



Ohio Legislative Service Commission

Bill Analysis

Amber Hardesty

S.B. 212

130th General Assembly
(As Introduced)

Sens. Turner, Schaffer, Schiavoni, Kearney

BILL SUMMARY

- Requires that each member of the General Assembly submit to a controlled substance assessment annually to determine whether the member has a chemical dependency.
- Requires the clerks of the Senate and the House of Representatives, once each calendar quarter, to conduct random controlled substance assessments of approximately 25% of the members of the General Assembly.
- If pursuant to an assessment there is reasonable cause to suspect that a member has a chemical dependency, the member must submit to a controlled substance test to determine whether the member has a controlled substance test failure.
- Provides that refusal to submit to a controlled substance test is an admission that the member has a controlled substance test failure.
- Requires that a member of the General Assembly who has a controlled substance test failure take an additional controlled substance test every 30 days until the member no longer has a controlled substance test failure and undergo substance abuse counseling provided by or coordinated through the Ohio Employee Assistance Program.
- Provides that a member of the General Assembly who has a controlled substance failure must be removed from any officer or chairperson position, and is not entitled to receive compensation as a member, until the member no longer has a controlled substance test failure.
- States that prohibiting the use of illegal substances is a reasonable requirement for members of the General Assembly and that the bill exercises the provision of the

Ohio Constitution that states that each house of the General Assembly is the judge of the qualifications of its own members.

CONTENT AND OPERATION

The bill requires that, beginning with the terms of office that commence after the bill's effective date, members of the General Assembly be subject to an annual controlled substance assessment to determine whether there is reasonable cause to suspect the member has a chemical dependency (see **COMMENT**). A chemical dependency means the use of a drug of abuse to the extent that the user becomes physically or psychologically dependent on the drug or endangers the user's health, safety, or welfare or that of others. A qualified individual selected by mutual agreement of the Senate and House clerks must conduct the assessment. If pursuant to an assessment there is reasonable cause to suspect that a member has a chemical dependency, the member must submit to a controlled substance test to determine whether the member has a controlled substance test failure. The costs of the assessments and testing must be paid by the member. However, the member is to be reimbursed the cost of the testing if the test does not reveal a controlled substance test failure.¹

In addition, once each calendar quarter, on dates on which the Senate and House clerks mutually agree, approximately 25% of the members of the General Assembly, chosen randomly, must undergo a controlled substance assessment.

Any test must be conducted at a laboratory in Ohio, designated by the clerks, that is accredited by the National Institute on Drug Abuse.²

Under the bill, a controlled substance test failure means that an individual is determined by a chemical test to have a concentration of any of the controlled substances specified in the law governing operating a motor vehicle under the influence of alcohol or drugs,³ or metabolites of such a controlled substance, in the individual's urine that equals or exceeds any of the applicable levels established in that law. However, an individual may not be determined to have a controlled substance test failure if the individual obtained the controlled substance from a prescription issued by

¹ R.C. 101.48(A) and (B).

² R.C. 101.48(C).

³ R.C. 4511.19 (not in the bill).



a licensed health professional authorized to prescribe drugs and the individual injected, ingested, or inhaled the controlled substance under the health professional's directions.⁴

The bill provides that refusal to submit to a controlled substance assessment or test required by the bill constitutes an admission that the member has a controlled substance test failure.⁵

If a member of the General Assembly is determined to have a controlled substance test failure, the bill requires the member to take an additional controlled substance test every 30 days until the member no longer has a controlled substance test failure and to undergo substance abuse counseling provided by, or coordinated through, the Ohio Employee Assistance Program. Further, the member must be removed from any officer or chairperson position, and is not entitled to receive compensation as a member, until the member no longer has a controlled substance test failure.⁶

Finally, the bill states that prohibiting the use of illegal substances is a reasonable requirement for members of the General Assembly, given the special nature of being a legislator, and that the General Assembly intends the bill as an exercise of the provision of the Ohio Constitution that states that each house of the General Assembly is the judge of the qualifications of its own members.⁷

COMMENT

It is uncertain whether requiring General Assembly members to undergo controlled substance assessments may be considered a search under the Fourth Amendment of the United States Constitution or if the assessment would be a valid cause to raise the required individualized suspicion. There is case law related to the actual testing being a search, as is described below.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."⁸ Article I, Section 14 of the Ohio Constitution provides similar

⁴ R.C. 101.48(A).

⁵ R.C. 101.48(D).

⁶ R.C. 101.48(E) and 3701.041 (not in the bill).

⁷ R.C. 101.48(F) and Ohio Const. Art. II, Sec. 6.

⁸ U.S. Const. Amend. IV.



protections.⁹ The United States Supreme Court has determined that compulsory administration of a blood, breath, or urine test is a search protected by the Fourth Amendment and therefore subject to the reasonableness requirement.¹⁰ To determine whether a particular search is reasonable, a court must balance the government's interest with the rights of the person to be searched.

To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing.¹¹ Exceptions to the general rule of individualized suspicion are present when the Fourth Amendment intrusion serves special government needs, beyond the need for law enforcement.¹² On this basis, the Supreme Court has sanctioned drug testing for railroad employees¹³ and U.S. Customs Service employees involved in drug interdiction.¹⁴ One case of particular relevance is *Chandler v. Miller*.¹⁵ In that case, the Supreme Court held unconstitutional a Georgia statute that subjected candidates seeking nomination for certain state offices to drug testing.¹⁶ The Court found that Georgia did not have a "special need" to require drug testing because there was no evidence that Georgia had a particular problem of drug abuse among candidates, no indication that the method used would actually deter drug abuse among candidates, and no indication that public scrutiny of elected officials would not be sufficient to prevent drug abuse among officeholders.¹⁷

HISTORY

ACTION

DATE

Introduced

10-22-13

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⁹ *State v. Robinette* (1997), 80 Ohio St.3d 234.

¹⁰ *Schmerber v. California*, 384 U.S. 757 (1966); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).

¹¹ *Chandler v. Miller*, 520 U.S. 305, 313 (1997), citing *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995).

¹² *Skinner* at 617.

¹³ *Id.*

¹⁴ *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665 (1989).

¹⁵ 520 U.S. 305 (1997).

¹⁶ The designated state offices were: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, district attorneys, members of the General Assembly, and members of the Public Service Commission. *Chandler* at 310.

¹⁷ *Chandler* at 318-322.

