AN ACT
relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Ken Legler Act.

SECTION 2. Section 207.021, Labor Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) An individual for whom suitable work is available only in an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is available for work for purposes of Subsection (a)(4) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the commission under Section 207.026. The commission shall adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

SECTION 3. Subchapter B, Chapter 207, Labor Code, is amended by adding Section 207.026 to read as follows:

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS.
(a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:
(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by the commission; and
(2) be designed to protect the rights of benefit applicants and recipients.

(b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who fails a drug test required under this subsection under a final determination or decision under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Notwithstanding Subsection (b), an individual is not
ineligible to receive benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that, subject to Section 207.021(a)(4):

(1) the individual is participating in a treatment program for drug abuse;

(2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date initial notice of the failed drug test is sent to the individual; or

(3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

(d) The commission shall prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212, and for the retaking of a failed drug test by an individual under this section. The procedures must provide:

(1) for prompt initial notice by mail to an individual who fails a drug test under Subsection (b) regarding:

(A) the fact of the individual's failure of the drug test;

(B) the manner in which the individual may notify the commission that the individual has enrolled in and is attending a treatment program for drug abuse;

(C) the manner in which the individual may appeal and retake the failed drug test; and

(D) common potential causes of a false positive.
AAfor privacy with regard to the individual's drug test result until not later than the 14th day after the date the initial notice of the failed drug test was mailed to the individual during which time the individual may appeal and retake the failed drug test; and

AAthat a determination or decision that an individual has failed a drug test under this section becomes final on:

(A) the 15th day after the date the initial notice of the failed drug test was mailed to the individual if the individual does not appeal and retake the individual's failed drug test as provided by this section; or

(B) the date that a retest conducted pursuant to an appeal by the individual as provided by this section confirms the positive drug test result.

(e) The commission shall administer the program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

SECTION 4. The changes in law made by this Act apply only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after February 1, 2014.

SECTION 5. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the
waiver or authorization is granted.

SECTION 6. This Act takes effect September 1, 2013.

President of the Senate

I hereby certify that S.B. No. 21 passed the Senate on April 11, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 21 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 104, Nays 42, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor