

The House Committee on Judiciary offers the following substitute to HB 861:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated,
 2 relating to general provisions for public assistance, so as to require drug testing for applicants
 3 and recipients of state administered TANF benefits; to provide for legislative intent; to
 4 provide for related matters; to provide for severability; to provide for an effective date and
 5 applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 WHEREAS, the citizens of this state have a great concern for the abuse of illegal substances
 9 by recipients of public benefits not only because such benefits are paid with limited public
 10 funds that are potentially wasted on illegal drug users, but also because of the need to
 11 identify and provide help to those who are caught in the trap of drug addiction; and

12 WHEREAS, the Georgia General Assembly recognizes the importance of encouraging a
 13 drug-free lifestyle and believes that the state should discourage rather than support the abuse
 14 of illegal substances; and

15 WHEREAS, the use of illegal drugs by those on the lower end of the economic scale makes
 16 it more likely that such persons will remain in poverty and commit other criminal offenses;
 17 and

18 WHEREAS, serious drug abuse by lower income parents is more likely to result in the
 19 children of impoverished families failing in school, developing emotional or behavior
 20 problems, and being neglected or abused; and

21 WHEREAS, if the state is to take responsibility for breaking the tragic cycle of the
 22 interrelated conditions of poverty, crime, and drug abuse, then it is necessary and proper for

23 the state to adopt a practice that will identify those substance abusers who receive state
 24 benefits rather than continuing to allow government tax dollars to support these
 25 self-destructive behaviors.

26 Therefore, the Georgia General Assembly by this Act adopts a just and effective means of
 27 identifying illegal drug users receiving public benefits.

28 SECTION 2.

29 Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
 30 general provisions relating to public assistance, is amended by adding a new Code section
 31 to read as follows:

32 "49-4-3.1.

33 (a) As used in this Code section, the term:

34 (1) 'Applicant' means any person applying or reapplying for TANF benefits with the
 35 Department of Human Services or any public or private entity working on behalf of the
 36 department in the administration of TANF benefits.

37 (2) 'Drug test' means the collection and testing of bodily fluids or other matter for the
 38 presence of marijuana or controlled substances administered in a manner equivalent to
 39 that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs
 40 (HHS Regulations 53 C.F.R. 11979, et seq., as amended) or other professionally valid
 41 procedures approved and adopted by the department. The term 'drug test' shall include
 42 any initial test or tests and any follow-up test required to meet or exceed federal or other
 43 professional standards for ensuring the accuracy of the testing process.

44 (3) 'Failing a drug test' means test results indicating the presence of marijuana or a
 45 controlled substance in a person's system; provided, however, that where a person has a
 46 valid medical prescription for a controlled substance for which he or she tested positive,
 47 he or she shall not be considered to have failed a drug test for such substance.

48 (4) 'Recipient' means a person currently receiving TANF benefits from or through the
 49 Department of Human Services.

50 (5) 'TANF benefits' means state administered federal benefits under the Temporary
 51 Assistance For Needy Families (TANF) program but shall not include any public
 52 assistance related to the provision of medical care.

53 (b) Not later than July 1, 2013, the Department of Human Services shall institute a drug
 54 testing program for applicants of TANF benefits who are 18 years of age or older. The
 55 drug testing program for TANF benefits shall require that a drug test be administered to
 56 each applicant for TANF benefits prior to the receipt of any such benefits.

- 57 (c) Contingent upon available funding, in addition to administering a drug test to
58 applicants for TANF benefits, the department shall institute a random drug testing program
59 for recipients of TANF benefits. A recipient of TANF benefits shall submit, not less than
60 once every two years, to the department's random drug testing program as a requirement
61 for continued receipt of such benefits. The department shall be responsible for ensuring
62 that recipients chosen for drug testing are selected at random and not by any other criteria.
- 63 (d) The department shall deny TANF benefits to an applicant for or recipient of TANF
64 benefits if the applicant or recipient fails a drug test.
- 65 (e) Failure of an applicant or recipient to comply with the drug testing requirements of this
66 Code section or the rules and regulations of the department for the administration of such
67 test shall be deemed to be equivalent to failing a drug test, and the applicant or recipient
68 shall be denied or deemed ineligible to receive TANF benefits.
- 69 (f) A person denied TANF benefits for failing a drug test pursuant to this Code section
70 may reapply for such benefits but shall be required to pass a drug test in the same manner
71 as an original applicant for such benefits. Any person failing a second drug test
72 administered under the provisions of this Code section shall not be permitted to reapply for
73 TANF benefits for a period of two years following the results of such test. Any person
74 failing a third drug test administered under the provisions of this Code section shall be
75 indefinitely prohibited from reapplying for TANF benefits.
- 76 (g) The department shall be responsible for ensuring the confidentiality of any and all drug
77 test results administered as part of the program. Random drug test results shall be used
78 only for the purpose of denying or determining eligibility for continued receipt of state
79 public assistance, state administered federal public assistance, or both. At no time shall
80 drug test results be released to any public or private person or entity except as requested
81 by the person tested.
- 82 (h) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test
83 conducted under this Code section, the dependent child's eligibility for TANF benefits shall
84 not be affected. An appropriate protective payee shall be designated and approved by the
85 department to receive benefits on behalf of the child. The parent may recommend another
86 individual to receive benefits for the parent's minor child. The recommended individual
87 must be an immediate family member. If an immediate family member is not available or
88 the family member declines the option, another individual shall be designated and approved
89 by the department. The designated individual shall also undergo drug testing before being
90 approved to receive benefits on behalf of the child. If the designated individual fails a drug
91 test, he or she shall be ineligible to receive benefits on behalf of the child.
- 92 (i) The department shall provide for an administrative hearing and interdepartmental
93 appeal for review of the findings of the department to the commissioner or his or her

94 designee. A decision by the commissioner or his or her designee shall be considered a final
 95 agency decision. A review of the final agency decision may be conducted by appeal to the
 96 superior court of the county where the applicant or recipient resides. An appeal of a final
 97 agency decision shall be filed within 30 days of the decision and such decision shall be
 98 affirmed provided there is any evidence to support the findings of the department. The
 99 administrative appeal proceedings authorized under this subsection shall be conducted by
 100 the department and shall not be conducted by the Office of Administrative Hearings or any
 101 other agency outside of the department.

102 (j) The administrative costs of the drug test administered pursuant to this Code section
 103 shall be paid by the recipient of TANF benefits by deducting such costs from the benefits
 104 over a period of 12 months; provided, however, that a recipient of public benefits shall not
 105 be charged more than a total of \$40.00 per drug test nor be required to pay for more than
 106 two tests in a two-year period.

107 (k) The results of any drug test done according to this Code section shall not be subject to
 108 disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public
 109 records. Such results shall not be used as a part of a criminal investigation or criminal
 110 prosecution. Such results may not be used in a civil action or otherwise disclosed to any
 111 person or entity without the express written consent of the person tested or his or her heirs
 112 or legal representative. All such records shall be destroyed five years after the date of the
 113 test.

114 (l) The department shall adopt rules and regulations for the administration of a drug testing
 115 program in accordance with the provisions of this Code section."

116 **SECTION 3.**

117 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 118 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
 119 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
 120 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
 121 adjudged invalid or unconstitutional were not originally a part hereof. The General
 122 Assembly declares that it would have passed the remaining parts of this Act if it had known
 123 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

124 **SECTION 4.**

125 This Act shall become effective on January 1, 2013, and shall apply to applicants or
 126 recipients of TANF benefits on or after July 1, 2013.

127

SECTION 5.

128 All laws and parts of laws in conflict with this Act are repealed.