

Stricken language would be deleted from and underlined language would be added to present law.

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As Engrossed: S3/12/15 H3/27/15
A Bill

SENATE BILL 600

By: Senators B. Johnson, *Collins-Smith, Bledsoe, Caldwell, A. Clark, J. Cooper, J. English, Files, Flippo, J. Hendren, Hester, Hickey, J. Hutchinson, Irvin, B. King, Rapert, Rice, D. Sanders, G. Stubblefield, E. Williams, J. Woods*
By: Representatives *Lundstrum, Tosh, Baltz, Bell, Bentley, Cozart, Eads, C. Fite, Gonzales, M.J. Gray, Ladyman, J. Mayberry, McNair, Miller, Ratliff, B. Smith, Speaks, Sullivan, Wallace*

For An Act To Be Entitled

AN ACT TO ESTABLISH THE DRUG SCREENING AND TESTING ACT OF 2015; TO REQUIRE APPLICANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM BENEFITS TO UNDERGO DRUG TESTING; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE DRUG SCREENING AND TESTING ACT OF 2015.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 76, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Drug Screening and Testing Act of 2015

20-76-701. Title.

This act shall be known and may be cited as the “Drug Screening and Testing Act of 2015”.

20-76-702. Definitions.

As used in this subchapter:

(1) "Caretaker relative" means any of the following individuals living with a minor child:



(9) "Protective payee" means a caretaker relative or legal guardian of a minor child unless the caretaker relative who is an applicant for Temporary Assistance for Needy Families Program benefits receives a positive result on a drug test; and

(10) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or drug metabolites.

20-76-703. Administration.

(a)(1) Subject to state appropriation, the Department of Workforce Services shall establish and administer a two-year pilot program of suspicion-based drug screening and testing for each applicant who is otherwise eligible for Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program and for each recipient of the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program.

(2) The pilot program shall include the population statewide as determined by the department, and all applicants and all recipients in the counties bordering the following states:

(A) Mississippi;

(B) Missouri;

(C) Oklahoma;

(D) Tennessee; and

(E) Any other state bordering Arkansas with a drug screening or drug testing program for Temporary Assistance for Needy Families Program.

(b)(1) A dependent child under eighteen (18) years of age is exempt from the drug screening and testing requirement unless the dependent child is a parent who is also an applicant for the Temporary Assistance for Needy Families Program and who does not live with a parent, legal guardian, or other adult caretaker relative.

(2) An entity or individual participating in the Career Pathways Program or Community Investment Initiative under the Temporary Assistance for Needy Families Program is exempt from the drug screening and testing requirement.

(c)(1) An applicant or recipient may inform the drug testing agency administering the test of any prescription or over-the-counter medication

that the individual is taking.

(2) An applicant or recipient shall not be denied Temporary Assistance for Needy Families Program benefits on the basis of failing a drug test if the applicant has a current and valid prescription for the drug in question.

(d)(1) An applicant or recipient shall undergo a confirmation test using the same urine sample from the initial positive test prior to receiving Temporary Assistance for Needy Families Program benefits.

(2) The results of the confirmation test shall be used to determine final eligibility for Temporary Assistance for Needy Families Program benefits.

20-76-704. Powers and duties.

(a) The Department of Workforce Services shall:

(1) Consult with substance abuse treatment experts;

(2) Develop appropriate screening techniques and processes to establish reasonable cause that an applicant or recipient is using a drug and to establish the necessary criteria to permit the department to require the applicant or recipient to undergo a urine-based five-panel drug test;

(3) Identify and select a screening tool as a part of the development of the screening technique that will be employed for the pilot program under this subchapter;

(4) Develop a plan for funding of the costs of the screening process, the urine-based five-panel drug testing process, personnel and information systems modification, and other costs associated with the development and implementation of the testing process; and

(5) Develop a plan for any modification of its information systems necessary to properly track and report the status of applicants or recipients who are screened and who must undergo testing as required by this subchapter, including without limitation a detailed analysis of costs for systems analysis, programming, and testing of modifications and for implementation dates for completion of the modifications.

(b) Upon conclusion of the first year of the pilot program and conclusion of the pilot program, the department shall submit a report on or before *December 31* to the General Assembly that includes without limitation:

(1) The number of individuals screened;

(2) The number of screened individuals for whom there was a reasonable suspicion of illegal drug use;

(3) The number of screened individuals who took a drug test;

(4) The number of screened individuals who refused to take a drug test;

(5) The number of screened individuals who received a positive result on the drug test;

(6) The number of screened individuals who received a negative result on the drug test;

(7) The number of individuals who received a positive result on a drug test for a second or subsequent time; and

(8) The amount of costs incurred by the department for the administration of the pilot program.

20-76-705. Standards in the drug screening and testing pilot program.

The drug screening and testing pilot program shall include without limitation:

(1)(A) A requirement that an applicant upon initial application for Temporary Assistance for Needy Families Program benefits or a current recipient of program benefits at annual redetermination shall be screened using an empirically validated drug screening tool.

(B) If the result of the drug screening tool gives the Department of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient shall be required to take a drug test.

(C) A refusal by an applicant or recipient to take a drug test shall result in lack of eligibility for program benefits for six (6) months;

(2) A process for administering the cost of drug tests as follows:

(A) If an applicant or recipient receives a negative result on a drug test, the cost of administering the drug test shall be paid by the department;

(B) If an applicant or recipient receives a positive result on a drug test, refuses to enter a treatment plan, and receives a negative result on a drug test upon reapplying for benefits after six (6)

months, the cost of administering the first drug test shall be deducted from his or her first program benefits, and the cost of administering the second drug test shall be paid by the department;

(C) If an applicant receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits; and

(D) If a recipient receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits after redetermination;

(3)(A) A referral process for any applicant or recipient who receives a positive result on a drug test to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department for an appropriate treatment period as determined by the department.

(B) Evidence of ongoing compliance during the determined treatment period shall be required.

(C) If an applicant or recipient is otherwise eligible during the treatment period, the applicant shall receive program benefits;

(4) A requirement that a refusal to enter a treatment plan or failure to complete the treatment plan by an applicant or recipient who receives a positive result on a drug test shall result in lack of eligibility for program benefits for six (6) months;

(5)(A) A requirement that an applicant or recipient be tested using the urine-based five-panel drug test upon the conclusion of the determined treatment period.

(B) If an applicant or recipient receives a positive result on the urine-based five-panel drug test or any subsequent drug test, the applicant shall be ineligible for program benefits for six (6) months.

(C) If an applicant or recipient who has failed a drug test reapplies for program benefits, the applicant or recipient shall test negative for illegal use of controlled substances in order to receive program benefits and the department may provide a referral to an appropriate treatment resource for drug abuse treatment or other resource; and

(6)(A) A requirement that a dependent child's eligibility for program benefits shall not be affected by a caretaker relative's

ineligibility due to positive results on a drug test.

(B) An appropriate protective payee shall be designated to receive program benefits on behalf of the dependent child.

20-76-706. Information regarding drug testing.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the Department of Workforce Services as a part of the drug testing program under this subchapter shall be confidential and not subject to disclosure and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings.

(b)(1) Information regarding drug test results for a test administered under this subchapter shall not be released to law enforcement officers or used in any criminal proceeding.

(2) Information released contrary to subdivision (b)(1) of this section is inadmissible as evidence in a criminal proceeding.

(c) This subchapter does not prohibit:

(1) The department or a drug testing agency conducting the drug test from having access to an adult applicant's or adult recipient's drug test information or using the information when consulting with legal counsel in connection with actions brought under or related to this subchapter or when the information is relevant to its defense in a civil or administrative matter; or

(2) The reporting of child abuse, child sexual abuse, or neglect of a child.

20-76-707. Positive drug test result not a disability.

An applicant or recipient who receives a positive result on a drug test administered under this subchapter shall not be deemed to have a disability because of the drug test result alone.

20-76-708. Rule-making authority.

(a) The Director of the Department of Workforce Services shall promulgate rules necessary for the implementation of this subchapter.

(b) The director shall consider the following when promulgating rules:

(1) Testing procedures established by the United States

Department of Health and Human Services and the United States Department of Transportation;

(2) Screening procedures established by the substance abuse experts to determine when a person exhibits the criteria to determine that there is reasonable cause to suspect that a person is likely to use drugs;

(3) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(4) Methods of analysis and procedures to ensure reliable drug testing results, including without limitation standards for initial tests and confirmation tests;

(5) Minimum detection levels for each drug or drug metabolite for the purpose of determining a positive result;

(6) Chain of custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(7) Retention, storage, and transportation procedures to ensure reliable results of drug tests used in the administration of this subchapter.

20-76-709. Effective date.

This subchapter shall be effective no later than December 31, 2015, and shall expire after a period of two (2) years from the beginning date of the pilot program, unless amended or extended by the General Assembly.

/s/B. Johnson