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Subject: S. 532 Drug Testing

I reviewed S.523 (“the drug testing bill”) and state and federal law relating to drug testing for unemployment benefits. The drug testing bill does not conflict with federal law and it does not duplicate any current law.

The Middle Class Tax Relief and Job Creation Act of 2012, H.R. 3630, 112th Cong., § 2105 (2012) (“the federal act”) provides that states are free to enact legislation aimed at testing certain applicants for benefits. S.523 is not the type of legislation envisioned by the federal act. The federal act allows states to directly test applicants as a condition for receiving benefits if the applicant was terminated because of unlawful drug use or if the occupation sought after by the applicant requires drug testing, i.e. truck drivers. S.523 does not create state testing of applicants. Rather, it allows the state to withdraw benefits to a current beneficiary who fails an employer’s drug test and is not hired. Withdrawing benefits from a beneficiary that fails a potential employer’s drug test does not conflict with the federal act.

No other federal statutes or regulations specifically address withdrawing unemployment benefits to beneficiaries who test positive for drugs. Likewise, no current South Carolina statute or regulation addresses drug testing for unemployment benefits. Because there is not already a method to withdraw benefits when a beneficiary tests positive, the drug testing bill is not duplicative.

Let me know if you have any other questions.

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