

House Bill 772 (COMMITTEE SUBSTITUTE) (AM)

By: Representative Morris of the 156<sup>th</sup>

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 that electronic benefits  
6 transfer cards for food stamp benefits contain a photo of the recipient; to provide for an  
7 effective date; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

14 "49-4-20.

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

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

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

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

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

62 (d) Any recipient of food stamps who tests positive for controlled substances as a result  
63 of a drug test required under this Code section shall be ineligible to receive food stamps as  
64 follows:

65 (1) For a first positive result, the recipient shall be ineligible for food stamps for one  
66 month and until he or she tests negative in a retest;

67 (2) For a second positive result, the recipient shall be ineligible for food stamps for three  
68 months and until he or she tests negative in a retest; and

69 (3) For a third and each subsequent positive result, the recipient shall be ineligible for  
70 food stamps for one year and until he or she tests negative in a retest unless the individual  
71 meets the requirements of subsection (f) of this Code section.

72 (e) The department shall:

73 (1) Provide notice of possible drug testing based on reasonable suspicion to each  
74 individual at the time of application. Dependent children under the age of 18 shall be  
75 exempt from the drug testing requirement;

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

79 (3) Require each individual to be tested to sign a written acknowledgment that he or she  
80 has received and understands the notice and advice provided under paragraphs (1) and (2)  
81 of this subsection;

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

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

87 (6) Inform an individual who tests positive for a controlled substance and is deemed  
88 ineligible for food stamps for one year pursuant to paragraph (3) of subsection (d) of this  
89 Code section that the individual may reapply for food stamps six months after the date  
90 of the positive drug test if he or she meets the requirements of subsection (f) of this Code  
91 section; and

92 (7) Provide any individual who tests positive with a list of substance abuse treatment  
93 providers approved by the department which are available in the area in which he or she  
94 resides. Neither the department nor the state shall be responsible for providing or paying  
95 for substance abuse treatment.

96 (f) An individual who tests positive for an illegal drug and is denied food stamps for one  
97 year may reapply for food stamps after six months if the individual can document the  
98 successful completion of a substance abuse treatment program offered by a provider

99 approved by the department. The cost of any drug testing provided under this Code section  
100 and substance abuse treatment shall be the responsibility of the individual being tested and  
101 receiving treatment. An individual who fails a drug test administered pursuant to  
102 subsection (c) of this Code section may reapply for food stamps under this subsection only  
103 once.

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

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

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

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

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

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

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

137 49-4-21.

138 (a) The department shall require that all electronic benefits transfer cards which include  
 139 food stamp benefits contain a photograph of one or more members of a household who are  
 140 authorized to use such food stamp benefits. The department is authorized to promulgate  
 141 regulations necessary to implement the provisions of this Code section.

142 (b) This Code section shall become effective on January 1, 2016."

143 **SECTION 2.**

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

146 "49-4-193.

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

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

- 156 (1) Which illegal drugs will be the subject of testing;
- 157 (2) Methods for assuring minimal privacy intrusions during collection of body fluid  
 158 specimens for such testing;
- 159 (3) Methods for assuring proper storage, transportation, and handling of such specimens  
 160 in order to ensure the integrity of the testing process;
- 161 (4) The identity of those persons entitled to the results of such tests and methods for  
 162 ensuring that only authorized persons are given access to such results;
- 163 (5) A list of laboratories qualified to conduct established drug tests;
- 164 (6) A list of approved substance abuse treatment providers;
- 165 (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid  
 166 specimens for such testing, to provide information regarding use of any drug pursuant to  
 167 a medical prescription or as otherwise authorized by law which may affect the results of  
 168 such test; and
- 169 ~~(8) A requirement that the test be conducted no later than 48 hours after the application~~  
 170 ~~is approved by the department for TANF eligibility. Proof of eligibility from the~~

171 ~~department shall be issued to the applicant. The applicant shall show proof of eligibility~~  
 172 ~~to an authorized test examiner prior to submitting to the test; and~~

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

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

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

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

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

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

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

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

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

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

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

209 (e) The department shall:

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

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

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

225 ~~(4)~~(2) Advise each individual to be tested, before the test is conducted, that he or she  
 226 may, but is not required to, advise the agent administering the test of any prescription or  
 227 over the counter medication he or she is taking;

228 ~~(5)~~(3) Require each individual to be tested to sign a written acknowledgment that he or  
 229 she has received and understood the notice and advice provided under paragraphs (1)  
 230 and ~~(4)~~(2) of this subsection;

231 ~~(6)~~(4) Assure each individual being tested a reasonable degree of dignity while  
 232 producing and submitting a sample for drug testing, consistent with the state's need to  
 233 ensure the reliability of the sample;

234 ~~(7)~~(5) Specify circumstances under which an individual who fails a drug test has the  
 235 right to take one or more additional tests;

236 ~~(8)~~(6) Inform an individual who tests positive for a controlled substance and is deemed  
 237 ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of  
 238 this Code section that the individual may reapply for those benefits six months after the  
 239 date of the positive drug test if he or she meets the requirements of subsection (f) of this  
 240 Code section; and

241 ~~(9)~~(7) Provide any individual who tests positive with a list of substance abuse treatment  
 242 providers approved by the department which are available in the area in which he or she

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

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

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

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

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

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



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

290

**SECTION 3.**

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