12 **(5) THC.**
- 13 SECTION 2. IC 22-4-15-2, AS AMENDED BY P.L.175-2009,
- 14 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15 JULY 1, 2011]: Sec. 2. (a) With respect to benefit periods established
- 16 on and after July 3, 1977, an individual is ineligible for waiting period
- 17 or benefit rights, or extended benefit rights, if the department finds that,
- 18 being totally, partially, or part-totally unemployed at the time when the
- 19 work offer is effective or when the individual is directed to apply for
- 20 work, the individual fails without good cause:
- 21 (1) to apply for available, suitable work when directed by the
- 22 commissioner, the deputy, or an authorized representative of the
- 23 department of workforce development or the United States
- 24 training and employment service;
- 25 (2) to accept, at any time after the individual is notified of a
- 26 separation, suitable work when found for and offered to the
- 27 individual by the commissioner, the deputy, or an authorized
- 28 representative of the department of workforce development or the
- 29 United States training and employment service, or an employment

- 1 unit; or
2 (3) to return to the individual's customary self-employment when
3 directed by the commissioner or the deputy.
- 4 (b) With respect to benefit periods established on and after July 6,
5 1980, the ineligibility shall continue for the week in which the failure
6 occurs and until the individual earns remuneration in employment
7 equal to or exceeding the weekly benefit amount of the individual's
8 claim in each of eight (8) weeks. If the qualification amount has not
9 been earned at the expiration of an individual's benefit period, the
10 unearned amount shall be carried forward to an extended benefit period
11 or to the benefit period of a subsequent claim.
- 12 (c) With respect to extended benefit periods established on and after
13 July 5, 1981, the ineligibility shall continue for the week in which the
14 failure occurs and until the individual earns remuneration in
15 employment equal to or exceeding the weekly benefit amount of the
16 individual's claim in each of four (4) weeks.
- 17 (d) If an individual failed to apply for or accept suitable work as
18 outlined in this section, the maximum benefit amount of the
19 individual's current claim, as initially determined, shall be reduced by
20 an amount determined as follows:
- 21 (1) For the first failure to apply for or accept suitable work, the
22 maximum benefit amount of the individual's current claim is
23 equal to the result of:
- 24 (A) the maximum benefit amount of the individual's current
25 claim, as initially determined; multiplied by
26 (B) seventy-five percent (75%);
27 rounded (if not already a multiple of one dollar (\$1)) to the next
28 higher dollar.
- 29 (2) For the second failure to apply for or accept suitable work, the
30 maximum benefit amount of the individual's current claim is
31 equal to the result of:
- 32 (A) the maximum benefit amount of the individual's current
33 claim determined under subdivision (1); multiplied by
34 (B) eighty-five percent (85%);
35 rounded (if not already a multiple of one dollar (\$1)) to the next
36 higher dollar.
- 37 (3) For the third and any subsequent failure to apply for or accept
38 suitable work, the maximum benefit amount of the individual's
39 current claim is equal to the result of:
- 40 (A) the maximum benefit amount of the individual's current
41 claim determined under subdivision (2); multiplied by
42 (B) ninety percent (90%);
43 rounded (if not already a multiple of one dollar (\$1)) to the next
44 higher dollar.
- 45 (e) In determining whether or not any such work is suitable for an
46 individual, the department shall consider:

- 1 (1) the degree of risk involved to such individual's health, safety,
2 and morals;
- 3 (2) the individual's physical fitness and prior training and
4 experience;
- 5 (3) the individual's length of unemployment and prospects for
6 securing local work in the individual's customary occupation; and
- 7 (4) the distance of the available work from the individual's
8 residence.

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

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

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

42 (g) Notwithstanding subsection (e), with respect to extended benefit
43 periods established on and after July 5, 1981, "suitable work" means
44 any work which is within an individual's capabilities. However, if the
45 individual furnishes evidence satisfactory to the department that the
46 individual's prospects for obtaining work in the individual's customary

1 occupation within a reasonably short period are good, the
 2 determination of whether any work is suitable work shall be made as
 3 provided in subsection (e).

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

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

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

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

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

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

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

23 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
 24 Fair Labor Standards Act of 1938), without regard to any
 25 exemption; or

26 (B) the state minimum wage (IC 22-2-2).

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

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

36 **(1) tested positive for drugs after a drug test given by a
 37 prospective employer; or**

38 **(2) refused to submit to a drug test.**

39 SECTION 3. IC 22-4-15-9 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2011]: **Sec. 9. (a) Notwithstanding any other provision of this
 42 article, an individual who is otherwise eligible for benefits may be
 43 disqualified for benefits under section 2 of this chapter, if the
 44 individual:**

45 **(1) is found to have tested positive for drugs after a drug test
 46 is given by a prospective employer; or**

1 (2) refuses to submit to a drug test;
2 after an offer of employment has been made or as a prerequisite to
3 an offer of employment by an employer.

4 (b) A prospective employer that:

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

7 (2) is aware that a prospective employee has refused to submit
8 to a drug test that would be given by or on behalf of the
9 employer;

10 shall immediately report the information in subdivision (1) or (2)
11 to the department.

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

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

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

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

21 (d) An individual who is disqualified for benefits under
22 subsection (a) may resume eligibility for benefits upon submission
23 of a negative drug test to the department.

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

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

30 (2) the manner in which a subsequent negative drug test may
31 be submitted to the department after a positive drug test has
32 been reported;

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

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

38 Page 2, line 17, delete ":" and insert "**the following**".

39 Page 2, delete lines 18 through 22.

40 Page 2, run in lines 17 through 23.

41 Page 2, line 25, delete "." and insert "":

42 (1) Amphetamines.

43 (2) Cocaine.

44 (3) Opiates (2,000 ng/ml).

45 (4) PCP.

46 (5) THC.

47 (g) The department may not deny benefits to an otherwise

1 **eligible individual based on the individual's failure or refusal to**
 2 **sign the affidavit described in subsection (f). An initial claim for**
 3 **benefits under this article and an affidavit described in subsection**
 4 **(f) must contain a clear and conspicuous statement that an**
 5 **otherwise eligible individual may not be denied benefits based on**
 6 **the individual's failure or refusal to sign the affidavit described in**
 7 **subsection (f).**

8 SECTION 5. IC 22-4-17-2.5, AS AMENDED BY P.L.3-2008,
 9 SECTION 159, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2011]: Sec. 2.5. (a) When an individual files an
 11 initial claim, the individual shall be advised of the following:

12 (1) Unemployment compensation is subject to federal, state, and
 13 local income taxes.

14 (2) Requirements exist concerning estimated tax payments.

15 (3) ~~After December 31, 1996,~~ The individual may elect to have
 16 income taxes withheld from the individual's payment of
 17 unemployment compensation. If an election is made, the
 18 department shall withhold federal income tax at the applicable
 19 rate provided in the Internal Revenue Code.

20 (4) An individual is allowed to change an election made under
 21 this section.

22 (b) Money withheld from unemployment compensation under this
 23 section shall remain in the unemployment fund until transferred to the
 24 federal taxing authority for payment of income taxes.

25 (c) The commissioner shall follow all procedures of the United
 26 States Department of Labor and the Internal Revenue Service
 27 concerning the withholding of income taxes.

28 (d) Money shall be deducted and withheld in accordance with the
 29 priorities established in regulations developed by the commissioner.

30 **(e) In addition to the information contained in subsection (a), an**
 31 **individual filing an initial claim shall be advised that the individual**
 32 **may be disqualified for benefits if the individual:**

33 **(1) is found to have a positive drug test after a drug test is**
 34 **given by 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**

- 1 **an offer of employment by the employer, as provided in**
- 2 **IC 22-4-15-9."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 86 as printed January 13, 2011.)

Senator TALLIAN