

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 547

BY SENATORS TRUMP AND PLYMALE

[Introduced January 20, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-3E-16 of the Code of West Virginia, 1931, as amended, relating
 2 to employer testing, notice, termination, and forfeiture of unemployment compensation
 3 benefits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. THE WEST VIRGINIA SAFER WORKPLACE ACT.

§21-3E-16. Employer testing; notice; termination; forfeiture.

1 If an employer implements a drug-free workplace program in accordance with this article,
 2 which includes notice, education and procedural requirements for testing for drugs and alcohol
 3 pursuant to this law, the employer may require the employee to submit to a test for the presence
 4 of drugs or alcohol. ~~If an employee is terminated because alcohol or a drug or alcohol is found to~~
 5 ~~be present in the employee’s system at a level proscribed by the employer’s policy, the employee,~~
 6 ~~may be terminated and forfeits his or her eligibility for unemployment compensation benefits and~~
 7 ~~if injured at the time of the intoxication, forfeits~~ indemnity benefits under the Worker Compensation
 8 Laws. However, the employer’s drug-free workplace program must notify all employees that it is
 9 a condition of employment for an employee to refrain from reporting to work or working with the
 10 presence of drugs or alcohol in his or her body and that policy must also state that if an injured
 11 employee refuses to submit to a test for drugs or alcohol, that employee forfeits eligibility for
 12 unemployment compensation benefits, and if injured, for indemnity benefits under the Worker
 13 Compensation Laws. Employers who do not notify their employees of this condition of
 14 employment waive their right to assert that eligibility for benefits is entirely forfeited.

15 Nothing herein may be construed or deemed to affect §23-4-2(a) of this code and the
 16 provisions of said section shall be the sole manner in which intoxication may be proven to
 17 establish such intoxication as the proximate cause of an injury for purposes of said chapter.

NOTE: The purpose of this bill is to rectify a conflict with Federal Unemployment Compensation and Social Security Administration laws regarding claims determinations and an individual’s “opportunity for a fair hearing” for unemployment compensation claims that are denied.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.