Welfare Recipient Drug Testing

This Act requires drug tests whenever state officials have a reasonable suspicion that someone receiving or applying for welfare or unemployment benefits is using drugs. Suspicion could be raised during addiction screening by welfare administering agency caseworkers or by missed meetings or criminal records. Recipients of state benefits would not receive assistance until they complete a drug treatment program and a job skills training. This Act allows drug tests for governor, lieutenant governor, attorney general and members of the legislature.

Submitted as:
Kansas Senate Bill 149
Status: Enacted into law in 2013.

Suggested State Legislation
(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Welfare Recipient Drug Testing Act.”

Section 2. [Definitions.]
As used in this Act:
(1) “Cash assistance” means cash assistance provided to individuals under the provisions of [relevant state statutes].
(2) “Controlled substance” means the same as in [relevant state statutes].
(3) “Controlled substance analogue” means the same as in 21 U.S. Code § 813.

Section 3. [Drug Screening for Cash Assistance Recipients.]
(A) A program of drug screening for applicants for cash assistance as a condition of eligibility for cash assistance and persons receiving cash assistance as a condition of continued receipt of cash assistance shall be established, subject to applicable federal law, by the secretary for [insert administering agency] on or before [insert date]. Under such program of drug screening, the secretary for [insert administering agency] shall order a drug screening of an applicant for or a recipient of cash assistance at any time when reasonable suspicion exists that such applicant for or recipient of cash assistance is unlawfully using a controlled substance or controlled substance analogue. The secretary for [insert administering agency] may use any information obtained by the secretary for [insert administering agency] to determine whether such reasonable suspicion exists, including, but not limited to, an applicant’s or recipient’s demeanor, missed appointments and arrest or other police records, previous employment or application for employment in an occupation or industry that regularly conducts drug screening, termination from previous employment due to unlawful use of a controlled substance or controlled substance analogue or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analogue.
(B) Any applicant for or recipient of cash assistance whose drug screening results in a positive test may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any applicant for or recipient of cash assistance who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening. Such applicant or recipient who took the additional drug screening and who tested
negative for unlawful use of a controlled substance and controlled substance analogue shall be reimbursed for the cost of such additional drug screening.

(C) Any applicant for or recipient of cash assistance who tests positive for unlawful use of a controlled substance or controlled substance analogue shall be required to complete a substance abuse treatment program approved by the secretary for [insert appropriate agencies]. Subject to applicable federal laws, any applicant for or recipient of cash assistance who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive cash assistance until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of cash assistance may be subject to periodic drug screening, as determined by the secretary for [insert administering agency]. Upon a second positive test for unlawful use of a controlled substance or controlled substance analogue, a recipient of cash assistance shall be required to complete a substance abuse treatment program and job skills program, and shall be terminated from cash assistance for a period of 12 months, or until such recipient of cash assistance completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analogue, a recipient of cash assistance shall be terminated from cash assistance, subject to applicable federal law.

(D) If an applicant for or recipient of cash assistance is ineligible for or terminated from cash assistance as a result of a positive test for unlawful use of a controlled substance or controlled substance analogue, and such applicant for or recipient of cash assistance is the parent or legal guardian of a minor child, an appropriate protective payee shall be designated to receive cash assistance on behalf of such child. Such parent or legal guardian of the minor child may choose to designate an individual to receive cash assistance for such parent’s or legal guardian’s minor child, as approved by the secretary for children and families. Prior to the designated individual receiving any cash assistance, the secretary for [insert administering agency] shall review whether reasonable suspicion exists that such designated individual is unlawfully using a controlled substance or controlled substance analogue.

(1) In addition, any individual designated to receive cash assistance on behalf of an eligible minor child shall be subject to drug screening at any time when reasonable suspicion exists that such designated individual is unlawfully using a controlled substance or controlled substance analogue. The secretary for [insert administering agency] may use any information obtained by the secretary for [insert administering agency] to determine whether such reasonable suspicion exists, including, but not limited to, the designated individual’s demeanor, missed appointments and arrest or other police records, previous employment or application for employment in an occupation or industry that regularly conducts drug screening, termination from previous employment due to unlawful use of a controlled substance or controlled substance analogue or prior drug screening records of the designated individual indicating unlawful use of a controlled substance or controlled substance analogue.

(2) Any designated individual whose drug screening results in a positive test may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any designated individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening. Such designated individual who took the additional drug screening and who tested negative for unlawful use of a controlled substance and controlled substance analogue shall be reimbursed for the cost of such additional drug screening.

(3) Upon any positive test for unlawful use of a controlled substance or controlled substance analogue, the designated individual shall not receive cash assistance on behalf of the parent’s or legal guardian’s minor child, and another designated individual shall be selected by the
secretary for [insert administering agency] to receive cash assistance on behalf of such parent’s or legal guardian’s minor child.

(E) If a person has been convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction and which has as an element of such offense the manufacture, cultivation, distribution, possession or use of a controlled substance or controlled substance analogue, and the date of conviction is on or after [insert date], such person shall thereby become forever ineligible to receive any cash assistance under this subsection unless such conviction is the person’s first conviction. First-time offenders convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction and which has as an element of such offense the manufacture, cultivation, distribution, possession or use of a controlled substance or controlled substance analogue, and the date of conviction is on or after [insert date], such person shall become ineligible to receive cash assistance for five years from the date of conviction.

(F) Except for hearings before the [insert administering agency] or, the results of any drug screening administered as part of the drug screening program authorized by this subsection shall be confidential and shall not be disclosed publicly.

(G) The secretary for [insert administering agency] may adopt such rules and regulations as are necessary to carry out the provisions of this subsection.

(H) Any authority granted to the secretary for [insert administering agency] under this subsection shall be in addition to any other penalties prescribed by law.

Section 4. [Drug Screening for Recipients of Unemployment Benefits.]

(A) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analogue shall be required to complete a substance abuse treatment program approved by the secretary for [insert administering agency], and a job skills program approved by the secretary for [insert administering agency]. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary for [insert administering agency]. Upon a second positive test for unlawful use of a controlled substance or controlled substance analogue, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analogue, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(B) Any individual who has been discharged or refused employment for failing a pre-employment drug screen required by an employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

Section 5. [Drug Screening for State Officials.]

(A) The director of the [insert appropriate agency] shall have the authority to establish
and implement a drug screening program for persons taking office as governor, lieutenant governor
or, attorney general or members of the [insert state] senate or house of representatives and for
applicants for safety sensitive positions in state government, but no applicant for a safety sensitive
position shall be required to submit to a test as a part of this program unless the applicant is first
given a conditional offer of employment.

(B) The director also shall have the authority to establish and implement a drug screening
program based upon a reasonable suspicion of illegal drug use by any person currently holding one
of the following positions or offices:

(1) The office of governor, lieutenant governor or attorney general;
(2) Members of the [insert state] senate or house of representatives;

(C) No person shall be terminated solely due to positive results of a test administered as a
part of a program authorized by this section if:

(1) The employee has not previously had a valid positive test result; and
(2) The employee undergoes a drug evaluation and successfully completes any
education or treatment program recommended as a result of the evaluation.

Section 6. [Severability.] Insert severability clause.

Section 7. [Repealer.] Insert repealer clause.

Section 8. [Effective Date.] Insert effective date.