

The House Committee on Judiciary offers the following substitute to HB 772:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public
2 assistance, so as to provide for drug testing for applicants and recipients of food stamps or
3 TANF benefits upon a reasonable suspicion of drug use; to provide requirements for drug
4 testing; to provide for penalties for any person who fails a drug test; to provide for
5 reapplication; to provide for confidentiality of records; to require photo identification for
6 food stamp benefits through an electronic benefits transfer card; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance,
11 is amended in Article 1, relating to general provisions, by adding new Code sections to read
12 as follows:

13 "49-4-20.

14 (a) As used in this Code section, the term 'established drug test' means the collection and
15 testing of bodily fluids administered in a manner equivalent to that required by the
16 Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the
17 United States Department of Health and Human Services or other professionally valid
18 procedures approved by the department; provided, however, that where possible and
19 practicable, a swab test shall be used in lieu of a urinalysis.

20 (b) The department shall adopt rules and regulations for an established drug test that
21 includes the following:

22 (1) Which illegal drugs will be the subject of testing;

23 (2) Methods for assuring minimal privacy intrusions during collection of body fluid
24 specimens for such testing;

25 (3) Methods for assuring proper storage, transportation, and handling of such specimens
26 in order to ensure the integrity of the testing process;

- 27 (4) The identity of those persons entitled to the results of such tests and methods for
 28 ensuring that only authorized persons are given access to such results;
- 29 (5) A list of laboratories qualified to conduct established drug tests;
- 30 (6) A list of approved substance abuse treatment providers;
- 31 (7) Procedures for persons undergoing drug testing prior to the collection of body fluid
 32 specimens for such testing, so as to provide information regarding the use of any drug
 33 pursuant to a medical prescription or as otherwise authorized by law which may affect
 34 the results of such test; and
- 35 (8) A requirement that any applicant who demonstrates proof of active and current
 36 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and
 37 no authorized test examiner shall conduct a drug test if an applicant demonstrates active
 38 and current Medicaid benefits unless the applicant presents a receipt proving that he or
 39 she has paid the required drug screening application fee. Eligible applicants who do not
 40 have active and current Medicaid benefits shall be responsible for paying the full cost of
 41 administering the drug test upon presentation to an authorized examiner.
- 42 (c)(1) The department shall require a drug test consistent with subsection (b) of this Code
 43 section to screen an applicant or recipient of food stamps at any time a reasonable
 44 suspicion exists that such applicant or recipient is using an illegal drug. The department
 45 may use any information obtained by the department to determine whether such
 46 reasonable suspicion exists, including, but not limited to:
- 47 (A) An applicant's or recipient's demeanor;
- 48 (B) Missed appointments and arrest or other police records;
- 49 (C) Previous employment or application for employment in an occupation or industry
 50 that regularly conducts drug screening; and
- 51 (D) Termination from previous employment due to unlawful use of a controlled
 52 substance or controlled substance analog or prior drug screening records of the
 53 applicant or recipient indicating unlawful use of a controlled substance or controlled
 54 substance analog.
- 55 (2) The cost of drug testing shall be the responsibility of the individual tested, provided
 56 that the individual does not submit proof of active and current Medicaid benefits to
 57 subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this
 58 Code section. No assistance payment shall be delayed because of the requirements of this
 59 Code section, and any payments made prior to the department's receipt of a test result
 60 showing a failure shall be recoverable.
- 61 (d) Any recipient of food stamps who tests positive for controlled substances as a result
 62 of a drug test required under this Code section shall be ineligible to receive food stamps as
 63 follows:

- 64 (1) For a first positive result, the recipient shall be ineligible for food stamps for one
65 month and until he or she tests negative in a retest;
- 66 (2) For a second positive result, the recipient shall be ineligible for food stamps for three
67 months and until he or she tests negative in a retest; and
- 68 (3) For a third and each subsequent positive result, the recipient shall be ineligible for
69 food stamps for one year and until he or she tests negative in a retest unless the individual
70 meets the requirements of subsection (f) of this Code section.
- 71 (e) The department shall:
- 72 (1) Provide notice of possible drug testing based on reasonable suspicion to each
73 individual at the time of application. Dependent children under the age of 18 shall be
74 exempt from the drug testing requirement;
- 75 (2) Advise each individual to be tested, before the test is conducted, that he or she may,
76 but is not required to, advise the agent administering the test of any prescription or over
77 the counter medication he or she is taking;
- 78 (3) Require each individual to be tested to sign a written acknowledgment that he or she
79 has received and understands the notice and advice provided under paragraphs (1) and (2)
80 of this subsection;
- 81 (4) Assure each individual being tested a reasonable degree of dignity while producing
82 and submitting a sample for drug testing, consistent with the state's need to ensure the
83 reliability of the sample;
- 84 (5) Specify circumstances under which an individual who fails a drug test has the right
85 to take one or more additional tests;
- 86 (6) Inform an individual who tests positive for a controlled substance and is deemed
87 ineligible for food stamps for one year pursuant to paragraph (3) of subsection (d) of this
88 Code section that the individual may reapply for food stamps six months after the date
89 of the positive drug test if he or she meets the requirements of subsection (f) of this Code
90 section; and
- 91 (7) Provide any individual who tests positive with a list of substance abuse treatment
92 providers approved by the department which are available in the area in which he or she
93 resides. Neither the department nor the state shall be responsible for providing or paying
94 for substance abuse treatment.
- 95 (f) An individual who tests positive for an illegal drug and is denied food stamps for one
96 year may reapply for food stamps after six months if the individual can document the
97 successful completion of a substance abuse treatment program offered by a provider
98 approved by the department. The cost of any drug testing provided under this Code section
99 and substance abuse treatment shall be the responsibility of the individual being tested and
100 receiving treatment. An individual who fails a drug test administered pursuant to

101 subsection (c) of this Code section may reapply for food stamps under this subsection only
102 once.

103 (g) If a parent is deemed ineligible for food stamps as a result of failing a drug test
104 conducted under this Code section:

105 (1) The dependent child's eligibility for food stamps shall not be affected;

106 (2) An appropriate protective payee shall be designated to receive food stamps on behalf
107 of the child; and

108 (3) The parent may choose to designate another individual to receive food stamps for the
109 parent's minor child. The designated individual must be an immediate family member
110 or, if an immediate family member is not available or the family member declines the
111 option, another individual approved by the department. The designated individual shall
112 be subject to possible drug testing based on a reasonable suspicion. If the designated
113 individual tests positive for controlled substances, he or she shall be ineligible to receive
114 benefits on behalf of the child.

115 (h) The results of any drug test performed according to this Code section shall not be
116 subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of
117 public records. Such results shall not be used as a part of a criminal investigation or
118 criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed
119 to any person or entity without the express written consent of the person tested or his or her
120 heirs or legal representative. All such records shall be destroyed and deleted five years
121 after the date of the test.

122 (I) No testing shall be required by the provisions of this Code section for any person whom
123 the department determines is significantly hindered, because of a physical or mental
124 handicap or developmental disability, from doing so or for any person enrolled in an
125 enhanced primary care case management program operated by the Department of
126 Community Health, Division of Medical Assistance to serve frail elderly and disabled
127 beneficiaries to improve the health outcomes of persons with chronic health conditions by
128 linking primary medical care with home and community based services. In addition, no
129 testing shall be required by the provisions of this Code section for any individuals receiving
130 or on a waiting list for long-term services and supports through a non-Medicaid home and
131 community based services program or for any individual residing in a facility such as a
132 nursing home, personal care home, assisted living community, intermediate care facility
133 for the intellectually or developmentally disabled, community living arrangement, or host
134 home.

135 (j) The department shall adopt rules to implement this Code section.

136 49-4-21.
 137 Each recipient of food stamp benefits shall present photo identification when using an
 138 electronic benefits transfer card, and each retailer shall request and inspect such photo
 139 identification at each transaction to ensure that the individual presenting the electronic
 140 benefits transfer card is the person identified by the photo identification. Failure to request
 141 such photo identification and perform such verification of identity shall result in the
 142 suspension of the retailer's privilege of accepting electronic benefits transfer cards for
 143 payment of any transactions for a period of one month for each offense. The department
 144 is authorized to promulgate regulations necessary to implement the provisions of this Code
 145 section."

146 **SECTION 2.**

147 Said chapter is further amended by revising Code Section 49-4-193, relating to established
 148 drug testing for TANF benefits, as follows:

149 "49-4-193.

150 (a) As used in this Code section, the term 'established drug test' means the collection and
 151 testing of bodily fluids administered in a manner equivalent to that required by the
 152 Mandatory Guidelines for Federal Workplace Drug Testing Programs (~~53 C.F.R. 11979,~~
 153 ~~et seq., as amended~~) established by the United States Department of Health and Human
 154 Services or other professionally valid procedures approved by the department; provided,
 155 however, that where possible and practicable, a swab test shall be used in lieu of a
 156 urinalysis.

157 (b) The department shall adopt rules and regulations for an established drug test which
 158 shall include the following:

- 159 (1) Which illegal drugs will be the subject of testing;
 160 (2) Methods for assuring minimal privacy intrusions during collection of body fluid
 161 specimens for such testing;
 162 (3) Methods for assuring proper storage, transportation, and handling of such specimens
 163 in order to ensure the integrity of the testing process;
 164 (4) The identity of those persons entitled to the results of such tests and methods for
 165 ensuring that only authorized persons are given access to such results;
 166 (5) A list of laboratories qualified to conduct established drug tests;
 167 (6) A list of approved substance abuse treatment providers;
 168 (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid
 169 specimens for such testing, to provide information regarding use of any drug pursuant to
 170 a medical prescription or as otherwise authorized by law which may affect the results of
 171 such test; and

172 (8) ~~A requirement that the test be conducted no later than 48 hours after the application~~
 173 ~~is approved by the department for TANF eligibility. Proof of eligibility from the~~
 174 ~~department shall be issued to the applicant. The applicant shall show proof of eligibility~~
 175 ~~to an authorized test examiner prior to submitting to the test; and~~

176 (9) A requirement that any applicant who demonstrates proof of active and current
 177 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and
 178 no authorized test examiner shall conduct a drug test if an applicant demonstrates active
 179 and current Medicaid benefits unless the applicant presents a receipt proving that he or
 180 she has paid the required drug screening application fee. Eligible applicants who do not
 181 have active and current Medicaid benefits shall be responsible for paying the full cost of
 182 administering the drug test upon presentation to an authorized examiner.

183 (c)(1) The department shall require a drug test consistent with subsection (b) of this Code
 184 section to screen ~~each individual who applies for assistance~~ an applicant or recipient at
 185 any time a reasonable suspicion exists that such applicant or recipient is using an illegal
 186 drug. The department may use any information obtained by the department to determine
 187 whether such reasonable suspicion exists, including, but not limited to:

188 (A) An applicant's or recipient's demeanor;

189 (B) Missed appointments and arrest or other police records;

190 (C) Previous employment or application for employment in an occupation or industry
 191 that regularly conducts drug screening; and

192 (D) Termination from previous employment due to unlawful use of a controlled
 193 substance or controlled substance analog or prior drug screening records of the
 194 applicant or recipient indicating unlawful use of a controlled substance or controlled
 195 substance analog.

196 (2) The cost of drug testing shall be the responsibility of the individual tested, provided
 197 that the individual does not submit proof of active and current Medicaid benefits to
 198 subsidize the cost of such drug testing pursuant to paragraph (9)(8) of subsection (b) of
 199 this Code section. No assistance payment shall be delayed because of the requirements
 200 of this Code section, and any payments made prior to the department's receipt of a test
 201 result showing a failure shall be recoverable.

202 (d) Any recipient of cash assistance under this article who tests positive for controlled
 203 substances as a result of a drug test required under this Code section shall be ineligible to
 204 receive TANF benefits as follows:

205 (1) For a first positive result, the recipient shall be ineligible for TANF benefits for one
 206 month and until he or she tests negative in a retest;

207 (2) For a second positive result, the recipient shall be ineligible for TANF benefits for
 208 three months and until he or she tests negative in a retest; and

209 (3) For a third and each subsequent positive result, the recipient shall be ineligible for
 210 TANF benefits for one year and until he or she tests negative in a retest unless the
 211 individual meets the requirements of subsection (f) of this Code section.

212 (e) The department shall:

213 (1) Provide notice of possible drug testing based on reasonable suspicion to each
 214 individual at the time of application. ~~The notice shall advise the individual that drug~~
 215 ~~testing will be conducted as a condition for receiving TANF benefits and that the~~
 216 ~~individual shall bear the cost of testing. If the individual tests negative for controlled~~
 217 ~~substances, the department shall increase the amount of the initial TANF benefit by the~~
 218 ~~amount paid by the individual for the drug testing. However, if the individual used an~~
 219 ~~active and current Medicaid benefit pursuant to paragraph (9) of subsection (b) of this~~
 220 ~~Code section to subsidize the cost of the test, the individual shall not be eligible for direct~~
 221 ~~TANF reimbursement. The individual shall be advised that the required drug testing may~~
 222 ~~be avoided if the individual does not apply for TANF benefits. Dependent children under~~
 223 the age of 18 are exempt from the drug testing requirement;

224 ~~(2) Require that for two-parent families, one parent shall comply with the drug testing~~
 225 ~~requirement;~~

226 ~~(3) Require that any teen parent who is not required to live with a parent, legal guardian,~~
 227 ~~or other adult caretaker relative shall comply with the drug testing requirement;~~

228 ~~(4)~~(2) Advise each individual to be tested, before the test is conducted, that he or she
 229 may, but is not required to, advise the agent administering the test of any prescription or
 230 over the counter medication he or she is taking;

231 ~~(5)~~(3) Require each individual to be tested to sign a written acknowledgment that he or
 232 she has received and understood the notice and advice provided under paragraphs (1)
 233 and ~~(4)~~(2) of this subsection;

234 ~~(6)~~(4) Assure each individual being tested a reasonable degree of dignity while
 235 producing and submitting a sample for drug testing, consistent with the state's need to
 236 ensure the reliability of the sample;

237 ~~(7)~~(5) Specify circumstances under which an individual who fails a drug test has the
 238 right to take one or more additional tests;

239 ~~(8)~~(6) Inform an individual who tests positive for a controlled substance and is deemed
 240 ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of
 241 this Code section that the individual may reapply for those benefits six months after the
 242 date of the positive drug test if he or she meets the requirements of subsection (f) of this
 243 Code section; and

244 ~~(9)~~(7) Provide any individual who tests positive with a list of substance abuse treatment
 245 providers approved by the department which are available in the area in which he or she

246 resides. Neither the department nor the state shall be responsible for providing or paying
 247 for substance abuse treatment.

248 (f) An individual who tests positive for an illegal drug and is denied TANF benefits for
 249 one year may reapply for TANF benefits after six months if the individual can document
 250 the successful completion of a substance abuse treatment program offered by a provider
 251 approved by the department. ~~An individual who has met the requirements of this~~
 252 ~~subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the~~
 253 ~~requirements of subsection (c) of this Code section. Any drug test conducted while the~~
 254 ~~individual is undergoing substance abuse treatment shall meet the requirements of~~
 255 ~~subsection (b) of this Code section.~~ The cost of any drug testing provided under this Code
 256 section and substance abuse treatment shall be the responsibility of the individual being
 257 tested and receiving treatment. An individual who fails the drug test required under
 258 subsection (c) of this Code section may reapply for TANF benefits under this subsection
 259 only once.

260 (g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test
 261 conducted under this Code section:

- 262 (1) The dependent child's eligibility for TANF benefits shall not be affected;
- 263 (2) An appropriate protective payee shall be designated to receive benefits on behalf of
 264 the child; and
- 265 (3) The parent may choose to designate another individual to receive benefits for the
 266 parent's minor child. The designated individual must be an immediate family member
 267 or, if an immediate family member is not available or the family member declines the
 268 option, another individual approved by the department. The designated individual shall
 269 ~~also undergo~~ be subject to possible drug testing based on a reasonable suspicion before
 270 ~~being approved to receive benefits on behalf of the child.~~ If the designated individual
 271 tests positive for controlled substances, he or she shall be ineligible to receive benefits
 272 on behalf of the child.

273 (h) The results of any drug test done according to this Code section shall not be subject to
 274 disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public
 275 records. Such results shall not be used as a part of a criminal investigation or criminal
 276 prosecution. Such results shall not be used in a civil action or otherwise disclosed to any
 277 person or entity without the express written consent of the person tested or his or her heirs
 278 or legal representative. All such records shall be destroyed and deleted five years after the
 279 date of the test.

280 (i) No testing shall be required by the provisions of this Code section for any person whom
 281 the department determines is significantly hindered, because of a physical or mental
 282 handicap or developmental disability, from doing so or for any person enrolled in an

283 enhanced primary care case management program operated by the Department of
284 Community Health, Division of Medical Assistance to serve frail elderly and disabled
285 beneficiaries to improve the health outcomes of persons with chronic health conditions by
286 linking primary medical care with home and community based services. In addition, no
287 testing shall be required by the provisions of this Code section for any individuals receiving
288 or on a waiting list for long-term services and supports through a non-Medicaid home and
289 community based services program or for any individual residing in a facility such as a
290 nursing home, personal care home, assisted living community, intermediate care facility
291 for the mentally retarded, community living arrangement, or host home.
292 (j) The department shall adopt rules to implement this Code section."

293

SECTION 3.

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