



Ohio Legislative Service Commission

Bill Analysis

Bob Bennett

S.B. 178

128th General Assembly
(As Introduced)

Sens. Schaffer, Grendell

BILL SUMMARY

- Requires a state agency operating a need-based program that provides cash assistance, medical assistance, housing assistance, food assistance, or energy assistance to require each adult applicant to undergo a urine drug test to determine whether the applicant has a controlled substance problem.
- Provides that an applicant who refuses to undergo the drug test or is determined to have a controlled substance problem is ineligible for the program and may not reapply for at least 30 days following the refusal or determination.
- Provides that the drug-testing requirement is not to apply to any federally-funded program unless the federal agency responsible for the program's administration approves the drug-testing requirement.
- Requires state agencies to seek federal approval to implement the drug-testing requirement for federally-funded programs.
- Exempts the Unemployment Compensation Program from the drug-testing requirement.

CONTENT AND OPERATION

Drug-testing requirement

(R.C. 9.71(B))

The bill requires a state agency operating a need-based program that provides cash assistance, medical assistance, housing assistance, food assistance, or energy assistance to require each individual age 18 or older who applies for the program to

undergo a urine drug test to determine whether the applicant has a controlled substance problem. Undergoing the drug test is a condition of eligibility for the program; a refusal to undergo the drug test results in ineligibility. An applicant who refuses to undergo the drug test is not permitted to reapply sooner than 30 days after the date of the refusal. An applicant who is determined by a urine drug test to have a controlled substance problem is also ineligible for the program and may not reapply for at least 30 days following the determination.

Exceptions

(R.C. 9.71(C) and (D))

The bill's drug-testing requirement does not apply to any need-based program funded in whole or in part with federal funds unless the federal agency responsible for the program's administration approves the drug-testing requirement. A state agency operating a need-based program providing cash assistance, medical assistance, housing assistance, food assistance, or energy assistance funded in whole or in part with federal funds is required to seek federal approval to implement the drug-testing requirement for the program.

Unemployment compensation is expressly excepted from the bill's operation.

Controlled substance problem

(R.C. 9.71(A))

The bill defines "controlled substance problem" as meaning that an individual is determined by a chemical test to have a concentration of a controlled substance, or metabolites of a controlled substance, in the individual's urine that equals or exceeds any of the applicable levels established in state law that prohibits operating a vehicle under the influence of a drug of abuse. However, an individual is not to be determined to have a controlled substance problem if the individual obtained the controlled substance pursuant to a prescription and took it in accordance with a health professional's directions.

COMMENT

Requiring an applicant for a need-based program to undergo drug testing that is not based on well founded suspicion raises a constitutional issue. The Fourth Amendment of the United States Constitution prohibits unreasonable searches. A federal district court enjoined implementation of a suspicionless, drug-testing program

for a Temporary Assistance for Needy Families program in Michigan and the Sixth Circuit Court of Appeals affirmed the decision.¹

HISTORY

ACTION	DATE
Introduced	09-30-09

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¹ *Marchwinski v. Howard*, 113 F. Supp.2d 1134, 2000 (E.D. Mich. 2000), rev'd 309 F.3d 330 (6th Cir. 2002), vacated by reh'g en banc 319 F.3d 258 (6th Cir. 2003), aff'd on reh'g 60 Fed. Appx. 601 (6th Cir. 2003).

